

SUBJECT TO COMPLETION, DATED FEBRUARY 6, 2020

PRELIMINARY OFFERING CIRCULAR

CONFIDENTIAL

\$500,000,000



Builders FirstSource, Inc.

as Issuer

% Senior Notes due 2030

Builders FirstSource, Inc., a Delaware corporation (the “Issuer,” “we,” “our” or “us”), is offering \$500,000,000 aggregate principal amount of its % senior notes due 2030 (the “Notes”).

The Notes will mature on , 2030 and will bear interest at the rate of % per year. Interest on the Notes is payable semi-annually in arrears on and of each year, beginning on , 2020.

The Notes will be redeemable in whole or in part at any time on or after , 2025. Up to 40% of the Notes will also be redeemable with the proceeds of certain equity offerings completed before , 2023. The redemption prices and payment of any accrued and unpaid interest are described under “Description of the Notes—Optional Redemption.” At any time prior to , 2025, the Notes will be redeemable, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but not including, the date of redemption, plus a “make-whole” premium. If we experience a Change of Control (as defined in “Description of the Notes”) or receive proceeds from certain asset sales, holders of the Notes will have the right to require us to repurchase the Notes under the terms set forth herein.

The Notes will be fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis (the “Guarantees”), by each of the Issuer’s subsidiaries that guarantee its obligations under the senior secured term loan facility (the “First-Lien Facility”) and the senior secured ABL facility (the “ABL Facility”) and, together with the First-Lien Facility, the “Senior Secured Credit Facilities”) (the “Guarantors”). Subject to certain exceptions, future subsidiaries of the Issuer that guarantee the Senior Secured Credit Facilities or certain other indebtedness will also guarantee the Notes.

The Notes and the Guarantees will be general senior unsecured obligations of the Issuer and the Guarantors, *pari passu* in right of payment with any existing and future senior indebtedness of the Issuer and the Guarantors, including obligations under the Senior Secured Credit Facilities and the 6.750% senior secured notes due 2027 (the “2027 Secured Notes”). The Notes and the Guarantees will be senior in right of payment to any future subordinated indebtedness of the Issuer and the Guarantors and effectively subordinated to all existing and future secured indebtedness of the Issuer and the Guarantors (including indebtedness under the Senior Secured Credit Facilities and our 2027 Secured Notes to the extent of the value of the assets securing such indebtedness of the Issuer and the Guarantors. The Notes and the Guarantees will be structurally subordinated to any existing and future indebtedness and other liabilities, including preferred stock, of the Issuer’s subsidiaries that do not guarantee the Notes.

The Notes will not have the benefit of any registration rights and we have no intention to register the Notes in the future.

We intend to use the net proceeds from this offering, together with borrowing under our ABL Facility, to redeem all of the outstanding aggregate principal amount of our 5.625% Senior Secured Notes due 2024 (the “2024 Secured Notes”) and to pay related transaction premiums, fees and expenses. See “Use of Proceeds.”

Investing in the Notes involves risks. See “Risk Factors” beginning on page 12.

Price for the Notes: % plus accrued interest, if any, from , 2020.

The Notes and the Guarantees have not been and will not be registered under the Securities Act of 1933, as amended (the “Securities Act”), or any state securities laws, and the Notes are being offered and sold only to persons reasonably believed to be “qualified institutional buyers” in accordance with Rule 144A under the Securities Act (“Rule 144A”) and outside the United States in accordance with Regulation S under the Securities Act (“Regulation S”). Prospective purchasers are hereby notified that the seller of the Notes may be relying on Rule 144A. For a description of restrictions on transfers of the Notes, see “Transfer Restrictions.”

We do not intend to apply for listing of the Notes on any securities exchange or for inclusion of the Notes in any automated quotation system.

The initial purchasers expect to deliver the Notes to purchasers in book-entry form through the facilities of The Depository Trust Company (“DTC”) on or about , 2020.

Joint Book-Running Managers

Credit Suisse

BofA Securities

Citigroup

The date of this Offering Circular is , 2020

We are responsible for the information contained in this offering circular (as it may be amended or supplemented from time to time, the “Offering Circular”). Neither we nor the initial purchasers have authorized anyone to give you any other information, and we and the initial purchasers take no responsibility for any other information that others may give you.

We and the initial purchasers are offering to sell the Notes only in places where offers and sales are permitted.

You should not assume that the information included in this Offering Circular is accurate as of any date other than the date on the front cover of this Offering Circular. Neither the delivery of this Offering Circular nor any sale made hereunder shall under any circumstances imply that the information herein is correct as of any date subsequent to the date on the cover of this Offering Circular.

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We expect that delivery of the Notes will be made against payment therefor on _____, 2020, which will be the _____ business day following the date of pricing of the Notes (such settlement being referred to as “T+ _____”). Under Rule 15c6-1 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes prior to the date that is two business days preceding the settlement date will be required, by virtue of the fact that the Notes initially settle in T+ _____, to specify an alternative settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Notes which wish to trade the Notes during such period should consult their advisors.

We have prepared this Offering Circular solely for use in connection with the proposed offering of the Notes described herein. This Offering Circular is confidential and personal to each prospective investor and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire securities. Distribution of this Offering Circular to any person other than the prospective investor and any person retained to advise such prospective investor with respect to its purchase is unauthorized, and disclosure of its contents, in whole or in part, without our prior written consent, is prohibited. Each prospective investor, by accepting delivery of this Offering Circular, agrees to the foregoing and agrees to make no copies or reproductions of any kind of all or any part of this Offering Circular or any documents referred to herein.

We, and not the initial purchasers, have furnished the information about us included in this Offering Circular. The initial purchasers assume no responsibility for, and makes no representation or warranty, express or implied, as to the accuracy or completeness of, the information included in this Offering Circular. Nothing included in this Offering Circular is, or shall be relied upon as, a promise or representation by the initial purchasers as to the past or future.

NONE OF THE U.S. SECURITIES AND EXCHANGE COMMISSION (THE “SEC”), ANY STATE SECURITIES COMMISSION OR OTHER U.S. REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED OF THE NOTES NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON

OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Prospective investors must rely on their own examination of the Issuer and the terms of the offering, including the merits and risks involved, in deciding whether to invest in the Notes. Prospective investors should not construe anything in this Offering Circular as legal, business or tax advice. Each prospective investor should consult its own advisors as needed to make its investment decision and to determine whether it is permitted to purchase the Notes under applicable laws and regulations. Prospective investors may be required to bear the financial risks of an investment in the Notes for an indefinite period of time.

This Offering Circular includes summaries believed to be accurate with respect to certain documents, but reference is made to the actual documents for complete information. All such summaries are qualified in their entirety by such reference. Copies of documents referred to herein will be made available to prospective investors upon request to the initial purchasers or us.

The Notes and the Guarantees have not been and will not be registered under the Securities Act or any state securities laws. Accordingly, the Notes are being offered and sold only to persons reasonably believed to be “qualified institutional buyers” (as defined in Rule 144A) and outside the United States to non-U.S. persons in offshore transactions in accordance with Regulation S. The Notes are subject to restrictions on transferability and resale and may not be transferred or resold except in a transaction exempt from or not subject to the registration requirements of the Securities Act or pursuant to an effective registration statement. Each purchaser of the Notes will be deemed to have made certain acknowledgments, representations and agreements relating to such restrictions on transfer and resale as more fully described under the heading “Transfer Restrictions.”

We reserve the right to withdraw this offering of Notes at any time and we and the initial purchasers reserve the right to reject any commitment to subscribe for the Notes in whole or in part and to allot each prospective investor less than the full amount of Notes subscribed for by such investor.

The Issuer’s name, logo and other trademarks mentioned in this Offering Circular are the property of their respective owners.

By purchasing any Notes, you acknowledge that:

- you have reviewed this Offering Circular;
- you are purchasing the Notes only for your own account and not for resale;
- you have had an opportunity to request from the Issuer any additional information that you need from the Issuer, and have reviewed any such additional information provided;
- you are a “qualified institutional buyer” (as defined in Rule 144A) or you are a person who is not a U.S. person, such sale took place outside the United States and you qualify to purchase the Notes in accordance with Regulation S;
- you are not relying on unauthorized information to make your investment decision; and
- the initial purchasers are not responsible for, and are not making any representation to you concerning the future performance of the Issuer or the accuracy or completeness of this Offering Circular.

You must comply with all laws and regulations that apply to you in any place in which you purchase, offer or sell any Notes or possess or distribute this Offering Circular. You must also obtain, at your sole cost and expense, any consents, waivers or approvals that you need in order to purchase the Notes. Neither we nor the initial purchasers are responsible for your compliance with these legal requirements.

We are offering 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. The Notes will be initially purchased by the firms that are listed on the cover of this Offering Circular, who are referred to in this Offering Circular as the initial purchasers, in accordance with such exemptions. Any sale of these Notes must be subject to an exemption from the registration requirements of the Securities Act.

FORWARD-LOOKING STATEMENTS

This Offering Circular and the documents incorporated by reference herein contain certain “forward-looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995 with respect to our business, financial condition, liquidity and results of operations. Words such as “anticipates,” “expects,” “intends,” “plans,” “predicts,” “believes,” “seeks,” “estimates,” “could,” “would,” “will,” “may,” “can,” “continue,” “potential,” “should” and the negative of these terms or other comparable terminology often identify forward-looking statements. Statements in this Offering Circular and the documents incorporated by reference that are not historical facts are hereby identified as “forward-looking statements” for the purpose of the safe harbor provided by Section 21E of the Exchange Act, and Section 27A of the Securities Act. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements, including the risks discussed in this Offering Circular and the documents incorporated by reference herein; in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018 in Item 1A under “Risk Factors” and in Item 7A under “Quantitative and Qualitative Disclosures About Market Risk”; in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2019 in Item 1A under “Risk Factors” and in Item 3 under “Quantitative and Qualitative Disclosures About Market Risk”; and the risks detailed from time to time in our future SEC reports. Factors, risks, and uncertainties that could cause actual outcomes and results to be materially different from those contemplated include, among others:

- dependence on the residential homebuilding industry, as well as the U.S. economy, the credit markets and other important factors;
- the building supply industry is subject to cyclical market pressures;
- the seasonal nature of the building products supply industry;
- homebuyer demand may shift towards smaller homes;
- competition in the highly fragmented building products supply industry;
- pricing pressure from our customers;
- our level of indebtedness and our ability to meet our obligations under our debt instruments;
- our future capital needs and our ability to obtain additional financing on acceptable terms;
- our incurrence of additional indebtedness and our inability to take certain actions because of restrictions in our debt agreements;
- rising interest rates, which could cause our variable indebtedness service obligations to increase significantly, including as a result of increased interest rates on borrowings under our Senior Secured Credit Facilities that may be impacted by the phase out of the London Interbank Offered Rate (also known as “LIBOR”);
- loss of significant customers;

- variability of our quarterly revenues and earnings;
- dependence on key personnel;
- product shortages, loss of key suppliers, and our dependence on third-party suppliers and manufacturers;
- additional impairment charges or the need to idle or permanently close under-performing locations;
- exposure to product liability, product warranty, casualty, construction defect, asbestos, vehicle and other liability claims;
- our ability to renew long-term leases for our facilities;
- our reliance on our subsidiaries;
- disruptions in our information technology systems;
- cybersecurity risks and the costs we may incur to minimize those risks;
- payment-related risks;
- natural or man-made disruptions to our distribution and manufacturing facilities;
- our ability to execute our strategic plans;
- effects of regulatory conditions on our operations;
- recently enacted tax legislation and future changes to tax laws and regulations;
- exposure to environmental liabilities and regulation;
- economic and financial uncertainty resulting from terrorism and war;
- the unionization of some of our employees; and
- the price of our common stock is volatile.

Many of the important factors that will determine these results are beyond our ability to control or predict. You are cautioned not to put undue reliance on any forward-looking statements, which speak only as of the date of this Offering Circular or, in the case of documents incorporated by reference, as of the date of such documents. Except as otherwise required by law, we do not assume any obligation to publicly update or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this Offering Circular or to reflect the occurrence of unanticipated events.

NO REVIEW BY THE SEC; NO REGISTRATION RIGHTS

This Offering Circular, as well as any other documents in connection with this offering, have not been and will not be reviewed by the SEC. There are no registration rights associated with the Notes or the Guarantees and we have no present intention to offer to exchange the Notes and the Guarantees for notes and note guarantees registered

under the Securities Act or to file a registration statement with respect to the Notes. The Indenture will not be qualified under the U.S. Trust Indenture Act of 1939, as amended.

NON-GAAP FINANCIAL MEASURES

We have included certain financial measures in this Offering Circular that have not been calculated in accordance with accounting principles generally accepted in the United States (“GAAP”) in order to provide investors with an alternative method for assessing our operating results in a manner that enables investors to more thoroughly evaluate our current performance as compared to past performance. We also believe these non-GAAP measures provide investors with a better baseline for modeling our future earnings expectations. Our management uses these non-GAAP measures for the same purpose. We believe that our investors should have access to the same set of tools that we use in analyzing our results. These non-GAAP measures should be considered in addition to results prepared in accordance with GAAP, but should not be considered a substitute for or superior to GAAP results. Our calculation of Adjusted EBITDA and free cash flow is not necessarily comparable to similarly titled measures reported by other companies. We have provided a definition below for these non-GAAP financial measures, together with an explanation of why management uses these measures and why management believes that these non-GAAP financial measures are useful to investors. For a reconciliation between these non-GAAP financial measures to the most closely comparable financial measures calculated in accordance with GAAP, please see “Summary—Summary Historical Financial and Other Data.”

We define Adjusted EBITDA as GAAP net income before depreciation and amortization, interest expense, income taxes, gain (loss) on sale of assets, (income) loss from closed locations, and other non-cash or special items including asset impairments, facility closure costs, acquisition costs, severance, conversion, transaction and integration costs, and stock compensation expense. Our management uses Adjusted EBITDA as a supplemental measure in the evaluation of our business and believes that Adjusted EBITDA provides a meaningful measure of our performance because it eliminates the effects of period to period changes in taxes, costs associated with capital investments, interest expense, stock compensation expense and other non-cash and non-recurring items. Adjusted EBITDA is not a financial measure calculated in accordance with GAAP. Accordingly, it should not be considered in isolation or as a substitute for net income or other financial measures prepared in accordance with GAAP. When evaluating Adjusted EBITDA, investors should consider, among other factors, (i) increasing or decreasing trends in Adjusted EBITDA, (ii) whether Adjusted EBITDA has remained at positive levels historically, and (iii) how Adjusted EBITDA compares to our debt outstanding. We provide a reconciliation of Adjusted EBITDA to GAAP net income. Because Adjusted EBITDA excludes some, but not all, items that affect net income and may vary among companies, Adjusted EBITDA presented by us may not be comparable to similarly titled measures of other companies. Adjusted EBITDA does not give effect to the cash we must use to service our debt or pay income taxes and thus does not reflect the funds generated from or used in operations or actually available for capital investments. We define free cash flow as GAAP net cash from operating activities net of purchases of property, plant and equipment. Our management uses free cash flow as a supplemental measure in the evaluation of our business as we believe it provides a meaningful evaluation of our liquidity. Free cash flow is not a financial measure calculated in accordance with GAAP. Accordingly, it should not be considered in isolation or as a substitute for net cash flow from operations or other financial measures prepared in accordance with GAAP.

MARKET AND INDUSTRY DATA AND FORECASTS

The industry and market data presented in this Offering Circular are based on management’s own estimates, internal company research and from third-party sources, and in each case, is believed by our management to be reliable. This data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market and industry data. We have not, and the initial purchasers have not, independently verified such data and we do not, and the initial purchasers do not, make any representation as to the accuracy or completeness of such information. While we are not aware of any misstatements regarding any industry and market data presented herein, such data involve risks and uncertainties and are subject to

change based upon various factors, including those discussed under the heading “Risk Factors” in this Offering Circular.

WHERE YOU CAN FIND ADDITIONAL INFORMATION AND INCORPORATION BY REFERENCE

We have chosen to “incorporate by reference” information into this Offering Circular, which means that we can disclose important information about us by referring you to another document filed with the SEC. The information incorporated by reference is considered to be a part of this Offering Circular. This Offering Circular incorporates by reference the documents and reports listed below (other than portions of these documents that are either (1) described in paragraphs (d)(1), (d)(2), (d)(3) or (e)(5) of Item 407 of Regulation S-K promulgated by the SEC or (2) furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K):

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on March 1, 2019;
- portions of the Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 12, 2019, that are incorporated by reference into Part III of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018;
- our Quarterly Report on Form 10-Q for the quarter ended September 30, 2019, filed with the SEC on November 1, 2019; and
- our Current Reports on Form 8-K filed with the SEC on April 30, 2019, May 24, 2019, May 28, 2019, May 31, 2019, July 12, 2019, July 30, 2019, August 9, 2019, August 23, 2019, October 10, 2019, October 16, 2019 and January 13, 2020.

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

Documents incorporated by reference are available from us without charge, excluding all exhibits except that if we have specifically incorporated by reference an exhibit into this Offering Circular, the exhibit will also be provided without charge. You may obtain documents incorporated by reference into this Offering Circular by requesting them in writing or by calling us at the following address or telephone number:

Builders FirstSource, Inc.
2001 Bryan Street, Suite 1600
Dallas, Texas 75201
(214) 880-3500
Attn: Corporate Secretary

You should rely only upon the information contained or incorporated by reference in this Offering Circular. We have not authorized anyone to provide you with different or additional information. You should not assume that the information in this Offering Circular is accurate as of any date other than the date of this Offering Circular.

SUMMARY

Except as otherwise indicated or where the context otherwise requires, in this Offering Circular, (i) “Builders FirstSource,” the “Company,” “we,” “us” and “our” refer to Builders FirstSource, Inc. and its consolidated subsidiaries and (ii) the “Issuer” refers to Builders FirstSource, Inc. and not to any of its subsidiaries. This summary highlights selected information contained elsewhere in this Offering Circular or incorporated by reference into this Offering Circular.

This summary does not contain all of the information that you should consider before investing in the Notes. You should read the entire Offering Circular and the incorporated documents carefully, including the section entitled “Risk Factors” in this Offering Circular and the information in the documents incorporated by reference herein, before making a decision to invest in the Notes.

Business Overview

We are a leading supplier and manufacturer of building materials, manufactured components and construction services to professional homebuilders, sub-contractors, remodelers and consumers. We operate approximately 400 locations in 40 states across the United States. We offer an integrated solution to our customers providing manufacturing, supply and installation of a full range of structural and related building products. Our manufactured products include our factory-built roof and floor trusses, wall panels and stairs, vinyl windows, custom millwork and trim, as well as engineered wood that we design, cut, and assemble specifically for each home. We also assemble interior and exterior doors into pre-hung units. Additionally, we supply our customers with a broad offering of professional grade building products not manufactured by us, such as dimensional lumber and lumber sheet goods and various window, door and millwork lines. Our full range of construction-related services includes professional installation, turn-key framing and shell construction, spanning all of our product categories.

Our Strengths

We are a market leader in a highly fragmented industry

We are a leading supplier and manufacturer of building materials, manufactured components and construction services to professional homebuilders, sub-contractors, remodelers and consumers, and we are the largest building supplier with manufacturing capabilities, according to *ProSales* magazine’s 2019 ProSales 100 list, with \$7.3 billion of sales generated over the last twelve months ended September 30, 2019. Many of our competitors are small, privately owned businesses with limited product offerings, access to capital and information technology infrastructure. We are able to maintain a competitive advantage over these smaller competitors by creating economies of scale that enable us to supply our customers cost-effectively. We believe we are well positioned to capture market share from smaller, local distributors that lack scale, allowing us to retain our market-leading position.

We maintain strong diversification across geographies, customers and end markets

We have a diverse geographic footprint, as we have operations in 77 of the top 100 U.S. Metropolitan Statistical Areas, as ranked by single family housing permits based on available 2018 U.S. Census data. We also serve a broad customer base, ranging from large production builders to small custom homebuilders, as well as multi-family builders, repair and remodeling contractors and light commercial contractors. For the year ended December 31, 2018, our top 10 customers accounted for approximately 16.8% of sales, and no single customer accounted for more than 5% of sales.

Strong free cash flow generation with history of deleveraging

Our differentiated, industry-leading platform with expanded use of technology and automation has enabled us to drive exceptional growth in net cash flow generation. Over the last few years, we have focused on sales of high margin value-added products, which have translated to improved profitability. Free cash flow was \$181.4 million for the year ended December 31, 2018 and \$282.3 million for the nine months ended September 30, 2019. We have also

used our cash flow towards active debt repayment since the ProBuild acquisition, resulting in a decrease in our total leverage ratio, net from 6.2x as of December 31, 2015 to 2.6x as of September 30, 2019 on an as adjusted basis, after giving effect to the Transactions (as defined below). See “—Summary Historical Financial and Other Data.” As such, we were able to deliver on a key leverage milestone of 2.5x to 3.5x set in 2015.

Total leverage ratio, net represents our total long-term debt, net of cash and cash equivalents, divided by our Adjusted EBITDA. We use Adjusted EBITDA as a supplemental measure in the evaluation of our business and believe that Adjusted EBITDA provides a meaningful measure of our performance. Adjusted EBITDA is not a financial measure calculated in accordance with GAAP. Accordingly, it should not be considered in isolation or as a substitute for net income or other financial measures prepared in accordance with GAAP. We provide a reconciliation of Adjusted EBITDA to GAAP net income in “—Summary Historical Financial and Other Data” below. We use free cash flow as a supplemental measure in the evaluation of our business as we believe it provides a meaningful evaluation of our liquidity. Free cash flow is not a financial measure calculated in accordance with GAAP. Accordingly, it should not be considered in isolation or as a substitute for net cash flow from operations or other financial measures prepared in accordance with GAAP. See “Non-GAAP Financial Measures” for more information on limitations of non-GAAP financial measures.

Our seasoned management team has deep industry experience

Our management team has extensive functional and industry experience with leadership developed internally as well as recruited externally. The team has successfully led the Company through industry cycles, including the 2009 housing crisis. Since inception, our leadership team has successfully integrated numerous acquisitions. Chad Crow, our President and Chief Executive Officer, joined the Company in September 1999 and served as Chief Financial Officer and Chief Operating Officer prior to assuming his current responsibilities in December 2017. Peter Jackson, our Senior Vice President and Chief Financial Officer, has significant experience in financial leadership positions including his prior roles at Lennox International, Inc., SPX Corporation, General Electric and Gerber Scientific.

On January 10, 2020, Mr. Crow notified our Board of Directors (the “Board”) of his decision to retire as President and Chief Executive Officer of the Company during 2020 after assisting our Board in hiring his replacement. See “—Recent Developments.”

Our Strategies

Leverage our competitive strengths to capitalize on growth in the housing market

As the U.S. housing market returns to a historically normalized level, we intend to leverage our core business strengths including size, national footprint, unmatched scale in manufacturing capability, breadth of product portfolio, and end market exposure to expand our sales and profit margins. Our customers continue to emphasize the importance of competitive pricing, a broad product portfolio, sales force knowledge, labor-saving manufactured products, on-site services and overall “ease of use” with their building products suppliers. Our comprehensive product offering, experienced sales force, strong strategic vendor relationships, and tenured senior management team position us well to capitalize on strong demand in the new home construction market and the repair and remodel segment. Our large delivery fleet, professional drivers, and comprehensive inventory management enable us to provide “just-in-time” product delivery, ensuring a smoother and faster production cycle for the homebuilder. Our comprehensive network of products, services and facilities provides a strategically advantaged service model which enhances our value to our customers and provides a strong platform to drive growth.

Maximize our share of wallet by capturing above-market growth in our higher margin value added products

We believe our national manufacturing footprint and differentiated capabilities will allow us to capture growth in our higher margin value-added products with single family homebuilders. We believe our value-added products address the growing demand for ways to build homes more efficiently, addressing labor constraints and rising costs. We plan to accelerate this growth by further expansion of our national manufacturing footprint to serve

locations that do not currently have adequate access to these high margin products. By focusing on our differentiated platform and broad product mix, we are able to offer a complete array of products and services that would otherwise need to be sourced from various distributors, providing us an opportunity to capture a greater share of wallet. This operational platform often will make us a preferred distributor for large scale national homebuilders as well as local and custom homebuilders looking for more efficient ways to build a home. We believe that customers continue to place an increased value on these capabilities, which further differentiates us from our competitors.

Optimize our highly scalable cost structure with operational excellence initiatives

We continue to focus on standardizing processes and technology-based workflows to minimize costs, streamline our operations and enhance working capital efficiency. We are implementing operational excellence initiatives that are designed to further improve efficiency as well as customer service. We expect these initiatives, including distribution and logistics, pricing and margin management, back office efficiencies, customer integration and systems-enabled process improvements, to yield significant cost savings. The scope and scale of our existing infrastructure, customer base, and logistical capabilities mean that improvements in efficiency, when replicated across our network, can yield substantial profit margin expansion.

Recent Developments

Financial Guidance for the Three Months Ended December 31, 2019 Reaffirmed

In connection with this offering, the Company reaffirms the following financial guidance it previously provided in conjunction with its earnings release for the third quarter of 2019. Net sales for the three-month period ended December 31, 2019 are expected to be between \$1,725 million and \$1,780 million, down 2 to 5 percent compared to the prior year period. Adjusted EBITDA for the three months ended December 31, 2019 is expected to be between \$100 million and \$110 million, down between 12 and 20 percent compared to the prior year period. For a definition of Adjusted EBITDA, an explanation of the reasons our management uses this measure and a discussion of certain of its limitations, see “—Summary Historical Financial and Other Data.”

Additionally, the Company estimates that, as of December 31, 2019, long-term debt and lease obligations totaled approximately \$1,286 million, net of approximately \$14 million of cash and cash equivalents, as compared to long-term debt and lease obligations of approximately \$1,334 million, net of approximately \$43 million of cash and cash equivalents, as of September 30, 2019.

The preliminary financial data included in this Offering Circular has been prepared by, and is the responsibility of, the Company’s management. PricewaterhouseCoopers LLP has not audited, reviewed, compiled, or applied agreed-upon procedures with respect to the preliminary financial data. Accordingly, PricewaterhouseCoopers LLP does not express an opinion or any other form of assurance with respect thereto. This information is based upon our estimates and currently available information, and is subject to revision as a result of, among other things, the completion of our financial closing procedures, the completion of our financial statements for such period and the completion of other operational procedures. Any such change may potentially be material. You should exercise caution in relying on this information and should draw no inferences from this information regarding financial or operating data not provided. The Company cannot assure you that these preliminary results will not differ materially from the information reflected in our financial statements for such period when they have been finalized.

Retirement of President and Chief Executive Officer

On January 10, 2020, Mr. Crow notified our Board of his decision to retire as President and Chief Executive Officer of the Company during 2020 after assisting the Board in hiring his replacement. Mr. Crow has agreed to continue with the Company in a consulting capacity for a period of time following the appointment of a new Chief Executive Officer to assist in the transition. The Board has retained a leading global executive search firm to help identify a successor.

Notice of Conditional Redemption

Upon pricing of the Notes, we intend to issue a notice of conditional redemption providing for the redemption of all of the outstanding 2024 Secured Notes at a redemption price equal to 104.219% of the principal amount of the 2024 Secured Notes, plus accrued and unpaid interest, if any, to, but not including, the issue date of the Notes offered hereby. Redemption of the 2024 Secured Notes would be conditioned upon the closing of the offering of the Notes offered hereby. Any redemption of the 2024 Secured Notes would be made solely pursuant to a redemption notice delivered pursuant to the indenture governing the 2024 Secured Notes, and nothing contained in this Offering Circular constitutes a notice of redemption of the 2024 Secured Notes.

Corporate Information

Builders FirstSource, Inc. is a Delaware corporation formed in 1998 as BSL Holdings, Inc. On October 13, 1999, our name changed to Builders FirstSource, Inc. Our common stock is listed on the NASDAQ Stock Market LLC under the ticker symbol “BLDR.”

For a further discussion of our business, we urge you to read the information that is incorporated by reference into this Offering Circular. See “Where You Can Find Additional Information and Incorporation by Reference.”

Summary of the Offering

The summary below describes the principal terms of the Notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The “Description of the Notes” section of this Offering Circular contains a more detailed description of the terms and conditions of the Notes. You should refer to the section entitled “Risk Factors” for an explanation of certain risks of investing in the Notes.

Issuer	Builders FirstSource, Inc.
Notes Offered	\$500,000,000 aggregate principal amount of % Senior Notes due 2030.
Maturity Date	, 2030
Interest	Interest on the Notes will be payable semi-annually in arrears on each and , beginning on , 2020. Interest on the Notes will accrue from the most recent date to which interest has been paid, or if no interest has been paid, the date of first issuance of the Notes. The Issuer will pay interest on the Notes in cash. See “Description of the Notes—Interest.”
Ranking	<p>The Notes will be senior unsecured obligations of the Issuer. Accordingly, they will be:</p> <ul style="list-style-type: none"> • <i>pari passu</i> in right of payment with all of the existing and future senior indebtedness of the Issuer, including indebtedness under the Senior Secured Credit Facilities and the 2027 Secured Notes; • effectively subordinated to all existing and future secured indebtedness of the Issuer (including indebtedness under the Senior Secured Credit Facilities and the 2027 Secured Notes) to the extent of the value of the assets securing such indebtedness; • senior to all of the future subordinated indebtedness of the Issuer; and • structurally subordinated to any existing and future indebtedness and other liabilities, including preferred stock, of the Issuer’s subsidiaries that do not guarantee the Notes.

As of September 30, 2019, on an as adjusted basis after giving effect to this offering, borrowing of \$47.0 million under the ABL Facility and the use of proceeds as described under the heading “Use of Proceeds” (together, the “Transactions”), we would have had approximately \$1,420.6 million of total debt outstanding, including \$500.0 million of the Notes offered hereby and \$920.6 million of total secured debt outstanding (consisting of \$157.1 million of borrowings under the First-Lien Facility, \$47.0 million of borrowings under the ABL Facility, with \$766.5 million of additional availability (subject to availability under a borrowing base and after giving effect to \$82.2 million of letters of credit outstanding as of September 30, 2019) thereunder, \$475.0 million aggregate principal amount outstanding under the 2027 Secured Notes and \$241.5 million of other finance obligations and finance lease obligations).

Guarantees	<p>The Notes will be fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis by each of the Issuer’s subsidiaries that guarantees its obligations under the Senior Secured Credit Facilities and the 2027 Secured Notes. Subject to certain exceptions, future subsidiaries that guarantee the Senior Secured Credit Facilities, the 2027 Secured Notes or certain other indebtedness will also guarantee the Notes. The Guarantees will be released in certain circumstances as described in “Description of the Notes—Guarantees.”</p> <p>The Guarantees will be senior unsecured obligations of the Guarantors. Accordingly, they will be:</p> <ul style="list-style-type: none"> • <i>pari passu</i> in right of payment with all of the existing and future senior indebtedness of the applicable Guarantor, including obligations under the Senior Secured Credit Facilities and the 2027 Secured Notes; • effectively subordinated to all existing and future secured indebtedness of the applicable Guarantor (including indebtedness under the Senior Secured Credit Facilities and the 2027 Secured Notes), to the extent of the value of the assets securing such indebtedness; • senior to all of the future subordinated indebtedness of the Issuer; and • structurally subordinated to any existing and future indebtedness and other liabilities, including preferred stock, of the applicable Guarantor’s subsidiaries that do not guarantee the Notes. <p>For the twelve months ended September 30, 2019, those of our subsidiaries that will not serve as Guarantors accounted for a <i>de minimis</i> percentage of our sales, total assets and total liabilities.</p>
Optional Redemption	<p>We may redeem the Notes, in whole or in part, at any time on or after _____, 2025 at the redemption prices described under “Description of the Notes—Optional Redemption,” plus accrued and unpaid interest, if any, to, but excluding, the redemption date. Prior to such date, we may redeem some or all of the Notes at a redemption price of 100% of the principal amount plus accrued and unpaid interest, if any, to, but excluding, the redemption date, plus a “make-whole” premium.</p> <p>In addition, prior to _____, 2023, we may redeem up to 40% of the aggregate principal amount of the Notes from the proceeds of certain equity offerings at the redemption price of _____ % of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.</p> <p>See “Description of the Notes—Optional Redemption.”</p>
Change of Control	<p>If we experience a Change of Control, we must offer to repurchase the Notes at 101% of the principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase.</p> <p>See “Description of the Notes—Change of Control.”</p>

Certain Covenants	<p>The Indenture will contain covenants that limit, among other things, our ability and the ability of some of our subsidiaries to:</p> <ul style="list-style-type: none"> • incur additional debt; • declare or pay dividends, redeem stock or make other distributions to stockholders; • make investments; • create liens or use assets as security in other transactions; • merge or consolidate, or sell, transfer, lease or dispose of substantially all of our assets; • enter into transactions with affiliates; • sell or transfer certain assets; and • agree to certain restrictions on the ability of restricted subsidiaries to make payments to the Issuer. <p>These covenants contain important exceptions, limitations and qualifications. Certain covenants will cease to apply to the Notes for so long as the Notes have investment grade ratings from any two of Standard & Poor’s Investors Ratings Service (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) and Fitch Ratings, Inc. (“Fitch”). See “Description of the Notes—Certain Covenants.”</p>
No Registration Rights	<p>We do not have any obligation to, nor do we intend to, register the Notes under the U.S. federal or state securities laws or under the securities laws of any other jurisdiction. We do not intend to list the Notes on any securities exchange.</p>
Absence of an Established Market for the Notes	<p>The Notes will be a new class of securities for which there currently is no market. Accordingly, we cannot assure you that a liquid market for the Notes will develop or be maintained.</p>
Transfer Restrictions	<p>The Notes have not been registered under the Securities Act or any state or other securities laws. The Notes are subject to restrictions on transfer and resale, as described under “Transfer Restrictions.”</p>
Use of Proceeds	<p>We intend to use the net proceeds from this offering, together with borrowing under our ABL Facility, to redeem all of the outstanding aggregate principal amount of our 2024 Secured Notes and to pay related transaction premiums, fees and expenses. See “Use of Proceeds.”</p>
Risk Factors	<p>Investing in the Notes involves substantial risk and uncertainties. You should consider carefully all of the information set forth in this Offering Circular and the documents incorporated by reference herein and, in particular, should evaluate the specific factors set forth in the section entitled “Risk Factors” in this Offering Circular; in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018 in Item 1A under “Risk Factors” and in Item 7A under “Quantitative and Qualitative Disclosures About Market Risk”; in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2019 in Item 1A under “Risk Factors” and in Item 3 under “Quantitative and Qualitative Disclosures</p>

About Market Risk”; and the risks detailed from time to time in our future SEC reports.

Summary Historical Financial and Other Data

The following tables set forth summary historical financial information for the Company for the periods ended and as of the dates indicated. The Company's financial information for and as of the years ended December 31, 2018 and 2017 and for the year ended December 31, 2016 has been derived from, and should be read in conjunction with, the Company's audited consolidated financial statements and the notes related thereto incorporated by reference into this Offering Circular.

The Company's financial information for the nine months ended September 30, 2019 and 2018 and as of September 30, 2019 has been derived from, and should be read in conjunction with, the Company's unaudited condensed consolidated financial statements and the notes related thereto incorporated by reference into this Offering Circular. In the opinion of the Company's management, the unaudited condensed consolidated financial statements have been prepared on a basis consistent with the Company's audited consolidated financial statements and include all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the results for the unaudited interim periods.

The Company's unaudited condensed combined financial information for the twelve months ("LTM") ended September 30, 2019, which does not comply with GAAP but we believe provides investors with useful information to assess our performance, has been derived by adding the Company's audited statement of operations information for the year ended December 31, 2018 to the Company's unaudited condensed consolidated statement of operations information for the nine months ended September 30, 2019 and subtracting the Company's unaudited condensed consolidated statement of operations information for the nine months ended September 30, 2018.

Our historical results are not necessarily indicative of the results that may be expected in the future.

	LTM Ended September 30, 2019	Nine Months Ended September 30,		Year Ended December 31,		
		2019	2018	2018	2017	2016
				(in thousands)		
Statement of Operations Data:						
Sales.....	\$ 7,332,838	\$ 5,516,858	\$ 5,908,791	\$ 7,724,771	\$ 7,034,209	\$ 6,367,284
Cost of sales.....	5,339,786	4,016,585	4,478,630	5,801,831	5,306,818	4,770,536
Gross margin	1,993,052	1,500,273	1,430,161	1,922,940	1,727,391	1,596,748
Selling, general and administrative expenses...	1,585,407	1,183,105	1,151,670	1,553,972	1,442,288	1,360,412
Income from operations.....	407,645	317,168	278,491	368,968	285,103	236,336
Interest expense, net	105,479	82,071	84,805	108,213	193,174	214,667
Income before income taxes..	302,166	235,097	193,686	260,755	91,929	21,669
Income tax expense (benefit)	69,703	54,655	40,516	55,564	53,148	(122,672)
Net income.....	\$ 232,463	\$ 180,442	\$ 153,170	\$ 205,191	\$ 38,781	\$ 144,341

	As of September 30, 2019	As of December 31,	
		2018	2017
		(in thousands)	
Balance Sheet Data:			
Current assets:			
Cash and cash equivalents	\$ 43,271	\$ 10,127	\$ 57,533
Accounts receivable, less allowances of \$14,280 and \$13,054 at September 30, 2019 and December 31, 2018, respectively	721,134	654,170	631,992
Other receivables.....	49,526	68,637	71,232
Inventories, net.....	581,543	596,896	601,547
Other current assets.....	34,603	43,921	33,564
Total current assets	1,430,077	1,373,751	1,395,868
Property, plant and equipment, net	696,154	670,075	639,303
Operating lease right-of-use assets, net.....	286,971	—	—
Goodwill	754,765	740,411	740,411

	As of September 30, 2019	As of December 31, 2018 2017	
		(in thousands)	
Intangible assets, net.....	101,303	103,154	132,567
Deferred income taxes.....	5,055	22,766	75,105
Other assets, net.....	23,434	22,152	22,870
Total assets	\$ 3,297,759	\$ 2,932,309	\$ 3,006,124
Current liabilities:			
Accounts payable	\$ 499,360	\$ 423,168	\$ 514,282
Accrued liabilities	289,735	292,526	271,597
Current portion of operating lease liabilities	60,280	—	—
Current maturities of long-term debt and lease obligations	14,370	15,565	12,475
Total current liabilities	863,745	731,259	798,354
Noncurrent portion of operating lease liabilities	232,475	—	—
Long-term debt and lease obligations, net of current maturities, debt discount premium and issuance costs	1,350,467	1,545,729	1,771,945
Deferred income taxes.....	18,836	—	—
Other long-term liabilities	53,235	58,983	59,616
Total liabilities.....	2,518,758	2,335,971	2,629,915
Total stockholders' equity.....	779,001	596,338	376,209
Total liabilities and stockholders' equity	\$ 3,297,759	\$ 2,932,309	\$ 3,006,124

	LTM Ended or As of, As Applicable, September 30, 2019	Nine Months Ended September 30, 2019 2018		Year Ended December 31, 2018 2017 2016		
		(in millions, except for ratios and where noted)				
Other Financial Data:						
Adjusted EBITDA(1)	\$ 531.8	\$ 406.8	\$ 376.6	\$ 501.6	\$ 419.0	\$ 381.6
Secured debt(2).....	\$ 920.6					
Total long-term debt(3)	\$ 1,420.6					
Total long-term debt, net(4)	\$ 1,377.3					
Secured leverage ratio, net(1)(5) ..	1.65x					
Total leverage ratio(1)(6)	2.67x					
Total leverage ratio, net(1)(7)	2.59x					
Interest coverage ratio(1)(8).....	5.04x					

- (1) We define Adjusted EBITDA as GAAP net income before depreciation and amortization, interest expense, income taxes, gain (loss) on sale of assets, (income) loss from closed locations, and other non-cash or special items including asset impairments, facility closure costs, acquisition costs, severance, conversion, transaction and integration costs, and stock compensation expense. Our management uses Adjusted EBITDA as a supplemental measure in the evaluation of our business and believes that Adjusted EBITDA provides a meaningful measure of our performance because it eliminates the effects of period to period changes in taxes, costs associated with capital investments, interest expense, stock compensation expense and other non-cash and non-recurring items. Adjusted EBITDA is not a financial measure calculated in accordance with GAAP. Accordingly, it should not be considered in isolation or as a substitute for net income or other financial measures prepared in accordance with GAAP. We provide a reconciliation of Adjusted EBITDA to GAAP net income below. See “Non-GAAP Financial Measures” for more information on limitations of non-GAAP financial measures.

When evaluating Adjusted EBITDA, investors should consider, among other factors, (i) increasing or decreasing trends in Adjusted EBITDA, (ii) whether Adjusted EBITDA has remained at positive levels historically, and (iii) how Adjusted EBITDA compares to our debt outstanding. We provide a reconciliation of Adjusted EBITDA to GAAP net income. Because Adjusted EBITDA excludes some, but not all, items that affect net income and may vary among companies, Adjusted EBITDA presented by us may not be comparable to similarly titled measures of other companies. Adjusted EBITDA does not give effect to the cash we must use to service our debt or pay income taxes and thus does not reflect the funds generated from or used in operations or actually available for capital investments.

The following table is a reconciliation of our GAAP net income to Adjusted EBITDA:

	LTM Ended September 30, 2019	Nine Months Ended September 30,		Year Ended December 31,		
		2019	2018	2018	2017	2016
		(in millions)				
Net income.....	\$ 232.5	\$ 180.4	\$ 153.2	\$ 205.2	\$ 38.8	\$ 144.3
Integration related expenses.....	15.1	10.8	14.9	19.2	20.7	26.0
Debt issuance and refinancing cost(A).....	3.6	6.8	—	(3.2)	58.7	57.0
Release of tax valuation allowance/Revaluation of deferred taxes(B)	—	—	—	—	29.0	(131.6)
Facility closure costs	—	—	—	—	—	(1.5)
Depreciation and amortization expense.....	97.0	71.8	72.7	97.9	93.0	109.8
Interest expense, net.....	101.9	75.3	84.8	111.4	134.5	157.7
Income tax expense.....	69.7	54.7	40.5	55.6	24.1	8.9
Stock compensation expense	13.9	9.4	9.9	14.4	13.5	10.5
(Gain)/loss on sale and asset impairments.....	(2.1)	(1.2)	(0.1)	(1.0)	6.3	(0.3)
Other management-identified adjustments(C)	0.2	(1.2)	0.7	2.2	0.4	0.8
Adjusted EBITDA.....	531.8	406.8	376.6	501.6	419.0	381.6

(A) Gains and losses associated with refinancing and/or extinguishing long term debt.

(B) In 2016, the Company released the valuation allowance against its net deferred tax assets. In 2017, the Company revalued its deferred tax assets due to the enactment of the 2017 Tax Act.

(C) Primarily relates to severance and one time cost.

(2) Secured debt consists of borrowings under the Senior Secured Credit Facilities, the aggregate principal amount outstanding under the 2027 Secured Notes and other finance obligations and finance lease obligations on an as adjusted basis, after giving effect to the Transactions. See “Capitalization.”

(3) Total long-term debt consists of the secured debt and the Notes offered hereby on an as adjusted basis, after giving effect to the Transactions.

(4) Total long-term debt, net represents our total long-term debt, net of cash and cash equivalents on an as adjusted basis, after giving effect to the Transactions.

(5) Secured leverage ratio, net represents our secured debt, net of cash and cash equivalents, divided by our Adjusted EBITDA on an as adjusted basis, after giving effect to the Transactions.

(6) Total leverage ratio represents our total long-term debt divided by our Adjusted EBITDA on an as adjusted basis, after giving effect to the Transactions.

(7) Total leverage ratio, net represents our total long-term debt, net of cash and cash equivalents, divided by our Adjusted EBITDA on an as adjusted basis, after giving effect to the Transactions.

(8) Interest coverage ratio represents our Adjusted EBITDA divided by our interest expense, net.

RISK FACTORS

In addition to the other information set forth and incorporated by reference in this Offering Circular, including, without limitation, the “Risk Factors” included in the Issuer’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018 and Quarterly Report on Form 10-Q for the quarter ended September 30, 2019, you should carefully consider the following risk factors before deciding to invest in the Notes. If any of the risks described below or in the documents incorporated by reference actually occurs, our business, business prospects, financial condition, results of operations or cash flows could be materially adversely affected. In any such case, the value of the Notes could decline, and you could lose all or part of your investment. The risks below and those incorporated by reference in this Offering Circular are not the only ones facing us. Additional risks not currently known to us or that we currently deem immaterial may also adversely affect us. This Offering Circular also contains forward-looking statements, estimates and projections that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of specific factors, including the risks described below and in the documents incorporated by reference in this Offering Circular.

Risks Relating to our Indebtedness and the Notes

Our level of indebtedness could adversely affect and prevent us from meeting our obligations under the Notes.

We have a substantial amount of indebtedness. As of September 30, 2019, on an as adjusted basis after giving effect to the Transactions, we would have had approximately \$1,420.6 million of total debt outstanding, including \$500.0 million of the Notes offered hereby and \$920.6 million of total secured debt outstanding (consisting of \$157.1 million of borrowings under the First-Lien Facility, \$47.0 million of borrowings under the ABL Facility, with \$766.5 million of additional availability (subject to availability under a borrowing base and after giving effect to \$82.2 million of letters of credit outstanding as of September 30, 2019) thereunder, \$475.0 million aggregate principal amount outstanding under the 2027 Secured Notes and \$241.5 million of other finance obligations and finance lease obligations). In addition, we had \$292.8 million in operating lease obligations as of September 30, 2019.

Our substantial debt could have important consequences to us, including:

- increasing our vulnerability to general economic and industry conditions;
- requiring a substantial portion of our operating cash flow to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our liquidity and our ability to use our cash flow to fund our operations, capital expenditures, and future business opportunities;
- exposing us to the risk of increased interest rates, and corresponding increased interest expense, because borrowings under the Senior Secured Credit Facilities are at variable rates of interest;
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions and general corporate or other purposes;
- limiting our ability to adjust to changing marketplace conditions and placing us at a competitive disadvantage compared to our competitors who may have less debt; or
- limiting our attractiveness as an investment opportunity for potential investors.

In addition, some of our debt instruments, including those governing the Senior Secured Credit Facilities and the 2027 Secured Notes, contain cross-default provisions that could result in our debt being declared immediately due and payable under a number of debt instruments, even if we default on only one debt instrument. In such event, it is unlikely that we would be able to satisfy our obligations under all of such accelerated indebtedness simultaneously.

Our financial condition and operating performance, including that of our subsidiaries, are also subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. There are no assurances that we will maintain a level of liquidity sufficient to permit us to pay the principal, premium and interest on our indebtedness, including the Notes.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital, or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations in an effort to meet our debt service and other obligations. The 2027 Secured Notes Indenture (as defined below) and the agreements governing the Senior Secured Credit Facilities restrict, and the Indenture will restrict, our ability to dispose of assets and to use the proceeds from such dispositions. We may not be able to consummate those dispositions or be able to obtain the proceeds that we could realize from them, and these proceeds may not be adequate to meet any debt service obligations then due, including payments on the Notes.

In addition, any borrowings under the ABL Facility will be secured indebtedness and therefore would be effectively senior to the Notes offered hereby and the Guarantees to the extent of the assets securing such indebtedness. See “Use of Proceeds” and “Description of Certain Other Indebtedness.”

We are a holding company and depend on our subsidiaries to generate sufficient cash flow to meet our debt service obligations, including payments on the Notes.

We are a holding company and derive all of our operating income from our subsidiaries. All of our assets are held by our direct and indirect subsidiaries. We rely on the earnings and cash flows of our subsidiaries, which are paid to us by our subsidiaries in the form of dividends and other payments or distributions, to meet our debt service obligations, including payments on the Notes. The ability of our subsidiaries to pay dividends or make other payments or distributions to us will depend on their respective operating results and may be restricted by, among other things, the laws of their jurisdiction of organization (which may limit the amount of funds available for the payment of dividends and other distributions to us), the terms of existing and future indebtedness and other agreements of our subsidiaries, the Senior Secured Credit Facilities, the terms of the Indenture and the 2027 Secured Notes Indenture and the covenants of any future outstanding indebtedness we or our subsidiaries incur.

If the Notes become rated investment grade by two of S&P, Moody's or Fitch, certain covenants will not be applicable and Guarantees may be released.

Certain covenants in the Indenture will be suspended and the Guarantees may be released if the Notes are rated investment grade by two of the ratings agencies and no default or event of default has otherwise occurred and is continuing under the Indenture. If the Notes are subsequently downgraded below investment grade, such covenants and such Guarantees will be reinstated. The covenants that would be suspended include, among others, limitations on our and our restricted subsidiaries' ability to pay dividends, make restricted payments, incur indebtedness, sell certain assets and enter into certain other transactions. Any actions that we take while these covenants are not in force will be permitted even if the covenants are subsequently reinstated. There can be no assurance that the Notes will ever be rated investment grade, or that if they are rated investment grade, the Notes will maintain such ratings.

We may not be able to satisfy our obligations to holders of the Notes upon a Change of Control.

Upon the occurrence of a Change of Control, each holder of the Notes will have the right to require us to purchase the Notes at a price equal to 101% of their principal amount thereof, together with any accrued and unpaid interest. Our failure to purchase, or to give notice of purchase of, the Notes would be a default under the Indenture, which would in turn be a default under the Senior Secured Credit Facilities and the 2027 Secured Notes Indenture. In addition, a Change of Control may constitute an event of default under the Senior Secured Credit Facilities and the 2027 Secured Notes Indenture. An event of default under the Senior Secured Credit Facilities or the 2027 Secured Notes Indenture may result in an event of default under the Indenture if the lenders accelerate the debt under either of the Senior Secured Credit Facilities or the debt under the 2027 Secured Notes Indenture is accelerated. Any of our future debt agreements may contain similar provisions.

If a Change of Control occurs, we may not have enough assets to satisfy all obligations under the Senior Secured Credit Facilities, the 2027 Secured Notes and the Notes. Upon the occurrence of a Change of Control we could seek to refinance the indebtedness under the Senior Secured Credit Facilities, the 2027 Secured Notes and the

Notes or obtain a waiver from the lenders under the Senior Secured Credit Facilities, the holders of the 2027 Secured Notes and/or the holders of the Notes. We cannot assure you, however, that we would be able to obtain a waiver or refinance our indebtedness on commercially reasonable terms, if at all. No assurances can be given that any court would enforce the Change of Control provisions in the Indenture as written for the benefit of the holders, or as to how these Change of Control provisions would be impacted were we to become a debtor in a bankruptcy case.

We may enter into transactions that would not constitute a Change of Control that could affect our ability to satisfy our obligations under the Notes.

Legal uncertainty regarding what constitutes a Change of Control and the provisions of the Indenture may allow us to enter into transactions, such as acquisitions, refinancings or recapitalizations, that would not constitute a Change of Control but may increase our outstanding indebtedness or otherwise affect our ability to satisfy our obligations under the Notes. The definition of Change of Control for purposes of the Notes includes a phrase relating to the transfer of “all or substantially all” of our assets 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, your ability to require the Issuer to repurchase Notes as a result of a transfer of less than all of our assets to another person may be uncertain. See “Description of the Notes—Change of Control.”

The agreements that govern our indebtedness contain various covenants that impose restrictions on us and certain of our subsidiaries that may affect our ability to operate our businesses.

The agreements that govern our indebtedness contain, and the Indenture will contain, various affirmative and negative covenants that may, subject to certain significant exceptions, restrict the ability of us and certain of our subsidiaries to, among other things, have liens on our property and/or merge or consolidate with any other person or sell or convey certain of our assets to any one person. The ability of us and our subsidiaries to comply with these provisions may be affected by events beyond our control. Failure to comply with these covenants could result in an event of default, which, if not cured or waived, could accelerate our repayment obligations.

The Notes are structurally subordinated to claims of creditors of certain of our subsidiaries that will not guarantee the Notes.

We and each of our subsidiaries that guarantees the Senior Secured Credit Facilities will initially guarantee the Notes. The Notes will not be guaranteed by certain of our existing and future subsidiaries. Claims of holders of the Notes will be structurally subordinated to the claims of creditors of these non-Guarantor subsidiaries, including trade creditors, and will not be satisfied from the assets of these non-Guarantor subsidiaries until their creditors are paid in full. In addition, the Guarantee of a Guarantor will be released in connection with a transfer of such Guarantor in a transaction not prohibited by the Indenture or upon certain other events described in “Description of the Notes—Guarantees.”

For the twelve months ended September 30, 2019, those of our subsidiaries that will not serve as Guarantors accounted for a *de minimis* percentage of our sales, total assets and total liabilities.

The Indenture will, subject to some limitations, permit these non-Guarantor subsidiaries to incur additional debt and will not limit their ability to incur other liabilities that are not considered indebtedness under the Indenture, such as trade payables.

The Notes are unsecured and will be effectively subordinated to our Senior Secured Credit Facilities and the 2027 Secured Notes, to the extent of the value of the collateral securing the Senior Secured Credit Facilities and the 2027 Secured Notes.

Our obligations under the Notes will be unsecured and will be effectively subordinated to our secured indebtedness (including indebtedness under the Senior Secured Credit Facilities and the 2027 Secured Notes) to the extent of the value of the collateral securing such secured indebtedness. Borrowings under the Senior Secured Credit Facilities and the 2027 Secured Notes are secured by substantially all of the assets of the Issuer and any existing and future guarantors.

If an event of default occurs under the 2027 Secured Notes Indenture or the agreements governing the Senior Secured Credit Facilities, the holders of such senior secured indebtedness will have a prior right to our secured assets, to the exclusion of the holders of the Notes, even if we are in default with respect to the Notes. In that event, our secured assets would first be used to repay in full all indebtedness and other obligations secured by them (including all amounts outstanding under the Senior Secured Credit Facilities and the 2027 Secured Notes), resulting in all or a portion of our assets being unavailable to satisfy the claims of the holders of the Notes and other unsecured indebtedness. Therefore, in the event of any distribution or payment of our assets in any foreclosure, dissolution, winding-up, liquidation, reorganization, or other bankruptcy proceeding, holders of the Notes will participate in our remaining assets ratably with each other and with all holders of our unsecured indebtedness that is deemed to be of the same class as such notes, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor. In any of the foregoing events, we cannot assure you that there will be sufficient assets to pay amounts due on the Notes. As a result, holders of such notes may receive less, ratably, than holders of secured indebtedness.

As of September 30, 2019, on an as adjusted basis after giving effect to the Transactions, (i) we would have had approximately \$1,420.6 million of total debt outstanding, all of which ranks *pari passu* in right of payment with the Notes, and (ii) the Notes would be effectively subordinated to \$920.6 million of total secured debt outstanding (consisting of \$157.1 million of borrowings under the First-Lien Facility, \$47.0 million of borrowings under the ABL Facility, with \$766.5 million of additional availability (subject to availability under a borrowing base and after giving effect to \$82.2 million of letters of credit outstanding as of September 30, 2019) thereunder, \$475.0 million aggregate principal amount outstanding under the 2027 Secured Notes and \$241.5 million of other finance obligations and finance lease obligations) to the extent of the value of the assets securing such indebtedness. The Indenture will also permit us to incur additional secured indebtedness, which could be substantial.

Federal and state statutes allow courts, under specific circumstances, to void Notes and require noteholders to return payments received.

If we become a debtor in a case under the U.S. Bankruptcy Code or encounter other financial difficulty under federal or state fraudulent transfer laws, a court may void or otherwise decline to enforce the Notes. A court might do so if it found that when we issued the Notes, or in some states when payments became due under the Notes, we received less than reasonably equivalent value or fair consideration and:

- were insolvent or rendered insolvent by reason of such incurrence;
- were left with inadequate capital to conduct our business;
- believed or reasonably should have believed that we would incur debts beyond our ability to pay; or
- were a defendant in an action for money damages or had a judgment for money damages docketed against us if, in either case, the judgment is unsatisfied after final judgment.

The court might also void the issuance of the Notes, without regard to the above factors, if the court found that we issued the Notes with actual intent to hinder, delay or defraud its creditors.

A court would likely find that we did not receive reasonably equivalent value or fair consideration for the Notes if we did not substantially benefit directly or indirectly from the issuance of the Notes. If a court were to void the issuance of the Notes you would no longer have any claim against us. Sufficient funds to repay the Notes may not be available from other sources, including the remaining obligors, if any. In addition, the court might direct you to repay any amounts that you already received from us. In the event of a finding that a fraudulent transfer or conveyance occurred, you may not receive any repayment on the Notes. Further, the avoidance of the Notes could result in an event of default with respect to our and our subsidiaries' other debt, which could result in acceleration of that debt. The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, we would be considered insolvent if:

- the sum of our debts, including contingent liabilities, was greater than the fair saleable value of all of our assets;

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

On the basis of historical financial information, recent operating history and other factors, we believe that we, after giving effect to these Notes, will not be insolvent, will not have unreasonably small capital for the business in which we are engaged and will not have incurred debts beyond our ability to pay such debts as they mature. In addition, we are not a defendant in an action for money damages, or had a judgment for money damages docketed against us, for which the judgment was unsatisfied after final judgment. We cannot assure you, however, as to what standard a court would apply in making these determinations or that a court would agree with our conclusions in this regard.

Finally, as a court of equity, the bankruptcy court may subordinate the claims in respect of the Notes to other claims against us under the principle of equitable subordination if the court determines that (a) the holder of Notes engaged in some type of inequitable conduct, (b) the inequitable conduct resulted in injury to our other creditors or conferred an unfair advantage upon the holders of Notes and (c) equitable subordination is not inconsistent with the provisions of the U.S. Bankruptcy Code.

There are circumstances other than repayment or discharge of the Notes under which the Guarantees will be released automatically, without your consent or the consent of the trustee.

The Guarantees may be released if the Notes are rated investment grade; provided, however, that if the Notes are subsequently downgraded below investment grade the Guarantees may be reinstated. See “Description of the Notes—Certain Covenants—Suspension of Covenants on Achievement of Investment Grade Status.”

In addition, the Guarantee of a Guarantor will be released in connection with a sale of such Guarantor in a transaction not prohibited by the Indenture.

The Indenture will also permit us to designate one or more of our restricted subsidiaries that is a Guarantor of the Notes as an unrestricted subsidiary. If we designate a Guarantor as an unrestricted subsidiary, any Guarantees of the Notes by such subsidiary or any of its subsidiaries will be released under the Indenture. In addition, the creditors of any unrestricted subsidiary and its subsidiaries will have a senior claim on the assets of such unrestricted subsidiary and its subsidiaries. See “Description of the Notes.”

The Guarantees provided by the Guarantors may not be enforceable and, under specific circumstances, federal and state statutes may allow courts to void the Guarantees and require holders of Notes to return payments received from Guarantors.

Under federal bankruptcy law and comparable provisions of state fraudulent transfer laws, a guarantee could be deemed a fraudulent transfer if the guarantor received less than a reasonably equivalent value in exchange for giving the guarantee, and one of the following is also true:

- such guarantor was insolvent on the date that it gave the guarantee or became insolvent as a result of giving the guarantee;
- such guarantor was engaged in business or a transaction, or was about to engage in business or a transaction, for which property remaining with the guarantor was an unreasonably small capital; or
- such guarantor intended to incur, or believed that it would incur, debts that would be beyond the guarantor’s ability to pay as those debts matured.

A guarantee could also be deemed a fraudulent transfer if it was given with actual intent to hinder, delay or defraud any entity to which the guarantor was or became, on or after the date the guarantee was given, indebted.

The measures of insolvency for purposes of the foregoing considerations will vary depending upon the law applied in any proceeding with respect to the foregoing. Generally, however, a guarantor would be considered insolvent if, at the time it incurred indebtedness:

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

We cannot predict:

- what standard a court would apply in order to determine whether a guarantor was insolvent as of the date it issued a guarantee, or whether, regardless of the method of valuation, a court would determine that the guarantor was insolvent on that date; or
- whether a court would determine that the payments under a guarantee would constitute fraudulent transfers or fraudulent conveyances on other grounds.

The Indenture will contain a “savings clause” intended to limit each Guarantor’s liability under its Guarantee to the maximum amount that it could incur without causing the Guarantee to be a fraudulent transfer under applicable law. There can be no assurance that this provision will be upheld as intended. In 2009, the U.S. Bankruptcy Court in the Southern District of Florida in *Official Committee of Unsecured Creditors of TOUSA, Inc. v. Citicorp N. Am., Inc.* found this kind of provision in that case to be ineffective, and held the guarantees to be fraudulent transfers and voided them in their entirety.

If a Guarantee is deemed to be a fraudulent transfer, it could be voided altogether, or it could be subordinated to all other debts of the Guarantor. In such case, any payment by the Guarantor pursuant to its Guarantee could be required to be returned to the Guarantor or to a fund for the benefit of the creditors of the Guarantor. If a Guarantee is voided or held unenforceable for any other reason, holders of the Notes would cease to have a claim against the Guarantor based on the Guarantee and would be creditors only of the Issuer and any Guarantor whose Guarantee was not similarly voided or otherwise held unenforceable.

Certain actions in respect of defaults taken under the Indenture by beneficial owners with short positions in excess of their interests in the Notes will be disregarded.

By acceptance of the Notes, each holder of notes agrees, in connection with any notice of Default, notice of acceleration or instruction to the Trustee to provide a notice of Default, notice of acceleration or take any other action (a “Noteholder Direction”), to (i) deliver a written representation to the Issuer and the Trustee that such holder and any of its affiliates acting in concert with it in connection with its investment in the Notes (other than screened affiliates) are not (or, in the case such holder is DTC or its nominee, that such holder is being instructed solely by beneficial owners that (together with such affiliates) are not) Net Short (as defined under “Description of the Notes”) and (ii) provide the Issuer with such other information as the Issuer may reasonably request from time to time in order to verify the accuracy of such holder’s representation within five business days of request therefor. Holders of the Notes, including holders that have hedged their exposure to the Notes in the ordinary course and not for speculative purposes, may not be able to make such representations or provide the requested additional information. These restrictions may impact a holder’s ability to participate in Noteholder Directions.

We may be unable to repay or repurchase the Notes at maturity.

At maturity, the entire principal amount of the Notes, plus accrued and unpaid interest, will become due and payable. We may not have the ability to repay or refinance these obligations. If the maturity date occurs at a time when other arrangements prohibit us from repaying the Notes, we would try to obtain waivers of such prohibitions from the lenders and holders under those arrangements, or we could attempt to refinance the borrowings

that contain the restrictions. If we could not obtain the waivers or refinance these borrowings, we would be unable to repay the Notes.

Holders of the Notes will not be entitled to registration rights and we do not currently intend to register the Notes under applicable securities laws, and there are restrictions on your ability to transfer or resell the Notes.

The Notes are being offered and sold pursuant to an exemption from registration under the Securities Act and applicable state securities laws and we do not currently intend to register the Notes or to offer to exchange the Notes for notes registered under the Securities Act. The holders of the Notes will not be entitled to require us to register the Notes for resale or otherwise. Therefore, you may transfer or resell the Notes in the United States only in a transaction registered under or exempt from the registration requirements of the Securities Act and applicable state securities laws, and you may be required to bear the risk of your investment in the Notes for an indefinite period of time. See “Transfer Restrictions.”

An active trading market may not develop for the Notes.

We cannot assure you that an active trading market will develop for the Notes. We do not intend to apply for listing of the Notes on any securities exchange or on any automated dealer quotation system in the United States or elsewhere.

The liquidity of, and trading market for, the Notes may also be adversely affected by, among other things:

- changes in the overall market for securities similar to the Notes;
- changes in our financial performance or prospects;
- the prospects for companies in our industry generally;
- the number of holders of the Notes;
- the interest of securities dealers in making a market for the Notes;
- the conditions of the financial markets; and
- prevailing interest rates.

The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future, which could have an adverse effect on the market price of the Notes.

Subsequent to their initial issuance, the Notes may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar notes, our performance and other factors.

The trading price of the Notes may be volatile and can be directly affected by many factors, including our credit rating.

The trading price of the Notes could be subject to significant fluctuation in response to, among other factors, changes in our operating results, interest rates, the market for non-investment grade securities, general economic conditions and securities analysts’ recommendations, if any, regarding our securities. 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. 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. In addition, subsequent to their initial issuance, the Notes may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar Notes, our performance and other factors.

You are responsible for determining the legality of your own investment.

Investing in the Notes involves your acquisition of interests in a structure and in assets that may raise legal issues for different classes of investors. You are responsible for determining whether you have the legal power, authority and right to invest in the Notes. The Issuer, the initial purchasers and their affiliates express no view as to your legal power, authority or right to invest in the Notes. You are urged to consult your own legal advisors as to such matters. You must be able to make the representations and warranties under “Transfer Restrictions.”

USE OF PROCEEDS

We expect that the net proceeds from this offering will be approximately \$ million after deducting the estimated discount to the initial purchasers. We intend to use the net proceeds from this offering, together with borrowing under our ABL Facility, to redeem the 2024 Secured Notes and to pay related premiums, fees and expenses.

The 2024 Secured Notes bear interest at a fixed rate of 5.625% per annum and are scheduled to mature on September 1, 2024. Loans under the ABL Facility bear interest, at the Company's option, based on either the eurodollar rate or base rate (a rate equal to the highest of an agreed benchmark rate commercially available, the federal funds effective rate plus 0.50% and the eurodollar rate plus 1.0%) plus, in each case, an applicable margin. The applicable margin in respect of the loans under ABL Facility is (x) 1.75%, 1.50% or 1.25% in the case of eurodollar rate loans (based on a measure of availability under the ABL Facility) and (y) 0.75%, 0.50% or 0.25% in the case of base rate loans (based on a measure of availability under the ABL Facility). As amended, revolving loans and swingline loans incurred under the ABL Facility will have a final maturity of November 22, 2023. See "Description of Certain Other Indebtedness."

Certain of the initial purchasers or their affiliates may be holders of our 2024 Secured Notes and will receive a portion of the net proceeds from this offering in connection with the redemption of the 2024 Secured Notes. In addition, certain of the initial purchasers or their affiliates are lenders and/or agents under our ABL Facility and have received, or may in the future receive, customary fees and commissions for transactions under our ABL Facility. See "Plan of Distribution."

CAPITALIZATION

The following table sets forth the Issuer's consolidated cash and cash equivalents and capitalization as of September 30, 2019:

- (1) on an actual basis; and
- (2) on an as adjusted basis, assuming we issue \$500.0 million of Notes in the offering and borrow \$47.0 million under our ABL Facility and use the net proceeds therefrom to redeem all of the outstanding aggregate principal amount of our 2024 Secured Notes and to pay related transaction premiums, fees and expenses.

You should read this table in conjunction with "Use of Proceeds" and "Risk Factors" included elsewhere in this Offering Circular, as well as the historical consolidated financial statements and related notes incorporated by reference into this Offering Circular. See "Where You Can Find Additional Information and Incorporation by Reference" located at the beginning of this Offering Circular for more information.

	As of September 30, 2019	
	Actual	As Adjusted
	(in thousands)	
Cash and cash equivalents ⁽¹⁾	\$ 43,271	\$ 43,271
Debt:		
2024 Secured Notes ⁽²⁾	503,923	—
2027 Secured Notes ⁽²⁾	475,000	475,000
ABL Facility ⁽²⁾⁽³⁾	—	47,000
First-Lien Facility ⁽²⁾	157,075	157,075
Notes offered hereby ⁽²⁾	—	500,000
Other finance obligations	222,606	222,606
Finance lease obligations	18,915	18,915
Total long-term debt	1,377,519	1,420,596
Total stockholders' equity	779,001	779,001
Total capitalization	\$ 2,156,520	\$ 2,199,597

- (1) Due to seasonal draws under the ABL Facility for working capital purposes, cash and cash equivalents may change. As adjusted cash and cash equivalents reflects cash on hand used to pay estimated fees and expenses in connection with the transactions contemplated by this Offering Circular.
- (2) Represents the aggregate principal amount and does not reflect deferred financing costs, debt issuance costs or discounts.
- (3) As of September 30, 2019, on an as adjusted basis after giving effect to the Transactions, we would have had \$766.5 million of additional availability under the ABL Facility (subject to availability under a borrowing base and after giving effect to \$82.2 million of letters of credit outstanding as of September 30, 2019).

DESCRIPTION OF CERTAIN OTHER INDEBTEDNESS

The following is a summary of certain provisions of the instruments evidencing or that are expected to evidence our material indebtedness. This summary does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all of the provisions of the relevant agreements that are or are expected to become effective.

First-Lien Facility

On July 31, 2015, the Company entered into a term loan credit agreement (the “Original First-Lien Credit Agreement”) with Deutsche Bank AG New York Branch, as administrative agent and collateral agent and the lenders and financial institutions party thereto. The Original First-Lien Credit Agreement provided for a seven-year \$600 million term loan facility. On August 22, 2016, the Company entered into an amended and restated term loan credit agreement to refinance the term loans outstanding under the Original First-Lien Credit Agreement (the “Amended and Restated First-Lien Credit Agreement”), and on February 23, 2017, the Company entered into a second amended and restated term loan credit agreement which extended the term of the term loans outstanding under the Amended and Restated First-Lien Credit Agreement to February 2024 (such credit facility, “First-Lien Facility”). The following is a summary description of certain terms of the First-Lien Facility.

Maturity and Prepayments

Subject to certain exceptions, the First-Lien Facility is subject to mandatory pre-payments in amounts equal to (1) 100% of the net cash proceeds from issuances or incurrence of debt by the Company or any of its restricted subsidiaries (other than with respect to certain permitted indebtedness); (2) 100% of the net cash proceeds from certain sales or other dispositions of assets by the Company or any of its restricted subsidiaries in excess of a certain amount and subject to customary reinvestment provisions and certain other exceptions; and (3) 50% (with step-downs to 25% and 0% based upon achievement of specified first lien net leverage ratios) of annual excess cash flow of the Company and its subsidiaries subject to customary exceptions and limitations.

Security and Guarantees

All obligations under the First-Lien Facility are guaranteed jointly and severally by the Company and all other subsidiaries that guarantee the 2024 Secured Notes. All obligations under the First-Lien Facility, and the guarantees of those obligations, are secured by substantially all of the assets of the Company and the Guarantors subject to certain exceptions and permitted liens, including a first-priority security interest in such assets that constitute Notes Collateral (as defined below) and a second-priority security interest in such assets that constitute ABL Collateral (as defined below).

“ABL Collateral” includes substantially all presently owned and after-acquired accounts, inventory, rights of unpaid vendor with respect to inventory, deposit accounts, investment property, cash and cash equivalents, and instruments and chattel paper and general intangibles, books and records and documents related to and proceeds of each of the foregoing.

“Notes Collateral” includes all collateral which is not ABL Collateral.

Interest

At the Company’s option, loans under the First-Lien Facility bear interest based on either the eurodollar rate or base rate (a rate equal to the highest of an agreed benchmark rate commercially available, the federal funds effective rate plus 0.50% and the eurodollar rate plus 1.0%) plus, in each case, an applicable margin. The applicable margin in respect of the loans under the First-Lien Facility is (x) 3.0% in the case of Eurodollar rate loans and (y) 2.0% in the case of base rate loans.

Covenants and Other Matters

The First-Lien Facility contains a number of customary affirmative and negative covenants that, among other things, limit or restrict the ability of the Company and the Guarantors to (1) incur additional indebtedness (including guarantee obligations); (2) incur liens; (3) engage in mergers or other fundamental changes; (4) sell certain property or assets; (5) pay dividends or other distributions; (6) make acquisitions, investments, loans and advances; (7) prepay certain indebtedness; (8) change the nature of their business; (9) engage in certain transactions with affiliates; and (10) incur restrictions on contractual obligations limiting interactions between the Company and its subsidiaries or limit actions in relation to the First-Lien Facility.

Events of Default

The First-Lien Facility contains customary events of default, subject to certain grace periods, thresholds and materiality qualifiers, including with respect to nonpayment of principal, interest, fees or other amounts; material inaccuracy of a representation or warranty when made; failure to perform or observe covenants; cross-default to other indebtedness in an amount in excess of \$50 million; bankruptcy and insolvency events; inability to pay debts; monetary judgment defaults in an amount in excess of \$50 million; actual or asserted invalidity or impairment of any definitive loan documentation; and a change of control.

ABL Facility

On July 31, 2015, the Company amended and restated its previously existing \$175 million senior secured revolving credit facility with SunTrust Bank as administrative agent and collateral agent. The amended and restated senior secured revolving credit facility provided for revolving credit financings of up to \$800 million, subject to availability under the borrowing base thereunder.

On March 22, 2017, the Company entered into an amendment to extend the maturity date and increase the revolving commitments under its previously existing \$800 million senior secured revolving credit facility, resulting in the amended and restated \$900 million ABL Facility due March 22, 2022. On April 24, 2019, the Company amended the ABL Facility to extend the maturity date to November 22, 2023. SunTrust Bank continues to serve as the administrative agent and collateral agent. The borrowing base for the ABL Facility, which determines availability under the facility, is based on a percentage of the value of certain of the assets comprising ABL Collateral. The following is a summary description of certain terms of the ABL Facility.

We intend to draw on the ABL Facility in connection with our conditional redemption of the 2024 Secured Notes, and the net proceeds of such borrowing and the Notes will be used to redeem all of the outstanding aggregate principal amount of our 2024 Secured Notes and to pay related transaction premiums, fees and expenses. See “Use of Proceeds.”

Maturity and Prepayments

As amended, revolving loans and swingline loans incurred under the ABL Facility will have a final maturity of November 22, 2023.

Security and Guarantees

All obligations under the ABL Facility are guaranteed jointly and severally by the Company and all other subsidiaries that guarantee the 2024 Secured Notes. All obligations under the ABL Facility, and the guarantees of those obligations, are secured by substantially all of the assets of the Company and the Guarantors subject to certain exceptions and permitted liens, including a first-priority security interest in such assets that constitute ABL Collateral and a second-priority security interest in such assets that constitute Notes Collateral.

Interest

At the Company's option, loans under the ABL Facility bear interest based on either the eurodollar rate or base rate (a rate equal to the highest of an agreed benchmark rate commercially available, the federal funds effective

rate plus 0.50% and the eurodollar rate plus 1.0%) plus, in each case, an applicable margin. The applicable margin in respect of the loans under ABL Facility is (x) 1.75%, 1.50% or 1.25% in the case of eurodollar rate loans (based on a measure of availability under the ABL Facility) and (y) 0.75%, 0.50% or 0.25% in the case of base rate loans (based on a measure of availability under the ABL Facility).

In addition, the Company pays customary commitment fees and letter of credit fees under the agreement governing the ABL Facility. The commitment fees will vary based upon a measure of the Company's utilization under the ABL Facility.

Covenants and Other Matters

The ABL Facility contains a number of customary affirmative and negative covenants that, among other things, limit or restrict the ability of the Company and the Guarantors to (1) incur additional indebtedness (including guarantee obligations); (2) incur liens; (3) engage in mergers or other fundamental changes; (4) sell certain property or assets; (5) pay dividends or other distributions; (6) make acquisitions, investments, loans and advances; (7) prepay certain indebtedness; (8) change the nature of their business; (9) engage in certain transactions with affiliates; and (10) incur restrictions on contractual obligations limiting interactions between the Company and its subsidiaries or limit actions in relation to the ABL Facility.

The ABL Facility also contains a financial covenant requiring the satisfaction of a minimum fixed charge coverage ratio of 1.00 to 1.00 in the event that the Company does not meet a minimum measure of availability under the ABL Facility.

Events of Default

The ABL Facility contains customary events of default, subject to certain grace periods, thresholds and materiality qualifiers, including with respect to nonpayment of principal, interest, fees or other amounts; material inaccuracy of a representation or warranty when made; failure to perform or observe covenants; cross-default to other indebtedness in an amount in excess of \$50 million; bankruptcy and insolvency events; inability to pay debts; monetary judgment defaults in an amount in excess of \$50 million; actual or asserted invalidity or impairment of any definitive loan documentation; and a change of control.

Senior Secured Notes due 2024

On August 22, 2016, the Company completed the sale of \$750 million aggregate principal amount of its 2024 Secured Notes. Net proceeds from the offering of the 2024 Secured Notes were used to redeem all of the Company's outstanding 7.625% Senior Secured Notes due 2021, repay approximately \$126 million of the Company's borrowings under its Original First-Lien Credit Agreement and pay related transaction fees and expenses.

We intend to use the proceeds of the offering of the Notes, together with borrowing under our ABL Facility, to redeem the 2024 Secured Notes and to pay related premiums, fees and expenses. See "Summary—Recent Developments—Notice of Conditional Redemption."

Senior Secured Notes due 2027

On May 30, 2019, the Company completed a private offering of \$400.0 million in aggregate principal amount of its 2027 Secured Notes. Net proceeds from the offering of the 2027 Secured Notes were used to repay a portion of the funds drawn under the Company's First-Lien Facility, to repurchase approximately \$97 million aggregate principal amount of the 2024 Secured Notes from certain beneficial owners in open market transactions and to pay related transaction fees and expenses, with the remaining net proceeds being used for general corporate purposes.

On July 25, 2019, the Company completed a private offering of an additional \$75.0 million in aggregate principal amount of the 2027 Secured Notes at an issue price of 104.5% of their par value. The net proceeds from

this additional issuance of the 2027 Secured Notes were used to redeem an additional \$75.0 million in aggregate principal amount of the 2024 Secured Notes and to pay related transaction fees and expenses.

The 2027 Secured Notes were issued and sold in a private transaction exempt from the registration requirements of the Securities Act, to qualified institutional buyers in accordance with Rule 144A under the Securities Act and to non-U.S. persons outside of the United States pursuant to Regulation S under the Securities Act. Accordingly, the 2027 Secured Notes and the related guarantees are not registered under the Securities Act and the 2027 Secured Notes and the related guarantees may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. The 2027 Secured Notes are the Company's senior secured obligations and are guaranteed on a senior basis by certain of its direct and indirect wholly-owned subsidiaries.

Indenture

The terms of the 2027 Secured Notes are governed by the indenture dated as of May 30, 2019 (the "2027 Secured Notes Indenture"), among the Issuer, the guarantors named therein (the "2027 Secured Notes Guarantors") and Wilmington Trust, National Association, as trustee and collateral agent.

Interest and Maturity

The 2027 Secured Notes bear interest at a rate of 6.750% and mature on June 1, 2027. Interest is payable on the 2027 Secured Notes on June 1 and December 1 of each year, commencing on December 1, 2019.

Guarantees and Security

The 2027 Secured Notes, subject to certain exceptions, are guaranteed, jointly and severally, on a senior secured basis, by the 2027 Secured Notes Guarantors. All obligations under the 2027 Secured Notes, and the guarantees of those obligations, are secured by substantially all of the assets of the Company and the 2027 Secured Notes Guarantors subject to certain exceptions and permitted liens, including a first-priority security interest in such assets that constitute Notes Collateral and a second-priority security interest in such assets that constitute ABL Collateral.

Intercreditor agreements govern all arrangements in respect of the priority of the security interests in the ABL Collateral and the Notes Collateral among the parties to the Senior Secured Credit Facilities, the 2027 Secured Notes Indenture and the indenture governing the 2024 Secured Notes.

Ranking

The 2027 Secured Notes constitute senior secured obligations of the Company and the 2027 Secured Notes Guarantors, rank senior in right of payment to all future debt of the Company and the 2027 Secured Notes Guarantors that is expressly subordinated in right of payment to the 2027 Secured Notes, and rank equally in right of payment with all existing and future liabilities of the Company and the 2027 Secured Notes Guarantors that are not so subordinated, including the Senior Secured Credit Facilities and the 2024 Secured Notes.

Covenants

The 2027 Secured Notes Indenture contains restrictive covenants that limit the ability of the Company and its restricted subsidiaries to, among other things, incur additional debt or issue preferred stock; create liens; create restrictions on the Company's subsidiaries' ability to make payments to the Company; pay dividends and make other distributions in respect of the capital stock of the Company and the 2027 Secured Notes Guarantors; make certain investments or certain other restricted payments; guarantee indebtedness; designate unrestricted subsidiaries; sell certain kinds of assets; enter into certain types of transactions with affiliates; and effect mergers and consolidations.

Certain of these covenants will be suspended if the 2027 Secured Notes are assigned an investment grade rating by any two of S&P, Moody's or Fitch and no default or event of default has occurred and is continuing.

Events of Default

The 2027 Secured Notes Indenture provides for events of default (subject in certain cases to customary grace and cure periods), which include, among others, nonpayment of principal or interest when due, breach of covenants or other agreements in the 2027 Secured Notes Indenture, defaults in payment of certain other indebtedness and certain events of bankruptcy or insolvency. Generally, if an event of default occurs, the Trustee or the Holders of 30% in principal amount of the outstanding 2027 Secured Notes may declare the principal of and unpaid interest on all of the 2027 Secured Notes to be due and payable immediately.

Redemption

At any time prior to June 1, 2022, the Company may redeem the 2027 Secured Notes in whole or in part at a redemption price equal to 100% of the principal amount of the 2027 Secured Notes plus the "applicable premium" set forth in the 2027 Secured Notes Indenture. At any time on or after June 1, 2022, the Company may redeem the 2027 Secured Notes at the redemption prices set forth in the 2027 Secured Notes Indenture, plus accrued and unpaid interest, if any, to, but excluding, the redemption date. At any time and from time to time prior to May 30, 2022, the Company may redeem up to 10% of the aggregate principal amount of the 2027 Secured Notes at a redemption price of 103% of the aggregate principal amount thereof plus accrued and unpaid interest to the redemption date. In addition, at any time prior to June 1, 2022, the Company may redeem up to 40% of the aggregate principal amount of the 2027 Secured Notes with the net cash proceeds of one or more equity offerings, as described in the 2027 Secured Notes Indenture, at a price equal to 106.750% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date. If the Company experiences certain change of control events, holders of the 2027 Secured Notes may require the Company to repurchase all or part of its 2027 Secured Notes at 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the repurchase date.

DESCRIPTION OF THE NOTES

The following is a description of the \$500,000,000 aggregate principal amount of % senior notes due 2030 (the “Notes”). The Notes will be issued by Builders FirstSource, Inc., a Delaware corporation (the “Company”). In this Description of the Notes, the term “Company” refers only to Builders FirstSource, Inc. and not to any of its Subsidiaries.

The Company will issue the Notes under an indenture (the “Indenture”) to be dated as of the Issue Date, among the Company, the Guarantors (as defined below) and Wilmington Trust, National Association, as trustee (the “Trustee”). The Notes will be issued in a private transaction that is not subject to the registration requirements of the Securities Act. See “Transfer Restrictions.” 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. A copy of the proposed form of the Indenture may be requested as described under “Where You Can Find Additional Information And Incorporation By Reference.” You can find the definitions of certain terms used in this description under “—Certain Definitions.” The capitalized terms defined in “—Certain Definitions” below are used in this “Description of the Notes” as so defined.

The Company does not intend to list the Notes on any securities exchange. The Company will not be required to, nor does the Company currently intend to, offer to exchange the Notes for notes registered under the Securities Act or otherwise register or qualify by prospectus the Notes for resale under the Securities Act. The Indenture will not be qualified under the Trust Indenture Act or subject to the terms of the Trust Indenture Act. Accordingly, the terms of the Notes include only those stated in the Indenture.

Brief Description of the Notes and the Note Guarantees

The Notes will be:

- general senior unsecured obligations of the Company;
- *pari passu* in right of payment with any existing and future senior Indebtedness (including Indebtedness under the Credit Agreement, the ABL and the Existing Notes) of the Company;
- effectively subordinated to all Secured Indebtedness (including Indebtedness under the Credit Agreement, the ABL and the Existing Notes) of the Company to the extent of the value of the assets securing such Indebtedness;
- senior in right of payment to any future Subordinated Indebtedness of the Company;
- unconditionally guaranteed on a senior unsecured basis, jointly and severally, by each Guarantor; and
- structurally subordinated to any existing and future Indebtedness and other liabilities, including preferred stock, of Non-Guarantor Subsidiaries and any other Subsidiaries of the Company that are not Guarantors.

Each Note Guarantee (as defined below) will be:

- a general senior unsecured obligation of the applicable Guarantor;
- *pari passu* in right of payment with all existing and future senior Indebtedness of that Guarantor, including its guarantee of the Credit Agreement, the ABL and the Existing Notes;

- effectively subordinated to all Secured Indebtedness (including guarantees of the Credit Agreement, the ABL and the Existing Notes) of such Guarantor to the extent of the value of the assets securing such Indebtedness;
- senior in right of payment to all future Subordinated Indebtedness of that Guarantor; and
- structurally subordinated to all existing and future Indebtedness and other liabilities, including preferred stock, of any Subsidiaries of that Guarantor that are not Guarantors.

As of September 30, 2019, on an as adjusted basis after giving effect to the Transactions, we would have had approximately \$1,420.6 million of total debt outstanding, including \$500.0 million of the Notes offered hereby and \$920.6 million of total secured debt outstanding (consisting of \$157.1 million of borrowings under the First-Lien Facility, \$47.0 million of borrowings under the ABL Facility, with \$766.5 million of additional availability (subject to availability under a borrowing base and after giving effect to \$82.2 million of letters of credit outstanding as of September 30, 2019) thereunder, \$475.0 million aggregate principal amount outstanding under the 2027 Secured Notes and \$241.5 million of other finance obligations and finance lease obligations).

Principal, Maturity and Interest

The Company will issue Notes 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 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 Company will issue an aggregate principal amount of \$500,000,000 of Notes pursuant to the Transactions. The Notes will mature on _____, 2030. Interest on the Notes will accrue at the rate per annum set forth on the cover of this Offering Circular and will be payable, in cash, semi-annually in arrears on _____ and _____ of each year, commencing on _____, 2020, 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 Issue Date. If the Company delivers global notes to the Trustee for cancellation on a date that is after the record date and on or before the corresponding interest payment date, then interest shall be paid in accordance with the applicable procedures of DTC. 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 Notes

The Company may issue additional Notes (the “*Additional Notes*”) from time to time under the Indenture. 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 will be part of the same issue as the Notes offered hereby under the Indenture for all purposes, including waivers, amendments, redemptions and offers to purchase; *provided* that Additional Notes will not be issued with the same CUSIP as the Notes offered hereby unless such Additional Notes are fungible with the Notes offered hereby for U.S. federal income tax purposes.

Payments

Principal of, and premium, if any, and interest on the Notes will be payable at the office or agency of the Company maintained for such purpose (along with any other paying agent maintained by the Company, the “Paying Agent”) or, at the option of the Paying Agent, payment of 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 or by wire transfer of immediately available funds to the accounts specified by the Holders of the Notes provided that all payments of

principal, premium, if any, and interest with respect to Notes represented by one or more global notes registered in the name of or held by the DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holders thereof. Until otherwise designated by the Company, the Company's office or agency maintained for such purpose will be the office of the Trustee.

Guarantees

The obligations of the Company under the Notes and the Indenture will be, jointly and severally, unconditionally guaranteed on a senior unsecured basis (the "*Note Guarantees*") by each existing and future Wholly-Owned Domestic Restricted Subsidiary (the "*Guarantors*") that Guarantees the Company's obligations under the Credit Agreement. Following the Issue Date, Subsidiaries will be required to Guarantee the Notes to the extent described in "*—Certain Covenants—Limitation on Guarantees.*"

For the twelve months ended September 30, 2019, those of our subsidiaries that will not serve as Guarantors accounted for a *de minimis* percentage of our sales, total assets and total liabilities.

Each Note Guarantee will be limited to the maximum amount that would not render the Note Guarantor's obligations subject to avoidance under applicable law as a fraudulent conveyance, fraudulent transfer or unjust preference, including provisions of the United States Bankruptcy Code or any comparable provision of foreign or state law or provincial 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 Relating to Our Indebtedness and the Notes—Federal and state statutes allow courts, under specific circumstances, to void Notes and require note holders to return payments received.*"

The Note Guarantee of a Guarantor will be automatically and unconditionally released and discharged upon:

- (1) a sale, exchange, transfer or other disposition (including by way of merger, amalgamation, consolidation, dividend, distribution or otherwise) of the Capital Stock of such Guarantor or the sale, exchange, transfer or other disposition, of all or substantially all of the assets of the Guarantor to a Person other than to the Company or a Restricted Subsidiary and as 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;
- (5) such Guarantor being (or being substantially concurrently) released or discharged from all of (i) its obligations under all of its Guarantees of payment by the Company of any Indebtedness of the Company under the Credit Agreement or (ii) in the case of a Note Guarantee made by a Guarantor (each, an "*Other Guarantee*") as a result of its guarantee of other Indebtedness of the Company or a Guarantor pursuant to the covenant entitled "*—Certain Covenants—Limitation on Guarantees,*" the relevant Indebtedness, except in the case of (i) or (ii), a release as a result of payment under such Guarantee (it being understood that a release subject to a contingent reinstatement is still considered a release, and if any such Guarantee of such Guarantor under the Credit Agreement or any Other Guarantee is so reinstated, such Note Guarantee shall also be reinstated);

- (6) upon the merger, amalgamation or consolidation of any Guarantor with and into the Company or another Guarantor or upon the liquidation of such Guarantor, in each case, in compliance with the applicable provisions of the Indenture;
- (7) upon the achievement of Investment Grade Status by the Notes; provided that such Note Guarantee shall be reinstated upon the Reversion Date; and
- (8) as described under “—Amendments and Waivers.”

Claims of creditors of Non-Guarantors, 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 therefor 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 below, the Notes are not redeemable at the option of the Company.

At any time prior to _____, 2025, the Company may redeem the Notes in whole or in part, at its option, upon notice as described under “—Selection and Notice,” at a redemption price equal to 100% of the principal amount of such Notes plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the redemption date.

At any time and from time to time on or after _____, 2025, the Company may redeem the Notes in whole or in part upon notice as described under “—Selection and Notice,” at a redemption price equal to the percentage of principal amount set forth below plus accrued and unpaid interest, if any, on the Notes redeemed, to, but excluding, the applicable date of redemption, if redeemed during the twelve-month period beginning on _____ of the year indicated below:

Year	Percentage
2025	%
2026	%
2027	%
2028 and thereafter	100.000%

At any time and from time to time prior to _____, 2023, the Company 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, if any, to, but excluding, 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 40% of the original aggregate principal amount of the Notes issued under the Indenture remains outstanding immediately thereafter (excluding Notes held by the Company or any of its Restricted Subsidiaries), unless all such Notes are redeemed substantially concurrently.

Notwithstanding the foregoing, in connection with any tender offer for the Notes, including a Change of Control Offer or Asset Disposition Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making a such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party will have the right upon not less than 15 nor more than 60 days' prior notice, given not more than 15 days following such purchase date, to redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price offered to each other Holder (excluding any early tender or incentive fee) in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but excluding, the date of such redemption.

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

Notice of any redemption of the Notes may, at the Company's discretion, be given prior to the completion of a corporate transaction (including an Equity Offering, an incurrence of Indebtedness, a Change of Control or other corporate transaction) and any redemption notice may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a related transaction. If such redemption or purchase is so subject to satisfaction of one or more conditions precedent, such notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In addition, the Company may provide in such notice that payment of the redemption price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

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 up to the redemption date 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 Company.

Unless the Company 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.

Mandatory Redemption or Sinking Fund

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. However, under certain circumstances, the Company 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 our outstanding debt securities or loans, including the Notes, in privately negotiated or open market transactions, by tender offer or otherwise.

Selection and Notice

If less than all of the Notes are to be redeemed at any time, the Trustee 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 Company, 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, the Trustee will select on a pro rata basis, subject to adjustments so that no Note

in an unauthorized denomination remains outstanding after such redemption; *provided, however*, that no Note of \$2,000 in aggregate principal amount or less shall be redeemed in part.

Notices of redemption will be delivered electronically or mailed by first-class mail at least 15 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at the address of such Holder appearing in the security register or otherwise in accordance with the applicable 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 Company defaults in the payment of the redemption price, interest ceases to accrue on Notes or portions of them called for redemption.

Change of Control

The Indenture will provide that if a Change of Control occurs, unless the Company has previously or substantially concurrently therewith delivered a redemption notice with respect to all the outstanding Notes as described under “—Optional Redemption,” the Company will make an offer to purchase all of the Notes pursuant to the offer described below (the “*Change of Control Offer*”) at a price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase, subject to the right of Holders of the Notes of record on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Company will deliver or cause to be delivered notice of such Change of Control Offer electronically in accordance with the procedures of DTC or by first-class mail, with a copy to the Trustee, to each Holder of Notes at the address of such Holder appearing in the security register, describing the transaction or transactions that constitute the Change of Control 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, except in the case of a conditional Change of Control Offer made in advance of a Change of Control as described below.

To the extent that the provisions of any securities laws, rules or regulations, including Rule 14e-1 under the Exchange Act, 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 Company may rely on any no-action letters issued by the SEC indicating that the staff of the SEC will not recommend enforcement action in the event a tender offer satisfies certain conditions.

Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders of the Notes to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

The occurrence of events which would constitute a Change of Control may constitute a default under the Credit Agreement and the ABL that permits the lenders to accelerate the maturity of borrowings thereunder and would also likely require the Company to offer to repurchase the Existing Notes. Future Indebtedness of the Company or its subsidiaries may contain prohibitions on certain events which would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. Moreover, the exercise by the holders of their right to require the Company to repurchase the Notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect of such repurchase on the Company. There can be no assurance that sufficient funds will be available when necessary to make any required repurchases.

Our ability to pay cash to the Holders of Notes following the occurrence of a Change of Control may be limited by our then-existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases. The Change of Control purchase feature of the Notes may in certain circumstances make more difficult or discourage a sale or takeover of us and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the initial purchasers of the Notes and us. We have no present intention to engage in a transaction involving a Change of Control after the Issue Date, although it is possible that we could decide to do so in the future.

Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the Indenture, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to incur additional Indebtedness are contained in the covenants described under “—Certain Covenants—Limitation on Indebtedness” and “—Certain Covenants—Limitation on Liens.” Such restrictions in the Indenture can be waived only with the consent of the Holders of a majority in principal amount of the Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture will not contain any covenants or provisions that may afford Holders of the Notes protection in the event of a highly leveraged transaction.

The Company will not be required to make a Change of Control Offer following a Change of Control if (i) 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 Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (ii) a notice of redemption of all outstanding Notes has been given pursuant to the Indenture as described above under the caption “—Optional Redemption,” unless and until there is a default in the payment of the redemption price on the applicable redemption date or the redemption is not consummated due to the failure of a condition precedent contained in the applicable redemption notice to be satisfied. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control.

The definition of “Change of Control” includes a disposition of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person. 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, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of “all or substantially all” of the assets of the Company and its Subsidiaries, taken as a whole. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of Notes may require the Company to make an offer to repurchase the Notes as described above.

A sale, lease or other disposition by the Company of any part of its assets shall not be deemed to constitute the sale, lease or other disposition of substantially all of its assets for purposes of the Indenture if the fair market value of the assets retained by the Company exceeds 100% of the aggregate principal amount of all outstanding Notes and any other outstanding Indebtedness of the Company that ranks equally with, or senior to, the Notes with respect to such assets. This paragraph is not intended to limit the Company’s sales, leases or other dispositions of less than substantially all of its assets.

The provisions under the Indenture relating 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 aggregate 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 Restricted Payments”;
- “—Limitation on Indebtedness”;
- “—Limitation on Restrictions on Distributions from Restricted Subsidiaries”;
- “—Limitation on Affiliate Transactions”;
- “—Limitation on Sales of Assets and Subsidiary Stock”;
- “—Limitation on Guarantees”; and
- the provisions of clause (3) of the first paragraph of “—Merger, Amalgamation and Consolidation.”

If at any time the Notes cease to have such Investment Grade Status, 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); provided, however, that no Default, Event of Default or breach of any kind shall be deemed to exist under the Indenture, the Notes or the Note Guarantees 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 during the Suspension Period (as defined below), or any actions taken at any time pursuant to any contractual obligation arising prior to the 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 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.” On and after the Reversion Date, all Liens created during the Suspension Period will be considered Permitted Liens. 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 prior to, but not during, the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will not reduce the amount available to be made as Restricted Payments under the first paragraph of “—Limitation on Restricted Payments.” On the Reversion Date, the amount of Excess Proceeds shall be reset at zero. Any Affiliate Transaction entered into after the Reversion Date pursuant to an agreement entered into during any Suspension Period will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (6) of the second paragraph under “—Limitation on Affiliate Transactions.” Any encumbrance or restriction on the ability of any Restricted Subsidiary to take any action described in clauses (A) through (C) of the first paragraph of “—Limitation on Restrictions on Distributions from Restricted Subsidiaries” that becomes effective during the Suspension Period will be deemed to have existed on the Issue Date, so that it is classified as permitted under clause (1) of the second paragraph under “—Limitation on Restrictions on Distributions from Restricted Subsidiaries.” In addition, any future obligation to grant further Guarantees shall be released. All such further obligation to grant Guarantees shall be reinstated upon the Reversion Date. No Default or Event of Default will be deemed to have

occurred on the Reversion Date as a result of any actions taken by the Company or its Restricted Subsidiaries during the Suspension Period.

On and after each Reversion Date, the Company and its Subsidiaries will be permitted to consummate the transactions contemplated by any contract entered into during the Suspension Period, so long as such contract and such consummation would have been permitted during such Suspension Period.

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

The Trustee shall have no duty to monitor the ratings of the Notes, shall not be deemed to have any knowledge of the ratings of the Notes and shall have no duty to notify Holders if the Notes achieve Investment Grade Status or of the occurrence of a Reversion Date.

Limitation on Indebtedness

The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Company and any of its Restricted Subsidiaries may Incur Indebtedness (including Acquired Indebtedness), if on the date of such Incurrence and after giving pro forma effect thereto (including pro forma application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries is greater than 2.00 to 1.00; *provided, further*, that Non-Guarantors may not Incur Indebtedness under this paragraph if, after giving pro forma effect to such Incurrence (including a pro forma application of the net proceeds therefrom), more than an aggregate of the greater of (a) \$375.0 million and (b) 75% of LTM EBITDA of Indebtedness of Non-Guarantors would be outstanding pursuant to this paragraph at such time.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness (collectively, “*Permitted Debt*”):

- (1) (X) Indebtedness Incurred under any Credit Facility (other than the ABL) by the Company or any of its Restricted Subsidiaries (including letters of credit or bankers’ acceptances issued or created under any Credit Facility) and Guarantees in respect of such Indebtedness, up to an aggregate principal amount equal to the sum of (I) the greater of (a) \$600.0 million and (b) the maximum amount of Indebtedness that the Company and its Restricted Subsidiaries could incur such that the Consolidated Secured Leverage Ratio is equal to or less than 4.00 to 1.00 on a pro forma basis (*provided* that, for the purposes of determining the amount that may be Incurred under this clause (I)(b), all Indebtedness incurred under this clause (I)(b) shall be deemed to be secured by Liens) plus (II) the greater of \$375.0 million and 75% of LTM EBITDA, in each case, outstanding at any one time, (Y) Indebtedness Incurred under the ABL by the Company or any of its Restricted Subsidiaries (including letters of credit or bankers’ acceptances issued or created under any Credit Facility) and Guarantees in respect of such Indebtedness, up to an aggregate principal amount outstanding at any one time not to exceed the greater of (a) \$1,300.0 million and (b) the Borrowing Base as of the date of such incurrence, and (Z) 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 (including, without limitation, tender premiums) and other costs and expenses (including, without limitation, original issue discount, upfront fees or similar fees) Incurred in connection with such refinancing, and any Refinancing Indebtedness in respect thereof;
- (2) Guarantees by the Company or any Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the Incurrence of such Indebtedness or other obligation is not prohibited by the terms of the Indenture;
- (3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and 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 being held by a Person other than the Company or a Restricted Subsidiary; and
- (b) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary,

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), (2) and (4)(a) above) outstanding on the Issue Date (including the Existing Notes) and any Guarantee thereof, (c) Refinancing Indebtedness (including, with respect to the Notes and the Existing Notes, any Guarantee thereof) Incurred in respect of any Indebtedness described in this clause or clause (2), (5) or (8) of this paragraph or Incurred pursuant to the first paragraph of this covenant, and (d) Management Advances;
- (5) Indebtedness of (x) the Company or any Restricted Subsidiary Incurred or issued to finance an acquisition or Investment or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Company or a Restricted Subsidiary in accordance with the terms of the Indenture (including designating an Unrestricted Subsidiary as a Restricted Subsidiary); *provided* that such Indebtedness is in an aggregate amount not to exceed (i) the greater of \$125.0 million and 25% of LTM EBITDA at any time outstanding plus (ii) unlimited additional Indebtedness if after giving pro forma effect to such acquisition, merger, amalgamation or consolidation, either
 - (a) the Company would be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the first paragraph of this covenant,
 - (b) either the Fixed Charge Coverage Ratio of the Company and the Restricted Subsidiaries would not be lower or the Consolidated Total Leverage Ratio of the Company and the Restricted Subsidiaries would not be higher, in each case, than immediately prior to such acquisition, merger, amalgamation or consolidation, or
 - (c) such Indebtedness constitutes Acquired Indebtedness (other than Indebtedness Incurred in contemplation of the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by the Company or a Restricted Subsidiary); *provided* that the only obligors with respect to such Indebtedness shall be those Persons who were obligors of such Indebtedness prior to such acquisition, merger, amalgamation or consolidation;
- (6) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);
- (7) Indebtedness (i) represented by Finance Lease Obligations or Purchase Money Obligations in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause and then outstanding, does not exceed the greater of (a) \$125.0 million and (b) 25% of LTM EBITDA (for the avoidance of doubt, Unsecured Finance Leases shall be permitted in an unlimited amount pursuant to clause (22)), and any Refinancing Indebtedness in respect thereof and (ii) arising out of Sale and Leaseback Transactions;
- (8) Indebtedness in respect of (a) workers' compensation claims, health, disability or other employee benefits, property, casualty or liability insurance, self-insurance obligations, customer guarantees, performance, indemnity, surety, judgment, bid, appeal, advance payment (including progress premiums), 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 practice; (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 practice; *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 practice from customers for goods or services purchased in the ordinary course of business or consistent with past practice; (d) letters of credit, bankers' acceptances, discounted bills of exchange, discounting or factoring of receivables or payables for credit management purposes, warehouse receipts, guarantees or other similar instruments or obligations issued or entered into, or relating to liabilities or obligations Incurred in the ordinary course of business or consistent with past practice; (e) any customary treasury, depositary, cash management, automatic clearinghouse arrangements, overdraft protections, credit or debit card, purchase card, electronic funds transfer, cash pooling or netting or setting off arrangements or similar arrangements in the ordinary course of business; or consistent with past practice; and (f) Settlement Indebtedness;
- (9) Indebtedness arising from agreements providing for guarantees, indemnification, obligations in respect of earn-outs, deferred purchase price 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 in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause and then outstanding, will not exceed 100% of the Net Cash Proceeds received by the Company from the issuance or sale (other than to a Restricted Subsidiary) of its Capital Stock or otherwise contributed to the equity (in each case, other than through the issuance of Disqualified Stock, Designated Preferred Stock or an Excluded Contribution) of the Company, in each case, subsequent to the Issue Date and any Refinancing Indebtedness in respect thereof; *provided, however*, that (i) any such Net Cash Proceeds that are so received or contributed shall not increase the amount available for making Restricted Payments to the extent the Company and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any Net Cash Proceeds that are so received or contributed shall be excluded for purposes of incurring Indebtedness pursuant to this clause to the extent such Net Cash Proceeds or cash have been applied to make Restricted Payments;
- (11) Indebtedness of Non-Guarantors in an aggregate amount not to exceed the greater of (a) \$125.0 million and (b) 25% of LTM EBITDA at any time outstanding and any Refinancing Indebtedness in respect thereof;
- (12) 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, any of its Subsidiaries or any Parent Entity (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 or any Parent Entity that is permitted by the covenant described below under “—Limitation on Restricted Payments”;
- (13) Indebtedness of the Company or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case Incurred in the ordinary course of business or consistent with past practice;

- (14) Indebtedness in an aggregate outstanding principal amount which when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause (14) and then outstanding will not exceed the greater of (a) \$375.0 million and (b) 75% of LTM EBITDA and any Refinancing Indebtedness in respect thereof;
- (15) Indebtedness in respect of a Receivables Facility;
- (16) Indebtedness of the Company or any of its Restricted Subsidiaries arising pursuant to any Permitted Tax Restructuring;
- (17) Indebtedness of the seller of any business or assets permitted to be acquired by the Company or any Restricted Subsidiary under the Indenture; *provided* that the aggregate amount of Indebtedness Incurred pursuant to this clause and then outstanding will not exceed the greater of \$75.0 million and 15% of LTM EBITDA;
- (18) any obligation, or guaranty of any obligation, of the Company or any Restricted Subsidiary to reimburse or indemnify a Person extending credit to customers of the Company or a Restricted Subsidiary incurred in the ordinary course of business or consistent with past practice for all or any portion of the amounts payable by such customers to the Person extending such credit;
- (19) Indebtedness to a customer to finance the acquisition of any equipment necessary to perform services for such customer; *provided* that the terms of such Indebtedness are consistent with those entered into with respect to similar Indebtedness prior to the Issue Date, including that (1) the repayment of such Indebtedness is conditional upon such customer ordering a specific volume of goods and (2) such Indebtedness does not bear interest or provide for scheduled amortization or maturity;
- (20) Indebtedness in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed the Available RP Capacity Amount;
- (21) obligations in respect of Disqualified Stock in an amount not to exceed the greater of \$50.0 million and 10% of LTM EBITDA outstanding at any time;
- (22) Unsecured Finance Leases; and
- (23) Indebtedness incurred by the Company or any of its Restricted Subsidiaries to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy or discharge the Notes or exercise the Company's legal defeasance or covenant defeasance, in each case, in accordance with the Indenture.

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 the first paragraph above or one of the clauses of the second paragraph of this covenant;
- (2) additionally, all or any portion of any item of Indebtedness may later be reclassified 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 and any related Liens are permitted to be Incurred at the time of reclassification (it being understood that any Indebtedness incurred pursuant to one of the clauses of the second paragraph of this covenant shall

- cease to be deemed incurred or outstanding for purposes of such clause but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Company or its Restricted Subsidiaries could have incurred such Indebtedness under the first paragraph of this covenant without reliance on such clause);
- (3) all Indebtedness outstanding on the Issue Date under the Credit Agreement and the ABL shall be deemed to have been Incurred on the Issue Date under clause (1) of the second paragraph of the description of this covenant;
 - (4) in the case of any Refinancing Indebtedness, such Indebtedness shall not include the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, dividends, premiums (including, without limitation, tender premiums), defeasance costs, fees and other costs and expenses (including, without limitation, original issue discount, upfront fees or similar fees) Incurred in connection with such refinancing;
 - (5) 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;
 - (6) 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 any clause 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;
 - (7) 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;
 - (8) 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;
 - (9) in the event that the Company or a Restricted Subsidiary enters into or increases commitments under a revolving credit facility, the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, for borrowings and reborrowings thereunder (and including issuance and creation of letters of credit and bankers' acceptances thereunder) will, at the Company's option as elected on the date the Company or a Restricted Subsidiary, as the case may be, enters into or increases such commitments, either (a) be determined on the date of such revolving credit facility or such increase in commitments (assuming that the full amount thereof has been borrowed as of such date), and, if such Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, test is satisfied with respect thereto at such time, any borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers' acceptances thereunder) will be permitted under this covenant irrespective of the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, at the time of any borrowing or reborrowing (or issuance or creation of letters of credit or bankers' acceptances thereunder) (the committed amount permitted to be borrowed or reborrowed (and the issuance and creation of letters of credit and bankers' acceptances) on a date pursuant to the operation of this clause (a) shall be the "*Reserved Indebtedness Amount*" as of such date for purposes of the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable) or (b) be determined on the date such amount is borrowed pursuant to any such facility or increased commitment;

- (10) in the event that the Company or a Restricted Subsidiary (x) incurs Indebtedness to finance an acquisition or (y) assumes Indebtedness of Persons that are acquired by the Company or any Restricted Subsidiary or merged into the Company or a Restricted Subsidiary in accordance with the terms of the Indenture, the date of determination of the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, shall, at the option of the Company, be the date that a definitive agreement for such acquisition is entered into and the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, shall be calculated giving pro forma effect to such acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) consistent with the definition of the Fixed Charge Coverage Ratio, the Consolidated Secured Leverage Ratio or the Consolidated Total Leverage Ratio, as applicable, and, for the avoidance of doubt, (A) if any such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in the EBITDA of the Company or the target company) at or prior to the consummation of the relevant acquisition, such ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether such acquisition and any related transactions are permitted hereunder and (B) such ratios shall not be tested at the time of consummation of such acquisition or related transactions; *provided, further*, that if the Company elects to have such determinations occur at the time of entry into such definitive agreement, (i) any such transaction shall be deemed to have occurred on the date the definitive agreement is entered into and to be outstanding thereafter for purposes of calculating any ratios under the Indenture after the date of such agreement and before the earlier of the date of consummation of such acquisition or the date such agreement is terminated or expires without consummation of such acquisition and (ii) to the extent any covenant baskets were utilized in satisfying any covenants, such baskets shall be deemed utilized until the earlier of the date of consummation of such acquisition or the date such agreement is terminated or expires without consummation of such acquisition, but any calculation of Consolidated EBITDA for purposes of other incurrences of Indebtedness or Liens or making of Restricted Payments (not related to such acquisition) shall not reflect such acquisition until it has been consummated;
- (11) notwithstanding anything in this covenant to the contrary, in the case of any Indebtedness incurred to refinance Indebtedness initially incurred in reliance on a clause of the second paragraph of this covenant measured by reference to a percentage of LTM EBITDA at the time of Incurrence, if such refinancing would cause the percentage of LTM EBITDA restriction to be exceeded if calculated based on the percentage of LTM EBITDA on the date of such refinancing, such percentage of LTM EBITDA restriction shall not be deemed to be exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced, plus accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing; and
- (12) 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 for purposes of the covenant described under this “—Limitation on 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).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided*, that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (a) the principal amount of such Indebtedness being refinanced plus (b) the aggregate amount of accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) Incurred in connection with such refinancing.

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 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 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 Note 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 or because it is guaranteed by different obligors.

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 such payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:
 - (a) dividends, payments 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; or
 - (b) dividends, payments or distributions payable to the Company or a Restricted Subsidiary (and, in the case of the Company or 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, repurchase, redeem, retire or otherwise acquire or retire for value any Capital Stock of the Company or any Parent Entity 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, payment, 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) an Event of Default shall have occurred and be continuing (or would immediately thereafter result 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 immediately 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 July 31, 2015 (and not returned or rescinded) (including Permitted Payments made pursuant to clauses (1) (without duplication) and (10) of the next succeeding paragraph, but excluding all other Restricted Payments made pursuant to the next succeeding paragraph) would exceed the sum (the “*Available Amount*”) of (without duplication):
 - (i) \$125.0 million and 25% of LTM EBITDA;
 - (ii) 50% of Consolidated Net Income for the period (treated as one accounting period) from July 1, 2016 to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal consolidated financial statements of the Company are available (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);
 - (iii) 100% of the aggregate cash, 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 or as the result of a merger or consolidation with another Person subsequent to the 2024 Notes Issue Date, or otherwise contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Company subsequent to the 2024 Notes 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 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 its employees to the extent funded by the Company or any Restricted Subsidiary, (y) cash 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);
 - (iv) 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 2024 Notes Issue Date of any Indebtedness, Disqualified Stock or Designated Preferred Stock that has been converted into or exchanged for Capital Stock of the Company (other than Disqualified Stock or Designated Preferred 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;
 - (v) 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, or other returns on Investment from, Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of, or cash distributions or cash interest received in respect 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 2024 Notes Issue Date; or (ii) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a dividend, payment or distribution from an Unrestricted Subsidiary (other than to the extent of the amount of the Investment that constituted a Permitted Investment or was made under clause (16) of the next succeeding paragraph and will increase the amount available under the applicable clause of the definition of “Permitted Investment” or clause (16) of the next succeeding paragraph, as the case may be) or a dividend from an Unrestricted Subsidiary after the 2024 Notes Issue Date; and

- (vi) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation 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 2024 Notes Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined in good faith by the Company, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation or consolidation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged, amalgamated 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 or was made under clause (16) of the next succeeding paragraph and will increase the amount available under the applicable clause of the definition of “Permitted Investment” or clause (16) of the next succeeding paragraph, as the case may be.

As of September 30, 2019, the amount available pursuant to clause (c)(ii) above was approximately \$278.1 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 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) (a) any prepayment, purchase, repurchase, redemption, defeasance, discharge or other acquisition or retirement of Capital Stock, including any accrued and unpaid dividends thereon (“*Treasury 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 or Designated Preferred Stock) (“*Refunding Capital Stock*”) or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preferred 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; and (b) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (13) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase,

- retire or otherwise acquire any Capital Stock of a Parent Entity) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;
- (3) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to the covenant described under “—Limitation on Indebtedness” above;
 - (4) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge 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 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 prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge 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 prepaying, purchasing, repurchasing, redeeming, defeasing, discharging 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 (i) a Change of Control (or other similar event described therein as a “change of control”) or (ii) an Asset Disposition (or other similar event described therein as an “asset disposition” or “asset sale,” but only if the Company shall have first complied with the terms described under “—Change of Control” or “—Limitation on Sales of Assets and Subsidiary Stock,” as applicable 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; or
 - (c) consisting of Acquired Indebtedness (other than Indebtedness Incurred (A) 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 otherwise acquired by the Company or a Restricted Subsidiary or (B) otherwise in connection with or contemplation of such acquisition);
 - (6) a Restricted Payment to pay for the prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition or retirement for value of Capital Stock (other than Disqualified Stock) of the Company or of any Parent Entity held by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or of any Parent Entity (or any of their permitted transferees, assigns, estates, trusts or heirs) 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 (6) do not exceed the greater of \$50.0 million and 10% of LTM EBITDA in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$100.0 million and 20% of LTM EBITDA 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 or Designated Preferred Stock) of the Company and, to the extent contributed to the capital of the Company (other than through the issuance of Disqualified Stock or Designated Preferred Stock or an Excluded Contribution), Capital Stock of any Parent Entity, in each case to members of management, directors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity 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 any future, present or former members of management, directors, employees or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or Restricted Subsidiaries or any Parent Entity in connection with a repurchase of Capital Stock of the Company or any Parent Entity 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) dividends, loans, advances or distributions to any Parent Entity or other payments by the Company or any Restricted Subsidiary in amounts equal to (without duplication):
 - (a) the amounts required for any Parent Entity to pay any Parent Entity Expenses or any Related Taxes;
 - (b) amounts constituting or to be used for purposes of making payments to the extent specified in clauses (2), (3), (5), (11) and (12) of the second paragraph under “—Limitation on Affiliate Transactions”; and
 - (c) up to the greater of \$30.0 million and 6% of LTM EBITDA per calendar year;
- (10) the declaration and payment by the Company of dividends on the common stock or common equity interests of the Company or any Parent Entity (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any such Parent Entity to fund the payment by such Parent Entity of dividends on such entity’s Capital Stock) following a public offering of such common stock or common equity interests (or such exchangeable securities, as applicable), in an amount in any fiscal year not to exceed a sum of (a) 6% of the proceeds received by or contributed to the Company in or from any such public offering and (b) an aggregate amount per annum not to exceed 5.0% of Market Capitalization;
- (11) payments by the Company, or loans, advances, dividends or distributions to any Parent Entity to make payments, to holders of Capital Stock of the Company or any Parent Entity 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);
- (12) Restricted Payments that are made with Excluded Contributions;
 - (13) (i) the declaration and payment of dividends on Designated Preferred Stock of the Company issued after the Issue Date; (ii) the declaration and payment of dividends to a Parent Entity in an amount sufficient to allow the Parent Entity to pay dividends to holders of its Designated Preferred Stock issued after the Issue Date; and (iii) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock; *provided, however*, that, in the case of clauses (i) and (ii), the amount of all dividends declared or paid to a Person pursuant to such clauses shall not exceed the cash proceeds received by the Company or the aggregate amount contributed in cash to the equity of the Company (other than through the issuance of Disqualified Stock or an Excluded Contribution of the Company), from the issuance or sale of such Designated Preferred Stock; *provided further*, in the case of clauses (i), (ii) and (iii), that for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or declaration of such dividends on such Refunding Capital Stock, after giving effect to such payment on a pro forma basis the Company would be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the test set forth in the first paragraph of the covenant described under “— Limitation on Indebtedness”;
 - (14) dividends or other distributions of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary by, Unrestricted Subsidiaries (unless the Unrestricted Subsidiary’s principal asset is cash or Cash Equivalents);
 - (15) distributions or payments of Receivables Fees;
 - (16) so long as no Event of Default has occurred and is continuing (or would result therefrom), (i) Restricted Payments (including loans or advances) in an aggregate amount outstanding at the time made not to exceed the greater of \$125.0 million and 25% of LTM EBITDA at such time, and (ii) any Restricted Payments, so long as, immediately after giving pro forma effect to the payment of any such Restricted Payment and the Incurrence of any Indebtedness the net proceeds of which are used to make such Restricted Payment, the Consolidated Total Leverage Ratio shall be no greater than 4.00 to 1.00;
 - (17) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment; and
 - (18) the redemption, defeasance, repurchase, exchange or other acquisition or retirement of Subordinated Indebtedness of the Company or any Guarantor in an aggregate amount at any one time outstanding taken together with all other redemptions, defeasances, repurchases, exchanges or other acquisitions or retirements of Subordinated Indebtedness made pursuant to this clause (18) not to exceed the greater of (x) \$100.0 million and (y) 20% of LTM EBITDA at the time of such redemption, defeasance, repurchase, exchange or other acquisition or retirement of Subordinated Indebtedness.

For purposes of determining compliance with this covenant, (a) in the event that a Restricted Payment or Investment (or portion thereof) meets the criteria of more than one of the categories of Permitted Payments described in clauses (1) through (18) above, or is permitted pursuant to the first paragraph of this covenant and/or one or more of the clauses contained in the definition of “Permitted Investments,” the Company will be entitled to divide or classify such Restricted Payment or Investment (or portion thereof) on the date of its payment or later divide, classify or reclassify in whole or in part in its sole discretion (based on circumstances existing on the date of such division, classification or reclassification) such Restricted Payment or Investment (or portion thereof) in any manner that complies with this covenant, including as an Investment pursuant to one or more of the clauses

contained in the definition of “Permitted Investments” and (b) any amount permitted by this covenant shall be reduced by any corresponding amount of Indebtedness outstanding that was incurred pursuant to clause (20) of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Indebtedness.”

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 its 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 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 suffer to exist any Lien (except Permitted Liens) (each, a “*Subject Lien*”) that secures Obligations under any Indebtedness on any asset or property of the Company or any Restricted Subsidiary, unless the Notes and the Guarantees are equally and ratably secured with (or on a senior basis to, in the case such Subject Lien secures any Subordinated Indebtedness) the Obligations secured by such Subject Lien.

Any Lien created for the benefit of the Holders of the Notes pursuant to the preceding paragraph may provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Subject Lien that gave rise to the obligation to so secure the Notes and the Guarantees.

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 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, (b) the Existing Notes, including any Guarantee thereof, or (c) any other agreement or instrument, in each case, in effect at or entered into on the Issue Date;

- (2) any encumbrance or restriction pursuant to 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 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 and Finance 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 and other similar agreements, organizational documents and instruments;
- (9) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;
- (10) 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 practice;
- (11) any encumbrance or restriction pursuant to Hedging Obligations;
- (12) 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;

- (13) restrictions created in connection with any Receivables Facility that, in the good faith determination of the Company, are necessary or advisable to effect such Receivables Facility;
- (14) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness, shall only be permitted if such Indebtedness is 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 and the Existing Notes Indentures, together with the security documents associated therewith, or the Indenture 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 entry into such agreement or instrument 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 agreement or instrument;
- (15) any encumbrance or restriction existing by reason of any lien permitted under “—Limitation on Liens”; or
- (16) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in clauses (1) to (15) of this paragraph or this clause (an “*Initial Agreement*”) or contained in any amendment, supplement or other modification to an agreement referred to in clauses (1) to (15) of this paragraph or this clause (16); *provided, however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable in any material respect 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 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, together with all other Asset Dispositions since the Issue Date (on a cumulative basis) (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) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied:
 - (a) to the extent the Company or any Restricted Subsidiary, as the case may be, elects (or is required by the terms of any Indebtedness), (i) to prepay, repay or purchase any Indebtedness of a Non-

Guarantor (in each case, other than Indebtedness owed to the Company or any Restricted Subsidiary) or any Secured Indebtedness, including Indebtedness under the Credit Agreement, the Existing Notes or ABL (or any Refinancing Indebtedness in respect thereof) within 450 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 (i), the Company or such Restricted Subsidiary will retire such Indebtedness and, other than any such Indebtedness under the ABL (or any Refinancing Indebtedness in respect thereof), 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 redeems, repays or repurchases such 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, if any, on the amount of Notes that would otherwise be prepaid; and

- (b) to the extent the Company or any Restricted Subsidiary elects, to invest in or commit to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary equal to the amount of Net Available Cash received by the Company or another Restricted Subsidiary) within 450 days from the later of (after giving effect to any Acceptable Commitment or Second Commitment (each as defined below), the “*Application Period*”) (i) the date of such Asset Disposition and (ii) the receipt of such Net Available Cash; *provided, however*, that a binding agreement shall be treated as a permitted application of Net Available Cash from the date of such commitment with the good faith expectation that an amount equal to Net Available Cash will be applied to satisfy such commitment within 180 days of such commitment (an “*Acceptable Commitment*”) and, in the event of any Acceptable Commitment is later cancelled or terminated for any reason before such amount is applied in connection therewith, the Company or such Restricted Subsidiary enters into another Acceptable Commitment (a “*Second Commitment*”) within 180 days of such cancellation or termination; *provided further* that if any Second Commitment is later cancelled or terminated for any reason before such amount is applied, then such Net Available Cash shall constitute Excess Proceeds;

provided that, pending the final application of the amount 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; *provided further* that if at any time during the Application Period the Consolidated Secured Leverage Ratio is less than or equal to 4.00 to 1.00, the Net Available Cash shall be deemed to have been applied in accordance with this covenant and the amount of Excess Proceeds shall be reset at zero.

The amount of 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. On the 451st day after the later of an Asset Disposition or the receipt of such Net Available Cash, if the aggregate amount of Excess Proceeds under the Indenture exceeds the greater of \$125.0 million and 25% of LTM EBITDA, the Company will within 10 Business Days be required to make an offer (“*Asset Disposition Offer*”) to all Holders of Notes issued under the Indenture and, to the extent the Company 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 such Pari Passu Indebtedness, in each case, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing such 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, the Paying Agent and each Holder of Notes at the address of such Holder appearing in the security register or otherwise in accordance with the applicable 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 15 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. The Company may satisfy the foregoing obligations with respect to any Net Available Cash from an Asset Disposition by making an Asset Disposition Offer with respect to all Net Available Cash prior to the expiration of the relevant 450 days (or such longer period provided above) or with respect to any unapplied Excess Proceeds.

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 Company shall allocate the Excess Proceeds among the Notes and such Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and such Pari Passu Indebtedness provided that no Notes or other such 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. Additionally, the Company may, at its option, make an Asset Disposition Offer using proceeds from any Asset Disposition at any time after the consummation of such Asset Disposition. Upon consummation or expiration of any Asset Disposition Offer, any remaining Net Available Cash shall not be deemed Excess Proceeds and the Company may use such Net Available Cash for any purpose not prohibited by the Indenture.

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 documents or agreements 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 such 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 consequence (which for the avoidance of doubt, includes, but is not limited to, any prepayment whereby doing so the Company, any Restricted Subsidiary, or any of their respective affiliates and/or equity owners 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, contingent or otherwise, 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, or by their terms are required to be satisfied for cash and Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, 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 \$135.0 million and 4.0% of Total Assets (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, including Rule 14e-1 under the Exchange Act, conflict with the provisions of the Indenture, the Company will comply with the applicable securities laws, rules and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

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

The Credit Agreement, the Existing Notes and ABL may prohibit or limit, and future credit agreements or other agreements to which the Company becomes a party may prohibit or limit, the Company from purchasing any Notes pursuant to this covenant. In the event the Company is prohibited from purchasing the Notes, the Company 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 does not obtain such consent or repay such borrowings, it will remain prohibited from purchasing the Notes. In such case, the Company'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 Restricted Subsidiary to 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 the greater of \$30.0 million and 6% of LTM EBITDA, 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 the greater of \$75.0 million and 15% of LTM EBITDA, the terms of such transaction have been approved by a majority of the members of the Board of Directors.

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 or other transaction permitted to be made or undertaken pursuant to the covenant described under “—Limitation on Restricted Payments,” (including Permitted 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, any Restricted Subsidiary or any Parent Entity, 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 practice;
- (3) any Management Advances and any waiver or transaction with respect thereto;
- (4) (a) 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 and (b) any merger, amalgamation or consolidation with any Parent Entity, *provided* that such Parent Entity shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Company and such merger, amalgamation or consolidation is otherwise consummated in compliance with the Indenture;
- (5) the payment of compensation, fees, costs 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 (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any Parent Entity or any Restricted Subsidiary (whether directly or indirectly and including through any Controlled Investment Affiliate or Immediate Family Member of such directors, officers or employees);
- (6) 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;
- (7) sales of accounts receivable, or participations therein, in connection with any Receivables Facility;
- (8) transactions with customers, vendors, clients, joint venture partners, suppliers, contractors, distributors or purchasers or sellers of goods or services, in each case in the ordinary course of business or consistent with past practice, 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;

- (9) any transaction between or among the Company or any Restricted Subsidiary and any Person that is an Affiliate of the Company or an Associate or similar entity solely because the Company or a Restricted Subsidiary or any Affiliate of the Company or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;
- (10) issuances, transfers or sales of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Company or options, warrants or other rights to acquire such Capital Stock and the granting of registration and other customary rights (and the performance of the related obligations) in connection therewith or any contribution to capital of the Company or any Restricted Subsidiary;
- (11)(a) payments by the Company or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly) of annual management, consulting, monitoring, refinancing, subsequent transaction exit fees, advisory fees and related costs and expenses and indemnities in connection therewith in an aggregate amount not to exceed 2.5% of LTM EBITDA and (b) customary payments by the Company or any Restricted Subsidiary to any Permitted Holder (whether directly or indirectly, including through any Parent Entity) for financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by a majority of the Board of Directors in good faith;
- (12) payment to any Permitted Holder of all out of pocket expenses Incurred by such Permitted Holder in connection with its direct or indirect investment in the Company and its Subsidiaries;
- (13) the Transactions and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to the Transactions, in each case as disclosed in this Offering Circular;
- (14) 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;
- (15) the existence of, or the performance by the Company or any Restricted Subsidiaries of its obligations under the terms of, any equityholders, investor rights or similar agreement (including any registration rights agreement or purchase agreements related thereto) to which it is party as of the Issue Date and any similar agreement that it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under any future amendment to the equityholders' agreement or under any similar agreement entered into after the Issue Date will only be permitted under this clause to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous to the Holders in any material respect;
- (16) any purchase by the Company's Affiliates of Indebtedness or Disqualified Stock of the Company or any of their 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;
- (17)(i) investments by Affiliates in securities or loans of the Company or any of its Restricted Subsidiaries (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Company or such Restricted Subsidiary generally to other non-affiliated third party investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities or loans of the Company or any of its Restricted Subsidiaries contemplated in the foregoing subclause (i) or that were acquired from Persons other than

the Company and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;

- (18) payments by the Company (and any Parent Entity) and its Restricted Subsidiaries pursuant to any tax sharing agreements or other equity agreements in respect of “Related Taxes” among the Company (and any such Parent Entity) and its Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Company and its Subsidiaries;
- (19) payments, Indebtedness and Disqualified Stock (and cancellation of any thereof) of the Company and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any of its direct or indirect parent companies 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; and any employment agreements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, managers or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by the board of directors of the Company in good faith;
- (20) employment and severance arrangements between the Company or its Restricted Subsidiaries and their respective offers and employees in the ordinary course of business;
- (21) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of the disposition of assets or Equity Interests in any Restricted Subsidiary permitted under “—Limitation on Sales of Assets and Subsidiary Stock” or entered into with any Business Successor, in each case, that the Company determines in good faith is either fair to the Company or otherwise on customary terms for such type of arrangements in connection with similar transactions;
- (22) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the caption “—Designation of Restricted and Unrestricted Subsidiaries”; and
- (23) any Permitted Tax Restructuring.

Designation of Restricted and Unrestricted Subsidiaries

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 an Unrestricted Subsidiary 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. The Company may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by 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 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,” (including pursuant to clause 5(b) of the second paragraph thereof treating such redesignation as an acquisition for the purpose of such clause) 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 following such designation. Any such designation by the Company shall be evidenced to the Trustee by an Officer’s Certificate certifying that such designation complies with the preceding conditions.

Reports

Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, from and after the Issue Date, the Company will furnish to the Trustee:

- (1) within 100 days after the end of each fiscal year (or if such day is not a Business Day, on the next succeeding Business Day), all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and a report on the annual financial statements by the Company’s independent registered public accounting firm;
- (2) within 55 days after the end of each of the first three fiscal quarters of each fiscal year (or if such day is not a Business Day, on the next succeeding Business Day), all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and (B) financial statements prepared in accordance with GAAP; and
- (3) within 15 days after the occurrence of any of the following events, all current reports that would be required to be filed with the SEC on Form 8-K or any successor or comparable form (if the Company had been a reporting company under Section 15(d) of the Exchange Act); *provided*, that the foregoing shall not obligate the Company to make available (i) any information otherwise required to be included on a Form 8-K regarding the occurrence of any such events if the Company determines in its good faith judgment that such event that would otherwise be required to be disclosed is not material to the Holders of the Notes or the business, assets, operations, financial positions or prospects of the Company and its Restricted Subsidiaries taken as a whole, (ii) a summary of the terms of, any employment or compensatory arrangement, agreement, plan or understanding between the Company (or any of its Subsidiaries) and any director, manager or executive officer of the Company (or any of its Subsidiaries) or (iii) copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K (except for (x) material Indebtedness and (y) historical and pro forma financial statements to the extent reasonably available):
 - (a) the entry into or termination of material agreements;
 - (b) significant acquisitions or dispositions;
 - (c) bankruptcy;

- (d) cross-default under direct material financial obligations;
- (e) a change in the Company's certifying independent auditor;
- (f) the appointment or departure of directors or executive officers;
- (g) non-reliance on previously issued financial statements; and
- (h) change of control transactions,

in each case, in a manner that complies in all material respects with the requirements specified in such form, except as described above or below and subject to exceptions consistent with the presentation of information in the offering circular; *provided, however*, that the Company shall not be required to (i) comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any "non-GAAP" financial information contained therein, (ii) provide any information that is not otherwise similar to information currently included in the offering circular or (iii) provide separate financial statements or other information contemplated by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X, or in each case any successor provisions or any schedules required by Regulation S-X. In addition, notwithstanding the foregoing, the Company will not be required to (i) comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as amended, or (ii) otherwise furnish any information, certificates or reports required by Items 307 or 308 of Regulation S-K. To the extent any such information is not so filed or furnished, as applicable, within the time periods specified above and such information is subsequently filed or furnished, as applicable, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured; *provided* that such cure shall not otherwise affect the rights of the Holders under "—Events of Default" if Holders of at least 30% in principal amount of the then total outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure. In addition, to the extent not satisfied by the foregoing, the Company will agree that, for so long as any Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Substantially concurrently with the furnishing or making such information available to the Trustee pursuant to the immediately preceding paragraph, the Company shall also use its commercially reasonable efforts to post copies of such information required by the immediately preceding paragraph on a website (which may be nonpublic and may be maintained by the Company or a third party) to which access will be given to Holders, prospective investors in the Notes (which prospective investors shall be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act or non-U.S. persons (as defined in Regulation S under the Securities Act) that certify their status as such to the reasonable satisfaction of the Company), and securities analysts and market making financial institutions that are, in the case of securities analysts and market making financial institutions, reasonably satisfactory to the Company. To the extent the Company determines in good faith that it cannot make such reports available in the manner described in the preceding sentence after the use of its commercially reasonable efforts, the Company shall furnish such reports to the Holders of the Notes, upon their request. The Company may condition the delivery of any such reports to such Holders, prospective investors in the Notes, and securities analysts and market making financial institutions on the agreement of such Persons to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes and (iii) not publicly disclose any such reports (and the information contained therein) and information.

The Company will also hold quarterly conference calls for the Holders of Notes, prospective investors in the Notes and securities analysts and market making financial institutions, to discuss financial information for the previous quarter (it being understood that such quarterly conference call may be the same conference call as with the Company's (or as applicable, any of any Parent Entity's) equity investors and analysts). The conference call will be following the last day of each fiscal quarter of the Company and not later than 10 Business Days from the time that the Company distributes the financial information as set forth in the third preceding paragraph. No fewer than two

days prior to the conference call, the Company will issue a press release or otherwise announce the time and date of such conference call and providing instructions for Holders, securities analysts, prospective investors and market making financial institutions to obtain access to such call.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and such Unrestricted Subsidiaries hold in the aggregate more than 5.0% of the Total Assets of the Company, then the annual and quarterly financial information required by clauses (1) and (2) of the first paragraph of this covenant will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

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 a Parent Entity; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Entity (and other direct or indirect Parent Entities included in such information, if any), on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand. For the avoidance of doubt, the consolidating information referred to in the proviso in the preceding sentence need not be audited.

Notwithstanding anything to the contrary set forth above, if the Company or any Parent Entity of the Company has furnished the Holders of Notes or filed with the SEC the reports described in the preceding paragraphs with respect to the Company or any Parent Entity, the Company shall be deemed to be in compliance with the provisions of this covenant.

The Trustee shall have no duty to review or analyze any reports furnished or made available to it and the Trustee’s receipt of such reports shall not constitute actual or constructive knowledge of the information contained therein or determinable therefrom, including the Company’s compliance with any of its covenants (as to which the Trustee is entitled to conclusively rely on an Officer’s Certificate).

Limitation on Guarantees

The Company will not permit any of its Wholly Owned Domestic Subsidiaries that are Restricted Subsidiaries (and non-Wholly Owned Domestic Subsidiaries if such non-Wholly Owned Domestic Subsidiaries guarantee, or are a co-issuer of, other capital markets debt securities of the Company or any Restricted Subsidiary or guarantee all or a portion of, or are a co-borrower under, the Credit Agreement), other than a Guarantor, to Guarantee the payment of any Indebtedness of the Company or any Guarantor, unless:

- (1) such Restricted Subsidiary within 60 days executes and delivers a supplemental indenture to the Indenture providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company 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 Guarantee of the Notes; and
- (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.

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.

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 not be required to comply with the 60-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 the Credit Agreement or other Indebtedness of the Company or the other Guarantors, unless it again becomes a Guarantor.

Merger, Amalgamation and Consolidation

The Company

The Company will not consolidate with or merge or amalgamate with or into or convey, transfer or lease all or substantially all its assets, in one transaction or a series of related transactions to any Person, unless:

- (1) the Company is the surviving Person or 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 of the United States or the District of Columbia and the Successor Company (if not the Company) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, all the obligations of Company under the Notes and the Indenture and if such Successor Company is not a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws;
- (2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the applicable Successor Company or any Subsidiary of the applicable Successor Company as a result of such transaction as having been Incurred by the applicable Successor Company or such Subsidiary at the time of such transaction), none of the Events of Default described in clauses (1), (2) or (5) thereof shall have occurred and be continuing;
- (3) upon execution of an agreement to enter into such transaction, no Event of Default shall have occurred and be continuing, and, immediately after giving pro forma effect to such transaction, either (a) the applicable 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 of the Company and the Restricted Subsidiaries 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 stating that such consolidation, merger, amalgamation or transfer and such supplemental indenture (if any) comply with the Indenture and an Opinion of Counsel stating 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.

The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Notes and the Indenture.

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 or amalgamate into or transfer all or part of its properties and assets to the Company, (b) any Restricted Subsidiary may consolidate or otherwise combine with, merge or amalgamate into or transfer all or part of its properties and assets to any other Restricted Subsidiary and (c) the Company and its Restricted Subsidiary may complete any Permitted Tax Restructuring. 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 or amalgamate 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 this section) shall not apply to the creation of a new Subsidiary as a Restricted Subsidiary of the Company.

Guarantors

No Guarantor may:

- (1) consolidate with or merge or amalgamate 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 or amalgamate with or into such Guarantor, unless
 - (A) the other Person is the Company or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or
 - (B) (1) either (x) the Company or 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 Note Guarantee and the Indenture; 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 or transfer (including by way of consolidation, merger or amalgamation) of the Guarantor or the conveyance, transfer, lease, 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.

Certain Compliance Calculations

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other exceptions, thresholds or baskets (other than ratio based baskets) on the same date. Each item of Indebtedness that is incurred or issued, each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant ratio based test.

Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated without regard to the incurrence of any Indebtedness under any revolving facility or letter of credit facility (1) immediately prior to or in connection therewith or (2) used to finance working capital needs of the Company and its Restricted Subsidiaries.

The Indenture shall provide that any calculation or measure that is determined with reference to the Company's financial statements (including Consolidated EBITDA, Consolidated Interest Expense, Consolidated Net Income, Fixed Charges, Fixed Charge Coverage Ratio, Consolidated Secured Leverage Ratio and Consolidated Total Leverage Ratio) may be determined with reference to the financial statements of a Parent Entity instead, so long as such Parent Entity does not hold any material assets other than, directly or indirectly, the Capital Stock of the Company.

For purposes of making the computation referred to above, any Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, operational changes, business expansions and disposed or discontinued operations that have been made by the Company or any of its Restricted Subsidiaries, during the reference period or subsequent to the 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, amalgamations, consolidations, operational changes, business expansions 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 reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged or amalgamated 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, amalgamation, consolidation, operational change, business expansion, 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, amalgamation, consolidation or disposed operation had occurred at the beginning of the reference period.

For purposes of this definition, whenever pro forma effect is to be given to a transaction (including the Transactions), the pro forma calculations shall be made in good faith by a responsible financial or chief accounting officer of the Company (and may include, for the avoidance of doubt, cost savings, operating expenses reductions and synergies resulting from such transactions which is being given pro forma effect). 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 reference period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Finance 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 Finance 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 upon the average daily balance of such Indebtedness during the reference period 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.

Events of Default

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

- (1) default in any payment of interest 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 by the Company or any Guarantor to comply for 60 days after written notice by the Trustee on behalf of the Holders or by the Holders of at least 30% in aggregate principal amount of the outstanding Notes with any agreement or obligation contained in the Indenture; *provided* that in the case of a failure to comply with the Indenture provisions described under “—Certain Covenants—Reports,” such period of continuance of such default or breach shall be 270 days after written notice described in this clause (3) has been given;
- (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 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) (or the payment of which is Guaranteed 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)) 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 of principal at its stated final maturity (after giving effect to any applicable grace periods) or the maturity of which has been so accelerated, aggregates to the greater of \$125.0 million and 25% of LTM EBITDA (measured at the date of such non-payment or acceleration) or more at any one time outstanding;
- (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 the greater of \$125.0 million and 25% of LTM EBITDA (measured at the date of such judgment) other than any judgments covered by indemnities provided by, or insurance policies issued by, reputable and creditworthy companies, 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 by a Significant Subsidiary ceases to be in full force and effect, other than (1) in accordance with the terms of the Indenture, (2) a Guarantor that is a Significant Subsidiary denies or disaffirms its obligations under its Guarantee of the Notes, other than in accordance with the terms thereof or upon release of such Note Guarantee in accordance with the Indenture or (3) in connection with the bankruptcy of a Guarantor, so long as the aggregate assets of such Guarantor and any other Guarantor whose Note Guarantee ceased or ceases to be in full force as a result of a

bankruptcy are less than the greater of \$125.0 million and 25% of LTM EBITDA (measured at the date of such bankruptcy).

However, a Default under clause (4) or (6) of this paragraph will not constitute an Event of Default until the Trustee or the Holders of at least 30% in principal amount of the outstanding Notes notify the Company of the Default and, with respect to clause (6), the Company does not cure such Default within the time specified in clause (6) of this paragraph after receipt of such notice; *provided* that a notice of Default may not be given with respect to any action taken, and reported publicly or to Holders, more than two years prior to such notice of Default. Any notice of Default, notice of acceleration or instruction to the Trustee to provide a notice of Default, notice of acceleration or take any other action (a “*Noteholder Direction*”) provided by any one or more Holders (each a “*Directing Holder*”) must be accompanied by a written representation from each such Holder delivered to the Company and the Trustee that such Holder is not (or, in the case such Holder is DTC or its nominee, that such Holder is being instructed solely by beneficial owners that are not) Net Short (a “*Position Representation*”), which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default (a “*Default Direction*”) shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Company with such other information as the Company may reasonably request from time to time in order to verify the accuracy of such Noteholder’s Position Representation within five Business Days of request therefor (a “*Verification Covenant*”). In any case in which the Holder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of DTC or its nominee and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer’s Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Event of Default shall be automatically stayed and the cure period with respect to such Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer’s Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such Holder’s participation in such Noteholder Direction being disregarded; and, if, without the participation of such Holder, the percentage of Notes held by the remaining Holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio, with the effect that such Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

Notwithstanding anything in the preceding two paragraphs to the contrary, any Noteholder Direction delivered to the Trustee during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the foregoing paragraphs.

For the avoidance of doubt, the Trustee shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with the Indenture, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer’s Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. The Trustee shall have no liability to the Company, any Holder or any other Person in acting in good faith on a Noteholder Direction.

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. Upon such a declaration, such principal and accrued and unpaid interest, if any, will be due and payable immediately. 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, waived and rescinded 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 the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction.

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 or interest which may only be waived with the consent of each affected Holder) 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.

The Indenture will provide that (i) if a Default for a failure to report or failure to deliver a required certificate in connection with another default (the “*Initial Default*”) occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in the covenant entitled “—Certain Covenants—Reports” or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Indenture. Any time period in the Indenture to cure any actual or alleged Default or Event of Default may be extended or stayed by a court of competent jurisdiction to the extent such actual or alleged Default or Event of Default is the subject of litigation.

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 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 and, if requested, provided to 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 and is known to the Trustee, 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 (it being understood that the Trustee has no duty to determine if any directed action is prejudicial to any Holder). Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification satisfactory to it against all fees, losses, liabilities and expenses that may be 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, 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 interest on any Note, the Trustee may withhold notice if and so long as the Trustee 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 it is aware which would constitute certain Defaults, their status and what action the Company is taking or proposes to take in respect thereof. The Trustee will not be deemed to have knowledge of any Defaults or Events of Default unless written notice of an event, which is in fact a Default, has been delivered to the Trustee at its office specified in the Indenture and such notice references the Notes and the Indenture and states that it is a "Notice of Default".

The Trustee shall not be deemed to have notice of any Default or Event of Default unless the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at its office specified in the Indenture, and such notice references the Notes and this Indenture and states that it is a "Notice of Default."

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 (other than provisions relating to Change of Control and Asset Dispositions);
- (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 currency other than that stated in such Note;
- (6) impair the contractual 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 (and, for the avoidance of doubt, the amendment, supplement or modification in accordance with the terms of the Indenture of the covenants described above under the captions "—Change of Control" and "—Certain Covenants" and clauses (3), (4), (6) and (7) of "—Events of Default" and the related definitions shall be deemed not to impair the contractual 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 Note);

- (7) waive a Default or Event of Default with respect to the nonpayment of principal, premium or 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);
- (8) make any change in the amendment or waiver provisions which require the Holders' consent described in this sentence; or
- (9) except as expressly permitted by the Indenture, modify the Note Guarantees of any Significant Subsidiary in any manner materially adverse to the Holders.

Notwithstanding the foregoing, without the consent of any Holder, the Company, the Trustee and the other parties thereto, as applicable, may amend or supplement any Note Documents and the Company may direct the Trustee to enter into an amendment to the Note Documents to:

- (1) cure any ambiguity, omission, mistake, defect, error or inconsistency, conform any provision to this "Description of the Notes," or reduce the minimum denomination of the Notes;
- (2) provide for the assumption by a successor Person of the obligations of the Company or a Guarantor 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 Note 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) 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;
- (7) make such provisions as necessary (as determined in good faith by the Company) for the issuance of Additional Notes;
- (8) provide for any Restricted Subsidiary to provide a Note 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;
- (9) 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) 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 other applicable securities law and (ii) such amendment does not adversely affect the rights of Holders to transfer Notes in any material respect.

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 Company at any time may terminate all obligations of the Company and the Guarantors under the Note Documents ("*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 Company 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 Company at any time may terminate the obligations of the Company and the Restricted Subsidiaries under the covenants described under "—Certain Covenants" (other than clauses (1) and (2) of "—Certain Covenants—Merger, Amalgamation 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 Company at its option at any time may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes so long as no Notes are then outstanding. If the Company 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 Significant Subsidiaries), (6) or (7) under "—Events of Default" above.

In order to exercise either defeasance option, the Company (i) must irrevocably deposit in trust (the "*defeasance trust*") with the Trustee cash in U.S. dollars or U.S. Government Obligations or a combination thereof for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity, as the case may be; *provided*, that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of the Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of redemption (any such amount, the "*Applicable Premium Deficit*") only required to be deposited with the Trustee on or prior to the date of redemption. Any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee at least two Business Days prior to the redemption date that confirms that such Applicable Premium Deficit shall be applied toward such redemption, and (ii) must comply with certain other conditions, including delivery to the Trustee of:

- (1) an Opinion of Counsel in the United States, subject to customary assumptions and exclusions, stating that Holders of the Notes, in their capacity as 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 Officer's Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Company; and
- (3) an Officer's Certificate and an Opinion of Counsel (which opinion of counsel may be subject to customary assumptions and exclusions), each stating 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 transfer or exchange of the Notes and indemnification rights of the Trustee, as expressly provided for in the Indenture) as to all 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 Company) 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 Company; (2) the Company has deposited or caused to be deposited with the Trustee, money in U.S. dollars or U.S. Government Obligations, or a combination thereof, 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 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; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of the Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, as calculated by the Company or on behalf of the Company by such Person as the Company shall designate, with any Applicable Premium Deficit only required to be deposited with the Trustee on or prior to the date of redemption, and any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee at least two Business Days prior to the redemption date that confirms that such Applicable Premium Deficit shall be applied toward such redemption; (3) the Company has paid or caused to be paid all other sums payable under the Indenture; and (4) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating 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 or shareholder of the Company or any of its respective Subsidiaries or Affiliates, as such, shall have any liability for any obligations of the Company 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

Wilmington Trust, National Association will be appointed as Trustee 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 known to the Trustee, 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 Company 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 Company may remove the Trustee, or any Holder who has been a bona fide Holder for not less than 6 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 in accordance with the applicable procedures of 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 earlier of such publication and the fifth 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 electronically deliver or 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 electronically delivered or 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

“2024 Notes” means any of the Company’s 5.625% Senior Secured Notes due 2024.

“2024 Notes Indenture” means the Indenture, dated August 22, 2016, by and among the Company, the guarantors party thereto and Wilmington Trust, National Association, as trustee and notes collateral agent.

“2024 Notes Issue Date” means August 22, 2016.

“2027 Notes” means any of the Company’s 6.750% Senior Secured Notes due 2027.

“2027 Notes Indenture” means the Indenture, dated May 30, 2019, by and among the Company, the guarantors party thereto and Wilmington Trust, National Association, as trustee and notes collateral agent, as supplemented by the First Supplemental Indenture, dated July 25, 2019, by and among the Company, the guarantors party thereto and Wilmington Trust, National Association, as trustee and notes collateral agent.

“ABL” means the Amended and Restated ABL Credit Agreement, dated July 31, 2015, among the Company, the Subsidiaries of the Company party thereto, SunTrust Bank, as administrative and collateral agent and the lenders party thereto from time to time, as amended by Amendment No. 1, dated as of March 22, 2017, Amendment No. 2, dated as of April 24, 2019, and as further amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time (whether with the original administrative agent and lenders or other agents and lenders or otherwise and whether provided under the original ABL or another credit agreement, indenture, instrument, other document or otherwise). For the avoidance of doubt, an ABL is not limited to a single agreement, indenture, instrument or other document and multiple agreements, indentures, instruments or other documents may constitute the ABL.

“Acquired Indebtedness” means with respect to any Person (x) Indebtedness of any other Person or any of its Subsidiaries existing at the time such other Person becomes a Restricted Subsidiary or merges or amalgamates with or into or consolidates or otherwise combines with the Company or any Restricted Subsidiary and (y) Indebtedness secured by a Lien encumbering any asset acquired by such Person. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (x) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary or on the date of the relevant merger, amalgamation, consolidation, acquisition or other combination.

“Acquisition” means the transactions contemplated by the Securities Purchase Agreement.

“Acquisition Transaction Expenses” means any fees or expenses incurred or paid by the Company or any Restricted Subsidiary in connection with the Acquisition Transactions, including, without limitation, any fees, costs and expenses associated with settling any claims or actions arising from a dissenting stockholder exercising its appraisal rights in respect of the Acquisition.

“Acquisition Transactions” means the transactions contemplated by the Securities Purchase Agreement, the issuance of the 2024 Notes, borrowings under the Credit Agreement and under the ABL and other related transactions.

“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; or
- (3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary.

“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.

“Alternative Currency” means any currency (other than U.S. dollars) that is a lawful currency (other than U.S. dollars) that is readily available and freely transferable and convertible into U.S. dollars (as determined in good faith by the Company).

“*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 _____, 2025 (such redemption price (expressed in percentage of principal amount) being set forth in the table under “—Optional Redemption” (excluding accrued but unpaid interest, if any)), 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, if any), computed upon the redemption date using a discount rate equal to the Applicable Treasury Rate at such redemption date plus 50 basis points; over
- (b) the 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. The Trustee shall have no duty to calculate or verify the calculations of the Applicable Premium.

“*Applicable Treasury Rate*” means the weekly average rounded to the nearest 1/100th of a percentage point (for the most recently completed week for which such information is available as of the date that is two Business Days prior to the redemption date) of the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 with respect to each applicable day during such week (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 _____, 2025; *provided, however*, that if the period from the redemption date to _____, 2025 is not equal to the constant maturity of a United States Treasury security for which such yield is given, the Applicable 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.

“*Asset Disposition*” means:

- (a) the voluntary 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 or any of its Restricted Subsidiaries (in each case other than Capital Stock of the Company) (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 the Company or a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary;
- (2) a disposition of cash, Cash Equivalents or Investment Grade Securities;
- (3) a disposition of inventory or other assets (including Settlement Assets) in the ordinary course of business or consistent with past practice or held for sale or no longer used in the ordinary course of business;
- (4) a disposition of obsolete, worn out, uneconomic, damaged or surplus property, equipment or other assets or property, equipment or other assets that are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Company and its Restricted Subsidiaries whether now or hereafter owned or leased or acquired in connection with an acquisition or used or

- useful in the conduct of the business of the Company and its Restricted Subsidiaries (including by ceasing to enforce, allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any intellectual property that is, in the reasonable judgment of the Company or the Restricted Subsidiaries, no longer used or useful, or economically practicable to maintain, or in respect of which the Company or any Restricted Subsidiary determines in its reasonable business judgment that such action or inaction is desirable);
- (5) transactions permitted under “—Certain Covenants—Merger, Amalgamation and Consolidation” 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 the greater of \$75.0 million and 15% of LTM EBITDA;
 - (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;
 - (10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or consistent with past practice or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
 - (11) conveyances, sales, transfers, licenses, sub-licenses, cross-licenses or other dispositions of intellectual property, software or other general intangibles and licenses, sub-licenses, cross-licenses, leases or subleases of other property, in each case, in the ordinary course of business or consistent with past practice or pursuant to a research or development agreement in which the counterparty to such agreement receives a license in the intellectual property or software that results from such agreement;
 - (12) the lease, assignment, license, sub-lease or cross-license of any real or personal property in the ordinary course of business;
 - (13) foreclosure, condemnation, expropriation, forced disposition or any similar action with respect to any property or other assets;
 - (14) the sale, discount or other disposition (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of inventory, accounts receivable or notes receivable arising in the ordinary course of business or consistent with past practice, or the conversion or exchange of accounts receivable for notes receivable;
 - (15) any issuance or sale of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary or any other disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary or an Immaterial Subsidiary;
 - (16) 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;

- (17) (i) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased, (ii) dispositions of property to the extent that the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased), and (iii) 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;
- (18) sales of accounts receivable, or participations therein, in connection with any Receivables Facility, or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with past practice;
- (19) any financing transaction with respect to property constructed, acquired, leased, renewed, relocated, expanded, maintained, upgraded, 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;
- (20) sales, transfers or other dispositions of Investments in joint ventures or similar entities to the extent required by, or made pursuant to customary buy/sell arrangements between, the parties to such joint venture set forth in joint venture arrangements and similar binding arrangements;
- (21) any surrender or waiver of contractual rights or the settlement, release, surrender or waiver of contractual, tort, litigation or other claims of any kind;
- (22) the unwinding of any Cash Management Services or Hedging Obligations; and
- (23) dispositions of non-core assets.

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Disposition and would also be a Permitted Investment or an Investment permitted under “—Certain Covenants—Limitation on Restricted Payments,” the Company, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Asset Disposition and/or one or more of the types of Permitted Investments or Investments permitted under “—Certain Covenants—Limitation on Restricted Payments.”

“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 and (ii) any joint venture entered into by the Company or any Restricted Subsidiary of the Company.

“Available RP Capacity Amount” means, as of the date of incurrence of any Indebtedness pursuant to clause (20) of the second paragraph of the covenant described in “—Certain Covenants—Limitation on Indebtedness,” (i) the amount of Restricted Payments that may be made at the time of determination pursuant to the covenant described in “—Certain Covenants—Limitation on Restricted Payments” minus (ii) the outstanding amount of any Indebtedness incurred pursuant to clause (20) of the second paragraph under “—Certain Covenants—Limitation on Indebtedness” plus (iii) the aggregate principal amount of Indebtedness prepaid prior to or substantially concurrently at such time, solely to the extent such Indebtedness was incurred pursuant to clause (20) of the second paragraph “—Certain Covenants—Limitation on Indebtedness.”

“Board of Directors” means (i) 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; (ii) with respect to any partnership, the board of directors or other governing body of the general partner, as applicable, of the partnership or any duly authorized committee thereof; (iii) with respect to a limited liability company, the managing member or members or any duly authorized controlling committee thereof; and (iv) 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, 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). Unless the context requires otherwise, Board of Directors means the Board of Directors of the Company.

“*Borrowing Base*” at any given time means an amount equal to:

- (a) 90% of the face amount of all accounts receivable and all billings and unbilled receivables owned by the Company and its Restricted Subsidiaries as of the end of the most recent fiscal quarter preceding the date of determination; *plus*
- (b) 90% of the book value of all inventory owned by the Company and its Restricted Subsidiaries as of the end of the most recent fiscal quarter preceding the date of determination; *plus*
- (c) 90% of the face amount of all credit card receivables owned by the Company and its Restricted Subsidiaries as of the end of the most recent fiscal quarter preceding the date of determination; *plus*
- (d) 100% of all cash held in a deposit account either (x) maintained with the administrative agent under the ABL or (y) over which the administrative agent under the ABL has a perfected security interest.

The Borrowing Base shall be calculated on a pro forma basis to include any accounts receivable, inventory, credit card receivables, unbilled receivables and billings owned by an entity that is to be merged with or into the Company or a Restricted Subsidiary or is to become a Restricted Subsidiary on the date of determination.

“*Business Day*” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York, United States or in the jurisdiction of the place of payment are authorized or required by law to close. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall not be reflected in computing interest or fees, as the case may be.

“*Business Successor*” means (i) any former Subsidiary of the Company and (ii) any Person that, after the Issue Date, has acquired, merged or consolidated with a Subsidiary of the Company (that results in such Subsidiary ceasing to be a Subsidiary of the Company), or acquired (in one transaction or a series of transactions) all or substantially all of the property and assets or business of a Subsidiary or assets constituting a business unit, line of business or division of a Subsidiary of the Company.

“*Capital Stock*” of any Person means any and all shares of, rights to purchase or acquire, 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 or exchangeable for such equity.

“*Cash Equivalents*” means:

- (1) U.S. dollars, Canadian dollars, Swiss Francs, United Kingdom pounds, Euro or any national currency of any member state of the European Union on the Issue Date; or (b) any other foreign currency held by the Company and the Restricted Subsidiaries in the ordinary course of business;
- (2) securities issued or directly and fully Guaranteed or insured by the United States, Canadian, Swiss or United Kingdom governments, a member state of the European Union or, in each case, or any agency or instrumentality 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 any lender or 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 \$100.0 million;
- (4) repurchase obligations for underlying securities of the types described in clauses (2), (3) and (7) entered into with any bank meeting the qualifications specified 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) above;
- (6) commercial paper and variable or fixed rate notes issued by a bank meeting the qualifications specified in clause (3) above (or by the parent company thereof) maturing within one year after the date of creation thereof or any commercial paper and variable or fixed rate note issued by, or guaranteed by a corporation rated at least (A) "A-1" or higher by S&P or "P-1" or higher by Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization selected by the Company) maturing within two years after the date of creation thereof or (B) "A-2" or higher by S&P or "P-2" or higher by Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization selected by the Company) maturing within one year after the date of creation thereof, or, in each case, if no rating is available in respect of the commercial paper or fixed rate notes, the issue of which has an equivalent rating in respect of its long-term debt;
- (7) marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either S&P or Moody's, respectively (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization selected by the Company), and in each case maturing within 24 months after the date of creation or acquisition thereof;
- (8) readily marketable direct obligations issued by any state, province, commonwealth or territory of the United States of America, Canada, Switzerland, the United Kingdom, any member state of the European Union or any political subdivision, taxing authority or public instrumentality thereof, in each case, having one of the two highest ratings 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 selected by the Company) with maturities of not more than two years from the date of creation or acquisition;
- (9) readily marketable direct obligations issued by any foreign government or any political subdivision, taxing authority or public instrumentality thereof, in each case, having one of the two highest ratings categories obtainable by 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 selected by the Company) with maturities of not more than two years from the date of acquisition;
- (10) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated within the three highest ratings categories by 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 selected by the Company);
- (11) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptance of, or time deposits with, any commercial bank which is organized and existing

- under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least “A-2” or the equivalent thereof or from Moody’s is at least “P-2” or the equivalent thereof (any such bank being an “*Approved Foreign Bank*”), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;
- (12) Indebtedness or Preferred Stock issued by Persons with a rating of “BBB-” or higher from S&P or “Baa3” or higher from Moody’s (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of 24 months or less from the date of acquisition;
 - (13) bills of exchange issued in the United States, Canada, Switzerland, the United Kingdom, 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);
 - (14) investments in money market funds access to which is provided as part of “sweep” accounts maintained with any bank meeting the qualifications specified in clause (3) above;
 - (15) investments in industrial development revenue bonds that (i) “re-set” interest rates not less frequently than quarterly, (ii) are entitled to the benefit of a remarketing arrangement with an established broker dealer and (iii) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by any bank meeting the qualifications specified in clause (3) above;
 - (16) investments in pooled funds or investment accounts consisting of investments in the nature described in the foregoing clause (15);
 - (17) Cash Equivalents or instruments similar to those referred to in clauses (1) through (16) above denominated in Dollars or any Alternative Currency;
 - (18) interests in any investment company, money market, enhanced high yield fund or other investment fund which invests 90% or more of its assets in instruments of the types specified in clauses (1) through (17) above; and
 - (19) for purposes of clause (2) of the definition of “Asset Disposition,” any marketable securities portfolio owned by the Company and its Subsidiaries on the Issue Date.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (1) through (9) and clauses (11) through (14) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (14) and in this paragraph. Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (1) above, *provided* that such amounts are converted into any currency listed in clause (1) as promptly as practicable and in any event within 10 Business Days following the receipt of such amounts. For the avoidance of doubt, any items identified as Cash Equivalents under this definition (other than clause (16) above) will be deemed to be Cash Equivalents for all purposes under the indenture regardless of the treatment of such items under GAAP.

“*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): automated clearing house transactions, treasury, depository, credit or debit card, purchasing card, stored value card, electronic fund transfer services and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange

facilities, deposit and other accounts and merchant services or other cash management arrangements in the ordinary course of business or consistent with past practice.

“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), other than one or more Permitted Holders, 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 other than in connection with any transaction or series of transactions in which the Company shall become the wholly-owned subsidiary of a Parent Entity so long as no person or group, as noted above, other than a Permitted Holder, holds 50% or more of the total voting power of the Voting Stock of such Parent Entity; or
- (2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, amalgamation, 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 Restricted Subsidiaries taken as a whole to a Person, other than the Company or any of its Restricted Subsidiaries or one or more Permitted Holders.

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

“Company” means Builders FirstSource, Inc., a Delaware corporation.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including amortization or write-off of (i) intangibles and non-cash organization costs, (ii) deferred financing and debt issuance fees, costs or expenses and (iii) capitalized expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and amortization of favorable or unfavorable lease assets or liabilities, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP and any write down of assets or asset value carried on the balance sheet.

“Consolidated EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

- (1) increased (without duplication) by:
 - (a) any fees, costs, expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any actual, proposed or contemplated Equity Offering (including any expense relating to enhanced accounting functions or other transactions costs associated with becoming a public company), Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by the Indenture (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the offering of the Existing Notes, the Notes, the Credit Agreement, the ABL, any other Credit Facilities and any Receivables Fees, and (ii) any amendment, waiver or other modification of the Existing Notes, the Notes, the Credit Agreement, the ABL, Receivables Facilities, any other Credit Facilities, any Receivables Fees, any other Indebtedness permitted to be Incurred under the Indenture or any Equity Offering, in each case, whether or not consummated, to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*
 - (b) provision for taxes based on income or profits, revenue or capital, including, without limitation, federal, state, provincial, territorial, local, foreign, unitary, excise, property, franchise and similar taxes and foreign withholding and similar taxes of such Person paid or accrued during such period, including any penalties and interest relating to any tax examinations (including, without limitation,

any additions to such taxes, and any penalties and interest with respect thereto), deducted (and not added back) in computing Consolidated Net Income; *plus*

- (c) 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 (provided that if 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 then the cash payment in such future period shall be subtracted from Consolidated EBITDA when paid); *plus*
- (d) (i) the amount of any restructuring charge, reserve, integration cost or other business optimization expense or cost (including charges directly related to the implementation of cost-savings initiatives) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions or divestitures after the Issue Date, including, without limitation, those related to any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities and to exiting lines of business and (ii) fees, costs and expenses associated with acquisition related litigation and settlements thereof; *plus*
- (e) any net loss included in the Consolidated Net Income attributable to non-controlling interests pursuant to the application of Accounting Standards Codification Topic 810-10-45 (“*Topic 810*”); *plus*
- (f) the amount of board of director fees, management, monitoring, advisory, consulting, refinancing, subsequent transaction, advisory and exit fees (including termination fees) and related indemnities and expenses paid or accrued in such period to any member of the Board of Directors of the Company, any Permitted Holder or any Affiliate of a Permitted Holder to the extent permitted under “—Certain Covenants—Limitation on Affiliate Transactions”; *plus*
- (g) net realized losses from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 (“*Topic 815*”) and related pronouncements; *plus*
- (h) 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*
- (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, any severance 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 Capital Stock (other than Disqualified Stock) of the Company solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (c) of the first paragraph under “—Certain Covenants—Limitation on Restricted Payments”; *plus*
- (j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of the initial application of Accounting Standards Codification Topic 715, and any other items of a similar nature; *plus*
- (k) the amount of loss or discount on sale of receivables and related assets to the Receivables Subsidiary in connection with a Receivables Facility; *plus*
- (l) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments, in each case in

connection with acquisitions or an Investment; *plus*

- (m) the amount of “run rate” cost savings (including, without limitation, cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit, insurance and procurement savings), operating expense reductions (including, without limitation, reductions with respect to facility closures and delivery fleet consolidation), other operating improvements and initiatives and synergies projected by the Company in good faith to be reasonably anticipated to be realizable or a plan for realization shall have been established within twenty four (24) months of the date thereof (which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including, without limitation, cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit, insurance and procurement savings), operating expense reductions (including, without limitation, reductions with respect to facility closures and delivery fleet consolidation), other operating improvements and initiatives and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that all steps have been taken, or are reasonably expected to be taken, in good faith, for realizing such cost savings and such cost savings are reasonably identifiable and factually supportable (in the good faith determination of the Company); *plus*
 - (n) Fixed Charges of such Person for such period (including (x) net losses on any Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate, currency or commodities risk, (y) bank fees and (z) costs of surety bonds in connection with financing activities, plus amounts excluded from the definition of “Consolidated Interest Expense” pursuant to clauses (t) through (z) in clause (1) thereof), to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; *plus*
 - (o) 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*
 - (p) 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; *plus*
 - (q) realized foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Company and its Restricted Subsidiaries; *plus*
 - (r) the amount of expenses relating to payments made to option holders of the Company or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Entities, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted under the Indenture; *plus*
 - (s) losses, expenses or charges (including all fees and expenses or charges related thereto) (i) from abandoned, closed, disposed or discontinued operations and any losses on disposal of abandoned, closed or discontinued operations and (ii) attributable to business dispositions or asset dispositions (other than in the ordinary course of business) as determined in good faith; *plus*
 - (t) Public Company Costs; *plus*
 - (u) cost related to the implementation of operational and reporting systems and technology initiatives; *plus*
 - (v) adjustments of the nature used in connection with the calculation of “Adjusted EBITDA” as set forth in footnote (1) of “Summary—Summary Historical Financial and Other Data” contained in the offering circular applied in good faith to the extent such adjustments continue to be applicable during the period in which Consolidated EBITDA is being calculated; and
- (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; *plus*
- (b) any net income included in Consolidated Net Income attributable to non-controlling interests pursuant to the application of Topic 810.

“*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 (other than with respect to Indebtedness borrowed under the Credit Agreement in connection with the Acquisition Transaction), (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (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 Finance Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (s) Receivables Fees; (t) penalties and interest relating to taxes, (u) any additional cash interest owing pursuant to any registration rights agreement, (v) accretion or accrual of discounted liabilities other than Indebtedness, (w) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisition, (x) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program, (y) any expensing of bridge, commitment and other financing fees and (z) 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 Finance 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 Finance 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 before any reduction in respect of Preferred Stock dividends; *provided, however*, that there will not be included in such Consolidated Net Income:

- (1) any extraordinary, exceptional, unusual or nonrecurring, loss, charge or expense (including Acquisition Transaction Expenses or any charges, expenses or reserves in respect of any restructuring, redundancy or severance expense or relocation costs, integration and facilities’ opening costs and other business optimization expenses and operating improvements (including related to new product introductions), systems development and establishment costs, restructuring charges, accruals or reserves (including restructuring and integration costs related to acquisitions after the Issue Date and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements, signing costs, retention or completion bonuses, transition costs, costs related to closure/consolidation of

- facilities, internal costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), contract terminations and professional and consulting fees incurred with any of the foregoing;
- (2) the cumulative effect of a change in accounting principles, including any impact resulting from an election by the Company to apply IFRS at any time following the Issue Date;
 - (3) any costs associated with the Acquisition Transactions;
 - (4) any fees and expenses (including any transaction or retention bonus or similar payment) incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, asset disposition, issuance or repayment of Indebtedness, issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with Financial Accounting Standards Codification No. 805 and gains or losses associated with Financial Accounting Standards Codification No. 460);
 - (5) 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;
 - (6) accruals and reserves that are established or adjusted (including any adjustment of estimated payouts on existing earn-outs) that are so required to be established as a result of the Acquisition Transactions in accordance with GAAP, or changes as a result of adoption or modification of accounting policies;
 - (7) 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 or on the re-valuation of any benefit plan obligation and (ii) income (loss) attributable to deferred compensation plans or trusts;
 - (8) any net income (loss) of any Person if such Person is not a Restricted Subsidiary (including any net income (loss) from investments recorded in such Person under equity method accounting), except that the Company's 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 or that (as reasonably determined by an Officer of the Company) could have been distributed by such Person 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);
 - (9) solely for the purpose of determining the amount available for Restricted Payments under clause (c)(ii) 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 Company and 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 articles, 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, (b) restrictions pursuant to the Credit Agreement, the ABL, the Existing Notes, the Notes, the Indenture or the Existing Notes Indentures and (c) restrictions specified in clause (13)(i) of the second paragraph of the covenant described under "—Certain Covenants—Limitation on Restrictions on Distributions from Restricted Subsidiaries"), 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);

- (10) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized upon the sale or other disposition of any asset (including pursuant to any Sale and Leaseback Transaction) or disposed or discontinued operations of the Company or any Restricted Subsidiaries which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Company);
- (11) any unrealized gains or losses in respect of any 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 any Hedging Obligations;
- (12) any unrealized foreign currency translation increases or decreases or transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Hedging Obligations for currency exchange risk) or other obligations of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;
- (13) any unrealized or realized gain or loss due solely to fluctuations in currency values and the related tax effects, determined in accordance with GAAP;
- (14) 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 (including the Acquisition Transaction), or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);
- (15) any goodwill or other intangible asset impairment charge, write-off or write-down and the amortization of intangibles arising pursuant to GAAP;
- (16) any after-tax effect of income (loss) from the early extinguishment or cancellation of Indebtedness or any Hedging Obligations or other derivative instruments;
- (17) any net unrealized gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Topic 815 and related pronouncements or mark to market movement of other financial instruments pursuant to Accounting Standards Codification 825 and related pronouncements; and
- (18) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures and any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Acquisition Transactions, or the release of any valuation allowances related to such item.

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 include (i) any expenses and charges that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed and only to the extent that such amount is (A) not denied by the applicable payor 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) and (ii) to the extent covered by insurance (including business interruption 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 only to the extent that 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 Secured Leverage Ratio*” means, as of any date of determination, the ratio of (x) the sum of (a) Consolidated Total Indebtedness secured by a Lien on any assets or property of the Company or any Restricted Subsidiary as of such date and (b) the Reserved Indebtedness Amount secured by a first priority Lien as of such date to (y) LTM EBITDA.

“*Consolidated Total Indebtedness*” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness for borrowed money (excluding intercompany Indebtedness, Subordinated Indebtedness and Indebtedness outstanding under the ABL that was used to finance seasonal working capital needs of the Company and its Restricted Subsidiaries (as determined by the Company in its reasonable discretion) as of such date) minus (b) 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 (*provided* that the cash proceeds of any proposed Incurrence of Indebtedness shall not be included in this clause (b) for purposes of calculating the Consolidated Total Leverage Ratio or the Consolidated Secured Leverage Ratio, as applicable), with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of “Fixed Charge Coverage Ratio.” For the avoidance of doubt, “Consolidated Total Indebtedness” shall exclude Indebtedness in respect of any Receivables Facility.

“*Consolidated Total Leverage Ratio*” means, as of any date of determination, the ratio of (x) the sum of (i) Consolidated Total Indebtedness and (ii) the Reserved Indebtedness Amount, each as of such date to (y) LTM EBITDA.

“*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.

“*Controlled Investment Affiliate*” means, as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Company and/or other companies.

“*Credit Agreement*” means the Second Amended and Restated Term Loan Credit Agreement, dated February 23, 2017, by and among the Company, the guarantors from time to time party thereto, Deutsche Bank AG New York Branch, as term administrative agent and term collateral agent, and each lender from time to time party thereto, together with the related documents thereto (including the revolving loans thereunder, any letters of credit and reimbursement obligations related thereto, any Guarantees and security documents), as amended, extended, renewed, restated, refunded, replaced, 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, 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 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 (including the Credit Agreement and the ABL), indentures or other arrangements, commercial paper facilities and overdraft facilities with banks, other financial 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 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 (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) 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.

“*Derivative Instrument*” with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person’s investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/or the creditworthiness of the Company and/or any one or more of the Guarantors (the “*Performance References*”).

“*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.”

“*Designated Preferred Stock*” means Preferred Stock of the Company or a Parent Entity (other than Disqualified Stock) that is issued for cash (other than to the Company or a Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any such Subsidiary for the benefit of their employees to the extent funded by the Company or such Subsidiary) and that is designated as “Designated Preferred Stock” pursuant to an Officer’s Certificate of the Company at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in clause (c)(iii) of the first paragraph of the covenant described under “—Certain Covenants—Limitation on Restricted Payments.”

“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 future, current or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members (excluding the Permitted Holders (but not excluding any future, current or former employee, director, officer, manager or consultant)) or Immediate Family Members), of the Company, any of its Subsidiaries, any Parent Entity or any other entity in which the Company or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the board of directors of the Company (or the compensation committee thereof) or any other plan for the benefit of current, former or future employees (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or its Subsidiaries or by any such plan to such employees (or their respective Controlled Investment Affiliates or Immediate Family Members), 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.

“Dollars” or *“\$”* means the lawful currency of the United States of America.

“Domestic Subsidiary” means, with respect to any Person, any Restricted Subsidiary of such Person other than a Foreign Subsidiary.

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

“Equity Offering” means a sale of Capital Stock (other than through the issuance of Disqualified Stock or Designated Preferred Stock or through an Excluded Contribution) other than (a) offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions or other securities of the Company or any Parent Entity and (b) issuances of Capital Stock to any Subsidiary of the Company.

“Euro” means the single currency of participating member states of the economic and monetary union as contemplated in the Treaty on European Union.

“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 or Designated Preferred 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 or Designated Preferred Stock) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer’s Certificate of the Company.

“*Existing Notes*” means any of the Company’s 2024 Notes or 2027 Notes.

“*Existing Notes Indentures*” means, collectively, the 2024 Notes Indenture and the 2027 Notes Indenture.

“*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.

“*Finance Lease Obligations*” means an obligation that is required to be classified and accounted for as a finance 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.

“*Fitch*” means Fitch Ratings, Inc. 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 (the “*reference period*”) for which internal consolidated financial statements are available to the Fixed Charges of such Person for reference period. 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 reference period 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 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.

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

“*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 set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public

Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time; *provided* that all terms of an accounting or financial nature used in the Indenture shall be construed, and all computations of amounts and ratios referred to in the Indenture shall be made (a) without giving effect to any election under Accounting Standards Codification Topic 825—Financial Instruments, or any successor thereto or comparable accounting principle (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Company or any Subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Finance Lease Obligations shall be determined in accordance with the definition of Finance Lease Obligations. 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); *provided* that any such election, once made, shall be irrevocable; *provided, further*, that any calculation or determination in the Indenture that requires 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. The Company shall give notice of any such election made in accordance with this definition to the Trustee. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness.

If there occurs a change in IFRS or GAAP, as the case may be, and such change would cause a change in the method of calculation of any standards, terms or measures used in the Indenture (an “*Accounting Change*”), then the Company may elect, as evidenced by a written notice of the Company to the Trustee, that such standards, terms or measures shall be calculated as if such Accounting Change had not occurred.

“*Grantor*” means the Company and the Guarantors.

“*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. The term “Guarantee” used as a verb has a corresponding meaning.

“*Guarantor*” means any Restricted Subsidiary that Guarantees the Notes, until such Note Guarantee is released in accordance with the terms of 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 the international financial reporting standards as issued by the International Accounting Standards Board as in effect from time to time.

“*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 and (ii) has Total Assets and revenues of less than 5.0% of Total Assets and, together with all other Immaterial Subsidiaries (as determined in accordance with GAAP), has Total Assets and revenues of less than 10.0% of Total Assets, in each case, measured at the end of the most recent fiscal period for which internal financial statements are available and revenues on a pro forma basis giving effect to any acquisitions or dispositions of companies, division or lines of business since such balance sheet date or the start of such four quarter period, as applicable, and on or prior to the date of acquisition of such Subsidiary.

“*Immediate Family Members*” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships, the estate of such individual and such other individuals above) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“*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, amalgamation, 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 not 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 or similar obligations to trade creditors), 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) Finance 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 the type referred to in clauses (1), (2), (3), (4), (5) and (9) 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);

with respect to clauses (1), (2), (4) and (5) above, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided, that Indebtedness of any Parent Entity appearing upon the balance sheet of the Company solely by reason of push-down accounting under GAAP shall be excluded.

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, any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice, 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 practice.

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. Indebtedness shall be calculated without giving effect to the effects of Topic No. 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the Indenture as a result of accounting for any embedded derivatives created by the terms of such 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 practice, other than Guarantees or other assumptions of Indebtedness;
- (ii) Obligations under or in respect of Receivables Facilities;
- (iii) Cash Management Services;
- (iv) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;
- (v) 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 practice;
- (vi) 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;

- (vii) 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;
- (viii) Indebtedness of any Parent Entity appearing on the balance sheet of the Company solely by reason of push down accounting under GAAP;
- (ix) Capital Stock (other than Disqualified Stock); or
- (x) amounts owed to dissenting stockholders in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or action (whether actual, contingent or potential) with respect thereto (including any accrued interest).

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing; *provided, however*, that such firm or appraiser is not an Affiliate of the Company.

“Investment” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of advances, loans 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 practice, 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 practice 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 determined by the Company) 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 Company.

“Investment Grade Securities” means:

- (1) securities issued or directly and fully Guaranteed or insured by the United States, Canadian, Swiss or United Kingdom government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities issued or directly and fully guaranteed or insured by a member of the European Union, or any agency or instrumentality thereof (other than Cash Equivalents);
- (3) debt securities or debt instruments with a rating of “A-” or higher from S&P or “A3” or higher by

Moody's or the equivalent of such rating by 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, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries; and

- (4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution.

"Investment Grade Status" shall occur when the Notes receive two of the following:

- (1) a rating of "BBB-" or higher from S&P;
- (2) a rating of "Baa3" or higher from Moody's; or
- (3) a rating of "BBB-" or higher from Fitch,

or the equivalent of such rating by either any 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 , 2020.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien, hypothecation or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof); *provided*, that in no event shall an operating lease to be deemed to constitute a Lien.

"Long Derivative Instrument" means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"LTM EBITDA" means Consolidated EBITDA of the Company measured 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 giving effect to such Indebtedness, acquisition or Investment, as applicable, since the start of such four quarter period and as are consistent with the pro forma adjustments set forth in the definition of "Fixed Charge Coverage Ratio."

"Management Advances" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Parent Entity, the Company or any Restricted Subsidiary:

- (1) (a) in respect of travel, entertainment, relocation or moving related expenses Incurred in the ordinary course of business or consistent with past practice or (b) for purposes of funding any such person's purchase of Capital Stock (or similar obligations) of the Company, its Subsidiaries or any Parent Entity with (in the case of this sub-clause (b)) the approval of the Board of Directors;
- (2) in respect of relocation, moving related expenses Incurred in connection with any closing or consolidation of any facility or office; or
- (3) not exceeding the greater of \$50.0 million and 10% of LTM EBITDA in the aggregate outstanding at any time.

"Management Stockholders" means the members of management of the Company (or any Parent Entity) or its Subsidiaries who are holders of Capital Stock of the Company or of any Parent Entity on the Issue Date.

"Market Capitalization" means an amount equal to (i) the total number of issued and outstanding shares of common Capital Stock of the Company or any Parent Entity on the date of the declaration of a Restricted Payment permitted pursuant to clause (10) of the second paragraph under "—Certain Covenants—Limitation on Restricted

Payments” multiplied by (ii) the arithmetic mean of the closing prices per share of such common Capital Stock on the principal securities exchange on which such common Capital Stock are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“*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 Rule 436 under the Securities 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, reasonably estimated to be actually payable 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 available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition, including distributions for Related Taxes;
- (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 any Parent Entity, 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 and indemnification obligation on adjustments to the purchase price associated with any such Asset 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, and including distributions for Related Taxes).

“*Net Short*” means, with respect to a Holder or beneficial owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its Notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Company or any Guarantor immediately prior to such date of determination.

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

“Note Documents” means the Notes (including Additional Notes), the Note 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 Company 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.

“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 who is reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Company or its Subsidiaries.

“Parent Entity” means any, direct or indirect, parent of the Company.

“Parent Entity Expenses” means:

- (1) costs (including all professional fees and expenses) Incurred by any Parent Entity in connection with reporting obligations under or otherwise Incurred in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, the Indenture or any other agreement or instrument relating to the Notes, the Guarantees or any other Indebtedness of the Company or any Restricted Subsidiary, including in respect of any reports filed or delivered with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;
- (2) customary indemnification obligations of any Parent Entity owing to directors, officers, employees or other Persons under its articles, charter, by-laws, partnership agreement or other organizational documents or pursuant to written agreements with any such Person to the extent relating to the Company and its Subsidiaries;
- (3) obligations of any Parent Entity in respect of director and officer insurance (including premiums therefor) to the extent relating to the Company and its Subsidiaries;
- (4) (x) general corporate overhead expenses, including professional fees and expenses and (y) other operational expenses of any Parent Entity related to the ownership or operation of the business of the Company or any of its Restricted Subsidiaries;
- (5) expenses Incurred by any Parent Entity in connection with any offering, sale, conversion or exchange of Capital Stock or Indebtedness; and
- (6) amounts to finance Investments that would otherwise be permitted to be made pursuant to the covenant described above under “—Certain Covenants—Limitation on Restricted Payments” if made by the Company; provided, that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such direct or indirect parent company shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the capital of the Company or one of its Restricted Subsidiaries or (2) the merger, consolidation or amalgamation of the Person formed or acquired into the Company or one of its Restricted Subsidiaries (to the extent not prohibited by the covenant described under the caption “—Certain Covenants—Merger, Amalgamation and Consolidation” above) in order to consummate such Investment, (C) such direct or indirect parent company and its Affiliates (other than the Company or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the

Company or a Restricted Subsidiary could have given such consideration or made such payment in compliance with the Indenture and such consideration or other payment is included as a Restricted Payment under the Indenture, (D) any property received by the Company shall not increase amounts available for Restricted Payments pursuant to clause (c) of the first paragraph of the covenant described under the caption “—Certain Covenants—Limitation on Restricted Payments” and (E) such Investment shall be deemed to be made by the Company or such Restricted Subsidiary pursuant to another provision of this covenant or pursuant to the definition of “Permitted Investments.”

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

“*Paying Agent*” means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Note on behalf of the Company.

“*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 Holders*” means, collectively, (i) the Sponsor, (ii) any one or more Persons, together with such Persons’ Affiliates, whose beneficial ownership constitutes or results in a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the Indenture, (iii) the Management Stockholders, (iv) any Person who is acting solely as an underwriter in connection with a public or private offering of Capital Stock of any Parent Entity or the Company, acting in such capacity and (v) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in clauses (i) through (iv), collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Company or any Parent Entity held by such group.

“*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, amalgamated, 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, Cash Equivalents or Investment Grade Securities;
- (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 practice;
- (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 practice;
- (6) Management Advances;
- (7) Investments received in settlement, compromise or resolution of debts created in the ordinary course of business or consistent with past practice and owing to the Company or any Restricted Subsidiary or in exchange for any other Investment or accounts receivable, endorsements for collection or deposit 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 litigation, arbitration or other disputes 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 promissory notes or other non-cash consideration (including earn-outs) from a sale or other disposition of property or assets, including an Asset Disposition;
- (9) Investments existing or pursuant to binding commitments, agreements or arrangements in effect on the Issue Date and any modification, replacement, renewal, reinvestment 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 or binding commitment 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 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) or Capital Stock of any Parent Entity 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), (9), (12) and (14) 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 and in accordance with the Indenture;
- (15) (i) Guarantees of Indebtedness 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, and (ii) performance guarantees with respect to obligations 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 or amalgamated into the Company or merged or amalgamated 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, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (18) Investments consisting of licensing or contribution 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 similar entities 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 the greater of \$125.0 million and 25% of LTM EBITDA at the time of such Investment (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 \$250.0

million and 50% of LTM EBITDA (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 returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) 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) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause that are at that time outstanding, not to exceed the greater of \$125.0 million and 25% of LTM EBITDA (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;
- (23) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Company, are necessary or advisable to effect any Receivables Facility or any repurchase in connection therewith;
- (24) Investments in connection with the Acquisition Transactions;
- (25) repurchases of Notes or Existing Notes;
- (26) Investments by an Unrestricted Subsidiary entered into prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the caption “—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries”;
- (27) transactions entered into in order to consummate a Permitted Tax Restructuring; and
- (28) any other Investment so long as, immediately after giving pro forma effect to the Investment and the incurrence of any Indebtedness the net proceeds of which are used to make such Investment, the Consolidated Total Leverage Ratio shall be no greater than 4.25 to 1.00.

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

- (1) Liens on assets or property of a Restricted Subsidiary that is not a Guarantor securing Indebtedness of any Restricted Subsidiary that is not a Guarantor;
- (2) pledges, deposits or Liens under workmen’s compensation laws, payroll taxes, 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 the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, warranty, release, judgment, customs, appeal or performance bonds, return-of-money bonds, bankers’ acceptance facilities (or other similar bonds, instruments or obligations), obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;
- (3) Liens with respect to outstanding motor vehicle fines and Liens imposed by law or regulation, including carriers’, warehousemen’s, mechanics’, landlords’, suppliers’, materialmen’s, repairmen’s, architects’, construction contractors’ or other like Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;

- (4) Liens for Taxes, assessments or governmental charges which are not overdue for a period of more than 30 days or which are being contested in good faith by appropriate proceedings diligently conducted; provided that appropriate reserves required pursuant to GAAP (or other applicable accounting principles) have been made in respect thereof;
- (5) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television 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, including servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreement and other agreements, 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 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 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; (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, consistent with past practice and not for speculative purposes; and/or (e) (i) of a collection bank arising under Section 4-210 of the UCC 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 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;
- (8) Liens securing or otherwise arising out of judgments, decrees, attachments, orders or awards not giving rise to an Event of Default so long as (a) 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, (b) the period within which such proceedings may be initiated has not expired or (c) no more than 60 days have passed after (i) such judgment, decree, order or award has become final or (ii) such period within which such proceedings may be initiated has expired;
- (9) Liens (i) on assets or property of the Company or any Restricted Subsidiary for the purpose of securing Finance Lease Obligations, or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided that* (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under the Indenture and (b) any such Liens may not extend to any assets or property of the Company or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property and (ii) on any interest or title of a lessor under any Finance Lease

Obligations or operating lease;

- (10) Liens perfected or evidenced by UCC financing statement filings, including precautionary UCC financing statements, (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;
- (11) Liens existing on the Issue Date, excluding Liens securing the Credit Agreement, ABL or the Existing Notes;
- (12) 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, amalgamation, 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;
- (13) 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;
- (14) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under the Indenture; *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;
- (15) (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;
- (16) 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;
- (17) 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;
- (18) 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;
- (19) Liens securing Indebtedness permitted to be Incurred pursuant to clauses (1), (14) or (19) (provided that, in the case of clause (19), such Liens are limited to all or part of the equipment acquired with the proceeds of such Indebtedness) of the second paragraph under “—Certain Covenants—Limitation on Indebtedness”;
- (20) Liens to secure Indebtedness permitted by clause (5) of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Indebtedness”; *provided* that such Liens shall only be permitted if (x) such Liens are limited to all or part of the same property or assets, including Capital Stock (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) acquired, or of any Person acquired or merged, consolidated or amalgamated with or into the Company or any Restricted Subsidiary, in any transaction to which such Indebtedness relates or (y) on the date of the Incurrence of such Indebtedness after giving effect to such Incurrence, the Consolidated Secured Leverage Ratio would equal or be less than the Consolidated

Secured Leverage Ratio immediately prior to giving effect thereto;

- (21) Liens Incurred to secure Obligations in respect of any Indebtedness permitted by clause (7) or (20) of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Indebtedness”;
- (22) Liens to secure Indebtedness of any Non-Guarantor covering only the assets of such Subsidiary;
- (23) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;
- (24) 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;
- (25) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Company or any Restricted Subsidiary or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments and (ii) 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;
- (26) Liens on equipment of the Company or any Restricted Subsidiary and located on the premises of any client or supplier or vehicles in the ordinary course of business;
- (27) 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;
- (28) 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 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;
- (29) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted under the Indenture;
- (30) 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;
- (31) Liens securing Indebtedness and other obligations in an aggregate principal amount not to exceed the greater of \$125.0 million and 25% of LTM EBITDA at any one time outstanding;
- (32) Liens then existing with respect to assets of an Unrestricted Subsidiary on the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the caption “—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries”;
- (33) 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 Secured Leverage Ratio would be no greater than 4.00 to 1.00;
- (34) Liens deemed to exist in connection with Investments in repurchase agreements permitted the covenant described under “—Certain Covenants—Limitation on Indebtedness” provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;
- (35) Liens on accounts receivable and related assets incurred in connection with a Receivables Facility;
- (36) Settlement Liens;

- (37) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;
- (38) the rights reserved to or vested in any Person or government, statutory or regulatory authority by the terms of any lease, license, franchise, grant or permit held by the Company or any Restricted Subsidiary or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;
- (39) restrictive covenants affecting the use to which real property may be put;
- (40) Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that such Liens or covenants do not interfere with the ordinary conduct of the business of the Company or any Restricted Subsidiary;
- (41) Liens arising in connection with any Permitted Tax Restructuring or any Intercompany License Agreements; or
- (42) Liens securing obligations pursuant to the Existing Notes.

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 the Indenture 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.

“Permitted Tax Distribution” means:

- (a) if and for so long as the Company is a member of a group filing a consolidated or combined tax return with any Parent Entity, any dividends or other distributions to fund any income Taxes for which such Parent Entity is liable up to an amount not to exceed with respect to such Taxes the amount of any such Taxes that the Company and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis calculated as if the Company and its Subsidiaries had paid Tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of the Company and its Subsidiaries; and
- (b) for any taxable year (or portion thereof) ending after the Issue Date for which the Company is treated as a disregarded entity, partnership, or other flow-through entity for federal, state, provincial, territorial, and/or local income Tax purposes, the payment of dividends or other distributions to the Company’s direct owner(s) to fund the income Tax liability of such owner(s) (or, if a direct owner is a pass-through entity, of the indirect owner(s)) for such taxable year (or portion thereof) attributable to the operations and activities of the Company and its direct and indirect Subsidiaries, in an aggregate amount not the exceed the product of (x) the highest combined marginal federal and applicable state, provincial, territorial, and/or local statutory income Tax rate (after taking into account the deductibility of U.S. state and local income Tax for U.S. federal income Tax purposes) and (y) the taxable income of the Company for such taxable year (or portion thereof).

“Permitted Tax Restructuring” means any reorganizations and other activities related to tax planning and tax reorganization (as determined by the Company in good faith) so long as such Permitted Tax Restructuring is not materially adverse to the holders of the Notes.

“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.

“Public Company Costs” means, as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as companies with listed equity, directors’ compensation, fees and expense reimbursement, costs relating to enhanced accounting functions and investor relations, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising solely by virtue of the listing of such Person’s equity securities on a national securities exchange or issuance of public debt securities.

“Purchase Money Obligations” means any Indebtedness Incurred to finance or refinance the acquisition, leasing, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment 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.

“Receivables Facility” means any of one or more receivables financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Company or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) pursuant to which the Company or any of its Restricted Subsidiaries sells its accounts receivable to either (a) a Person that is not a Restricted Subsidiary or (b) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“Receivables Fees” means distributions or payments made directly or by means of discounts with respect to any accounts receivable or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Facility.

“Receivables Subsidiary” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Receivables Facilities and other activities reasonably related thereto.

“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 to refund, refinance, replace, exchange, renew, repay or extend (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 refunded or refinanced; and
- (b) to the extent such Refinancing Indebtedness refinances Subordinated Indebtedness, Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Subordinated Indebtedness, Disqualified Stock or Preferred Stock, respectively, and, in the case of Subordinated Indebtedness, is subordinated to the Notes on terms at least as favorable to the Holders as those contained in the documentation governing

the Indebtedness being refinanced;

(2) Refinancing Indebtedness shall not include:

- (i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not the Company or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Company or a Guarantor; or
 - (ii) Indebtedness, Disqualified Stock or Preferred Stock of the Company 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 any such Credit Facility or other Indebtedness.

“*Related Taxes*” means:

- (1) any Taxes, including sales, use, transfer, rental, *ad valorem*, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes and other similar fees and expenses (other than
 - (x) Taxes measured by income and (y) withholding Taxes), required to be paid (*provided* such Taxes are in fact paid) by any Parent Entity by virtue of its:
 - (a) being organized or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Company or any of the Company’s Subsidiaries) or otherwise maintain its existence or good standing under applicable law;
 - (b) being a holding company parent, directly or indirectly, of the Company or any of the Company’s Subsidiaries;
 - (c) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Company or any of the Company’s Subsidiaries; or
 - (d) having made any payment in respect to any of the items for which the Company is permitted to make payments to any Parent Entity pursuant to “—Certain Covenants—Limitation on Restricted Payments”; or
- (2) any Permitted Tax Distribution.

“*Reserved Indebtedness Amount*” has the meaning set forth in the covenant described under the caption “—Certain Covenants—Limitation on Indebtedness.”

“*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.

“*Screened Affiliate*” means any Affiliate of a Holder (i) that makes investment decisions independently from such Holder and any other Affiliate of such Holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such Holder and any other Affiliate of such Holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Company or its Subsidiaries, (iii) whose investment policies are not directed by such Holder or any other Affiliate of such Holder that is acting in concert with such Holder in connection with its investment in the Notes, and (iv) whose investment decisions are not influenced by the investment decisions of such Holder or any other Affiliate of such Holder that is acting in concert with such Holders in connection with its investment in the Notes.

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

“*Secured Indebtedness*” means any Indebtedness secured by a Lien.

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

“*Securities Purchase Agreement*” means the Securities Purchase Agreement, dated as of April 13, 2015, by and among Company, ProBuild and the holders of securities of ProBuild named as parties thereto.

“*Settlement*” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“*Settlement Asset*” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

“*Settlement Indebtedness*” means any payment or reimbursement obligation in respect of a Settlement Payment.

“*Settlement Lien*” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“*Settlement Payment*” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“*Settlement Receivable*” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“*Short Derivative Instrument*” means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

“*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 or are extensions or developments of any thereof.

“*Sponsor*” means JLL Partners, Inc. and its Affiliates, including any funds, partnerships or other investment vehicles or Subsidiaries managed or directly or indirectly controlled by them but not including, however, any of portfolio companies of the foregoing.

“*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*” means, 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.

“*Transaction Expenses*” means any fees or expenses incurred or paid by the Company or any Restricted Subsidiary in connection with the Transactions.

“*Transactions*” means the issuance of the Notes, the borrowing under the ABL, the repayment of existing indebtedness and other related transactions and use of proceeds (including the redemption of the 2024 Notes), in each case, as described in this Offering Circular.

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

“*Trustee*” means Wilmington Trust, National Association together with its successors and assigns.

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

“*Unrestricted Subsidiary*” means:

- (1) any Subsidiary (other than the Company or any direct or indirect parent entity of the Company) of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Company in the manner provided below); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

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.”

“*Unsecured Finance Lease Obligations*” means Finance Lease Obligations not secured by a Lien and any other lease obligation that is not required to be accounted for as a financing or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. For the avoidance of doubt, an operating lease shall be considered an Unsecured Finance Lease Obligation.

“*Unsecured Finance Leases*” means all leases underlying Unsecured Finance Lease Obligations.

“*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 is owned by the Company or another Guarantor.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain U.S. federal income tax considerations relating to the acquisition, ownership and disposition of the Notes to U.S. Holders and Non-U.S. Holders (each as defined below and collectively referred to as “holders”), but does not purport to be a complete analysis of all potential U.S. federal income tax considerations that may be relevant to a holder. This summary is based on the provisions of the United States Internal Revenue Code of 1986, as amended (the “Code”), the Treasury regulations promulgated thereunder, judicial authority, published administrative positions of the IRS and other applicable authorities, all as in effect as of the date of this document, and all of which are subject to change. Changes in such authorities or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax considerations discussed below. We have not sought, nor do we intend to seek, a ruling from the U.S. Internal Revenue Service (the “IRS”) with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with our statements and conclusions or that a court would sustain any challenge by the IRS in the event of litigation.

This summary applies only to holders (1) that purchase Notes in this offering for cash at their “issue price” (generally, the initial price at which a substantial amount of the Notes are sold for cash to persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and (2) that will hold their Notes as “capital assets” within the meaning of section 1221 of the Code (generally, property held for investment). This summary is general in nature and does not purport to deal with all aspects of U.S. federal income taxation or other tax considerations that might be relevant to particular holders in light of their personal investment circumstances or status, nor does it address U.S. federal income tax considerations applicable to holders that may be subject to special tax rules, such as banks and other financial institutions, individual retirement and other tax-deferred accounts, tax-exempt entities, S corporations, partnerships or other pass-through entities or arrangements for U.S. federal income tax purposes or investors in such entities or arrangements, insurance companies, regulated investment companies, real estate investment trusts, broker-dealers, dealers or traders in currencies or securities that use a mark-to-market method of tax accounting, former citizens or residents of the United States, governments and their controlled entities, persons subject to the personal holding company or accumulated earnings rules, taxpayers subject to the anti-inversion rules, persons required to accelerate the recognition of any item of gross income as a result of Section 451(b) of the Code, U.S. Holders that hold Notes through non-U.S. brokers or other non-U.S. intermediaries, and taxpayers subject to the alternative minimum tax. This summary also does not discuss Notes held as part of a hedge, straddle, synthetic security, conversion or other integrated transaction, or situations in which the “functional currency” of a U.S. Holder is not the United States dollar. Moreover, this summary also does not discuss any consequences resulting from the Medicare tax on net investment income or the effect of any U.S. federal taxes other than income taxes (such as estate or gift taxes), or any state, local or non-United States taxes.

In the case of Notes held by an entity that is classified as a partnership for U.S. federal income tax purposes, the tax treatment of the purchase, ownership and disposition of the Notes to a partner in the partnership generally will depend upon the tax status of the partner and the activities of the partner and the partnership. Partnerships or partners in partnerships considering an investment in the Notes should consult their tax advisors regarding the particular U.S. federal income tax consequences applicable to them.

THE FOLLOWING DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE. HOLDERS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE NOTES IN LIGHT OF THEIR PARTICULAR SITUATIONS, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER OTHER U.S. FEDERAL TAX LAWS OR THE LAWS OF ANY STATE, LOCAL OR NON-UNITED STATES TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

Effect of Certain Contingencies on the Notes

In certain circumstances (e.g., in the case of a change in control) we may be obligated to pay amounts in excess of stated interest or principal on the Notes or in advance of their scheduled due dates. Our obligation to pay such excess or accelerated amounts may implicate the provisions of the Treasury regulations relating to “contingent payment debt obligations,” in which case the timing and amount of income inclusions and the character of income recognized may be different from the consequences described herein. Under these Treasury regulations, however, one or more contingencies will not cause a debt instrument to be treated as a contingent payment debt instrument if, as of the issue date, such contingencies in the aggregate are considered “remote” or “incidental.”

Although the issue is not free from doubt, we believe and intend to take the position that the foregoing contingencies should, in the aggregate, be treated as remote and/or incidental. Our position is binding on a holder, unless the holder discloses in the proper manner to the IRS that it is taking a different position. However, our position is not binding on the IRS, and we can give holders no assurance that our position would be sustained if challenged by the IRS. A successful challenge of this position by the IRS could adversely affect the timing and amount of a holder’s income with respect to the Notes, and holders subject to U.S. federal income tax might be required to accrue income on the Notes based upon a “comparable yield” (as defined in the Treasury regulations) in excess of stated interest and to treat any gain from the sale or other taxable disposition of a Note as ordinary income, rather than capital gain. This summary assumes that the Notes will not be considered contingent payment debt instruments. Holders should consult their tax advisors regarding the potential application to the Notes of the Treasury regulations relating to contingent payment debt obligations and the consequences thereof.

Tax Consequences to U.S. Holders

For purposes of this discussion, a “U.S. Holder” is a beneficial owner of a Note that is for U.S. federal income tax purposes any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. 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 has the authority to control all of its substantial decisions, or (ii) a valid election is in place under applicable U.S. Treasury regulations to treat such trust as a domestic trust.

Ownership of the Notes by U.S. Holders

Stated Interest. Stated interest on a Note will be taxable to a U.S. Holder as ordinary income at the time such payments accrue or are received in accordance with the U.S. Holder’s regular method of accounting for U.S. federal income tax purposes.

Sale, Exchange or other Taxable Disposition of the Notes. Upon the disposition of a Note by sale, exchange, retirement, redemption or other taxable disposition, a U.S. Holder will generally recognize taxable gain or loss equal to the difference, if any, between (i) the amount realized on the taxable disposition (other than any amounts attributable to accrued but unpaid stated interest, which will be taxed as ordinary interest income to the extent not previously included in income) and (ii) the U.S. Holder’s adjusted tax basis in the Note at the time of the taxable disposition. A U.S. Holder’s adjusted tax basis in the Note generally will be the price paid therefor. Any such gain or loss will generally constitute capital gain or loss and will be long-term capital gain or loss to the extent the U.S. Holder’s holding period for such Note is more than one year. Any such capital gain or loss will be short-term capital gain or loss to the extent the U.S. Holder’s holding period for such Note is one year or less. Non-

corporate U.S. Holders, including individuals, are generally subject to a reduced U.S. federal income tax rate on net long-term capital gains. The deductibility of capital losses is subject to significant limitations under the Code.

Information Reporting and Backup Withholding

In general, information reporting will apply to payments of stated interest and payments of the proceeds of the sale or other taxable disposition (including a retirement or redemption) of a Note to U.S. Holders other than exempt recipients. Additionally, the applicable withholding agent may be required to impose backup withholding on any payments of such amounts at a rate of 24% unless such U.S. Holder (i) establishes that it is a corporation or comes within certain other exempt categories, or (ii) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and otherwise complies with applicable requirements of the backup withholding rules. Each U.S. Holder may provide its correct taxpayer identification number and certify that such U.S. Holder is not subject to backup withholding by completing IRS Form W-9. Backup withholding is not an additional tax. The amount of any backup withholding from such payments may be allowed as a credit against such U.S. Holder's U.S. federal income tax liability or may entitle such U.S. Holder to a refund, provided that the required information is timely furnished to the IRS. U.S. Holders should consult their tax advisors regarding their potential qualification for an exemption from backup withholding and the procedures for obtaining such an exemption, if applicable.

Tax Consequences to Non-U.S. Holders

For purposes of this discussion, the term "Non-U.S. Holder" means a beneficial owner of a Note that is, for U.S. federal income tax purposes, an individual, corporation, estate or trust that is not U.S. Holder.

Ownership of the Notes by Non-U.S. Holders

Payments of Interest on the Notes. Subject to the discussions of backup withholding and FATCA below, payments of interest to a Non-U.S. Holder that is not effectively connected with a U.S. trade or business carried on by the Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax, provided that:

- the Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;
- the Non-U.S. Holder is not a "controlled foreign corporation" related to us through stock ownership;
- the Non-U.S. Holder is not a bank that is receiving the interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and
- either (1) the Non-U.S. Holder provides an appropriate IRS Form W-8 (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed establishing its status as a Non-U.S. Holder or (2) the Non-U.S. Holder holds its Notes through certain foreign intermediaries or certain foreign partnerships and the Non-U.S. Holder and such intermediary or partnership satisfy the certification requirements of applicable Treasury regulations. Special certification rules apply to Non-U.S. Holders that are pass-through entities.

If a Non-U.S. Holder cannot satisfy the requirements described above, payments of interest on a Note paid to a Non-U.S. Holder that are not effectively connected with a U.S. trade or business carried on by the Non-U.S. Holder, will generally be subject to withholding of U.S. federal income tax at a 30% rate (unless the rate is reduced under an applicable income tax treaty and the Non-U.S. Holder claims the benefit of that treaty by providing an applicable IRS Form W-8 (or a suitable substitute or successor form or such other form as the IRS may prescribe) that has been properly completed and duly executed).

If interest paid to a Non-U.S. Holder on a Note is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States, then the Non-U.S. Holder will be subject to U.S. federal income tax on such amounts generally in the same manner as if such Non-U.S. Holder were a U.S. Holder, unless an applicable income tax treaty provides otherwise. In addition, if the Non-U.S. Holder is treated as a corporation for U.S. federal income tax purposes, the Non-U.S. Holder may be subject to a branch profits tax on its effectively connected earnings and profits, subject to adjustments, at a rate of 30% (or such lower rate specified by an applicable income tax treaty).

Sale, Exchange or Other Taxable Disposition of the Notes. Subject to the discussions of backup withholding and FATCA below, a Non-U.S. Holder will generally not be subject to U.S. federal income tax on any gain recognized on a sale, exchange, retirement, redemption or other taxable 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 "Ownership of the Notes by Non-U.S. Holders—Payments of Interest on the Notes") unless:

- the gain is effectively connected with the conduct of a trade or business within the U.S. by the Non-U.S. Holder; or
- in the case of a Non-U.S. Holder who is a nonresident alien individual, such holder is present in the United States for 183 or more days in the taxable year of the taxable disposition and certain other requirements are met.

If a Non-U.S. Holder falls under the first of these exceptions, then unless an applicable income tax treaty provides otherwise, the holder will be taxed on the net gain derived from the disposition of the Note generally in the same manner as if such Non-U.S. Holder were a U.S. Holder and, if the Non-U.S. Holder is treated as a corporation for U.S. federal income tax purposes, it may also be subject to a branch profits tax at a rate of 30% (or lower applicable treaty rate) of the holder's effectively connected earnings and profits, subject to certain adjustments.

If an individual Non-U.S. Holder falls under the second of these exceptions, the holder generally will be subject to U.S. federal income tax at a rate of 30% (unless a lower applicable treaty rate applies) on the amount by which the capital gain derived from the disposition exceeds certain of such holder's capital losses allocable to sources within the United States.

Information Reporting and Backup Withholding

The amount of interest on a Note paid to a Non-U.S. Holder and the amount of tax, if any, withheld from such payment generally must be reported annually to the Non-U.S. Holder and to the IRS. The IRS may make this information available under the provisions of an applicable income tax treaty or agreement to the tax authorities in the country in which the Non-U.S. Holder is resident or established.

Provided that a Non-U.S. Holder has complied with certain reporting procedures (usually satisfied by providing an applicable properly completed IRS Form W-8BEN or IRS Form W-8BEN-E) or otherwise establishes an exemption, the Non-U.S. Holder generally will not be subject to backup withholding tax with respect to interest payments on a Note.

Rules relating to information reporting requirements and backup withholding with respect to the payment of proceeds from the taxable 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-U.S. Holder generally will be subject to backup withholding and information reporting unless the Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. 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-U.S. office of a broker that is not a U.S. person and is not a person that has certain specified U.S. connections (a "U.S. Related Person"), a Non-U.S.

Holder will not be subject to backup withholding or information reporting.

- If the proceeds are paid to or through a non-U.S. office of a broker that is a U.S. person or a U.S. Related Person, a Non-U.S. Holder generally will be subject to information reporting (but generally not backup withholding) unless the Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (usually on an IRS Form W-8BEN or W-8BEN-E) or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a credit against the Non-U.S. Holder's U.S. federal income tax liability, if any, or may entitle the Non-U.S. Holder to a refund, provided that the required information is timely furnished to the IRS. Non-U.S. Holders should consult their tax advisors regarding the application of the backup withholding rules in their particular circumstances and the availability of, and procedure for, obtaining an exemption from backup withholding under current Treasury regulations.

FATCA

Under sections 1471 to 1474 of the Code (commonly referred to as "FATCA"), U.S. federal withholding tax of 30% is generally imposed on interest income paid on a debt obligation issued by a United States corporation and, subject to the regulatory relief described below, on the gross proceeds paid from the sale or other disposition of such a debt obligation, to (i) a foreign financial institution (as the beneficial owner or as an intermediary for the beneficial owner), unless such institution (a) enters into, and is in compliance with, a withholding and information reporting agreement with the U.S. government to collect and provide to the U.S. tax authorities substantial information regarding U.S. 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 U.S. owners) or (b) is a resident in a country that has entered into an intergovernmental agreement with the United States in relation to such withholding and information reporting and the financial institution complies with the related information reporting requirements of such country or (ii) a foreign entity that is not a financial institution (as the beneficial owner or as an intermediary for the beneficial owner), unless such entity provides the applicable 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, or such entity otherwise qualifies for an exemption from these rules. An intergovernmental agreement between the United States and the applicable foreign country, or future U.S. Treasury regulations or other guidance, may modify these requirements. Under proposed U.S. Treasury regulations that may be relied upon pending finalization, the withholding tax on gross proceeds would be eliminated and, consequently, FATCA withholding on gross proceeds is not expected to apply. Holders should consult their tax advisors regarding the application of FATCA to Notes and their investment in the Notes.

CERTAIN ERISA CONSIDERATIONS

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Code impose certain restrictions on (a) employee benefit plans (as defined in Section 3(3) of ERISA) that are subject to Title I of ERISA, (b) plans, including individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S., or other laws, rules or regulations that are substantially similar to such provisions of ERISA or the Code (collectively, “Similar Laws”) and (c) entities whose underlying assets are considered to include “plan assets” within the meaning of 29 C.F.R. Section 2510.3-101 (as modified by Section 3(42) of ERISA) or any applicable Similar Law of any such plans described in (a) or (b) above (each, a “Plan”).

General Fiduciary Matters

ERISA and the Code impose certain duties on persons who are fiduciaries of Plans subject to Title I of ERISA or Section 4975 of the Code (an “ERISA Plan”) and prohibit certain transactions between an ERISA Plan and fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of an ERISA Plan or the management or disposition of the assets of an ERISA Plan, or who renders investment advice for a fee or other compensation (direct or indirect) to an ERISA Plan, is generally considered to be a fiduciary of such ERISA Plan. In considering an investment of a portion of the assets of any Plan in the Notes, a fiduciary (taking into account the facts and circumstances of the Plan) should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary’s duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws. A fiduciary can be personally liable for losses incurred by a Plan resulting from a breach of fiduciary duties and can be subject to other adverse consequences.

Each Plan should consider the fact that none of the Issuer, any of the Guarantors, the initial purchasers or any of their respective affiliates will act as a fiduciary to any Plan with respect to the decision to acquire the Notes and is not undertaking to provide any advice or recommendation, including, without limitation, in a fiduciary capacity, with respect to such decision.

Prohibited Transaction Issues

Section 406 of ERISA and Section 4975 of the Code prohibit ERISA Plans from engaging in specified transactions involving plan assets with persons or entities who are “parties in interest,” within the meaning of Section 3(14) of ERISA, or “disqualified persons,” within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. Plans that are “governmental plans” (as defined in Section 3(32) of ERISA), certain “church plans” (as defined in Section 3(33) of ERISA) and non-U.S. plans (as described in Section 4(b)(4) of ERISA) are not subject to the requirements of Section 406 of ERISA or Section 4975 of the Code but may be subject to similar provisions under applicable Similar Laws.

The acquisition and/or holding of the Notes by an ERISA Plan with respect to which we, any of the Guarantors or the initial purchasers are considered a party in interest or disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the U.S. Department of Labor has issued prohibited transaction class exemptions, or PTCEs, that may apply to provide exemptive relief for direct or indirect prohibited transactions resulting from the acquisition and holding of the Notes. These class exemptions include, without limitation, PTCE 84-14, as amended, respecting transactions determined by independent qualified professional asset managers, PTCE 90-1, respecting insurance company pooled separate accounts, PTCE 91-38, respecting bank-maintained collective investment funds, PTCE 95-60, respecting life insurance company general accounts and PTCE 96-23, respecting transactions determined by in-house asset managers. In addition, Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provide relief from the prohibited transaction provisions of ERISA and Section 4975 of the Code for certain transactions between an ERISA Plan and a person that is a party in interest or

disqualified person solely by reason of providing services to the ERISA Plan or a relationship with such service provider, provided that neither the person transacting with the ERISA Plan nor an affiliate exercises any discretionary authority or control with respect to the assets of the ERISA Plan involved in the transaction or renders investment advice with respect to such assets, and provided further that the ERISA Plan pays no more than and receives no less than adequate consideration in connection with the transaction. There can be no assurance that all of the conditions of any such exemptions will be satisfied.

In addition, a fiduciary of an ERISA Plan that engages in a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code. Accordingly, each purchaser of the Notes and subsequent transferee that is or may become a Plan is responsible for determining that its purchase and holding of such Notes will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation of any applicable Similar Laws.

Representation

By acceptance of the Notes, each purchaser of the Notes will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser to acquire and hold Notes constitutes assets of any Plan or (ii) the acquisition and holding of the Notes by such purchaser will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Laws, and none of the Issuer, any of the Guarantors, the initial purchasers or any of their respective affiliates will act as a fiduciary to such purchaser with respect to the decision to acquire and hold the Notes.

THE PRECEDING DISCUSSION IS ONLY A SUMMARY OF CERTAIN ERISA IMPLICATIONS OF AN INVESTMENT IN THE NOTES AND DOES NOT PURPORT TO BE COMPLETE. PROSPECTIVE INVESTORS SHOULD CONSULT WITH THEIR OWN LEGAL, TAX, FINANCIAL AND OTHER ADVISORS PRIOR TO INVESTING IN THE NOTES REGARDING THE SUITABILITY OF THE ACQUISITION OF THE NOTES IN LIGHT OF SUCH INVESTOR'S PARTICULAR CIRCUMSTANCES.

BOOK ENTRY, DELIVERY AND FORM

The Notes are being offered and sold to (a) persons reasonably believed to be qualified institutional buyers in reliance on Rule 144A (“Rule 144A Notes”) or (b) persons other than U.S. persons in offshore transactions in reliance on Regulation S (“Regulation S Notes”). Except as set forth below, the Notes will be issued in registered, global form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. Notes will be issued at the closing of this offering only against payment in immediately available funds.

Rule 144A Notes representing the Notes initially will be represented by one or more global notes in registered form without interest coupons (the “Rule 144A Global Notes”). Regulation S Notes representing the Notes initially will be represented by one or more global notes in registered form without interest coupons (the “Regulation S Global Notes”). Through and including the 40th day after the later of the commencement of this offering and the closing of this offering (the “Distribution Compliance Period”), beneficial interests in the Regulation S Global Notes may be held only through the Euroclear System (“Euroclear”) and Clearstream Banking, S.A. (“Clearstream”) (as indirect participants in DTC), unless transferred to a person that takes delivery through a Rule 144A Global Note in accordance with the certification requirements described below under “Exchanges Among Global Notes.” Rule 144A Global Notes and Regulation S Global Notes are collectively referred to herein as “Global Notes.”

Global Notes will be deposited upon issuance with Wilmington Trust, National Association, as trustee (the “Trustee”) as custodian for DTC and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below. Beneficial interests in Rule 144A Global Notes may not be exchanged for beneficial interests in Regulation S Global Notes at any time except in the limited circumstances described below. See “—Exchanges Among Global Notes.” Except as set forth below, Global Notes may be transferred only to another nominee of DTC or to a successor of DTC or its nominee, in whole and not in part. Except in the limited circumstances described below, beneficial interests in Global Notes may not be exchanged for Notes in certificated form and owners of beneficial interests in Global Notes will not be entitled to receive physical delivery of Notes in certificated form. See “—Exchange of Global Notes for Certificated Notes.”

Global Notes (including beneficial interests in the Notes they represent) will be subject to certain restrictions on transfer and will bear restrictive legends as described under “Transfer Restrictions.” In addition, transfers of beneficial interests in Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including Euroclear and Clearstream), which may change from time to time.

Depository Procedures

The following description of the operations and procedures of DTC, Euroclear and Clearstream is provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. We take no responsibility for these operations and procedures and urge investors to contact the system or their participants directly to discuss these matters.

DTC has advised us that it is a limited-purpose trust company organized under the laws of the State of New York, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participating organizations (collectively, the “Participants”) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers (including the initial purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC’s system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the “Indirect Participants”). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

DTC has also advised us that, pursuant to procedures established by it:

- (1) upon deposit of the Global Notes, DTC will credit the accounts of Participants designated by the initial purchasers with portions of the principal amount of the Global Notes; and
- (2) ownership of these interests in Global Notes will be shown on, and the transfer of ownership of these interests will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interests in Global Notes).

Investors in Rule 144A Global Notes who are Participants in DTC's system may hold their interests therein directly through DTC. Investors in Rule 144A Global Notes who are not Participants may hold their interests therein indirectly through organizations (including Euroclear and Clearstream) that are Participants in DTC. All interests in a Global Note may be subject to the procedures and requirements of DTC. Investors in Regulation S Global Notes must initially hold their interests therein through Euroclear or Clearstream, if they are participants in those systems, or indirectly through organizations that are participants. After the expiration of the Distribution Compliance Period (but not earlier), investors may also hold interests in Regulation S Global Notes through Participants in the DTC system other than Euroclear and Clearstream. Euroclear and Clearstream will hold interests in Regulation S Global Notes on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositories, which are Euroclear Bank S.A./N.V., as operator of Euroclear, and Citibank, N.A., as operator of Clearstream which in turn hold such interests in customers' securities accounts in the depositories' names on the books of DTC. Interests in a Global Note held through Euroclear or Clearstream may be subject to the procedures and requirements of those systems (as well as to the procedures and requirements of DTC). The laws of some states require that certain persons take physical delivery in definitive form of securities that they own and the ability to transfer beneficial interests in a Global Note to Persons that are subject to those requirements will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of a person having beneficial interests in a Global Note to pledge those interests to Persons that do not participate in the DTC system, or otherwise take actions in respect of those interests, may be affected by the lack of a physical certificate evidencing those interests.

Except as described below, owners of an interest in Global Notes will not have Notes registered in their names, will not receive physical delivery of definitive notes in registered certificated form ("Certificated Notes") and will not be considered the registered owners or "Holders" thereof under the Indenture for any purpose.

Payments in respect of the principal of and premium and interest on a Global Note registered in the name of DTC or its nominee will be payable to DTC in its capacity as the registered Holder under the Indenture. Under the terms of the Indenture, the Issuer and the Trustee will treat the Persons in whose names Notes, including Global Notes, are registered as the owners of such Notes for the purpose of receiving payments and for all other purposes. Consequently, neither the Issuer, the Trustee or any agent of the Issuer or the Trustee has or will have any responsibility or liability for:

- (1) any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interests in Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in Global Notes; or
- (2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised us that its current practice, upon receipt of any payment in respect of securities such as the Notes (including principal and interest), is to credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on that payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the relevant security as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of Notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the Trustee or the Issuer. Neither the Issuer nor the Trustee will be liable for any delay by DTC or any of its Participants in

identifying the beneficial owners of any Notes, and the Issuer and the Trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Subject to the transfer restrictions set forth under “Transfer Restrictions,” transfers between Participants in DTC will be effected in accordance with DTC’s procedures, and will be settled in same-day funds and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Subject to compliance with the transfer restrictions applicable to the Notes described herein, cross-market transfers between the Participants, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC’s rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note from DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

DTC has advised us that it will take any action permitted to be taken by a Holder of Notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of the portion of the aggregate principal amount of the Notes as to which that Participant or those Participants has or have given the relevant direction. However, if there is an Event of Default under the Notes, DTC reserves the right to exchange the Global Notes for legended notes in certificated form, and to distribute those Notes to its Participants. Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures in order to facilitate transfers of interests in Global Notes among Participants, they are under no obligation to perform those procedures, and may discontinue or change those procedures at any time.

Neither the Issuer nor the Trustee nor any of their respective agents will have any responsibility for the performance by DTC, Euroclear, Clearstream or their respective Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations.

Exchange of Global Notes for Certificated Notes

A Global Note is exchangeable for a Certificated Note if:

- DTC (a) notifies us that it is unwilling or unable to continue as depository for the applicable Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act and, in each case, a successor depository is not appointed;
- we at our option, notify, the Trustee in writing that we elect to cause the issuance of Certificated Notes (although Regulation S Global Notes at the Issuer’s election pursuant to this clause may not be exchanged for Certificated Notes prior to (a) the expiration of the Distribution Compliance Period and (b) the receipt of any certificates required under the provisions of Regulation S); or
- there has occurred and is continuing a Default or event of default with respect to the Notes.

In addition, beneficial interests in a Global Note may be exchanged for Certificated Notes upon prior written notice given to the Issuer and the Registrar by or on behalf of DTC in accordance with the Indenture. In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in a Global Note will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with its customary procedures) and will bear the applicable restrictive legend referred to in “Transfer Restrictions,” unless that legend is not required by applicable law.

Exchange of Certificated Notes for Global Notes

If Certificated Notes are issued in the future, they will not be exchangeable for beneficial interests in any Global Note unless the transferor first delivers to the Issuer and the Registrar a written certificate (in the form provided in the Indenture) to the effect that the transfer will comply with the appropriate transfer restrictions applicable to the Notes being transferred. See “Transfer Restrictions.”

Exchanges Among Global Notes

Prior to the expiration of the Distribution Compliance Period, beneficial interests in a Regulation S Global Note may be exchanged for beneficial interests in a Rule 144A Global Note only if:

- the exchange occurs in connection with a transfer of the Notes pursuant to Rule 144A; and
- the transferor first delivers to the Issuer and the Registrar a written certificate (in the form provided in the Indenture) to the effect that the Notes are being transferred: (a) to a Person who (i) the transferor reasonably believes to be a qualified institutional buyer within the meaning of Rule 144A and (ii) is purchasing for its own account or the account of a qualified institutional buyer in a transaction meeting the requirements of Rule 144A; and (b) in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in the Regulation S Global Note, whether before or after the expiration of the Distribution Compliance Period, only if the transferor first delivers to the Issuer and the Registrar a written certificate (in the form provided in the Indenture) to the effect that the transfer is being made in accordance with Rule 903 or Rule 904 of Regulation S or Rule 144.

Transfers involving exchanges of beneficial interests between a Regulation S Global Note and a Rule 144A Global Note will be effected in DTC by means of an instruction originated by the DTC Participant through the DTC Deposit/Withdraw at Custodian system. Accordingly, in connection with any such transfer, appropriate adjustments will be made to reflect the changes in the principal amounts of the Regulation S Global Note and the Rule 144A Global Note, as applicable. Any beneficial interest in one of the Global Notes that is transferred to a Person who takes delivery in the form of an interest in the other Global Note will, upon transfer, cease to be an interest in the original Global Note and will become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interest in the other Global Note.

Same Day Settlement and Payment

We will make payments in respect of Notes represented by Global Notes, including payments of principal, premium, if any, and interest by wire transfer of immediately available funds to the accounts specified by the DTC or its nominee. We will make all payments of principal of and premium, if any, and interest on Certificated Notes by wire transfer of immediately available funds to the accounts specified by the Holders of the Certificated Notes or, if no account is specified, by mailing a check to each Holder’s registered address. See “Description of the Notes—Principal, Maturity and Interest.” Notes represented by Global Notes are expected to be eligible to trade in DTC’s Same-Day Funds Settlement System, and any permitted secondary market trading activity in Notes represented by Global Notes will, therefore, be required by DTC to be settled in immediately available funds. Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a Participant will be credited, and any such crediting will be reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised us that cash received in Euroclear or Clearstream as a result of sales of interests in a Global Note by or through a Euroclear or Clearstream participant to a Participant will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC’s settlement date.

TRANSFER RESTRICTIONS

The Notes have not been and will not be registered under the Securities Act or any other applicable securities law and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such terms are defined under the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and such other securities laws. Accordingly, the Notes are being offered hereby only (a) to persons reasonably believed to be qualified institutional buyers (as defined in Rule 144A) in reliance on the exemption 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 in reliance upon Regulation S under the Securities Act.

Each purchaser of the Notes, by its acceptance thereof, will be deemed to have acknowledged, represented to, and agreed with us and the initial purchasers as follows:

- (1) It understands and acknowledges that the Notes have not been registered under the Securities Act or any other applicable securities law, the Notes are being offered for resale in transactions not requiring registration under the Securities Act or any other securities laws, including sales pursuant to Rule 144A, and none of the Notes may be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, pursuant to an exemption therefrom or in a transaction not subject thereto and in each case in compliance with the conditions for transfer set forth in paragraph (4) below.
- (2) It is either:
 - (A) a qualified institutional buyer and is aware that any sale of the Notes to it will be made in reliance on Rule 144A. Such acquisition will be for its own account or for the account of another qualified institutional buyer, or
 - (B) an institution that, at the time the buy order for the Notes was originated, was outside the United States and was not a U.S. person (and was not purchasing for the account or benefit of a U.S. person) within the meaning of Regulation S (an "Initial Foreign Purchaser").
- (3) It acknowledges that none of the Issuer, the Guarantors or the initial purchasers or any person representing the Issuer or the Guarantors or the initial purchasers has made any representation to it with respect to the Issuer, the Guarantors or the offering or sale of any Notes, other than the information included in this Offering Circular, which Offering Circular has been delivered to it. Accordingly, it acknowledges that no representation or warranty is made by the initial purchasers as to the accuracy or completeness of such materials. It has had access to such financial and other information as it has deemed necessary in connection with its decision to purchase any of the Notes, including an opportunity to ask questions of and request information from the Issuer, the Guarantors and the initial purchasers, and it has received and reviewed all information that it requested.
- (4) It is purchasing the Notes for its own account, or for one or more investor accounts for which it is acting as a fiduciary or agent, in each case for investment, and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, subject to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and subject to its or their ability to resell such Notes pursuant to Rule 144A, Regulation S or any exemption from registration available under the Securities Act. It agrees on its own behalf and on behalf of any investor account for which it is purchasing the Notes and each subsequent holder of the Notes by its acceptance thereof will agree, to offer, sell or otherwise transfer such Notes prior to the date which is one year after the later of the date of the original issue of the Notes, the original issue date of any additional Notes and the last date on which we or any of our affiliates was the owner of such Notes (the "Resale Restriction Termination Date") only (a) to us or any of our subsidiaries, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) for so long as the Notes are eligible for resale pursuant to Rule 144A, to a person it reasonably believes is a qualified institutional buyer 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, (e) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and to compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. Each purchaser acknowledges that we and the Registrar reserve the right prior to any offer, sale or other transfer pursuant to clause (d) prior to the end of the 40-day distribution compliance period within the meaning of Regulation S under the Securities Act or pursuant to clauses (e) or (f) prior to the Resale Restriction Termination Date of the Notes to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to us.

Each certificate representing a note will include a legend substantially to the following effect:

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE 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 SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")), OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION, (2) AGREES TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH NOTE PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD THEN IMPOSED BY RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION) ONLY (A) TO AN ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER 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) OUTSIDE THE UNITED STATES PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATION S UNDER THE SECURITIES ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND REGISTRAR'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO THE ISSUER.

- (5) If it is (1) a purchaser in a sale that occurs outside the United States within the meaning of Regulation S, or (2) a "distributor," "dealer" or person "receiving a selling concession, fee or other remuneration" in respect of Notes sold, prior to the expiration of the 40-day distribution compliance period within the meaning of Rule 903 of Regulation S, it acknowledges that until the expiration of such distribution compliance period any offer or sale of the Notes shall not be made by it to a U.S. person or for the account or benefit of a U.S. person within the meaning of Rule 902(k) of the Securities Act.
- (6) If it is an Initial Foreign Purchaser, it acknowledges that, until the expiration of the distribution compliance period described above, it may not, directly or indirectly, refer, resell, pledge or otherwise transfer a note or any interest therein except to a person who certifies in writing to the applicable transfer agent that such transfer satisfies, as applicable, the requirements of the legends described above and that the Notes will not be accepted for registration of any transfer prior to the end of the applicable distribution compliance period unless the transferee has first complied with the certification requirements described in this paragraph.
- (7) Either (i) it is not acquiring or holding such Notes with the assets of (A) an "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) that is subject to Title I of ERISA, (B) a "plan" that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), (C) any entity deemed under ERISA to hold

“plan assets” of any of the foregoing by reason of an employee benefit plan’s or plan’s investment in such entity, or (D) a governmental plan, church plan or non-U.S. plan subject to provisions under any non-U.S., state, local or other federal laws or regulations that are substantially similar to the foregoing provisions of ERISA or the Code (“Similar Law”); or (ii) the acquisition and holding of such Notes by it will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Law, and none of the Issuer, any of the Guarantors, the initial purchasers or any of their respective affiliates will act as a fiduciary to such purchaser with respect to the decision to acquire and hold the Notes.

- (8) It acknowledges that we, the initial purchasers and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations, warranties and agreements and agrees that if any of the acknowledgments, representations, warranties and agreements deemed to have been made by its purchase of the Notes are no longer accurate, it shall promptly notify us and the initial purchasers. If it is acquiring any Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such investor account and that it has full power to make the foregoing acknowledgments, representations and agreements on behalf of each such investor account.

PLAN OF DISTRIBUTION

Credit Suisse Securities (USA) LLC (“Credit Suisse”) is acting as representative of the initial purchasers named below. Subject to the terms and conditions stated in the purchase agreement dated the date of this Offering Circular, each initial purchaser named below has severally agreed to purchase, and we have agreed to sell to such initial purchaser, the principal amount of Notes offered hereby set forth opposite such initial purchaser’s name.

Initial Purchaser	Principal Amount of Notes Offered Hereby
Credit Suisse Securities (USA) LLC	\$
BofA Securities, Inc.	
Citigroup Global Markets Inc.	
Total	<u>\$ 500,000,000</u>

The purchase agreement provides that the obligations of the initial purchasers to purchase the Notes are subject to approval of legal matters by counsel and to other conditions. The initial purchasers must purchase all the Notes if they purchase any of the Notes.

The initial purchasers propose to resell the Notes at the offering price set forth on the cover page of this Offering Circular within the United States to persons reasonably believed to be qualified institutional buyers (as defined in Rule 144A) in reliance on Rule 144A and outside the United States in reliance on Regulation S. The price at which the Notes are offered may be changed at any time without notice. The initial purchasers may offer and sell Notes through certain of their respective affiliates.

The Notes have not been and will not be registered under the Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except in transactions exempt from, or not subject to, the registration requirements of the Securities Act. See “Transfer Restrictions.”

In addition, until 40 days after the commencement of this offering, an offer or sale of Notes within the United States by a dealer that is not participating in this offering may violate the registration requirements of the Securities Act if that offer or sale is made otherwise than in accordance with Rule 144A.

We have agreed that, during the period from the date of this Offering Circular through and including the date that is 60 days after the date of this Offering Circular, we and the Guarantors will not, without the prior written consent of Credit Suisse, offer, sell, contract to sell or otherwise dispose of any debt securities issued or guaranteed by us or any of the Guarantors having a tenor of more than one year.

The Notes will constitute a new class of securities with no established trading market. We do not intend to list the Notes on any securities exchange or automated inter-dealer quotation system. We cannot assure you that the prices at which the Notes will sell in the market after this offering will not be lower than the initial offering prices or that an active trading market for the Notes will develop and continue after this offering. The initial purchasers have advised us that they currently intend to make a market in the Notes. However, they are not obligated to do so and they may discontinue any market-making activities with respect to the Notes at any time without notice. Accordingly, we cannot assure you as to the liquidity of, or the trading market for, the Notes.

In connection with the offering, the initial purchasers may purchase and sell Notes in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions and stabilizing purchases:

- Short sales involve secondary market sales by the initial purchasers of a greater number of Notes than they are required to purchase in the offering.
- Covering transactions involve purchases of Notes in the open market after the distribution has been completed in order to cover short positions.

- Stabilizing transactions involve bids to purchase Notes so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the initial purchasers for their own account, may have the effect of preventing or retarding a decline in the market price of the Notes. They may also cause the price of the Notes to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The initial purchasers may conduct these transactions in the over-the-counter market or otherwise. If the initial purchasers commence any of these transactions, they may discontinue them at any time.

The initial purchasers are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The initial purchasers and their respective affiliates have in the past performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses and may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. In the ordinary course of their various business activities, the initial purchasers and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. Certain of the initial purchasers or their respective affiliates that have a lending relationship with us may hedge their credit exposure to us consistent with their customary risk management policies. A typical such hedging strategy includes the initial purchasers or their respective affiliates hedging 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. The initial purchasers and their respective 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.

Certain of the initial purchasers or their affiliates may be holders of our 2024 Secured Notes and will receive a portion of the net proceeds from this offering in connection with the redemption of the 2024 Secured Notes. In addition, certain of the initial purchasers or their affiliates are lenders and/or agents under our ABL Facility and have received, or may in the future receive, customary fees and commissions for transactions under our ABL Facility.

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

We expect that delivery of the Notes will be made against payment therefor on February , 2020, which will be the business day following the date of pricing of the Notes (such settlement being referred to as “T+ ”). Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes prior to the date that is two business days preceding the settlement date will be required, by virtue of the fact that the Notes initially settle in T+ , to specify an alternative settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Notes which wish to trade the Notes during such period should consult their advisors.

PRIIPs Regulation – Prohibition of Sales to European Economic Area and the United Kingdom Retail Investors

The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“EEA”) or in the United Kingdom (the “UK”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “MiFID II”); (ii) a customer within

the meaning of Directive 2016/97/EU (as amended, the “Insurance Distribution Directive”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (the “Prospectus Regulation”). Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the “PRIIPs Regulation”) for offering or selling the Notes or otherwise making them available to retail investors in the EEA or in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA or in the UK may be unlawful under the PRIIPs Regulation.

Notice to Prospective Investors in the United Kingdom

This Offering Circular is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the “Order”), (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order or (iii) persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any Notes may otherwise lawfully be communicated or caused to be communicated (each such person being referred to as a “relevant person”). The Notes are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such Notes will be engaged in only with, relevant persons. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Canadian Residents

Resale Restrictions

The distribution of Notes in Canada is being made only in the provinces of Ontario, Quebec, Alberta and British Columbia on a private placement basis exempt from the requirement that we prepare and file a prospectus with the securities regulatory authorities in each province where trades of these securities are made. Any resale of the Notes in Canada must be made under applicable securities laws which may vary depending on the relevant jurisdiction, and which may require resales to be made under available statutory exemptions or under a discretionary exemption granted by the applicable Canadian securities regulatory authority. Purchasers are advised to seek legal advice prior to any resale of the securities.

Representations of Canadian Purchasers

By purchasing Notes in Canada and accepting delivery of a purchase confirmation, a purchaser is representing to us and the dealer from whom the purchase confirmation is received that:

- the purchaser is entitled under applicable provincial securities laws to purchase the Notes without the benefit of a prospectus qualified under those securities laws as it is an “accredited investor” as defined under National Instrument 45-106—*Prospectus Exemptions*;
- the purchaser is a “permitted client” as defined in National Instrument 31-103—*Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- where required by law, the purchaser is purchasing as principal and not as agent; and
- the purchaser has reviewed the text above under Resale Restrictions.

Conflicts of Interest

Canadian purchasers are hereby notified that Credit Suisse is relying on the exemption set out in section 3A.3 or 3A.4, if applicable, of National Instrument 33-105—*Underwriting Conflicts* from having to provide certain conflict of interest disclosure in this document.

Statutory Rights of Action

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the Offering Circular (including any amendment thereto) such as this document contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser of these securities in Canada should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Enforcement of Legal Rights

All of our directors and officers as well as the experts named herein may be located outside of Canada and, as a result, it may not be possible for Canadian purchasers to effect service of process within Canada upon us or those persons. All or a substantial portion of our assets and the assets of those persons may be located outside of Canada and, as a result, it may not be possible to satisfy a judgment against us or those persons in Canada or to enforce a judgment obtained in Canadian courts against us or those persons outside of Canada.

Taxation and Eligibility for Investment

Canadian purchasers of Notes should consult their own legal and tax advisors with respect to the tax consequences of an investment in the Notes in their particular circumstances and about the eligibility of the Notes for investment by the purchaser under relevant Canadian legislation.

Notice to Prospective Investors in Switzerland

The Notes may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (the "SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the Notes or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this prospectus supplement nor any other offering or marketing material relating to the offering, the issuer, or the Notes have been or will be filed with or approved by any Swiss regulatory authority. In particular, this prospectus supplement will not be filed with, and the offer of Notes will not be supervised by, the Swiss Financial Market Supervisory Authority, and the offer of Notes has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes (the "CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of Notes.

LEGAL MATTERS

Certain legal matters in connection with the offering of the Notes will be passed upon for the Issuer by Kirkland & Ellis LLP, New York, New York. The initial purchasers have been represented by Cahill Gordon & Reindel LLP, New York, New York.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The financial statements incorporated in this Offering Circular by reference to the Annual Report on Form 10-K for the year ended December 31, 2018, and the effectiveness of internal control over financial reporting as of December 31, 2018, have been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report incorporated herein.

AVAILABLE INFORMATION

We have agreed that, for so long as any Notes remain outstanding and we are not subject to the information requirements of Section 13 or 15(d) of the Exchange Act, we will furnish to holders of the Notes and prospective purchasers thereof the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act in order to permit compliance with Rule 144A in connection with resales of such Notes.

We and the initial purchasers have not authorized anyone to provide you with any information other than that contained in this Offering Circular or in a document to which we have referred you. We and the initial purchasers take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. You should assume that the information appearing in this Offering Circular is accurate only as of the date on the front cover of this Offering Circular.

This Offering Circular contains summaries of certain agreements that we have entered into or will enter into in connection with this Offering, such as the Indenture. The descriptions of these agreements contained in this Offering Circular do not purport to be complete and are subject to, or qualified in their entirety by reference to, the definitive agreements. Copies of the definitive agreements will be made available without charge to you in response to a written or oral request to us at the following address and telephone number:

2001 Bryan Street, Suite 1600
Dallas, Texas 75201
(214) 880-3500
Attn: Corporate Secretary

\$500,000,000



**Builders FirstSource, Inc.
% Senior Notes due 2030**

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PRELIMINARY OFFERING CIRCULAR

, 2020

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Joint Book-Running Managers

Credit Suisse

BofA Securities

Citigroup
