

EXHIBIT R-2



ABITIBIBOWATER, INC.	RR Donnelley ProFile	SERPRFRS16 10 5 6	SER pf_rend	12-Sep-2010 22:41 EST	44464 TX 146 4*
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Description of notes

You can find the definitions of certain terms used in this description under the subheading "—Certain definitions." In this description, (i) prior to the Release Date, the term "Issuer" refers to ABI Escrow Corporation ("Escrow Corp."), a wholly owned subsidiary of AbitibiBowater Inc. (the "Company"), and (ii) after the Release Date, the term "Issuer" refers to AbitibiBowater Inc. and not to any of its Subsidiaries. In this description, except where otherwise indicated, all references to "dollars" and "\$" are to the lawful currency of the United States.

Escrow Corp. will issue the notes under an indenture among itself and as trustee, in a private transaction that is not subject to the registration requirements of the Securities Act, which, if the Release Date occurs, will be supplemented by a supplemental indenture among AbitibiBowater Inc., the Guarantors and the Trustee. See "Notice to investors." The holders of the notes will be entitled to the registration rights set forth in a registration rights agreement among the Issuer, the Guarantors and the Initial Purchasers. The terms of the notes will include those stated in the indenture and those specifically made part of the indenture by reference to the Trust Indenture Act of 1939, as amended. The security documents referred to below under the caption "—Security" define the terms of the security arrangements that will secure the notes.

The following description is a summary of the material provisions of the indenture, the Escrow Agreement and the security documents. It does not restate those agreements in their entirety. We urge you to read the indenture, the registration rights agreement, the Escrow Agreement and the security documents because they, and not this description, define your rights as holders of the notes. Copies of the indenture, the registration rights agreement, the Escrow Agreement and the security documents are available from the Company at its address set forth on page (i) of this offering memorandum. Certain defined terms used in this description but not defined below under "—Certain definitions" have the meanings assigned to them in the indenture, the registration rights agreement and the security documents.

The registered holder of a note will be treated as the owner of it for all purposes. Only registered holders will have rights under the indenture.

Brief description of the notes and the note guarantees

The notes

The notes:

- will be general obligations of the Issuer;
- following the Release Date, will be secured on a first-priority basis by Liens on all Notes Priority Collateral owned or at any time acquired by the Issuer and on a second-priority basis by Liens on all ABL Priority Collateral, subject, in each case, to Permitted Liens; prior to release of Escrow Proceeds (either on the Release Date or in connection with the Special Mandatory Redemption), the notes will be secured only by a pledge of the Escrow Proceeds as described under "—Escrow of proceeds; Release conditions";
- will be *pari passu* in right of payment with all existing and future senior Indebtedness of the Issuer;
- following the Release Date, will be effectively subordinated to obligations of the Issuer under the ABL Credit Agreement to the extent of the value of the ABL Priority Collateral;



- following the Release Date, will be effectively subordinated to (i) any indebtedness and other liabilities secured by Permitted Liens ranking prior to the Liens securing the notes or on assets not constituting Collateral, to the extent of the value of the assets of the Issuer subject to those Permitted Liens, and (ii) any indebtedness of the Subsidiaries of the Issuer that do not guarantee the notes;
- following the Release Date, will be senior in right of payment to the Convertible Notes and any future subordinated Indebtedness of the Issuer, if any; and
- following the Release Date, will be unconditionally guaranteed by the Guarantors.

The note guarantees

Following the Release Date, the notes will be guaranteed by all of the Issuer's material Wholly owned Restricted Subsidiaries other than Foreign Subsidiaries, as to payment of principal, premium, if any, and interest when and as the same shall become due and payable.

Each Note Guarantee:

- will be a general obligation of that Guarantor;
- will be secured on a first-priority basis by Liens on all Notes Priority Collateral owned or at any time acquired by that Guarantor and on a second-priority basis by Liens on all ABL Priority Collateral owned or at any time acquired by that Guarantor, subject, in each case, to Permitted Liens;
- will be *pari passu* in right of payment with all existing and future senior Indebtedness of that Guarantor;
- will be effectively subordinated to all existing and future obligations of that Guarantor under the ABL Credit Agreement to the extent of the value of the ABL Priority Collateral;
- will be effectively subordinated to any indebtedness and other liabilities of that Guarantor secured by Permitted Liens ranking prior to the Liens securing the notes or on assets not constituting Collateral, to the extent of the value of the assets of that Guarantor subject to those Permitted Liens; and
- will be senior in right of payment to the guarantees of the Convertible Notes by each Guarantor that is a guarantor of the Convertible Notes and any future subordinated Indebtedness of that Guarantor, if any.

See "Risk factors—Risks related to the notes—There may not be sufficient collateral to pay all or any of the notes" and "Risk factors—Risks related to the notes—A portion of the collateral securing the notes is subject to control by creditors with first-priority liens."

▲ Not all of the Issuer's Subsidiaries will guarantee the notes. In the event of a bankruptcy, liquidation or reorganization of any of these non-guarantor Subsidiaries, the non-guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the Issuer or any Guarantor on account of its or their equity interest(s). On a pro forma basis after giving effect to the Transactions, on June 30, 2010, our non-guarantor subsidiaries would have had approximately \$4 billion in assets and \$239 million of indebtedness (representing indebtedness of ACH, which we are evaluating the possible sale of (see "—Recent Developments")) that would have been structurally senior to the notes. For the six months ended June 30, 2010, our non-guarantor subsidiaries had aggregate revenues of \$955 million and EBITDA of \$(239) million.



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Following the Release Date, all of the Issuer's Subsidiaries, including any majority-owned joint ventures, will be "Restricted Subsidiaries" except for our QSPEs and Augusta Newsprint Company (the "*Augusta JV*"). The QSPEs and the Augusta JV will be treated as "Unrestricted Subsidiaries" from and after the Release Date. In addition, under the circumstances described below under the caption "—Certain covenants—Designation of restricted and unrestricted subsidiaries," the Issuer will be permitted to designate certain of its Restricted Subsidiaries as "Unrestricted Subsidiaries." The Unrestricted Subsidiaries will not be subject to the restrictive covenants in the indenture. The Unrestricted Subsidiaries will not guarantee the notes.

Principal, maturity and interest

The Issuer will issue \$750.0 million in aggregate principal amount of notes in this offering. The Issuer may issue additional notes (the "*Additional Notes*") under the indenture from time to time after this offering. Any issuance of Additional Notes is subject to all of the covenants in the indenture, including the covenants described below under the caption "—Certain covenants—Incurrence of indebtedness and issuance of preferred stock" and "—Certain covenants—Liens." The notes and any Additional Notes will be treated as a single class for all purposes under the indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase, except that Additional Notes may be required to trade under a separate CUSIP number if they are issued with different levels of original issue discount from the notes offered hereby. The Additional Notes will be secured, equally and ratably, with the notes and any other Permitted Additional Pari Passu Obligations. The Issuer will issue notes in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000. The notes will mature on , 2018.

Interest on the notes will accrue at the rate of % per annum and will be payable semi-annually in arrears on and , commencing on , 2011. Interest on overdue principal and interest, will accrue at a rate that is the lesser of 1% higher than the then applicable interest rate on the notes and the maximum rate permitted by applicable law. The Issuer will make each interest payment to the holders of record on and immediately preceding the applicable interest payment date.

Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Methods of receiving payments on the notes

If a holder of notes has given wire transfer instructions to the Issuer, the Issuer will pay all principal, interest and premium, if any, on that holder's notes in accordance with those instructions. All other payments on the notes will be made at the office or agency of the paying agent and registrar unless the Issuer elects to make interest payments by check mailed to the noteholders at their address set forth in the register of holders.

Paying agent and registrar for the notes

The trustee will initially act as paying agent and registrar. The Issuer may change the paying agent or registrar without prior notice to the holders of the notes; *provided* that neither the Issuer nor any of its Affiliates may act as paying agent or registrar.



Transfer and exchange

A holder may transfer or exchange notes in accordance with the provisions of the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents in connection with a transfer of notes. Holders will be required to pay all taxes due on transfer. The Issuer will not be required to transfer or exchange any note selected for redemption. Also, the Issuer will not be required to transfer or exchange any note for a period of 15 days before a selection of notes to be redeemed.

Note guarantees

Following the Release Date, the notes will be guaranteed by all of the Issuer's material Wholly owned Restricted Subsidiaries other than Foreign Subsidiaries. These Note Guarantees will be joint and several obligations of the Guarantors. The obligations of each Guarantor under its Note Guarantee will be limited as necessary to prevent that Note Guarantee from constituting a fraudulent conveyance or prohibited financial assistance under applicable law. See "Risk factors—Risks related to the notes—Federal and state fraudulent transfer laws may permit a court to void the notes, the note guarantees and/or the grant of Collateral and, if that occurs, you may not receive any payments on the notes."

A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person), another Person, other than the Issuer or another Guarantor, unless:

- (1) immediately after giving effect to that transaction, no Default or Event of Default exists; and
- (2) either:
 - (a) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than a Guarantor) assumes all the obligations of that Guarantor under the indenture, its Note Guarantee, all appropriate security documents and the registration rights agreement pursuant to a supplemental indenture satisfactory to the trustee and the Collateral Agent; or
 - (b) such transfer is permitted by "—Repurchase at the option of the holders—Asset sales."

The Note Guarantee of any Guarantor, and the Collateral Agent's Lien on the Collateral of such Guarantor, will be released:

- (1) in connection with any sale or other disposition of all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Guarantor if the sale or other disposition does not violate the "Asset Sale" provisions of the indenture;
- (2) in connection with any sale or other disposition of Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or Guarantor, if the sale or other disposition does not violate the "Asset Sale" provisions of the indenture and the Guarantor ceases to be a Restricted Subsidiary of the Issuer as a result of the sale or other disposition;
- (3) if the Issuer designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of the indenture; or



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- (4) upon legal defeasance or satisfaction and discharge of the indenture as provided below under the captions “—Legal defeasance and covenant defeasance” and “—Satisfaction and discharge.”

See “—Repurchase at the option of holders—Asset sales.”

Escrow of proceeds; Release conditions

The Gross Proceeds will be placed in escrow until the approval and the effectiveness of the Plans of Reorganization in accordance with their terms. The terms of the escrow will be set forth in the Escrow Agreement, pursuant to which Escrow Corp. will deposit with the Escrow Agent on the date of the indenture the Gross Proceeds, together with sufficient Government Obligations and other Escrow Investments, in an amount sufficient to redeem, for cash, the notes at a redemption price equal to 101% of the issue price of the notes (as set forth on the cover of this offering memorandum), together with accrued and unpaid interest from the date of the indenture up to but not including the date of the latest possible Special Mandatory Redemption described below (collectively, the “Escrow Proceeds”). Escrow Corp. will grant the Trustee, for the benefit of the holders of the notes, a first priority security interest in the escrow account and all deposits therein to secure the Special Mandatory Redemption.

Prior to release of the Escrow Proceeds (either on the Release Date or in connection with the Special Mandatory Redemption), the notes will be secured only by a pledge of the Escrow Proceeds.

The Company will only be entitled to direct the Escrow Agent to release to it the Escrow Proceeds upon satisfaction of the following conditions, which shall be certified in writing by the Company in an officers’ certificate contemporaneously with the release of the Escrow Proceeds or on or prior to the Escrow End Date (such date, the “Release Date”):

- (1) issuance by the Bankruptcy Courts of final orders (that shall not have been stayed, modified or overturned) confirming the Plans of Reorganization which shall be in full force and effect and, other than release of the Escrow Proceeds and the other conditions to be satisfied substantially simultaneously with release of the Escrow Proceeds, satisfaction of all conditions precedent to the effectiveness of the Plans of Reorganization set forth therein;
- (2) the substantially concurrent consummation of the Transactions in accordance with the Plans of Reorganization;
- (3) the Plans of Reorganization shall not have been amended or terminated on or prior to the Release Date except for such amendments, modifications and waivers that are not, individually or in the aggregate, materially adverse to the Issuer or any of its Subsidiaries (after giving effect to the consummation of the Transactions), taken as a whole, or to the holders of the notes;
- (4) the execution and delivery of a supplemental indenture providing for the assumption of Escrow Corp.’s obligations by the Company and for the Note Guarantees by the Guarantors, security documents and the Intercreditor Agreement;
- (5) no Default or Event of Default shall have occurred and be continuing under the indenture;
- (6) after giving effect to the consummation of the Plans of Reorganization, a Change of Control will not have occurred, other than as contemplated thereby; and



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(7) receipt of (a) customary legal opinions and (b) customary officers' certificates.

The indenture will provide that to the extent the Company or any Restricted Subsidiary has incurred Indebtedness (treating Indebtedness not discharged pursuant to the Plans of Reorganization and remaining outstanding on the Release Date as having been incurred as of the Release Date), made any Restricted Payments, consummated any Asset Sale or otherwise taken any action or engaged in any activities during the period beginning on the date of the indenture and ending on the Release Date, in each case, except as expressly contemplated by the Plans of Reorganization, such actions and activities shall be treated and classified under the indenture (including but not limited to impacting relevant baskets and determining whether a Default or Event of Default would have occurred as of the Release Date for purposes of the release conditions above), as if the indenture and the covenants set forth therein had applied to the Company and the Restricted Subsidiaries during such period.

Security

Following the Release Date, the obligations of the Issuer with respect to the notes, the obligations of the Guarantors under the Note Guarantees, and the performance of all other obligations of the Issuer and the Guarantors under the Note Documents will be secured equally and ratably together with any other Permitted Additional Pari Passu Obligations by (i) second priority security interests, subject to certain Permitted Liens, in the ABL Priority Collateral (other than Excluded Assets) and (ii) first priority security interests, subject to certain Permitted Liens, in the following assets of the Issuer and the Guarantors, in each case whether now owned or hereafter acquired (other than Excluded Assets) (the "*Notes Priority Collateral*" and, together with the ABL Priority Collateral, the "*Collateral*"):

- all of the Capital Stock held by the Issuer and the Guarantors (which, in the case of any equity interest in any Foreign Subsidiary, will be limited to 100% of the non-voting stock (if any) and 65% of the voting stock of such Foreign Subsidiary);
- the Issuer's and the Guarantors' owned real property associated with the Grenada, Mississippi, Coosa Pines, Alabama, Calhoun, Tennessee and Catawba, South Carolina facilities (collectively, the "*Mill Properties*") and any real property acquired after the date of the indenture by the Issuer or any Guarantor in fee simple with an individual Fair Market Value (measured at the time of acquisition thereof) in excess of \$10.0 million (except to the extent subject to a Lien permitted by clause (4), (7) or (13) (as it relates to any of the foregoing) of the definition of "Permitted Liens" to the extent the documentation relating to such Lien prohibits the granting of a Lien thereon to secure the Note Obligations);
- equipment;
- patents, trademarks and copyrights;
- general intangibles, instruments, books and records and supporting obligations related to the foregoing and proceeds of the foregoing (in each case, except to the extent constituting ABL Priority Collateral);
- the Collateral Proceeds Account; and
- substantially all of the other tangible and intangible assets of the Issuer and the Guarantors, other than (i) the ABL Priority Collateral and (ii) Excluded Assets.



"Excluded Assets" will include, among other things, the following assets of the Issuer and the Guarantors:

- (i) assets located outside the United States to the extent a Lien on such assets cannot be perfected by the filing of UCC financing statements in the jurisdictions of organization of the Issuer and the Guarantors;
- (ii) assets subject to Liens pursuant to clause (4), (7) or (13) (as it relates to any of the foregoing) of the definition of "Permitted Liens" to the extent the documentation relating to such Liens prohibit such assets from being Collateral and only for so long as such Liens remain outstanding;
- (iii) (x) the voting Capital Stock of Foreign Subsidiaries in excess of 65% of the voting rights of all such Capital Stock in each such Foreign Subsidiary and (y) any Capital Stock of a Person that is not a Subsidiary of the Issuer to the extent that a pledge of such Capital Stock is prohibited by such Person's organizational documents or any shareholders agreement relating to such Capital Stock;
- (iv) any assets of or interests in joint ventures, including joint ventures that are majority-owned Subsidiaries, and in the case of interests in any joint ventures (other than the Augusta JV), to the extent such joint venture's organizational documents or any shareholders agreement relating thereto would prohibit a pledge of such interest (it being understood that interests in the Augusta JV shall be available to pledge as collateral for any third party indebtedness incurred by the Augusta JV);
- (v) any owned real property owned on the date of the indenture other than the Mill Properties and any owned real property acquired after the date of the indenture with an individual Fair Market Value (measured at the time of acquisition thereof) not in excess of \$10.0 million, and all of the Issuer's and the Guarantors' right, title and interest in any leasehold or other non-fee simple interest in any real property (whether owned on the date of the indenture or acquired following the date of the indenture), other than the leaseholds between Bowater Alabama LLC and the Industrial Development Board of the City of Childersbrg relating to the Coosa Pines mill;
- (vi) aircraft, motor vehicles and other assets subject to certificates of title to the extent that a Lien therein cannot be perfected by the filing of UCC financing statements in the jurisdictions of organization of the Issuer and the Guarantors;
- (vii) any property to the extent that the grant of a security interest therein would violate applicable law, require a consent not obtained of any governmental authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination;
- (viii)(a) deposit accounts the balance of which consists exclusively of withheld income taxes, employment taxes, or amounts required to be paid over to certain employee benefit plans, and (b) segregated deposit accounts constituting and the balance of which consists solely of funds set aside in connection with tax, payroll and trust accounts;
- (ix) any intellectual property if the grant of a security interest therein would result in the invalidation of the grantor's interest therein;



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- (x) the Specified Assets;
- (xi) Timberlands;
- (xii) the assets and real property associated with the facility located in Covington, Tennessee, which are expected to be sold on or about the Emergence Date;
- (xiii) to the extent not included in the ABL Priority Collateral, accounts receivable of the Issuer, the Restricted Subsidiaries or any of their respective Subsidiaries and any assets related thereto including, without limitation, all collateral and all guarantees, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable; and
- (xiv) proceeds and products of any and all of the foregoing excluded assets described in clauses (i) through (xiii) above only to the extent such proceeds and products would constitute property or assets of the type described in clauses (i) through (xiii) above.

For the avoidance of doubt, no assets of any Subsidiary that is not a Guarantor (including any Capital Stock owned by any such Subsidiary) shall constitute Collateral.

The Collateral will be pledged pursuant to a security agreement, to be dated as of the Release Date, among the Issuer, the Guarantors and the Collateral Agent (as amended, modified, restated, supplemented or replaced from time to time in accordance with its terms, the "Security Agreement"), and one or more mortgages, deeds of trust or deeds to secure Indebtedness (the "Mortgages") or other grants or transfers for security executed and delivered by the Issuer or the applicable Guarantor to the Collateral Agent for the benefit of the Collateral Agent, the trustee, the holders of the notes and the holders of any Permitted Additional Pari Passu Obligations.

So long as no Event of Default (or event of default under any Permitted Additional Pari Passu Obligations) has occurred and is continuing, and subject to certain terms and conditions, the Issuer and the Guarantors are entitled to exercise any voting and other consensual rights pertaining to all Capital Stock pledged pursuant to the Security Agreement and to remain in possession and retain exclusive control over the Collateral (other than as set forth in the security documents), to operate the Collateral, to alter or repair the Collateral and to collect, invest and dispose of any income thereon. Upon the occurrence of an Event of Default (or event of default under any Permitted Additional Pari Passu Obligations) and to the extent permitted by law and following notice by the Collateral Agent to the Issuer and the Guarantors:

- (1) all of the rights of the Issuer and the Guarantors to exercise voting or other consensual rights with respect to all Capital Stock included in the Collateral shall cease, and all such rights shall become vested, subject to the terms of the Intercreditor Agreement, in the Collateral Agent, which, to the extent permitted by law, shall have the sole right to exercise such voting and other consensual rights; and
- (2) the Collateral Agent may, subject to the terms of the Intercreditor Agreement, take possession of and sell the Collateral or any part thereof in accordance with the terms of the security documents.

Upon the occurrence and during the continuance of an Event of Default or an event of default under any Permitted Additional Pari Passu Obligations, the Collateral Agent will be permitted, subject to applicable law and the terms of the Intercreditor Agreement, to exercise remedies and



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sell the Collateral under the security documents only at the direction of the holders of a majority of the notes and the holders of any Permitted Additional Pari Passu Obligations voting as a single class.

Intercreditor agreement

The Collateral Agent (in its capacity as Collateral Agent), on behalf of the holders of notes and the holders of any Permitted Additional Pari Passu Obligations, the ABL Facility Collateral Agent, on behalf of the holders of the ABL Obligations, the Issuer and the Guarantors will enter into an intercreditor agreement (the "*Intercreditor Agreement*") that will set forth the relative priority of the ABL Liens and the Note Liens, as well as certain other rights, priorities and interests of the holders of the notes and the holders of Permitted Additional Pari Passu Obligations and the holders of the ABL Obligations. The Intercreditor Agreement will provide, among other things:

Lien priority. Notwithstanding the time, order or method of creation or perfection of any ABL Obligations, ABL Liens, Note Obligations, Permitted Additional Pari Passu Obligations or the Note Liens, (i) the ABL Liens on the ABL Priority Collateral will rank senior to any Note Liens on the ABL Priority Collateral and (ii) the Note Liens on the Notes Priority Collateral will rank senior to any ABL Liens on the Notes Priority Collateral.

Prohibition on contesting liens and obligations. No holder of any note or Permitted Additional Pari Passu Obligation may contest the validity or enforceability of the ABL Liens or the ABL Obligations, and no holder of any ABL Obligations may contest the validity or enforceability of the Note Liens, the notes or the Permitted Additional Pari Passu Obligations.

Exercise of remedies and release of liens. For a period of 180 days (subject to extension for any period during which the ABL Facility Collateral Agent is diligently pursuing remedies against the ABL Priority Collateral or is prohibited by applicable law from pursuing such remedies) commencing on the later of (x) the acceleration of Note Obligations or any Permitted Additional Pari Passu Obligations and (y) the ABL Facility Collateral Agent receiving notice of acceleration from the Collateral Agent, the ABL Facility Collateral Agent will have the sole power to exercise remedies against the ABL Priority Collateral (subject to the right of the Collateral Agent and the holders of notes to take limited protective measures with respect to the Note Liens and to take certain actions that would be permitted to be taken by unsecured creditors) and to foreclose upon and dispose of the ABL Priority Collateral. For a period of 180 days (subject to extension for any period during which the Collateral Agent is diligently pursuing remedies against the Notes Priority Collateral or is prohibited by applicable law from pursuing such remedies) commencing on the later of (x) the acceleration of the ABL Obligations and (y) the Collateral Agent receiving notice of acceleration from the ABL Facility Collateral Agent, the Collateral Agent will have the sole power to exercise remedies against the Notes Priority Collateral (subject to the right of the ABL Facility Collateral Agent and the holders of ABL Obligations to take limited protective measures and certain actions permitted to be taken by unsecured creditors) and to foreclose upon and dispose of the Notes Priority Collateral. Upon (x) any disposition of any ABL Priority Collateral in connection with any enforcement action or, following an event of default under the ABL Facility, certain other sales consented to by the ABL Facility Collateral Agent including in connection with "going out of business" sales or (y) any disposition of ABL Priority Collateral permitted by the documents governing the ABL Obligations, the indenture and the security documents, in each case, which results in the release of the ABL Lien on such item of ABL Priority Collateral, the Note Lien on such item of ABL Priority Collateral will be automatically released.



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Upon (x) any disposition of any Notes Priority Collateral in connection with any enforcement action or (y) any disposition of Notes Priority Collateral permitted by the documents governing the ABL Obligations, the indenture and the security documents, in each case, which results in the release of the Note Lien on such item of Notes Priority Collateral, the ABL Lien on such item of Notes Priority Collateral will be automatically released.

ABL facility collateral agent's access and use rights. The Collateral Agent will permit the ABL Facility Collateral Agent to have access to and use of certain items of Notes Priority Collateral prior to, and for a period of up to 180 days (subject to extension during periods when the ABL Facility Collateral Agent is prohibited by law from exercising such rights) following, the foreclosure upon or taking possession of such item of Notes Priority Collateral by the Collateral Agent in order to facilitate the ABL Facility Collateral Agent's exercise of remedies with respect to the ABL Priority Collateral.

Tracing of collateral and treatment of cash. Prior to the issuance of a notice of default by the ABL Facility Collateral Agent or the Collateral Agent or an insolvency or liquidation proceeding, whether any asset was acquired with "proceeds" (within the meaning of the UCC) of ABL Priority Collateral or Notes Priority Collateral will be disregarded for purposes of determining whether such asset constitutes ABL Priority Collateral or Notes Priority Collateral.

Application of proceeds and turn-over provisions. In connection with any enforcement action with respect to the Collateral or any insolvency or liquidation proceeding, all proceeds of (x) ABL Priority Collateral will first be applied to the repayment of all ABL Obligations before being applied to any Note Obligations or any Permitted Additional Pari Passu Obligations and (y) Notes Priority Collateral will first be applied to the repayment of all Note Obligations and Permitted Additional Pari Passu Obligations before being applied to any ABL Obligations. If any holder of a note, Permitted Additional Pari Passu Obligation or ABL Obligation receives any proceeds of Collateral in contravention of the foregoing, such proceeds will be turned over to the Collateral Agent or ABL Priority Collateral Agent, as applicable, for application in accordance with the foregoing.

Amendments and refinancings. The ABL Obligations, the Note Obligations and any Permitted Additional Pari Passu Obligations may be amended or refinanced in accordance with the ABL Credit Agreement, the indenture and the documents governing such Permitted Additional Pari Passu Obligations, and subject to continuing rights and obligations of the holders of such refinancing Indebtedness under the Intercreditor Agreement.

Certain matters in connection with liquidation and insolvency proceedings.

Debtor-in-possession financings. In connection with any insolvency or liquidation proceeding of the Issuer or any Guarantor, the ABL Facility Collateral Agent may consent to certain debtor-in-possession financings secured by a Lien on the ABL Priority Collateral ranking prior to the Note Lien on such ABL Priority Collateral or to the use of cash collateral constituting proceeds of ABL Priority Collateral without the consent of any holder of notes and any Permitted Additional Pari Passu Obligations, and no holder of a note or holder of any Permitted Additional Pari Passu Obligation shall be entitled to object to such use of cash collateral or debtor-in-possession financing or seek "adequate protection" in connection therewith (other than in the form of a junior lien on any additional items of collateral for the ABL Obligations which are granted in connection with such debtor-in-possession financing or use of cash collateral).



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Relief from automatic stay; Bankruptcy sales and post-petition interest. No holder of a note or any Permitted Additional Pari Passu Obligation may (x) seek relief from the automatic stay with respect to any ABL Priority Collateral, (y) object to any sale of any ABL Priority Collateral or any motion seeking relief from the automatic stay in any insolvency or liquidation proceeding, in each case which has been supported by the holders of ABL Obligations or (z) object to any claim of any holder of ABL Obligations to post-petition interest to the extent of its ABL Lien on the ABL Priority Collateral. No holder of any ABL Obligation may (x) seek relief from the automatic stay with respect to any Notes Priority Collateral, (y) object to any sale of any Notes Priority Collateral or any motion seeking relief from the automatic stay with respect to the Notes Priority Collateral in any insolvency or liquidation proceeding, in each case, which is supported by the holders of the notes and any Permitted Additional Pari Passu Obligations or (z) object to any claim of any holder of notes or any Permitted Additional Pari Passu Obligations to post-petition interest to the extent of its Note Lien on the Notes Priority Collateral.

Adequate protection. No holder of a note or any Permitted Additional Pari Passu Obligations may (i) except as expressly provided above, seek adequate protection on account of its Note Lien on the ABL Priority Collateral or (ii) object to any request by the holders of ABL Obligations for adequate protection on account of the ABL Priority Collateral (other than payments from proceeds of Notes Priority Collateral). No holder of any ABL Obligation may (i) seek adequate protection on account of its ABL Lien on the Notes Priority Collateral other than in the form of junior priority liens or (ii) object to any request by the holders of notes or any Permitted Additional Pari Passu Obligations for adequate protection on account of the Notes Priority Collateral (other than payments from the proceeds of ABL Priority Collateral).

Plans of reorganization. Neither the ABL Facility Collateral Agent, the Collateral Agent nor any holder of any ABL Obligations, notes or Permitted Additional Pari Passu Obligations may support any plan of reorganization in any insolvency or liquidation proceeding which contravenes the intercreditor provisions described above (unless consented to by the ABL Facility Collateral Agent or the Collateral Agent, as applicable, representing the holders of the Liens entitled to the benefit of such contravened intercreditor provisions).

Use and release of collateral

Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have commenced enforcement of remedies under the security documents, except to the extent otherwise provided in the ABL Credit Agreement or other documentation governing the ABL Obligations, the Issuer and the Guarantors will have the right to remain in possession and retain exclusive control of the Collateral, to freely operate the Collateral and to collect, invest and dispose of any income thereon.

Release of collateral

The indenture and the security documents provide that the Note Liens will automatically and without the need for any further action by any Person be released:

- (1) in whole or in part, as applicable, as to all or any portion of property subject to such Note Liens which has been taken by eminent domain, condemnation or other similar circumstances;



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- (2) in whole upon:
- (a) satisfaction and discharge of the indenture as set forth below under “—Satisfaction and discharge”; or
 - (b) a legal defeasance or covenant defeasance of the indenture as described below under “—Defeasance or covenant defeasance of indenture”;
- (3) in part, as to any property that (a) is sold, transferred or otherwise disposed of by the Issuer or any Guarantor (other than to the Issuer or another Guarantor) in a transaction not prohibited by the indenture at the time of such sale, transfer or disposition, (b) is owned or at any time acquired by a Guarantor that has been released from its Guarantee pursuant to paragraph (b) of “—Certain covenants—Additional note guarantees,” concurrently with the release of such Guarantee or (c) is or becomes Excluded Assets;
- (4) as to property that constitutes all or substantially all of the Collateral securing the notes, with the consent of holders of at least 66⅔% in aggregate principal amount of the notes then outstanding (which consent may be obtained in connection with an exchange offer or tender offer and associated consent solicitation);
- (5) as to property that constitutes less than all or substantially all of the Collateral securing the notes, with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (which consent may be obtained in connection with an exchange offer or tender offer and associated consent solicitation); and
- (6) in part, in accordance with the applicable provisions of the security documents and as described above with respect to the Intercreditor Agreement.

The indenture will not require the Issuer to comply with the provisions of Trust Indenture Act Section 314(b).

Certain bankruptcy limitations

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



Furthermore, in the event a bankruptcy court determines the value of the Collateral (after giving effect to any prior Liens) is not sufficient to repay all amounts due on the notes and any Permitted Additional Pari Passu Obligations, the holders of the notes and such Permitted Additional Pari Passu Obligations would hold secured claims to the extent of the value of the Note Liens on Collateral, and would hold unsecured claims with respect to any shortfall. Applicable Federal bankruptcy laws permit the payment and/or accrual of post-petition interest, costs and attorneys' fees during a debtor's bankruptcy case only to the extent the claims are oversecured or the debtor is solvent at the time of reorganization. In addition, if the Issuer or the Guarantors were to become the subject of a bankruptcy case, the bankruptcy court, among other things, may avoid certain prepetition transfers made by the entity that is the subject of the bankruptcy filing, including, without limitation, transfers held to be preferences or fraudulent conveyances.

Special mandatory redemption

The notes will be subject to a mandatory redemption (a "*Special Mandatory Redemption*") in the event that either (i) the Release Date has not occurred on or prior to the Escrow End Date or (ii) prior to the Escrow End Date, the Issuer has determined, in its reasonable discretion, that the escrow conditions cannot be satisfied by such date (any such date, a "*Trigger Date*"). The Issuer will cause the notice of Special Mandatory Redemption to be mailed no later than the next Business Day following the Trigger Date and will redeem the notes two business days following the date of the notice of redemption. The redemption price for any Special Mandatory Redemption will be 101% of the issue price of the notes (as set forth on the cover of this offering memorandum), together with accrued and unpaid interest on the notes from the date of the indenture up to but not including the date of the Special Mandatory Redemption.

If the Escrow Agent receives a notice of a Special Mandatory Redemption pursuant to the terms of the indenture, the Escrow Agent will liquidate all Escrow Proceeds then held by it not later than the last business day prior to the date of the Special Mandatory Redemption. Concurrently with release of the amounts necessary to fund the Special Mandatory Redemption to the paying agent, the Escrow Agent will release any excess of Escrow Proceeds over the mandatory redemption price to the Issuer, and the Issuer will be permitted to use such excess Escrow Proceeds at its discretion.

Optional redemption

The notes are subject to redemption, at the option of the Issuer, in whole or in part, at any time on or after _____, 2014 upon not less than 30 nor more than 60 days' notice at the following Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the redemption date (subject to the right of holders of record on the relevant regular record date to receive interest due on an interest payment date that is on or prior to the redemption date), if redeemed during the 12-month period beginning on _____ of the years indicated below:

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



Prior to _____, 2013, the Issuer may redeem during each 12-month period commencing with the date of the indenture up to 10% of the aggregate principal amount of the notes issued under the indenture, including any Additional Notes (or any exchange notes therefor) at its option, from time to time, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each holder's registered address, at a redemption price equal to 103% of the principal amount of the notes redeemed, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date that is on or prior to the redemption date).

In addition, at any time (a "Make-Whole Redemption Date") prior to _____, 2014, the Issuer may redeem the notes, in whole or in part, at a Redemption Price equal to the principal amount of the notes plus the Applicable Premium plus accrued and unpaid interest, if any, to but not including the date of redemption.

In addition to the optional redemption of the notes in accordance with the provisions of the preceding paragraphs, prior to _____, 2013, the Issuer may, from time to time, with the net proceeds of one or more Qualified Equity Offerings, redeem up to an aggregate of 35% of the aggregate principal amount of the outstanding notes (including any Additional Notes but excluding any exchange notes), at a Redemption Price equal to _____ % of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but not including, the date of redemption; *provided* that at least 65% of the principal amount of notes (including any Additional Notes) that have been issued under the indenture remain outstanding immediately after the occurrence of any such redemption (excluding notes held by the Issuer or its Subsidiaries) and that any such redemption occurs within 90 days following the closing of any such Qualified Equity Offering.

Any notice of any redemption may be given prior to the redemption of any notes, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a Quality Equity Offering or other corporate transaction.

No notes of \$2,000 or less shall be redeemed in part. Notices of redemption shall be mailed by first class mail (and, to the extent permitted by applicable procedures or regulations, electronically) at least 30 days before the redemption date to each holder of notes to be redeemed at its registered address. If any note is to be redeemed in part only, the notice of redemption that relates to that note shall state the portion of the principal amount thereof to be redeemed. A new note in principal amount equal to the unredeemed portion of the original note will be issued in the name of the holder thereof upon cancellation of the original note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on notes or portions of them called for redemption. If less than all of the notes are to be redeemed, the trustee will select the notes or portions thereof to be redeemed by lot, *pro rata* or by any other method the trustee shall deem fair and appropriate (subject to The Depository Trust Company, Euroclear and/or Clearstream procedures as applicable).

Repurchase at the option of holders

Change of control

If a Change of Control occurs following the Release Date, each holder of notes will have the right to require the Issuer to repurchase all or any part (equal to \$2,000 or an integral multiple of



\$1,000 in excess thereof) of that holder's notes pursuant to an offer (a "*Change of Control Offer*") on the terms set forth in the indenture. In the Change of Control Offer, the Issuer will offer a Change of Control Payment in cash equal to 101% of the aggregate principal amount of notes repurchased, plus accrued and unpaid interest and Special Interest, if any, on the notes repurchased to the date of purchase, subject to the rights of holders of notes on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Issuer will send a notice to each holder with a copy to the trustee describing the transaction or transactions that constitute the Change of Control and offering to repurchase notes on the Change of Control Payment 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 sent, pursuant to the procedures required by the indenture and described in such notice. The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the indenture by virtue of such compliance.

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

- (1) accept for payment all notes or portions of notes properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes properly tendered; and
- (3) deliver or cause to be delivered to the trustee the notes properly accepted together with an officers' certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Issuer.

The paying agent will promptly mail to each holder of notes properly tendered the Change of Control Payment for such notes as directed by the Issuer in writing, and the trustee will promptly authenticate upon an authentication order from the Issuer and mail (or cause to be transferred by book entry) to each holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; *provided* that each new note will be in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The provisions described above that require the Issuer to make a Change of Control Offer following a Change of Control will be applicable whether or not any other provisions of the indenture are applicable. 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 Issuer repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control Offer made by the Issuer and purchases all notes properly tendered and not withdrawn under



the Change of Control Offer, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon the consummation of such Change of Control, if a definitive agreement is in place for the Change of Control at the time the Change of Control Offer is made.

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

Under a recent Delaware Chancery Court interpretation of a change of control repurchase requirement with a continuing director provision (as does the definition of "Change of Control" for purposes of the indenture), a board of directors may approve a slate of shareholder-nominated directors without endorsing them or while simultaneously recommending and endorsing its own slate instead. The foregoing interpretation would permit the Issuer's Board of Directors to approve a slate of directors that included a majority of dissident directors nominated pursuant to a proxy contest, and the ultimate election of such directors would not constitute a "Change of Control" under the indenture that would trigger the rights of a holder of notes to require a repurchase of the notes pursuant to this covenant.

Asset sales

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

- (1) the Issuer (or its Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;
- (2) at least 75% of the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this clause (2), each of the following will be deemed to be cash:

(a) except in the case of a Sale of Notes Priority Collateral, any liabilities, as shown on the Issuer's most recent consolidated balance sheet, of the Issuer or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption or similar agreement;

(b) except in the case of a Sale of Notes Priority Collateral, any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents within 180 days of receipt thereof, to the extent of the cash or Cash Equivalents received in that conversion;

(c) except in the case of a Sale of Notes Priority Collateral, any Designated Noncash Consideration received by the Issuer or any Restricted Subsidiary thereof in such Asset Sale



having a Fair Market Value, taken together with all other Designated Noncash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (x) \$50.0 million or (y) 1.0% of Total Assets at the time of receipt of such Designated Noncash Consideration, with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received without giving effect to subsequent changes in value;

(d) any stock or assets of the kind referred to in clause (1) or (3) of the third paragraph of this covenant (in the case of a Sale of Notes Priority Collateral) or clause (2) or (4) of the fourth paragraph of this covenant (in any other case); and

- (3) in the case of a Sale of Notes Priority Collateral, (a) at least 75% of the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary is in the form of cash or Marketable Securities and (b) the Issuer (or its Restricted Subsidiary, as the case may be) deposits the Net Proceeds therefrom (to the extent they are in excess of \$5.0 million) as collateral in a segregated account (a "*Collateral Proceeds Account*") held by the Collateral Agent or its agent and shall be subject to the Note Liens pending application as set forth below.

Notwithstanding the foregoing, the Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale at any time before the date that is the six month anniversary of the Release Date, other than an Asset Sale with respect to Specified Assets; *provided* that the Net Proceeds from any such Asset Sale of Specified Assets consummated before such six month anniversary may be applied to redeem, repay or defease the Convertible Notes and, if not, shall be applied in accordance with the subsequent paragraphs.

If the Issuer (or its Restricted Subsidiary, as the case may be) receives any Net Proceeds (to the extent they are in excess of \$5.0 million) from a Casualty or Condemnation Event directly attributable to any Notes Priority Collateral, it will promptly deposit such Net Proceeds in the Collateral Proceeds Account. Within 360 days after the receipt of any Net Proceeds from any Sale of Notes Priority Collateral or a Casualty or Condemnation Event directly attributable to any Notes Priority Collateral, the Issuer (or the applicable Restricted Subsidiary, as the case may be) may apply those Net Proceeds at its option:

- (1) to acquire all or substantially all of the assets of, or any Capital Stock of, a Permitted Business, if, after giving effect to any such acquisition, such Permitted Business is owned by the Issuer or a Guarantor and such Permitted Business includes Notes Priority Collateral with a Fair Market Value at least equal to the Fair Market Value of the Notes Priority Collateral disposed of in the applicable Sale of Notes Priority Collateral;
- (2) to make capital expenditures on assets that constitute Notes Priority Collateral; and/or
- (3) to acquire other assets that are Notes Priority Collateral and that are used or useful in a Permitted Business.

Within 360 days after the receipt of any Net Proceeds from an Asset Sale (other than from a Sale of Notes Priority Collateral), the Issuer (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds at its option:

- (1) (A) in the case of Net Proceeds from any Asset Sale of assets of any non-Guarantor, to repay Indebtedness of such non-Guarantor or (B) in the case of any other Net Proceeds, to repay ABL Obligations;



- (2) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Issuer;
- (3) to make a capital expenditure; and/or
- (4) to acquire other assets that are used or useful in a Permitted Business.

Pending the final application of any Net Proceeds (other than Net Proceeds from any Sale of Notes Priority Collateral or a Casualty or Condemnation Event directly attributable to any Notes Priority Collateral), the Issuer or the applicable Restricted Subsidiary, as the case may be, may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by the indenture. Any binding commitment to apply Net Proceeds to invest in accordance with clause (1), (2) or (3) of the third paragraph of this covenant (in the case of Net Proceeds of Notes Priority Collateral) or clause (2), (3) or (4) of the fourth paragraph of this covenant (in the case of any other Net Proceeds) shall be treated as a permitted final application of Net Proceeds from the date of such commitment so long as the Issuer or such Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment; *provided* that if such commitment is later canceled, terminated or otherwise not consummated after the 360-day period for any reason, then such Net Proceeds shall constitute "Excess Proceeds" (as defined in the next succeeding paragraph).

Any Net Proceeds from Asset Sales (including Sales of Notes Priority Collateral) or Casualty or Condemnation Events related to Notes Priority Collateral that are not applied or invested as provided in the second or third paragraphs of this covenant will constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds \$25.0 million, within 30 days thereof, the Issuer will make an offer (a "*Net Proceeds Offer*") to all holders of notes and to the holders of any Permitted Additional Pari Passu Obligations containing provisions similar to those set forth in the Indenture with respect to asset sales to purchase the maximum principal amount of notes and Permitted Additional Pari Passu Obligations (plus all accrued interest and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased out of the Excess Proceeds. The offer price in any Net Proceeds Offer will be equal to 100% of the principal amount, plus accrued and unpaid interest, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of a Net Proceeds Offer, those Excess Proceeds will be released from the Collateral Proceeds Account, those Excess Proceeds may become collateral securing ABL Obligations and the Issuer may use those Excess Proceeds for any purpose not otherwise prohibited by the indenture. If the aggregate principal amount of notes and Permitted Additional Pari Passu Obligations tendered into such Net Proceeds Offer exceeds the amount of Excess Proceeds, the trustee will select the notes and Permitted Additional Pari Passu Obligations on a *pro rata* basis with such adjustments as may be needed so that only notes in minimum amounts of \$2,000 and integral multiples of \$1,000 will be purchased. Upon completion of each Net Proceeds Offer, the amount of Excess Proceeds will be reset at zero (and to the extent such Net Proceeds are held in the Collateral Proceeds Account, such Net Proceeds shall be released to the Issuer). If the Issuer makes a Net Proceeds Offer prior to the 360-day deadline specified in the third or fourth paragraph of this covenant, as applicable, with respect to any Net Proceeds, the Issuer's obligations with respect to such Net Proceeds under this covenant shall be deemed satisfied after completion of such Net Proceeds Offer.



The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of notes pursuant to a Change of Control Offer or a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control or Net Proceeds Offer provisions of the indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control or Net Proceeds Offer provisions of the indenture by virtue of such compliance.

The agreements governing other Indebtedness of the Issuer and its Subsidiaries contain, and future agreements may contain, prohibitions of certain events, including events that would constitute a Change of Control or an Asset Sale or Casualty or Condemnation Event and including repurchases of or other prepayments in respect of the notes. The exercise by the holders of notes of their right to require the Issuer to repurchase the notes upon a Change of Control, an Asset Sale or Casualty or Condemnation Event could cause a default under these other agreements, even if the Change of Control, Asset Sale or Casualty or Condemnation Event itself does not, due to the financial effect of such repurchases on the Issuer. In the event a Change of Control, Asset Sale or Casualty or Condemnation Event occurs at a time when the Issuer is prohibited from repurchasing notes, the Issuer could seek the consent of its lenders to the repurchase of notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain a consent or repay those borrowings, the Issuer will remain prohibited from repurchasing notes and any Permitted Additional Pari Passu Obligations. In that case, the Issuer's failure to repurchase tendered notes would constitute an Event of Default under the indenture which could, in turn, constitute a default under the other indebtedness. Finally, the Issuer's ability to pay cash to the holders of notes upon a repurchase may be limited by the Issuer's then existing financial resources. See "Risk factors—We may not have the ability to raise the funds necessary to finance the change of control offer required by the indenture governing the notes."

Certain covenants

Restricted payments

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

- (1) declare or pay any dividend or make any other payment or distribution on or in respect of the Issuer's or any Restricted Subsidiary's Equity Interests (including any such payment in connection with any merger or consolidation involving such Person) or to the direct or indirect holders of the Issuer's or any Restricted Subsidiary's Equity Interests, except dividends or distributions payable solely in Equity Interests of the Issuer or such Restricted Subsidiary (other than Disqualified Stock) and except dividends or distributions payable solely to the Issuer or a Restricted Subsidiary (and, if such Restricted Subsidiary is not a Wholly Owned Subsidiary, to its other Equity Interest holders on a *pro rata* basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a *pro rata* basis);
- (2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Issuer) any Equity Interests of the Issuer;



- (3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among the Issuer and any of its Restricted Subsidiaries), except (a) a payment of interest or principal at the Stated Maturity thereof or (b) the purchase, repurchase or other acquisition or retirement for value of any such Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of such purchase, repurchase or other acquisition or retirement for value; or
- (4) make any Restricted Investment

(all such payments and other actions set forth in these clauses (1) through (4) above being collectively referred to as "*Restricted Payments*"), unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default has occurred and is continuing or would occur after giving effect to such Restricted Payment;
- (2) the Issuer would, at the time of such Restricted Payment and after giving pro forma effect thereto, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described below under the caption "—Incurrence of indebtedness and issuance of preferred stock"; and
- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries since the date of the indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14) of the next succeeding paragraph), is less than the sum, without duplication, of:

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

(b) 100% of the aggregate net cash proceeds (or the Fair Market Value of any property or assets) received by the Issuer since the Release Date as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of the Issuer or from the issue or sale of convertible or exchangeable Disqualified Stock of the Issuer or convertible or exchangeable debt securities of the Issuer, in each case that have been converted into or exchanged for Equity Interests of the Issuer (other than Disqualified Stock, Equity Interests and convertible or exchangeable Disqualified Stock or debt securities sold to a Subsidiary of the Issuer); *plus*

(c) to the extent that any Restricted Investment that was made after the date of the indenture is sold or otherwise liquidated or repaid, the amount of the cash return of or on capital (or the Fair Market Value of any property or assets) with respect to such Restricted Investment (less the cost of disposition, if any); *plus*



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(d) to the extent that any Unrestricted Subsidiary of the Issuer designated as such after the date of the indenture is redesignated as a Restricted Subsidiary after the date of the indenture, the Fair Market Value of the Issuer's Restricted Investment in such Restricted Subsidiary as of the date of such redesignation; *plus*

(e) cash dividends received by the Issuer or a Restricted Subsidiary of the Issuer that is a Guarantor after the date of the indenture from an Unrestricted Subsidiary of the Issuer, to the extent that such dividends were not otherwise included in the Consolidated Net Income of the Issuer for such period.

The preceding provisions will not prohibit:

- (1) the payment of any dividend or distribution on account of Equity Interests or the consummation of any redemption within 60 days after the date of declaration of the dividend or distribution on account of Equity Interests or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of the indenture;
- (2) the making of any Restricted Payment in exchange for, or out of or with the net proceeds of the sale (other than to a Subsidiary of the Issuer) of, Equity Interests of the Issuer (other than Disqualified Stock) or from the contribution of common equity capital to the Issuer; *provided* that the amount of any such net proceeds that are utilized for any such Restricted Payment will not be considered to be net proceeds of Equity Interests of the Issuer for purposes of clause (3)(b) of the preceding paragraph;
- (3) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee in exchange for, by conversion into or out of, or with the net cash proceeds from, a substantially concurrent incurrence of Permitted Refinancing Indebtedness, which incurrence occurs within 60 days of such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value;
- (4) any Restricted Payment made in connection with and contemplated by the Plans of Reorganization;
- (5) so long as no Default or Event of Default has occurred and is continuing, the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Issuer or any Restricted Subsidiary of the Issuer held by any current or former officer, director or employee of the Issuer or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$5.0 million in any twelve-month period; *provided, further*, that such amount in any twelve-month period may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer as common equity capital, the cash proceeds from the sale of Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to members of management, directors or consultants of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the date of the indenture to the extent the cash proceeds from the sale of such Equity Interests



have not otherwise been applied to the making of Restricted Payments pursuant to clause (3) of the preceding paragraph or clause (2) of this paragraph; *plus*

(b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the date of the indenture; and

in addition, cancellation of Indebtedness owing to the Issuer or any Guarantor from any current or former officer, director or employee (or any permitted transferees thereof) of the Issuer or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its Restricted Subsidiaries from such Persons will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provisions of the indenture;

- (6) the repurchase of Equity Interests deemed to occur upon the exercise of stock options, warrants or similar rights to the extent such Equity Interests represent a portion of the exercise price of those stock options, warrants or similar rights or the payment of related withholding taxes;
- (7) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Issuer or any Restricted Subsidiary of the Issuer issued on or after the date of the indenture in accordance with the Fixed Charge Coverage Ratio test described below under the caption "—Incurrence of indebtedness and issuance of preferred stock";
- (8) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, upon the occurrence of a Change of Control and within 60 days after completion of the offer to repurchase notes pursuant to the covenant described above under the caption "—Repurchase at the option of holders—Change of control," any purchase or redemption of Indebtedness of the Issuer that is contractually subordinated to the notes or any Note Guarantee that is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Change of Control, at a purchase price not greater than 101% of the outstanding principal amount thereof (plus accrued and unpaid interest); *provided that*, prior to such repayment or repurchase, the Issuer shall have made the Change of Control Offer with respect to the notes as required by the indenture, and the Issuer shall have repurchased all notes validly tendered for payment and not withdrawn in connection with such Change of Control Offer;
- (9) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, after the completion of a Net Proceeds Offer pursuant to the covenant described under the caption "—Repurchase at the option of the holders—Asset sales," any purchase or redemption of Indebtedness of the Issuer that is contractually subordinated to the notes or any Note Guarantee that is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Asset Sale, at a purchase price not greater than 100% of the outstanding principal amount thereof (plus accrued and unpaid interest) with any Excess Proceeds that remain after consummation of an Net Proceeds Offer; *provided that*, prior to such repayment or repurchase, the Issuer shall have made the Net Proceeds Offer with respect to the notes as required by the indenture, and the Issuer shall have repurchased all notes validly tendered for payment and not withdrawn in connection with such Net Proceeds Offer;
- (10) the redemption, repurchase or other acquisition for value of any Equity Interests of any Foreign Subsidiary of the Issuer that are held by a Person that is not an Affiliate of the Issuer;



provided that the consideration for such redemption, repurchase or other acquisition is not in excess of either (i) the Fair Market Value of such common Equity Interests or (ii) such amount required by applicable laws, rules or regulations;

- (11) the redemption, repurchase or other acquisition or retirement for value of the Convertible Notes with any Excluded Proceeds;
- (12) purchases of receivables pursuant to a Qualified Receivables Transaction and the payment or distribution of fees in connection therewith;
- (13) Investments since the date of the indenture in joint ventures and Unrestricted Subsidiaries in an aggregate amount not to exceed \$50.0 million, net of any return of or on such Investments; and
- (14) so long as no Default or Event of Default has occurred and is continuing, other Restricted Payments in an aggregate amount not to exceed \$50.0 million.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this covenant will be determined by the Issuer or, if such Fair Market Value is in excess of \$20.0 million, by the Board of Directors of the Issuer whose resolution with respect thereto will be delivered to the trustee. The Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if the Fair Market Value exceeds \$50.0 million.

For purposes of determining compliance with this covenant, in the event that a proposed Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (14) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer will be entitled to classify or reclassify (based on circumstances existing at the time of such reclassification) such Restricted Payment or portion thereof in any manner that complies with this covenant and such Restricted Payment will be treated as having been made pursuant to only such clause or clauses or the first paragraph of this covenant.

Incurrence of indebtedness and issuance of preferred stock

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Issuer will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided, however*, that the Issuer may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and the Guarantors may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Fixed Charge Coverage Ratio for the Issuer's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be, would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.



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The first paragraph of this covenant will not prohibit the incurrence of any of the following items of Indebtedness or the issuance of any of the following Disqualified Stock (collectively, "Permitted Debt"):

- (1)(x) the incurrence by the Issuer and any Restricted Subsidiary, and the guarantee thereof by any Restricted Subsidiary, of Indebtedness and letters of credit (and reimbursement obligations with respect thereto) under one or more Credit Facilities (with letters of credit being deemed to have a principal amount equal to the maximum remaining potential liability of the Issuer and its Restricted Subsidiaries thereunder) and (y) Indebtedness incurred by a Receivables Entity in a Qualified Receivables Transaction, in an aggregate principal amount at any one time outstanding under this clause (1) not to exceed the greater of:
 - (A) \$700.0 million less the amount applied to repay Indebtedness pursuant to clause (1) of the third paragraph under "Redemption at the option of holders—Asset sales"; and
 - (B) the amount of the Borrowing Base as of the date of such incurrence;
- (2) the incurrence by the Issuer and its Restricted Subsidiaries of the Existing Indebtedness;
- (3) the incurrence by the Issuer and the Guarantors of Indebtedness represented by the notes and the related Note Guarantees to be issued on the date of the indenture and the exchange notes and the related Note Guarantees to be issued pursuant to the registration rights agreement;
- (4) the incurrence by the Issuer of Indebtedness represented by the Convertible Notes issued in accordance with the Plans of Reorganization in an amount not to exceed \$610 million;
- (5) the incurrence by the Issuer or any of its Restricted Subsidiaries of Attributable Debt in connection with a Sale/Leaseback Transaction or Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, development, construction, installation, expansion, repair or improvement of property (either real or personal), plant or equipment used in the business of the Issuer or any of its Restricted Subsidiaries (in each case, whether through the direct purchase of such assets or the purchase of Equity Interests of any Person owning such assets), which incurrence occurs within 270 days of such purchase, design, development, construction, installation, expansion, repair or improvement, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (5), not to exceed, outstanding as of any date of incurrence of Indebtedness pursuant to this clause (5), the greater of (x) \$125.0 million or (y) 2.0% of Total Assets;
- (6) the incurrence by the Issuer or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to extend, renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by the indenture to be incurred under the first paragraph of this covenant or clause (2), (3), (4), (5), (6), (17) or (22) of this paragraph;



- (7) the incurrence by the Issuer or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Issuer and any of its Restricted Subsidiaries; *provided, however, that:*
- (a) if the Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not the Issuer or a Guarantor, such Indebtedness (other than Indebtedness incurred in the ordinary course in connection with the cash management operations of the Issuer and its Subsidiaries) must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the notes, in the case of the Issuer, or the Note Guarantee, in the case of a Guarantor; and
 - (b)(i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer,
- will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Issuer or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (7);
- (8) the issuance by any of the Issuer's Restricted Subsidiaries to the Issuer or to any of its Restricted Subsidiaries of shares of preferred stock; *provided, however, that:*
- (a) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer; and
 - (b) any sale or other transfer of any such preferred stock to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer
- will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (8);
- (9) Hedging Obligations that are not incurred for speculative purposes but for the purpose of
- (a) fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (b) fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (c) fixing or hedging commodity price risk, including the price or cost of raw materials, emission rights, manufactured products or related commodities, with respect to any commodity purchases or sales;
- (10) the guarantee by the Issuer or any of the Guarantors of Indebtedness of the Issuer or a Restricted Subsidiary that was permitted to be incurred by another provision of this covenant; *provided that* if the Indebtedness being guaranteed is subordinated in right of payment to the notes, then the Guarantee must be subordinated in right of payment to the same extent as the Indebtedness guaranteed;
- (11) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment or other insurance or self-insurance obligations, bankers' acceptances, performance, completion and surety bonds, completion guarantees and similar obligations in the ordinary course of business;
- (12) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days;



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- (13) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness arising from agreements of the Issuer or such Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with sale or other disposition of any business, assets or Capital Stock of the Issuer or any of its Restricted Subsidiaries, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock; *provided that* (A) the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the net proceeds, whether or not cash, actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition and (B) such Indebtedness is not reflected in the balance sheet of the Issuer or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on its balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (13));
- (14) the incurrence of contingent liabilities arising out of endorsements of checks and other negotiable instruments for deposit or collection in the ordinary course of business;
- (15) the incurrence of Indebtedness consisting of guarantees of loans or other extensions of credit to or on behalf of current or former officers, directors, employees, or consultants of the Issuer, any of its Restricted Subsidiaries, or any direct or indirect parent of the Issuer for the purpose of permitting such Persons to purchase Capital Stock of the Issuer or any direct or indirect parent of the Issuer; *provided that* the aggregate amount of such Indebtedness and Investments made pursuant to clause (8) of the definition of "Permitted Investments" may not exceed \$5.0 million at any one time outstanding;
- (16) the incurrence by the Issuer and/or any of its Restricted Subsidiaries of Indebtedness solely in respect of premium financing or similar deferred payment obligations with respect to insurance policies purchase in the ordinary course of business;
- (17)(a) the incurrence by a wholly owned Foreign Subsidiary (other than a Foreign Subsidiary organized under the laws of Canada or any province thereof) of the Issuer of additional Indebtedness in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (17)(a), not to exceed \$25.0 million at any time outstanding and (b) the incurrence by a wholly owned Foreign Subsidiary organized under the laws of Canada or any province thereof of the Issuer or of any Guarantor of additional Indebtedness in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (17)(b), not to exceed \$35.0 million at any time outstanding;
- (18) the incurrence of Indebtedness under any agreement between the Issuer or any Restricted Subsidiary and any commercial bank or other financial institution relating to treasury, depository and cash management services, employee credit card arrangements or automated clearinghouse transfers of funds;
- (19) the incurrence of Indebtedness of the Issuer or any Restricted Subsidiary consisting of take-or-pay obligations entered into in the ordinary course of business;
- (20) the incurrence of Indebtedness incurred on behalf of, or representing guarantees of Indebtedness of, joint ventures not to exceed \$50.0 million at any time outstanding;



- (21) the incurrence by the Issuer or any Restricted Subsidiaries of Obligations in respect of bankers' acceptances, tender, bid, judgment, appeal, performance or governmental contract bonds and completion guarantees, surety, standby letters of credit and warranty and contractual service obligations of a like nature, trade letters of credit and documentary letters of credit and similar bonds or guarantees provided by the Issuer or any Restricted Subsidiary in the ordinary course of business;
- (22) Indebtedness, Disqualified Stock or preferred stock of Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into the Issuer or a Restricted Subsidiary in accordance with the terms of the indenture; *provided* that such Indebtedness, Disqualified Stock or preferred stock is not incurred in contemplation of such acquisition or merger; *provided further* that after giving *pro forma* effect to such acquisition or merger, either:
- (1) the Issuer would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of this covenant; or
- (2) the Fixed Charge Coverage Ratio would be greater than that immediately prior to such acquisition or merger; and
- (23) the incurrence by the Issuer or any of its Restricted Subsidiaries of additional Indebtedness or Disqualified Stock in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (23), not to exceed \$150.0 million.

Any Indebtedness incurred under a Credit Facility pursuant to clause (1) of the second paragraph of this covenant shall be deemed for purposes of this covenant to have been incurred on the date such Indebtedness was first incurred until such Indebtedness is actually repaid, other than pursuant to "cash sweep" provisions or any similar provisions under any Credit Facility that provide that such Indebtedness is deemed to be repaid daily (or otherwise periodically).

For purposes of determining compliance with this "Incurrence of indebtedness and issuance of preferred stock" covenant, in the event that an item of proposed Indebtedness or Disqualified Stock meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (23) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer will be permitted to classify all or a portion of such item of Indebtedness or Disqualified Stock on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness or Disqualified Stock (based on circumstances existing on the date of such reclassification), in any manner that complies with this covenant, except that Indebtedness outstanding under the ABL Credit Agreement and under receivables securitization facilities related to a Qualified Receivables Transaction outstanding on the Release Date will always be deemed to have been incurred on such date in reliance on the exception provided by clause (1) of the definition of "Permitted Debt." The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant; *provided*, in each such case, that the amount of any such accrual, accretion or payment is



included in Fixed Charges of the Issuer as accrued. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Issuer or any Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

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

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
 - (a) the Fair Market Value of such assets at the date of determination; and
 - (b) the amount of the Indebtedness of the other Person.

Liens

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness on any asset now owned or hereafter acquired, except Permitted Liens.

Dividend and other payment restrictions affecting restricted subsidiaries

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

- (1) pay dividends or make any other distributions on its Capital Stock to the Issuer or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Issuer;
- (2) make loans or advances to the Issuer; or
- (3) sell, lease or transfer any of its properties or assets to the Issuer.

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

- (1) agreements governing Existing Indebtedness, the Convertible Notes and the related indenture and the ABL Credit Agreement as in effect on the Emergence Date and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not, in the good faith judgment of the Board of Directors of the Issuer, materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of the indenture;
- (2) the indenture, the notes and the Note Guarantees, and any exchange notes and the related Note Guarantees to be issued pursuant to the registration rights agreement;
- (3) applicable law, rule, regulation, order, approval, license, permit or similar restriction;



- (4) (a) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Issuer or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the indenture to be incurred; and (b) any amendment, modification, replacement or refinancing thereof; *provided, however*, that such encumbrances or restrictions are not, in the good faith judgment of the Board of Directors of the Issuer, materially more restrictive, taken as a whole, with respect to consensual encumbrances or restrictions set forth in clause (1), (2) or (3) of the preceding paragraph than on such encumbrances or restrictions prior to such amendment, modification, replacement or refinancing;
- (5) customary non-assignment provisions in contracts and licenses entered into in the ordinary course of business;
- (6) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of the preceding paragraph;
- (7) any agreement for the sale or other disposition of the Capital Stock or assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending such sale or other disposition;
- (8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not, in the good faith judgment of the Board of Directors of the Issuer, materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced, extended, renewed, refunded, replaced, defeased or discharged;
- (9) Liens permitted to be incurred under the provisions of the covenant described above under the caption "—Liens" that limit the right of the debtor to dispose of the assets subject to such Liens;
- (10) customary provisions in joint venture agreements or other similar agreements entered into in the ordinary course;
- (11) other Indebtedness or Disqualified Stock of any Subsidiary that is not a Restricted Subsidiary so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuer's ability to make anticipated principal or interest payments on the notes (as determined in good faith by the Issuer);
- (12) customary provisions in Permitted Hedging Obligations;
- (13) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into with the approval of the Issuer's Board of Directors, which limitation is applicable only to the assets that are the subject of such agreements;
- (14) restrictions on cash or other deposits or net worth imposed by customers under contracts or other agreements entered into in the ordinary course of business;



- (15) restrictions in other Indebtedness incurred in compliance with the covenant described under the caption "—Incurrence of indebtedness and issuance of disqualified stock and preferred stock"; *provided* that such restrictions, taken as a whole, are, in the good faith judgment of the Issuer's Board of Directors, no more materially restrictive with respect to such encumbrances and restrictions than those contained in the existing agreements referenced in clauses (1) and (2) above;
- (16) encumbrances on property that exist at the time such property was acquired by the Issuer or any Restricted Subsidiary;
- (17) restrictions applicable to Foreign Subsidiaries of the Issuer or of any Guarantor arising under the documentation governing Indebtedness of Foreign Subsidiaries that is permitted to be incurred by the indenture;
- (18) Indebtedness or other contractual requirements of a Receivables Entity in connection with a Qualified Receivables Transaction; *provided* that such restrictions apply on such Receivables Entity;
- (19) encumbrances or restrictions consisting of customary non-assignment provisions in leases governing leasehold interests to the extent such provisions restrict the transfer of the lease or the property leased thereunder;
- (20) customary guarantees by the Issuer under of non-Indebtedness obligations of a Subsidiary set forth in leases, licenses and other agreements entered into by the Subsidiary in the ordinary course of business;
- (21) any legislation, regulation, order-in-council or similar enactment, whether in effect on the date of the indenture or adopted thereafter, pursuant to which the Issuer or any Subsidiary is eligible for funding relief in respect of its pension deficit funding obligations and any agreements or arrangements entered into for purposes of effecting any such legislation, regulation, order-in-council or similar enactment; and
- (22) contractual encumbrances or restrictions in effect on the date of the indenture, and any amendments, restatements, modifications, supplements, renewals, extensions, refundings, replacements, or refinancings of those agreements; *provided* that the amendments, restatements, modifications, supplements, renewals, extensions, refundings, replacements, or refinancings are not, in the good faith judgment of the Board of Directors of the Issuer, materially more restrictive, taken as a whole, with respect to consensual encumbrances or restrictions set forth in clauses (1), (2) or (3) of the preceding paragraph than those contained in those agreements on the date of the indenture.

For purposes of determining compliance with this "Dividend and other payment restrictions affecting restricted subsidiaries" covenant, the subordination of loans or advances made to the Issuer or a Restricted Subsidiary to other Indebtedness incurred by the Issuer or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.



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Merger, consolidation or sale of assets

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

- (1) either: (a) the Issuer is the surviving corporation; or (b) the Person formed by or surviving any such consolidation, merger or amalgamation (if other than the Issuer) or to which such sale, assignment, transfer, conveyance or other disposition has been made is organized or existing under the laws of the United States, any state of the United States or the District of Columbia and is either (i) a corporation or (ii) a partnership or limited liability company and is (or has previously been) joined by a corporation as a co-issuer of the notes;
- (2) the Person formed by or surviving any such consolidation, merger or amalgamation (if other than the Issuer) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Issuer under the notes, the indenture, the registration rights agreement and the security documents and pursuant to agreements reasonably satisfactory to the trustee and the Collateral Agent;
- (3) immediately after such transaction, no Default or Event of Default exists; and
- (4) the Issuer or the Person formed by or surviving any such consolidation, merger or amalgamation (if other than the Issuer), or to which such sale, assignment, transfer, conveyance or other disposition has been made would, on the date of such transaction after giving *pro forma* effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, (i) be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption "—Incurrence of indebtedness and issuance of preferred stock" or (ii) have had a Fixed Charge Coverage Ratio equal to or greater than the Fixed Charge Coverage Ratio of the Issuer immediately prior to such transaction.

In addition, the Issuer will not, directly or indirectly, lease all or substantially all of the properties and assets of the Issuer and its respective Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

This "Merger, consolidation or sale of assets" covenant will not apply to:

- (1) a merger, amalgamation or consolidation of the Issuer with an Affiliate solely for the purpose of (a) reorganizing the Issuer as a different type of entity; *provided* that in the case where the surviving entity in such merger, amalgamation or consolidation is not a corporation, a corporation becomes (or has previously become) a co-issuer of the notes, or (b) reincorporating or reorganizing the Issuer in another jurisdiction, in each case in a transaction that complies with clauses (1) and (2) of the prior paragraph;
- (2) any consolidation, amalgamation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Issuer and its Restricted Subsidiaries; or
- (3) any merger, amalgamation or consolidation of the Issuer or any Restricted Subsidiary pursuant to or contemplated by the Plans of Reorganization.



Each Guarantor (other than any Guarantor whose Note Guarantee is to be released in accordance with the terms of the Note Guarantee and the Indenture in connection with any transaction complying with the provisions of "—Limitation on asset sales") will not, and the Issuer will not cause or permit any Guarantor to, consolidate with or merge with or into any Person other than the Issuer or any other Guarantor unless:

- (1) the entity formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, lease, conveyance or other disposition shall have been made is a corporation, limited liability company or partnership organized or existing under the laws of the United States, any state of the United States or the District of Columbia;
- (2) such entity (if other than a Guarantor) assumes by supplemental indenture or other documentation or instruments (in form reasonably satisfactory to the trustee and the Collateral Agent), the performance of every covenant and obligation of the Guarantor on the Note Guarantee and the Indenture, the Security Documents and the Intercreditor Agreement, on the part of such Guarantor to be performed or observed, and such entity (whether or not previously a Guarantor) shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien on the Collateral owned by or transferred to such entity, together with such financing statements or comparable documents as may be required to perfect any security interest in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; and
- (3) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

No quantitative or other established meaning has been given to the phrase "all or substantially all" by courts which have interpreted this phrase in various contexts. In interpreting this phrase, courts make a subjective determination as to the portion of assets conveyed, considering such factors as the value of the assets conveyed and the proportion of an entity's income derived from the assets conveyed. Accordingly, there may be uncertainty as to whether a holder of the notes can determine whether the Issuer has sold, leased, conveyed or otherwise disposed of all or substantially all of its assets and exercise any remedies such holder may have upon the occurrence of any such transaction.

Transactions with affiliates

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each, an "Affiliate Transaction"), unless:

- (1) the Affiliate Transaction is on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person; and
- (2) the Issuer delivers to the trustee:
 - (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$20.0 million, a resolution of the Board of



Directors of the Issuer set forth in an officers' certificate certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Issuer; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million, an opinion as to the fairness to the Issuer or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

- (1) any consulting or employment agreement or arrangements, incentive compensation plan, stock option or stock ownership plan, employee benefit plan, severance arrangements, officer or director indemnification agreement or any similar arrangement entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business for the benefit of directors, officers, employees and consultants of the Issuer or a direct or indirect parent of the Issuer and payments and transactions pursuant thereto and payments pursuant thereto;
- (2) transactions between or among the Issuer and/or its Restricted Subsidiaries;
- (3) transactions with a Person (other than an Unrestricted Subsidiary of the Issuer) that is an Affiliate of the Issuer solely because the Issuer owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;
- (4) payment of reasonable directors' fees;
- (5) any transaction in which the only consideration paid by the Issuer or any Restricted Subsidiary consists of Equity Interests (other than Disqualified Stock) of the Issuer or any contribution of capital to the Issuer;
- (6) Restricted Payments that do not violate the provisions of the indenture described above under the caption "—Restricted payments" or that are Permitted Investments (other than those described in clauses (4), (5), (10) and (12) of the definition thereof);
- (7) any agreement, instrument or arrangement as in effect on the date of the indenture or any amendment thereto (so long as such amendment is not materially more disadvantageous, taken as a whole, than the applicable agreement, instrument or arrangement, as in effect on the date of the indenture, as determined in good faith by the Issuer;
- (8) the issuance of the Convertible Notes in connection with the Plans of Reorganization;
- (9) loans or advances to employees in the ordinary course of business not to exceed \$5.0 million in the aggregate at any one time outstanding;
- (10) transactions between the Issuer or any Restricted Subsidiary and any person that is an Affiliate of the Issuer or any Restricted Subsidiary solely because a director of such Person is also a director of the Issuer or any direct or indirect parent entity of the Issuer; *provided* that such director abstains from voting as a director of the Issuer or any direct or indirect parent entity of the Issuer, as the case may be, on any matter involving such other Person;



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- (11) purchase or sale of goods and/or services in the ordinary course of business on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person;
- (12) if such Affiliate Transaction is with an Affiliate in its capacity as a holder of Indebtedness of the Issuer or any Restricted Subsidiary, a transaction in which such Affiliate is treated no more favorably than the other holders of Indebtedness of the Issuer or such Restricted Subsidiary;
- (13) any capital contribution to any Affiliate otherwise permitted by the indenture;
- (14) transactions with any joint venture engaged in a Permitted Business; *provided* that all the outstanding ownership interests of such joint venture are owned only by the Issuer, its Restricted Subsidiaries and Persons that are not Affiliates of the Issuer;
- (15) any Investment of the Issuer or any of its Restricted Subsidiaries existing on the Emergence Date, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Emergence Date;
- (16) transactions between a Receivables Entity and any Person in which the Receivables Entity has an Investment;
- (17) the transactions contemplated by the Plans of Reorganization, including the payment of fees and expenses in connection therewith;
- (18) pledges of Equity Interests of Unrestricted Subsidiaries;
- (19) the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of the registration rights agreement entered into with the Backstop Investors with respect to the Convertible Notes; and
- (20) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business or transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Issuer and its Subsidiaries and not for the purpose of circumventing any provision of this indenture.

Business activities

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

Additional note guarantees

If (a) the Issuer or any of its Restricted Subsidiaries acquires or creates another Wholly owned Restricted Subsidiary (other than (x) a Foreign Subsidiary or (y) a Restricted Subsidiary that when taken together with each other Restricted Subsidiary that is not a Guarantor solely as a result of this clause (y) accounts for less than 1.0% of the Total Assets of the Issuer and its consolidated Restricted Subsidiaries and less than 1.0% of the consolidated revenue of the Issuer) after the



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date of the indenture or (b) any of the Issuer's Restricted Subsidiaries that is not a Guarantor guarantees any other Indebtedness of the Issuer or a Guarantor, then that newly acquired or created Wholly owned Restricted Subsidiary or Restricted Subsidiary, as applicable, will become a Guarantor of the notes and execute a supplemental indenture and security documents, if applicable, and deliver an opinion of counsel and an officers' certificate as to the authorization, execution, delivery and enforceability of such supplemental indenture and security documents satisfactory to the trustee (and, if applicable, the Collateral Agent) within 20 business days of the date on which it was acquired, created or guaranteed the other Indebtedness.

Designation of restricted and unrestricted subsidiaries

The Board of Directors of the Issuer may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default; *provided* that in no event will the businesses currently operated by the Issuer be transferred to or held by an Unrestricted Subsidiary. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Issuer and its Restricted Subsidiaries in the Restricted 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 "—Restricted payments" or under one or more clauses of the definition of "Permitted Investments," as determined by the Issuer. That designation will only be permitted if the Investment would be permitted at that time and if such Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Issuer 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 Issuer as an Unrestricted Subsidiary will be evidenced to the trustee by filing with the trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an officers' certificate certifying that such designation complied with the preceding conditions and was permitted by the covenant described above under the caption "—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 Unrestricted Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Issuer 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 "—Incurrence of indebtedness and issuance of preferred stock," the Issuer will be in default of such covenant. The Board of Directors of the Issuer may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Issuer; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Issuer 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 "—Incurrence of indebtedness and issuance of preferred stock," calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Payments for consent

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any holder of notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the



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indenture, the security documents or the notes unless such consideration is offered to be paid and is paid to all holders of the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Activities of Escrow Corp.

Escrow Corp.'s activities will be restricted to issuing the notes, performing its obligations with respect to the notes under the indenture (including granting a security interest) and the Escrow Agreement and consummating the assumption of the obligations under the notes and the indenture by AbitibiBowater Inc. or redeeming the Redemption Amount, as applicable. Escrow Corp. may not own, hold or otherwise have any interest in any assets other than the escrow account and cash or certain cash equivalents.

Reports

Whether or not required by the rules and regulations of the SEC, so long as any notes are outstanding, the Issuer will furnish to the trustee, within the time periods specified in the SEC's rules and regulations (including any extensions provided therein) for a filer that is a "non-accelerated filer" (or any successor term that provides an entity with the greatest time period for filing periodic reports with the SEC) plus five business days:

- (1) all quarterly and annual reports that would be required to be filed with the SEC on Forms 10-K and 10-Q (or any successor or comparable forms) if the Issuer were required to file such reports; and
- (2) 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 Issuer were required to file such reports.

All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on the Issuer's consolidated financial statements by the Issuer's certified independent accountants. Notwithstanding the above reporting requirements, the Issuer shall not be required to disclose to the trustee (or the holders of the notes) any materials for which it has sought and has received (or reasonably expects to receive) confidential treatment from the SEC.

Notwithstanding the foregoing, the Issuer shall not be required to comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as such provisions have been implemented pursuant to the rules and regulations of the SEC. The Issuer will not take any action for the purpose of causing the SEC not to accept any such filings. If, notwithstanding the foregoing, the SEC will not accept the Issuer's filings for any reason, the Issuer will post the reports referred to in the preceding paragraphs on its website within the time periods described above.

In addition, the Issuer and the Guarantors agree that, for so long as any notes remain outstanding, if at any time they are not required to file with the SEC the reports required by the preceding paragraphs, they will furnish to the holders of notes 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.

Notwithstanding anything herein to the contrary, the Issuer will not be deemed to have failed to comply with any of its reporting requirements set forth above for the purposes of clause (4) under "—Events of default and remedies" until 120 days after the proper notice under such



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clause (4) has been provided. For the avoidance of doubt, a Default resulting from a failure to provide any report required above shall be cured upon the provision of such report prior to the acceleration of the notes.

Events of default and remedies

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

- (1) default for 30 days in the payment when due of interest on, or Special Interest, if any, with respect to, the notes;
- (2) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the notes;
- (3) failure by the Issuer or any of its Restricted Subsidiaries for 30 days after notice to the Issuer by the trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding voting as a single class to comply with the provisions described under the captions "—Repurchase at the option of holders—Change of control," "—Repurchase at the option of holders—Asset sales" or "—Certain covenants—Merger, consolidation or sale of assets";
- (4) failure by the Issuer or any of its Restricted Subsidiaries for 60 days after notice to the Issuer by the trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding voting as a single class to comply with any of the other agreements in the indenture or the security documents;
- (5) 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 Issuer or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created after the date of the indenture, if that default:
 - (a) is caused by a failure to pay principal of, or interest or premium, if any, on, such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a "Payment Default"); or
 - (b) results in the acceleration of such Indebtedness prior to its express maturity,

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

- (6) failure by the Issuer, any Restricted Subsidiary of the Issuer or any group of Restricted Subsidiaries of the Issuer to pay final and non-appealable judgments entered by a court or courts of competent jurisdiction aggregating in excess of \$50.0 million (net of any amounts covered by insurance or pursuant to which the Issuer is indemnified to the extent that the third party under such agreement acknowledges its obligations thereunder), which judgments are not paid, discharged or stayed for a period of 60 days and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree that is not promptly stayed;



- (7) except as permitted by the indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee;
- (8) certain events of bankruptcy or insolvency described in the indenture with respect to the Issuer, the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of its Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; and
- (9) unless all of the Collateral has been released from the Note Liens in accordance with the provisions of the security documents, the default, repudiation or disaffirmation by the Issuer or any of its Restricted Subsidiaries of any of their obligations under the security documents (other than by reason of a release of such obligation or Lien related thereto in accordance with the indenture or the security documents), which default, repudiation or disaffirmation results in Collateral having an aggregate Fair Market Value in excess of \$50.0 million not being subject to a valid, perfected security interest in favor of the Collateral Agent under any applicable law (other than the law of any foreign jurisdiction) (to the extent required under the security documents), or a determination in a judicial proceeding that the security documents are unenforceable or invalid against the Issuer or any of its Restricted Subsidiaries for any reason with respect to Collateral having an aggregate Fair Market Value of \$50.0 million or more; *provided* that such default, repudiation, disaffirmation or determination is not rescinded, stayed, or waived by the Persons having such authority pursuant to the security documents or otherwise cured within 60 days after the Issuer receives written notice thereof specifying such occurrence from the trustee or the holders of at least 25% of the outstanding principal amount of the notes demanding that such default be remedied.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Issuer, any Restricted Subsidiary of the Issuer that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary, all outstanding notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding notes may declare all the notes to be due and payable immediately.

Subject to certain limitations, holders of a majority in aggregate principal amount of the then outstanding notes may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of the notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal, interest or premium or Special Interest, if any.

Subject to the provisions of the indenture relating to the duties of the trustee, in case an Event of Default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any holders of notes 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, premium, if any, or interest or Special Interest, if any, when due, no holder of a note may pursue any remedy with respect to the indenture or the notes unless:

- (1) such holder has previously given the trustee notice that an Event of Default is continuing;



- (2) holders of at least 25% in aggregate principal amount of the then outstanding notes have requested the trustee to pursue the remedy;
- (3) such holders have offered 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 request and the offer of security or indemnity; and
- (5) holders of a majority in aggregate principal amount of the then outstanding notes have not given the trustee a direction inconsistent with such request within such 60-day period.

The holders of a majority in aggregate principal amount of the then outstanding notes by notice to the trustee may, on behalf of the holders of all of the notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the indenture except a continuing Default or Event of Default in the payment of interest or premium or Special Interest, if any, on, or the principal of, the notes.

The Issuer is required to deliver to the trustee annually a statement regarding compliance with the indenture. Upon becoming aware of any Default or Event of Default, the Issuer is required to deliver to the trustee a statement specifying such Default or Event of Default.

No personal liability of directors, officers, employees and stockholders

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor, as such, will have any liability for any obligations of the Issuer or the Guarantors under the notes, the indenture, the Note Guarantees, the security documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Legal defeasance and covenant defeasance

The Issuer may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an officers' certificate, elect to have all of its obligations discharged with respect to the outstanding notes, all obligations of the Guarantors discharged with respect to their Note Guarantees and all of the Liens on Collateral securing the notes released ("*Legal Defeasance*") except for:

- (1) the rights of holders of outstanding notes to receive payments in respect of the principal of, or interest or premium, if any, on, such notes when such payments are due from the trust referred to below;
- (2) the Issuer's obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trusts, duties and immunities of the trustee, and the Issuer's and the Guarantors' obligations in connection therewith; and
- (4) the Legal Defeasance and Covenant Defeasance provisions of the indenture.



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In addition, the Issuer may, at its option and at any time, elect to have the obligations of the Issuer and the Guarantors released with respect to certain covenants (including its obligation to make Change of Control Offers and Net Proceeds Offers) that are described in the indenture ("*Covenant Defeasance*") and to have all of the Liens on the Collateral securing the notes released and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, all Events of Default described under "—Events of default and remedies" (except those relating to payments on the notes or bankruptcy, receivership, rehabilitation or insolvency) will no longer constitute an Event of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (1) the Issuer must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the notes, cash in U.S. dollars, non-callable Government Obligations, or a combination of cash in U.S. dollars and non-callable Government Obligations, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, or interest and premium, if any, on, the outstanding notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Issuer must specify whether the notes are being defeased to such stated date for payment or to a particular redemption date;
- (2) in the case of Legal Defeasance, the Issuer must deliver to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that (a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of the indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel will confirm that, the holders of the outstanding notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (3) in the case of Covenant Defeasance, the Issuer must deliver to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that the holders of the outstanding notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (4) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;
- (5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than the indenture) to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;
- (6) the Issuer must deliver to the trustee an officers' certificate stating that the deposit was not made by the Issuer with the intent of preferring the holders of notes over the other creditors



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of the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or others; and

- (7) the Issuer must deliver to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Collateral will be released from the Lien securing the notes, as provided under the caption "—Use and release of collateral—Release of collateral," upon a Legal Defeasance or Covenant Defeasance in accordance with the provisions described above.

Amendment, supplement and waiver

Except as provided in the next five succeeding paragraphs, the indenture, the security documents, or the notes or the Note Guarantees may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes), and any existing Default or Event of Default or compliance with any provision of the indenture, the security documents or the notes or the Note Guarantees may be waived with the consent of the holders of a majority in aggregate principal amount of the then outstanding notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes).

Without the consent of each holder of notes affected, an amendment, supplement or waiver may not (with respect to any notes held by a non-consenting holder):

- (1) reduce the principal amount of notes whose holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the fixed maturity of any note or alter the provisions with respect to the redemption of the notes (other than provisions relating to the covenants described above under the caption "—Repurchase at the option of holders");
- (3) reduce the rate of or change the time for payment of interest, including default interest, on any note;
- (4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the notes (except a rescission of acceleration of the notes by the holders of at least a majority in aggregate principal amount of the then outstanding notes and a waiver of the payment default that resulted from such acceleration);
- (5) make any note payable in money other than that stated in the notes;
- (6) make any change in the provisions of the indenture relating to waivers of past Defaults or the rights of holders of notes to receive payments of principal of, or interest or premium, if any, on, the notes;
- (7) waive a redemption payment with respect to any note (other than a payment required by one of the covenants described above under the caption "—Repurchase at the option of holders");
- (8) release any Guarantor from any of its obligations under its Note Guarantee or the indenture, except in accordance with the terms of the indenture; or



(9) make any change in the preceding amendment and waiver provisions.

In addition, any amendment to, or waiver of, the provisions of the indenture or any security document that has the effect of releasing all or substantially all of the Collateral from the Note Liens shall require the consent of the holders of at least 66⅔% in aggregate principal amount of the notes then outstanding under the indenture.

Without the consent of the holders of at least 75% in aggregate principal amount of the notes then outstanding, no amendment or waiver may make any change to, or extend the time for performance under, the escrow release provisions described under "—Escrow of proceeds; Release conditions" or the Special Mandatory Redemption provisions described under "—Special mandatory redemption."

Notwithstanding the preceding, without the consent of any holder of notes, the Issuer, the Guarantors and the trustee may amend or supplement the indenture, the notes, the Note Guarantees or the security documents:

- (1) to cure any ambiguity, defect or inconsistency;
- (2) to provide for uncertificated notes in addition to or in place of certificated notes;
- (3) to provide for the assumption of the Issuer's or a Guarantor's obligations to holders of notes and Note Guarantees in the case of a merger or consolidation or sale of all or substantially all of the Issuer's or such Guarantor's assets, as applicable;
- (4) to make any change that would provide any additional rights or benefits to the holders of notes or that does not adversely affect the legal rights under the indenture of any such holder;
- (5) to comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;
- (6) to conform the text of the indenture, the Note Guarantees, the security documents or the notes to any provision of this "Description of notes" to the extent that such provision in this "Description of notes" was intended to be a verbatim recitation of a provision of the indenture, the Note Guarantees, the security documents or the notes, which intent shall be evidenced by an officers' certificate of the Issuer to that effect;
- (7) to provide for the issuance of Additional Notes in accordance with the limitations set forth in the indenture as of the date of the indenture;
- (8) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes;
- (9) to make, complete or confirm any grant of Collateral permitted or required by the indenture or any of the security documents or any release of Collateral that becomes effective as set forth in the indenture or any of the security documents; or
- (10) to comply with the rules of any applicable securities depository.

In addition, the trustee and the Collateral Agent will be authorized to amend the Intercreditor Agreement or the security documents to add additional secured parties holding Permitted Additional Pari Passu Obligations or ABL Obligations permitted by the indenture with the same



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Lien priorities and rights as provided in the Intercreditor Agreement or to enter into intercreditor arrangements with the holders of any such Indebtedness so long as the terms of such intercreditor arrangements are not less favorable to the holders of notes than the intercreditor provisions contained in the Security Agreement and the Intercreditor Agreement.

The consent of the holders of notes is not necessary under the indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

Satisfaction and discharge

The indenture and the notes will be discharged (and all Liens on the Collateral securing the notes will be released) and the indenture will cease to be of further effect as to all notes issued thereunder, when:

(1) either:

(a) all notes that have been authenticated, except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer, have been delivered to the trustee for cancellation; or

(b) all notes that have not been delivered to the trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the trustee as trust funds in trust solely for the benefit of the holders, cash in U.S. dollars, non-callable Government Obligations, or a combination of cash in U.S. dollars and non-callable Government Obligations, in amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the notes not delivered to the trustee for cancellation for principal, premium and Special Interest, if any, and accrued interest to the date of maturity or redemption;

- (2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;
- (3) the Issuer or any Guarantor has paid or caused to be paid all sums payable by it under the indenture; and
- (4) the Issuer has delivered irrevocable instructions to the trustee under the indenture to apply the deposited money toward the payment of the notes at maturity or on the redemption date, as the case may be.

In addition, the Issuer must deliver an officers' certificate and an opinion of counsel to the trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

The Collateral will be released from the Lien securing the notes, as provided under the caption "—Use and release of collateral—Release of collateral," upon a satisfaction and discharge in accordance with the provisions described above. Upon request, the Collateral Agent will acknowledge the release of such Liens upon presentation of an officers' certificate and an opinion of counsel, as provided in the indenture.



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Concerning the trustee

If the trustee becomes a creditor of the Issuer or any Guarantor, the indenture limits the right of the trustee to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (if the indenture has been qualified under the Trust Indenture Act) or resign.

The holders of a majority in aggregate principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee, subject to certain exceptions. The indenture provides that in case an Event of Default occurs and is continuing, the trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless such holder has offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Governing law

The indenture, the notes, the Note Guarantees, the Security Agreement and the Intercreditor Agreement will be governed by and construed in accordance with the laws of the State of New York.

Certain definitions

Set forth below are certain defined terms used in the indenture. Reference is made to the indenture for a full disclosure of all defined terms used therein, as well as any other capitalized terms used herein for which no definition is provided.

"ABL Credit Agreement" means the credit agreement, to be dated on or prior to the Emergence Date among the Issuer and the other Subsidiaries of the Issuer party thereto, the various lenders and agents party thereto and Citibank, N.A., as Administrative Agent, together with any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities, receivables securitization facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder, alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender, group of lenders or investors.

"ABL Facility Collateral Agent" means Citibank, N.A., as collateral agent under the ABL Credit Agreement, and its successors, replacements and/or assigns in such capacity.

"ABL Liens" means all Liens in favor of the ABL Facility Collateral Agent on Collateral securing the ABL Obligations.

"ABL Obligations" means (x) the Indebtedness and other obligations which are secured by a Lien on the Collateral permitted by clause (b) of the definition of "Permitted Liens" and (y) obligations in respect of "Bank Products" (which is defined in the Intercreditor Agreement to



include certain cash management obligations and Hedging Obligations) that are permitted to be secured pursuant to the definition of "Permitted Liens."

▲ "ABL Priority Collateral" shall mean the following property of the Issuer and the Guarantors, whether now owned or hereafter acquired (but excluding Excluded Assets described under "—Security"):

- (1) all accounts, other than (i) the Collateral Proceeds Account and (ii) other accounts which constitute identifiable proceeds which arise from the sale, license, assignment or other disposition of Notes Priority Collateral;
- (2) all chattel paper, other than chattel paper which constitutes identifiable proceeds of Notes Priority Collateral;
- (3) all (x) deposit accounts and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein, and (y) securities accounts and security entitlements and securities credited thereto, and, in each case, all cash, checks and other property held therein or credited thereto;
- (4) all inventory;
- (5) to the extent relating to, evidencing or governing any of the items referred to in the preceding clauses (1) through (4) constituting ABL Priority Collateral, all documents, general intangibles (other than patents, trademarks, copyrights and other intellectual property), instruments (including promissory notes) and commercial tort claims;
- (6) to the extent relating to any of the items referred to in the preceding clauses (1) through (5) constituting ABL Priority Collateral, all supporting obligations and letter of credit rights;
- (7) all books and records relating to the items referred to in the preceding clauses (1) through (6) constituting ABL Priority Collateral (including all books, databases, customer lists, and records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (6)); and
- (8) all proceeds of any of the foregoing, including collateral security and guarantees with respect to any of the foregoing and all cash, money, insurance proceeds, instruments, securities, financial assets and deposit accounts.▲

"Acquired Debt" means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.



"Applicable Accounting Standards" means, as of the date of this indenture, U.S. GAAP; *provided, however,* that the Issuer may, upon not less than sixty (60) days' prior written notice to the trustee, change to IFRS; *provided, however,* that notwithstanding the foregoing, if the Issuer changes to IFRS, it may elect, in its sole discretion, to continue to utilize U.S. GAAP for the purposes of making all calculations under the indenture that are subject to Applicable Accounting Standards and the notice to the trustee required upon the change to IFRS shall set forth whether or not the Issuer intends to continue to use U.S. GAAP for purposes of making all calculations under the indenture. In the event the Issuer elects to change to IFRS for purposes of making calculations under the indenture, references in the indenture to a standard or rule under U.S. GAAP shall be deemed to refer to the most nearly comparable standard or rule under IFRS.

"Applicable Premium" means, with respect to a note, the greater of:

- (1) 1.0% of the then outstanding principal amount of such note and
- (2)(a) the present value of all remaining required interest and principal payments due on such note and all premium payments relating to such note assuming a redemption date of 2014, computed using a discount rate equal to the Treasury Rate plus 50 basis points, minus
- (b) the then outstanding principal amount of such note, *minus*
- (c) accrued interest paid on the date of redemption.

"Asset Sale" means:

- (1) the sale, lease, conveyance or other disposition of any assets or rights; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the indenture described above under the caption "—Repurchase at the option of holders—Change of control" and/or the provisions described above under the caption "—Certain covenants—Merger, consolidation or sale of assets" and not by the provisions of the Asset Sale covenant; and
- (2) the issuance of Equity Interests by any of the Issuer's Restricted Subsidiaries or the sale of Equity Interests in any of the Issuer's Subsidiaries (other than directors' qualifying Equity Interests or Equity Interests required by applicable law to be held by a Person other than the Issuer or one of its Restricted Subsidiaries).

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

- (1) any single transaction or series of related transactions that involves assets not constituting Notes Priority Collateral having a Fair Market Value of less than \$15.0 million;
- (2) any single transaction or series of related transactions that involves assets constituting Notes Priority Collateral having a Fair Market Value of less than \$5.0 million;
- (3) a transfer of assets constituting Notes Priority Collateral between or among the Issuer and the Guarantors;
- (4) a transfer of assets that are not Notes Priority Collateral between or among the Issuer and its Restricted Subsidiaries;
- (5) an issuance of Equity Interests by a Restricted Subsidiary of the Issuer to the Issuer or to a Restricted Subsidiary of the Issuer;



- (6) the sale or lease of products, services or accounts receivable in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets;
- (7) the sale or other disposition of Cash Equivalents not constituting Collateral;
- (8) a Restricted Payment that does not violate the covenant described above under the caption "—Certain covenants—Restricted payments" or a Permitted Investment;
- (9) the licensing of intellectual property or other general intangibles to third persons on customary terms in the ordinary course of business;
- (10) the sale, lease, sublease, license, sublicense, consignment, conveyance or other disposition of inventory not constituting Collateral in the ordinary course of business, including leases with respect to facilities that are temporarily not in use or pending their disposition, or accounts receivable in connection with the compromise, settlement or collection thereof;
- (11) dispositions of accounts receivable and related assets to a Receivables Entity in connection with a Qualified Receivables Transaction;
- (12) a disposition of leasehold improvements or leased assets in connection with the termination of any operating lease;
- (13) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive factoring or similar arrangements;
- (14) any sale of Equity Interests in, or other ownership interests in or assets or property, including Indebtedness, or other securities of, an Unrestricted Subsidiary;
- (15) (a) any exchange of assets (including a combination of assets and Cash Equivalents) for assets related to a Permitted Business of comparable or greater market value or usefulness to the business of the Issuer and the Restricted Subsidiaries as a whole, as determined in good faith by the Issuer and (b) in the ordinary course of business, any swap of assets, or lease, assignment or sublease of any real or personal property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or greater value or usefulness to the business of the Issuer and the Restricted Subsidiaries as a whole, as determined in good faith by the Issuer; *provided* that if the assets transferred pursuant to this clause (15) are Notes Priority Collateral the assets received in exchange therefor shall be Notes Priority Collateral;
- (16) any sale, conveyance or other disposition of assets of any Restricted Subsidiary that is not a Wholly owned Restricted Subsidiary, except to the extent that the proceeds thereof are distributed to the Issuer or a Wholly owned Restricted Subsidiary;
- (17) any foreclosure or any similar action with respect to the property or other assets of the Issuer or any Restricted Subsidiary;
- (18) any sale, conveyance or other disposition of property or assets of the Issuer or any Restricted Subsidiary (whether in a single transaction or a series of related transactions) in connection with and pursuant to the Plans of Reorganization; and
- (19) the creation of or realization on a Lien to the extent that the granting of such Lien was not in violation of the covenant described above under the caption "—Certain covenants—Liens."



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

"*Bankruptcy Courts*" means each of the United States Bankruptcy Court for the District of Delaware and the Superior Court of Quebec in Canada.

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

"*Board of Directors*" means:

- (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Borrowing Base*" means, as of any date, an amount equal to:

- (1) the excess, if positive, of (x) 85% of the face amount of all accounts receivable owned by the Issuer and its Restricted Subsidiaries as of the end of the most recent fiscal quarter preceding such date over (y) \$125.0 million; plus
- (2) the excess, if positive, of (x) 65% of the book value of all Eligible Inventory owned by the Issuer and its Restricted Subsidiaries as of the end of the most recent fiscal quarter preceding such date over (y) \$25.0 million.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with Applicable Accounting Standards, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.



"Capital Stock" means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Cash Equivalents" means:

- (1) United States dollars and Canadian dollars or any other currency freely convertible into United States or Canadian dollars;
- (2) securities issued or directly and fully guaranteed or insured by the Canadian or United States government or any agency or instrumentality of the Canadian or United States government (*provided that the full faith and credit of Canada or the United States is pledged in support of those securities*) having maturities of not more than six months from the date of acquisition;
- (3) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any lender party to the ABL Credit Agreement or with any Canadian or United States commercial bank having capital and surplus in excess of \$500.0 million and a Thomson Bank Watch Rating of "B" or better;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within nine months after the date of acquisition;
- (6) securities issued by any state of the United States of America, any province of Canada or any political subdivision or any public instrumentality of any such state or province maturing within one year from the date of acquisition thereof and at the time of acquisition thereof, having one of the two highest ratings obtainable from either Standard & Poor's or Moody's;
- (7) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (6) of this definition; and
- (8) local currencies held by the Issuer or any of its Restricted Subsidiaries, from time to time in the ordinary course of business and consistent with past practice.

"Casualty or Condemnation Event" means any taking under power of eminent domain or similar proceeding and any insured loss, in each case, relating to property or other assets that constituted Collateral.



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

- (1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act);
- (2) the adoption of a plan relating to the liquidation or dissolution of the Issuer (other than a plan of liquidation of the Issuer that is a liquidation for tax purposes only);
- (3) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any "person" (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Issuer, measured by voting power rather than number of shares;
- (4) the Issuer consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Issuer, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Issuer or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Issuer outstanding immediately prior to such transaction constitutes or is converted into or exchanged for a majority of the outstanding shares of the Voting Stock of such surviving or transferee Person (immediately after giving effect to such transaction); or
- (5) the first day on which a majority of the members of the Board of Directors of the Issuer are not Continuing Directors.

Notwithstanding the foregoing: (A) any holding company whose only significant asset is Equity Interests of the Issuer or any of its direct or indirect parent companies shall not itself be considered a "person" or "group" for purposes of clause (2) above; (B) the transfer of assets between or among the Guarantors and the Issuer shall not itself constitute a Change of Control; (C) the term "Change of Control" shall not include a merger or consolidation of the Issuer with or the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Issuer's assets to, an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Issuer in another jurisdiction and/or for the sole purpose of forming or collapsing a holding company structure; and (D) a "person" or "group" shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) until the consummation of the transactions contemplated by such agreement.

"Collateral Agent" means the Trustee, in its capacity as collateral agent for the holders of notes and holders of Permitted Additional Pari Passu Obligations, together with its successors in such capacity.

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

- (1) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*
- (2) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*



- (3) depreciation, amortization (including amortization of intangibles, deferred financing fees, debt incurrence costs, commissions, fees and expenses, but excluding amortization of prepaid cash expenses that were paid in a prior period), depletion and other non-cash expenses or charges (including any write-offs of debt issuance or deferred financing costs or fees and impairment charges and the impact on depreciation and amortization of purchase accounting), but excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses or charges were deducted in computing such Consolidated Net Income; *plus*
- (4) the amount of net loss resulting from the payment of any premiums, fees or similar amounts that are required to be paid under the terms of the instrument(s) governing any Indebtedness upon the repayment, prepayment or other extinguishment of such Indebtedness in accordance with the terms of such Indebtedness; *plus*
- (5) business optimization expenses and other restructuring charges, reserves or expenses (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, facility consolidations, retention, headcount reductions, systems establishment costs, contract termination costs, future lease commitments and excess pension charges) in an amount not to exceed \$50.0 million for any four fiscal quarter period; *plus*
- (6) nonrecurring charges or expenses made or incurred in connection with any restructuring, and transaction costs incurred in connection with any acquisition, in each case to the extent deducted in computing such Consolidated Net Income; *plus*
- (7) any impairment charges or asset write-offs, in each case pursuant to Applicable Accounting Standards, and the amortization of intangibles arising pursuant to Applicable Accounting Standards; *plus*
- (8) any expenses incurred in connection with the ongoing administration of the Creditor Protection Proceedings; *minus*
- (9) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with Applicable Accounting Standards.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of the Issuer will be added to Consolidated Net Income to compute Consolidated Cash Flow of the Issuer only to the extent that a corresponding amount would be permitted at the date of determination to be dividended to the Issuer by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

"Consolidated Net Income" means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period,



on a consolidated basis determined in accordance with Applicable Accounting Standards and without any reduction in respect of preferred stock dividends; *provided* that:

- (1) all extraordinary gains and losses and all gains and losses realized in connection with any Asset Sale or the disposition of securities or the early extinguishment of Indebtedness or Hedging Obligations, together with any related provision for taxes on any such gain, will be excluded;
- (2) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;
- (3) the net income (or loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders; *provided* that for purposes of determining Consolidated Cash Flow, the net income of any such Restricted Subsidiary that is a Guarantor will be included;
- (4) the cumulative effect of a change in accounting principles will be excluded;
- (5) notwithstanding clause (2) above, the net income of any Unrestricted Subsidiary will be excluded to the extent received by the specified Person or one of its Restricted Subsidiaries;
- (6) any restoration to or deduction from income related to the post-emergence settlement of pre-petition claims obligations in relation to Creditor Protection Proceedings (to the extent resulting solely in adjustments to the equity of the Issuer) following the date of the indenture will be excluded;
- (7) any charges or credits relating to any purchase accounting adjustments or any non-cash reorganization expenses (including, without limitation, expenses incurred after the Emergence Date in connection with the Plans of Reorganization) or charges resulting from the adoption of fresh start accounting principles will be excluded;
- (8) (i) any (a) one-time non-cash compensation charges, (b) non-cash costs or expenses resulting from stock option plans, employee benefit plans, compensation charges or postemployment benefit plans, or grants or awards of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights and (c) write-offs or write-downs of goodwill will be excluded and (ii) any asset impairment charge (other than impairments of goodwill) shall be recognized on a straight line basis over the ten year period commencing with the date such charges would otherwise be recognized in accordance with Applicable Accounting Standards;
- (9) any gain or loss for such period from currency translation gains or losses or net gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resolution from Hedging Obligations for currency exchange risk entered in relation with Indebtedness) will be excluded;



- (10) any unrealized net after-tax income (loss) from Hedging Obligations or cash management Obligations and the application of Accounting Standards Codification Topic 815 "Derivatives and Hedging" or from other derivative instruments shall be excluded;
- (11) non-cash interest expense resulting from the application of Accounting Standards Codification Topic 470-20 "Debt—Debt with Conversion Options—Recognition" shall be excluded;
- (12) any charges resulting from the application of Accounting Standards Codification Topic 805 "Business Combinations," Accounting Standards Codification Topic 350 "Intangibles—Goodwill and Other," Accounting Standards Codification Topic 360-10-35-15 "Impairment or Disposal of Long-Lived Assets," Accounting Standards Codification Topic 480-10-25-4 "Distinguishing Liabilities from Equity—Overall—Recognition" or Accounting Standards Codification Topic 820 "Fair Value Measurements and Disclosures" shall be excluded; and
- (13) the amortization or write-off of financing fees in connection with the Transactions shall be excluded.

"*Consolidated Priority Debt*" means, as of any date of determination, an amount, without duplication, equal to the aggregate principal amount of (i) all outstanding Indebtedness of the Issuer and the Guarantors as of such date that is secured by a Permitted Lien pursuant to clauses (1), (2), (4), (5), (7), (8), (13) (to the extent representing a refinancing of Indebtedness otherwise described in this clause (i)), (28), (37) and (38) of the definition thereof *plus* (ii) all outstanding Indebtedness of Restricted Subsidiaries that are not Guarantors as of such date.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors of the Issuer who:

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

"*Convertible Notes*" means the 10% Convertible Senior Subordinated Notes due 2017 of the Issuer.

"*Credit Facilities*" means one or more debt facilities or commercial paper facilities (including without limitation the credit facilities provided under ABL Credit Agreement), in each case, with banks or other lenders or credit providers or a trustee providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables), bankers acceptances, letters of credit or issuances of senior secured notes, including any related notes, guarantees, collateral documents, instruments, documents and agreements executed in connection therewith and in each case, as amended, restated, modified, renewed, extended, supplemented, restructured, refunded, replaced in any manner (whether upon or after termination or otherwise) or refinanced (including, in each case, by means of sales of debt securities to institutional investors) in whole or in part from time to time, in one or more instances and including any amendment increasing the amount of Indebtedness incurred or available to be borrowed thereunder, extending the maturity of any Indebtedness incurred thereunder or contemplated thereby or deleting, adding or substituting one or more parties



thereto (whether or not such added or substituted parties are banks or other institutional lenders), including into one or more separate instruments or facilities, in each case, whether any such amendment, restatement, modification, renewal, extension, supplement, restructuring, refunding, replacement or refinancing occurs simultaneously or not with the termination or repayment of a prior Credit Facility.

"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.

"Designated Non-cash Consideration" means the Fair Market Value of non-cash consideration received by the Issuer or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an officer's certificate delivered to the trustee, setting forth the basis of such valuation.

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Issuer may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption "—Certain covenants—Restricted payments." The amount of Disqualified Stock deemed to be outstanding at any time for purposes of the indenture will be the maximum amount that the Issuer and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"Eligible Inventory" means all inventory other than inventory that would be classified as "Mill Stores and other supplies" in accordance with the standards set forth in the footnotes to the Company's financial statements included in this offering memorandum.

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

"Escrow Agent" means as escrow agent under the Escrow Agreement or any successor escrow agent as set forth in the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement dated as of the date of the indenture, among the Issuer, the trustee and the Escrow Agent, as amended, supplemented, modified, extended, renewed, restated or replaced in whole or in part from time to time.

"Escrow End Date" means December 31, 2010.

"Escrow Investment" means (1) Treasury Securities, (2) investments in time deposit accounts, certificates of deposit and money market deposits maturing no later than the Escrow End Date in each case, entitled to U.S. Federal deposit insurance for the full amount thereof or issued by a



bank or trust company (including the Escrow Agent or an affiliate of the Escrow Agent) which is organized under the laws of the United States of America or any State thereof having capital, surplus and undivided profits aggregating in excess of \$500.0 million and (3) repurchase obligations maturing no later than the Escrow End Date entered into with a nationally recognized broker-dealer, with respect to which the purchase securities are Obligations issued or guaranteed by the United States government or any agency thereof, which repurchase Obligations shall be entered into pursuant to written agreements.

"Escrow Proceeds" has the meaning ascribed to such term under "—Escrow of proceeds; Release conditions."

"Excluded Proceeds" means the net proceeds from the sale of Specified Assets by the Issuer or any of its Subsidiaries, during the period commencing on the Emergence Date and ending on the date that is six months thereafter, which net proceeds are used to repurchase, redeem or otherwise retire all or a portion of the outstanding principal amount of the Convertible Notes pursuant to the indenture governing the Convertible Notes as in effect on the Emergence Date.

"Existing Indebtedness" means all indebtedness of the Issuer and its Subsidiaries (other than Indebtedness under the ABL Credit Agreement) in existence on the date of the indenture, until such amounts are repaid, including the Convertible Notes, to the extent issued on such date under the Plans of Reorganization.

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by (unless otherwise provided in the indenture) (i) if such Fair Market Value is less than \$20.0 million, the Chief Financial Officer of the Issuer and (ii) if such Fair Market Value is \$20.0 million or greater, the Board of Directors of the Issuer.

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

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

- (1) acquisitions, dispositions, discontinued operations or other operational changes that have been made by the specified Person or any of its Restricted Subsidiaries, including through Investments, mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to



the Calculation Date, or that are to be made on the Calculation Date, will be given *pro forma* effect, in the good-faith judgment of the Chief Financial Officer of the Issuer, as if they had occurred on the first day of the four-quarter reference period, and such *pro forma* calculations may reflect operating expense reductions and other operating improvements or synergies expected to result from the applicable event based on actions to be taken within 12 months after the relevant event (to the extent set forth in an officer's certificate in reasonable detail, including the cost and timing of such expense reductions or other operating improvements or synergies), in each case, net of all costs required to achieve such expense reduction or other operating improvement or synergy;

- (2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with Applicable Accounting Standards, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;
- (3) the Fixed Charges attributable to discontinued operations, as determined in accordance with Applicable Accounting Standards, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;
- (4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;
- (5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and
- (6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).

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

- (1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts, yield and other fees and charges (including interest) incurred in connection with any Qualified Receivables Transaction or any other transaction pursuant to which the Issuer or any of its Subsidiaries may sell, convey or otherwise transfer or grant a security interest in any accounts receivable or related assets of the type specified in the definition of "Qualified Receivables Transaction" and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates; *provided* that the amortization or write-off of deferred financing fees shall be excluded from Fixed Charges; *plus*
- (2) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of Disqualified Stock of the Issuer or preferred stock any Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Issuer (other than



Disqualified Stock) or to the Issuer or a Restricted Subsidiary of the Issuer, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, determined on a consolidated basis in accordance with Applicable Accounting Standards.

Notwithstanding the foregoing, any charges arising from (i) the application of Accounting Standards Codification Topic 480-10-25-4 "Distinguishing Liabilities from Equity—Overall—Recognition" to any series of preferred stock other than Disqualified Stock, (ii) the application of Accounting Standards Codification Topic 470-20 "Debt—Debt with Conversion Options—Recognition" or (iii) Convertible Notes prior to their release from escrow pursuant to the Plans of Reorganization, in each case, shall be disregarded in the calculation of Fixed Charges.

"*Foreign Subsidiary*" means, with respect to any Person, any Subsidiary of such Person that is not a U.S. Subsidiary and any Subsidiary of such a Subsidiary, whether or not a U.S. Subsidiary.

"*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 by the United States of America, which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository 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 depository receipt; *provided, however*, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository 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 depository receipt.

"*Gross Proceeds*" means the aggregate U.S. Dollar amount received by Escrow Corp. pursuant to the sale of the notes, after giving effect to any original issue discount.

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

"*Guarantors*" means the Issuer and any Restricted Subsidiary of the Issuer that executes a Note Guarantee in accordance with the provisions of the indenture, and their respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of the indenture.



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"Hedging Obligations" means, with respect to any specified Person, the obligations of such Person under:

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

"IFRS" means the International Financial Reporting Standards, as promulgated by the International Accounting Standards Board (or any successor board or agency), as in effect on the date of the election, if any, by the Issuer to change Applicable Accounting Standards to IFRS.

"Indebtedness" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);
- (3) in respect of banker's acceptances;
- (4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;
- (5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed but excluding other accrued liabilities being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;
- (6) representing any Hedging Obligations,

if and to the extent any of the preceding items would appear as a liability upon a balance sheet (excluding the footnotes) of the specified Person prepared in accordance with Applicable Accounting Standards. In addition, the term *"Indebtedness"* includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person as shall equal the lesser of (x) the Fair Market Value of such asset as of the date of determination or (y) the amount of such Indebtedness and, to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person.

Notwithstanding the foregoing, the term *"Indebtedness"* will not include (a) in connection with the purchase by the Issuer or of its Restricted Subsidiaries of any business, 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 unless such payments are required under Applicable Accounting Standards to appear as a liability on the balance sheet (excluding the footnotes); *provided, however*, that at the time of closing, the amount of any such payment is not determinable and, to the extent such



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payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter; (b) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money; (c) deferred or prepaid revenues; (d) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; or (e) Convertible Notes that are issued into escrow pursuant to the Plans of Reorganization until the time such Convertible Notes have been released from such escrow.

"Intercreditor Agreement" means that certain intercreditor agreement, to be dated the Emergence Date, among the Issuer, certain subsidiaries of the Issuer, the ABL Facility Collateral Agent and the Collateral Agent, as amended, supplemented, restated, modified, renewed or replaced (whether upon or after termination or otherwise), in whole or in part from time to time, or any other successor agreement and whether among the same or any other parties.

"Investments" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees of Indebtedness or other obligations), advances or capital contributions (excluding (i) commission, travel and similar advances to officers and employees made in the ordinary course of business and (ii) extensions of credit to customers or advances, deposits or payment to or with suppliers, lessors or utilities or for workers' compensation, in each case, that are incurred in the ordinary course of business and recorded as accounts receivable, prepaid expenses or deposits on the balance sheet of such Person prepared in accordance with Applicable Accounting Standards), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with Applicable Accounting Standards. If the Issuer or any Restricted Subsidiary of the Issuer sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Issuer such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Issuer's Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption "*—Certain covenants—Restricted payments.*" The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of the covenant described above under the caption "*—Certain covenants—Restricted payments.*" Except as otherwise provided in the indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value but giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of (x) the repayment or disposition thereof for cash or (y) the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary (valued proportionately to the equity interest in such Unrestricted Subsidiary of the Issuer or such Restricted Subsidiary owning such Unrestricted Subsidiary at the time of such redesignation) at the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time of such redesignation, in the case of clauses (x) and (y), not to exceed the original amount, or Fair Market Value, of such Investment.

"Lien" means, with respect to any asset, any mortgage, hypothecation, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other



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title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in; *provided* that in no event shall an operating lease, rights of set-off or netting arrangements in the ordinary course of business be deemed to constitute a Lien.

"Marketable Securities" means securities or securities entitlements that are capable of being contributed to the Collateral Proceeds Account as security for the Note Obligations and that otherwise constitute Cash Equivalents.

"Net Proceeds" means the aggregate cash proceeds and Cash Equivalents received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale or Casualty or Condemnation Event (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale or Casualty or Condemnation Event, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale or Casualty or Condemnation Event, taxes paid or payable as a result of the Asset Sale or Casualty or Condemnation Event, in each case, after taking into account, without duplication, (1) any available tax credits or deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness secured by a Permitted Lien on the asset or assets that were the subject of such Asset Sale or Casualty or Condemnation Event (other than ABL Obligations, Note Obligations and Permitted Additional Pari Passu Obligations) and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with Applicable Accounting Standards, (2) any reserve or payment with respect to liabilities associated with such asset or assets and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including, without limitation, severance costs, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, and (3) any cash escrows in connection with purchase price adjustments, reserves or indemnities (until released).

"Net Proceeds Offer" has the meaning assigned to that term in the indenture governing the notes.

"Non-Recourse Debt" means Indebtedness:

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

in each case except to the extent permitted by the covenant described above under the caption "*Certain covenants—Restricted payments*"; *provided, however*, that Indebtedness shall not



cease to be Non-Recourse Debt solely by reason of pledge by the Issuer or any of its Restricted Subsidiaries of Equity Interests of an Unrestricted Subsidiary of the Issuer or of a Person that is not a Subsidiary of the Issuer or such Restricted Subsidiary if recourse is limited to such Equity Interests.

"Note Documents" means the indenture, the security documents, the notes, the Note Guarantees and the security documents.

"Note Guarantee" means the Guarantee by each Guarantor of the Issuer's obligations under the indenture and the notes, executed pursuant to the provisions of the indenture.

"Note Liens" means all Liens in favor of the Collateral Agent on Collateral securing the Note Obligations and any Permitted Additional Pari Passu Obligations.

"Note Obligations" means the Obligations of the Issuer and any other obligor under the indenture or any of the other Note Documents, including any Guarantor, to pay principal, premium, if any, and interest (including any interest accruing after the commencement of bankruptcy or insolvency proceedings) when due and payable, and all other amounts due or to become due under or in connection with the indenture, the notes and the performance of all other Obligations to the trustee and the holders under the indenture and the notes, according to the respective terms thereof.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Permitted Additional Pari Passu Obligations" means obligations under any Additional Notes or any other Indebtedness (whether or not consisting of Additional Notes) secured by the Note Liens; *provided that*, except in the case of Permitted Refinancing Indebtedness in respect of the notes or Permitted Additional Pari Passu Obligations, immediately after giving effect to the incurrence of such Permitted Additional Pari Passu Obligations, the Priority Debt Leverage Ratio of the Issuer and its Restricted Subsidiaries would be less than or equal to 2.0:1.0; *provided that* (i) the trustee or agent under such Permitted Additional Pari Passu Obligation executes a joinder agreement to the Security Agreement in the form attached thereto agreeing to be bound thereby and (ii) the Issuer has designated such Indebtedness as "Permitted Additional Pari Passu Obligations" under the Security Agreement.

"Permitted Business" means any business engaged in by the Issuer or any of its Restricted Subsidiaries on the date of the indenture in the forest products, paper products, energy and recycling industries (including, without limitation, the manufacturing and production of paper, packaging products and wood pulp) and any business or other activities that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses in which the Issuer and its Restricted Subsidiaries are engaged on the date of the indenture.

"Permitted Hedging Obligations" means any Hedging Obligations that would constitute Permitted Debt pursuant to clause (9) of the second paragraph of the "Incurrence of indebtedness and issuance of preferred stock" covenant of the indenture.

"Permitted Investments" means:

- (1) any Investment in the Issuer or a Restricted Subsidiary; *provided that* such Investment shall not consist of a transfer of Notes Priority Collateral (other than Equity Interests of a



Restricted Subsidiary) unless such transfer is to the Issuer, a Guarantor or to a Restricted Subsidiary domiciled in Canada and, in the case of such a Restricted Subsidiary domiciled in Canada, the Issuer or Guarantor transferring such Notes Priority Collateral receives assets in exchange with a similar Fair Market Value to such transferred Notes Priority Collateral, which assets shall become Notes Priority Collateral;

- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Issuer or any Restricted Subsidiary of the Issuer in a Person, if as a result of such Investment:
 - (a) such Person becomes a Restricted Subsidiary of the Issuer; or
 - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer;
- (4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption "—Repurchase at the option of holders—Asset sales," or from a sale or other disposition of assets not constituting an Asset Sale;
- (5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Issuer;
- (6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Issuer or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;
- (7) Investments represented by Hedging Obligations;
- (8) loans and advances to officers, directors or employees (a) for business-related travel expenses, moving expenses and other similar expenses, including as part of a recruitment or retention plan, in each case incurred in the ordinary course of business or consistent with past practice or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent entity of the Issuer, (b) required by applicable employment laws loans and (c) other loans and advances not to exceed \$5.0 million at any one time outstanding;
- (9) any Investment pursuant to the Plans of Reorganization or an Investment consisting of any extension, modification or renewal of any such Investment; *provided* that the amount of any such Investment may be increased (x) as required by the terms of such Investment pursuant to the Plans of Reorganization or (y) as otherwise permitted under the indenture;
- (10) repurchases of the notes;
- (11) any Investment of the Issuer or any of its Restricted Subsidiaries existing on the date of the indenture, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the date of the indenture;



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- (12) guarantees otherwise permitted by the terms of the indenture;
- (13) receivables owing to the Issuer or any of its Restricted Subsidiaries, prepaid expenses, and lease, utility, workers' compensation and other deposits, if created, acquired or entered into in the ordinary course of business;
- (14) payroll, business-related travel, and similar advances to cover matters that are expected at the time of such advances to be ultimately treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (15) Investments resulting from the acquisition of a Person, otherwise permitted by the indenture, which Investments at the time of such acquisition were held by the acquired Person and were not acquired in contemplation of the acquisition of such Person;
- (16) reclassification of any Investment initially made in (or reclassified as) one form into another (such as from equity to loan or vice versa); *provided* in each case that the amount of such Investment is not increased thereby;
- (17) any Investment in any Subsidiary of the Issuer or any joint venture in the ordinary course of business in connection with intercompany cash management arrangements or related activities;
- (18) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (18) that are at the time outstanding not to exceed \$100.0 million, net of any return of or on such Investments received by the Issuer or any Restricted Subsidiary; and
- (19) the acquisition by a Receivables Entity in connection with a Qualified Receivables Transaction of Equity Interests of a trust or other Person established by such Receivables Entity to effect such Qualified Receivables Transaction; and any other Investment by the Issuer or a Restricted Subsidiary in a Receivables Entity or any Investment by a Receivables Entity in any other Person in connection with a Qualified Receivables Transaction.

"Permitted Liens" means:

- (1) any Liens held by the Collateral Agent securing the notes and the related Note Guarantees outstanding on the date of the indenture (and any related exchange notes and exchange note guarantees);
- (2) any Lien with respect to the ABL Credit Agreement or any other Credit Facility so long as the aggregate principal amount outstanding under the ABL Credit Agreement or any successor Credit Facility does not exceed the principal amount which could be borrowed under clause (1) of the definition of "Permitted Debt";
- (3) Liens in favor of the Issuer or the Guarantors;
- (4) Liens on property of a Person existing at the time such Person becomes a Restricted Subsidiary of the Issuer or is merged with or into or consolidated with the Issuer or any Restricted Subsidiary of the Issuer; *provided* that such Liens were in existence prior to the contemplation of such Person becoming a Restricted Subsidiary of the Issuer or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary of the Issuer or is merged into or consolidated with the Issuer or a Restricted Subsidiary of the Issuer;



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- (5) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Issuer or any Restricted Subsidiary of the Issuer (plus improvements and accessions to such property or proceeds or distributions thereof); *provided* that such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition;
- (6) Liens to secure the performance of tenders, completion guarantees, statutory obligations, surety, environmental or appeal bonds, bids, leases, government contracts, performance bonds or other obligations of a like nature incurred in the ordinary course of business;
- (7) Liens to secure Indebtedness (including Capital Lease Obligations) or Attributable Debt permitted by clause (5) of the second paragraph of the covenant entitled "—Certain covenants—Incurrence of indebtedness and issuance of preferred stock" covering only the assets acquired with or financed by such Indebtedness (plus improvements and accessions to such property or proceeds or distributions thereof);
- (8) Liens existing on the date of the indenture;
- (9) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with Applicable Accounting Standards has been made therefor;
- (10) Liens consisting of carriers', warehousemen's, landlord's and mechanics', suppliers, materialmen's, repairmen's and similar Liens not securing Indebtedness or in favor of customs or revenue authorities or freight forwarders or handlers to secure payment of custom duties, in each case, incurred in the ordinary course of business;
- (11) any state of facts an accurate survey would disclose, public and private roads, timber cutting and hauling contracts, timber sales contracts, prescriptive easements or adverse possession claims, minor encumbrances, easements or reservations of, or rights of others for, pursuant to any leases, licenses, rights-of-way or other similar agreements or arrangements, development, air or water rights, sewers, electric lines, telegraph and telephone lines and other utility lines, pipelines, service lines, railroad lines, improvements and structures located on, over or under any property, drains, drainage ditches, culverts, electric power or gas generating or co-generation, storage and transmission facilities and other similar purposes, zoning or other restrictions as to the use of real property or minor defects in title, which were not incurred to secure payment of Indebtedness and that 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 such Person;
- (12) Liens on the assets of a Restricted Subsidiary that is not a Guarantor securing Indebtedness or other obligations of such Restricted Subsidiary permitted by the indenture;
- (13) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under the indenture (other than the ABL Credit Agreement or the notes); *provided, however*, that the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof);
- (14) Liens on real property consisting of public and private roads, timber cutting and hauling contracts, timber sales contracts, prescriptive easements or adverse possession claims, minor



encumbrances, easements or reservations of, or rights of others for, pursuant to any leases, licenses, rights-of-way or other similar agreements or arrangements, development, air or water rights, sewers, electric lines, telegraph and telephone lines and other utility lines, pipelines, service lines, railroad lines, improvements and structures located on, over or under any property, drains, drainage ditches, culverts, electric power or gas generating or co-generation, storage and transmission facilities and other similar purposes, zoning or other restrictions as to the use of real property or minor defects in title, which were not incurred to secure payment of Indebtedness and that 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 Issuer and its Restricted Subsidiaries;

- (15) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances, tender, bid, judgment, appeal, performance or governmental contract bonds and completion guarantees, surety, standby letters of credit and warranty and contractual service obligations of a like nature, trade letters of credit and documentary letters of credit and similar bonds or guarantees provided by the Issuer or any Subsidiary of the Issuer;
- (16) Liens incurred or pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and employee health and disability benefits, or casualty-liability insurance or self insurance or securing letters of credit issued in the ordinary course of business;
- (17) judgment and attachment Liens not giving rise to an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made in conformity with Applicable Accounting Standards;
- (18) Liens on (a) assets other than those constituting Collateral securing Permitted Hedging Obligations and (b) assets constituting Collateral securing Permitted Hedging Obligations to the extent that the Obligations to which the Hedging Obligations relate are permitted to be secured pursuant to the indenture;
- (19) any interest or title of a lessor, licensor or sublicense under any operating lease, license or sublicense, as applicable;
- (20) Liens on the Equity Interests of an Unrestricted Subsidiary of the Issuer or of a Person that is not a Subsidiary of the Issuer securing Indebtedness of such Unrestricted Subsidiary or other Person if recourse to the Issuer and its Restricted Subsidiaries with respect to such Indebtedness is limited to such Equity Interests;
- (21) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Issuer or any Restricted Subsidiary thereof on deposit with or in possession of such bank;
- (22) any obligations or duties affecting any of the property of the Issuer or any of its Restricted Subsidiaries to any municipality or public authority with respect to any franchise, grant, license, or permit that do not impair the use of such property for the purposes for which it is held;
- (23) Liens on any property in favor of domestic or foreign governmental bodies to secure partial, progress, advance or other payment pursuant to any contract or statute, not yet due and payable;



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- (24) Liens with respect to so-called "greenbelt" or "buffer zone" properties;
- (25) leases and ground leases of underutilized or vacant properties of the Issuer or any of its Restricted Subsidiaries to third parties with which the Issuer or such Restricted Subsidiary has a production, co-production, operating or other arrangement or to third party providers of energy, transportation services or raw materials in the ordinary course of business, *provided* such leases do not materially interfere with the operation of the business of the Issuer or any of its Restricted Subsidiaries or secure any Indebtedness;
- (26) Liens consisting of any law or governmental regulation or permit requiring the Issuer or any of its Restricted Subsidiaries to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;
- (27) Liens on assets of Foreign Subsidiaries securing Indebtedness of such Foreign Subsidiaries that is permitted under the covenant entitled "—Incurrence of indebtedness and issuance of disqualified stock and preferred stock";
- (28) Liens securing Permitted Additional Pari Passu Obligations;
- (29) Liens on the unearned premiums under the insurance policies permitted by clause (16) of the definition of "Permitted Debt" securing Indebtedness incurred pursuant to clause (16) of the definition of "Permitted Debt";
- (30) any amounts held by a trustee in the funds and accounts under an indenture securing any revenue bonds issued for the benefit of the Issuer or any Restricted Subsidiary;
- (31) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business;
- (32) any netting or set-off arrangements entered into by the Issuer or any Restricted Subsidiary in the ordinary course of its banking arrangements (including, for the avoidance of doubt, cash pooling arrangements) for the purposes of netting debit and credit balances of the Issuer or any Restricted Subsidiary of the Issuer, including pursuant to any cash management agreement;
- (33) Liens deemed to exist in connection with Investments in repurchase agreements permitted under the covenant entitled "—Incurrence of indebtedness and issuance of disqualified stock and preferred stock"; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreements;
- (34) leases and subleases of real property which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and other Liens incidental to the conduct of the business of the Issuer and its Restricted Subs that do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the Issuer's business;
- (35) Liens arising from UCC financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business or other precautionary UCC financing statement filings;
- (36) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;



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(37) Liens on assets of the Issuer or a Receivables Entity incurred in connection with a Qualified Receivables Transaction; and

(38) Liens not otherwise permitted hereunder securing Indebtedness or other obligations that does not, in the aggregate, exceed \$25.0 million at any one time outstanding.

"Permitted Refinancing Indebtedness" means any Indebtedness of the Issuer or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of the Issuer or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided that*:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);
- (2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;
- (3) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to the notes on terms at least as favorable to the holders of notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and
- (4) Permitted Refinancing Indebtedness may not be incurred by a person other than the Issuer or a Guarantor to renew refund, refinance, replace, defease or discharge any Indebtedness of the Issuer or a Guarantor.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Plans of Reorganization" means the plan or plans of reorganization proposed by AbitibiBowater Inc. and certain of its U.S. and Canadian subsidiaries described in this offering memorandum under "Summary—Plans of Reorganization" that satisfy the requirements of the provisions of Chapter 11 of the United States Bankruptcy Code, as amended, and the Companies' Creditors Arrangement Act.

"Priority Debt Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Priority Debt on the date of determination to (b) Consolidated Cash Flow of the Issuer and its Restricted Subsidiaries for the most recently ended four full fiscal quarters for which internal financial statements are available, in each case with such pro forma adjustments to Consolidated Cash Flow as are consistent with the pro forma adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Qualified Equity Offering" means a public or private equity offering of Capital Stock (other than Disqualified Stock and other than issuances to an Affiliate of the Issuer) of the Issuer or any direct or indirect parent company of the Issuer, of at least \$50.0 million; *provided that*, in the



case of an offering or sale by a direct or indirect parent company of the Issuer, such parent company contributes to the capital of the Issuer the portion of the net cash proceeds of such offering or sale necessary to pay the aggregate Redemption Price (plus accrued interest to the redemption date) of the notes to be redeemed pursuant to the provisions described under the fourth paragraph of "— Optional redemption."

"Qualified Proceeds" means any of the following or any combination of the following:

- (1) Cash Equivalents; and
- (2) the Fair Market Value of the Capital Stock of any Person engaged primarily in a Permitted Business if, in connection with the receipt by the Issuer or any of its Restricted Subsidiaries of such Capital Stock, such Person becomes a Restricted Subsidiary of the Issuer or such Person is merged or consolidated into the Issuer or any of its Restricted Subsidiaries.

"Qualified Receivables Transaction" means any transaction or series of transactions entered into by the Issuer, any of its Restricted Subsidiaries or any of their respective Subsidiaries pursuant to which the Issuer, such Restricted Subsidiaries or any of their respective Subsidiaries sells, conveys or otherwise transfers to (i) a Receivables Entity (in the case of a transfer by the Issuer, Restricted Subsidiaries or any such Subsidiary) and (ii) any other Person (in the case of a transfer by a Receivables Entity), or grants a security interest in, any accounts receivable (whether now existing or arising in the future) of the Issuer, its Restricted Subsidiaries or any of their respective Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable.

"QSPEs" means each of the following: (1) Calhoun Note Holdings AT LLC, (2) Calhoun Note Holdings TI LLC, (3) Bowater Catawba Note Holdings I LLC, (4) Bowater Catawba Note Holdings II LLC, (5) Bowater Saluda Note Holdings LLC, (6) Timber Note Holding LLC, (7) Rich Timber Holdings, LLC, (8) Abitibi-Consolidated U.S. Funding Corp. and (9) any other qualified special purpose entity created to facilitate the sale and/or the monetization of receivables from the sale of Timberlands.

"Receivables Entity" means a Subsidiary of the Issuer or any Restricted Subsidiary that engages in no activities other than in connection with the financing of accounts receivable and which is designated by the Board of Directors of the Issuer (as provided below) as a Receivables Entity. Any such designation by the Board of Directors of the Issuer will be evidenced to the trustee by filing with the trustee a certified copy of the resolution of the Board of Directors of the Issuer giving effect to such designation and an officers' certificate certifying that such designation complied with the foregoing conditions.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Subsidiary" of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"Sale of Notes Priority Collateral" means any Asset Sale to the extent involving a sale, lease or other disposition of Notes Priority Collateral.



"security documents" means the Security Agreement, the Intercreditor Agreement, and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Issuer or any other Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

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

"Specified Assets" means (i) the assets associated with the ACH Limited Partnership and (ii) the assets associated with the Alabama River newsprint mill located in Purdue, Alabama.

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

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

- (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and
- (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof) to the extent such partnership is included in the consolidated financial statements of such Person.

"Timberlands" means any real property of the Issuer or any Restricted Subsidiary which contains standing timber which is (or upon completion of a growth cycle then in process is expected to become) of a commercial quantity and of merchantable quality, excluding, however, any such real property which at the time of determination is held primarily for development or sale, and not primarily for the production of any lumber or other timber products.

"Total Assets" means the total assets of the Issuer and its Restricted Subsidiaries, as shown on the most recent internal balance sheet of the Issuer, prepared on a consolidated basis (excluding Unrestricted Subsidiaries) in accordance with Applicable Accounting Standards.

"Transactions" means, collectively, the effectiveness of the Plans of Reorganization and related transactions, including the application of Fresh Start Accounting principles, the entry into the ABL Credit Agreement (and the substantially concurrent satisfaction or waiver of the conditions to effectiveness with respect thereto), the issuance of the notes offered hereby and the Convertible Notes and the application of the net proceeds thereof in the manner set forth in the Plans of Reorganization.



"Treasury Rate" means the rate per annum equal to the yield to maturity at the time of computation of United States Treasury securities with a constant maturity most nearly equal to the period from such date of redemption to , 2014; *provided* that if the period from such date of redemption to , 2014 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from such date of redemption to , 2014 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.

"Treasury Securities" means any Investment in obligations issued or guaranteed by the United States government or agency thereof, in each case, maturing no later than the Escrow End Date.

"Unrestricted Subsidiary" means (a) the QSPEs, (b) the Augusta JV, and (c) any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

- (1) has no Indebtedness other than Non-Recourse Debt;
- (2) except as permitted by the covenant described above under the caption "—Certain covenants—Transactions with affiliates," is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary of the Issuer unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer;
- (3) except as otherwise permitted by the covenant described above under the caption "—Certain covenants—Restricted payments," is a Person with respect to which neither the Issuer nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and
- (4) except as otherwise permitted by the covenant described above under the caption "—Certain covenants—Restricted payments," has not guaranteed or otherwise provided credit support for any Indebtedness of the Issuer or any of its Restricted Subsidiaries.

"U.S. GAAP" means generally accepted accounting principles set forth in 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 in the United States in effect on the date of the indenture.

"U.S. Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is organized or existing under the laws of the United States, any state thereof, or the District of Columbia.

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



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

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

"*Wholly owned Restricted Subsidiary*" of any specified Person means a Restricted Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) will at the time be owned by such Person or by one or more Wholly owned Restricted Subsidiaries of such Person.

"*Wholly owned Subsidiary*" of any specified Person means a Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) will at the time be owned by such Person or by one or more Wholly owned Subsidiaries of such Person.

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act)

N°. 500-11-036133-094

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement
of:

ABITIBIBOWATER INC.
- and -
ABITIBI-CONSOLIDATED INC.
- and -
BOWATER CANADIAN HOLDINGS INC.
- and -
the other Petitioner listed herein
Petitioners
- and -
ERNST & YOUNG INC.
Monitor
BS0350 n/dos.: 041053-1170

EXHIBIT R-2

ORIGINAL

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