

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): February 25, 1999  
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COMMISSION FILE NUMBER 0-7570

DELAWARE	CANANDAIGUA BRANDS, INC.	16-0716709
	AND ITS SUBSIDIARIES:	
NEW YORK	BATAVIA WINE CELLARS, INC.	16-1222994
NEW YORK	CANANDAIGUA WINE COMPANY, INC.	16-1462887
NEW YORK	CANANDAIGUA EUROPE LIMITED	16-1195581
ENGLAND AND WALES	CANANDAIGUA LIMITED	---
NEW YORK	POLYPHENOLICS, INC.	16-1546354
NEW YORK	ROBERTS TRADING CORP.	16-0865491
DELAWARE	BARTON INCORPORATED	36-3500366
DELAWARE	BARTON BRANDS, LTD.	36-3185921
MARYLAND	BARTON BEERS, LTD.	36-2855879
CONNECTICUT	BARTON BRANDS OF CALIFORNIA, INC.	06-1048198
GEORGIA	BARTON BRANDS OF GEORGIA, INC.	58-1215938
NEW YORK	BARTON DISTILLERS IMPORT CORP.	13-1794441
DELAWARE	BARTON FINANCIAL CORPORATION	51-0311795
WISCONSIN	STEVENS POINT BEVERAGE CO.	39-0638900
ILLINOIS	MONARCH IMPORT COMPANY	36-3539106
GEORGIA	THE VIKING DISTILLERY, INC.	58-2183528

(State or other jurisdiction of incorporation or organization) (Exact name of registrant as specified in its charter) (I.R.S. Employer Identification No.)

300 Willow Brook Office Park, Fairport, New York 14450  
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(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (716) 393-4130  
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(Former name or former address, if changed since last report)

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are filed to be incorporated into registration statement No. 333-67037:

1.1. Underwriting Agreement dated February 25, 1999 by and among Canandaigua Brands, Inc., Batavia Wine Cellars, Inc., Barton Incorporated, Barton Brands, Ltd., Barton Beers, Ltd., Barton Brands of California, Inc., Barton Brands of Georgia, Inc., Barton Distillers Import Corp., Barton Financial Corporation, Stevens Point Beverage Co., Canandaigua Limited, Monarch Import Company, Canandaigua Wine Company, Inc., The Viking Distillery, Inc., Canandaigua Europe Limited, Roberts Trading Corp. and Polyphenolics, Inc., as Issuers, and Chase Securities Inc., Credit Suisse First Boston Corporation, Fleet Securities, Inc., Schroder & Co. Inc. and Scotia Capital Markets (USA) Inc., as Underwriters.

99.1 Form of Indenture dated as of February 25, 1999 by and among Canandaigua Brands, Inc., as Issuer, and Batavia Wine Cellars, Inc., Barton Incorporated, Barton Brands, Ltd., Barton Beers, Ltd., Barton Brands of California, Inc., Barton Brands of Georgia, Inc., Barton Distillers Import Corp., Barton Financial Corporation, Stevens Point Beverage Co., Canandaigua Limited, Monarch Import Company, Canandaigua Wine Company, Inc., The Viking Distillery, Inc., Canandaigua Europe Limited, Roberts Trading Corp. and Polyphenolics, Inc., as Guarantors, and Harris Trust and Savings Bank, as Trustee.

99.2 Form of Supplemental Indenture No. 1 dated as of February 25, 1999 by and among Canandaigua Brands, Inc., as Issuer, and Batavia Wine Cellars, Inc., Barton Incorporated, Barton Brands, Ltd., Barton Beers, Ltd., Barton Brands of California, Inc., Barton Brands of Georgia, Inc., Barton Distillers Import Corp., Barton Financial Corporation, Stevens Point Beverage Co., Canandaigua Limited, Monarch Import Company, Canandaigua Wine Company, Inc., The Viking Distillery, Inc., Canandaigua Europe Limited, Roberts Trading Corp. and Polyphenolics, Inc., as Guarantors, and Harris Trust and Savings Bank, as

Trustee.

SIGNATURES

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

CANANDAIGUA BRANDS, INC.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Senior Vice  
President and Chief Financial  
Officer

SUBSIDIARIES

BATAVIA WINE CELLARS, INC.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Treasurer

CANANDAIGUA WINE COMPANY, INC.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Treasurer

CANANDAIGUA EUROPE LIMITED

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Treasurer

CANANDAIGUA LIMITED

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Director  
(Principal Financial Officer and  
Principal Accounting Officer)

POLYPHENOLICS, INC.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President  
and Treasurer

ROBERTS TRADING CORP.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
-----  
Thomas S. Summer, Treasurer

BARTON INCORPORATED

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
-----  
Thomas S. Summer, Vice President

BARTON BRANDS, LTD.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
-----  
Thomas S. Summer, Vice President

BARTON BEERS, LTD.

Dated: March 3, 1999 By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

BARTON BRANDS OF CALIFORNIA, INC.

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

BARTON BRANDS OF GEORGIA, INC.

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

BARTON DISTILLERS IMPORT CORP.

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

BARTON FINANCIAL CORPORATION

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

STEVENS POINT BEVERAGE CO.

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
-----  
Thomas S. Summer, Vice President

MONARCH IMPORT COMPANY

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

THE VIKING DISTILLERY, INC.

Dated: March 3, 1999

By: /s/ Thomas S. Summer  
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Thomas S. Summer, Vice President

CANANDAIGUA BRANDS, INC.  
\$200,000,000  
8 1/2 % Senior Subordinated Notes due 2009  
UNDERWRITING AGREEMENT  
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February 25, 1999

CHASE SECURITIES INC.  
CREDIT SUISSE FIRST BOSTON CORPORATION  
FLEET SECURITIES, INC.  
SCHRODER & CO. INC.  
SCOTIA CAPITAL MARKETS (USA) INC.  
c/o Chase Securities Inc.  
270 Park Avenue, 4th floor  
New York, New York 10017

Ladies and Gentlemen:

Canandaigua Brands, Inc., a Delaware corporation (the "Company"),  
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proposes to issue and sell \$200,000,000 aggregate principal amount of its 8 1/2%  
Senior Subordinated Notes due 2009 (the "Notes"). The Notes will be issued  
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pursuant to an Indenture to be dated as of February 25, 1999 (the "Base  
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Indenture") by and among the Company, the Guarantors (as defined below) and  
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Harris Trust and Savings Bank, as trustee (the "Trustee"), as supplemented by a  
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Supplemental Indenture to be dated as of February 25, 1999 (the "Supplemental  
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Indenture" and, together with the Base Indenture, the "Indenture"). As of the  
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Closing Date (as defined herein), the Notes will be unconditionally guaranteed  
on a senior subordinated basis, as to payment of principal, premium, if any, and  
interest, jointly and severally, by each of Barton Distillers Import Corp.,  
Batavia Wine Cellars, Inc., Canandaigua Wine Company, Inc., Canandaigua Europe  
Limited, Roberts Trading Corp. and Polyphenolics, Inc., each a New York  
corporation, Canandaigua Limited, a corporation organized under the laws of  
England and Wales, Barton Financial Corporation, Barton Incorporated and Barton  
Brands, Ltd., each a Delaware corporation, Barton Beers, Ltd., a Maryland  
corporation, Barton Brands of California, Inc., a Connecticut corporation,  
Barton Brands of Georgia, Inc. and The Viking Distillery, Inc, each a Georgia  
corporation, Stevens Point Beverage Co., a Wisconsin corporation, and Monarch  
Import

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Company, an Illinois corporation (collectively, the "Guarantors" and,  
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together with the Company, the "Issuers"), pursuant to the terms of the  
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Indenture (the "Guarantees"). The Notes and the Guarantees are sometimes  
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referred to herein together as the "Securities." The Issuers hereby confirm  
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their agreement with Chase Securities Inc. ("CSI"), Credit Suisse First Boston  
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Corporation, Fleet Securities, Inc., Schroder & Co. Inc. and Scotia Capital  
Markets (USA) Inc. (together with CSI, the "Underwriters") concerning the  
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purchase of the Securities by the several Underwriters.

Capitalized terms used but not defined herein shall have the meanings  
given to such terms in the Prospectus (as defined in Section 1).

1. Representations, Warranties and Agreements of the Issuers. The  
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Company and the Guarantors, jointly and severally, represent and warrant to and  
agree with the Underwriters as of the date hereof and as of the Closing Date  
that:

(a) A registration statement on Form S-3 (No. 333-67037), including a  
form of basic prospectus relating to certain debt and equity securities  
(the "Shelf Securities") to be offered from time to time by the Company  
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and each of the preliminary supplements to the basic prospectus relating  
to the offering of the Securities has (i) been prepared by the Company in  
conformity with the requirements of the United States Securities Act of

1933, as amended (the "Securities Act"), and the rules and regulations (the  
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"Rules and Regulations") of the United States Securities and Exchange  
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Commission (the "Commission") thereunder, (ii) been filed with the  
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Commission under the Securities Act and (iii) become effective under the  
Securities Act. Copies of such registration statement and any amendments  
thereto, as well as copies of the Preliminary Prospectus (as defined  
below), have been delivered by the Company to you. The Company has also  
filed with or proposes to file with the Commission pursuant to Rule 424  
under the Securities Act ("Rule 424") a final prospectus supplement  
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relating to the Securities (a "Prospectus Supplement"). The registration  
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statement, as amended to the date of this Agreement, including the exhibits  
and schedules thereto, if any, any registration statement filed pursuant to  
Rule 462(b) under the Securities Act and all documents incorporated by  
reference or deemed to be incorporated by reference therein, is hereinafter  
referred to as the "Registration Statement" and the related prospectus  
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covering the Shelf Securities in the form first used to confirm sales is  
hereinafter referred to as the "Basic Prospectus." The Basic Prospectus as  
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supplemented by any applicable Prospectus Supplement is hereinafter  
referred to as the "Prospectus." "Effective Time" means the date and the  
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time as of which the Registration Statement, or the most recent post-  
effective amendment thereof, if any, was declared effective by the  
Commission; "Effective Date" means the date of the Effective Time;  
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"Preliminary Prospectus" means any preliminary form of Prospectus  
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specifically relating to the Notes, in the form first filed with, or

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transmitted for filing to, the Commission pursuant to Rule 424. Any  
reference in this Agreement to the Registration Statement, the Basic  
Prospectus, any Preliminary Prospectus previously filed with the Commission  
pursuant to Rule 424 or the Prospectus shall be deemed to refer to and  
include the documents incorporated by reference therein pursuant to Item 12  
of Form S-3 under the Securities Act which were filed under the Securities  
Exchange Act of 1934, as amended, and the rules and regulations of the  
Commission thereunder (collectively, the "Exchange Act") on or before the  
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date of this Agreement or the date of the Registration Statement, the Basic  
Prospectus, any Preliminary Prospectus or the Prospectus, as the case may  
be; and any reference to "amend," "amendment" or "supplement" with respect  
to the Registration Statement, the Basic Prospectus, any Preliminary  
Prospectus or the Prospectus shall be deemed to refer to and include any  
documents filed under the Exchange Act after the date of this Agreement, or  
the date of the Registration Statement, the Basic Prospectus, any  
Preliminary Prospectus or the Prospectus, as the case may be, which are  
deemed to be incorporated by reference therein. The Commission has not  
issued any order preventing or suspending the use of the Prospectus or the  
effectiveness of the Registration Statement.

(b) The Registration Statement conforms, and the Prospectus and any  
further amendments or supplements to the Registration Statement or the  
Prospectus will, when they become effective or are filed with the  
Commission, as the case may be, conform in all material respects to the  
requirements of the Securities Act, the Trust Indenture Act of 1939, as  
amended (the "Trust Indenture Act"), and the Rules and Regulations and do  
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not and will not, as of the applicable Effective Date (as to the  
Registration Statement and any amendment thereto) and as of the applicable  
filing date (as to the Prospectus and any amendment or supplement thereto)  
contain an untrue statement of a material fact or omit to state a material  
fact required to be stated therein or necessary to make the statements  
therein (in the case of the Prospectus, in light of the circumstances in  
which they were made) not misleading; on the Closing Date, the Indenture  
will conform in all material respects with the applicable requirements of  
the Trust Indenture Act and the rules and regulations of the Commission  
thereunder; and, at the Effective Time, the Prospectus, if not filed  
pursuant to Rule 424(b), did not or will not, and on the date of any filing  
pursuant to Rule 424(b) and on the Closing Date, the Prospectus (together  
with any supplement thereto) will not, include any untrue statement of a  
material fact or omit to state a material fact necessary in order to make  
the statements therein, in light of the circumstances under which they were  
made, not misleading. The preceding sentence does not apply to (i) that  
part of the Registration Statement which shall constitute the Statement of  
Eligibility and Qualifications (Form T-1) of the Trustee under the Trust

Indenture Act or (ii) information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter specifically for use therein (the "Underwriters' Information").

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(c) The documents incorporated or deemed to be incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further documents so filed and incorporated by reference in the Prospectus, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(d) Each Preliminary Prospectus filed as part of the registration statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 complied when so filed in all material respects with the Securities Act and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to Underwriters' Information.

(e) The Company and each of its consolidated subsidiaries (the "Subsidiaries") have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, with full power and authority (corporate and other) to own their properties and conduct their respective businesses as described in the Prospectus, and are duly qualified to transact business as foreign corporations in good standing under the laws of each jurisdiction where the ownership or leasing of their respective properties or the conduct of their respective businesses require such qualification, except where the failure to so qualify would not have a material adverse effect on the business, condition (financial or otherwise), prospects or operations of the Company and its Subsidiaries considered as a whole (a "Material Adverse Effect"); the Company had at the dates indicated an

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authorized capitalization as set forth in the Prospectus, and the

issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and the outstanding shares of capital stock of each of the Company's Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and (except for directors' qualifying shares) are owned beneficially by the Company free and clear of all liens, encumbrances, equities and claims (collectively, "Liens") except for the Liens under the First Amended and

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Restated Credit Agreement dated as of November 2, 1998 between the Company, the guarantors named therein, the lenders signatory thereto, and The Chase Manhattan Bank, as Administrative Agent (the "Credit Agreement"). Neither

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the Company nor any of the Guarantors is in violation of its respective charter or bylaws and neither the Company nor any of the Guarantors is in default (nor has an event occurred with notice, lapse of time or both that would constitute a default) in the performance of any obligation, agreement or condition contained in any agreement, lease, indenture or instrument of the Company or any Guarantor where such violation or default would have a Material Adverse Effect.

(f) The Issuers have full power and authority to enter into this Agreement and the Indenture and to issue, sell and deliver the Notes, in the case of the Company, and the Guarantees, in the case of the Guarantors (collectively, the "Transaction Documents"), to be sold by them to the

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Underwriters as provided herein and therein. The execution, delivery and performance of this Agreement, the Indenture and the Securities by the Company or any Guarantor, as the case may be, and the consummation by the Company or any Guarantor, as the case may be, of the transactions contemplated hereby and thereby does not and will not conflict with or result in a breach or violation by the Company or any Subsidiary, as the case may be, of any of the terms or provisions of, constitute a default by the Company or any Subsidiary, as the case may be, under, or result in the

creation or imposition of any lien, charge, security interest or encumbrance upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms of, (A) the Credit Agreement and any other indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any Subsidiary, as the case may be, is a party or to which any of them or any of their respective properties is subject, (B) the charter or bylaws of the Company or any Subsidiary, as the case may be, or (C) any statute, judgment, decree, order, rule or regulation of any court, governmental agency or regulatory agency or body having jurisdiction over the Company or any of the Subsidiaries or any of their respective properties or assets except for any conflict, breach, default, lien, charge, security interest or encumbrance that would not have a Material Adverse Effect.

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(g) The execution and delivery of the Indenture has been duly authorized by all necessary corporate action of the Issuers and, when duly executed and delivered in accordance with their terms by each party thereto, will be a legal, valid and binding agreement of the Issuers, enforceable against the Issuers in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws relating to creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether such enforcement may be sought in a proceeding in equity or at law). The issuance, execution and delivery of the Notes have been duly authorized by all necessary corporate action of the Company and, when executed, issued and delivered by the Company and authenticated by the Trustee and paid for in accordance with this Agreement, will be the legal, valid, binding and enforceable obligations of the Company, entitled to the benefits of the Indenture, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether such enforcement may be sought in a proceeding in equity or at law). The issuance, execution and delivery of the Guarantees have been duly authorized by all necessary corporate action of each Guarantor and, when executed, issued and delivered by each Guarantor and authenticated by the Trustee and paid for in accordance with this Agreement, will be the legal, valid, binding and enforceable obligations of each Guarantor, entitled to the benefits of the Indenture, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether such enforcement may be sought in a proceeding in equity or at law). The execution and delivery of this Agreement by the Issuers have been duly authorized by all necessary corporate action, and this Agreement has been duly executed and delivered by the Issuers and is the valid and legally binding agreement of each of the Issuers.

(h) Except as described or referred to in the Prospectus, there is not pending, or to the knowledge of the Issuers threatened, any action, suit, proceeding, inquiry or investigation, to which the Company or any of the Subsidiaries is a party, or to which the property of the Company or any of the Subsidiaries is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company or any of Subsidiaries, would individually or in the aggregate have a Material Adverse Effect or might materially adversely affect the consummation of the offering of the Securities pursuant to this Agreement; and all pending legal or governmental proceedings to which the Company or any of the Subsidiaries is a party or that affect any of their respective properties that are not described in the Prospectus, including ordinary routine litigation incidental to the business, would not, in the aggregate, result in a Material Adverse Effect.

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(i) Arthur Andersen LLP are independent certified public accountants with respect to the Company and its consolidated Subsidiaries within the meaning of Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants ("AICPA") and its interpretations

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and rulings thereunder. The historical financial statements of the Company (including the related notes) contained in the Prospectus comply as to form in all material respects with the requirements applicable to a registration statement on Form S-3 under the Securities Act; such historical financial statements have been prepared in accordance with United States generally accepted accounting principles ("GAAP") consistently applied throughout the

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periods covered thereby and fairly present the financial position of the Company at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated. KPMG Audit plc are independent chartered accountants with respect to Matthew Clark plc within the meaning of Rule 101 of the Code of Professional Conduct of the AICPA and its interpretations and rulings thereunder. The historical financial statements of Matthew Clark plc have been prepared in accordance with United Kingdom GAAP consistently applied throughout the

periods covered thereby and fairly present the financial position of Matthew Clark plc at the respective dates indicated and the results of its operations and cash flows for the respective periods indicated and such financial statements have to the extent required by the Commission for each period presented been properly reconciled to United States GAAP and contain a discussion of all differences between US GAAP and UK GAAP. The historical financial information of Matthew Clark plc contained in the Prospectus has been converted into United States Dollars on a consistent basis in accordance with US GAAP and the rules and regulations of the Commission. The financial information contained in the Prospectus and relating to the Company is derived from the accounting records of the Company and its Subsidiaries and fairly presents the information purported to be shown thereby. The financial information contained in the Prospectus and relating to Matthew Clark plc is derived from the accounting records of Matthew Clark plc and fairly presents the information purported to be shown thereby. The pro forma financial statements contained in the Prospectus have been prepared on a basis consistent with the historical financial statements contained in the Prospectus (except for the pro forma adjustments specified therein), include all material adjustments to the historical financial statements required by Rule 11-02 of Regulation S-X under the Securities Act and the Exchange Act to reflect the transactions described in the Registration Statement, the Prospectus or in the documents incorporated therein by reference, are based on assumptions made on a reasonable basis and fairly present the historical and proposed transactions described in the Registration Statement, the Prospectus or in the documents incorporated therein by reference (including the transactions contemplated by the Transaction Documents). The other historical financial and statistical

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information and data included in the Registration Statement, the Prospectus or in the documents incorporated therein by reference fairly presents, in all material respects, the information purported to be shown thereby.

(j) Except as described in or contemplated by the Registration Statement or the Prospectus, subsequent to February 28, 1998, (i) neither the Company nor any of the Subsidiaries has sustained any loss or interference with its business or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree which would have a Material Adverse Effect; and (ii) there has not been any change in the capital stock (other than as a result of the exercise of the Company's outstanding stock options, purchases under the Company's employee stock purchase plan, any repurchases by the Company under the Stock Repurchase Program (as defined in the Prospectus) or as a result of the conversion of the Company's Class B Common Stock (par value \$.01 per share) into Class A Common Stock (par value \$.01 per share)) or long-term debt of the Company or any of the Guarantors, or any other material adverse change, or any development involving a prospective material adverse change, in or affecting the business, condition (financial or otherwise), prospects or operations of the Company and the Subsidiaries taken as a whole.

(k) The Company and each of the Subsidiaries have good and marketable title to all properties and assets, as described in the Prospectus as owned by them free and clear of all liens, encumbrances, claims, security interests or restrictions, except as provided under the Credit Agreement as such as are described in the Prospectus or do not interfere with the use made and proposed to be made of such properties by the Company and the Subsidiaries and would not individually or in the aggregate result in a Material Adverse Effect; and all of the leases and subleases material to the business of the Company and the Subsidiaries taken as a whole, and under which the Company or any of the Subsidiaries holds properties described in the Prospectus, are in full force and effect and neither the Company nor any of the Subsidiaries has any notice of any claims of any sort that has been asserted by anyone adverse to the rights of the Company or any of the Subsidiaries under such leases or subleases, or affecting or questioning the rights of the Company or any of the Subsidiaries to the continued possession of the leased or subleased premises under any such lease or sublease, which claims would have a Material Adverse Effect.

(l) Each of the Company and the Subsidiaries owns or possesses all governmental licenses, permits, certificates, consents, orders, approvals and other authorizations necessary to own, lease and operate its properties and to conduct its business as presently conducted by it and described in the Prospectus, except where

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the failure to own or possess such licenses, permits, certificates, consents, orders, approvals and other authorizations would not, individually or in the aggregate, have a Material Adverse Effect (collectively, "Material Licenses"); all of the Material Licenses are valid and in full force and effect, except where the invalidity of such Material License or the failure of such Material License to be in full force and



effect would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of its Subsidiaries has received any notice of proceedings relating to revocation or modification of any such Material Licenses which would, individually or in the aggregate, have a Material Adverse Effect.

(m) Each of the Company and each of its Subsidiaries owns or possesses, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, trademarks, service marks, trade names and know-how (including trade secrets and other patentable and/or unpatentable proprietary or confidential information or procedures) (collectively, "intellectual property") necessary to carry on its business

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as presently operated by it, except where the failure to own or possess or have the ability to acquire any such intellectual property would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of its Subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any intellectual property or of any facts which would render any intellectual property invalid or inadequate to protect the interest of the Company or any of its Subsidiaries therein and which infringement or conflict would have a Material Adverse Effect.

(n) None of the Company or any of its Subsidiaries has taken, or will take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities.

(o) None of the Company or any of its Subsidiaries is an investment company within the meaning of the Investment Company Act of 1940, as amended.

(p) Except as described in the Prospectus, the Company and its Subsidiaries comply in all material respects with all Environmental Laws (as defined below), except to the extent that failure to comply with such Environmental Laws would not individually or in the aggregate have a Material Adverse Effect. None of the Company or any of its Subsidiaries is the subject of any pending or, to the knowledge of any of the Issuers, threatened federal, state or local investigation evaluating whether any remedial action by the Company or any of its Subsidiaries is needed to respond to a release of any Hazardous Materials (as defined below) into the environment, resulting from the Company's or any of its Subsidiaries' business

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operations or ownership or possession of any of their properties or assets or is in contravention of any Environmental Law that would, individually or in the aggregate, have a Material Adverse Effect. None of the Company or any of its Subsidiaries has received any notice or claim, nor are there pending or, to the knowledge of any of the Issuers, threatened lawsuits against them, with respect to violations of an Environmental Law or in connection with any release of any Hazardous Material into the environment that would have a Material Adverse Effect. As used herein, "Environmental Laws" means any federal, state or local law or regulation applicable to the Company's or any of its Subsidiaries' business operations or ownership or possession of any of their properties or assets relating to environmental matters, and "Hazardous Materials" means those substances that are regulated by or form the basis of liability under any Environmental Laws.

(q) There are no contracts or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Securities Act or by the Rules and Regulations which have not been described in the Prospectus or filed as exhibits to the Registration Statement or incorporated therein by reference as permitted by the Rules and Regulations.

(r) No relationship, direct or indirect, exists between or among the Company and its Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, which is required to be described in the Prospectus which is not so described in the Prospectus or incorporated therein by reference as permitted by the Rules and Regulations.

(s) No labor problem exists with the employees of the Company or any of its Subsidiaries or, to the knowledge of the Issuers, is imminent that, in either case, would have a Material Adverse Effect.

(t) Except as disclosed in the Prospectus, all United States federal income tax returns of the Company and its Subsidiaries required by law to be filed have been filed (taking into account extensions granted by the applicable federal governmental agency) and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the

payment of which would not individually or in the aggregate result in a Material Adverse Effect. All other corporate franchise and income tax returns of the Company and its Subsidiaries required to be filed pursuant to applicable foreign, state or local laws have been filed, except insofar as the failure to file such returns would not individually or in the aggregate result in a Material Adverse Effect, and all taxes shown on such returns or otherwise assessed which

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are due and payable have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the payment of which would not individually or in the aggregate result in a Material Adverse Effect.

(u) The Company and each of its Subsidiaries maintain (and in the future will maintain) a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and to maintain accountability for assets; (C) access to assets is

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permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(v) The Company and each of its Subsidiaries is in compliance with, and each such entity has not received any notice of any outstanding violation of, all laws, regulations, ordinances and rules applicable to it and its operations, except, in either case, where any failure by the Company or any of its Subsidiaries to comply with any such law, regulation, ordinance or rule would not individually or in the aggregate result in a Material Adverse Effect.

(w) Neither the issuance, sale or delivery of the Securities and the Guarantees nor the application of the proceeds thereof by the Company as set forth in the Prospectus will violate Regulations T, U or X of the Board of Government of the Federal Reserve System or any other regulation of such Board of Governors.

(x) Each of the Company and its Subsidiaries is, and immediately after the Closing Date will be, Solvent. As used herein, the term "Solvent" means, with respect to any such entity on a particular date, that on such date (A) the fair market value of the assets of such entity is greater than the amount that will be required to pay the probable liabilities of such entity on its debts as they become absolute and matured, (B) assuming the sale of the Securities as contemplated by this Agreement and as described in the Prospectus, such entity is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (C) such entity is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (D) such entity does not have unreasonably small capital.

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(y) Other than this Agreement, neither the Company nor any Subsidiary is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Issuers or any Subsidiary or the Underwriters for a brokerage commission, finders' fee or like payment in connection with the offering and sale of the Securities.

(z) The conditions for use of Form S-3, as set forth in the General Instructions thereto, have been satisfied by the Company.

(aa) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Preliminary Prospectus or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(bb) The Asset Purchase Agreement (the "Diageo Purchase Agreement")

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dated February 22, 1999 by and among the Company and Diageo Inc., UDV Canada Inc., and United Distillers Canada Inc. relating to the purchase by the Company of certain whisky brands (the "Diageo Acquisition") has been

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duly authorized and executed by the Company. The Company is not in violation of the terms of the Diageo Purchase Agreement.

Any certificate signed by an officer of the Company or any of the Guarantors and delivered to the Underwriters or to counsel for the Underwriters at or prior to the Closing Date pursuant to any section of this Agreement or the transactions contemplated hereby shall be deemed a representation and warranty by the Company or such Guarantor, as the case may be, to each Underwriter as to

the matters covered thereby.

2. Purchase of the Securities by the Underwriters. (a) On the  
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basis of the representations, warranties and agreements contained herein, and subject to the terms and conditions set forth herein, the Issuers agree to issue and sell to each of the Underwriters, severally and not jointly, and each of the Underwriters, severally and not jointly, agrees to purchase from the Issuers, the principal amount of Securities set forth opposite the name of such Underwriter on Schedule I hereto at a purchase price equal to 98.000% of the principal amount thereof. The Issuers shall not be obligated to deliver any of the Securities except upon payment for all of the Securities to be purchased as provided herein.

(b) The Issuers acknowledge and agree that the Underwriters may sell Securities to any affiliate of an Underwriter and that any such affiliate may sell Securities purchased by it to an Underwriter.

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(c) The Issuers hereby confirm their engagement of Schroder & Co. Inc. as, and Schroder & Co. Inc. hereby confirms its agreement with the Company to render services as, a "qualified independent underwriter", within the meaning of Section (b) (15) of Rule 2720 of the Conduct Rules of the National Association of Securities Dealers, Inc. (the "NASD") with respect to the offering and sale of  
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the Securities. Schroder & Co., Inc., solely in its capacity as a qualified independent underwriter and not otherwise, is referred to herein as the "QIU." The yield to maturity at which the Securities will be sold to the public shall be no lower than the minimum yield to maturity recommended by Schroder & Co. Inc. acting as QIU.

3. Delivery of and Payment for the Securities. (a) Delivery of and  
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payment for the Securities shall be made at the offices of Cahill Gordon & Reindel, New York, New York or at such other place as shall be agreed upon by the Underwriters and the Company, at 9:00 A.M., New York City time, on March 4, 1999, or at such other time or date, not later than seven full business days thereafter, as shall be agreed upon by the Underwriters and the Company (such date and time of payment and delivery being referred to herein as the "Closing  
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Date").

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(b) On the Closing Date, payment of the purchase price for the Securities shall be made to the Company by wire or book-entry transfer of same-day funds to such account or accounts as the Company shall specify prior to the Closing Date or by such other means as the parties hereto shall agree prior to the Closing Date against delivery to the Underwriters of the certificates evidencing the Securities. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligations of the Underwriters hereunder. Upon delivery, the Securities shall be in global form, registered in such names and in such denominations as CSI on behalf of the Underwriters shall have requested in writing not less than two full business days prior to the Closing Date. The Issuers agree to make one or more global certificates evidencing the Securities available for inspection by CSI on behalf of the Underwriters in New York, New York at least 24 hours prior to the Closing Date.

4. Further Agreements of the Company. Each of the Issuers agrees  
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with each of the several Underwriters:

(a) to prepare the Prospectus in a form approved by the Underwriters and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Securities Act; except for such post-effective amendment made under Rule 462(d) under the Securities Act, which amendment shall be approved by the Underwriters, to make no further amendment

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or any supplement to the Registration Statement or to the Prospectus prior to the Closing Date except as permitted herein; to advise the Underwriters, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Underwriters with copies thereof; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; to advise the Underwriters,

promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal at the earliest possible time;

(b) to furnish promptly to each Underwriter and to counsel for the Underwriters a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith;

(c) to deliver promptly to each Underwriter such number of the following documents as such Underwriter shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement and the computation of per share earnings), (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus and (iii) any document incorporated by reference in the Prospectus (excluding exhibits thereto); and, if the delivery of a prospectus is required at any time after the Effective Time in connection with the offering or sale of the Securities and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus or to file

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under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Underwriters and, upon their request, to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as each Underwriter may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance;

(d) to file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Underwriters, be required by the Securities Act or requested by the Commission.

(e) during the period when a prospectus is required to be delivered in connection with the offering or sale of the Securities, prior to filing with the Commission any amendment to the Registration Statement or supplement to the Prospectus, any document incorporated by reference in the Prospectus or any Prospectus pursuant to Rule 424, to furnish a copy thereof to each Underwriter and counsel for the Underwriters and obtain the consent of the Underwriters to the filing;

(f) as soon as practicable after the Effective Date, to make generally available to the Company's security holders and to deliver to the Underwriters an earnings statement of the Company and its Subsidiaries (which need not be audited) complying with Section 11(a) of the Securities Act and the Rules and Regulations (including, at the option of the Company, Rule 158);

(g) for so long as the Securities are outstanding, to furnish the Underwriters copies of any annual reports, quarterly reports and current reports filed by the Company with the Commission on Forms 10-K, 10-Q and 8-K, or such other similar forms as may be designated by the Commission, and such other documents, reports and information as shall be furnished by the Company to the Trustee or to the holders of the Securities pursuant to the Indenture or the Exchange Act or any rule or regulation of the Commission thereunder;

(h) promptly from time to time take such action as the Underwriters may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as the Underwriters may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as required for the resale of the Securities;

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(i) for a period of 180 days from the date of the Prospectus, not to offer for sale, sell, contract to sell or otherwise dispose of, directly or

indirectly, or file a registration statement for, or announce any offer, sale, contract for sale of or other disposition of any unsecured debt securities issued or guaranteed by the Company or any of its Subsidiaries (other than the Securities) without the prior written consent of CSI not to be unreasonably withheld;

(j) not to, for so long as the Securities are outstanding, be or become, or be or become owned by, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act, and to not be or become, or be or become owned by, a closed-end investment company required to be registered, but not registered thereunder;

(k) in connection with the offering of the Securities, until CSI on behalf of the Underwriters shall have notified the Company of the completion of the distribution of the Securities, not to, and to cause its affiliated purchasers (as defined in Regulation M under the Exchange Act) not to, either alone or with one or more other persons, bid for or purchase, for any account in which it or any of its affiliated purchasers has a beneficial interest, any Securities, or attempt to induce any person to purchase any Securities; and not to, and to cause its affiliated purchasers not to, make bids or purchase for the purpose of creating actual, or apparent, active trading in or of raising the price of the Securities;

(l) in connection with the offering of the Securities, to make its officers, employees, independent accountants and legal counsel reasonably available upon request by the Underwriters;

(m) to furnish to each of the Underwriters on the date hereof a copy of each of the independent accountants' reports included in the Prospectus signed by the accountants rendering such report;

(n) to do and perform all things required to be done and performed by it under this Agreement that are within its control prior to or after the Closing Date, and to use its best efforts to satisfy all conditions precedent on its part to the delivery of the Securities;

(o) to not take any action prior to the execution and delivery of the Indenture which, if taken after such execution and delivery, would have resulted in a default or an event of default under the Indenture;

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(p) not to take any action prior to the Closing Date which would require the Prospectus to be amended or supplemented pursuant to Section 4(d);

(q) prior to the Closing Date, not to issue any press release or other communication directly or indirectly or hold any press conference with respect to any Issuer, its condition, financial or otherwise, or earnings, business affairs or business prospects (except for routine oral marketing communications and earnings announcements in the ordinary course of business and consistent with the past practices of such Issuer and of which the Underwriters are notified), without the prior written consent of the Underwriters, unless in the judgment of such Issuer and its counsel, and after notification to the Underwriters, such press release or communication is required by law; and

(r) to apply the net proceeds from the sale of the Securities as set forth in the Prospectus under the heading "Use of Proceeds."

5. Conditions of Underwriters' Obligations. The respective

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obligations of the several Underwriters hereunder are subject to the accuracy, on and as of the date hereof and the Closing Date, of the representations and warranties of each of the Issuers contained herein, to the accuracy of the statements of each of the Issuers and their respective officers made in any certificates delivered pursuant hereto, to the performance by each of the Issuers of its respective obligations hereunder and to each of the following additional terms and conditions:

(a) All of the representation and warranties of the Company and the Guarantors contained in this Agreement shall be true and correct on the Closing Date with the same force and effect as if made on and as of the Closing Date.

(b) The Prospectus shall have been timely filed with the Commission in accordance with the Securities Act; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus or otherwise shall have been complied with.

(c) The Prospectus (and any amendments or supplements thereto) shall have been printed and copies distributed to the Underwriters as promptly as practicable on or following the date of this Agreement or at such other date and time as to which the Underwriters may agree; and no stop order suspending the sale of the Securities in any jurisdiction in which the Underwriters reasonably expect to sell Securities

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shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(d) None of the Underwriters shall have discovered and disclosed to the Company on or prior to the Closing Date that the Prospectus or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of counsel for the Underwriters, is material or omits to state any fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(e) All corporate proceedings and other legal matters incident to the authorization, form and validity of each of the Transaction Documents and the Prospectus, and all other legal matters relating to the Transaction Documents and the transactions contemplated thereby shall be satisfactory in all material respects to the Underwriters, and the Issuers shall have furnished to the Underwriters all documents and information that they or their counsel may reasonably request to enable them to pass upon such matters.

(f) McDermott, Will & Emery shall have furnished to the Underwriters their written opinion, as special securities counsel to the Issuers, addressed to the Underwriters and dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially to the effect set forth in Annex A hereto.

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(g) Nixon, Hargrave, Devans & Doyle LLP, special counsel to the Issuers, shall have furnished to the Underwriters a written opinion, addressed to the Underwriters and dated the Closing Date, in form and substance satisfactory to the Underwriters, substantially to the effect set forth in Annex B hereto.

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(h) Each of Clifford Chance, special United Kingdom counsel to the Issuers, and Piper & Marbury, special Maryland counsel to the Issuers, shall have furnished to the Underwriters a written opinion, addressed to the Underwriters and dated the Closing Date, in form and substance satisfactory to the Underwriters, substantially to the effect set forth in Annex C hereto.

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(i) The Underwriters shall have received from Cahill Gordon & Reindel, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to such matters as the Underwriters may reasonably require, and the Issuers shall have furnished to such counsel such documents and information as they request for the purpose of enabling them to pass upon such matters.

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(j) The Company shall have furnished to the Underwriters letters (the "Initial Letters") of Arthur Andersen LLP and KPMG Audit Plc, addressed to  
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the Underwriters and dated the date hereof, in form and substance previously approved by the Underwriters and counsel for the Underwriters.

(k) The Company shall have furnished to the Underwriters letters (the "Bring-Down Letters") of Arthur Andersen LLP and KPMG Audit Plc, addressed  
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to the Underwriters and dated the Closing Date, in form and substance satisfactory to the Underwriters and counsel for the Underwriters. In addition, the Company shall have received letters from Arthur Andersen LLP and KPMG Audit Plc consenting to the use, in connection with the offering of the Securities, of the audited financial statements of the Company and its Subsidiaries prepared by such accountants and included in the Prospectus.

(l) The Company shall have furnished to the Underwriters a certificate, dated the Closing Date, of its chief executive officer and its chief financial officer stating that:

(i) The representations, warranties and agreements of the Company and the Guarantors in Section 1 are true and correct as of the Closing Date; the Company and the Guarantors have complied with all agreements contained herein; and the conditions set forth in Sections

5(a) through 5(k) have been fulfilled;

(ii) They have carefully examined the Registration Statement and the Prospectus and, in their opinion (A) as of the Effective Date, the Registration Statement and Prospectus did not include any untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and (B) since the Effective Date no event has occurred which is required under the Securities Act to be set forth in a supplement or amendment to the Registration Statement or the Prospectus; and

(iii) Subsequent to the date of the most recent financial statements of the Company and Matthew Clark contained in the Prospectus, there has been no event or development that can reasonably be expected to have a Material Adverse Effect, except as set forth in the Prospectus.

(m) The Indenture shall have been duly executed and delivered by each of Issuers and the Trustee, and the Notes shall have been duly executed and delivered

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by the Company and duly authenticated by the Trustee and the Guarantee of each Guarantor shall have been duly endorsed thereon.

(n) Subsequent to the execution and delivery of this Agreement or, if earlier, the dates as of which information is given in the Prospectus (exclusive of any amendment or supplement thereto), other than as expressly described in the Prospectus, there shall not have been any change in the capital stock or long-term debt or any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), results of operations, business or prospects of the Company and its Subsidiaries taken as a whole, the effect of which, in any such case described above, is, in the judgment of the Underwriters, so material and adverse as to make it impracticable or inadvisable to proceed with the sale or delivery of the Securities on the terms and in the manner contemplated in this Agreement and the Prospectus (exclusive of any amendment or supplement thereto).

(o) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency or body which would, as of the Closing Date, prevent the issuance, sale or resale of the Securities; and no injunction, restraining order or order of any other nature by any federal or state court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance, sale or resale of the Securities.

(p) Subsequent to the execution and delivery of this Agreement (i) no downgrading shall have occurred in the rating accorded the Notes or any of the Company's other debt securities by any "nationally recognized statistical rating organization," as such term is defined by the Commission for purposes of Rule 436(g)(2) of the rules and regulations of the Commission under the Securities Act and (ii) no such organization shall have publicly announced that it has under surveillance or review (other than an announcement with positive implications of a possible upgrading), its rating of the Notes or any of the Company's other debt securities.

(q) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the over-the-counter market shall have been suspended or limited, or minimum prices shall have been established on any such exchange or market by the Commission, by any such exchange or by any other regulatory body or governmental authority having jurisdiction, or trading in any securities of the Company on any exchange or in the over-the-counter market shall have been suspended, (ii) any moratorium on commercial banking activities shall have been declared by federal or New York state authorities,

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(iii) an outbreak or escalation of hostilities or a declaration by the United States of a national emergency or war or (iv) a material adverse change in general economic, political or financial conditions (or the effect of international conditions on the financial markets in the United States shall be such) the effect of which, in the case of clauses (iii) and (iv), is, in the judgment of the Underwriters, so material and adverse as to make it impracticable or inadvisable to proceed with the sale or the delivery of the Securities on the terms and in the manner contemplated in this Agreement and in the Prospectus (exclusive of any amendment or supplement thereto).

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the

provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

6. Termination. The obligations of the Underwriters hereunder may  
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be terminated by the Underwriters, in their absolute discretion, by notice given to and received by the Company prior to delivery of and payment for the Securities if, prior to that time, any of the events described in Section 5(n), (o), (p) or (q) shall have occurred and be continuing or, if the Underwriters shall decline to purchase the Securities for any reason permitted under this Agreement.

7. Defaulting Underwriters. (a) If, on the Closing Date, any of  
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the Underwriters defaults in the performance of its obligations under this Agreement, the non-defaulting Underwriters may make arrangements for the purchase of the Securities which such defaulting Underwriter agreed but failed to purchase by other persons satisfactory to the Company and the non-defaulting Underwriters, but if no such arrangements are made within 36 hours after such default, this Agreement shall terminate without liability on the part of the non-defaulting Underwriters or the Company, except that the Company will continue to be liable for the payment of expenses to the extent set forth in Sections 8 and 12 and except that the provisions of Sections 9, 10, 13 and 16 shall not terminate and shall remain in effect. As used in this Agreement, the term "Underwriters" includes, for all purposes of this Agreement unless the context otherwise requires, any party not listed in Schedule I hereto that,

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pursuant to this Section 7, purchases Securities which a defaulting Underwriter agreed but failed to purchase.

(b) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or the non-defaulting Underwriters for damages caused by its default. If other persons are obligated or agree to purchase the Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Issuers or counsel for the Underwriters may be necessary in the Prospectus or in any other document or arrangement, and the Issuers

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agree to promptly prepare any amendment or supplement to the Prospectus that effects any such changes.

8. Reimbursement of Underwriters' Expenses. If (a) this Agreement  
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shall have been terminated pursuant to Section 6 or 7, (b) the Issuers shall fail to tender the Securities for delivery to the Underwriters for any reason permitted under this Agreement or (c) the Underwriters shall decline to purchase the Securities for any reason permitted under this Agreement, the Issuers, jointly and severally, shall reimburse the Underwriters for such out-of-pocket expenses (including reasonable fees and disbursements of counsel) as shall have been reasonably incurred by the Underwriters in connection with this Agreement and the proposed purchase and resale of the Securities. If this Agreement is terminated pursuant to Section 7 by reason of the default of one or more of the Underwriters, the Company shall not be obligated to reimburse any defaulting Underwriter on account of such expenses.

9. Indemnification. (a) Each of the Issuers, jointly and  
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severally, shall indemnify and hold harmless each Underwriter (including, without limitation, Schroder & Co. Inc. acting in its role as QIU), their respective affiliates, their respective officers, directors, employees, representatives and agents, and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act (collectively referred to for purposes of this Section 9(a) and Section 10 as an "Underwriter"), from and against any loss, claim,

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damage or liability, joint or several, or any action in respect thereof (including, without limitation, any loss, claim, damage, liability or action relating to purchases and sales of the Securities), to which such Underwriter may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and shall reimburse each Underwriter promptly upon demand for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending or preparing to defend against or appearing as a third party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Issuers



shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with any Underwriters' Information, or (iii) with respect to the Schroder & Co.

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Inc. only, its activities as QIU under its engagement pursuant to Section 2(c) hereof; provided, however, that Schroder & Co. will not be indemnified with

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respect to its activities as QIU to the extent that any loss, claim, damage or liability arising from Schroder & Co.'s activities as QIU is finally judicially determined by a court of competent jurisdiction not subject to further appeal to have resulted from the gross negligence or willful misconduct of Schroder & Co. The foregoing indemnity agreement is in addition to any liability which the Issuers may otherwise have to any Underwriter or to any officer, employee or controlling person of that Underwriter; provided, further, however, that with respect to any such untrue statement in or omission from the Preliminary Prospectus, the indemnity agreement contained in this Section 9(a) shall not inure to the benefit of any such Underwriter to the extent that the sale of the Securities to the person asserting any such loss, claim, damage, liability or action was an initial resale by such Underwriter and any such loss, claim, damage, liability or action of or with respect to such Underwriter results from the fact that both (A) to the extent required by applicable law, a copy of the Prospectus was not sent or given to such person at or prior to the written confirmation of the sale of such Securities to such person and (B) the untrue statement in or omission from the Preliminary Prospectus was corrected in the Prospectus and the Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission unless in, either case, such failure to deliver the Prospectus was a result of non-compliance by the Issuers with Section 5(c).

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless each of the Issuers, their respective affiliates, their respective officers, directors, employees, representatives and agents, and each person, if any, who controls any Issuer within the meaning of Section 15 the Securities Act or Section 20(a) of the Exchange Act (collectively referred to for purposes of this Section 9(b) and Section 10 as the "Issuers"), from and against any loss,

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claim, damage or liability, joint or several, or any action in respect thereof, to which the Issuers may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with any Underwriters' Information, and shall reimburse the Issuers promptly upon demand for any legal or other expenses reasonably incurred by the Issuers in connection with investigating or defending or preparing to defend against or appearing as a third

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party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under this Section 9 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party pursuant to Section 9(a) or 9(b), notify the indemnifying party in writing of such claim or the commencement of such action; provided, however, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 9 except to the extent that the indemnifying party was otherwise unaware of such claim or the commencement of such action and it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; provided, further, however, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 9. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 9 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that an indemnified party

shall have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel for the indemnified party will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based upon advice of counsel to the indemnified party) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based upon advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm of attorneys (in addition to any local counsel) at any one time for all such indemnified

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party or parties. Each indemnified party, as a condition of the indemnity agreements contained in Sections 9(a) and 9(b), shall use all reasonable efforts to cooperate with the indemnifying party in the defense of any such action or claim. No indemnifying party shall be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

(d) The Underwriters severally confirm and the Issuers acknowledge that the statements with respect to the public offering of the Notes by the Underwriters set forth on the cover page of, and the information under the caption "Underwriting" in, the Prospectus Supplement are correct and constitute the only Underwriters' Information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in the Registration Statement and the Prospectus.

The obligations of the Issuers and the Underwriters in this Section 9 are in addition to any other liability that the Issuers or the Underwriters, as the case may be, may otherwise have, including in respect of any breaches of representations, warranties and agreements made herein by any such party.

10. Contribution. If the indemnification provided for in Section 9

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is unavailable or insufficient to hold harmless an indemnified party under Section 9(a) or 9(b), then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Issuers on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuers on the one hand and the Underwriters on the other with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Issuers on the one hand and the Underwriters on the other with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Securities purchased under this Agreement (before deducting expenses) received by or on behalf of the Company, on the one hand, and the total discounts and commissions received by the Underwriters with respect to the Securities purchased under this Agreement, on the other, bear to the total gross proceeds from the sale of the Securities under this Agreement, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things,

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whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by any Issuer on the one hand or to any Underwriters' Information on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Issuers and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 10 were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or

payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 10 shall be deemed to include, for purposes of this Section 10, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim. Notwithstanding the provisions of this Section 10, no Underwriter shall be required to contribute any amount in excess of the amount by which the total discounts and commissions received by such Underwriter with respect to the Securities purchased by it under this Agreement exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 10 are several in proportion to their respective purchase obligations and not joint.

11. Persons Entitled to Benefit of Agreement. This Agreement shall

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inure to the benefit of and be binding upon each of the Underwriters and each of the Issuers and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except as provided in Sections 9 and 10 with respect to affiliates, officers, directors, employees, representatives, agents and controlling persons of the Issuers and the Underwriters. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 11, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

12. Expenses. Whether or not the transactions contemplated by this

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Agreement are consummated or this Agreement is terminated, the Issuers, jointly and severally, agree with the Underwriters to pay (a) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (b) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement and any amendments and exhibits thereto; (c) the costs of distributing the Registration Statement as originally filed and each amendment thereto and any

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post-effective amendments thereof (including, in each case, exhibits); (d) the costs incident to the preparation, printing and distribution of the Preliminary Prospectus, the Prospectus and any amendments or supplements thereto; (e) the costs of reproducing and distributing each of the Transaction Documents; (f) the costs incident to the preparation, printing and delivery of the certificates evidencing the Securities, including stamp duties and transfer taxes, if any, payable upon issuance of the Securities; (g) the filing fees incident to securing any required review by the National Association of Securities Dealers, Inc. of the terms of sale of the Securities; (h) the fees and expenses of the Issuers' counsel and independent accountants; (i) the fees and expenses of preparing, printing and distributing Blue Sky memoranda (including related fees and expenses of counsel for the Underwriters); (j) any fees charged by rating agencies for rating the Securities; (k) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); and (l) all other costs and expenses incident to the performance of the obligations of the Issuers under this Agreement which are not otherwise specifically provided for in this Section 12; provided, however, that except as provided in this Section 12 and Section 8, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel, any transfer taxes on the Securities they may sell and the expenses of advertising any offering of the Securities made by the Underwriters.

13. Survival. The respective indemnities, rights of contribution,

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representations, warranties and agreements of the Issuers and the Underwriters contained in this Agreement or made by or on behalf of the Issuers or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any of them or any of their respective affiliates, officers, directors, employees, representatives, agents or controlling persons.

14. Notices, etc. All statements, requests, notices and agreements

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hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail or telecopy transmission to Chase Securities Inc., 270 Park Avenue, New York, New York 10017, Attention: David Fass (telecopier no.: 212-270-0994); or

(b) if to the Issuers, shall be delivered or sent by mail or telecopy transmission to the address of the Company set forth in the Final Prospectus Supplement, Attention: David Sorce (telecopier no.: 716-218-

provided, however, that any notice to an Underwriter pursuant to Section 9(c) shall also be delivered or sent by mail to such Underwriter at its address set forth on the signature page

hereof. Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Issuers shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by CSI.

15. Definition of Terms. For purposes of this Agreement, (a) the term "business day" means any day on which the New York Stock Exchange, Inc. is open for trading and (b) except where otherwise expressly provided, the term "affiliate" has the meaning set forth in Rule 405 under the Securities Act.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principals of conflicts of laws thereof.

17. Counterparts. This Agreement may be executed in two or more counterparts (which may include counterparts delivered by telecopier) and, if executed in counterpart, the executed counterparts shall each be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

18. Amendments. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

19. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

[Signature Pages Follow]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to us a counterpart hereof, whereupon this instrument will become a binding agreement between each of the Issuers and the several Underwriters in accordance with its terms.

Very truly yours,

CANANDAIGUA BRANDS, INC.

By: \_\_\_\_\_  
Name:  
Title:

BATAVIA WINE CELLARS, INC.

By: \_\_\_\_\_  
Name:  
Title:

BARTON INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

BARTON BRANDS, LTD.

By: \_\_\_\_\_  
Name:  
Title:

BARTON BEERS, LTD.

By:

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Name:  
Title:

BARTON BRANDS OF CALIFORNIA, INC.

By: -----  
Name:  
Title:

BARTON BRANDS OF GEORGIA, INC.

By: -----  
Name:  
Title:

BARTON DISTILLERS IMPORT CORP.

By: -----  
Name:  
Title:

BARTON FINANCIAL CORPORATION

By: -----  
Name:  
Title:

STEVENS POINT BEVERAGE CO.

By: -----  
Name:  
Title:

CANANDAIGUA LIMITED

By: -----  
Name:  
Title:

MONARCH IMPORT COMPANY

By: -----  
Name:  
Title:

CANANDAIGUA WINE COMPANY, INC.

By: -----  
Name:  
Title:

THE VIKING DISTILLERY, INC.

By: -----  
Name:  
Title:

CANANDAIGUA EUROPE LIMITED

By: -----  
Name:  
Title:

ROBERTS TRADING CORP.

By:

-----  
Name:  
Title:

POLYPHENOLICS, INC.

By: -----  
Name:  
Title:

Accepted:

CHASE SECURITIES INC.

By: /s/ Joe Purcell  
-----  
Name: Joe Purcell  
Title: Vice President

CREDIT SUISSE FIRST BOSTON CORPORATION

By: /s/ Eldad Coppens  
-----  
Name: Eldad Coppens  
Title: Director

FLEET SECURITIES, INC.

By: /s/ Robert Hornstein  
-----  
Name: Robert Hornstein  
Title: Vice President

SCHRODER & CO. INC.

By: /s/ Andrew van der Vord  
-----  
Name: Andrew van der Vord  
Title: Managing Director

SCOTIA CAPITAL MARKETS (USA) INC.

By: /s/ Amil V. Schiaffino  
-----  
Name: Amil V. Schiaffino  
Title: Director

SCHEDULE I  
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Underwriters -----	Principal Amount of Notes -----
Chase Securities Inc.	\$160,000,000
Credit Suisse First Boston Corporation	10,000,000
Fleet Securities, Inc.	10,000,000
Schroder & Co. Inc.	10,000,000
Scotia Capital Markets (USA) Inc.	10,000,000
Total	\$200,000,000

ANNEX A  
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[Form of Opinion of Special Securities Counsel for the Company]

McDermott, Will & Emery, special securities counsel to the Company, shall have furnished to the Underwriters their written opinion, as counsel for the Issuers, addressed to the Underwriters and dated on the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially to the effect set forth below:

(i) The Company has been duly incorporated, is validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to execute, deliver and perform all of its respective obligations under the Transaction Documents.

(ii) No consent, approval, authorization, order, registration or

qualification of or with any governmental authority or agency or, to our knowledge, any court or similar body is required under the laws of the United States, the State of New York and the General Corporation Law of the State of Delaware for the execution, delivery or performance of the Transaction Documents by the Company or any Guarantor, as the case may be, except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the securities by the Underwriters (as to which no opinion is required).

(iii) The execution, delivery and performance of the Transaction Documents by the Company or any Guarantor, as the case may be, and the application of the net proceeds from the sale of the Securities in the manner described in the Prospectus under the caption "Use of Proceeds" do not and will not (A) conflict with the charter and by-laws of the Company, (B) conflict with, constitute a breach of or a default by the Company or any Guarantor, as the case may be, under, or result in the creation or imposition of any lien, security interest or encumbrance upon any of the assets of the Company or any Guarantor, as the case may be, pursuant to the terms of the Credit Agreement or any other indenture, mortgage, deed of trust, loan or credit agreement, bond, debenture, note, lease or other agreement or instrument listed on Annex 2 hereto, (C) contravene the General Corporation Law of the State of Delaware or any statute, rule or regulation under the laws of the United States and the State of New York applicable to the Company or any of the Guarantors or any of their respective properties or (D) to the

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knowledge of such counsel, conflict with or violate any judgment, decree or order of any court or governmental agency or court or body applicable to the Company or any of the Guarantors and their respective properties.

(iv) The Transaction Documents have been duly authorized by the Company. The Transaction Documents have been duly executed and delivered by the Company and each of the Guarantors. The sale and the issuance of the Notes and the Guarantees, and the execution and delivery thereof, have been duly authorized by requisite corporate action of the Company. The Notes have been duly executed by the Company and the Guarantees have been duly executed by the Guarantors. The Securities have been duly delivered to the Underwriters by the Company and the Guarantors.

(v) The Indenture is a valid and binding agreement, enforceable against the Company and each Guarantor in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). When the Notes and the Guarantees have been authenticated in accordance with the terms of the Indenture, the Notes and the Guarantees will be valid and binding obligations of the Company and the Guarantors, respectively, entitled to the benefits of the Indenture and enforceable against the Company and the Guarantors in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(vi) The Securities and the Indenture conform in all material respects to the descriptions thereof under the caption "Description of the Notes" in the Prospectus and "Description of Debt Securities" in the Basic Prospectus. The statements made in the Prospectus under the caption "Description of the Senior Credit Facilities," insofar as they describe certain provisions of the Credit Agreement, are accurate in all material respects.

(vii) Each of the Company's Current Reports on Form 8-K/A filed on February 12, 1999 and on Form 8-K filed on February 22, 1999 incorporated by reference into the Prospectus, at the time it was filed with the Commission, appeared on its face to be appropriately responsive in all mate-

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rial respects to the requirements of the Exchange Act and rules and regulations as promulgated by the Commission under the Exchange Act, except that such counsel need not express any opinion as to the financial statements, schedules, projections (and associated assumptions and cautionary statements) and other financial data

included therein or incorporated by reference therein or excluded therefrom or the exhibits thereto (except to the extent set forth in the next sentence of this paragraph).

(viii) The Registration Statement was declared effective under the Securities Act as of November 19, 1998, the Prospectus was filed with the Commission pursuant to the subparagraph of Rule 424(b) of the Rules and Regulations specified in such opinion on the date specified therein and no stop order suspending the effectiveness of the Registration Statement has been issued and, to the knowledge of such counsel, no proceeding for that purpose is pending or threatened by the Commission.

(ix) As of its date and as of the Closing Date, the Registration Statement and the Prospectus and any further amendments or supplements thereto made by the Company prior to the Closing Date (except for the financial statements, the notes thereto and related schedules and other financial data included therein, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Securities Act and the Rules and Regulations (except that such counsel will not express any opinion as to the financial statements, schedules and other financial data included therein or incorporated by reference therein or excluded therefrom, or exhibits thereto or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the prospectus except to the extent set forth in paragraph (vi) of this opinion).

(x) The Indenture conforms as to form in all material respects with the requirements of the Trust Indenture Act and the Trust Indenture Act Rules and Regulations.

(xi) Neither the Company nor any Subsidiary is required to register under the Investment Company Act of 1940, as amended (the "1940 Act"), as an "investment company" as such term is defined in the 1940 Act.

(xii) Neither the issuance, sale or delivery of the Securities nor the application of the proceeds thereof by the Company as set forth in the Prospectus will violate Regulations T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

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In addition, such opinion shall state such counsel has participated in conferences with officers and representatives of the Company and the Subsidiaries, and representatives of the independent accountants of the Company and the Underwriters at which the contents of the Registration Statement and the Prospectus and related matters were discussed. Although such counsel is not required to pass upon or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus, and are not required to make an independent check or verification thereof, except to the extent set forth in paragraph (vi) of the opinion, such counsel is required to state that, based upon the foregoing, no facts have come to their attention to lead them to believe that the Registration Statement or the Prospectus (including the documents incorporated therein by reference (except to the extent statements contained in such documents have been modified or superseded by statements contained in the Prospectus)), as of its date and as of the Closing Date, contained an untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading. Such counsel need express no opinion or belief as to the financial statements, schedules, and other financial data included therein, or incorporated by reference into, or excluded from the Registration Statement or the Prospectus.

ANNEX B

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#### Form of Opinion of Special Counsel to the Company

Nixon, Hargrave, Devans & Doyle LLP, special counsel to the Company, shall have furnished to the Underwriters its written opinion, addressed to the Underwriters and dated on the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially to the effect set forth below:

(i) Each of the Subsidiaries of the Company listed on Annex 1 attached hereto (the "Guarantors") is a corporation duly incorporated, in each case, validly existing and in good standing under the laws of its respective jurisdiction of incorporation. The Company and each of the Guarantors is duly qualified and in good standing as a foreign corporation in each jurisdiction listed for it on Annex 2 attached hereto. The Company and each Guarantor has all requisite corporate power to own, lease and license its respective properties and conduct its business as now being conducted and as described in the Prospectus. All of the issued and outstanding capital stock of each



Guarantor has been duly authorized and validly issued and is fully paid and non-assessable and were not issued in violation of any preemptive or similar rights of stockholders arising under the corporate law of the state of incorporation of such Guarantor, the charter or bylaws of such Guarantor, or, to the best knowledge of such counsel, any agreement to which such Guarantor is party, and, to the best knowledge of such counsel, is owned by the Company, free and clear of any lien, adverse claim, security interest, restriction on transfer, shareholders' agreement, voting trust or other defect of title whatsoever except for the liens under the Credit Agreement.

(ii) The Guarantors have the corporate power and authority to execute, deliver and perform all of their respective obligations under the Transaction Documents. The execution, delivery and performance of the Transaction Documents by the Company or any Guarantor, does not and will not (A) conflict with the charter or bylaws of any Guarantor, (B) contravene the General Corporation Law of the State of Delaware or any statute, rule or regulation under the laws of the State of New York applicable to the Guarantors or any of their respective properties, or (C) to the knowledge of such counsel, conflict with or violate any judgment, decree or order of any court or governmental agency or court or body applicable to any of the Guarantors or any of their respective properties.

(iii) The Transaction Documents have been duly authorized, executed and delivered by each Guarantor. The sale and issuance of the Guar-

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antees and the execution and delivery thereof have been duly authorized by requisite corporate action of the Guarantors.

(iv) To the best knowledge of such counsel after due inquiry, except as described or referred to in the Registration Statement and Prospectus: there is not pending or threatened any action, suit, proceeding, inquiry or investigation, to which the Company or any of the Guarantors is a party, or to which the property of the Company or any of the Guarantors is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company or any of the Guarantors, will individually or in the aggregate result in any material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Guarantors taken as a whole or will materially adversely affect the consummation of the transactions contemplated by the Prospectus; and all pending legal or governmental proceedings to which the Company or any of the Subsidiaries is a party or that affect any of their respective properties, that are not described in the Registration Statement and Prospectus, including ordinary routine litigation incidental to the business, considered in the aggregate, will not result in a material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Guarantors taken as a whole.

(v) Each of the documents filed by the Company under the Exchange Act and incorporated by reference into the Prospectus, other than the Company's Current Report on Form 8-K/A filed on February 12, 1999 and the Company's Current Report on Form 8-K filed on February 22, 1999 (collectively, the "Documents"), at the time it was filed with the Commission, appeared on its face to be appropriately responsive in all material respects to the requirements of the Exchange Act, and the rules and regulations as promulgated by the Commission under the Exchange Act, except that such counsel need not express any opinion as to the financial statements, schedules, and other financial data included therein or incorporated by reference therein, or excluded therefrom or the exhibits thereto (except to the extent set forth in the next sentence of this paragraph) and such counsel need not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Documents. To such counsel's knowledge without having made any independent investigation and based upon representations of officers of the Company as to factual matters, there were no con-

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tracts or documents required to be filed as exhibits to such Documents on the date they were filed which were not so filed.

Such counsel may limit its opinion to the laws of the United States and the State of New York and the General Corporation Law of the State of Delaware.

## Guarantors

Guarantor -----	State of Incorporation -----
Batavia Wine Cellars, Inc.	New York
Canandaigua Wine Company, Inc.	New York
Barton Incorporated	Delaware
Barton Brands, Ltd.	Delaware

ANNEX C

## Form of Opinion of Local Counsel to the Company

Clifford Chance, special United Kingdom counsel to the Issuers, and Piper & Marbury, special Maryland counsel to the Issuers, shall have furnished to the Underwriters their written opinions, each addressed to the Underwriters and dated on the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially to the effect set forth below:

(i) [ ] (the "Company") has been duly organized and is validly existing as a corporation and is in good standing under the laws of its jurisdiction of incorporation.

(ii) The Company has the corporate power and authority to execute, deliver and perform its obligations under the Underwriting Agreement, the Indenture, the Supplemental Indenture and the Guarantee. The Indenture, the Supplemental Indenture, the Underwriting Agreement, and the Guarantee have been duly authorized for execution and delivery by the Company. The sale and issuance by the Company of its Guarantee and the execution and delivery thereof has been duly authorized by requisite corporation action of the Company.

(iii) The execution, delivery, and performance by the Company of the Underwriting Agreement, the Indenture, the Supplemental Indenture and the Guarantee does not and will not (A) conflict with the charter or By-Laws of the Company, (B) contravene any statute, rule or regulation under the laws of its jurisdiction of incorporation applicable to the Company and its properties, or (c) to counsel's knowledge, conflict with or violate any judgment, decree or order of any court or governmental agency or court or body applicable to the Company and its properties (except that no opinion need be expressed with respect to the securities or Blue Sky laws of its jurisdiction of incorporation).

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CANANDAIGUA BRANDS, INC., as Issuer,  
 and its subsidiary guarantors  
 Batavia Wine Cellars, Inc.  
     Barton Incorporated  
     Barton Brands, Ltd.  
     Barton Beers, Ltd.  
 Barton Brands of California, Inc.  
 Barton Brands of Georgia, Inc.  
 Barton Distillers Import Corp.  
 Barton Financial Corporation  
 Stevens Point Beverage Co.  
     Monarch Import Company  
 Canandaigua Wine Company, Inc.  
 The Viking Distillery, Inc.  
 Canandaigua Europe Limited  
     Polyphenolics, Inc.  
     Canandaigua Limited  
 Roberts Trading Corp., as Guarantors

AND

HARRIS TRUST AND SAVINGS BANK, as Trustee

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INDENTURE

Dated as of February 25, 1999

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CANANDAIGUA BRANDS, INC.

Reconciliation and Tie between Indenture  
 and  
 Trust Indenture Act of 1939

Trust Indenture Act Section	Indenture Section
310	(a) (1)..... 11.5
	(a) (2)..... 11.5
	(a) (3)..... Not applicable
	(a) (4)..... Not applicable
	(b)..... 11.4, 11.5
311	(a)..... 11.9(a), (c)
	(b)..... 11.9(b), (c)
312	(a)..... 4.6(d), 11.1
	(b)..... 11.11
	(c)..... 11.11
313	(a)..... 11.10(a)
	(b) (i)..... Not applicable
	(b) (2)..... 11.10(b)
	(c)..... 11.10(c)
	(d)..... 11.10(c)
314	(a) (1)..... 4.6(a)
	(a) (2)..... 4.6(b)
	(a) (3)..... 4.6(c)
	(b)..... Not applicable
	(c)..... 3.8
	(d)..... Not applicable
	(e)..... 3.8
315	(a)..... 11.1(a), (b)
	(b)..... 11.3
	(c)..... 11.1(a)
	(d)..... 11.1(a), 11.1(b), 13.3
	(e)..... 7.7
316	(a) (1) (A)..... 7.6, 13.3

	(a) (1) (B).....	7.1, 7.5, 13.3
	(a) (2).....	Not required
	(b).....	7.7
317	(a).....	7.2
	(b).....	4.8
318	(a).....	3.4

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

CANANDAIGUA BRANDS, INC.  
INDENTURE

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INDENTURE dated as of the 25th day of February, 1996, among CANANDAIGUA BRANDS, INC., a Delaware corporation (hereinafter called the "Company"), the wholly-owned subsidiaries of the Company set forth on the signature page hereto (such wholly-owned subsidiaries then-existing and, as applicable, any successor who replaces such subsidiary pursuant to the applicable provisions of this Indenture and, thereafter, such successor, all together the "Guarantors") and HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation with its principal offices in Chicago, Illinois, as Trustee hereunder (hereinafter called the "Trustee");

WHEREAS, the Company for its lawful corporate purposes has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness (hereinafter called the "Debt Securities"), to be issued in one or more series as herein provided; and

WHEREAS, each Guarantor has duly authorized the issuance of a guarantee of the Debt Securities, of substantially the tenor set forth herein, and to provide therefor each Guarantor has duly authorized the execution and delivery of this Indenture and such Guarantee (as hereinafter defined).

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

THAT, in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Debt Securities by the holders thereof, and for other valuable consideration the receipt whereof is hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed among the Company, the Guarantors and the Trustee, for the benefit of those who shall hold the Debt Securities, as follows:

ARTICLE I

DEFINITIONS; TRUST INDENTURE ACT CONTROLLING

SECTION 1.1. Definitions. Unless otherwise specified or the context otherwise requires, the terms defined in this Article I shall for all purposes of this Indenture and of any indenture supplemental hereto have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Additional Amounts

The term "Additional Amounts" has the meaning specified in Section 14.4.

Affiliate

An "Affiliate" shall mean any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any

other obligor under this Indenture.

#### Authenticating Agent

The term "Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 11.14 to act on behalf of the Trustee to authenticate Debt Securities of one or more series.

#### Authorized Newspaper

The term "Authorized Newspaper" shall mean a newspaper in the English language or in an official language of the country of publication, customarily printed on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in the place in connection with which the term is used or in the financial community of such place. If, because of temporary suspension of publication or general circulation of any newspaper or for any other reason, it is impossible or, in the opinion of the Trustee, impracticable to make any publication of any notice required by this Indenture in the manner herein provided, such publication or other notice in lieu thereof which is made at the written direction of the Company by the Trustee shall constitute a sufficient publication of such notice. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same place meeting the foregoing requirements and in each case on any Business Day.

#### Bankruptcy Law

The term "Bankruptcy Law" means Title 11 of the United States Code, as now constituted or hereafter in effect, or any other applicable Federal or State bankruptcy, insolvency or other similar law.

#### Board; Board of Directors

The term "Board" or "Board of Directors" shall mean the Board of Directors of the Company or (i) the Executive Committee, if any, of such Board, (ii) any other committee of such Board duly authorized to act hereunder, or (iii) any officers of the Company duly authorized by such Board or by any duly authorized committee of such Board to act hereunder.

#### Business Day

The term "Business Day" shall mean, with respect to any series of Debt Securities, a day that, in the city (or in any of the cities, if more than one) in which amounts are payable, as specified in the terms of such Debt Securities, is not a day upon which banking institutions

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are authorized or required by law, or by executive order issued by a governmental authority or agency regulating such banking institutions, to close.

#### Capital Stock

The term "Capital Stock" shall mean stock of any class of the Company.

#### Certified Resolution

The term "Certified Resolution" shall mean a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

#### Class A Common Stock

The term "Class A Common Stock" shall mean the Class A Common Stock, par value \$.01 per share, of the Company.

#### Closing Price

The term "Closing Price" on any day when used with respect to any class of Capital Stock shall mean (i) if the stock is then listed or admitted to trading on a national securities exchange in the United States, the last reported sale price, regular way, for the stock as reported in the consolidated transaction or other reporting system for securities listed or traded on such exchange, or (ii) if the stock is listed on the National Association of Securities Dealers, Inc. Automated Quotations System National Market System (the "Nasdaq National Market System"), the last reported sale price, regular way, for the stock, as reported on such list, or (iii) if the stock is not so admitted for trading on any national securities exchange or the Nasdaq National Market System, the average of the last reported closing bid and asked prices reported by the National Association of Securities Dealers, Inc. Automated Quotations System as furnished by any member in good standing of the National Association of Securities Dealers, Inc., selected from time to time by the Company for that purpose or as quoted by the National Quotation Bureau Incorporated. In the event that no such quotation is available for any day, the Board of Directors



shall be entitled to determine the current market price on the basis of such quotations as it considers appropriate.

#### Code

The term "the Code" means the Internal Revenue Code of 1986, as amended.

#### Company

The term "Company" shall mean Canandaigua Brands, Inc., a Delaware corporation, and, subject to the provisions of Article X, shall include its successors and assigns.

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#### Company Order

The term "Company Order" means a written order signed in the name of the Company by its Chairman of the Board, President or any Vice President (regardless of Vice Presidential designation), and by its Chief Financial Officer, Treasurer, any Assistant Treasurer, Secretary or any Assistant Secretary and delivered to the Trustee.

#### Debt Security

The term "Debt Security" shall mean one of the debentures, notes or other evidences of indebtedness that are issued from time to time in one or more series under this Indenture and, more particularly, any series of Debt Securities authenticated and delivered under this Indenture.

holder of Debt Securities;

The term "holder of Debt Securities" or other similar term shall mean any person who shall at the time be the registered holder of any Debt Security or Debt Securities as shown by the register or registers kept by the Company or its agent for that purpose in accordance with the terms of this Indenture.

#### Depository

The term "Depository" has the meaning specified in Section 2.13.

#### Event of Default

The term "Event of Default" shall mean an event listed in Section 7.1, continued for the period of time, if any, and after the required notices, if any, therein designated.

#### Global Security

The term "Global Security" has the meaning specified in Section 2.13.

#### Guaranteed Obligations

The term "Guaranteed Obligations" has the meaning specified in Section 14.1.

#### Guaranteed Parties

The term "Guaranteed Parties" shall mean all Persons who are now or who hereafter become holders of Debt Securities and the Trustee.

#### Guarantees

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The term "Guarantees" means the guarantee of each of the Guarantors as set forth in Article XIV hereof, in one or more supplemental indentures hereto, and any additional guarantee of the Debt Securities executed pursuant to the terms thereof.

#### Guarantors

The term "Guarantors" shall have the meaning set forth in the Recitals hereto.

#### Indenture

The term "Indenture" shall mean this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented and, unless the context otherwise indicates, shall include the form and terms of each particular series of Debt Securities established as contemplated hereunder.

#### Officers' Certificate

The term "Officers' Certificate" shall mean a certificate signed by the

Chairman of the Board, President or any Vice President (regardless of Vice Presidential designation), and by its Chief Financial Officer, Treasurer, any Assistant Treasurer, Secretary or any Assistant Secretary of the Company, in their capacities as such officers of the Company and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 3.8, if and to the extent required by the provisions thereof.

#### Opinion of Counsel

The term "Opinion of Counsel" shall mean an opinion in writing signed by legal counsel (who may be an employee of the Company) acceptable in form and substance to the Trustee and delivered to the Trustee. Such opinion shall include the statements provided for in Section 3.8, if and to the extent required by the provisions thereof.

#### Original Issue Discount

The term "Original Issue Discount" with respect to any debt security, including an Original Issue Discount Security, has the same meaning as set forth in Section 1273 of the Code, or any successor provision, and the applicable Treasury Regulations thereunder.

#### Original Issue Discount Security

The term "Original Issue Discount Security" means any series of a Debt Security, including a series of a Debt Security that does not provide for the payment of interest prior to maturity, which is issued at a price lower than the principal amount thereof and which provides that upon redemption or acceleration of the stated maturity thereof an amount less than the principal amount thereof to be due and payable pursuant to Section 7.1.

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#### Outstanding

The term "Outstanding," when used with respect to the Debt Securities, shall, subject to Section 3.3, mean, as of the date of determination, all Debt Securities theretofore authenticated and delivered under this Indenture, except: (a) Debt Securities for the payment or redemption of which cash (or other form of payment if permitted by the terms of such Debt Securities) in the necessary amount shall have been deposited in trust with the Trustee or any paying agent (other than the Company) provided that, if such Debt Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provision satisfactory to the Trustee shall have been made for giving such notice; (b) Debt Securities converted into Capital Stock in accordance with Article XIII hereof, if the terms of such Debt Securities provide for convertibility pursuant to Section 2.2; (c) Debt Securities paid or in lieu of or in substitution for which other Debt Securities shall have been authenticated and delivered pursuant to the terms of Section 2.9, unless proof satisfactory to the Trustee is presented that any such Debt Securities are held by persons in whose hands such Debt Securities are valid, binding and legal obligations; and (d) Debt Securities which have been cancelled by the Trustee or delivered to the Trustee or its designee for cancellation.

#### Paying Agent

The term "Paying Agent" shall mean any person authorized by the Company to pay the principal of, premium, if any, and interest on any Debt Securities.

#### Person

The term "Person" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

#### Preferred Stock

The term "Preferred Stock" shall mean the Preferred Stock, par value \$.01 per share, of the Company.

#### Principal

The term "principal" of a debt security, including any series of Debt Securities, on any day and for any purpose means the amount (including, without limitation, in the case of an Original Issue Discount Security, any accrued original issue discount, but excluding interest) that is payable with respect to such debt security as of such date and for such purpose (including, without limitation, in connection with any sinking fund, upon any redemption at the option of the Company upon any purchase or exchange at the option of the Company or the holder of such debt security and upon any acceleration of the maturity of such debt security).

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Principal amount

The term "principal amount" of a debt security, including any series of Debt Securities, means the principal amount as set forth on the face of such debt security.

Responsible Officer

The term "Responsible Officer", when used with respect to the Trustee, shall mean any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

Securities Exchange Act

The term "Securities Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

Significant Subsidiary

The term "Significant Subsidiary" shall mean any subsidiary (i) whose revenues exceed 10% of the total revenues of the Company, in each case for the most recent fiscal year, or (ii) whose net worth exceeds 10% of the total stockholders' equity of the Company, in each case as of the end of the most recent fiscal years.

Trustee; corporate principal office

The term "Trustee" shall mean the trustee or trustees hereunder for the time being, whether original or successor. "Trustee" as used with respect to the Debt Securities of any series shall mean the Trustee with respect to Debt Securities of such series. The term "principal office" of the Trustee shall mean the principal office of the Trustee at which, at any particular time, the corporate trust business of the Trustee shall be administered, which office as of the date hereof is at 311 West Monroe Street, 12th Floor, Chicago, Illinois 60606.

U.S. Government Obligations

The term "U.S. Government Obligations" means direct obligations of, or obligations entitled to the full faith and credit of, the United States of America.

SECTION 1.2. Trust Indenture Act definitions controlling. All terms used in this Indenture which are defined in the Trust Indenture Act of 1939, as amended, or which are by reference therein defined in the Securities Act of 1933 (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in such Trust Indenture Act and such Securities Act as they were respectively in force at the date of this Indenture, except as otherwise provided in Section 12.3.

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ARTICLE II

FORM, ISSUE AND REGISTRATION OF DEBT SECURITIES

SECTION 2.1. Forms generally and dating. The Debt Securities of each series shall be in the form or forms (including temporary or permanent global form) established from time to time by or pursuant to a resolution of the Board of Directors or in one or more indentures supplemental hereto, which shall set forth the information required by Section 2.2. The Debt Securities and the Trustee's certificate of authentication shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or by a resolution of the Board of Directors and may have such notations, legends or endorsements as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture or as may be required by law, stock exchange rule or usage. The Company shall approve and provide the form of the Debt Securities and the form of any Guarantee thereto and any notation, legend or endorsement thereon. If the form of Debt Securities of any series is established by action taken pursuant to a resolution of the Board of Directors, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 2.5 for the authentication and delivery of such Debt Securities.

Each Debt Security shall be dated the date of its authentication. The form of the Trustee's certificate of authentication to be borne by the Debt Securities shall be substantially as follows:

[FORM OF TRUSTEE'S CERTIFICATE]

This is one of the Debt Securities of the series referred to on the reverse hereof.

as Trustee

By: \_\_\_\_\_  
Authorized Officer

SECTION 2.2. Amount unlimited; Issuable in series.

The aggregate principal amount of the Debt Securities which may be authenticated and delivered under this indenture is unlimited.

The Debt Securities may be issued in one or more series. There shall be established in or pursuant to one or more resolutions of the Board of Directors, or established in or pursuant

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to one or more indentures supplemental hereto, prior to the issuance of the Debt Securities of any series:

(1) the title and designation of the Debt Securities of the series (which shall distinguish Debt Securities of the series from all other Debt Securities) including whether such Debt Securities shall be issued as senior Debt Securities, senior subordinated Debt Securities or subordinated Debt Securities, any subordination provisions particular to such series of Debt Securities, and whether such Debt Securities are convertible and/or exchangeable;

(2) any limit upon the aggregate principal amount of the Debt Securities of the series which may be authenticated and delivered under this Indenture (except for the Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of the series pursuant to Section 2.6, 2.8, 2.9, 2.10, 2.11, 5.2 or 12.5) and except for any Debt Securities which pursuant to Section 2.4 are deemed not to have been authenticated and delivered hereunder;

(3) the date or dates (and whether fixed or extendable) on which the principal of the Debt Securities of the series is payable or the method of determination thereof;

(4) the rate or rates (which may be fixed, floating or adjustable) at which the Debt Securities of the series shall bear interest, if any, the method of calculating such rates, the date or dates from which such interest shall accrue or the manner of determining such dates, the interest payment dates on which such interest shall be payable and the record dates for the determination of holders of Debt Securities to whom interest is payable;

(5) the place or places where the principal of and premium, if any, and interest on the Debt Securities, if any, of the series shall be payable;

(6) any provisions relating to the issuance of the Debt Securities of such series at an original issue discount;

(7) the price or prices at which, the period or periods within which and the terms and conditions upon which the Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise (including, without limitation, the form or method of payment thereof if other than in cash);

(8) the obligation, if any, of the Company to redeem, purchase or repay the Debt Securities of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a holder of Debt Securities thereof and the price or prices at which and the period or periods within which

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and the terms and conditions upon which the Debt Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation (including, without limitation, the form or method of payment thereof if other than in cash), and any provisions for the remarketing of such Debt Securities;

(9) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Debt Securities of the series shall be issuable;

(10) if other than the principal amount thereof, the portion of the principal amount of the Debt Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 7.1 or provable in bankruptcy pursuant to Section 7.2, or, if

applicable, which is convertible in accordance with Article XIII.

(11) any Events of Default with respect to the Debt Securities of a particular series, in lieu of or in addition to those set forth herein and the remedies therefor;

(12) the obligations, if any, of the Company to permit the conversion of the Debt Securities of such series into Preferred Stock or Class A Common Stock, or combination thereof, and the terms and conditions upon which such conversion shall be effected (including, without limitation, the initial conversion price or rate, the conversion period and any other provision in addition to or in lieu of those set forth in this Indenture relative to such obligation);

(13) any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Debt Securities of such series;

(14) the currency or currencies, including composite currencies, in which the Debt Securities of the series shall be denominated if other than the currency of the United States of America, and, if so, whether the Debt Securities of the series may be satisfied and discharged other than as provided in Article VI;

(15) if other than the coin or currency in which the Debt Securities of that series are denominated, the coin or currency in which payment of the principal of, premium, if any, or interest on the Debt Securities of such series shall be payable (and the manner in which the equivalent of the principal amount thereof in the currency of the United States is to be determined for any purpose, including for the determination of the principal amount outstanding);

(16) if the principal of, premium, if any, or interest on the Debt Securities of such series are to be payable, at the election of the Company or a

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holder of Debt Securities thereof, in a coin or currency other than that in which the Debt Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(17) if the amount of payments of principal of, premium, if any, and interest on the Debt Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;

(18) whether and under what circumstances the Company will pay additional amounts on the Debt Securities of the series held by a person who is not a United States of America person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem such Debt Securities rather than pay such additional amounts;

(19) if receipt of certain certificates or other documents or satisfaction of other conditions will be necessary for any purpose, including, without limitation, as a condition to the issuance of the Debt Securities of such series in definitive form (whether upon original issue or upon exchange of a temporary Debt Security of such series), the form and terms of such certificates, documents or conditions;

(20) any other affirmative or negative covenants with respect to the Debt Securities of such series;

(21) whether the Debt Securities of such series shall be issued in whole or in part in the form of one or more Global Securities and in such case, (i) the Depository for such Global Security or Debt Securities, which Depository must be a clearing agency registered under the Securities Exchange Act, (ii) the circumstances under which any such Global Security may be exchanged for Debt Securities registered in the name of, and under which any transfer of such Global Security may be registered in the name of, any Person other than such Depository or its nominee, if other than as set forth in Section 2.13 and (iii) any other provisions regarding such Global Securities which provisions may be in addition to or in lieu of, in whole or in part, the provisions of Section 2.13;

(22) whether the Debt Securities are defeasible;

(23) whether the Debt Securities of such series shall be guaranteed in whole or in part by the Guarantors, jointly and severally with all other Guarantors in such case, and (i) the extent that the Debt Securities of the series shall be guaranteed by the Guarantors; (ii) the ranking of such Guarantee; (iii) the terms of subordination of such Guarantee; and (iv) the form of any such Guarantee; and

(24) any other terms of a particular series and any other provisions expressing or referring to the terms and conditions upon which the Debt Securities of such series are to be issued under the Indenture, which terms and provisions are not in conflict with the provisions of this Indenture; provided, however, that the addition to or subtraction from or variation of Articles IV, V, VI, VII, and X (and Section 1.1, insofar as it relates to the definition of certain terms as used in such Articles) with regard to the Debt Securities of a particular series shall not be deemed to constitute a conflict with the provisions of those Articles.

All Debt Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such resolution of the Board of Directors or in any such indenture supplemental hereto. Not all Debt Securities of any one series need be issued at the same time, and, unless otherwise so provided, a series may be reopened for issuances of additional Debt Securities of such series.

If any of the terms of the Debt Securities of a series are established by action taken pursuant to a resolution of the Board of Directors, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee with an Officers' Certificate setting forth the terms of the Debt Securities of such series. With respect to Debt Securities of a series which are not to be issued at one time, such resolution of the Board of Directors or action may provide general terms or parameters for Debt Securities of such series and provide either that the specific terms of particular Debt Securities of such series shall be specified in a Company Order or that such terms shall be determined by the Company or its agents in accordance with a Company Order as contemplated by the proviso clause of Section 2.5.

SECTION 2.3. Denominations. The Debt Securities of each series shall be registered Debt Securities without coupons, in such denominations as shall be specified as contemplated by Section 2.2. In the absence of any such provisions with respect to the Debt Securities of any series, the Debt Securities of such series shall be issuable in denominations of \$1,000 or of any integral multiple of \$1,000.

SECTION 2.4. Execution of Debt Securities; Authentication. The Debt Securities shall be executed on behalf of the Company by its President, its Treasurer or one of its Executive Vice Presidents or Vice Presidents, whose signatures may be manual or facsimile, and its corporate seal shall be thereunto affixed (or a facsimile thereof shall be engraved, printed, or otherwise reproduced thereon) and attested by the manual or facsimile signature of its Secretary or one of its Assistant Secretaries. The Guarantees shall be executed on behalf of each Guarantor by such Guarantor's President, its Treasurer, one of its Vice Presidents (regardless of Vice Presidential designation), or one of its other officers (or an officer of the Company) duly authorized by its board of directors to execute the Guarantee on behalf of such Guarantor, whose signatures may be manual or facsimile, and its corporate seal shall be thereunto affixed (or a facsimile thereof shall be engraved, printed, or otherwise reproduced thereon) and attested by the manual or facsimile signature of its Secretary or one of its

Assistant Secretaries. In case any officer of the Company who shall have signed any of the Debt Securities shall cease to be such officer before the Debt Securities so signed and attested shall actually have been authenticated and delivered by the Trustee or the Authenticating Agent or disposed of by the Company, such Debt Securities nevertheless may be authenticated, issued and delivered or disposed of with the same force and effect as though the person or persons who signed or attested such Debt Securities had not ceased to be such officer of the Company; and any such Debt Security may be signed and attested on behalf of the Company by such persons, as at the actual date of the execution of such Debt Security, shall be the proper officers of the Company, although at the date of such Debt Security or the date of execution of this Indenture any such person was not such officer.

No Debt Security of any series shall be entitled to the benefits hereof or shall be or become valid or obligatory for any purpose unless there shall appear on the Debt Security a certificate of authentication, substantially in the form hereinbefore recited, manually executed by the Trustee for such series or an Authenticating Agent; and such certificate on any series of Debt Securities issued by the Company shall be conclusive evidence that it has been duly authenticated and delivered hereunder.

Notwithstanding the foregoing, if any series of Debt Securities shall have been duly authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Debt Security to the Trustee or its designee for cancellation as provided in Section 2.11 together with a written statement (which need not be accompanied by an Opinion of Counsel) stating that such Debt Security has not been issued and sold by the Company, for all purposes of this Indenture such Debt Security shall be deemed not to have been

authenticated and delivered hereunder and shall not be entitled to the benefits of this Indenture.

If the form or forms or terms of the Debt Securities of any series have been established in or pursuant to one or more resolutions of the Board of Directors or indentures supplemental hereto as permitted by Sections 2.1 and 2.2, in authenticating such Debt Securities, and accepting the additional responsibilities under this Indenture in relation to such Debt Securities, the Trustee and the Authenticating Agent shall be entitled to receive, and (subject to Section 11.2) shall be fully protected in relying upon, a copy of such resolution or resolutions delivered to the Trustee and the Authenticating Agent and certified by the Secretary or Assistant Secretary of the Company or the Guarantors to have been duly adopted by the Board of Directors of the Company or the boards of directors of the Guarantors, as applicable, and to be in full force and effect on the date of such certification, and an Opinion of Counsel stating:

(1) if the form or forms of such Debt Securities and Guarantees have been established by or pursuant to a resolution of the Board of Directors or indenture supplemental hereto, that such form or forms have been established in conformity with the provisions of this Indenture;

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(2) if the terms of such Debt Securities and Guarantees have been established by or pursuant to a resolution of the Board of Directors or indenture supplemental hereto, that such terms have been established in conformity with the provisions of this Indenture;

(3) that such Debt Securities and Guarantees, when authenticated and delivered by the Trustee or an Authenticating Agent and issued by the Company and the Guarantors in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company and the Guarantors, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles (or such other similar matters as in the opinion of such counsel shall not materially adversely affect such enforceability); and

(4) that the issuance and authentication of such Debt Securities and Guarantees to be issued will not conflict with, result in a breach or constitute a default or with the giving of notice or the passage of time or both, would not constitute a default, under the articles of incorporation or bylaws of the Company or the Guarantors or result in such a default or violation;

provided, however, that, with respect to Debt Securities of a series which are not to be issued at one time, the Trustee and the Authenticating Agent shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Debt Securities of such series and that the opinions described in clauses (2) and (3) above may state, respectively,

(a) that, when the terms of such Debt Securities and Guarantees shall have been established pursuant to a Company Order or pursuant to such procedures as may be specified from time to time by a Company Order, all as contemplated by and in accordance with a resolution of the Board of Directors or an Officers' Certificate pursuant to a resolution of the Board of Directors or indenture supplemental hereto, as the case may be, such terms will have been established in conformity with the provisions of this Indenture; and

(b) that such Debt Securities and Guarantees, when (i) executed by the Company or the Guarantors, as the case may be, (ii) completed, authenticated and delivered by the Trustee or Authenticating Agent in accordance with this Indenture, (iii) issued and delivered by the Company or the Guarantors, as the case may be, and (iv) paid for, all as contemplated by and in accordance with the aforesaid Company Order or specified procedures, as the case may be, will constitute valid and legally binding obligations of the Company or Guarantor, as the case may be, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization and other laws

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or general applicability relating to or affecting the enforcement of creditors' rights and to general equitable principles (or such other similar matters as in the opinion of such counsel shall not materially adversely affect such enforceability).

Notwithstanding the provisions of Sections 2.1, 2.2, 3.8 and this Section, if all the Debt Securities of a series are not to be originally issued at one time, the resolution of the Board of Directors or indenture supplemental hereto, the certified copy of the record of action taken pursuant to such resolution or supplemental indenture, the Officers' Certificate, the Company Order and any

other documents otherwise required pursuant to such Sections need not be delivered at or prior to the time of authentication of each Debt Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Debt Security of such series to be issued; provided, however, that any subsequent request by the Company to the Trustee or the Authenticating Agent to authenticate Debt Securities of such series shall constitute a representation and warranty by the Company that, as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to Section 3.8 at or prior to authentication of the first such Debt Security shall be true and correct on the date thereof as if made on and as of the date thereof.

The Trustee or the Authenticating Agent shall not be required to authenticate such Debt Securities if the issue of such Debt Securities pursuant to this Indenture will adversely affect the Trustee's or the Authenticating Agent's own rights, duties or immunities under the Debt Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or the Authenticating Agent.

With respect to Debt Securities of a series which are not all issued at one time, the Trustee and the Authenticating Agent may conclusively rely, as to the authorization by the Company of any such Debt Securities or the Guarantors of any such Guarantees, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel, Officers' Certificate and other documents delivered pursuant to Sections 2.1, 2.2, 3.8 and this Section, as applicable, at or prior to the time of the first authentication of Debt Securities of such series and Guarantees unless and until such opinion, certificate or other documents have been superseded or revoked in a writing delivered to the Trustee. In connection with the authentication and delivery of Debt Securities of a series which are not all issued at one time, the Trustee and the Authenticating Agent shall be entitled to assume that the Company's instructions to authenticate and deliver such Debt Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

SECTION 2.5. Issue of Debt Securities. The Trustee and the Authenticating Agent, forthwith upon the execution and delivery of this Indenture and from time to time thereafter, upon the execution and delivery to it of Debt Securities of any series by the Company and the Guarantees by the Guarantors as herein provided, and without any further action on the part of the Company and the Guarantors, shall authenticate such Debt Securities up to a maximum amount, if any, designated for such series pursuant to Section 2.2 and deliver them to or upon

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the receipt of a Company Order; provided, however, that if not all the Debt Securities of a series are to be issued at one time and if the resolution of the Board of Directors or indenture supplemental hereto establishing such series as contemplated by Sections 2.1 and 2.2 shall so permit, such Company Order may set forth procedures acceptable to the Trustee for the issuance of such Debt Securities and for determining the form or forms or terms of particular Debt Securities of such series including, but not limited to, interest rate, if any, maturity date, date of issuance and date from which interest, if any, shall accrue.

SECTION 2.6. Transfer of Debt Securities. The transfer of any series of Debt Securities may be registered by the registered owner thereof, in person or by his attorney duly authorized in writing, at the office or agency of the Company to be maintained by it as provided in Section 4.2, by delivering such Debt Security for cancellation, accompanied by delivery of a duly executed instrument of transfer, in form approved by the Company and satisfactory to the Trustee or its designee, and thereupon the Company shall execute in the name of the transferee or transferees, and the Trustee or the Authenticating Agent shall authenticate and deliver, a new Debt Security or Debt Securities of the same series and of like form for the same aggregate principal amount.

SECTION 2.7. Persons deemed owners of Debt Securities. Prior to due presentation of any series of Debt Securities for registration of transfer, the person in whose name a Debt Security of any series shall be registered, on books kept for such purpose in accordance with Section 4.2, shall be deemed the absolute owner thereof for all purposes of this Indenture, whether or not such Debt Security is overdue, and neither the Company, the Trustee nor any Paying Agent or conversion agent nor any series of Debt Securities registrar shall be affected by notice to the contrary. Subject to the provisions of Section 2.12, payment of or on account of the principal, premium, if any, and interest shall be made only to or upon the order in writing of such registered owner thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Debt Security to the extent of the sum or sums so paid.

SECTION 2.8. Provisions for Debt Securities in temporary form. Until Debt Securities of any series in definitive form are ready for delivery, the Company and the Guarantors may execute and, upon its request in writing, the Trustee or the Authenticating Agent shall authenticate and deliver, in lieu thereof and



subject to the same conditions, one or more printed or lithographed Debt Securities in temporary form, substantially of the tenor of Debt Securities of the same series, without a recital of specific redemption prices and with such other appropriate omissions, variations and insertions, all as may be determined by the Board of Directors. Until exchanged for Debt Securities of the same series in definitive form such Debt Securities in temporary form shall be entitled to the benefits of this Indenture. The Company and the Guarantors shall, without unreasonable delay after the issue of Debt Securities in temporary form, prepare, execute and deliver definitive Debt Securities of the same series to the Trustee, and upon the presentation and surrender of Debt Securities in temporary form, the Trustee or the Authenticating Agent shall authenticate and deliver, in exchange therefor, Debt Securities of the same series in definitive form for the same

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aggregate principal amount as the Debt Securities in temporary form surrendered. Such exchange shall be made by the Company at its own expense and without any charge therefor.

SECTION 2.9. Mutilated, destroyed, lost or stolen Debt Securities. Upon receipt by the Company, the Guarantors, the Trustee and the Authenticating Agent of evidence satisfactory to them that any Debt Security of any series has been mutilated, destroyed, lost or stolen, and upon receipt of indemnity (and in case of a destroyed, lost or stolen Debt Security, proof of ownership) satisfactory to them, the Company and the Guarantors shall, in the case of a mutilated Debt Security, and may in the case of a lost, stolen or destroyed Debt Security, execute, and thereupon the Trustee or the Authenticating Agent shall authenticate and deliver, a new Debt Security of the same series of like tenor bearing a serial number not contemporaneously outstanding (bearing such notation, if any, as may be required by the rules of any stock exchange upon which the Debt Securities of the same series are listed or are to be listed), in exchange and substitution for, and upon surrender and cancellation of, the mutilated Debt Security, or in lieu of and in substitution for the Debt Security so destroyed, lost or stolen; or, if any mutilated, destroyed, lost or stolen Debt Security of any series shall have matured or be about to mature, instead of issuing a new Debt Security, the Company, upon written notice to the Trustee or the Authenticating Agent, may pay the same without surrender of the destroyed, lost or stolen Debt Security. The Company may require payment of the expenses which may be incurred by the Company or any agent thereof and the charges and expenses of the Trustee and the Authenticating Agent in the premises. Any series of Debt Securities issued under the provisions, of this Section 2.9 in lieu of any series of Debt Securities alleged to have been destroyed, lost or stolen, shall constitute an additional contractual obligation of the Company and the Guarantors, whether or not the Debt Security alleged to have been destroyed, lost or stolen shall be found at any time, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Debt Securities of the same series issued under this Indenture.

All Debt Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debt Securities, and shall preclude, to the extent lawful, any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.10. Exchanges of Debt Securities. Debt Securities of any series may, upon surrender thereof as hereinafter provided in this Section 2.10, be exchanged for one or more Debt Securities of the same series of the same aggregate principal amount, in authorized denominations. The Debt Securities to be exchanged shall be surrendered at the office or agency of the Company to be maintained by it as provided in Section 4.2, accompanied by duly executed instruments of transfer in a form acceptable to the Company, the Trustee and the registrar, and the Company and the Guarantors shall execute and the Trustee or the Authenticating Agent shall authenticate and deliver, in exchange therefor, the Debt Security or Debt Securities of the same series, bearing numbers not contemporaneously outstanding, which the holder of Debt Securities making the exchange shall be entitled to receive. Every

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exchange of Debt Securities of any series shall be effected in such manner as may be prescribed by the Company with the approval of the Trustee and registrar, and as may be necessary to comply with the regulations of any stock exchange upon which Debt Securities of such series are listed or are to be listed or to conform to usage in respect thereof.

Upon every exchange or registration of transfer of Debt Securities, no service charge shall be made but the Company may require the payment of any taxes or other governmental charges required to be paid with respect to such exchange or registration, as a condition precedent to the exercise of the privilege of such exchange or registration.

All Debt Securities executed, authenticated and delivered in exchange or

upon registration of transfer shall be the valid obligations of the Company and the Guarantors, evidencing the same debt as the Debt Securities surrendered, and shall be entitled to the benefits of this Indenture to the same extent as the Debt Securities in exchange for which they were authenticated and delivered.

The Company shall not be required to make exchanges or registrations of transfer under any provision of this Article II of: (a) the Debt Securities of any series for the period of 15 days next preceding the date of any designation of Debt Securities of such series to be redeemed, as provided in Article V, or (b) any series of Debt Securities or portion thereof called or to be called for redemption.

SECTION 2.11. Cancellation of surrendered Debt Securities. All Debt Securities of any series surrendered for the purpose of payment, exchange, conversion or cancellation (including Debt Securities authenticated which the Company has not issued and sold) shall, if surrendered to the Company or any Paying Agent or conversion agent, be delivered to the Trustee or its designee and cancelled by it, or, if surrendered to the Trustee or its designee, shall be cancelled by it, and no Debt Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture or as otherwise provided in the resolution of the Board of Directors or indenture supplemental hereto establishing such series as contemplated by Section 2.2. All Debt Securities of any series surrendered for the purpose of redemption or credit against any sinking fund shall similarly be delivered to the Trustee or its designee for cancellation, and no Debt Securities shall be issued in lieu thereof except Debt Securities of the same series in the case of redemption of a Debt Security in part only. If the Company shall acquire any of the Debt Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Debt Securities unless and until the same are delivered to the Trustee or its designee for cancellation. Unless otherwise directed in writing by the Company, the Trustee or its designee shall destroy all cancelled Debt Securities and furnish to the Company a certificate evidencing such destruction.

SECTION 2.12. Payment of interest; Defaulted interest. Except as provided in Section 13.4, interest (except defaulted interest) on the Debt Securities of any series which is payable on any interest payment date shall be paid to the persons who are holders of Debt Securities of such series at the close of business on the record date specified for that purpose

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as contemplated by Section 2.2. At the option of the Company, payment of interest on any series of Debt Securities may be made by check mailed to the holder's registered address.

If the Company defaults in a payment of interest on the Debt Securities of any series, it shall pay the defaulted interest to the persons who are holders of Debt Securities of such series at the close of business on a subsequent special record date. The Company shall fix the record date (which shall be not less than five Business Days prior to the date of payment of such defaulted interest) and payment date. At least 15 days before the record date, the Company shall mail to each holder of Debt Securities of such series a notice that states the record date, the payment date and the amount of defaulted interest to be paid. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Debt Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee or any paying agent for such series an amount of money in immediately available funds by 10:00 a.m. New York time on the payment date equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to any Paying Agent for such series for such deposit prior to the date of the proposed payment. The Company may pay defaulted interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debt Security may be listed, and upon notice as may be required by such exchange if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

SECTION 2.13. Global Securities; Depository. For the purpose of this Section, the term "Agent Member" means a member of, or participant in, a Depository; the term "Depository" means, with respect to Debt Securities issuable or issued in whole or in part in the form of one or more Global Securities, the entity designated as Depository by the Company pursuant to Section 2.2, and, if at any time there is more than one such person, "Depository" as used with respect to the Debt Securities shall mean the respective Depository with respect to a particular series of Debt Securities; and the term "Global Security" means a global certificate evidencing all or part of the series of Debt Securities as shall be specified herein, issued to the Depository for the series or such portion of the series, and registered in the name of such Depository or its nominee. The Global Security may provide that it shall represent the aggregate amount of Outstanding Debt Securities from time to time endorsed thereon which may from time to time be reduced to reflect exchanges. Any endorsement to reflect the amount, or any increase or decrease in the amount, of Outstanding Debt Securities shall be made by the Trustee.

Notwithstanding Section 2.10, except as otherwise specified as contemplated by Section 2.2, hereof, any Global Security shall be exchangeable only as provided in this paragraph. A Global Security shall be exchangeable pursuant to this Section 2.13 if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time the Depositary ceases to be a clearing agency registered under the Securities Exchange Act, (ii) the Company in its sole discretion determines that all Global Securities of any series then outstanding under this Indenture shall be exchangeable for definitive Debt Securities of such series in registered form or (iii) an Event of Default with

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respect to the Debt Securities of the series represented by such Global Security has occurred and is continuing. Any Global Security of such series exchangeable pursuant to the preceding sentence shall be exchangeable for definitive Debt Securities of such series in registered form, bearing interest (if any) at the same rate or pursuant to the same formula, having the same date of issuance, redemption, conversion (if any) and other provisions, and of differing denominations aggregating a like amount. Such definitive Debt Securities of such series shall be registered in the names of the owners of the beneficial interests in such Global Securities of such series as such names are from time to time provided by the relevant participants in the Depositary holding such Global Securities (as such participants are identified from time to time by such Depositary).

No Global Security may be transferred except as a whole by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor of the Depositary or a nominee of such successor. Except as provided above, owners solely of beneficial interests in a Global Security shall not be entitled to receive physical delivery of Debt Securities of such series in definitive form and will not be considered the holders of Debt Securities thereof for any purpose under this Indenture.

Any Global Security that is exchangeable pursuant to the preceding paragraph shall be exchangeable for Debt Securities of such series in authorized denominations and registered in such names as the Depositary that is the holder of Debt Securities of such Global Securities of such series shall direct.

In the event that a Global Security is surrendered for redemption in part pursuant to Section 5.2 or 5.5, the Company shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver to the Depositary for such Global Security, without service charge, a new Global Security in a denomination and tenor equal to and in exchange for the unredeemed portion of the principal for the Global Security so surrendered.

The Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by a Depositary, and such Depositary may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of a Debt Security of any series, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a holder of Debt Securities is entitled to give or take under this Indenture.

The Trustee shall not be required to authenticate Global Securities until it has received documentation satisfactory to it.

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### ARTICLE III

#### MISCELLANEOUS PROVISIONS

SECTION 3.1. Rights under Indenture limited to the parties and holders of Debt Securities. Nothing in this Indenture or the Debt Securities, express or implied, is intended or shall be construed to confer upon, or to give to, any person or corporation, other than the parties hereto, their successors and assigns, and the holders of the Debt Securities, any right, remedy or claim under or by reason of this Indenture or any provision hereof; and the provisions of this Indenture are for the exclusive benefit of the parties hereto, their successors and assigns, and the holders of the Debt Securities.

SECTION 3.2. Certificate of independent accountants conclusive. Unless otherwise specifically provided, the certificate or opinion of an independent firm of public accountants of recognized standing selected by the Board of Directors and acceptable to the Trustee in the exercise of reasonable care (which firm may be regular independent accountants to the Company), shall be conclusive evidence of the correctness of any computation made under the provisions of this Indenture, and wherever reference is made in this Indenture

to "generally accepted accounting principles" the certificate or opinion of such a firm shall be conclusive evidence thereof. The Company shall furnish to the Trustee upon its request a copy of any such certificate or opinion.

SECTION 3.3. Treatment of Debt Securities owned or held by the Company in determining required percentages. For all purposes of this Indenture, in determining whether the holders of a required percentage or proportion of the principal amount of Debt Securities of one or more series have concurred in any request, waiver, vote, direction or consent, Debt Securities owned or held by or for the account or for the benefit of the Company or any other obligor under this Indenture or any Affiliate shall be disregarded and deemed not Outstanding, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such request, waiver, direction or consent, only Debt Securities which the Trustee knows to be so owned or held shall be so disregarded. Debt Securities so owned which have been pledged in good faith to secure an obligation may be regarded as Outstanding for all such purposes, if the Trustee receives an Officers' Certificate stating that said Debt Securities have been so pledged, that the pledgee is entitled to vote with respect to such Debt Securities and that the pledgee is not the Company or any other obligor on the Debt Securities, an Affiliate of the Company or an Affiliate of such other obligor. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be conclusive, and, subject to the provisions of Section 11.1 of this Indenture, shall afford full protection to the Trustee.

SECTION 3.4. Remaining provisions not affected by invalidity of any other provisions -required provisions of Trust Indenture Act of 1939 to control. In case any one or more of the provisions contained in this Indenture or in the Debt Securities of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality

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or unenforceability shall not affect any other provision of this Indenture, but this Indenture shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

If any provision of this Indenture limits, qualifies or conflicts with any other provision of this Indenture which is required to be included in an indenture qualified under the Trust Indenture Act of 1939, such provision which is so required to be included shall control. If any provisions of this Indenture modifies or excludes any provisions of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or excluded, as the case may be.

SECTION 3.5. Company released from Indenture requirements if entitled to have Indenture cancelled. Whenever by the terms of this Indenture the Company and the Guarantors shall be required to do or not to do anything so long as any of the Debt Securities shall be Outstanding of any series, the Company and the Guarantors shall, notwithstanding any such provision, not be required to comply with such provision with respect to such series if it shall be entitled to have this Indenture satisfied and discharged pursuant to the provisions hereof, even though in either case the holders of any of the Debt Securities of such series shall have failed to present and surrender such Debt Securities for payment pursuant to the terms of this Indenture.

SECTION 3.6. Date of execution. Although this Indenture, for convenience and for the purpose of reference, is dated as of the date first above written, the actual date of execution by the Company, the Guarantors and by the Trustee is as indicated by their respective acknowledgements hereto annexed.

SECTION 3.7. Execution of documents furnished under the Indenture. Unless otherwise expressly provided, any order, notice, request, demand, certificate or statement of the Company or any Guarantor required or permitted to be made or given under any provision hereof shall be sufficiently executed if signed by its Chairman of the Board, President or any Vice President (regardless of Vice Presidential designation), and by its Chief Financial Officer, Treasurer, any Assistant Treasurer, Secretary or any Assistant Secretary.

SECTION 3.8. Officers' Certificate and Opinions of Counsel to be furnished to Trustee. Upon any application, demand or request by the Company or any Guarantor to the Trustee to take any action under any of the provisions of this Indenture, the Company and each Guarantor, as the case may be, shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with and that such action is in compliance with applicable law.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the

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nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Company and any Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the Company and the Guarantors, upon the certificate, statement or opinion of or representations by an officer or officers of the Company and the Guarantors, as the case may be, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Company, any Guarantor, or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company and the Guarantors, as the case may be, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

SECTION 3.9. Presentation of notices and demands. All notices to or demands upon the Trustee shall be in writing and may be served or presented at the principal office of the Trustee. Any notice to or demand upon the Company or any Guarantor shall be deemed to have been sufficiently given or served by the Trustee or the holders of Debt Securities, for all purposes, by being mailed by first class mail addressed to the Company, attention of the President, at 300 WillowBrook Office Park, Fairport, New York 14450, or at such other address or to such other counsel, as may be filed in writing by the Company with the Trustee.

Except as otherwise expressly provided herein, where this Indenture provides for notice to holders of Debt Securities of any event, such notice shall be sufficiently given to holders of Debt Securities if in writing and mailed, first-class postage prepaid, to each holder of a Debt Security affected by such event, at the address of such holder as it appears in the Debt Security register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

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In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to holders of Debt Securities by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. In any case where notice to holders of Debt Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular holder of a Debt Security shall affect the sufficiency of such notice with respect to other holders of Debt Securities.

SECTION 3.10. Successors and assigns bound by Indenture. All the covenants, promises and agreements in this Indenture contained by or on behalf of the Company, the Guarantors or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 3.11. Descriptive headings for convenience only. The descriptive headings of the several Articles of this Indenture are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

SECTION 3.12. New York law to govern. This Indenture and each Debt Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said jurisdiction, and the rights, obligations, duties, immunities and limitations of rights of the Trustee shall be construed in accordance with the laws of the State of New York.

SECTION 3.13. Indenture may be executed in counterparts. This Indenture

may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument. Harris Trust and Savings Bank, as Trustee, hereby accepts the trusts in this Indenture declared and provided upon the terms and conditions hereinbefore set forth.

#### ARTICLE IV

##### COVENANTS OF THE COMPANY

The Company covenants and agrees as follows:

SECTION 4.1. Payment of Principal and interest. The Company and each Guarantor will for the benefit of each series of Debt Securities duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Debt Securities of such series at the times and place and in the manner specified in this Indenture, the Guarantees and in the Debt Securities of such series. At the option of the Company, interest on the Debt Securities shall be payable without presentation of such Debt Securities by a check to the registered holder. Any payment of principal and any premium or interest required to be made on an interest payment date, redemption date or at maturity which is not a Business Day need not be made on such date, but may be made on the next succeeding Business Day with the same force and

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effect as if made on such interest payment date, redemption date or at maturity, as the case may be, and no interest shall accrue for the period from and after such interest payment date, redemption date or maturity.

SECTION 4.2. Maintenance of office or agency. So long as any of the Debt Securities of any series remain unpaid, the Company will at all times keep an office or agency in New York, New York, where Debt Securities of such series may be presented for registration of transfer and exchange as in this Indenture provided, where notices and demands with respect to the Debt Securities and this Indenture may be served and where the Debt Securities may be presented for payment or, for Debt Securities of each series that is convertible, for conversion. The principal office of the Trustee shall be the office or agency for all of the aforesaid purposes unless otherwise provided in a supplemental indenture or unless the Company shall maintain some other office or agency with respect to the Debt Securities of any series for such purposes and shall give the Trustee written notice of the location thereof. In case the Company shall fail to maintain such office or agency, presentations may be made and notices and demands may be served at the principal office of the Trustee.

The Company shall keep, at said office or agency, a register or registers in which, subject to such reasonable regulations as it may prescribe, the Company shall register or cause to be registered Debt Securities of each series and shall register or cause to be registered the transfer or exchange of Debt Securities of each series as in Article II provided. Such register or registers shall be in written form in the English language or any other form capable of being converted into written form within a reasonable time. At all reasonable times, such register or registers shall be open for inspection by the Trustee.

SECTION 4.3. Corporate existence. Subject to Article X hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory) and franchises of the Company and each Guarantor; provided, however, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business and its Guarantors as a whole and that the loss thereof is not disadvantageous in any material respect to the holders of Debt Securities.

SECTION 4.4. Restrictions on mergers, sales and consolidations. So long as any of the Debt Securities remain unpaid, neither the Company nor any Guarantor will consolidate or merge with or sell, convey or lease all or substantially all of its property to any other corporation, partnership or limited liability company except (a) to the extent expressly permitted pursuant to the terms of any supplemental indenture governing any series of the Debt Securities and (b) as otherwise permitted in Article X hereof.

SECTION 4.5. Further assurances. From time to time whenever requested by the Trustee, the Company and the Guarantors will execute and deliver such further instruments and assurances and do such further acts as may be reasonably necessary or proper to carry out

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more effectually the purposes of this Indenture or to secure the rights and remedies hereunder of the holders of the Debt Securities of any series.

SECTION 4.6. File certain reports and information with the Trustee and the Securities and Exchange Commission - transmit to holders of Debt Securities

summaries of certain documents filed with the Trustee - furnish list of holders of Debt Securities to the Trustee. The Company will:

(a) file with the Trustee, within 15 days after the Company files the same with the Securities and Exchange Commission, copies of the annual reports and of the information, documents and other reports which the Company may be required to file with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (or copies of such portions thereof as may be prescribed by the Securities and Exchange Commission); or, if the Company is not required to file with the Securities and Exchange Commission information, documents or reports pursuant to either Section 13 or Section 15(d) of the Securities Exchange Act of 1934, then the Company will file with the Trustee and will file with the Securities and Exchange Commission, in accordance with rules and regulations prescribed by the Securities and Exchange Commission, such of the supplementary and periodic information, documents and reports required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(b) file with the Trustee and the Securities and Exchange Commission, in accordance with the rules and regulations prescribed from time to time by the Securities and Exchange Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required by such rules and regulations;

(c) transmit to the holders of Debt Securities, in the manner and to the extent provided in subdivision (c) of Section 11.10, such summaries of any information, documents and reports required to be filed with the Trustee pursuant to the provisions of subdivisions (a) and (b) of this Section 4.6 as may be required by the rules and regulations of the Securities and Exchange Commission; and

(d) furnish or cause to be furnished to the Trustee, not more than 15 days after each record date (but in no event less frequently than every six months) for the payment of interest with respect to Debt Securities of any series, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all information in the possession or control of the Company or of any Paying Agent, other than the Trustee, as to the names and addresses of the holders of Debt Securities of such series obtained since the date as of which the next previous list, if any, was furnished; provided, that so long as the Trustee is Debt Security registrar for such series, no such list need be furnished. Any such list may be dated as

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of a date not more than 15 days prior to the time such information is furnished or caused to be furnished, and need not include information received after such date (excluding from any such list names and addresses received by the Trustee in its capacity as Debt Security registrar).

SECTION 4.7. File statement by officers annually with the Trustee. Within 120 days after the close of the fiscal year ending February 28, 1999, and within 120 days after the close of each fiscal year thereafter, the Company will file with the Trustee a brief certificate from the chief executive officer, chief financial officer or treasurer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

SECTION 4.8. Duties of Paying Agent. The Company will cause each Paying Agent for the Debt Securities of any series other than the Trustee to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee:

(a) that it will hold all sums held by it as such agent for the payment of the principal of, premium, if any, or interest on the Debt Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Debt Securities of such series) in trust for the benefit of the holders of the Debt Securities of such series;

(b) that it will give the Trustee written notice of any failure by the Company (or by any other obligor on the Debt Securities of such series) to make any payment of the principal of, premium, if any, or interest on the Debt Securities of such series when the same shall be due and payable; and

(c) that it will, at any time during the continuance of any Event of Default with respect to such series, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

If the Company acts as its own Paying Agent for the Debt Securities of any series, it will, on or before each due date of the principal of, premium, if any, or interest on the Debt Securities of such series, set aside and segregate and hold in trust for the benefit of the holders of the Debt Securities of such series a sum sufficient to pay such principal, premium, if any, or interest and will notify the Trustee of such action or any failure to take such action.

Whenever the Company shall have one or more Paying Agents for any series of Debt Securities, it will, on or before each due date of the principal of, premium, if any, or interest on any Debt Securities of such series, deposit with the Paying Agent or Agents for the Debt Securities of such series a sum, by 10:00 a.m. New York time in immediately available funds on the payment date, sufficient to pay the principal, premium, if any, or interest so becoming

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due with respect to the Debt Securities of such series, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure so to act.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to the Debt Securities of one or more series or for any other purpose, pay, or by Company order direct any Paying Agent for such series to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such payment.

Anything in this Section 4.8 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.8 shall be subject to the provisions of Section 6.3.

#### ARTICLE V

##### REDEMPTION OF DEBT SECURITIES; SINKING FUND

SECTION 5.1. Applicability of Article. Debt Securities of any series which are redeemable before their stated maturity at the election of the Company or through the operation of any sinking fund for the retirement of Debt Securities of such series shall be redeemable in accordance with their terms established pursuant to Section 2.2 and (except as otherwise established pursuant to Section 2.2 for Debt Securities of such series) in accordance with this Article.

SECTION 5.2. Notice of redemption to be given to Trustee - deposit of cash (or other form of payment) with Trustee - selection by Trustee of Debt Securities to be redeemed. Not less than 30 days (or such lesser number of days as the Trustee shall approve) nor more than 60 days (or such greater number of days as the Trustee shall approve) prior to the date fixed by the Company for the redemption at the option of the Company of any Debt Securities of any series which are subject to redemption or portions thereof, the Company shall give written notice, by delivering a Company Order to the Trustee, stating the aggregate principal amount of Debt Securities of such series which the Company elects to redeem and the date and place fixed for redemption, that the Company, in the case of any redemption of Debt Securities subject to any restrictions on such redemption provided in the terms of Debt Securities of such series established pursuant to Section 2.2 or elsewhere in this Indenture, is in compliance with such restrictions. On or before 10:00 a.m. New York time of the date fixed for redemption, the Company shall deposit with the Trustee or the Paying Agent money in immediately available funds on such redemption date (or other form of payment if permitted by the terms of such Debt Securities) in an amount sufficient to redeem on the date fixed for redemption all the Debt Securities of such series or portions thereof to be redeemed, other than any Debt Securities of such series called for redemption on such date which have been converted prior to the date of such deposit, at the appropriate redemption price, together with any accrued interest to the date fixed for redemption. If less than all the Debt Securities then

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Outstanding of such series are to be redeemed, the Trustee shall select, substantially pro rata or by lot, in such manner as it shall deem appropriate and fair, in its sole discretion, the numbers of the Debt Securities to be redeemed as a whole or in part, and shall thereafter promptly notify the Company in writing of the numbers of the Debt Securities to be redeemed; provided, however, that Debt Securities of such series registered in the name of the Company shall be excluded from any such selection for redemption until all Debt Securities of such series not so registered shall have been previously selected for redemption. For the purpose of such selection in case of redemption of less than all of the Debt Securities of any series, the Trustee and the Company shall have the option to treat as Outstanding Debt Securities any Debt Securities of such series which are surrendered for conversion after the fifteenth day immediately preceding the mailing of the notice of such redemption, and need not



treat as Outstanding Debt Securities any Debt Securities authenticated and delivered during such period in exchange for the unconverted portion of any Debt Securities converted in part during such period. In case any series of Debt Securities shall be redeemed in part only, the notice of redemption shall specify the principal amount thereof to be redeemed and shall state that, upon surrender thereof for redemption, a new Debt Security or new Debt Securities of the same series of an aggregate principal amount equal to the unredeemed portion of such Debt Security will be issued in lieu thereof; and in such case the Company shall execute and the Trustee or the Authenticating Agent shall authenticate and deliver such new Debt Security or Debt Securities of such series to or upon the written order of the holder of Debt Securities, at the expense of the Company. Provisions of this Indenture that apply to Debt Securities called for redemption also apply to portions of Debt Securities called for redemption.

Upon or after the receipt of such notice, the Trustee, in the name of the Company and as its agent, shall mail by first-class mail, postage prepaid, to each registered holder of a Debt Security to be redeemed in whole or in part at his last address appearing on the registration books of the Company, a notice of redemption. Such notice of redemption shall identify the Debt Securities to be so redeemed in whole or in part and whether such Debt Securities are to be redeemed in whole or in part and shall state: (i) the date fixed for redemption; (ii) the redemption price at which Debt Securities are to be redeemed and method of payment, if other than in cash; (iii) if applicable, the current conversion price or rate; (iv) if applicable, that the right of the holder of Debt Securities to convert Debt Securities called for redemption shall terminate at the close of business on the date fixed for redemption (or such other day as may be specified as contemplated by Section 2.2 for Debt Securities of any series); (v) if applicable, that holders of Debt Securities who want to convert Debt Securities called for redemption must satisfy the requirements for conversion contained in such Debt Securities; (vi) that, subject to Section 13.4, interest, if any, accrued to the date fixed for redemption will be paid as specified in said notice and that on and after said date interest thereon shall cease to accrue; (vii) the provision of the Debt Security or this Indenture under which the redemption is being made; and (viii) that the Company so elects to redeem such Debt Securities or portions thereof at the place or places specified in such notice. Such notice shall be mailed not later than the tenth, and not earlier than the sixtieth, day before the date fixed for redemption. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such

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notice; and failure duly to give such notice by mail, or any defect in such notice, to the holder of any series of Debt Securities designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debt Security.

The Company shall pay to the Trustee the cost of mailing notices of redemption and any other necessary expenses incurred by the Trustee in connection therewith.

SECTION 5.3. Debt Securities called for redemption to become due - rights of holders of redeemed Debt Securities - return of funds on conversion. The notice of election to redeem having been mailed as hereinbefore provided, the Debt Securities or portions thereof called for redemption shall become due and payable on the redemption date at the applicable redemption price, together with interest accrued to the date fixed for redemption, at the place or places specified in such notice, and if cash (or other form of payment if permitted by the terms of such Debt Securities) in the amount necessary to redeem such Debt Securities or portions thereof has been deposited with the Trustee, interest on such Debt Securities or portions thereof shall cease to accrue from and after the date fixed for redemption (unless the Company shall default in the payment of the redemption price, plus accrued interest, if any) and the right to convert such Debt Securities or portions thereof, if the terms of such Debt Securities provide for conversion pursuant to Section 2.2, shall terminate at the close of business on the date fixed for redemption or such other day as may be specified as contemplated by Section 2.2 for Debt Securities of such series. The respective registered holders of Debt Securities or portions thereof so called for redemption shall be entitled to receive payment of the applicable redemption price, together with interest accrued to the date fixed for redemption on or after the date fixed for redemption (unless the Company shall default in the payment of the redemption price, plus accrued interest, if any), upon presentation and surrender at the place or places of payment specified in such notice. Notwithstanding the foregoing, subject to Section 13.4, if the record date for payment of interest is on or prior to the redemption date, such interest shall be payable to the persons who are holders of such Debt Securities on such record date according to the terms of such Debt Securities and Section 2.12.

If any series of Debt Securities called for redemption pursuant to Section 5.1 is converted pursuant to Article XIII, any monies deposited with the Trustee for the purpose of paying or redeeming any such Debt Security shall be promptly paid to the Company.

SECTION 5.4. Credits against sinking fund. Against any one or more sinking fund payments to be made pursuant to the terms of the Debt Securities of any series providing for a sinking fund, the Company may elect, by delivery of an Officers' Certificate to the Trustee, at least 45 days prior to the sinking fund payment date (or such shorter period as may be acceptable to the Trustee or is otherwise specified as contemplated by Section 2.2 for Debt Securities of any series), to take credit for any Debt Securities of such series or portions thereof acquired or redeemed by the Company, pursuant to the terms of such Debt Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Debt Securities, which have not previously been used by the Company for the purposes permitted in this Section 5.4 and for any Debt Securities which have been converted

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pursuant to the terms of such Debt Securities. Such Debt Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Debt Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. Upon any such election the Company shall receive credit against such sinking fund payments required to be made in the order in which they are to be made. Any series of Debt Securities for which credit is elected to be taken which shall not theretofore have been delivered to the Trustee for cancellation shall at the time of such election be delivered to the Trustee for cancellation by the Trustee.

SECTION 5.5. Redemption through sinking fund. Each sinking fund payment made under the terms of the Debt Securities of any series established pursuant to Section 2.2 shall be applied to the redemption of Debt Securities of such series on the date for redemption specified in the Debt Securities of such series next succeeding such sinking fund payment date; provided, however, if at any time the amount of cash to be paid into the sinking fund for such series on the next succeeding such sinking fund payment date; provided, however, if at any time the amount of cash to be paid into the sinking fund for such series on the next succeeding sinking fund payment date, together with any unused balance of any preceding sinking fund payment or payments for such series, shall not exceed in the aggregate \$10,000, the Trustee, unless requested by the Company, shall not give notice of the redemption of Debt Securities of such series through the operation of the sinking fund on the succeeding date for redemption specified in the Debt Securities of such series. At least 45 days (or such lesser number of days as the Trustee shall approve) prior to the date on which a sinking fund payment with respect to the Debt Securities of any series is due, the Company shall give written notice to the Trustee of the principal amount of Debt Securities of such series registered in the name of the Company (which shall be excluded from such redemption) and the Trustee shall select, substantially pro rata or by lot, in such manner as it shall deem appropriate and fair, the principal amount of Debt Securities of such series to be redeemed in accordance with the terms of the Debt Securities of such series after allowance for any credit elected under Section 5.4 and shall, in the name and at the expense of the Company and as its agent, give notice of such redemption, all in the manner provided for in Section 5.2, except that such notice shall state that the Debt Securities of such series are being redeemed for the sinking fund. The notice of redemption having been mailed as hereinbefore provided, the Debt Securities or portions thereof called for redemption shall become due and payable on the next succeeding date for redemption specified in the Debt Securities of such series at the sinking fund redemption price thereof, all in the manner and with the effect provided for in Section 5.3.

Any sinking fund payment not so required to be applied to the redemption of Debt Securities of any series on the date for redemption specified in the Debt Securities of such series next succeeding any sinking fund payment date may, at the direction of the Company as evidenced by a Company Order, be applied by the Trustee prior to the forty-fifth day preceding the next following sinking fund payment date for such series, in such manner and from time to time, in such amount as the Company may direct the Trustee in writing, so far as such moneys shall be adequate, to the purchase for the sinking fund of Debt Securities of such series or portions thereof, in the open market, from the Company or otherwise, at prices

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(exclusive of accrued interest and brokerage commissions) not in excess of the sinking fund redemption price for such series. The Company agrees to pay to the Trustee, upon request, accrued interest and brokerage commissions paid by the Trustee with respect to any Debt Securities of such series so purchased by the Trustee and such accrued interest and brokerage commissions shall not be charged against the sinking fund for such series.

Any unused balance of sinking fund moneys with respect to Debt Securities of any series remaining in the hands of the Trustee on the forty-fifth day preceding the sinking fund payment date for such series in any year shall be added to any sinking fund payment for such series to be made in cash in such year, and together with such payment, if any, shall be applied to the redemption or purchase of Debt Securities of such series in accordance with the provisions of this Section 5.5, provided that any sinking fund moneys so remaining in the

hands of the Trustee after the date specified in the Debt Securities of such series and not utilized in the purchase of Debt Securities of such series as provided in this Section 5.5 shall be applied by the Trustee to the payment of Debt Securities at maturity.

SECTION 5.6. Debt Securities no longer Outstanding after notice to Trustee and deposit of cash. If the Company, having given notice to the Trustee as provided in Section 5.1 or 5.2, shall have deposited with the Trustee or the Paying Agent, for the benefit of the holders of any Debt Securities of any series or portions thereof called for redemption in whole or in part cash or other form of payment if permitted by the terms of such Debt Securities (which amount shall be immediately due and payable to the holders of such Debt Securities or portions thereof) in the amount necessary so to redeem all such Debt Securities or portions thereof on the date fixed for redemption and provision satisfactory to the Trustee shall have been made for the giving of notice of such redemption, such Debt Securities, or portions thereof, shall thereupon, for all purposes of this Indenture, be deemed to be no longer Outstanding, and the holders thereof shall be entitled to no rights thereunder or hereunder, except the right to receive payment of the applicable redemption price, together with interest accrued to the date fixed for redemption, on or after the date fixed for redemption of such Debt Securities or portions thereof and the right to convert such Debt Securities or portions thereof, if the terms of such Debt Securities provide for convertibility pursuant to Section 2.2, at or prior to the close of business on the date fixed for redemption.

SECTION 5.7. Conversion arrangement on call for redemption. In connection with any redemption of Debt Securities, the Company may arrange for the purchase and conversion of any Debt Securities called for redemption by an agreement with one or more investment bankers or other purchasers to purchase such Debt Securities by paying to the Trustee or the Paying Agent in trust for the holders of Debt Securities, on or before 10:00 a.m. New York time on the redemption date, an amount no less than the redemption price, together with interest, if any, accrued to the redemption date of such Debt Securities, in immediately available funds. Notwithstanding anything to the contrary contained in this Article V, the obligation of the Company and the Guarantors to pay the redemption price of such Debt Securities, including all accrued interest, if any, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Debt Securities not duly surrendered for conversion by the holders thereof

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may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and (notwithstanding anything to the contrary contained in Article XIII) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the last day on which Debt Securities of such series called for redemption may be converted in accordance with this Indenture and the terms of such Debt Securities, subject to payment of the above amount aforesaid. The Trustee or the Paying Agent shall hold and pay to the holders of Debt Securities whose Debt Securities are selected for redemption any such amount paid to it in the same manner as it would moneys deposited with it by the Company for the redemption of Debt Securities. Without the Trustee's and the Paying Agent's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Debt Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Debt Securities between the Company and such purchasers, including the costs and expenses incurred by the Trustee and the Paying Agent in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

## ARTICLE VI

### SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 6.1. Satisfaction and discharge of Indenture with respect to Debt Securities of any series. If (a) the Company shall deliver to the Trustee for cancellation all Debt Securities of any series theretofore authenticated (other than any such Debt Securities which shall have been destroyed, lost or stolen and in lieu of or in substitution for which other such Debt Securities shall have been authenticated and delivered or Debt Securities for whose payment money (or other form of payment if permitted by the terms of such Debt Securities) has theretofore been held in trust and thereafter repaid to the Company, as provided in Section 6.3) and not theretofore cancelled, or (b) the Company shall irrevocably deposit (subject to Section 6.3) with the Trustee or Paying Agent as trust funds the entire amount in cash or U.S. Government Obligations sufficient to pay at maturity or upon redemption all of the Debt Securities of such series (other than any Debt Securities which shall have been destroyed, lost or stolen and in lieu of or in substitution for which other Debt Securities shall have been authenticated and delivered or Debt Securities for whose payment money (or

other form of payment if permitted by the terms of such Debt Securities) has theretofore been held in trust and thereafter repaid to the Company, as provided in Section 6.3) not theretofore paid, surrendered or delivered to the Trustee for cancellation, including the principal, premium, if any, and interest due or to become due to such date of maturity or redemption date, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company and the Company shall deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that in the opinion of the signers

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all conditions precedent to the satisfaction and discharge of this Indenture with respect to the Debt Securities of such series have been complied with (and, in the event that such deposit shall be made more than one year prior to the maturity of the Debt Securities of such series, such Opinion of Counsel shall also state that such deposit will not result in an obligation of the Company, the Trustee or the trust fund created by such deposit to register as an investment company under the Investment Company Act of 1940, as amended) and a certificate (upon which the Trustee may rely) of a firm of independent public accounts of recognized national standing selected by the Board of Directors (who may be the regular accountants employed by the Company) stating that the cash, if any, and U.S. Government Obligations, if any, deposited as set forth above are sufficient to pay at maturity or upon redemption all of the Debt Securities of such series as set forth above, then, except with respect to the remaining rights of conversion of any Debt Securities the terms of which provide for conversion (which shall continue in full force and effect pursuant to the terms set forth in Article XIII to the extent provided for in such terms) or to rights of exchange or registration of transfer or of the Company's right of optional redemption of any Debt Securities of such series, this Indenture shall cease to be of further effect with respect to the Debt Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Debt Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Debt Securities of such series, the obligations of the Company and the Guarantors to the Trustee under Section 11.2 shall survive, and if moneys or U.S. Government Obligations shall have been irrevocably deposited with the Trustee or Paying Agent pursuant to clause (b) of this Section, the obligations of the Trustee under Section 6.2 and the first paragraph of Section 6.3 shall survive.

In order to have money available on a payment date to pay the principal of, premium, if any, or interest, if any, on the Debt Securities, the U.S. Government Obligations shall be payable as to principal or interest on or before such payment date in such amounts as will provide the necessary money. Such U.S. Government Obligations shall not be callable at the issuer's option.

SECTION 6.2. Deposits for payment or redemption of Debt Securities to be held in trust. Subject to the provisions hereinafter contained in this Article VI, any moneys or U.S. Government Obligations (or other form of payments if permitted by the terms of such Debt Security) which at any time shall be deposited by the Company, or on its behalf with the Trustee or Paying Agent, for the purpose of paying or redeeming any of the Debt Securities of any series shall be held in trust and applied by the Trustee to the payment to the holders of the particular Debt Securities for the payment or redemption of which such moneys (or other form of payments if permitted by the terms of such Debt Security) have been deposited, of all sums due and to become due thereon for principal, premium, if any, and interest, upon presentation and surrender of such Debt Securities at the office or agency of the Company maintained as provided in this Indenture. Neither the Company nor the Trustee (except as provided in Section 11.2) nor any Paying Agent shall be required to pay interest on any moneys so deposited.

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SECTION 6.3. Repayment of moneys. Any moneys or U.S. Government Obligations deposited with the Trustee or any Paying Agent remaining unclaimed by the holders of Debt Securities for two years after the date upon which the principal of or interest on such Debt Securities shall have become due and payable, shall (unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law) be repaid to the Company by the Trustee or Paying Agent and such holders shall (unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law) thereafter be entitled to look to the Company only for payment thereof; provided, however, that, before being required to make any such payment to the Company, the Trustee or Paying Agent may, at the expense and written direction of the Company, cause to be published once, in an Authorized Newspaper, a notice that such moneys remain unclaimed and that, after the date set forth in said notice, the balance of such moneys then unclaimed will be returned to the Company.

Upon satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent other than the Trustee hereunder shall, upon demand of the Company, be repaid to it and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

The Trustee or any Paying Agent shall deliver or pay to the Company from time to time upon a request in writing by the Company any moneys or U.S. Government Obligations (or the principal or interest on such U.S. Government Obligations) held by it as provided in Section 6.1 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such money or U.S. Government Obligations were deposited or received.

## ARTICLE VII

### REMEDIES UPON DEFAULT

SECTION 7.1. Events of Default defined -- acceleration of maturity upon default --waiver of default after acceleration. The following events are hereby defined for all purposes of this Indenture (except where the term is otherwise defined for specific purposes) as Events of Default with respect to Debt Securities of a particular series, unless it is either inapplicable to a particular series or is specifically deleted or modified as contemplated by Section 2.2 for the Debt Securities of such series, in addition to any other events as may be defined as Events of Default pursuant to Section 2.2 for the Debt Securities of such series:

(a) Failure of the Company to pay or provide for payment of the principal of or premium, if any, on any of the Debt Securities of such series, when and as the same shall become due and payable, whether at maturity thereof, by call for redemption, through any mandatory sinking fund, by redemption at the option of the holder of any

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series of Debt Securities pursuant to the terms of such Debt Security, by declaration of acceleration or otherwise; or

(b) Failure of the Company to pay or provide for payment of any installment of interest on any of the Debt Securities of such series, when and as the same shall become due and payable, which failure shall have continued for a period of 30 days; or

(c) Failure of the Company or the Guarantors to perform or observe any other of the covenants or agreements on the part of the Company or the Guarantors in this Indenture or in the Debt Securities of such series (other than a covenant or agreement which has expressly been included in this Indenture solely for the benefit of Debt Securities of any series other than that series or is expressly made inapplicable to the Debt Securities of such series pursuant to Section 2.2) or in the Guarantees, which failure shall have continued for a period of 90 days after written notice by certified or registered mail given to the Company or the Guarantors, as the case may be, by the Trustee hereunder or to the Company and to the Trustee from the holders of not less than 25% of the aggregate principal amount of Debt Securities then Outstanding of such series under this Indenture specifying such Event of Default or failure and requesting that it be remedied and stating that such notice is a notice of an event which, if continued for 90 days after such written notice, will become an Event of Default;

(d) The institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking relief under any Bankruptcy Law or the consent by it to the institution of proceedings thereunder or consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due;

(e) The entry of a decree or order by a court having jurisdiction for relief in respect of the Company, or adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any Bankruptcy Law or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 180 consecutive days; or

(f) any Guarantee of any Guarantor that is a Significant Subsidiary shall for any reason cease to be, or be asserted in writing by any such

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Guarantor thereof or the Company not to be, in full force and effect and enforceable in accordance with its terms (other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture), provided, however, that if the Company or

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any Guarantor asserts in writing that any Guarantee is not in full force and effect and enforceable in accordance with its terms, such assertion shall not constitute an Event of Default for purposes of this subsection (f) if (i) such written assertion is accompanied by an Opinion of Counsel to the effect that, as a matter of law, the defect or defects rendering such Guarantee unenforceable can be remedied within 10 days of the date of such assertion, (ii) the Company or such Guarantor delivers an Officers' Certificate to the effect that the Company or such Guarantor represents that such defect or defects shall be so remedied within such 10-day period, and (iii) such defect or defects are in fact so remedied within such 10-day period: and provided, further, that notwithstanding anything to the

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contrary in this subsection (f), any reduction in the maximum amount of any such Guarantee in accordance with Article V shall not be an Event of Default hereunder.

If one or more Events of Default shall occur and be continuing with respect to Debt Securities then Outstanding of any series, then, and in each and every such case, either the Trustee, by notice in writing to the Company, or the holders of not less than 25% in aggregate principal amount of the Debt Securities then Outstanding of such series, by notice in writing to the Company and to the Trustee, may declare the principal amount (or, if the Debt Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of the Debt Securities of such series) of all Debt Securities of such series and/or such other amount or amounts as the Debt Securities or supplemental indenture with respect to such series may provide, if not already due and payable, to be immediately due and payable; and upon any such declaration all Debt Securities of such series shall become and be immediately due and payable, anything in this Indenture or in any of the Debt Securities of such series contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of (and/or such other specified amount on) the Debt Securities of such series shall so become due and payable, and before any judgement or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Debt Securities of such series and the principal of (and/or such other specified amount) and premium, if any, on any and all Debt Securities of such series which shall have become due otherwise than by acceleration, with interest on such principal (and/or such other specified amount) and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest, at the rate specified in the Debt Securities of such series (or, if no such rate is specified, at the rate borne by the Debt Securities of such series), to the date of such payment or deposit, and the reasonable compensation and expenses of the Trustee, and any and all defaults under this Indenture with respect to the Debt Securities of such series, other than the nonpayment of principal of (and/or such other specified amount) or premium, if any, and accrued interest on

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Debt Securities of such series which shall have become due by acceleration, shall have been remedied, then and in every such case the Trustee shall, upon written request or consent of the holders of a majority in aggregate principal amount of the Debt Securities then Outstanding of such series delivered to the Company and to the Trustee, waive such default and its consequences and rescind or annul such declaration and its consequences, but no such waiver, rescission or annulment shall extend to or affect any subsequent default, or impair any right consequent thereon.

For all purposes under this Indenture, if the portion of the principal amount as may be specified in the terms of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, payment of such portion of the principal amount thereof, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

SECTION 7.2. Covenant of Company to pay to Trustee whole amount due on default in payment of Principal or interest - Trustee may recover judgment for whole amount due -application of moneys received by the Trustee. In case the Company or any Guarantor shall commit an Event of Default with respect to the Debt Securities of any series described in Section 7.1(a) or (b) or any Guarantee, then, upon demand of the Trustee, the Company and the Guarantors shall pay to the Trustee, for the benefit of the holders of the Debt Securities then Outstanding of such series, the whole amount which then shall have become due on all such Debt Securities of such series for principal, premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable

law) upon overdue installments of interest, at the rate specified in the Debt Securities of such series (or, if no such rate is specified, at the rate borne by the Debt Securities of such series), and in addition thereto, such additional amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, liabilities, disbursements and advances of the Trustee, any predecessor Trustee, their agents and counsel. In case the Company or the Guarantors shall pay the same in accordance with the provisions of this Section 7.2 and, prior to such payment neither the Trustee nor the holders of the Debt Securities then Outstanding of such series shall have taken any steps to begin enforcing their rights under this Indenture and so long as no additional Event of Default with respect to the Debt Securities of such series shall have occurred, from and after such payment, the Event of Default giving rise to the demand by the Trustee pursuant to this Section 7.2 shall be deemed to be no longer continuing and shall be deemed to have thereupon been remedied, cured or waived without further action upon the part of either the Trustee or any of the holders of Debt Securities. In case the Company or the Guarantors shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute any judicial proceedings at law or in equity for the collection of the sums so due and unpaid and may prosecute such proceedings to judgment or final decree, and may enforce the same against the Company or the Guarantors or any other obligor upon the Debt Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or the Guarantors or any other obligor upon the Debt Securities of such series, wherever

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situated. The right of the Trustee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company, the Guarantors or any other obligor upon the Debt Securities or the property of the Company, the Guarantors or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of any Debt Securities shall then be due and payable as therein expressed or by declaration of acceleration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Debt Securities of any series for which it serves as Trustee and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, any predecessor Trustee, their agents and counsel) and of the holders of Debt Securities of such series allowed in such judicial proceeding, and to receive payment of or on account of such claims and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any judicial proceeding is hereby irrevocably authorized and instructed by each of the holders of Debt Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the holders of Debt Securities of such series, to pay to the Trustee any amount due it or any predecessor Trustee, for compensation and expenses, including counsel fees incurred up to the date of such distribution. Nothing contained in this Indenture shall be deemed to give to the Trustee any right to accept or consent to any plan of reorganization, arrangement, adjustment or composition affecting the holders of Debt Securities or the rights of any holder of Debt Securities, or to authorize the Trustee to vote in respect of the claim of any holder of Debt Securities in any such proceeding; provided, however, that the Trustee may, on behalf of the holders of Debt Securities, vote for the election of a trustee in bankruptcy or similar official and may be a member of any creditors' committee.

Any moneys or property received by the Trustee under this Section 7.2 shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys or property on account of principal, premium, if any, or interest, upon presentation of the several Debt Securities of the series in respect of which such moneys were received, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of costs and expenses of collections, and reasonable compensation to the Trustee, its agents, attorneys and counsel, and all advances made and expenses and liabilities incurred by the Trustee, except as a result of its negligence or bad faith and all other amounts owing to the Trustee or any predecessor Trustee pursuant to Section 11.2 hereof;

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Second: In case the principal of the Outstanding Debt Securities in respect of which such moneys were received shall not have become due and be

unpaid, to the payment of interest on such Debt Securities, in the order of the maturity of the installments of such interest, with interest (so far as may be lawful) upon the overdue installments of interest at the rate specified in such Debt Securities (or, if no such rate is specified, at the rate borne by the Debt Securities of such series), such payments to be made ratably to the persons entitled thereto;

Third: In case the principal of the Outstanding Debt Securities in respect of which such moneys were received and/or such other amount or amounts as the Debt Securities or supplemental indenture with respect to such series shall provide, shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Debt Securities for principal (and/or such other specified amount), premium, if any, and interest, with interest on the overdue principal (and/or such other specified amount), premium, if any, and (so far as may be lawful) upon overdue installments of interest, at the rate specified in such Debt Securities (or, if no such rate is specified, at the rate borne by the Debt Securities of such series), and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon such Debt Securities, then to the payment of such principal (and/or such other specified amount), premium, if any, and interest, with interest on the overdue principal (and/or such other specified amount), premium, if any, and (so far as may be lawful) upon overdue installments of interest, at the rate specified in such Debt Securities (or, if no such rate is specified, at the rate borne by the Debt Securities of such series), without preference or priority of principal (and/or such other specified amount) and premium, if any, over interest, or of interest over principal (and/or specified amount) and premium, if any, or of any installment of interest over any other installment of interest, or of any such Debt Security over any other such Debt Security, ratably to the aggregate of such principal (and/or such other specified amount), premium, if any, and accrued and unpaid interest; and

Fourth: To the payment of the remainder, if any, to the Company, its successors or assigns, or to whomever may be so lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 7.3. Trustee may enforce rights of action without possession of Debt Securities. All rights of action under this Indenture or any of the Debt Securities Outstanding of any series hereunder enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Debt Securities or the production thereof at the trial or other proceedings relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought for the ratable benefit of the holders of the Debt Securities with respect to which the rights are being exercised, subject to the provisions of this Indenture.

SECTION 7.4. Delays or omissions not to impair any rights or powers accruing upon default. No delay or omission of the Trustee or of the holders of Debt Securities to exercise any rights or powers accruing upon any default which shall not have been remedied shall

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impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this Article VII to the Trustee and the holders of the Debt Securities of any series may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the holders of the Debt Securities of such series.

SECTION 7.5. In Event of Default Trustee may protect and enforce its rights by appropriate proceedings - holders of majority in aggregate Principal amount of Debt Securities of a series may waive default. If any one or more Events of Default shall happen and be continuing, the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee, being advised by its counsel, shall deem most effectual to protect and enforce any of said rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific performance of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Provided the Debt Securities of any series shall not then be due and payable by reason of a declaration pursuant to Section 7.1 hereof, the holders of a majority in aggregate principal amount of the Debt Securities of such series then Outstanding may on behalf of the holders of all of the Debt Securities of such series waive by written notice any past default hereunder and its consequences, except a default in the payment of interest on or principal and premium, if any, of any of the Debt Securities of such series. In the case of any such waiver, the Company, the Guarantors, the Trustee and the holders of the Debt Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 7.6. Holders of majority in aggregate principal amount of Debt



Securities of any series may direct exercise of remedies. The holders of a majority in aggregate principal amount of the Debt Securities then Outstanding of any series shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting any proceedings for any remedy available to the Trustee, or of exercising any power or trust conferred upon the Trustee under this Indenture, with respect to the Debt Securities of such series; provided, however, that subject to the provisions of Section 11.1 of this Indenture, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action or proceedings so directed may not lawfully be taken or if the Trustee in good faith shall, by Responsible Officers, determine that the action or proceedings so directed would involve the Trustee in personal liability, or would be unduly prejudicial to the holders of the Debt Securities of such series not joining in such direction, it being understood that the Trustee (subject to Section 11.1) shall have no duty to ascertain whether or not such actions or forebearances are unduly prejudicial to such holders, and the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

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SECTION 7.7. Limitation on suits by holders of Debt Securities. No holder of any Debt Security of any series shall have the right to institute any suit, action or proceeding, in equity or at law for the execution of any trust or power hereof, or for the enforcement of any other remedy under or upon this Indenture or the Debt Securities of such series, unless the holders of a majority in aggregate principal amount of the Debt Securities then Outstanding of such series shall have made written request upon the Trustee and shall have afforded to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name, as Trustee hereunder, and shall have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request for 60 days after its receipt of such request and no direction inconsistent with such request shall have been given to the Trustee pursuant to Section 7.6; it being understood and intended that no one or more holders of Debt Securities of any series shall have any right under this Indenture or under the Debt Securities, by his or their action, to enforce any right hereunder except in the manner herein provided, and that all proceedings hereunder, at law or in equity, shall be instituted, had and maintained in the manner herein provided and for the ratable benefit of all holders of the Debt Securities of such series. Notwithstanding any provision of this Indenture to the contrary, the right, which is absolute and unconditional, of any holder of Debt Securities to receive the payment of the principal of, premium, if any, and interest on his Debt Securities at and after the respective due dates (including maturity by call for redemption, through any sinking fund, declaration unless annulled pursuant to Section 7.1 hereof, or otherwise), of such principal, premium, if any, or interest, or the right, which is also absolute and unconditional, of any holder of Debt Securities to require conversion of his Debt Securities pursuant to Article XIII hereof if the terms of such Debt Securities provide for convertibility pursuant to Section 2.2, or the right to institute suit for the enforcement of any such payment at or after such due dates or of such right to convert, shall not be impaired or affected without the consent of such holder, and the obligation of the Company, which is also absolute and unconditional, to pay the principal of, premium, if any, and interest on each of the Debt Securities to the respective holders thereof at the times and places in the Debt Securities expressed shall not be impaired or affected.

Notwithstanding anything to the contrary contained in this Section 7.7, the parties to this Indenture and the holders of Debt Securities agree as follows:

Any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this paragraph shall not apply to any suit instituted, directly or through an agent or agents, by the Trustee, to any suit instituted by any holder of Debt Securities of any series, or group of holders of Debt Securities of any series, holding in the aggregate more than 10% in aggregate principal amount of the Debt Securities then Outstanding of such series or to any suit instituted by any holder of Debt Securities of any

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series for the enforcement of the payment of the principal of, premium, if any, or interest on, any Debt Security of such series at or after the respective due dates of such principal, premium, if any, or interest expressed in his Debt Security of such series.

SECTION 7.8. No Debt Securities owned or held by, for the account of or for the benefit of the Company to be deemed Outstanding for purpose of payment or distribution. No Debt Securities owned or held by, for the account of or for

the benefit of the Company or any Affiliate (other than Debt Securities pledged in good faith which would be deemed Outstanding under the provisions of Section 3.3) shall be deemed Outstanding for the purpose of any payment or distribution provided for in this Article VII.

SECTION 7.9. Company and Trustee restored to former position on discontinuance or abandonment of proceedings. If the Trustee shall have proceeded to enforce any right under this Indenture with respect to the Debt Securities of any series, and such proceedings shall have been discontinued or abandoned because of waiver, or for any other reason, or shall have been determined adversely to the Trustee, then, and in any such case, the Company, the Guarantors, the Trustee and the holders of Debt Securities of such series shall each be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

#### ARTICLE VII

##### EVIDENCE OF ACTION BY HOLDERS OF DEBT SECURITIES

SECTION 8.1. Evidence of action by holders of Debt Securities. Any demand, request, consent, proxy or other instrument which this Indenture may require or permit to be signed and executed by the holders of Debt Securities of any series may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such holders of Debt Securities in person or by an attorney duly authorized in writing. Proof of the execution of any such demand, request, consent, proxy or other instrument, or of a writing appointing any such attorney, shall be sufficient for any purpose of this Indenture if made in the following manner: the fact and date of the execution by any person of such demand, request, consent, proxy or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in any state or country, that the person signing such request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, or by a trustee or other fiduciary, such certificate or affidavit shall also constitute sufficient proof of his authority. The Trustee may nevertheless in its discretion accept such other proof or require further proof of any matter referred to in this Section 8.1 as it shall deem reasonable. The ownership of Debt Securities shall be proved by the registry books or by a certificate of the registrar thereof.

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The Trustee shall not be bound to recognize any person as a holder of Debt Securities of any series unless and until his title to the Debt Securities of such series held by him is proved in the manner in this Article VIII provided.

Any demand, request, discretion, waiver, consent, vote or other action of the holder of any series of Debt Securities shall be conclusive and shall bind all future holders of the same Debt Security and of any series of Debt Securities issued in exchange or substitution therefor irrespective of whether or not any notation in regard thereto is made upon such Debt Security. Any such holder, however, may revoke the consent as to his Debt Security or portion thereof. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement, waiver or other action becomes effective. An amendment, supplement, waiver or other action shall become effective on receipt by the Trustee of written consents from the holders of Debt Securities of the requisite percentage in aggregate principal amount of the Outstanding Debt Securities of the relevant series. After an amendment, supplement, waiver or other action becomes effective, it shall bind every holder of Debt Securities of each series of Debt Securities so affected.

The Company or the Trustee, as applicable, may set a date for the purpose of determining the holders of Debt Securities entitled to consent, vote or take any other action referred to in this Section 8.1, which date shall be not less than 10 days nor more than 60 days prior to the taking of the consent, vote or other action.

#### ARTICLE IX

##### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 9.1. Immunity of incorporators, stockholders, officers, directors and employees. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any series of Debt Securities or for any claim based thereon or otherwise in any manner in respect thereof, or in respect of this Indenture, to or against any subsidiary, incorporator, stockholder, officer, director or employee, as such, past, present or future, of the Company or any subsidiary, incorporator, stockholder, officer, director or employee, as such, past, present or future, of any predecessor or successor corporation,

partnership or limited liability company either directly or through the Company or such predecessor or successor corporation, partnership or limited liability company, whether by virtue of any constitutional provision or statute or rule of law, or by the enforcement of any assessment or penalty, or in any other manner, all such liability being expressly waived and released by the acceptance of any series of Debt Securities and as part of the consideration for the issue thereof.

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#### ARTICLE X

##### MERGER, CONSOLIDATION, SALE OR LEASE

SECTION 10.1. Documents required to be filed with the Trustee upon consolidation, merger, sale, transfer or lease - execution of supplemental indentures - acts of successor corporation. Nothing in this Indenture or in the Debt Securities shall prevent any consolidation or merger of the Company or the Guarantors with or into any other corporation, partnership or limited liability company, or any consolidation or merger of any other corporation, partnership or limited liability company with or into the Company or any Guarantor, or any sale, transfer or lease of all or substantially all of the property and assets of the Company or any Guarantor to any other corporation, partnership or limited liability company lawfully entitled to acquire the same; provided, however, and the Company and the Guarantors hereby covenant and agree, that any consolidation or merger of the Company or the Guarantors with or into any other corporation, partnership or limited liability company or the sale, transfer or lease of all or substantially all of the property and assets of the Company and its subsidiaries on a consolidated basis shall be upon the condition that (a) the due and punctual payment of the principal of, premium, if any, and interest on all the Debt Securities according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture to be kept or performed by the Company and the Guarantors shall, by an indenture supplemental hereto complying with the provisions of Section 12.1, executed and delivered to the Trustee, be expressly assumed by the corporation, partnership or limited liability company (other than the Company or the Guarantors) formed by or resulting from any such consolidation or merger, or which shall have received the transfer or lease of all or substantially all of the property and assets of the Company and its subsidiaries on a consolidated basis, just as fully and effectually as if such successor corporation, partnership or limited liability company had been an original party hereto; and (b) the Company, the Guarantor or such successor corporation, partnership or limited liability company, as the case may be, shall not, immediately after such consolidation, merger, sale, transfer or lease be in default in the performance of any such covenant or condition. Thereafter, unless otherwise specified pursuant to Section 2.2 for the Debt Securities of any series, all obligations of the predecessor corporation, partnership or limited liability company under the Debt Securities of such series shall terminate. In the event of any such sale, transfer or lease, the predecessor Company or the Guarantor may be dissolved, wound up and liquidated at any time thereafter.

Every such successor corporation, partnership or limited liability company, upon executing an indenture supplemental hereto as provided in this Section 10.1 in form satisfactory to the Trustee, shall succeed to and be substituted for the Company and the Guarantors, as the case may be, with the same effect as if it had been named herein as the Company and the Guarantors; and any order, certificate or resolution of the Board or officers of the Company or the a Guarantor provided for in this Indenture may be made by like officials of such successor corporation, partnership or limited liability company. Such successor corporation, partnership or limited liability company may thereupon cause to be signed, either in its own name or in the name of the Company or the Guarantors, with such

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suitable reference, if any, to such consolidation, merger, sale, transfer or lease as may be required by the Trustee, any or all of the Debt Securities or Guarantees which shall not theretofore have been signed by the Company or the Guarantors and authenticated by the Trustee or any Authenticating Agent; and upon the written order of such successor corporation, partnership or limited liability company in lieu of the Company or any Guarantor, as the case may be, signed by the President or any Vice President (regardless of Vice Presidential designation) and the Chief Financial Officer, Treasurer or any Assistant Treasurer of such successor corporation, partnership or limited liability company, and subject to all the terms, conditions and restrictions herein prescribed with respect to the authentication and delivery of the Debt Securities and Guarantees, the Trustee or any Authenticating Agent shall authenticate and deliver any and all Debt Securities and Guarantees which shall have been previously signed by the proper officers of the Company and the Guarantors and delivered to the Trustee or any Authenticating Agent for authentication and any of such Debt Securities and Guarantees which such successor corporation, partnership or limited liability company shall thereafter, in accordance with the provisions of this Indenture, cause to be signed and delivered to the Trustee or any Authenticating Agent for such purpose. All Debt Securities of any series so authenticated and delivered shall

in all respects have the same rank as the Debt Securities of such series theretofore or thereafter authenticated and delivered in accordance with the terms of this Indenture.

Notwithstanding the foregoing, this Section 10.1 shall not apply in the event, and to the extent, that any such consolidation, merger, sale, transfer or lease described above is expressly permitted pursuant to the terms of any supplemental indenture governing any series of Debt Securities, provided that the Company or the applicable Guarantor (as the case may be) complies with all conditions set forth in such supplemental indenture for any such consolidation, merger, sale, transfer or lease.

SECTION 10.2. Trustee may rely upon Opinion of Counsel. The Trustee may receive and shall, subject to the provisions of Section 11.1 of this Indenture, be fully protected in relying upon an Officers' Certificate and Opinion of Counsel as conclusive evidence that any supplemental indenture executed under the foregoing Section 10.1 complies with the foregoing conditions and provisions of this Article X.

## ARTICLE XI

### CONCERNING THE TRUSTEE

SECTION 11.1. Acceptance of Trust - responsibilities of Trustee. (a) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture or in the Trust Indenture Act of 1939, and no implied covenants or conditions shall be read into this Indenture against the Trustee. In case an Event of Default with respect to the Debt Securities of a particular series has occurred (but only during the continuance thereof), the Trustee shall exercise with respect to the Debt

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Securities of such series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee pursuant to any provision of this Indenture, shall examine them to determine whether they conform to the requirements of this Indenture.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) prior to the occurrence of an Event of Default with respect to the Debt Securities of any series hereunder and after the curing or waiving of all Events of Default with respect to the Debt Securities of such series which may have occurred, the Trustee shall not be liable with respect to the Debt Securities of such series except for the performance of such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee, but the duties and obligations of the Trustee with respect to the Debt Securities of such series, prior to the occurrence of an Event of Default with respect to the Debt Securities of such series and after the curing or waiving of all Events of Default with respect to the Debt Securities of such series which may have occurred, shall be determined solely by the express provisions of this Indenture;

(ii) Subject to the limitations contained in subsection (a) of this Section 11.1, prior to the occurrence of an Event of Default with respect to the Debt Securities of any series hereunder and after the curing or waiving of all Events of Default with respect to the Debt Securities of such series which may have occurred, and in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed herein, upon certificates or opinions conforming to the requirements of this Indenture;

(iii) the Trustee shall not be personally liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iv) the Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in aggregate principal amount of the Debt Securities then Outstanding of any series relating to the time, method and place of conducting any proceeding for any remedy available

to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Debt Securities of such series.

(c) Subject to the limitations contained in subsections (a) and (b) of this Section 11.1, the recitals contained herein and in the Debt Securities (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities except that the Trustee represents that it is duly authorized to execute and deliver this Indenture and to perform its obligations hereunder.

(d) Subject to the limitations contained in subsections (a) and (b) of this Section 11.1:

(i) the Trustee may rely and shall be protected in acting or refraining from action upon any resolution, certificate, opinion, notice, consent, request, order, appraisal, report, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(ii) before the Trustee acts or refrains from acting, the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(iii) whenever in the administration of the trusts of this Indenture, prior to an Event of Default hereunder and after the curing or waiving of all Events of Default which may have occurred, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(iv) the Trustee shall be under no obligation to exercise any of the trusts or powers hereof at the request, order or direction of any of the holders of Debt Securities, pursuant to the provisions of this Indenture, unless such holders of Debt Securities shall have offered to the Trustee reasonable indemnity against all the costs, expenses and liabilities which might be incurred therein;

(v) the Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or power conferred upon it by this Indenture;

(vi) prior to the occurrence of an Event of Default with respect to the Debt Securities of any series hereunder and after the curing or waiving of all Events of Default with respect to the Debt Securities of such series which may have occurred, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, opinion, notice, consent, request, order, appraisal, report, bond or other document or instrument concerning such series, unless requested in writing to do so by the holders of not less than a majority in aggregate principal amount of the Debt Securities then Outstanding of such series; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee (subject to the limitations contained in subsections (a) and (b) of this Section 11.1), not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expense or liability as a condition to so proceeding; and provided, further, that nothing in this subdivision (d) (vi) shall require the Trustee to give the holders of Debt Securities any notice other than that required by Section 11.3 hereof. The reasonable expense of every such investigation shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(vii) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(viii) except for (i) a default under Sections 7.1(a) or (b) hereof, or (ii) any other event which the Trustee has "actual knowledge" and which event, with the giving of notice or the passage of time or both, would constitute an Event of Default under this Indenture, the Trustee shall not be deemed to have notice of any default or Event of Default unless specifically notified in writing of such event by the Company or the

holders of not less than 25% aggregate principal amount of the Debt Securities then outstanding; as used herein, the term "actual knowledge" means the actual fact or statement of knowing, without any duty to make any investigation with regard thereto;

(ix) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(x) none of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that

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repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 11.2. Trustee to be entitled to compensation - Trustee not to be accountable for application of proceeds - moneys held by Trustee to be trust funds. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) for services rendered by it in the execution of the trusts hereby created, and shall also be entitled to payment of reasonable expenses and disbursements actually made or incurred hereunder, including the reasonable fees and expenses of counsel, accountants and of all persons not regularly in its employ, and all taxes which may have been assessed against the Trustee as such or any funds on deposit with the Trustee. The Company also agrees to indemnify each of the Trustee and any predecessor Trustee for and hold it harmless against loss, liability or expense incurred arising out of or in connection with the acceptance or administration of this trust or performance of its duties hereunder, including the costs and expenses of defending itself against any claim of liability in the premises and the costs and expenses of enforcing this Section 11.2, except to the extent that such loss, liability or expense is incurred due to the negligence or willful misconduct of the Trustee or predecessor Trustee. If any property other than cash shall at any time be subject to a lien in favor of the holders of Debt Securities, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The obligations of the Company under this Section 11.2 to compensate the Trustee and to indemnify, pay or reimburse the Trustee or any predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the resignation or removal of the Trustee, the termination of this Indenture, and the satisfaction and discharge or any other termination pursuant to any Bankruptcy Law hereof. Such additional indebtedness shall be secured by a lien prior to that of the Debt Securities of all series with respect to which the Trustee acts as Trustee upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Debt Securities.

The Trustee shall not be accountable for the use or application by the Company of any Debt Securities authenticated and delivered hereunder or of the proceeds of such Debt Securities, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture, or for the use or application of any moneys received by any paying agent.

All moneys received by the Trustee in trust under or pursuant to any provision of this Indenture shall constitute trust funds for the purposes for which they were paid or were held, but need not be segregated in any manner from any other moneys and may be deposited by the Trustee, under such conditions as may be prescribed by law, in its general banking department, and the Trustee shall not be liable for any interest thereon, except as otherwise agreed with the Company.

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The parties hereto, and the holders of Debt Securities by their acceptance of their Debt Securities, hereby agree, that when the Trustee incurs expenses and renders services after an Event of Default occurs, such expenses and the compensation for such services are intended by the holders of the Debt Securities and Company to constitute expenses of administration under any Bankruptcy Law.

SECTION 11.3. Trustee to give holders of Debt Securities notice of default. The Trustee shall give to the holders of Debt Securities of any series notice of the happening of all defaults with respect to the Debt Securities of such series known to it, within 90 days after the occurrence thereof unless such defaults shall have been cured before the giving of such notice; provided,

however, that, except in the case of a default resulting from the failure to make any payment of principal of, premium, if any, or interest on the Debt Securities of any series, or in the payment of any mandatory sinking fund installment with respect to the Debt Securities of such series, the Trustee may withhold the giving of such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the holders of Debt Securities of such series. For the purpose of this Section 11.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default. Such notice shall be given to the holders of Debt Securities of such series in the manner and to the extent provided in subsection (c) of Section 11.10.

SECTION 11.4. Trustee acquiring conflicting interest must eliminate it or resign. Reference is made to Section 310(b) of the Trust Indenture Act of 1939, as amended. There shall be excluded under Section 310(b)(1) thereof this Indenture with respect to the Debt Securities of any series other than the Debt Securities of the first series.

SECTION 11.5. Eligibility of Trustee. There shall at all times be a corporate Trustee under this Indenture which shall be a bank or trust company organized and doing business under the laws of the United States or of any State or the District of Columbia and having a combined capital and surplus of not less than \$50,000,000 which is authorized under the laws of its jurisdiction of incorporation to exercise corporate trust powers and is subject to supervision or examination by Federal, State or District of Columbia authority and which has an office or agency in New York, New York. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, the combined capital of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee shall at any time cease to meet the foregoing standards of eligibility, then such Trustee shall resign immediately in the manner and with the effect specified in Section 11.6.

SECTION 11.6. Resignation or removal of Trustee. (a) Subject to the limitations contained in subsection (d) of this Section 11.6, the Trustee may resign and be discharged from the trust hereby created with respect to the Debt Securities of one or more series by giving notice thereof to the Company and by giving notice thereof to the holders of Debt Securities of such series, in the manner and to the extent provided in subsection (c) of Section

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11.10. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees (it being understood that any such successor trustee may be appointed with respect to the Debt Securities of one or more or all of such series with respect to which the resigning trustee has resigned and that at any time there shall be only one trustee with respect to the Debt Securities of any particular series) by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the mailing of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any holder of Debt Securities of such series who has been a bona fide holder of a Debt Security or Debt Securities of such series for at least six months may on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of Section 11.4 with respect to the Debt Securities of any series after written request therefor by the Company or by any holder of Debt Securities of such series who has been a bona fide holder of a Debt Security or Debt Securities of such series for at least six months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 11.5 with respect to the Debt Securities of any series and shall fail to resign after written request therefor by the Company or by any such holder of Debt Securities; or

(3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs

then, in any such case, the Company may remove the Trustee with respect to all Debt Securities of such series and appoint a duly qualified successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee so appointed, or, subject to the

provisions of Section 7.7, any holder of Debt Securities who has been a bona fide holder of a Debt Security or Debt Securities of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Debt Securities of such series and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a duly qualified successor trustee with respect to the Debt Securities of such series.

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(c) The holders of a majority in aggregate principal amount of the Debt Securities then Outstanding of any series may at any time remove the Trustee and appoint a duly qualified successor trustee with respect to such series by delivery to the Trustee so removed, to the successor trustee and to the Company of the evidence provided for in Section 8.1 of the action in that regard taken by holders of Debt Securities.

(d) Any resignation or removal of the Trustee and any appointment of a duly qualified successor trustee pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 11.7.

#### SECTION 11.7. Acceptance by successor Trustee.

(a) In case of the appointment hereunder of a successor trustee with respect to all Debt Securities, every duly qualified successor trustee so appointed under any of the methods herein provided shall execute, acknowledge and deliver to its predecessor trustee and to the Company an instrument in writing accepting such appointment hereunder and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with the rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder with like effect as if originally named as Trustee herein. The predecessor trustee shall, nevertheless, at the written request of the successor trustee, pay over to the successor trustee all moneys at the time held by it herein; and the Company and the predecessor trustee upon payment or provision thereof of any amounts then due the predecessor trustee pursuant to the provisions of Section 11.2, shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor trustee all such rights, powers, trusts, duties and obligations. The Company shall promptly give notice of the appointment of such successor trustee to the holders of Debt Securities in the manner and to the extent provided in subsection (c) of Section 11.10.

(b) In case of the appointment hereunder of a successor trustee with respect to the Debt Securities of one or more (but not all) series, the Company, the predecessor trustee and each successor trustee with respect to the Debt Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the predecessor trustee with respect to the Debt Securities of such series to which the appointment of such successor trustee relates, (ii) if the predecessor trustee is not retiring with respect to all Debt Securities of such series, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor trustee with respect to the Debt Securities of such series as to which the predecessor trustee is not retiring shall continue to be vested in the predecessor trustee, and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any

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other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the predecessor trustee shall become effective to the extent provided therein and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor trustee with respect to the Debt Securities of such series to which the appointment of such successor trustee relates; but, on request of the Company or any successor trustee, such predecessor trustee upon payment of its charges shall duly assign, transfer and deliver to such successor trustee all property and money held by such predecessor trustee hereunder with respect to the Debt Securities of such series to which the appointment of such successor trustee relates. Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in this subsection (b) of this Section.

#### SECTION 11.8. Successor to Trustee by merger or consolidation, etc. Any



corporation or national banking association into which the Trustee may be merged, or with which it may be consolidated, or to which the Trustee transfers all or substantially all of its corporate trust assets, or any corporation or national banking association resulting from any merger or consolidation or conversion to which the Trustee shall be a party, shall be the successor trustee under this Indenture without the execution or filing of any instruments or any further act on the part of any of the parties hereto.

In case at the time such successor trustee shall succeed to the trusts created by this Indenture any of the Debt Securities shall have been authenticated but not delivered, any such successor trustee may adopt the certificate of authentication of its predecessor trustee, and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any successor trustee may authenticate such Debt Securities either in the name of any predecessor hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of authentication of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor trustee or authenticate Debt Securities in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 11.9. Limitations on right of Trustee as a creditor to obtain payment of certain claims. Reference is made to Section 311 of the Trust Indenture Act of 1939, as amended, for purposes of which the following terms shall have the following meanings:

(i) the term "cash transaction" shall mean any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(ii) the term "self-liquidating paper" shall mean any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing,

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manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares, or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

SECTION 11.10. Trustee to make annual report to holders of Debt Securities -Trustee to make other reports to holders of Debt Securities - holders of Debt Securities to whom reports to be transmitted. (a) The Trustee shall, so long as any Debt Securities are Outstanding of any series with respect to which it acts as Trustee, transmit to the holders of Debt Securities of such series, any report which is required to be transmitted to the holders of Debt Securities of such series pursuant to Section 313(a) of the Trust Indenture Act of 1939, as amended.

(b) The Trustee shall, so long as any Debt Securities of any series with respect to which it acts as Trustee shall be Outstanding, also transmit to the holders of Debt Securities of such series, as hereinafter provided, within the times hereinafter specified, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state the circumstances surrounding the making thereof) made by the Trustee, as such, since the date of the last report transmitted pursuant to the provisions of subsection (a) of this Section 11.10 (or if no such report has been so transmitted, since the date of the execution of this Indenture), for the reimbursement of which it claims or may claim a lien or charge prior to that of the Debt Securities of such series, on property or funds held or collected by the Trustee, as such, and which it has not previously reported pursuant to this subsection (b), if such advances remaining unpaid at any time aggregate more than 10% of the principal amount of the Debt Securities of such series then Outstanding, such report to be so transmitted within 90 days after such time.

(c) All reports required by this Section 11.10, and all other reports or notices which are required by any other provision of this Indenture to be transmitted in accordance with the provisions of this Section 11.10, shall be transmitted by mail: (i) to all registered holders of Debt Securities of such series, as the names and addresses of such holders appear upon the Debt Security register; (ii) to such holders of Debt Securities of such series as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose; and (iii) except in the case of reports pursuant to subsection (b) of this Section 11.10, to all holders of Debt Securities of such series whose names and addresses have been furnished to or received by the Trustee pursuant to Section 4.6(d).

(d) The Trustee shall, at the time of the transmission to the holders of Debt Securities of any report or notice pursuant to this Section 11.10, file a copy thereof with the Securities and Exchange commission. The Company will notify the Trustee if and when the Debt

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Securities of any series become listed on any stock exchange and the Trustee will thereafter file a copy of any such report or notice with such stock exchange.

SECTION 11.11. Preservation of information by Trustee - Trustee to give certain information to holders of Debt Securities upon application. The Trustee shall preserve, in as current a form as is reasonably practicable, all information furnished it pursuant to Section 4.6(d) hereof or received by it as Debt Security registrar hereunder. The Trustee may destroy such information upon receipt of new information updating information previously furnished.

Within five Business Days after receipt by the Trustee or its designee of a written application by any three or more holders of Debt Securities stating that the applicants desire to communicate with other holders of Debt Securities with respect to their rights under this Indenture or under the Debt Securities, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned a Debt Security or Debt Securities for a period of at least six months preceding such application, the Trustee or its designee shall, at its election, either (a) afford to such applicants access to all information so furnished to or received by the Trustee or its designee and not destroyed pursuant to the provisions of this Section 11.11, or (b) inform such applicants as to the approximate number of holders of Debt Securities according to the most recent information so furnished to or received by the Trustee or its designee, and as to the approximate cost of mailing to the holders of Debt Securities the form of proxy or other communication, if any, specified in such application. If the Trustee or its designee shall elect not to afford to such applicants access to such information, the Trustee or its designee shall, upon the written request of such applicants, mail to all holders of Debt Securities whose names and addresses are contained in the then current information filed with the Trustee or its designee as aforesaid copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee or its designee of the material to be mailed and the payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five Business Days after such tender, the Trustee or its designee shall mail to such applicants, and file with the Securities and Exchange Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee or its designee, such mailing would be contrary to the best interests of the holders of Debt Securities or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Securities and Exchange Commission, after granting opportunity for a hearing upon the objections specified in said written statement and on notice to the Trustee or its designee, shall enter an order refusing to sustain any of such objections, or, if, after the entry of an order sustaining one or more of such objections, the Securities and Exchange Commission shall find, after notice and opportunity for a hearing, that all objections sustained have been met and shall enter an order so declaring, the Trustee or its designee shall mail copies of such material to all such holders of Debt Securities with reasonable promptness after such determination and the renewal of the aforesaid tender; otherwise the Trustee or its designee shall be relieved of any obligation or duty to such applicants respecting their application.

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Neither the Company, the Trustee or its designee nor any person acting as Debt Security registrar or paying agent shall be liable or accountable to the Company or to any holder of Debt Securities by reason of the disclosure of any such information as to the names and addresses of holders of Debt Securities in accordance with the provisions of this Section 11.11, regardless of the source from which such information was derived, nor by reason of the mailing of any material pursuant to a request made under this Section 11.11.

SECTION 11.12. Trustee may hold Debt Securities and otherwise deal with Company. The Trustee, the Debt Security registrar, any paying agent or any other agent of the Company in its individual or any other capacity may buy, own, hold and sell any of the Debt Securities or any other evidences of indebtedness or other securities, whether heretofore or hereafter created or issued, of the Company or any subsidiary or Affiliate with the same rights it would have if it were not Trustee, Debt Security registrar, paying agent or such other agent; and subject to the provisions of this Article XI, the Trustee may engage or be interested in any financial or other transaction with the Company or any subsidiary or Affiliate, including, without limitation, secured and unsecured loans to the Company or any subsidiary or Affiliate; and may maintain any and all other general banking and business relations with the Company and any subsidiary or Affiliate with like effect and in the same manner and to the same extent as if the Trustee were not a party to this Indenture; and no implied

covenant shall be read into this Indenture against the Trustee in respect of any such matters.

SECTION 11.13. Trustee may comply with any rule, regulation or order of the Securities and Exchange Commission. The Trustee may comply in good faith with any rule, regulation or order of the Securities and Exchange Commission made pursuant to the terms and provisions of the Trust Indenture Act of 1939 and shall be fully protected in so doing notwithstanding that such rule, regulation or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason, but nothing herein contained shall require the Trustee to take any action or omit to take any action in accordance with such rule, regulation or order, except as is in this Indenture otherwise required.

SECTION 11.14. Appointment of Authenticating Agent. The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Debt Securities which shall be authorized to act on behalf of the Trustee to authenticate Debt Securities of such series issued upon exchange, registration of transfer or partial redemption or partial conversion thereof, and if the Trustee is required to appoint one or more Authenticating Agents with respect to any series of Debt Securities, to authenticate Debt Securities of such series and to take such other actions as are specified in Sections 2.4, 2.8, 2.11, 5.2 and 13.3, and Debt Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent (except in respect of original issue and Section 2.9). Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing

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business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$1,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 11.14, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 11.14, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 11.14.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of such Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 11.14, without the execution or filing of any paper or any further act on the part of the Trustee or such Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice or resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 11.14, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall provide notice to the holders of the Debt Securities of the series as to which the Authenticating Agent will serve as provided in Section 3.9. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 11.14.

The Trustee agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 11.2.

If an appointment with respect to one or more series is made pursuant to this Section 11.14, the Debt Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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This is one of the Debt Securities of the series designated therein referred to in the within-mentioned Indenture.

Harris Trust and Savings Bank, as Trustee

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Officer

If all of the Debt Securities of a series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Debt Securities upon original issuance located where the Company wishes to have Debt Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing (which writing need not comply with Section 3.8 and need not be accompanied by an Opinion of Counsel), shall appoint in accordance with this Section 11.14 an Authenticating Agent having an office in a place designated by the Company with respect to such series of Debt Securities.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

SECTION 12.1. Company and Trustee may enter into supplemental indenture for special purposes. Without the consent of any of the holders of Debt Securities, the Company, when authorized by resolution of its Board of Directors, and, upon receipt of an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, is duly authorized by all necessary corporate action, constitutes the legal, valid and binding obligation of the Company and is in compliance with applicable law, the Trustee from time to time and at any time, subject to the conditions and restrictions in this Indenture contained, may enter into an indenture or indentures supplemental hereto in form satisfactory to the Trustee, which thereafter shall form a part hereof, for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Company and the Guarantors in this Indenture contained, other covenants and agreements thereafter to be observed for the benefit of the holders of all or any series of Debt Securities (and if such covenants and agreements are to be for the benefit of less than all series of Debt Securities, stating that such covenants and agreements are expressly being included

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solely for the benefit of such series) or to surrender any right or power herein reserved to or conferred upon the Company or the Guarantors; or

(b) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained in this Indenture or in any supplemental indenture; or

(c) to make such provisions in regard to matters or questions arising under this Indenture which may be necessary or desirable, or otherwise change this Indenture in any manner which shall not adversely affect the interests of the holders of Debt Securities of any series; or

(d) to evidence the succession of another corporation to the Company or any Guarantor, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company or any Guarantor pursuant to Article X and to provide for the adjustment of conversion rights pursuant to Section 13.7; or

(e) to establish the form or terms of the Debt Securities of any series as permitted by Sections 2.1 and 2.2; or

(f) to change or eliminate any of the provisions of this Indenture, provided that, except as otherwise contemplated by Section 2.2(11), any such change or elimination shall become effective only when there is no Debt Security outstanding of any series created prior thereto which is entitled to the benefit of such provision; or

(g) to add or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Debt Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to provide for uncertificated Debt Securities in addition to certificated Debt Securities (so long as any "registration-required obligation" within the meaning of Section 163(f)(2)

of the Code is in registered form for purposes of the Code); or

(h) to amend or supplement any provision contained herein, which was required to be contained herein in order for this Indenture to be qualified under the Trust Indenture Act of 1939, if the Trust Indenture Act of 1939 or regulations thereunder change what is so required to be included in qualified indentures, in any manner not inconsistent with what then may be required for such qualification; or

(i) to add any additional Events of Default (and if such Events of Default are to be applicable to less than all series of Debt Securities, stating that such Events of Default are expressly being included solely to be applicable to such series); or

(j) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Debt Securities of one or more series any property or assets; or

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(k) to add a Guarantor; or

(l) to add to or change any of the provisions of this Indenture as contemplated in Section 11.7(b);

and the Company hereby covenants that it will fully perform all the requirements of any such supplemental indenture which may be in effect from time to time. Nothing in this Article XII contained shall affect or limit the right or obligation of the Company to execute and deliver to the Trustee any instrument of further assurance or other instrument which elsewhere in this Indenture it is provided shall be delivered to the Trustee.

The Trustee shall join with the Company in the execution of any such supplemental indenture, make any further appropriate agreements and stipulations which may be therein contained and accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 12.1 may be executed by the Company, the Guarantors and the Trustee without the consent of the holders of any of the Debt Securities at the time Outstanding, notwithstanding any of the provisions of Section 12.2.

SECTION 12.2. Modification of Indenture with consent of holders of Debt Securities. With the consent (evidenced as provided in Section 8.1) of the holders of more than 50% in aggregate principal amount of the Debt Securities at the time Outstanding of each series affected by such supplement, the Company and the Guarantors, when authorized by a resolution of each of their respective Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provision to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of such series of the Debt Securities; provided, however, that no such supplemental indenture shall (i) extend the time or times of payment of the principal of, premium, if any, or the interest on, any series of Debt Securities, or reduce the principal amount of, premium, if any, or the rate of interest on, any series of Debt Securities (and/or such other amount or amounts as any Debt Securities or supplemental indentures with respect thereto may provide to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 7.1) or change the currency of payment of principal of, premium, if any, or interest on, any series of Debt Securities or reduce any amount payable on redemption thereof or alter or impair the right to convert the same at the rate and upon the terms provided in the Indenture or alter or impair the right to require redemption at the option of the holder, without the consent of the holder of each Debt Security so affected, or (ii) reduce the percentage of Debt Securities of any series, the vote or consent of the holders of which is required for such modifications and alterations, without the consent of the holders of all Debt Securities then Outstanding of such series under the Indenture. Notwithstanding the

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foregoing, no consent of the holders of Debt Securities shall be necessary to permit the execution of supplemental indentures pursuant to Section 13.7.

Upon the request of the Company, accompanied by a copy of a resolution of its Board of Directors certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of holders of Debt Securities as aforesaid, the Trustee shall join with the Company and the Guarantors, as the case may be, in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may, in

its discretion, but shall not be obligated, to enter into such supplemental indenture.

It shall not be necessary for the consent of the holders of Debt Securities under this Section 12.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

A supplemental indenture which changes or eliminates any provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Debt Securities, or which modifies the rights of the holders of Debt Securities of such series with respect to such provision, shall be deemed not to affect the rights under this Indenture of the holders of Debt Securities of any other series.

SECTION 12.3. Effect of supplemental indentures. Upon the execution of any supplemental indenture pursuant to the provisions of this Article XII, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company, the Guarantors and the holders of Debt Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 11.1, may receive an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article XII.

SECTION 12.4. Supplemental indentures to conform to Trust Indenture Act. Any supplemental indenture executed and delivered pursuant to the provisions of this Article XII shall conform in all respects to the requirements of the Trust Indenture Act of 1939 as then in effect.

SECTION 12.5. Notation on or exchange of Debt Securities. If an amendment, supplement or waiver changes the terms of a Debt Security of any series, the Trustee may require the holder of the Debt Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Debt Security about the changed terms and return it to the holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the

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Debt Security of any series shall issue and the Trustee shall authenticate a new Debt Security of such series that reflects the changed terms.

## ARTICLE XIII

### CONVERSION OF DEBT SECURITIES

SECTION 13.1. Applicability of Article. Debt Securities of any series which are convertible into Capital Stock at the option of the holder of Debt Securities shall be convertible in accordance with their terms and (unless otherwise specified as contemplated by Section 2.2 for Debt Securities of any series) in accordance with this Article. Each reference in this Article XIII to "a Debt Security" or "the Debt Securities" refers to the Debt Securities of the particular series that is convertible into Capital Stock. Each reference in this Article to "Capital Stock" into which Debt Securities of any series are convertible refers to the class of Capital Stock into which the Debt Securities of such series are convertible in accordance with their terms (as specified as contemplated by Section 2.2). If more than one series of Debt Securities with conversion privileges are outstanding at any time, the provisions of this Article XIII shall be applied separately to each such series.

SECTION 13.2. Right of holders of Debt Securities to convert Debt Securities. Subject to and upon compliance with the terms of the Debt Securities and the provisions of Section 5.7 and this Article XIII, at the option of the holder thereof, any series of Debt Securities of any series of any authorized denomination, or any portion of the principal amount thereof which is \$1,000 or any integral multiple of \$1,000, may, at any time during the period specified in the Debt Securities of such series, or in case such Debt Security or portion thereof shall have been called for redemption, then in respect of such Debt Security or portion thereof until and including, but not after (unless the Company shall default in payment due upon the redemption thereof) the close of business on the date fixed for redemption except that in the case of redemption at the option of the holder of Debt Securities, if specified in the terms of such Debt Securities, such right shall terminate upon receipt of written notice of the exercise of such option, be converted into duly authorized, validly issued, fully paid and nonassessable shares of the class of Preferred Stock or Class A Common Stock, or combination thereof, as specified in such Debt Security, at the conversion rate for each \$1,000 principal amount of Debt Securities (such initial conversion rate reflecting an initial conversion price specified in such Debt Security) in effect on the conversion date, or, in

case an adjustment in the conversion rate has taken place pursuant to the provisions of Section 13.5, then at the applicable conversion rate as so adjusted, upon surrender of the Debt Security or Debt Securities, the principal amount of which is so to be converted, to the Company at any time during usual business hours at the office or agency to be maintained by it in accordance with the provisions of Section 4.2, accompanied by a written notice of election to convert as provided in Section 13.3 and, if so required by the Company and the Trustee, by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by the registered holder or his attorney duly authorized in writing. All Debt Securities surrendered for conversion shall, if surrendered to

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the Company or any conversion agent, be delivered to the Trustee for cancellation and cancelled by it, or shall, if surrendered to the Trustee, be cancelled by it, as provided in Section 2.11.

The initial conversion price or conversion rate in respect of a series of Debt Securities shall be as specified in the Debt Securities of such series. The conversion price or conversion rate will be subject to adjustment on the terms set forth in Section 13.5 or such other or different terms, if any, as may be specified by Section 2.2 for Debt Securities of such series. Provisions of this Indenture that apply to conversion of all of a Debt Security also apply to conversion of a portion of it.

SECTION 13.3. Issuance of shares of Capital Stock on conversion. As promptly as practicable after the surrender, as herein provided, of any series of Debt Securities or Debt Securities for conversion, the Company shall deliver or cause to be delivered at its said office or agency to or upon the written order of the holder of the Debt Security or Debt Securities so surrendered a certificate or certificates representing the number of duly authorized, validly issued, fully paid and nonassessable shares of Capital Stock into which such Debt Security or Debt Securities may be converted in accordance with the terms thereof and the provisions of this Article XIII. Prior to delivery of such certificate or certificates, the Company shall require a written notice at its said office or agency from the holder of the Debt Security or Debt Securities so surrendered stating that the holder irrevocably elects to convert such Debt Security or Debt Securities, or, if less than the entire principal amount thereof is to be converted, stating the portion thereof to be converted. Such notice shall also state the name or names (with address and social security or other taxpayer identification number) in which said certificate or certificates are to be issued. Such conversion shall be deemed to have been made at the time that such Debt Security or Debt Securities shall have been surrendered for conversion and such notice shall have been received by the Company or the Trustee, the rights of the holder of such Debt Security or Debt Securities as a holder of Debt Securities shall cease at such time, the person or persons entitled to receive the shares of Capital Stock upon conversion of such Debt Security or Debt Securities shall be treated for all purposes as having become the record holder or holders of such shares of Capital Stock at such time and such conversion shall be at the conversion rate in effect at such time. In the case of any series of Debt Securities of any series which is converted in part only, upon such conversion, the Company shall execute and the Trustee or an Authenticating Agent shall authenticate and deliver to the holder thereof, as requested by such holder, a new Debt Security or Debt Securities of such series of authorized denominations in aggregate principal amount equal to the unconverted portion of such Debt Security.

If the last day on which a Debt Security may be converted is not a Business Day in a place where a conversion agent is located, the Debt Security may be surrendered to that conversion agent on the next succeeding day that is a Business Day.

The Company will not be required to deliver certificates for shares of Capital Stock upon conversion while its stock transfer books are closed for a meeting of stockholders or for

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the payment of dividends or for any other purpose, but certificates for shares of Capital Stock shall be delivered as soon as the stock transfer books shall again be opened.

SECTION 13.4. No payment or adjustment for interest or dividends. Unless otherwise specified as contemplated by Section 2.2 for Debt Securities of such series, Debt Securities surrendered for conversion during the period from the close of business on any regular record date (or special record date for payment of defaulted interest) next preceding any interest payment date to the opening of business on such interest payment date (except Debt Securities called for redemption on a redemption date within such period) when surrendered for conversion must be accompanied by payment of an amount equal to the interest thereon which the registered holder is to receive on such interest payment date. Payment of interest shall be made, as of such interest payment date or such date, as the case may be, to the holder of record of the Debt Securities as of such regular, or special record date, as applicable. Except where Debt

Securities surrendered for conversion must be accompanied by payment as described above, no interest on converted Debt Securities will be payable by the Company on any interest payment date subsequent to the date of conversion. No other payment or adjustment for interest or dividends is to be made upon conversion. Notwithstanding the foregoing, upon conversion of any series of Debt Securities with original issue discount, the fixed number of shares of Capital Stock into which such Debt Security is convertible delivered by the Company to the holder thereof shall be applied, first, to pay the accrued original issue discount attributable to the period from the date of issuance to the date of conversion of such Debt Security, and, second, to pay the balance of the principal amount of such Debt Security.

SECTION 13.5. Adjustment of conversion rate. Unless otherwise specified as contemplated by Section 2.2 for Debt Securities of such series, the conversion rate for Debt Securities in effect at any time shall be subject to adjustment as follows:

(a) In case the Company shall (i) declare a dividend or make a distribution on the class of Capital Stock into which Debt Securities of such series are convertible in shares of its Capital Stock, (ii) subdivide the outstanding shares of the class of Capital Stock into which Debt Securities of such series are convertible into a greater number of shares, (iii) combine the outstanding shares of the class of Capital Stock into which Debt Securities of such series are convertible into a smaller number of shares, or (iv) issue by reclassification of the shares of the class of Capital Stock into which Debt Securities of such series are convertible (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation) any shares, the conversion rate for the Debt Securities of such series in effect at the time of the record date for such dividend or distribution, or the effective date of such subdivision, combination or reclassification, shall be proportionately adjusted so that the holder of any series of Debt Securities of such series surrendered for conversion after such time shall be entitled to receive the number and kind of shares which he would have owned or have been entitled to receive had such Debt Security been converted immediately prior to such time. Similar adjustments shall be made whenever any event listed above shall occur.

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(b) In case the Company shall fix a record date for the issuance of rights or warrants to all holders of the class of Capital Stock into which Debt Securities of such series are convertible entitling them (for a period expiring within 45 days after such record date) to subscribe for or purchase shares of such class of Capital Stock (or securities convertible into shares of such class of Capital Stock) at a price per share (or, in the case of a right or warrant to purchase securities convertible into such class of Capital Stock, having a conversion price per share, after adding thereto the exercise price, computed on the basis of the maximum number of shares of such class of Capital Stock issuable upon conversion of such convertible securities, per share of such class of Capital Stock, so issuable) less than the current market price per share of such class of Capital Stock (as defined in subsection (d) below) on the date on which such issuance was declared or otherwise announced by the Company (the "Determination Date"), the number of shares of such class of Capital Stock into which each \$1,000 principal amount of Debt Securities shall be convertible after such record date shall be determined by multiplying the number of shares of such class of Capital Stock into which such principal amount of Debt Securities was convertible immediately prior to such record date by a fraction, of which the numerator shall be the number of shares of such class of Capital Stock outstanding on the Determination Date plus the number of additional shares of such class of Capital Stock offered for subscription or purchase (or in the case of a right or warrant to purchase securities convertible into such class of Capital Stock, the aggregate number of additional shares of such class of Capital Stock into which the convertible securities so offered are initially convertible), and of which the denominator shall be the number of shares of such class of Capital Stock outstanding on the Determination Date plus the number of shares of such class of Capital Stock obtained by dividing the aggregate offering price of the total number of shares so offered (or, in the case of a right or warrant to purchase securities convertible into such class of Capital Stock, the aggregate initial conversion price of the convertible securities so offered, after adding thereto the aggregate exercise price of such rights or warrants computed on the basis of the maximum number of shares of such class of Capital Stock issuable upon conversion of such convertible securities) by such current market price. Shares of such class of Capital Stock of the Company owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and to the extent that shares of such class of Capital Stock are not delivered (or securities convertible into shares of such class of Capital Stock are not delivered) after the expiration of such rights or warrants (or, in the case of rights or warrants to purchase securities convertible into such class of Capital Stock once exercised, the expiration of the conversion right of such securities) the conversion rate shall be



readjusted to the conversion rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants (or securities convertible into shares) been made upon the basis of delivery of only the number of shares actually delivered. In the event that such rights or warrants are not so issued, the conversion rate shall again be adjusted to the conversion rate which would then be in effect if such record date had not been fixed.

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(c) In case the Company shall fix a record date for the making of a distribution to all holders of the class of Capital Stock into which Debt Securities of such series are convertible (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of its indebtedness or assets (excluding any cash dividends paid from retained earnings and dividends payable in Capital Stock for which adjustment is made pursuant to subsection (a) above) or subscription rights or warrants (excluding subscription rights or warrants to purchase the class of Capital Stock into which Debt Securities of such series are convertible), the number of shares of such class of Capital Stock into which each \$1,000 principal amount of Debt Securities of such series shall be convertible after such record date shall be determined by multiplying the number of shares of such class of Capital Stock into which such principal amount of Debt Securities was convertible immediately prior to such record date by a fraction, of which the numerator shall be the fair market value of the assets of the Company, after deducting therefrom all liabilities of the Company and all preferences (including accrued but unpaid dividends) in respect of classes of Capital Stock having a preference with respect to the assets of the Company over such class of Capital Stock (all as determined by the Board of Directors, whose determination shall be conclusive, and described in a certificate signed by any Chairmen of the Board, President or any Vice President (regardless of Vice Presidential designation) and the Chief Financial Officer or Treasurer of the Company, filed with the Trustee and each conversion agent) on such record date, and of which the denominator shall be such fair market value after deducting therefrom such liabilities and preferences, less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a statement filed with the Trustee and each conversion agent) of the assets or evidences of indebtedness, so distributed or of such subscription rights or warrants applicable, so distributed. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the conversion rate shall again be adjusted to the conversion rate which would then be in effect if such record date had not been fixed.

(d) For the purpose of any computation under subsection (b) above and Section 13.6, the current market price per share of the Capital Stock on any date as of which such price is to be computed shall mean the average of the Closing Prices for the 30 consecutive Business Days commencing 45 Business Days before such date.

(e) No adjustment in the conversion rate shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such rate; provided, however, that any adjustments which by reason of this subsection (e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment, and provided, further, that adjustments shall be required and made in accordance with the provisions of this Article XIII (other than this subsection (e)) not later than such time as may be required in order to preserve the tax-free nature of a distribution for United States income tax purposes to the holders of Debt Securities or the class of Capital Stock into which such Debt Securities are convertible. All

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calculations under this Article XIII shall be made to the nearest cent or to the nearest one-thousandth of a share, as the case may be. Anything in this Section 13.5 to the contrary notwithstanding, the Company shall be entitled to make such adjustments in the conversion rate, in addition to those required by this Section 13.5, as it in its discretion shall determine to be advisable in order that any stock dividend, subdivision of shares, distribution of rights to purchase stock or securities, or distribution of securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable for United States income tax purposes.

(f) Whenever the conversion rate is adjusted, as herein provided, the Company shall promptly file with the Trustee and with the office or agency maintained by the Company for the conversion of Debt Securities of such series pursuant to Section 4.2, a certificate of a firm of independent public accountants of recognized national standing selected by the Board of Directors (who may be the regular accountants employed by the Company) setting forth the conversion rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment and a computation

thereof. Such certificate shall be conclusive evidence of the correctness of such adjustment. Neither the Trustee nor any conversion agent shall be under any duty or responsibility with respect to any such certificate or any facts or computations set forth therein, except to exhibit said certificate from time to time to any holder of Debt Securities of such series desiring to inspect the same. The Company shall promptly cause a notice setting forth the adjusted conversion rate to be mailed to the holders of Debt Securities of such series, as their names and addresses appear upon the registration books of the Company.

(g) In the event that at any time, as a result of shares of any other class of Capital Stock becoming issuable in exchange or substitution for or in lieu of shares of the class of Capital Stock into which such Debt Securities are convertible or as a result of an adjustment made pursuant to subsection (a) above, the holder of any series of Debt Securities of such series thereafter surrendered for conversion shall become entitled to receive any shares of the Company other than shares of the class of Capital Stock into which the Debt Securities of such series are convertible, thereafter the number of such other shares so receivable upon conversion of any series of Debt Securities shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the class of Capital Stock into which the Debt Securities of such series are convertible contained in subsections (a) to (f), inclusive, above, and the provisions of this Article XIII with respect to the class of Capital Stock into which the Debt Securities of such series are convertible shall apply on like terms to any such other shares.

(h) The conversion rate with respect to any Debt Securities with original issue discount, the terms of which provide for convertibility, shall not be adjusted during the term of such Original Issue Discount Securities for accrued original issue discount.

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(i) In the event that the Debt Securities of any series are convertible into more than one class of Capital Stock, the provisions of this Section 13.5 shall apply separately to events affecting each such class.

SECTION 13.6. No fractional shares to be issued. No fractional shares of Capital Stock shall be issued upon conversions of Debt Securities. If more than one Debt Security of any series shall be surrendered for conversion at one time by the same holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of Debt Securities of such series (or specified portions thereof to the extent permitted hereby) so surrendered. Instead of a fraction of a share of Capital Stock which would otherwise be issuable upon conversion of any series of Debt Securities or Debt Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction of a share in an amount equal to the same fractional interest of the current market price (as defined in Section 13.5) per share of Capital Stock on the Business Day next preceding the day of conversion.

SECTION 13.7. Preservation of conversion rights upon consolidation, merger, sale or conveyance. In case of any consolidation of the Company with, or merger of the Company into, any other corporation (other than a consolidation or merger in which the Company is the continuing corporation), or in the case of any sale or transfer of all or substantially all of the assets of the Company, the corporation formed by such consolidation or the corporation into which the Company shall have been merged or the corporation which shall have acquired such assets, as the case may be, shall execute and deliver to the Trustee, a supplemental indenture, subject to the provisions of Article X and XII as they relate to supplemental indentures, providing that the holder of each Debt Security then Outstanding of a series which was convertible into Capital Stock shall have the right thereafter to convert such Debt Security into the kind and amount of shares of stock and other securities and property, including amount of shares of stock and other securities and property, including cash, receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Capital Stock of the Company into which such Debt Securities might have been converted immediately prior to such consolidation, merger, sale or transfer. Such supplemental indenture shall conform to the provisions of the Trust Indenture Act of 1939 as then in effect and shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XIII. Neither the Trustee nor any conversion agent shall be under any responsibility to determine the correctness of any provision contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property receivable by holders of Debt Securities upon the conversion of their Debt Securities after any such consolidation, merger, sale or transfer, or to any adjustment to be made with respect thereto and, subject to the provisions of Section 11.1, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto. If in the case of any such consolidation, merger, sale or transfer, the stock or other securities and property receivable by a holder of the Debt Securities includes

stock or other securities and property of a corporation other than the successor or purchasing corporation, then such supplemental indenture shall

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also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Debt Securities as the Board of Directors shall reasonably consider necessary. The above provisions of this Section 13.7 shall similarly apply to successive consolidations, mergers, sales or transfers.

SECTION 13.8. Notice to holders of Debt Securities of a series prior to taking certain types of action. With respect to the Debt Securities of any series, in case:

(a) the Company shall authorize the issuance to all holders of the class of Capital Stock into which Debt Securities of such series are convertible of rights or warrants to subscribe for or purchase shares of its Capital Stock or of any other right:

(b) the Company shall authorize the distribution to all holders of the class of Capital Stock into which Debt Securities of such series are convertible of evidences of its indebtedness or assets (except for the exclusions with respect to certain dividends set forth in Section 13.5(c));

(c) of any subdivision, combination or reclassification of the class of Capital Stock into which Debt Securities of such series are convertible or of any consolidation or merger to which the Company is a party and for which approval by the stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of Debt Securities of such series pursuant to Section 4.2, and shall cause to be mailed to the holders of Debt Securities of such series, at their last addresses as they shall appear upon the registration books of the Company, at least ten days prior to the applicable record date hereinafter specified, a notice stating (i) the date as of which the holders of such class of Capital Stock to be entitled to receive any such rights, warrants or distribution are to be determined, or (ii) the date on which any such subdivision, combination, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation, winding up or other action is expected to become effective, and the date as of which it is expected that holders of record of such class of Capital Stock shall be entitled to exchange their Capital Stock of such class for securities or other property, if any, deliverable upon such subdivision, combination, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation, winding up or other action. The failure to give the notice required by this Section 13.8 or any defect therein shall not affect the legality or validity of any distribution, right, warrant, subdivision, combination, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation, winding up or other action, or the vote upon any of the foregoing. Such notice shall also be published by and at the expense of the Company not later than the aforesaid filing date at least once in an Authorized Newspaper.

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SECTION 13.9. Covenant to reserve shares for issuance on conversion of Debt Securities. The Company covenants that at all times it will reserve and keep available out of each class of its authorized Capital Stock, free from preemptive rights, solely for the purpose of issue upon conversion of Debt Securities of any series as herein provided, such number of shares of Capital Stock of such class as shall then be issuable upon the conversion of all Outstanding Debt Securities of such series. The Company covenants that all shares of Capital Stock which shall be so issuable shall, when issued or delivered, be duly and validly issued shares of the class of authorized Capital Stock into which Debt Securities of such series are convertible, and shall be fully paid and nonassessable, free of all liens and charges and not subject to preemptive rights and that, upon conversion, the appropriate capital stock accounts of the Company will be duly credited.

SECTION 13.10. Compliance with governmental requirements. The Company covenants that if any shares of Capital Stock required to be reserved for purposes of conversion of Debt Securities hereunder require registration or listing with or approval of any governmental authority under any Federal or State law, pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act, or any national or regional securities exchange on which such Capital Stock is listed at the time of delivery of any shares of such Capital Stock, before such shares may be issued upon conversion, the Company will use its best efforts to cause such shares to be duly registered, listed or approved, as the case may be.

SECTION 13.11. Payment of taxes upon certificates for shares issued upon conversion. The issuance of certificates for shares of Capital Stock upon the conversion of Debt Securities shall be made without charge to the converting holders of Debt Securities for any tax (including, without limitation, all documentary and stamp taxes) in respect of the issuance and delivery of such certificates, and such certificates shall be issued in the respective names of, or in such names as may be directed by, the holders of the Debt Securities converted; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the Debt Security converted, and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 13.12. Trustee's duties with respect to conversion provisions. The Trustee and any conversion agent shall not at any time be under any duty or responsibility to any holder of Debt Securities to determine whether any facts exist which may require any adjustment of the conversion rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any conversion agent shall be accountable with respect to the registration under securities laws, listing, validity or value (or the kind or amount) of any shares of Capital Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any series of Debt Securities; and neither the Trustee nor any conversion agent

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makes any representation with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or stock certificates or other securities or property upon the surrender of any series of Debt Securities for the purpose of conversion; and the Trustee, subject to the provisions of Section 11.1, and any conversion agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article XIII.

#### ARTICLE XIV

#### GUARANTEES

SECTION 14.1. Guarantee. If any of the Guarantors guarantee any series of Debt Securities, such series of Debt Securities shall be guaranteed, jointly and severally, by each Guarantor. Subject to the provisions of this Article XIV and the terms of a Debt Security of any series, each Guarantor hereby irrevocably and unconditionally guarantees, jointly and severally, to each holder of Debt Securities and the Trustee, on behalf of the holders of Debt Securities, (a) the due and punctual payment of the principal of, premium if any, and interest on each Debt Security, when and as the same shall become due and payable, whether at stated maturity, acceleration, or otherwise, the due and punctual payment of interest on the overdue principal of and interest, if any, on the Debt Securities, to the extent lawful, and the due and punctual performance of all other obligations of the Company to the holders of Debt Securities or the Trustee all in accordance with the terms of such Debt Security and this Indenture provided that this Guarantee shall not be applicable to, or guarantee the Company's obligation with respect to the conversion of Debt Securities into Preferred Stock or Class A Common Stock if applicable to the Debt Securities of such series, and (b) in the case of any extension of time of payment or renewal of any Debt Securities or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, at stated maturity, by declaration of acceleration or otherwise (the obligations in subsections (a) and (b) hereof being the "Guaranteed Obligations"). Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Company to the holders of Debt Securities, or the Trustee under the Debt Securities and this Indenture but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company. The Guarantors hereby agree that their obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of any such Debt Security or this Indenture, any failure to enforce the provisions of any such Debt Security or this Indenture, any waiver, modification or indulgence granted to the Company with respect thereto, by any Guaranteed Party or any other circumstances which may otherwise constitute a legal or equitable discharge or defense of the Company or a surety or guarantor. The Guarantors hereby waive diligence, presentment, filing of claims with a court in the event of merger or bankruptcy of the Company, any right to require a proceeding first against the Company, the benefit of

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discussion, protest or notice with respect to any such Debt Security or the indebtedness evidenced thereby and all demands whatsoever (except as specified above), and covenant that this Guarantee will not be discharged as to any such Debt Security except by payment in full of the Guaranteed Obligations, pursuant to Article X, or upon conversion of such Debt Security in accordance with Article XIII. Each Guarantor further agrees that, as between such Guarantor and the Guaranteed Parties, (x) the maturity of Guaranteed Obligations may be accelerated as provided in Article VII for the purpose of the Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations, and (y) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article VII, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of this Guarantee. In addition, without limiting the foregoing provisions, upon the effectiveness of an acceleration under Article VII, the Trustee shall promptly make a demand for payment on the Debt Securities under each Guarantee provided for in this Article XIV and not discharged.

Each Guarantor hereby irrevocably waives any claim or other rights that it may now or hereafter acquire against the Company that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Indenture, or any other document or instrument including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, any right to participate in any claim or remedy of the Guaranteed Parties against the Company, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Company, directly or indirectly, in cash or other property or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Guarantor in violation of the preceding sentence and the Guaranteed Obligations shall not have been paid in full, such amount shall be deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Guaranteed Parties, and shall forthwith be paid to the Trustee. Each Guarantor acknowledges that it will receive direct and indirect benefits from the issuance of the Debt Securities and that the waiver set forth in this Section is knowingly made in contemplation of such benefits.

SECTION 14.2. Obligations of the Guarantors Unconditional. Nothing contained in this Article XIV elsewhere in this Indenture or in any series of Debt Securities or in the Guarantee is intended to or shall impair, as between the Guarantors and the holders of Debt Securities, the obligations of the Guarantors, which obligations are independent of the obligations of the Company under the Debt Securities and this Indenture and are absolute and unconditional, to pay to the holders of Debt Securities the Guaranteed Obligations as and when the same shall become due and payable in accordance with the provisions of this Guarantee and this Indenture, nor shall anything herein or therein prevent the Trustee or any holder of Debt Securities from exercising all remedies otherwise permitted by applicable law upon an Event of Default under this Indenture. Each payment to be made by any Guarantor hereunder in respect of the Guaranteed Obligations shall be payable in the currency or currencies in which such Guaranteed Obligations are denominated.

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SECTION 14.3. Execution of Guarantee. To evidence its obligations under this Article XIV, each Guarantor hereby agrees to execute a guarantee in a form set forth in the supplemental indenture for such series of Debt Securities, to be endorsed on each Debt Security authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of the Guarantors by their respective Presidents or Vice Presidents (regardless of Vice Presidential designation), under their corporate seals reproduced thereon attested by their respective Secretaries or Assistant Secretaries. The signature of any of these officers on the Debt Securities may be manual or facsimile. Each Guarantor hereby agrees that its Guarantee set forth in this Article XIV shall remain in full force and effect notwithstanding any failure to endorse such Guarantee on any series of Debt Securities.

If an officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates a Debt Security on which this Guarantee is endorsed, the Guarantee shall be valid nevertheless.

SECTION 14.4. Withholding. All payments made by a Guarantor with respect to the Guarantees will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of any country (other than the United States) or any political subdivision thereof or any authority therein or thereof, having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is then required by law. In the event that any country (other than the United States) or any political subdivision thereof or any authority therein or thereof, imposes any such withholding or deduction on (a) any payments made by a Guarantor with respect to the Guarantees or (b) any net proceeds on the sale to or exchange with any Guarantor of the Debt Securities, such Guarantor will pay such additional amounts (the "Additional Amounts") as may be necessary in order that the net amounts received in respect of such payments or sale or exchange by

the holders of the Debt Securities or the Trustee, as the case may be, after such withholding or deduction shall equal the respective amounts that would have been received in respect of such payments or sale or exchange in the absence of such withholding or deduction; except that no such Additional Amounts shall be payable with respect to any series of Debt Securities held by or on behalf of a holder who is liable for such taxes, duties, assessments or governmental charges in respect of such Debt Security by reason of his being a citizen or resident of, or carrying on a business in, the country of residence of any Guarantor. Notwithstanding the foregoing, a Guarantor making a payment on the Debt Securities pursuant to the Guarantee shall not be required to pay any Additional Amounts if (x) the beneficial holder of a Debt Security receives by certified mail (evidenced by a return receipt signed by such beneficial holder) (i) written notice from such Guarantor no less than 60 days in advance of making such payment and (ii) the appropriate forms or instructions necessary to enable such beneficial holder to certify or document the availability of an exemption from, or reduction of, the withholding or deduction of such taxes under applicable law, which such instructions shall clearly specify that Additional Amounts hereunder may not be paid if such forms are not completed by such beneficial holder, and (y) the Guarantor that would otherwise have to pay such Additional Amounts establishes to the satisfaction of the Trustee that the obligation to pay such Additional Amounts would not have arisen but for the failure

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of such beneficial holder to (i) duly complete such forms as were actually received by such beneficial holder or respond to such instructions and (ii) provide to such Guarantor such duly completed forms or responses to instructions. Without prejudice to the survival of any of the agreements of the Guarantors hereunder, the agreements and obligations of the Guarantors contained in this Section 14.4 shall survive the payment in full of the Guaranteed Obligations and all other amounts payable under this Guarantee.

SECTION 14.5. Limitation of Guarantee. The Company and each holder of a Debt Security by his or her acceptance thereof, hereby confirm that it is the intention of all such parties that any Guarantee of the Guaranteed Obligations executed by a Guarantor pursuant to this Indenture and the terms of a supplemental indenture for any series of Debt Securities not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act or any similar federal or state law. To effectuate the foregoing intention, the holders of Debt Securities hereby irrevocably agree that in the event that any such Guarantee would constitute or result in a violation of any applicable fraudulent conveyance or similar law of any relevant jurisdiction, the liability of the Guarantor under such Guarantee shall be reduced to the maximum amount, after giving effect to all other contingent and fixed liabilities of such Guarantor, permissible under the applicable fraudulent conveyance or similar law.

SECTION 14.6. Release of Guarantee. (a) Concurrently with the payment in full of all of the Guaranteed Obligations, the Guarantors shall be released from and relieved of their obligations under this Article XIV. Upon the delivery by the Company to the Trustee of an Officers' Certificate and, if requested by the Trustee, an Opinion of Counsel to the effect that the transaction giving rise to the release of such obligations was made by the Company in accordance with the provisions of this Indenture and the Debt Securities, the Trustee shall execute any documents reasonably required in order to evidence the release of the Guarantors from their obligations. If any of the Guaranteed Obligations are revived and reinstated after the termination of this Guarantee, then all of the obligations of the Guarantors under this Guarantee shall be revived and reinstated as if this Guarantee had not been terminated until such time as the Guaranteed Obligations are paid in full, and the Guarantors shall enter into an amendment to this Guarantee, reasonably satisfactory to the Trustee, evidencing such revival and reinstatement.

(b) Upon the sale or disposition of all the Capital Stock of a Guarantor (by merger or otherwise) to a Person other than the Company or any other Guarantor and which sale or disposition is otherwise in compliance with the terms of this Indenture, such Guarantor shall be deemed released from all obligations under this Article XIV; provided, however, that any such termination

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upon such sale or disposition shall occur if and only to the extent that all obligations of such Guarantor under all of its guarantees of, and under all of its pledges of assets or other security interests which secure, indebtedness of the Company or any other Guarantor shall also terminate upon such sale or disposition. Upon the delivery by the Company to the Trustee of an Officers' Certificate and, if requested by the Trustee, an Opinion of Counsel to the effect that the transaction giving rise to the release of such obligations was made in accordance with the provisions of this Indenture and the Debt

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Securities, the Trustee shall execute any documents reasonably required in order to evidence the release of such Guarantor from its obligations. Any Guarantor not so released remains liable for the full amount of principal of and interest on the Debt Securities as provided in this Article XIV.

(c) With respect to any series of Debt Securities, upon conversion of such Debt Security in accordance with the provisions of Article XIII, the Guarantors shall be released from and relieved of their obligations with respect to such Debt Security under this Article XIV. Upon such conversion, if so requested by a Guarantor, the Trustee shall execute any documents reasonably required in order to evidence the release of the Guarantors from their obligations. If any of the Guaranteed Obligations are revived and reinstated after the termination of this Guarantee, then all of the obligations of the Guarantors under this Guarantee shall be revived and reinstated as if this Guarantee had not been terminated until such time as the Guaranteed Obligations are paid in full, and the Guarantors shall enter into an amendment to this Guarantee, reasonably satisfactory to the Trustee, evidencing such revival and reinstatement.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

CANANDAIGUA BRANDS, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BATAVIA WINE CELLARS, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON BRANDS, LTD.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON BEERS, LTD.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON BRANDS OF CALIFORNIA, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON BRANDS OF GEORGIA, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON DISTILLERS IMPORT CORP.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

BARTON FINANCIAL CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

STEVENS POINT BEVERAGE CO.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

MONARCH IMPORT COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

CANANDAIGUA WINE COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

THE VIKING DISTILLERY, INC.

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:











STATE OF NEW YORK \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that she resides at \_\_\_\_\_, that he or she is \_\_\_\_\_ of CANANDAIGUA EUROPE LIMITED, a New York corporation, the corporation described in and which executed the above instrument; that he or she knows the seal of said corporation; that the seal affixed to the said instrument is such seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he or she signed his or her name thereto by like authority.

[NOTARIAL SEAL]

-----

STATE OF NEW YORK \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_: that he is \_\_\_\_\_ of POLYPHENOLICS, INC., a New York corporation, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

-----

STATE OF NEW YORK \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_: that he is \_\_\_\_\_ of CANANDAIGUA LIMITED, a company organized under the laws of England and Wales, the company described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said company; and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

-----

STATE OF NEW YORK \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_: that he is \_\_\_\_\_ of ROBERTS TRADING CORP., a New York corporation, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

-----

STATE OF NEW YORK \_\_\_\_\_ )  
 ) ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_, that he or she is \_\_\_\_\_ of HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation described in and which executed the above instrument; that she knows the seal of said corporation; that the seal affixed to the said instrument is such seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he or she signed his or her name thereto by like authority.

[NOTARIAL SEAL]

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CANANDAIGUA BRANDS, INC.,

as Issuer  
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Batavia Wine Cellars, Inc.  
Barton Incorporated  
Barton Brands, Ltd.  
Barton Beers, Ltd.  
Barton Brands of California, Inc.  
Barton Brands of Georgia, Inc.  
Barton Distillers Import Corp.  
Barton Financial Corporation  
Stevens Point Beverage Co.  
Canandaigua Limited  
Monarch Import Company  
Canandaigua Wine Company, Inc.  
The Viking Distillery, Inc.  
Canandaigua Europe Limited  
Roberts Trading Corp.  
Polyphenolics, Inc.,

as Guarantors  
-----

and

HARRIS TRUST AND SAVINGS BANK,

as Trustee  
-----

Supplemental Indenture No. 1

Dated as of February 25, 1999

-----  
\$200,000,000  
of  
8 1/2% Senior Subordinated Notes due 2009  
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SUPPLEMENTAL INDENTURE NO. 1, dated as of February 25, 1999 (the "Supplemental Indenture"), between CANANDAIGUA BRANDS, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), the guarantors named herein and from time to time parties hereto, and HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY  
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WHEREAS, the Company has heretofore delivered to the Trustee an Indenture dated as of February 25, 1999 (the "Indenture"), a form of which has been filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended, as an exhibit to the Company's Registration Statement on Form S-3 (Registration No. 333-40571), providing for the issuance from time to time of Debt Securities of the Company.

WHEREAS, Sections 2.1 and 2.2 of the Indenture provide for various matters with respect to any series of Debt Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

WHEREAS, Section 12.1 of the Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Indenture to establish the form or terms of Debt Securities of any series as provided by Sections 2.1 and 2.2 of the Indenture.

WHEREAS, all the conditions and requirements necessary to make this Supplemental Indenture, when duly executed and delivered, a valid and binding agreement in accordance with its terms and for the purposes herein expressed, have been performed and fulfilled.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the series of Debt Securities provided for herein by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE ONE

RELATION TO INDENTURE; DEFINITIONS  
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SECTION 1.1. Relation to Indenture.  
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This Supplemental Indenture constitutes an integral part of the Indenture.

SECTION 1.2. Definitions.  
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For all purposes of this Supplemental Indenture, except as otherwise expressly provided for or unless the context otherwise requires:

(1) Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Indenture;

(2) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Supplemental Indenture; and

(3) To the extent terms defined herein differ from the Indenture the terms defined herein will govern.

"Acquired Indebtedness" means Indebtedness of a Person (i) existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Restricted Subsidiary.

"Affiliate" means, with respect to any specified Person: (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; (ii) any other Person that owns, directly or indirectly, 5% or more of such Person's Capital Stock or any officer or director of any such Person or other Person or, with respect to any natural Person, any person having a relationship with such Person by blood, marriage or adoption not more remote than first cousin; or (iii) any other Person 10% or more of the voting Capital Stock of which is beneficially owned or held directly or indirectly by such specified

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

"Asset Sale" means any sale, issuance, conveyance, transfer, lease or other disposition (including, without limitation, by way of merger, consolidation or Sale and Leaseback Transaction) (collectively, a "transfer"), directly or indirectly, in one or a series of related transactions of: (i) any Capital Stock of any Restricted Subsidiary; (ii) all or substantially all of the properties and assets of any division or line of business of the Company or its Restricted Subsidiaries; or (iii) any other properties or assets of the Company or any Restricted Subsidiary, other than in the ordinary course of business. For the purposes of this definition, the term "Asset Sale" shall not include (x) any transfer of properties and assets (A) that is governed by Section 6.1(a) or (B) that is of the Company to any Restricted Subsidiary, or of any Subsidiary to the Company or any Subsidiary in accordance with the terms of this Supplemental Indenture and the Indenture or (y) transfers of properties and assets in any given fiscal year with an aggregate Fair Market Value of less than \$3,000,000.

"Asset Swap" means the execution of a definitive agreement, subject only to customary closing conditions that the Company in good faith believes will be satisfied, for a substantially concurrent purchase and sale, or exchange, of Productive Assets between the Company or any of its Restricted Subsidiaries and another Person or group of affiliated Persons; it being understood that an Asset Swap may include a cash equalization payment made in connection therewith provided that such cash payment, if received by the Company or its Subsidiaries, shall be deemed to be proceeds received from an Asset Sale and applied in accordance with Section 3.9.

"Average Life to Stated Maturity" means, as of the date of determination with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (a) the number of years from the date of determination to the date or dates of each successive scheduled principal payment of such Indebtedness multiplied by (b) the amount of each such principal payment by (ii) the sum of all such principal payments.

"Bankruptcy Law" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States Federal or state law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"Borrowing Base" means the sum of (i) 85% of accounts receivable of the Company and its Subsidiaries and (ii) 50% of the net book value of the inventory of the Company and its Subsidiaries, in each case, as determined on a consolidated basis in accordance with GAAP.

"Capital Lease Obligation" means any obligations of the Company and its Restricted Subsidiaries on a Consolidated basis under any capital lease of real or personal property which, in accordance with GAAP, has been recorded as a capitalized lease obligation.

"Capital Stock" of any Person means any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock.

"Change of Control" shall mean the occurrence of any of the following events: (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 30% of the voting power of the total outstanding Voting Stock of the Company voting as one class, provided that the Permitted Holders "beneficially own" (as so defined) a percentage of Voting Stock having a lesser percentage of the voting power than such other Person and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of the Company; (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election to such Board or whose nomination for election by the shareholders of the Company was approved by a vote of 66 2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of

Directors then in office; (iii) the Company consolidates with or merges with or

into any Person or conveys, transfers or leases all or substantially all of its assets to any Person, or any corporation consolidates with or merges into or with the Company, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Company is changed into or exchanged for cash, securities or other property, other than any such transaction where the outstanding Voting Stock of the Company is not changed or exchanged at all (except to the extent necessary to reflect a change in the jurisdiction of incorporation of the Company) or where (A) the outstanding Voting Stock of the Company is changed into or exchanged for (x) Voting Stock of the surviving corporation which is not Redeemable Capital Stock or (y) cash, securities and other property (other than Capital Stock of the surviving corporation) in an amount which could be paid by the Company as a Restricted Payment in accordance with Section 3.5 (and such amount shall be treated as a Restricted Payment subject to the provisions set forth in Section 3.5) and (B) no "person" or "group" other than Permitted Holders owns immediately after such transaction, directly or indirectly, more than the greater of (1) 30% of the voting power of the total outstanding Voting Stock of the surviving corporation voting as one class and (2) the percentage of such voting power of the surviving corporation held, directly or indirectly, by Permitted Holders immediately after such transaction; or (iv) the Company is liquidated or dissolved or adopts a plan of liquidation or dissolution other than in a transaction which complies with the provisions described in Section 6.1.

"Change of Control Offer" shall have the meaning set forth in Section 3.11(a).

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Supplemental Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Company" means Canandaigua Brands, Inc., a corporation incorporated under the laws of Delaware, until a successor Person shall have become such pursuant to the applicable provisions of this Supplemental Indenture or the Indenture, and thereafter "Company" shall mean such successor Person.

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"Consolidated Fixed Charge Coverage Ratio" of the Company means, for any period, the ratio of (a) the sum of Consolidated Net Income (Loss), Consolidated Interest Expense, Consolidated Income Tax Expense and Consolidated Non-cash Charges deducted in computing Consolidated Net Income (Loss) in each case, for such period, of the Company and its Restricted Subsidiaries on a Consolidated basis, all determined in accordance with GAAP to (b) the sum of Consolidated Interest Expense for such period and cash and non-cash dividends paid on any Preferred Stock of the Company and its Restricted Subsidiaries during such period; provided that (i) in making such computation, the Consolidated Interest Expense attributable to interest on any Indebtedness computed on a pro forma basis and (A) bearing a floating interest rate, shall be computed as if the rate in effect on the date of computation had been the applicable rate for the entire period and (B) which was not outstanding during the period for which the computation is being made but which bears, at the option of the Company, a fixed or floating rate of interest, shall be computed by applying at the option of the Company, either the fixed or floating rate and (ii) in making such computation, the Consolidated Interest Expense of the Company attributable to interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

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

"Consolidated Interest Expense" of the Company means, without duplication, for any period, the sum of (a) the interest expense of the Company and its Restricted Subsidiaries for such period, on a Consolidated basis, including, without limitation, (i) amortization of debt discount, (ii) the net cost under interest rate contracts (including amortization of discounts), (iii) the interest portion of any deferred payment obligation and (iv) accrued interest, plus (b) (i) the interest component of the Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by the Company and its Restricted Subsidiaries during such period and (ii) all capitalized interest of the Company and its Restricted Subsidiaries, in each case as determined in accordance with GAAP on a Consolidated basis. Whenever pro forma effect is to be given to an acquisition or disposition of assets for the purpose of calculating the Consolidated Fixed Charge Coverage Ratio, the

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amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection with such acquisition or disposition of assets shall be

calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, as in effect on the date of such calculation.

"Consolidated Net Income (Loss)" of the Company means, for any period, the Consolidated net income (or loss) of the Company and its Restricted Subsidiaries for such period as determined in accordance with GAAP on a Consolidated basis, adjusted, to the extent included in calculating such net income (loss), by excluding, without duplication: (i) all extraordinary gains or losses (less all fees and expenses relating thereto); (ii) the portion of net income (or loss) of the Company and its Restricted Subsidiaries allocable to minority interests in unconsolidated Persons to the extent that cash dividends or distributions have not actually been received by the Company or one of its Restricted Subsidiaries; (iii) net income (or loss) of any Person combined with the Company or any of its Restricted Subsidiaries on a "pooling of interests" basis attributable to any period prior to the date of combination; (iv) any gain or loss, net of taxes, realized upon the termination of any employee pension benefit plan; (v) net gains (but not losses) (less all fees and expenses relating thereto) in respect of dispositions of assets other than in the ordinary course of business; or (vi) the net income of any Restricted Subsidiary to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulations applicable to that Restricted Subsidiary or its stockholders. Whenever pro forma effect is to be given to an acquisition or disposition of assets for the purpose of calculating the Consolidated Fixed Charge Coverage Ratio, the amount of income or earnings related to such assets shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, as in effect on the date of such calculation.

"Consolidated Net Tangible Assets" means with respect to any Person, as of any date of determination, the book value of such Person's total assets, less goodwill, deferred financing costs and other intangibles and less accumulated amortization, shown on the most recent balance sheet of such Person, determined on a consolidated basis in accordance with GAAP.

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"Consolidated Net Worth" of any Person means the Consolidated stockholders' equity (excluding Redeemable Capital Stock) of such Person and its subsidiaries, as determined in accordance with GAAP on a Consolidated basis.

"Consolidated Non-cash Charges" of the Company means, for any period, the aggregate depreciation, amortization and other non-cash charges of the Company and its Restricted Subsidiaries for such period, as determined in accordance with GAAP on a Consolidated basis (excluding any non-cash charge which requires an accrual or reserve for cash charges for any future period).

"Consolidation" means, with respect to any Person, the consolidation of the accounts of such Person and each of its subsidiaries if and to the extent the accounts of such Person and each of its subsidiaries would normally be consolidated with those of such Person, all in accordance with GAAP. The term "Consolidated" shall have a similar meaning.

"Credit Agreement" means the First Amended and Restated Credit Agreement, dated as of November 2, 1998, between the Company, the Subsidiaries of the Company identified on the signature pages thereof, the lenders named therein and The Chase Manhattan Bank, as administrative agent, including any deferrals, renewals, extensions, replacements, refinancings or refundings thereof or amendments, modifications or supplements thereto and any agreements therefor (including any of the foregoing that increase the principal amount of Indebtedness or the commitments to lend thereunder and have been made in compliance with the provisions of Section 3.4; provided that, for purposes of the definition of "Permitted Indebtedness," no such increase may result in the principal amount of Indebtedness of the Company under the Credit Agreement exceeding the amount permitted by subparagraph (b)(i) of Section 3.4), whether by or with the same or any other lender, creditor, group of lenders or group of creditors, and including related notes, guarantees and note agreements and other instruments and agreements executed in connection therewith.

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

"Depository" or "DTC" has the meaning set forth in Section 2.6.

"Designated Guarantor Senior Indebtedness" means, with respect to any Guarantor, (i) any Indebtedness of such

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Guarantor outstanding under the Credit Agreement and (ii) any other Guarantor Senior Indebtedness of such Guarantor which, at the time of determination, has an aggregate principal amount outstanding, together with any commitments to lend additional amounts, of at least \$50,000,000 if the instrument governing such other Guarantor Senior Indebtedness expressly states that such Indebtedness is

"Designated Guarantor Senior Indebtedness" for purposes of this Supplemental Indenture.

"Designated Senior Indebtedness" means (i) any Indebtedness outstanding under the Credit Agreement and (ii) any other Senior Indebtedness which, at the time of determination, has an aggregate principal amount outstanding, together with any commitments to lend additional amounts, of at least \$50,000,000 if the instrument governing such other Senior Indebtedness expressly states that such Indebtedness is "Designated Senior Indebtedness" for purposes of this Supplemental Indenture.

"Designation" has the meaning set forth in Section 3.14.

"Designation Amounts" has the meaning set forth in Section 3.14.

"Domestic Restricted Subsidiary" means a Restricted Subsidiary of the Company organized under the laws of the United States or any political subdivision thereof or the operations of which are located substantially inside the United States.

"Excess Proceeds" has the meaning set forth in Section 3.9(b).

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

"Existing Notes" means the Company's outstanding

8 3/4% Senior Subordinated Notes due 2003.

"Fair Market Value" means, with respect to any asset or property, the sale value that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy.

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"Foreign Restricted Subsidiary" means a Restricted Subsidiary of the Company not organized under the laws of the United States or any political subdivision thereof and the operations of which are located substantially outside of the United States.

"GAAP" or "Generally Accepted Accounting Principles" means generally accepted accounting principles in the United States, consistently applied, which are in effect on the date of this Supplemental Indenture.

"Guarantee" means the guarantee by each Guarantor of the Company's Indenture Obligations pursuant to a guarantee given in accordance with this Supplemental Indenture, including the Guarantees by the Guarantors and any Guarantee delivered pursuant to provisions of Section 3.10.

"Guaranteed Debt" of any Person means, without duplication, all Indebtedness of any other Person referred to in the definition of Indebtedness contained in this Section 1.2 guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to, or in any other manner invest in, the debtor (including any agreement to pay for property or services without requiring that such property be received or such services be rendered), (iv) to maintain working capital or equity capital of the debtor, or otherwise to maintain the net worth, solvency or other financial condition of the debtor or (v) otherwise to assure a creditor against loss; provided that the term "guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business.

"Guarantor" means the Subsidiaries listed on the signature pages of this Supplemental Indenture as guarantors and each other Subsidiary required to become a Guarantor after the Issue Date pursuant to Section 3.10.

"Hedging Agreement" means, with respect to any Person, all interest rate swap or similar agreements or foreign currency or commodity hedge, exchange or similar agreements of such Person.

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"Hedging Obligations" means, with respect to any Person, the Obligations of such Person under Hedging Agreements.

"Holders" mean the registered holders of the Notes.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, guarantee or otherwise become liable in respect of such

Indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" shall have meanings correlative to the foregoing). Indebtedness of any Acquired Person or any of its Subsidiaries existing at the time such Acquired Person becomes a Subsidiary (or is merged into or consolidated with the Company or any Subsidiary), whether or not such Indebtedness was Incurred in connection with, as a result of, or in contemplation of, such Acquired Person becoming a Subsidiary (or being merged into or consolidated with the Company or any Subsidiary), shall be deemed Incurred at the time any such Acquired Person becomes a Subsidiary or merges into or consolidates with the Company or any Subsidiary.

"Indebtedness" means, with respect to any Person, without duplication, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, excluding any trade payables and other accrued current liabilities arising in the ordinary course of business, but including, without limitation, all obligations, contingent or otherwise, of such Person in connection with any letters of credit issued under letter of credit facilities, acceptance facilities or other similar facilities and in connection with any agreement to purchase, redeem, exchange, convert or otherwise acquire for value any Capital Stock of such Person, or any warrants, rights or options to acquire such Capital Stock, now or hereafter outstanding, (ii) all obligations of such Person evidenced by bonds, notes, debentures or other similar instruments, (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), but excluding trade payables arising in the ordinary course of business, (iv) all Hedging Obligations of such Person, (v) all Capital Lease Obligations of such Person, (vi) all Indebtedness referred to in clauses (i) through (v) above of other Persons and all dividends of other Persons, the payment

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of which is secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or with respect to property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (vii) all Guaranteed Debt of such Person, (viii) all Redeemable Capital Stock valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends, and (ix) any amendment, supplement, modification, deferral, renewal, extension, refunding or refinancing of any liability of the types referred to in clauses (i) through (viii) above. For purposes hereof, the "maximum fixed repurchase price" of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Redeemable Capital Stock as if such Redeemable Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the Fair Market Value of such Redeemable Capital Stock, such Fair Market Value to be determined in good faith by the board of directors of the issuer of such Redeemable Capital Stock.

"Indenture Obligations" means the obligations of the Company and any other obligor under this Supplemental Indenture or under the Notes, including any Guarantor, to pay principal of, premium, if any, and interest when due and payable, and all other amounts due or to become due under or in connection with this Supplemental Indenture, the Notes and the performance of all other obligations to the Trustee and the Holders under this Supplemental Indenture and the Notes, according to the terms hereof or thereof.

"Insolvency or Liquidation Proceeding" means, with respect to any Person, any liquidation, dissolution or winding up of such Person, or any bankruptcy, reorganization, insolvency, receivership or similar proceeding with respect to such Person, whether voluntary or involuntary.

"Interest Payment Date" has the meaning set forth in Section 2.3.

"Investments" means, with respect to any Person, directly or indirectly, any advance, loan (including guarantees), or other extension of credit or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase, acquisition or ownership by such Per-

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son of any Capital Stock, bonds, notes, debentures or other securities issued or owned by, any other Person and all other items that would be classified as investments on a balance sheet prepared in accordance with GAAP.

"Issue Date" means the original issue date of the Notes.

"Lien" means any mortgage, charge, pledge, lien (statutory or otherwise), privilege, security interest, hypothecation or other encumbrance

upon or with respect to any property of any kind, real or personal, movable or immovable, now owned or hereafter acquired.

"Maturity" when used with respect to any Note means the date on which the principal of such Note becomes due and payable as therein provided or as provided in this Supplemental Indenture, whether at Stated Maturity, the Offer Date or the redemption date and whether by declaration of acceleration, Offer in respect of Excess Proceeds, Change of Control, call for redemption or otherwise.

"Net Cash Proceeds" means (a) with respect to any Asset Sale by any Person, the proceeds thereof in the form of cash or Temporary Cash Investments including payments in respect of deferred payment obligations when received in the form of, or stock or other assets when disposed for, cash or Temporary Cash Investments (except to the extent that such obligations are financed or sold with recourse to the Company or any Restricted Subsidiary) net of (i) brokerage commissions and other actual fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale, (ii) provisions for all taxes payable as a result of such Asset Sale, (iii) payments made to retire Indebtedness where payment of such Indebtedness is secured by the assets or properties the subject of such Asset Sale, (iv) amounts required to be paid to any Person (other than the Company or any Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale and (v) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an Officers' Certificate delivered to the Trustee and (b) with re-

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spect to any issuance or sale of Capital Stock or options, warrants or rights to purchase Capital Stock, or debt securities or Capital Stock that have been converted into or exchanged for Capital Stock, as referred to in Section 3.5, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations when received in the form of, or stock or other assets when disposed for, cash or Temporary Cash Investments (except to the extent that such obligations are financed or sold with recourse to the Company or any Restricted Subsidiary), net of attorneys' fees, accountants' fees and brokerage, consultation, underwriting and other fees and expenses actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"Note Amount" has the meaning specified in Section 3.9 hereof.

"Notes" has the meaning specified in Section 2.1 hereof.

"Obligations" means any principal, interest (including, without limitation, Post-Petition Interest), penalties, fees, indemnifications, reimbursement obligations, damages and other liabilities payable under the documentation governing any Indebtedness.

"Offer" has the meaning set forth in Section 3.9 hereof.

"Offer Date" has the meaning set forth in Section 3.9 hereof.

"Offer Price" has the meaning set forth in Section 3.9 hereof.

"Other Indebtedness" has the meaning set forth in Section 3.10 hereof.

"Pari Passu Indebtedness" means any Indebtedness of the Company or a Guarantor that is pari passu in right of payment with the Notes or a Guarantee, as the case may be.

"Pari Passu Offer" has the meaning set forth in Section 3.9 hereof.

"Permitted Holders" means as of the date of determination (i) Marvin Sands, Richard Sands and Robert Sands;

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(ii) family members or the relatives of the Persons described in clause (i) or the Mac and Sally Sands Foundation, Incorporated; (iii) any trusts created for the benefit of the Persons described in clause (i), (ii) or (v) or for the benefit of Andrew Stern or any trust for the benefit of any such trust; (iv) any partnerships that are controlled by (and a majority of the partnership interests in which are owned by) any of the Persons described in clauses (i), (ii), (iii) or (v) or by any partnership that satisfies the conditions of this clause (iv); or (v) in the event of the incompetence or death of any of the persons described in clauses (i) and (ii), such Person's estate, executor, administrator, committee or other personal representative or beneficiaries, in each case who at any particular date shall beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Company.



"Permitted Indebtedness" has the meaning set forth in Section 3.4.

"Permitted Investment" means (i) Investments in any Wholly Owned Restricted Subsidiary or any Person which, as a result of such Investment, becomes a Wholly Owned Restricted Subsidiary; (ii) Indebtedness of the Company or a Restricted Subsidiary described under clauses (iv) and (v) of the definition of "Permitted Indebtedness"; (iii) Temporary Cash Investments; (iv) Investments acquired by the Company or any Restricted Subsidiary in connection with an Asset Sale permitted under Section 3.9 to the extent such Investments are non-cash proceeds as permitted under such covenant; (v) guarantees of Indebtedness otherwise permitted by this Supplemental Indenture; (vi) Investments in existence on the date of the Indenture; and (vii) Investments in joint ventures in an aggregate amount not to exceed at any one time the greater of (x) \$50.0 million and (y) 5.0% of Consolidated Net Tangible Assets.

"Permitted Junior Securities" means any securities of the Company or any successor corporation provided for by a plan of reorganization or readjustment that are (i) equity securities without special covenants or (ii) debt securities expressly subordinated in right of payment to all Senior Indebtedness that may at the time be outstanding, to substantially the same extent as, or to a greater extent than, the Notes are subordinated as provided in this Supplemental Indenture, in any event pursuant to a court order so providing and as to which (a) the rate of interest on such securities shall not exceed the effective rate of interest on the Notes on the date of this Supplemental Indenture, (b) such securities shall not be entitled to the benefits of covenants or defaults materially more

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beneficial to the holders of such securities than those in effect with respect to the Notes on the date of this Supplemental Indenture and (c) such securities shall not provide for amortization (including sinking fund and mandatory prepayment provisions) commencing prior to the date six months following the final scheduled maturity date of the Senior Indebtedness (as modified by the plan of reorganization or readjustment pursuant to which such securities are issued).

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

"Post-Petition Interest" means, with respect to any Indebtedness of any Person, all interest accrued or accruing on such Indebtedness after the commencement of any Insolvency or Liquidation Proceeding against such Person in accordance with and at the contract rate (including, without limitation, any rate applicable upon default) specified in the agreement or instrument creating, evidencing or governing such Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Preferred Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's preferred stock, whether now outstanding, or issued after the date of the Issue Date, and including, without limitation, all classes and series of preferred or preference stock.

"Productive Assets" means assets of a kind used or usable by the Company and its Restricted Subsidiaries in their respective businesses (including, without limitation, contracts, leases, licenses or other agreements of value to the Company or any of its Restricted Subsidiaries), provided, however, that productive assets to be acquired by the Company or any Restricted Subsidiary shall be, in the good faith judgment of management of the Company or such Restricted Subsidiary, assets which are reasonably related, ancillary or complementary to the business of the Company and its Restricted Subsidiaries as conducted on the Issue Date.

"Public Equity Offering" means, with respect to the Company, an underwritten public offering of Qualified Capital Stock of the Company pursuant to an effective registration

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statement filed under the Securities Act (excluding registration statements filed on Form S-8).

"Qualified Capital Stock" of any Person means any and all Capital Stock of such Person other than Redeemable Capital Stock.

"Redeemable Capital Stock" means any Capital Stock that, either by its terms or by the terms of any security into which it is convertible or exchangeable or otherwise, is or upon the happening of an event (other than as a result of a change of control provision substantially similar to that contained in Section 3.11) or passage of time would be, required to be redeemed prior to

any Stated Maturity of the principal of the Notes or is redeemable at the option of the holder thereof at any time prior to any such Stated Maturity, or is convertible into or exchangeable for debt securities at any time prior to any such Stated Maturity at the option of the holder thereof.

"Restricted Payment" has the meaning set forth in Section 3.5.

"Restricted Subsidiary" means any Subsidiary of the Company that has not been designated by the Board of Directors of the Company, by a resolution of the Board of Directors of the Company delivered to the Trustee, as an Unrestricted Subsidiary pursuant to Section 3.14. Any such designation may be revoked by a resolution of the Board of Directors of the Company delivered to the Trustee, subject to the provisions of such covenant.

"Sale and Leaseback Transaction" means any transaction or series of related transactions pursuant to which the Company or a Restricted Subsidiary sells or transfers any property or asset in connection with the leasing, or the resale against installment payments, of such property or asset to the seller or transferor.

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

"Senior Guarantor Indebtedness" means, at any date, (a) all Obligations of the Guarantors under the Credit Agreement; provided, however, that any Indebtedness under any refinancing, refunding or replacement of the Credit Agreement shall not constitute Senior Guarantor Indebtedness to the extent that the Indebtedness thereunder is by its express terms subordinate

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to any other Indebtedness of any Guarantor; (b) all Hedging Obligations of the Guarantors; (c) all Obligations of the Guarantors under stand-by letters of credit; and (d) all other Indebtedness of the Guarantors for borrowed money, including principal, premium, if any, and interest (including Post-Petition Interest) on such Indebtedness, unless the instrument under which such Indebtedness of the Guarantors for money borrowed is Incurred expressly provides that such Indebtedness for money borrowed is not senior or superior in right of payment to the Notes, and all renewals, extensions, modifications, amendments or refinancings thereof. Notwithstanding the foregoing, Senior Guarantor Indebtedness shall not include (a) to the extent that it may constitute Indebtedness, any Obligation for Federal, state, local or other taxes; (b) any Indebtedness among or between the Guarantors and any Subsidiary of the Guarantors or any Affiliate of the Guarantors or any of such Affiliate's Subsidiaries, unless and for so long as such Indebtedness has been pledged to secure obligations under or in respect of Senior Guarantor Indebtedness; (c) to the extent that it may constitute Indebtedness, any Obligation in respect of any trade payable Incurred for the purchase of goods or materials, or for services obtained, in the ordinary course of business; (d) that portion of any Indebtedness that is Incurred in violation of the Indenture; (e) Indebtedness evidenced by the Notes; (f) Indebtedness of the Guarantors that is expressly subordinate or junior in right of payment to any other Indebtedness of the Guarantors; (g) to the extent that it may constitute Indebtedness, any obligation owing under leases (other than Capital Lease Obligations) or management agreements; (h) any obligation that by operation of law is subordinate to any general unsecured obligations of the Guarantors; (i) Indebtedness represented by the Existing Notes; (j) Indebtedness incurred by the Guarantors as part of the purchase price of the acquisition of assets or a business; and (k) Indebtedness of the Guarantors to the extent such Indebtedness is owed to and held by any Federal, state, local or other governmental authority.

"Senior Indebtedness" means, at any date, (a) all Obligations of the Company under the Credit Agreement; provided, however, that any Indebtedness under any refinancing, refunding or replacement of the Credit Agreement shall not constitute Senior Indebtedness to the extent that the Indebtedness thereunder is by its express terms subordinate to any other Indebtedness of the Company; (b) all Hedging Obligations of the Company; (c) all Obligations of the Company under stand-by letters of credit; and (d) all other Indebtedness of the Company for borrowed money, including principal, premium, if any, and in-

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terest (including Post-Petition Interest) on such Indebtedness, unless the instrument under which such Indebtedness of the Company for money borrowed is Incurred expressly provides that such Indebtedness for money borrowed is not senior or superior in right of payment to the Notes, and all renewals, extensions, modifications, amendments or refinancings thereof. Notwithstanding the foregoing, Senior Indebtedness shall not include (a) to the extent that it may constitute Indebtedness, any Obligation for Federal, state, local or other taxes; (b) any Indebtedness among or between the Company and any Subsidiary of the Company or any Affiliate of the Company or any of such Affiliate's Subsidiaries, unless and for so long as such Indebtedness has been pledged to secure obligations under or in respect of Senior Indebtedness; (c) to the extent that it may constitute Indebtedness, any Obligation in respect of any trade payable Incurred for the purchase of goods or materials, or for services

obtained, in the ordinary course of business; (d) that portion of any Indebtedness that is Incurred in violation of the Indenture; (e) Indebtedness evidenced by the Notes; (f) Indebtedness of the Company that is expressly subordinate or junior in right of payment to any other Indebtedness of the Company; (g) to the extent that it may constitute Indebtedness, any obligation owing under leases (other than Capital Lease Obligations) or management agreements; (h) any obligation that by operation of law is subordinate to any general unsecured obligations of the Company; (i) Indebtedness represented by the Existing Notes; (j) Indebtedness incurred by the Company as part of the purchase price of the acquisition of assets or a business; and (k) Indebtedness of the Company to the extent such Indebtedness is owed to and held by any Federal, state, local or other governmental authority.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon, means the dates specified in such Indebtedness as the fixed date on which the principal of such Indebtedness or such installment of interest is due and payable.

"Subordinated Indebtedness" means Indebtedness of the Company or a Guarantor subordinated in right of payment to the Notes, the Existing Notes or a Guarantee, as the case may be.

"Subsidiary" means any Person a majority of the equity ownership or the Voting Stock of which is at the time owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries.

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"Temporary Cash Investments" means: (i) any evidence of Indebtedness of a Person, other than the Company or its Subsidiaries, maturing not more than one year after the date of acquisition, issued by the United States of America, or an instrumentality or agency thereof and guaranteed fully as to principal, premium, if any, and interest by the United States of America, (ii) any certificate of deposit, maturing not more than one year after the date of acquisition, issued by, or time deposit of, a commercial banking institution that is a member of the Federal Reserve System and that has combined capital and surplus and undivided profits of not less than \$500,000,000, whose debt has a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's Investors Service, Inc. ("Moody's") or any successor rating agency or "A-1" (or higher) according to Standard and Poor's Corporation ("S&P") or any successor rating agency, (iii) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate or Subsidiary of the Company) organized and existing under the laws of the United States of America with a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P and (iv) any money market deposit accounts issued or offered by a domestic commercial bank having capital and surplus in excess of \$500,000,000.

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

"United States Government Obligations" means direct non-callable obligations of the United States of America for the payment of which the full faith and credit of the United States is pledged.

"Unrestricted Subsidiary" means any Subsidiary of the Company designated as such pursuant to Section 3.14. Any such designation may be revoked by a resolution of the Board of Directors of the Company delivered to the Trustee, subject to the provisions of Section 3.14.

"Voting Stock" means stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of a corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

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"Wholly Owned Restricted Subsidiary" means any Restricted Subsidiary all the Capital Stock of which (other than directors' qualifying shares and up to 5% of the issued and outstanding Capital Stock which may be owned by executive officers of such Subsidiary) is owned by the Company or another Wholly Owned Restricted Subsidiary.

## ARTICLE TWO

### THE SERIES OF DEBT SECURITIES

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#### SECTION 2.1. Title of the Debt Securities.

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There shall be a series of Debt Securities designated the "8 1/2% Senior Subordinated Notes due 2009" (the "Notes").

SECTION 2.2. Limitation on Aggregate Principal Amount.  
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The aggregate principal amount of the Notes shall be limited to \$200,000,000, and, except as provided in this Section and in Section 2.5 of the Indenture, the Company shall not execute and the Trustee shall not authenticate or deliver Notes in excess of such aggregate principal amount.

SECTION 2.3. Interest and Interest Rates; Maturity Date of Notes.  
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The Notes will mature on March 1, 2009 and will be unsecured senior subordinated obligations of the Company. Each Note will bear interest at the rate of 8 1/2% per annum from March 4, 1999 or from the most recent interest payment date to which interest has been paid, payable semi-annually on March 1 and September 1 in each year (each an "Interest Payment Date"), commencing September 1, 1999, to the Person in whose name the Note (or any predecessor Note) is registered at the close of business on the February 15 or August 15 next preceding such interest payment date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The interest so payable on any Note which is not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the Person in whose name such Note is registered on the relevant regular record date, and such defaulted interest shall instead be payable to the Person in whose name such Note is registered on the special record date

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or other specified date determined in accordance with the Indenture.

If any Interest Payment Date or Stated Maturity falls on a day that is not a Business Day, the required payment shall be made on the next Business Day as if it were made on the date such payment was due and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity, as the case may be.

SECTION 2.4. Optional Redemption.  
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The Notes may not be redeemed prior to March 1, 2004 except to the extent permitted in connection with a Public Equity Offering as described in the Form of Note attached hereto as Exhibit A. On or after March 1, 2004 the Company will have the right to redeem all or any part of the Notes at the Redemption Prices set forth in the Form of Note attached hereto as Exhibit A.

In the event that less than all of the Notes are to be redeemed at any time pursuant to an optional redemption, selection of such Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate; provided, however, that no Notes of a principal amount of \$1,000 or less shall be redeemed in part; provided, further, however, that if a partial redemption is made with the net cash proceeds of a Public Equity Offering by the Company, selection of the Notes or portions thereof for redemption shall be made by the Trustee only on a pro rata basis or on as nearly a pro rata basis as is practicable (subject to the procedures of The Depository Trust Company), unless such method is otherwise prohibited. A new Note in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Note.

SECTION 2.5. Sinking Fund.  
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The Notes are not entitled to the benefit of any sinking fund.

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SECTION 2.6. Method of Payment.  
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Settlement for the Notes will be made in same day funds. All payments of principal and interest will be made by the Company in same day funds. The Notes will trade in the Same-Day Funds Settlement System of The Depository Trust Company (the "Depository" or "DTC") until maturity, and secondary market trading activity for the Notes will therefore settle in same day funds.

Principal of, premium, if any, and interest on the Notes will be payable, and the Notes will be exchangeable and transferable, at the office or agency of the Company in the City of New York maintained for such purposes

(which initially will be the Trustee); provided, however, that payment of interest may be made at the option of the Company by check mailed to the Person entitled thereto as shown on the security register.

SECTION 2.7. Currency.

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Principal and interest on the Notes shall be payable in United States Dollars or in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

SECTION 2.8. Registered Securities; Global Form.

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The Notes shall be issuable only in fully registered form without coupons, in denominations of \$1,000 and any integral multiple thereof. No service charge will be made for any registration of transfer, exchange or redemption of Notes, except in certain circumstances for any tax or other governmental charge that may be imposed in connection therewith. The depository for the Notes shall be the DTC. The Notes shall not be issuable in definitive form.

SECTION 2.9. Form of Notes.

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The Notes shall be substantially in the form attached as Exhibit A hereto.

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ARTICLE THREE

COVENANTS

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The following covenants shall apply to the Notes (but not with respect to any other series of Debt Securities), and are in addition to the covenants set forth in Article IV of the Indenture. To the extent inconsistent with the covenants contained in Article IV of the Indenture the covenants set forth in this Supplemental Indenture shall govern with respect to the Notes (but not with respect to any other series of Debt Securities).

SECTION 3.1. Payment of Taxes and Other Claims.

-----

The Company will pay or discharge or cause to be paid or discharged, on or before the date the same shall become due and payable, (a) all taxes, assessments and governmental charges levied or imposed upon the Company or any Restricted Subsidiary shown to be due on any return of the Company or any Restricted Subsidiary or otherwise assessed or upon the income, profits or property of the Company or any Restricted Subsidiary if failure to pay or discharge the same could reasonably be expected to have a material adverse effect on the ability of the Company or any Guarantor to perform its obligations hereunder and (b) all lawful claims for labor, materials and supplies, which, if unpaid, would by law become a Lien upon the property of the Company or any Restricted Subsidiary, except for any Lien permitted to be incurred under Section 3.8, if failure to pay or discharge the same could reasonably be expected to have a material adverse effect on the ability of the Company or any Guarantor to perform its obligations hereunder; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted and in respect of which appropriate reserves (in the good faith judgment of management of the Company) are being maintained in accordance with GAAP consistently applied.

SECTION 3.2. Maintenance of Properties.

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The Company will cause all material properties owned by the Company or any Restricted Subsidiary or used or held for use in the conduct of its business or the business of any Re-

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stricted Subsidiary to be maintained and kept in good condition, repair and working order (ordinary wear and tear excepted) and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be consistent with sound business practice and necessary so that the business carried on in connection therewith may be properly conducted at all times; provided, however, that nothing in this Section shall prevent the Company

from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Restricted Subsidiary and not reasonably expected to have a material adverse effect on the ability of the Company to perform its obligations hereunder.

SECTION 3.3. Insurance.

-----

The Company will at all times keep all of its and its Restricted Subsidiaries' properties which are of an insurable nature insured with insurers, believed by the Company to be responsible, against loss or damage to the extent that property of similar character is usually so insured by corporations similarly situated and owning like properties.

SECTION 3.4. Limitation on Indebtedness.

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(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including any Acquired Indebtedness), except that the Company and any Guarantor may Incur Indebtedness (including any Acquired Indebtedness) and any Restricted Subsidiary that is not a Guarantor may Incur Acquired Indebtedness if, in each case, the Consolidated Fixed Charge Coverage Ratio for the Company for the four full fiscal quarters immediately preceding the Incurrence of such Indebtedness taken as one period (and after giving pro forma effect to (i) the Incurrence of such Indebtedness and (if applicable) the application of the net proceeds therefrom, including to refinance other Indebtedness, as if such Indebtedness was Incurred, and the application of such proceeds occurred, at the beginning of such four-quarter period; (ii) the Incurrence, repayment or retirement of any other Indebtedness by the Company and its Restricted Subsidiaries since the first day of such four-quarter period as if such Indebtedness was Incurred, repaid or retired at the beginning of such four-quarter period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance

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of such Indebtedness during such four-quarter period); (iii) in the case of Acquired Indebtedness, the related acquisition as if such acquisition occurred at the beginning of such four-quarter period; and (iv) any acquisition or disposition by the Company and its Restricted Subsidiaries of any company or any business or any assets out of the ordinary course of business, whether by merger, stock purchase or sale or asset purchase or sale, or any related repayment of Indebtedness, in each case since the first day of such four-quarter period, assuming such acquisition or disposition had been consummated on the first day of such four-quarter period) is equal to at least 2.00:1.00.

(b) The foregoing limitation will not apply to the Incurrence of any of the following (collectively "Permitted Indebtedness"):

(i) Indebtedness of the Company and any Restricted Subsidiary under the Credit Agreement in an aggregate principal amount at any one time outstanding not to exceed an amount equal to the greater of (x) \$1.0 billion, minus the amount of any repayment of such Indebtedness under the Credit Agreement pursuant to Section 3.9, and (y) the Borrowing Base;

(ii) Indebtedness of the Company pursuant to the Notes and other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness under the Credit Agreement);

(iii) Indebtedness of any Guarantor pursuant to a Guarantee;

(iv) Indebtedness of the Company owing to a Restricted Subsidiary; provided that any Indebtedness of the Company owing to a Restricted Subsidiary that is not a Guarantor is made pursuant to an intercompany note in the form attached to this Supplemental Indenture as Exhibit B and is subordinated in right of payment from and after such time as the Notes shall become due and payable (whether at Stated Maturity, acceleration or otherwise) to the payment and performance of the Company's obligations under the Notes; provided, further, that any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to a Restricted Subsidiary or a pledge to or for the benefit of the lenders under the Credit Agreement) shall be deemed to

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be an Incurrence of such Indebtedness by the obligor not permitted by this clause (iv);

(v) Indebtedness of a Restricted Subsidiary owing to the Company or a Wholly Owned Restricted Subsidiary; provided that, with respect to Indebtedness owing to a Wholly Owned Restricted Subsidiary that is not a Guarantor, (x) any such Indebtedness is made pursuant to an intercompany note in the form attached to this Supplemental Indenture as Exhibit B and

(y) any such Indebtedness shall be subordinated in right of payment from and after such time as the obligations under the Guarantee by such Wholly Owned Restricted Subsidiary shall become due and payable to the payment and performance of such Wholly Owned Restricted Subsidiary's obligations under its Guarantee; provided further that (a) any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to the Company or a Restricted Subsidiary or a pledge to or for the benefit of the lenders under the Credit Agreement) shall be deemed to be an Incurrence of such Indebtedness by the obligor not permitted by this clause (v), and (b) any transaction pursuant to which any Restricted Subsidiary which has Indebtedness owing to the Company or any other Restricted Subsidiary, ceases to be a Restricted Subsidiary shall be deemed to be the Incurrence of Indebtedness by such Restricted Subsidiary that is not permitted by this clause (v);

(vi) guarantees of any Restricted Subsidiary made in accordance with the provisions of Section 3.10 of this Supplemental Indenture;

(vii) Hedging Obligations of the Company or any Guarantor entered into in the ordinary course of business (and not for speculative purposes) designed to protect against fluctuations in: (x) interest rates in respect of Indebtedness of the Company or any of its Restricted Subsidiaries, as long as such obligations at the time Incurred do not exceed the aggregate principal amount of such Indebtedness then outstanding or in good faith anticipated to be outstanding within 90 days of such Incurrence, (y) currencies or (z) commodities;

(viii) any renewals, extensions, substitutions, refundings, refinancings or replacements (collectively, a "refinancing") of any Indebtedness described in clauses (ii) and (iii) of this definition of "Permitted Indebted-

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ness," including any successive refinancings so long as the aggregate principal amount of Indebtedness represented thereby is not increased by such refinancing plus the lesser of (1) the stated amount of any premium, interest or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (2) the amount of premium, interest or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Company incurred in connection with such refinancing and, in the case of Pari Passu Indebtedness or Subordinated Indebtedness, such refinancing does not reduce the Average Life to Stated Maturity or the Stated Maturity of such Indebtedness; and

(ix) Indebtedness, in addition to that described in clauses (i) through (viii) of this definition of "Permitted Indebtedness," and any renewals, extensions, substitutions, refinancings or replacements of such Indebtedness, not to exceed \$75.0 million outstanding at any one time in the aggregate.

SECTION 3.5. Limitation on Restricted Payments.  
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(a) The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

(i) declare or pay any dividend on, or make any distribution to holders of, any shares of the Company's Capital Stock (other than dividends or distributions payable solely in shares of its Qualified Capital Stock or in options, warrants or other rights to acquire such Qualified Capital Stock);

(ii) purchase, redeem or otherwise acquire or retire for value, directly or indirectly, any shares of the Capital Stock of the Company or any Affiliate thereof (other than any Wholly Owned Restricted Subsidiary of the Company) or options, warrants or other rights to acquire such Capital Stock;

(iii) make any principal payment on, or repurchase, redeem, defease, retire or otherwise acquire for value, prior to any scheduled principal payment, sinking fund or maturity, any Subordinated Indebtedness;

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(iv) declare or pay any dividend or distribution on any Capital Stock of any Restricted Subsidiary to any Person (other than the Company or any of its Restricted Subsidiaries) or purchase, redeem or otherwise acquire or retire for value any Capital Stock of any Restricted Subsidiary held by any Person (other than the Company or any of its Wholly Owned Restricted Subsidiaries);

(v) Incur, create or assume any guarantee of Indebtedness of any

Affiliate (other than a Wholly Owned Restricted Subsidiary of the Company);  
or

(vi) make any Investment in any Person (other than any Permitted Investments);

(any of the foregoing payments described in clauses (i) through (vi), other than any such action that is a Permitted Payment, collectively, "Restricted Payments") unless after giving effect to the proposed Restricted Payment (the amount of any such Restricted Payment, if other than cash, as determined by the Board of Directors of the Company, whose determination shall be conclusive and evidenced by a Certified Resolution), (1) no Default or Event of Default shall have occurred and be continuing and such Restricted Payment shall not be an event which is, or after notice or lapse of time or both, would be, an "event of default" under the terms of any Indebtedness of the Company or its Restricted Subsidiaries; (2) immediately before and immediately after giving effect to such transaction on a pro forma basis, the Company could Incur \$1.00 of additional Indebtedness (other than Permitted Indebtedness) under the provisions contained in Section 3.4; and (3) the aggregate amount of all such Restricted Payments declared or made after the date of this Supplemental Indenture does not exceed the sum of:

(A) 50% of the aggregate cumulative Consolidated Net Income of the Company accrued on a cumulative basis during the period beginning on the first day of the Company's fiscal quarter commencing prior to the date of the Indenture and ending on the last day of the Company's last fiscal quarter ending prior to the date of the Restricted Payment (or, if such aggregate cumulative Consolidated Net Income shall be a loss, minus 100% of such loss); plus

(B) the aggregate Net Cash Proceeds received after the date of the Indenture by the Company from the issuance or sale (other than to any of its Subsidiaries) of its shares of Qualified Capital Stock or any options, warrants or rights to purchase such shares of Qualified Capi-

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tal Stock of the Company (except, in each case, to the extent such proceeds are used to purchase, redeem or otherwise retire Capital Stock or Subordinated Indebtedness as set forth below); plus

(C) the aggregate Net Cash Proceeds received after the date of the Indenture by the Company (other than from any of its Subsidiaries) upon the exercise of any options or warrants to purchase shares of Qualified Capital Stock of the Company; plus

(D) the aggregate Net Cash Proceeds received after the date of the Indenture by the Company from debt securities or Redeemable Capital Stock that has been converted into or exchanged for Qualified Capital Stock of the Company to the extent such debt securities or Redeemable Capital Stock is originally sold for cash plus the aggregate Net Cash Proceeds received by the Company at the time of such conversion or exchange; plus

(E) in the event the Company or any Restricted Subsidiary makes an Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, an amount equal to the Company's or any Restricted Subsidiary's existing Investment in such Person that was previously treated as a Restricted Payment; plus

(F) so long as the Designation thereof was treated as a Restricted Payment made after the Issue Date, with respect to any Unrestricted Subsidiary that has been redesignated as a Restricted Subsidiary after the Issue Date in accordance with Section 3.14, an amount equal to the Company's Investment in such Unrestricted Subsidiary (provided that such amount shall not in any case exceed the Designation Amount with respect to such Restricted Subsidiary upon its Designation); plus

(G) \$50.0 million; minus

(H) the Designation Amount (measured as of the date of Designation) with respect to any Subsidiary of the Company which has been designated as an Unrestricted Subsidiary after the Issue Date in accordance with Section 3.14.

(b) Notwithstanding the foregoing, and in the case of clauses (ii), (iii) and (iv) below, so long as there is no Default or Event of Default continuing, the foregoing provi-

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sions shall not prohibit the following actions (clauses (i) through (iv) being referred to as a "Permitted Payment"):

(i) the payment of any dividend within 60 days after the date of declaration thereof, if at such date of declaration such payment would be



permitted by the provisions of paragraph (a) of this Section 3.5 and such payment shall be deemed to have been paid on such date of declaration for purposes of the calculation required by paragraph (a) of this Section 3.5;

(ii) the repurchase, redemption or other acquisition or retirement of any shares of any class of Capital Stock of the Company in exchange for (including any such exchange pursuant to the exercise of a conversion right or privilege or in which cash is paid in lieu of the issuance of fractional shares or scrip), or out of the Net Cash Proceeds of, a substantially concurrent issue and sale for cash (other than to a Subsidiary) of other shares of Qualified Capital Stock of the Company; provided that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock are excluded from clause (3)(B) of paragraph (a) of this Section 3.5;

(iii) any repurchase, redemption, defeasance, retirement, refinancing or acquisition for value or payment of principal of any Subordinated Indebtedness in exchange for, or out of the Net Cash Proceeds of, a substantially concurrent issuance and sale for cash (other than to any Subsidiary of the Company) of any Qualified Capital Stock of the Company, provided that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock are excluded from clause (3)(B) of paragraph (a) of this Section 3.5;

(iv) the repurchase, redemption, defeasance, retirement, refinancing or acquisition for value or payment of principal of any Subordinated Indebtedness (other than Redeemable Capital Stock) (a "refinancing") through the issuance of new Subordinated Indebtedness of the Company, provided that any such new Subordinated Indebtedness (1) shall be in a principal amount that does not exceed the principal amount so refinanced (or, if such Subordinated Indebtedness provides for an amount less than the principal amount thereof to be due and payable upon a declaration or acceleration thereof, then such lesser amount as of the date of determination), plus the lesser of (x) the stated amount of any premium, interest or other payment

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required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (y) the amount of premium, interest or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Company Incurred in connection with such refinancing; (2) has an Average Life to Stated Maturity greater than the remaining Average Life to Stated Maturity of the Notes; (3) has a Stated Maturity for its final scheduled principal payment later than the Stated Maturity for the final scheduled principal payment of the Notes; and (4) is expressly subordinated in right of payment to the Notes at least to the same extent as the Indebtedness to be refinanced.

SECTION 3.6. Limitation on Transactions with  
Affiliates.  
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The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) with any Affiliate of the Company (other than the Company or a Wholly Owned Restricted Subsidiary) unless (i) such transaction or series of transactions is in writing on terms that are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than would be available in a comparable transaction in arm's-length dealings with an unrelated third party, (ii) with respect to any transaction or series of transactions involving aggregate payments in excess of \$10.0 million, the Company delivers an Officers' Certificate to the Trustee certifying that such transaction or series of related transactions complies with clause (i) above and such transaction or series of related transactions has been approved by the Board of Directors of the Company, and (iii) with respect to a transaction or series of related transactions involving aggregate value in excess of \$25.0 million, the Company delivers to the Trustee an opinion of an independent investment banking firm of national standing stating that the transaction or series of transactions is fair to the Company or such Restricted Subsidiary; provided, however, that this provision shall not apply to any transaction with an officer or director of the Company entered into in the ordinary course of business (including compensation or employee benefit arrangements with any officer or director of the Company).

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SECTION 3.7. Limitation on Senior Subordinated  
Indebtedness.  
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The Company will not, and will not permit any Guarantor to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise in any manner become directly or indirectly liable for or with respect to or otherwise

permit to exist any Indebtedness that is subordinate in right of payment to any Indebtedness of the Company or such Guarantor, as the case may be, unless such Indebtedness is also pari passu with the Notes or the Guarantee of such Guarantor or subordinate in right of payment to the Notes or such Guarantee to at least the same extent as the Notes or such Guarantee are subordinate in right of payment to Senior Indebtedness or Senior Guarantor Indebtedness, as the case may be, as set forth in this Supplemental Indenture.

SECTION 3.8. Limitation on Liens.  
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The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, affirm or suffer to exist any Lien of any kind upon any of its property or assets (including any intercompany notes), owned at the date of this Supplemental Indenture or acquired after the date of this Supplemental Indenture, or any income or profits therefrom, except if the Notes (or a Guarantee, in the case of Liens of a Guarantor) are directly secured equally and ratably with (or prior to in the case of Liens with respect to Subordinated Indebtedness or Indebtedness of a Guarantor subordinated in right of payment to any Guarantee) the obligation or liability secured by such Lien, excluding, however, from the operation of the foregoing any of the following:

(a) any Lien existing as of the date of this Supplemental Indenture;

(b) any Lien arising by reason of (1) any judgment, decree or order of any court, so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree or order shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired; (2) taxes not yet delinquent or which are being contested in good faith; (3) security for payment of workers' compensation or other insurance; (4) good faith deposits in connection with tenders, leases or contracts (other than contracts for the payment of money); (5) zoning restrictions, easements, li-

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censes, reservations, provisions, covenants, conditions, waivers, restrictions on the use of property or minor irregularities of title (and with respect to leasehold interests, mortgages, obligations, liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without consent of the lessee), none of which materially impairs the use of any parcel of property material to the operation of the business of the Company or any Restricted Subsidiary or the value of such property for the purpose of such business; (6) deposits to secure public or statutory obligations, or in lieu of surety or appeal bonds; (7) certain surveys, exceptions, title defects, encumbrances, easements, reservations of, or rights of others for, rights of way, sewers, electric lines, telegraph or telephone lines and other similar purposes or zoning or other restrictions as to the use of real property not interfering with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries; (8) operation of law in favor of mechanics, materialmen, laborers, employees or suppliers, incurred in the ordinary course of business for sums which are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof; or (9) standard custodial, bailee or depository arrangements (including (x) in respect of deposit accounts with banks and other financial institutions and (y) standard customer agreements in respect of accounts for the purchase and sale of securities and other property with brokerage firms or other types of financial institutions);

(c) any Lien now or hereafter existing on property of the Company or any Guarantor securing Senior Indebtedness or Senior Guarantor Indebtedness, in each case which Indebtedness is permitted under the provisions of Section 3.4 and provided that the provisions of Section 3.10 are complied with;

(d) any Lien securing Acquired Indebtedness created prior to (and not created in connection with, or in contemplation of) the incurrence of such Indebtedness by the Company or any Restricted Subsidiary, in each case which Indebtedness is permitted under the provisions of Section 3.4; provided that any such Lien only extends to the assets that were subject to such lien securing such Acquired Indebtedness prior to the related transaction by the Company or its Restricted Subsidiaries; and

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(e) any extension, renewal, refinancing or replacement, in whole or in part, of any Lien described in the foregoing clauses (a) through (d) so long as the amount of security is not increased thereby.

SECTION 3.9. Limitation on Sale of Assets.  
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(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale (other than an Asset Swap permitted by clause (g) below of this Section 3.9) unless (i) at least 75% of the proceeds from such Asset Sale are received in cash; provided, however, that the amount of (A) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet or the notes thereto) of the Company or any Restricted Subsidiary that are assumed by the transferee in such Asset Sale and from which the Company or such Restricted Subsidiary is released and (B) any notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are immediately converted by the Company or such Restricted Subsidiary into cash, shall be deemed cash for purposes of this Section 3.9, and (ii) the Company or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the shares or assets sold (other than in the case of an involuntary Asset Sale, as determined by the Board of Directors of the Company and evidenced in a Certified Resolution).

(b) If all or a portion of the Net Cash Proceeds of any Asset Sale are not required to be applied to repay permanently any Senior Indebtedness or Senior Guarantor Indebtedness then outstanding as required by the terms thereof, or the Company determines not to apply such Net Cash Proceeds to the permanent prepayment of such Senior Indebtedness or Senior Guarantor Indebtedness or if no such Senior Indebtedness or Senior Guarantor Indebtedness is then outstanding, then the Company may within 12 months of the Asset Sale, invest the Net Cash Proceeds in other properties and assets that (as determined by the Board of Directors of the Company or the applicable Restricted Subsidiary) replace the properties and assets that were the subject of the Asset Sale or in properties and assets that will be used in the businesses of the Company or its Restricted Subsidiaries as existing at such time or reasonably related thereto. The amount of such Net Cash Proceeds neither used to permanently repay or prepay Senior Indebtedness or Senior Guarantor Indebtedness nor used or invested as set forth in this paragraph constitutes "Excess Proceeds."

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(c) When the aggregate amount of Excess Proceeds equals \$10,000,000 or more, the Company shall apply the Excess Proceeds to the repayment of the Notes and any Pari Passu Indebtedness required to be repurchased under the instrument governing such Pari Passu Indebtedness as follows: (a) the Company shall make an offer to purchase (an "Offer") from all holders of the Notes in accordance with the procedures set forth in this Supplemental Indenture in the maximum principal amount (expressed as a multiple of \$1,000) of Notes that may be purchased out of an amount (the "Note Amount") equal to the product of such Excess Proceeds multiplied by a fraction, the numerator of which is the outstanding principal amount of the Notes, and the denominator of which is the sum of the outstanding principal amount of the Notes and such Pari Passu Indebtedness (subject to proration in the event such amount is less than the aggregate Offered Price (as defined below) of all Notes tendered) and (b) to the extent required by such Pari Passu Indebtedness to permanently reduce the principal amount of such Pari Passu Indebtedness, the Company shall make an offer to purchase or otherwise repurchase or redeem Pari Passu Indebtedness (a "Pari Passu Offer") in an amount (the "Pari Passu Debt Amount") equal to the excess of the Excess Proceeds over the Note Amount; provided that in no event shall the Pari Passu Debt Amount exceed the principal amount of such Pari Passu Indebtedness plus the amount of any premium required to be paid to repurchase such Pari Passu Indebtedness. The offer price shall be payable in cash in an amount equal to 100% of the principal amount of the Notes plus accrued and unpaid interest, if any, to the date (the "Offer Date") such Offer is consummated (the "Offered Price"), in accordance with the procedures set forth in this Supplemental Indenture. To the extent that the aggregate Offered Price of the Notes tendered pursuant to the Offer is less than the Note Amount relating thereto or the aggregate amount of Pari Passu Indebtedness that is purchased is less than the Pari Passu Debt Amount (the amount of such shortfall, if any, constituting a "Deficiency"), the Company shall use such Deficiency in the business of the Company and its Restricted Subsidiaries. Upon completion of the purchase of all the Notes tendered pursuant to an Offer and the purchase of the Pari Passu Indebtedness pursuant to a Pari Passu Offer, the amount of Excess Proceeds, if any, shall be reset at zero.

(d) If the Company becomes obligated to make an Offer pursuant to clause (c) above, the Notes shall be purchased by the Company, at the option of the holder thereof, in whole or in part in integral multiples of \$1,000, on a date that is not earlier than 45 days and not later than 60 days from the

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date the notice is given to holders, or such later date as may be necessary for the Company to comply with the requirements under the Exchange Act, subject to proration in the event the Note Amount is less than the aggregate Offered Price of all Notes tendered.

(e) The Company shall comply with the applicable tender offer rules, including Rule 14e-1 under the Exchange Act, and any other applicable securities laws or regulations in connection with an Offer.

(f) The Company will not, and will not permit any Subsidiary to, create or permit to exist or become effective any restriction (other than restrictions existing under (i) Indebtedness as in effect on the date of this Supplemental Indenture as such Indebtedness may be refinanced from time to time, provided that such restrictions are no less favorable to the Holders of Notes than those existing on the date of this Supplemental Indenture or (ii) any Senior Indebtedness and any Senior Guarantor Indebtedness) that would materially impair the ability of the Company to make an Offer to purchase the Notes or, if such Offer is made, to pay for the Notes tendered for purchase.

(g) The Company will not, and will not permit any Restricted Subsidiary to, engage in any Asset Swaps, unless: (i) at the time of entering into such Asset Swap, and immediately after giving effect to such Asset Swap, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; (ii) in the event such Asset Swap involves an aggregate amount in excess of \$10.0 million, the terms of such Asset Swap have been approved by a majority of the members of the board of directors of the Company which determination shall include a determination that the Fair Market Value of the assets being received in such swap are at least equal to the Fair Market Value of the assets being swapped and (iii) in the event such Asset Swap involves an aggregate amount in excess of \$20.0 million, the Company has also received a written opinion from an independent investment banking firm of nationally recognized standing that such Asset Swap is fair to the Company or such Restricted Subsidiary, as the case may be, from a financial point of view.

(h) Subject to paragraphs (c) and (f) above, within 30 days after the date on which the amount of Excess Proceeds equals or exceeds \$10,000,000, the Company shall send or cause to be sent by first-class mail, postage prepaid, to the Trustee

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and to each Holder of the Notes, at its address appearing in the Security Register, a notice stating or including:

(1) that the Holder has the right to require the Company to repurchase, subject to proration, such Holder's Notes at the Offered Price;

(2) the Offer Date;

(3) the instructions a Holder must follow in order to have its Notes purchased in accordance with paragraph (c) of this Section; and

(4) (i) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Sales otherwise described in the offering materials (or corresponding successor reports) (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required pursuant to Section 3.15), (ii) a description of material developments in the Company's business subsequent to the date of the latest of such Reports, (iii) if material, appropriate pro forma financial information, and (iv) such other information, if any, concerning the business of the Company which the Company in good faith believes will enable such Holders to make an informed investment decision.

(i) Holders electing to have Notes purchased hereunder will be required to surrender such Notes at the address specified in the notice at least three Business Days prior to the Offer Date. Holders will be entitled to withdraw their election to have their Notes purchased pursuant to this Section 3.9 if the Company receives, not later than three Business Days prior to the Offer Date, a telegram, telex, facsimile transmission or letter setting forth (1) the name of the Holder, (2) the certificate number of the Note in respect of which such notice of withdrawal is being submitted, (3) the principal amount of the Note (which shall be \$1,000 or an integral multiple thereof) delivered for purchase by the Holder as to which its election is to be withdrawn, (4) a statement that such Holder is withdrawing its election to have such principal amount of such Note purchased, and (5) the principal amount, if any, of such Note (which shall be \$1,000 or an integral multiple thereof) that remains subject to the original notice of the Of-

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fer and that has been or will be delivered for purchase by the Company.

(j) The Company shall (i) not later than the Offer Date, accept for payment Notes or portions thereof tendered pursuant to the Offer, (ii) not later than 10:00 a.m. (New York time) on the Offer Date, deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 4.8 of the Indenture) an amount of money in same day funds (or New York Clearing House funds if such deposit is made prior to the Offer Date) sufficient to pay the aggregate Offered Price of all the Notes or portions thereof which are to be purchased on that date and (iii) not later than the Offer Date, deliver to the Paying Agent (if

other than the Company) an Officers' Certificate stating the Notes or portions thereof accepted for payment by the Company.

Subject to applicable escheat laws, as provided in the Notes, the Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Offering Price; provided, however, that, (x) to the extent that the aggregate amount of cash deposited by the Company with the Trustee in respect of an Offer exceeds the aggregate Offered Price of the Notes or portions thereof to be purchased, then the Trustee shall hold such excess for the Company and (y) unless otherwise directed by the Company in writing, promptly after the Business Day following the Offer Date the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon.

(k) Notes to be purchased shall, on the Offer Date, become due and payable at the Offered Price and from and after such date (unless the Company shall default in the payment of the Offered Price) such Notes shall cease to bear interest. Such Offered Price shall be paid to such Holder promptly following the later of the Offer Date and the time of delivery of such Note to the relevant Paying Agent at the office of such Paying Agent by the Holder thereof in the manner required. Upon surrender of any such Note for purchase in accordance with the foregoing provisions, such Note shall be paid by the Company at the Offered Price; provided, however, that installments of interest whose Stated Maturity is on or prior to the Offer Date shall be payable to the Holders of such Notes, registered as such on the relevant record dates according to the terms and the provisions of Section 2.12 of the Indenture and Section 2.3 of this Supplemental Indenture; provided, further, that Notes

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to be purchased are subject to proration in the event the Excess Proceeds are less than the aggregate Offered Price of all Notes tendered for purchase, with such adjustments as may be appropriate by the Trustee so that only Notes in denominations of \$1,000 or integral multiples thereof, shall be purchased. If any Note tendered for purchase shall not be so paid upon surrender thereof by deposit of funds with the Trustee or a Paying Agent in accordance with paragraph (j) above, the principal thereof (and premium, if any, thereon) shall, until paid, bear interest from the Offer Date at the rate borne by such Note. Any Note that is to be purchased only in part shall be surrendered to a Paying Agent at the office of such Paying Agent (with, if the Company, the note registrar designated pursuant to Section 4.2 of the Indenture or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the note registrar or the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, one or more new Notes of any authorized denomination as requested by such Holder in an aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not purchased.

SECTION 3.10. Limitation on Guarantees by  
Restricted Subsidiaries.  
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In the event the Company (i) organizes or acquires any Domestic Restricted Subsidiary after the Issue Date that is not a Guarantor and causes or permits such Restricted Subsidiary to, directly or indirectly, guarantee the payment of any Indebtedness ("Other Indebtedness") of the Company or any Guarantor or (ii) causes or permits any Foreign Restricted Subsidiary that is not a Guarantor to, directly or indirectly, guarantee the payment of any Other Indebtedness, then, in each case the Company shall cause such Restricted Subsidiary to simultaneously execute and deliver a supplemental indenture to the Indenture pursuant to which it will become a Guarantor under the Indenture; provided, however, that in the event a Domestic Restricted Subsidiary is acquired in a transaction in which a merger agreement is entered into, such Domestic Restricted Subsidiary shall not be required to execute and deliver such supplemental indenture until the consummation of the merger contemplated by any such merger agreement; provided, further, that if such Other Indebtedness is (i) Indebtedness that is ranked pari passu in right of payment with the Notes or the Guarantees of such Restricted Subsidiary, as the case may be, the Guarantees

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of such Restricted Subsidiary shall be pari passu in right of payment with the guarantee of the Other Indebtedness; or (ii) Subordinated Indebtedness, the Guarantees of such Restricted Subsidiary shall be senior in right of payment to the guarantee of the Other Indebtedness (which guarantee of such Subordinated Indebtedness shall provide that such guarantee is subordinated to the Guarantees of such Subsidiary to the same extent and in the same manner as the Other Indebtedness is subordinated to the Notes or the Guarantee of such Restricted Subsidiary, as the case may be). Within 120 days of the Issue Date, the Company will cause Canandaigua, B.V. to become a Guarantor under the Indenture.

If the Notes are defeased in accordance with the terms of Article Four of this Supplemental Indenture, or if, subject to the requirements of Article

Six of this Supplemental Indenture, all or substantially all of the assets of any Guarantor or all of the Capital Stock of any Guarantor are sold (including by issuance or otherwise) by the Company in a transaction constituting an Asset Sale, and if (x) the Net Cash Proceeds from such Asset Sale are used in accordance with Section 3.9 or (y) the Company delivers to the Trustee an Officers' Certificate to the effect that the Net Cash Proceeds from such Asset Sale shall be used in accordance with Section 3.9 and within the time limits specified by such Section, then such Guarantor or the Guarantors, as the case may be (in the event of a defeasance of the Notes or sale or other disposition of all of the Capital Stock of such Guarantor), or the corporation acquiring such assets (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) shall be released and discharged of its Guarantee obligations in respect of the Indenture, the Supplemental Indenture and the Notes.

Any Guarantor that is designated an Unrestricted Subsidiary pursuant to and in accordance with Section 3.14 shall upon such Designation be released and discharged of its Guarantee obligations in respect of the Indenture, the Supplemental Indenture and the Notes and any Unrestricted Subsidiary whose Designation is revoked pursuant to Section 3.14 will be required to become a Guarantor in accordance with Article Ten.

In addition, a Guarantee of a Guarantor shall be released upon the sale or transfer of all or substantially all of the assets or all of the Capital Stock of such Guarantor; provided, that either (i) such sale or transfer  
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complies with the provisions set forth in Section 3.9 or (ii) such sale or transfer need not comply with the provisions set forth in Section

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3.9 because the Capital Stock so sold or transferred does not constitute an "Asset Sale" by operation of the provision in clause (y) of the last sentence of the definition of Asset Sale.

SECTION 3.11. Purchase of Notes upon a Change  
of Control.  
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(a) If a Change of Control shall occur at any time, then each Holder of Notes shall have the right to require that the Company purchase such Holder's Notes in whole or in part in integral multiples of \$1,000, at a purchase price (the "Change of Control Purchase Price") in cash in an amount equal to 101% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to the date of purchase (the "Change of Control Purchase Date"), pursuant to the offer described in subsection (b) of this Section (the "Change of Control Offer") and in accordance with the procedures set forth in subsections (b), (c), (d) and (e) of this Section.

(b) Within 15 days following any Change of Control, the Company shall notify the Trustee thereof and give written notice (a "Change of Control Purchase Notice") of such Change of Control to each Holder by first-class mail, postage prepaid, at its address appearing in the Security Register stating or including:

(1) that a Change of Control has occurred, the date of such event, and that such Holder has the right to require the Company to repurchase such Holder's Notes at the Change of Control Purchase Price;

(2) the circumstances and relevant facts regarding such Change of Control (including but not limited to information with respect to pro forma historical income, cash flow and capitalization after giving effect to such Change of Control, if any);

(3) (i) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q, as applicable, and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report (or in the event the Company is not required to prepare any of the foregoing Forms, the comparable information required to be prepared by the Company and any Guarantor pursuant to Section 3.15), (ii) a description of material developments in the Company's busi-

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ness subsequent to the date of the latest of such reports and (iii) such other information, if any, concerning the business of the Company which the Company in good faith believes will enable such Holders to make an informed investment decision;

(4) that the Change of Control Offer is being made pursuant to this Section 3.11 and that all Notes properly tendered pursuant to the Change of Control Offer will be accepted for payment at the Change of Control Purchase Price;

(5) the Change of Control Purchase Date, which shall be a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed, or such later date as is necessary to comply with requirements under the Exchange Act;

(6) the Change of Control Purchase Price;

(7) the names and addresses of the Paying Agent and the offices or agencies referred to in Section 4.2 of the Indenture;

(8) that Notes must be surrendered on or prior to the Change of Control Purchase Date to the Paying Agent at the office of the Paying Agent or to an office or agency referred to in Section 4.2 of the Indenture to collect payment;

(9) that the Change of Control Purchase Price for any Note which has been properly tendered and not withdrawn will be paid promptly following the Change of Control Offer Purchase Date;

(10) the procedures for withdrawing a tender of Notes and Change of Control Purchase Notice;

(11) that any Note not tendered will continue to accrue interest; and

(12) that, unless the Company defaults in the payment of the Change of Control Purchase Price, any Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Purchase Date.

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(c) Upon receipt by the Company of the proper tender of Notes, the Holder of the Note in respect of which such proper tender was made shall (unless the tender of such Note is properly withdrawn) thereafter be entitled to receive solely the Change of Control Purchase Price with respect to such Note. Upon surrender of any such Note for purchase in accordance with the foregoing provisions, such Note shall be paid by the Company at the Change of Control Purchase Price; provided, however, that installments of interest whose Stated Maturity is on or prior to the Change of Control Purchase Date shall be payable to the Holders of such Notes registered as such on the relevant record dates according to the terms and the provisions of Section 2.3. If any Note tendered for purchase shall not be so paid upon surrender thereof, the principal thereof (and premium, if any, thereon) shall, until paid, bear interest from the Change of Control Purchase Date at the rate borne by such Note. Holders electing to have Notes purchased will be required to surrender such Notes to the Paying Agent at the address specified in the Change of Control Purchase Notice at least two Business Days prior to the Change of Control Purchase Date. Any Note that is to be purchased only in part shall be surrendered to a Paying Agent at the office of such Paying Agent (with, if the Company, the note registrar designated pursuant to Section 4.2 of the Indenture or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the note registrar or the Trustee, as the case may be, duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, one or more new Notes of any authorized denomination as requested by such Holder in an aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not purchased.

(d) The Company shall (i) not later than the Change of Control Purchase Date, accept for payment Notes or portions thereof tendered pursuant to the Change of Control Offer, (ii) not later than 11:00 a.m. (New York time) on the Change of Control Purchase Date, deposit with the Paying Agent an amount of cash sufficient to pay the aggregate Change of Control Purchase Price of all the Notes or portions thereof which are to be purchased as of the Change of Control Purchase Date and (iii) not later than the Change of Control Pur-

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chase Date, deliver to the Paying Agent an Officers' Certificate stating the Notes or portions thereof accepted for payment by the Company. The Paying Agent shall promptly mail or deliver to Holders of Notes so accepted payment in an amount equal to the Change of Control Purchase Price of the Notes purchased from each such Holder, and the Company shall execute and the Trustee shall promptly authenticate and mail or deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted shall be promptly mailed or delivered by the Paying Agent at the Company's expense to the Holder thereof. The Company will publicly announce the results of the Change of Control Offer on the Change of Control Purchase Date. For purposes of this Section 3.11, the Company shall choose a Paying Agent which shall not be the Company.

(e) A Change of Control Purchase Notice may be withdrawn before or after delivery by the Holder to the Paying Agent at the office of the Paying Agent of the Note to which such Change of Control Purchase Notice relates, by

means of a written notice of withdrawal delivered by the Holder to the Paying Agent at the office of the Paying Agent or to the office or agency referred to in Section 4.2 of the Indenture to which the related Change of Control Purchase Notice was delivered not later than three Business Days prior to the Change of Control Purchase Date specifying, as applicable:

(1) the name of the Holder;

(2) the certificate number of the Note in respect of which such notice of withdrawal is being submitted;

(3) the principal amount of the Note (which shall be \$1,000 or an integral multiple thereof) delivered for purchase by the Holder as to which such notice of withdrawal is being submitted; and

(4) the principal amount, if any, of such Note (which shall be \$1,000 or an integral multiple thereof) that remains subject to the original Change of Control Purchase Notice and that has been or will be delivered for purchase by the Company.

(f) Subject to applicable escheat laws, as provided in the Notes, the Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed, together with interest or dividends, if any, thereon, held by them for the payment of the Change of Control Purchase Price; provided, however, that, (x) to the extent that the aggregate amount of cash deposited by the Company pursuant to clause (ii) of paragraph (d) above exceeds the aggregate Change of Control Purchase Price of the Notes or portions thereof to be purchased, then

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the Trustee shall hold such excess for the Company and (y) unless otherwise directed by the Company in writing, promptly after the Business Day following the Change of Control Purchase Date the Trustee shall return any such excess to the Company together with interest, if any, thereon.

(g) The Company shall comply with the applicable tender offer rules, including Rule 14e-1 under the Exchange Act, and any other applicable securities laws or regulations in connection with a Change of Control Offer.

(h) The Company will not, and will not permit any Subsidiary to, create or permit to exist or become effective any restriction (other than restrictions existing under Indebtedness as in effect on the date of this Supplemental Indenture) that would materially impair the ability of the Company to make a Change of Control Offer to purchase the Notes or, if such Change of Control Offer is made, to pay for the Notes tendered for purchase.

SECTION 3.12. Limitation on Restricted  
Subsidiary Capital Stock.  
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The Company will not permit any Restricted Subsidiary of the Company to issue any Capital Stock, except for (i) Capital Stock issued to and held by the Company or a Wholly Owned Restricted Subsidiary, (ii) Capital Stock issued by a Person prior to the time (A) such Person becomes a Restricted Subsidiary, (B) such Person merges with or into a Restricted Subsidiary or (C) a Restricted Subsidiary merges with or into such Person, provided that such Capital Stock was not issued or incurred by such Person in anticipation of the type of transaction contemplated by subclauses (A), (B) or (C), and (iii) Capital Stock issued or sold by a Restricted Subsidiary where, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary.

SECTION 3.13. Limitation on Dividends and Other  
Payment Restrictions Affecting  
Restricted Subsidiaries.  
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The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to (i) pay dividends or make any other distribution on its Capital Stock, (ii) pay any Indebtedness

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owed to the Company or a Restricted Subsidiary of the Company, (iii) make any Investment in the Company or a Restricted Subsidiary of the Company or (iv) transfer any of its properties or assets to the Company or any Restricted Subsidiary, except (a) any encumbrance or restriction pursuant to an agreement in effect on the date of this Supplemental Indenture; (b) any encumbrance or restriction, with respect to a Restricted Subsidiary that was not a Restricted Subsidiary of the Company on the date of this Supplemental Indenture, in existence at the time such Person becomes a Restricted Subsidiary of the Company and, in the case of clauses (a) and (b), not incurred in connection with, or in



contemplation of, such Person becoming a Restricted Subsidiary; (c) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions in the foregoing clauses (a) and (b), or in this clause (c), provided that the terms and conditions of any such encumbrances or restrictions are not materially less favorable to the holders of the Notes than those under or pursuant to the agreement evidencing the Indebtedness so extended, renewed, refinanced or replaced (except that an encumbrance or restriction that is not more restrictive than those set forth in this Supplemental Indenture shall in any event be permitted hereunder); and (d) any encumbrance or restriction created pursuant to an asset sale agreement, stock sale agreement or similar instrument pursuant to which an Asset Sale permitted under Section 3.9 is to be consummated, so long as such restriction or encumbrance shall be effective only for a period from the execution and delivery of such agreement or instrument through a termination date not later than 270 days after such execution and delivery.

SECTION 3.14. Designation of Unrestricted Subsidiaries.

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The Company may designate after the Issue Date any Subsidiary of the Company as an "Unrestricted Subsidiary" under this Supplemental Indenture (a "Designation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation;

(ii) at the time of and after giving effect to such Designation, the Company could Incur \$1.00 of additional Indebtedness (other than Permitted Indebtedness) under the Consolidated Fixed Charge Coverage Ratio of the first paragraph of Section 3.4(a); and

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(iii) the Company would be permitted to make an Investment (other than a Permitted Investment) at the time of Designation (assuming the effectiveness of such Designation) pursuant to Section 3.5(a) above in an amount (the "Designation Amount") equal to the amount of the Company's Investment in such Subsidiary on such date.

Neither the Company nor any Restricted Subsidiary shall at any time (x) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness) or (y) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary. For purposes of the foregoing, the Designation of a Subsidiary of the Company as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary.

The Company may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a "Revocation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(ii) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation would, if Incurred at such time, have been permitted to be Incurred for all purposes of the Indenture.

All Designations and Revocations must be evidenced by resolutions of the Board of Directors of the Company, delivered to the Trustee certifying compliance with the foregoing provisions.

SECTION 3.15. Provision of Financial Statements.

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Whether or not the Company is subject to Section 13(a) or 15(d) of the Exchange Act, the Company will, to the extent permitted under the Exchange Act, file with the Commission the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to such Sections 13(a) or 15(d) if the Company were so subject, such documents to be filed with the Commission on or prior to the respective dates (the "Required Filing Dates") by which the Company would have been required so to

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file such documents if the Company were so subject. The Company will also in any event (x) within 15 days of each Required Filing Date (i) transmit by mail to all Holders, as their names and addresses appear in the security register, without cost to such Holders and (ii) file with the Trustee copies of the annual

reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act if the Company were subject to such Sections and (y) if filing such documents by the Company with the Commission is not permitted under the Exchange Act, promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder at the Company's cost.

SECTION 3.16. Statement by Officers as to Default.  
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(a) The Company will deliver to the Trustee, on or before a date not more than 60 days after the end of each fiscal quarter and not more than 120 days after the end of each fiscal year of the Company ending after the date hereof, a written statement signed by two executive officers of the Company, one of whom shall be the principal executive officer, principal financial officer or principal accounting officer of the Company, stating whether or not, after a review of the activities of the Company during such year or such quarter and of the Company's performance under this Supplemental Indenture and the Indenture, to the best knowledge, based on such review, of the signers thereof, the Company has fulfilled all its obligations and is in compliance with all conditions and covenants under this Supplemental Indenture and the Indenture throughout such year or quarter, as the case may be, and, if there has been a Default specifying each Default and the nature and status thereof.

(b) When any Default or Event of Default has occurred and is continuing, or if the Trustee or any Holder or the trustee for or the holder of any other evidence of Indebtedness of the Company or any Restricted Subsidiary gives any notice or takes any other action with respect to a claimed default (other than with respect to Indebtedness in the principal amount of less than \$10,000,000), the Company shall deliver to the Trustee by registered or certified mail or facsimile transmission followed by hard copy an Officers' Certificate specifying such Default, Event of Default, notice or other action within five Business Days of its occurrence.

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SECTION 3.17. Waiver of Certain Covenants.  
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The Company may omit in a particular instance to comply with any covenant or condition set forth in Sections 3.1 through 3.15, if, before or after the time for such compliance, the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding or shall, by Act of such Holders, waive such compliance in such instance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

ARTICLE FOUR

SATISFACTION AND DISCHARGE OF INDENTURE  
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The following provisions of this Article Four shall apply to the Notes (but not with respect to any other series of Debt Securities) and shall replace (solely with respect to the Notes and not with respect to any other series of Debt Securities) in its entirety the provisions set forth in Article VI of the Indenture.

SECTION 4.1. Satisfaction and Discharge of Indenture.  
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This Supplemental Indenture and the Indenture (solely with respect to the Notes and not with respect to any other series of Debt Securities) shall cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes herein expressly provided for) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Supplemental Indenture and the Indenture (solely with respect to the Notes and not with respect to any other series of Debt Securities), when

(a) either

(1) all the Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.13 of the Indenture

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or (ii) all Notes for whose payment United States dollars have theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.8 of the Indenture) have been delivered to the Trustee cancelled or for cancellation; or

(2) all such Notes not theretofore delivered to the Trustee cancelled or for cancellation (x) have become due and payable, (y) will become due and payable at their Stated Maturity within one year, or (z) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee in trust for such purpose an amount in United States dollars sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee cancelled or for cancellation, for the principal of, premium, if any, and accrued interest at such Stated Maturity or redemption date;

(b) the Company or any Guarantor has paid or caused to be paid all other sums payable hereunder by the Company or any Guarantor; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel stating that (i) all conditions precedent herein provided relating to the satisfaction and discharge of this Supplemental Indenture and the Indenture have been complied with and (ii) such satisfaction and discharge will not result in a breach or violation of, or constitute a default under, this Supplemental Indenture, the Indenture or any other material agreement or instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound.

Opinions of Counsel required to be delivered under this Section 4.1 may have qualifications customary for opinions of the type required and counsel delivering such opinions of Counsel may rely on certificates of the Company or government or other officials customary for opinions of the type required, including certificates certifying as to matters of fact, in-

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cluding that various financial covenants have been complied with.

Notwithstanding the satisfaction and discharge of this Supplemental Indenture and the Indenture, the obligations of the Company to the Trustee under Section 11.2 of the Indenture and, if United States dollars shall have been deposited with the Trustee pursuant to subclause (2) of Subsection (a) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 4.8 of the Indenture shall survive.

SECTION 4.2. Application of Trust Money.  
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Subject to the provisions of Section 4.8 of the Indenture, all United States dollars deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Notes, the Indenture and this Supplemental Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal of, premium, if any, and interest on the Notes for whose payment such United States dollars have been deposited with the Trustee, but such money need not be segregated from other funds except to the extent required by law or GAAP.

SECTION 4.3. Termination of Company's Obligations.  
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Subject to the provisions of Section 7.14 with respect to the creation of the defeasance trust provided for in the following clause (i), the Company may, provided that no Default or Event of Default has occurred and is continuing or would arise therefrom (or, with respect to a Default or Event of Default specified in Section 5.1(g) or (h), occurs at any time on or prior to the 91st calendar day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 91st day)) and provided that no default under any Senior Indebtedness would result therefrom, terminate its and its Restricted Subsidiaries' substantive obligations in respect of Article Three of this Supplemental Indenture (other than Sections 3.15 and 3.16) and Article Four of the Indenture (other than Sections 4.1, 4.2, and 4.3) and Article Six hereof and any Event of Default specified in Section 5.1(c) or (d) by (i) depositing with the Trustee, under the terms of an irrevocable trust agreement, money in United States dollars or United States Government Obligations (or a combination thereof) sufficient (without reinvestment) to

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pay all remaining Indebtedness on the Notes, (ii) delivering to the Trustee either an Opinion of Counsel or a ruling directed to the Trustee from the United States Internal Revenue Service to the effect that the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and termination of obligations, (iii) delivering to the Trustee an Opinion of Counsel to the effect that the Company's exercise of its option under this Section 4.3 will not result in any of the Company, the Trustee or the trust created by the Company's deposit of funds pursuant to this provision becoming or being deemed to be an "investment company" under the Investment Company Act of 1940, as amended (the "Investment Company Act"), and (iv) delivering to the Trustee an Officers' Certificate and an Opinion of Counsel each stating compliance with all conditions precedent provided for herein. In addition, subject to the provisions of Section 7.14 with respect to the creation of the defeasance trust provided for in the following clause (i), the Company may, provided that no Default or Event of Default has occurred and is continuing or would arise therefrom (or, with respect to a Default or Event of Default specified in Section 5.01(h) or (i), occurs at any time on or prior to the 91st calendar day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 91st day)) and provided that no default under any Senior Indebtedness would arise therefrom, terminate all of its and the Guarantors' substantive obligations in respect of the Notes (including its obligations to pay the principal of and interest on the Notes and the Guarantors' Guarantee thereof) by (i) depositing with the Trustee, under the terms of an irrevocable trust agreement, money in United States dollars or United States Government Obligations sufficient (without reinvestment) to pay all remaining Indebtedness on the Notes, (ii) delivering to the Trustee either a ruling directed to the Trustee from the United States Internal Revenue Service to the effect that the Holders of the Notes will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and termination of obligations or an Opinion of Counsel addressed to the Trustee based upon such a ruling or based on a change in the applicable Federal tax law since the date of this Supplemental Indenture to such effect, (iii) delivering to the Trustee an Opinion of Counsel to the effect that the Company's exercise of its option under this Section 4.1 will not result in any of the Company, the Trustee or the trust created by the Company's deposit of funds pursuant to this provision becoming or being deemed to be an "investment company" under the Investment Company Act and (iv) delivering to the Trustee an Officers' Certificate and an Opinion of Coun-

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sel each stating compliance with all conditions precedent provided for herein.

Notwithstanding the foregoing paragraph, the Company's obligations in Sections 2.4, 2.6, 2.8, 2.9, 2.10, 2.12, 2.13, 4.1, 4.2, 11.2 and 11.6 of the Indenture and Sections 4.4, 4.5 and 5.1 of this Supplemental Indenture shall survive until the Notes are no longer outstanding. Thereafter, the Company's obligations in Sections 4.4, 4.5 and 4.6 of this Supplemental Indenture shall survive and Section 11.2 of the Indenture shall survive.

After such delivery or irrevocable deposit and delivery of an Officers' Certificate and Opinion of Counsel, the Trustee upon request shall acknowledge in writing the discharge of the Company's and the Guarantors' obligations under the Notes, this Supplemental Indenture and the Indenture except for those surviving obligations specified above.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the United States Government Obligations deposited pursuant to this Section 4.3 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of outstanding Notes.

#### SECTION 4.4. Application of Trust Money.

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The Trustee shall hold in trust money or United States Government Obligations deposited with it pursuant to Section 4.3, and shall apply the deposited money and the money from United States Government Obligations in accordance with this Supplemental Indenture and the Indenture solely to the payment of principal of and interest on the Notes.

#### SECTION 4.5. Repayment to Company.

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Subject to Section 11.2 of the Indenture and Section 4.3 of this Supplemental Indenture, the Trustee shall promptly pay to the Company upon written request any excess money held by it at any time. The Trustee shall pay to the Company upon written request any money held by it for the payment of principal or interest that remains unclaimed for two years; provided, however, that the Trustee before being required to make any payment may at the expense of the Company cause to be published once in a newspaper of general circulation in The City of New York or mail to each Holder entitled to such money notice that

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such money remains unclaimed and that, after a date specified therein which shall be at least 30 days from the date of such publication or mailing, any unclaimed balance of such money then remaining shall be repaid to the Company. After payment to the Company, Holders entitled to money must look solely to the Company for payment as general creditors unless an applicable abandoned property law designates another person and all liability of the Trustee or Paying Agent with respect to such money shall thereupon cease.

SECTION 4.6. Reinstatement.  
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If the Trustee is unable to apply any money or United States Government Obligations in accordance with Section 4.3 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and the Guarantors' obligations under this Supplemental Indenture, the Indenture, the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.3 until such time as the Trustee is permitted to apply all such money or United States Government Obligations in accordance with Section 4.3; provided, however, that if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or United States Government Obligations held by the Trustee.

ARTICLE FIVE

REMEDIES

The following provisions of this Article Five apply to the Notes (but not with respect to any other series of Debt Securities) and shall replace in its entirety Section 7.1 of the Indenture. To the extent any provisions of this Article Five are inconsistent or conflict with any provisions contained in Article Seven of the Indenture the provisions of this Article Five shall govern with respect to the Notes (but not with respect to any other series of Debt Securities).

SECTION 5.1. Events of Default.  
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Whenever used herein or in the Indenture, an "Event of Default" means any one of the following events (whatever the

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reason for such Event of Default and whether it shall be occasioned by the provisions of Article Seven or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) there shall be a default in the payment of any interest on any Note when it becomes due and payable, and such default shall continue for a period of 30 days;

(b) there shall be a default in the payment of the principal of (or premium, if any, on) any Note at its Maturity (upon acceleration, optional or mandatory redemption, required repurchase or otherwise);

(c) (i) there shall be a default in the performance, or breach, of any covenant or agreement of the Company or any Guarantor under the Indenture or this Supplemental Indenture (other than a default in the performance, or breach, of a covenant or agreement which is specifically dealt with in clauses (a) or (b) or in clauses (ii), (iii) and (iv) of this clause (c)) and such default or breach shall continue for a period of 30 days after written notice has been given, by certified mail, (x) to the Company by the Trustee or (y) to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the outstanding Notes, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; (ii) there shall be a default in the performance or breach of the provisions of Article Six; (iii) the Company shall have failed to make or consummate an Offer in accordance with the provisions of Section 3.9; or (iv) the Company shall have failed to make or consummate a Change of Control Offer in accordance with the provisions of Section 3.11;

(d) one or more defaults shall have occurred under any agreements, indentures or instruments under which the Company, any Guarantor or any Subsidiary then has outstanding Indebtedness in excess of \$10,000,000 in the aggregate and, if not already matured at its final maturity in accordance with its terms, such Indebtedness shall have been accelerated;

(e) any Guarantee shall for any reason cease to be, or be asserted in writing by any Guarantor or the Company not to be, in full force and effect and enforceable in accordance with its terms, except to the extent

by the Indenture, this Supplemental Indenture and any such Guarantee;

(f) one or more judgments, orders or decrees for the payment of money in excess of \$15,000,000 either individually or in the aggregate (net of amounts covered by insurance, bond, surety or similar instrument), shall be entered against the Company, any Guarantor, any Subsidiary or any of their respective properties and shall not be discharged and either (a) any creditor shall have commenced an enforcement proceeding upon such judgment, order or decree or (b) there shall have been a period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of an appeal or otherwise, shall not be in effect;

(g) any holder or holders of at least \$10,000,000 in aggregate principal amount of Indebtedness of the Company, any Guarantor or any Subsidiary after a default under such Indebtedness shall notify the Trustee of the intended sale or disposition of any assets of the Company, any Guarantor or any Subsidiary that have been pledged to or for the benefit of such holder or holders to secure such Indebtedness or shall commence proceedings, or take any action (including by way of set-off), to retain in satisfaction of such Indebtedness or to collect on, seize, dispose of or apply in satisfaction of Indebtedness, assets of the Company, any Guarantor or any Subsidiary (including funds on deposit or held pursuant to lock-box and other similar arrangements);

(h) there shall have been the entry by a court of competent jurisdiction of (i) a decree or order for relief in respect of the Company, any Guarantor or any Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or (ii) a decree or order adjudging the Company, any Guarantor or any Subsidiary bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, any Guarantor or any Subsidiary under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company, any Guarantor or any Subsidiary or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order

shall be unstayed and in effect, for a period of 60 consecutive days; or

(i) (i) the Company, any Guarantor or any Subsidiary commences a voluntary case or proceeding under any applicable Bankruptcy Law or any other case or proceeding to be adjudicated bankrupt or insolvent, (ii) the Company, any Guarantor or any Subsidiary consents to the entry of a decree or order for relief in respect of the Company, any Guarantor or such Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against it, (iii) the Company, any Guarantor or any Subsidiary files a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, (iv) the Company, any Guarantor or any Subsidiary (1) consents to the filing of such petition or the appointment of, or taking possession by, a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company, any Guarantor or such Subsidiary or of any substantial part of their respective properties, (2) makes an assignment for the benefit of creditors or (3) admits in writing its inability to pay its debts generally as they become due, or (v) the Company, any Guarantor or any Subsidiary takes any corporate action in furtherance of any such actions in this paragraph (i).

The Company shall deliver to the Trustee within five days after the occurrence thereof, written notice, in the form of an Officers' Certificate, of any Default, its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 5.2. Acceleration of Maturity;  
Rescission and Annulment.  
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If an Event of Default (other than an Event of Default specified in Sections 5.1(h) and (i)) shall occur and be continuing, the Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall, declare all unpaid principal of, premium, if any, and accrued interest on all the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes); provided that so long as the Credit Agreement is in effect, such declaration

shall not become effective until the earlier of (a) five Business Days after receipt of such notice of acceleration from the Holders or the Trustee by the agent under the Credit Agreement or (b) acceleration of the Indebtedness under the Credit Agreement. Thereupon such principal shall become immediately due and payable, and the Trustee may, at its discretion, proceed to protect and enforce the rights of the holders of Notes by appropriate judicial proceeding. If an Event of Default specified in clause (h) or (i) of Section 5.1 occurs and is continuing, then all the Notes shall ipso facto become and be immediately due and payable, in an amount equal to the principal amount of the Notes, together with accrued and unpaid interest, if any, to the date the Notes become due and payable, without any declaration or other act on the part of the Trustee or any Holder. The Trustee or, if notice of acceleration is given by the Holders, the Holders shall give notice to the agent under the Credit Agreement of any such acceleration.

At any time after such declaration of acceleration has been made but before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate principal amount of the Notes outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

- (a) the Company has paid or deposited with the Trustee a sum sufficient to pay
  - (i) all sums paid or advanced by the Trustee under Section 11.2 of the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel,
  - (ii) all overdue interest on all Notes, and
  - (iii) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the Notes;
- (b) all Events of Default, other than the non-payment of principal of the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.5 of the Indenture; and
- (c) the rescission will not conflict with any judgment or decree.

No such rescission shall affect any subsequent Default or impair any right consequent thereon.

ARTICLE SIX

CONSOLIDATION, MERGER,  
CONVEYANCE, TRANSFER OR LEASE  
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The following provisions of this Article Six apply to the Notes (but not with respect to any other series of Debt Securities) and shall replace in its entirety Section 10.1 of the Indenture as it applies to the Notes (but not with respect to any other series of Debt Securities).

SECTION 6.1. Company or Any Guarantor May  
Consolidate, etc., Only on  
Certain Terms.  
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(a) The Company shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other Person or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets as an entirety to any Person or group of affiliated Persons, or permit any of its Restricted Subsidiaries to enter into any such transaction or transactions if such transaction or transactions, in the aggregate, would result in a sale, assignment, conveyance, transfer, lease or disposal of all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries on a Consolidated basis to any other Person or group of affiliated Persons, unless at the time and after giving effect thereto:

- (i) either (a) the Company shall be the continuing corporation, or
- (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries on a Consolidated basis (the "Surviving Entity") shall be a corporation duly organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and such Person assumes, by a supplemental indenture in a form

reasonably satisfactory to the Trustee, all the obligations of the Company under the Notes, the Inden-

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ture and this Supplemental Indenture shall remain in full force and effect;

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

(iii) immediately after giving effect to such transaction on a pro forma basis, the Consolidated Net Worth of the Company (or the Surviving Entity if the Company is not the continuing obligor under this Supplemental Indenture and the Indenture) is equal to or greater than the Consolidated Net Worth of the Company immediately prior to such transaction;

(iv) immediately before and immediately after giving effect to such transaction on a pro forma basis (on the assumption that the transaction occurred on the first day of the four-quarter period immediately prior to the consummation of such transaction with the appropriate adjustments with respect to the transaction being included in such pro forma calculation), the Company (or the Surviving Entity if the Company is not the continuing obligor under the Indenture and this Supplemental Indenture) could incur \$1.00 of additional Indebtedness under Section 3.4 (other than Permitted Indebtedness);

(v) each Guarantor, if any, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under the Indenture, this Supplemental Indenture and the Notes;

(vi) if any of the property or assets of the Company or any of its Restricted Subsidiaries would thereupon become subject to any Lien, the provisions of Section 3.8 are complied with; and

(vii) the Company or the Surviving Entity shall have delivered, or caused to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger, transfer, sale, assignment, conveyance, lease or other transaction and the supplemental indenture in respect thereto comply with the Indenture and this Supplemental Indenture and that all conditions precedent therein or herein provided for relating to such transaction have been complied with.

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(b) Each Guarantor shall not, and the Company will not permit a Guarantor to, in a single transaction or through a series of related transactions, merge or consolidate with or into any other corporation (other than the Company or any other Guarantor) or other entity, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets on a consolidated basis to any entity (other than the Company or any other Guarantor) unless at the time and after giving effect thereto:

(i) either (1) such Guarantor shall be the continuing corporation or partnership or (2) the entity (if other than such Guarantor) formed by such consolidation or into which such Guarantor is merged or the entity which acquires by sale, assignment, conveyance, transfer, lease or disposition the properties and assets of such Guarantor shall be a corporation duly organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume by an indenture supplemental hereto, executed and delivered to the Trustee, in a form reasonably satisfactory to the Trustee, all the obligations of such Guarantor under its Guarantee, the Indenture and this Supplemental Indenture;

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

(iii) such Guarantor shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee, each stating that such consolidation, merger, sale, assignment, conveyance, transfer, lease or disposition and such supplemental indenture comply with the Indenture and this Supplemental Indenture, and thereafter all obligations of the predecessor shall terminate.

The provisions of this Section 6.1(b) shall not apply to any transaction (including any Asset Sale made in accordance with Section 3.9) with respect to any Guarantor (i) if the Guarantee of such Guarantor is released in connection with such transaction in accordance with the last sentence of Section 3.10 or (ii) if such transaction need not comply with the provisions set forth in



Section 3.9 because the properties or assets so sold, assigned, conveyed, transferred, leased or otherwise disposed of do not constitute an "Asset Sale" by operation of the provisions of clause (y) of the last sentence of the definition of Asset Sale.

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SECTION 6.2. Successor Substituted.  
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Upon any consolidation or merger, or any sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Company or any Guarantor (except, in the case of a Guarantor, pursuant to the transaction set forth in the last paragraph of Section 6.1 (b)) in accordance with Section 6.1, the successor Person formed by such consolidation or into which the Company or such Guarantor, as the case may be, is merged or the successor Person to which such sale, assignment, conveyance, transfer, lease or disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company or such Guarantor, as the case may be, under this Supplemental Indenture, the Indenture, the Notes and/or the Guarantees, as the case may be, with the same effect as if such successor had been named as the Company or such Guarantor, as the case may be, herein, in the Notes and/or in the Guarantees, as the case may be. When a successor assumes all the obligations of its predecessor under the Indenture and this Supplemental Indenture, the Notes or a Guarantee, as the case may be, the predecessor shall be released from those obligations; provided that in the case of a transfer by lease, the predecessor shall not be released from the payment of principal and interest on the Notes or a Guarantee, as the case may be.

ARTICLE SEVEN

SUBORDINATION OF NOTES  
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SECTION 7.1. Notes Subordinated to Senior  
Indebtedness.  
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The Company covenants and agrees, and the Trustee and each Holder of the Notes by his acceptance thereof likewise covenant and agree, that all Notes shall be issued subject to the provisions of this Article Seven; and each person holding any Note, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that all payments of the principal of and interest on the Notes by the Company shall, to the extent and in the manner set forth in this Article Seven, be subordinated and junior in right of payment to the prior payment in full in cash of all amounts payable under Senior Indebtedness.

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SECTION 7.2. No Payment on Notes in Certain  
Circumstances.  
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(a) No direct or indirect payment (excluding any payment or distribution of Permitted Junior Securities and excluding any payment from funds held in trust for the benefit of Holders pursuant to Article Four of this Supplemental Indenture (a "Defeasance Trust Payment")) by or on behalf of the Company of principal of, premium if, any, or interest on the Notes, whether pursuant to the terms of the Notes, upon acceleration, pursuant to an Offer, a Change of Control Offer or otherwise, shall be made if, at the time of such payment, there exists a default in the payment of all or any portion of the obligations on any Designated Senior Indebtedness, whether at maturity, on account of mandatory redemption or prepayment, acceleration or otherwise, and such default shall not have been cured or waived or the benefits of this sentence waived by or on behalf of the holders of such Designated Senior Indebtedness. In addition, during the continuance of any non-payment event of default with respect to any Designated Senior Indebtedness pursuant to which the maturity thereof may be immediately accelerated, and upon receipt by the Trustee of written notice (a "Payment Blockage Notice" ) from the holder or holders of such Designated Senior Indebtedness or the trustee or agent acting on behalf of the holders of such Designated Senior Indebtedness, then, unless and until such event of default has been cured or waived or has ceased to exist or such Designated Senior Indebtedness has been discharged or repaid in full in cash or the benefits of these provisions have been waived by the holders of such Designated Senior Indebtedness, no direct or indirect payment (excluding any payment or distribution of Permitted Junior Securities and excluding any Defeasance Trust Payment) shall be made by or on behalf of the Company of principal of, premium, if any, or interest on the Notes, to such Holders, during a period (a "Payment Blockage Period") commencing on the date of receipt of such notice by the Trustee and ending 179 days thereafter.

Notwithstanding anything herein or in the Notes to the contrary, (x) in no event shall a Payment Blockage Period extend beyond 179 days from the date

the Payment Blockage Notice in respect thereof was given, (y) there shall be a period of at least 181 consecutive days in each 360-day period when no Payment Blockage Period is in effect and (z) not more than one Payment Blockage Period may be commenced with respect to the Notes during any period of 360 consecutive days. No event of default that existed or was continuing on the date of commencement of any Payment Blockage Period with respect to the Designated Senior Indebtedness initiating such Payment Blockage Pe-

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riod (to the extent the holder of Designated Senior Indebtedness, or trustee or agent, giving notice commencing such Payment Blockage Period had knowledge of such existing or continuing event of default) may be, or be made, the basis for the commencement of any other Payment Blockage Period by the holder or holders of such Designated Senior Indebtedness or the trustee or agent acting on behalf of such Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such event of default has been cured or waived for a period of not less than 90 consecutive days.

(b) In the event that, notwithstanding the foregoing, the Company shall have made payment to the Trustee or any Holder when such payment is prohibited by Section 7.2(a), such payment shall be held in trust for the benefit of, and shall be paid over or delivered by the Trustee (if the Notice required by Section 7.6 has been received by the Trustee) or the Holder to, the holders of Designated Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Designated Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that, upon notice from the Trustee to the holders of Designated Senior Indebtedness that such prohibited payment has been made, the holders of the Designated Senior Indebtedness (or their representative or representatives or a trustee or trustees) notify the Trustee in writing of the amounts then due and owing on the Designated Senior Indebtedness, if any, and only the amounts specified in such notice to the Trustee shall be paid to the holders of Designated Senior Indebtedness.

SECTION 7.3. Payment Over of Proceeds upon  
Dissolution, etc.  
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(a) Upon any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities and excluding any Defeasance Trust Payment), upon any dissolution or winding-up or total liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all Senior Indebtedness shall first be paid in full in cash before the Holders of the Notes or the Trustee on behalf of such Holders shall be entitled to receive any payment by the Company of the principal of, premium, if any, or interest on the Notes, or any payment by the Company to acquire any of the Notes for cash, property or securities, or any distribution with respect to the Notes of any cash, prop-

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erty or securities (excluding any payment or distribution of Permitted Junior Securities and excluding any Defeasance Trust Payment). Before any payment may be made by, or on behalf of, the Company of the principal of, premium, if any, or interest on the Notes upon any such dissolution or winding-up or total liquidation or reorganization, any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities and excluding any Defeasance Trust Payment), to which the Holders of the Notes or the Trustee on their behalf would be entitled, but for the subordination provisions of the Indenture and this Supplemental Indenture, shall be made by the Company or by any receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, directly to the holders of the Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders) or their representatives or to the trustee or trustees or agent or agents under any agreement or indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all such Senior Indebtedness in full in cash after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of such Senior Indebtedness.

(b) In the event that, notwithstanding the foregoing provision prohibiting such payment or distribution, any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities and excluding any Defeasance Trust Payment), shall be paid by the Company to the Trustee or any Holder of Notes at a time when such payment or distribution is prohibited by Section 7.3(a) and before all obligations in respect of Senior Indebtedness are paid in full in cash, such payment or distribution shall be received and held in trust for the benefit of, and shall be paid over or delivered by the Trustee (if the Notice required by Section 7.6

has been received by the Trustee) or the Holder to, the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders) or their respective representatives, or to the trustee or trustees or agent or agents under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, for application to the payment of Senior Indebtedness remaining unpaid until all such Senior Indebtedness has been paid in full in cash after giving effect to any prior or

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concurrent payment, distribution or provision therefor to or for the holders of such Senior Indebtedness.

The consolidation of the Company with, or the merger of the Company with or into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided in Article Six shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 7.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article Six.

SECTION 7.4. Subrogation.  
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Upon the payment in full in cash of all Senior Indebtedness, or provision for payment, the Holders of the Notes shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company made on such Senior Indebtedness until the principal of and interest on the Notes shall be paid in full in cash; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Notes or the Trustee on their behalf would be entitled except for the provisions of this Article Seven, and no payment over pursuant to the provisions of this Article Seven to the holders of Senior Indebtedness by Holders of the Notes or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the Holders of the Notes, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. It is understood that the provisions of this Article Seven are and are intended solely for the purpose of defining the relative rights of the Holders of the Notes, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

If any payment or distribution to which the Holders of the Notes would otherwise have been entitled but for the provisions of this Article Seven shall have been applied, pursuant to the provisions of this Article Seven, to the payment of all amounts payable under Senior Indebtedness, then and in such case, the Holders of the Notes shall be entitled to receive from the holders of such Senior Indebtedness any payments or distributions received by such holders of Senior Indebtedness in excess of the amount required to make payment in full in cash of such Senior Indebtedness.

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SECTION 7.5. Obligations of Company  
Unconditional.  
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Nothing contained in this Article Seven or elsewhere in the Indenture, this Supplemental Indenture or in the Notes is intended to or shall impair, as among the Company and the Holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Notes the principal of and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Notes and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Holder of any Note or the Trustee on their behalf from exercising all remedies otherwise permitted by applicable law upon default under the Indenture and this Supplemental Indenture, subject to the rights, if any, under this Article Seven of the holders of the Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Without limiting the generality of the foregoing, nothing contained in this Article Seven shall restrict the right of the Trustee or the Holders of Notes to take any action to declare the Notes to be due and payable prior to their stated maturity pursuant to Section 5.1 or to pursue any rights or remedies hereunder; provided, however, that all Senior Indebtedness then due and payable shall first be paid in full in cash before the Holders of the Notes or the Trustee are entitled to receive any direct or indirect payment from the Company of principal of or interest on the Notes.

SECTION 7.6. Notice to Trustee.  
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The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Notes pursuant to the provisions of this Article Seven. The Trustee shall not be charged with knowledge of the existence of any event of default with respect to any Senior Indebtedness or of any other facts which would prohibit the making of any payment to or by the Trustee unless and until the Trustee shall have received notice in writing to that effect signed by an Officer of the Company, or by a holder of Senior Indebtedness or trustee or agent therefor; and prior to the receipt of any such written notice, the Trustee shall, subject to Article Eleven of the Indenture, be entitled to assume that no such facts exist; provided, however, that if the Trustee shall

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not have received the notice provided for in this Section 7.6 at least two Business Days prior to the date upon which by the terms of the Indenture and this Supplemental Indenture any moneys shall become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Note), then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive any moneys from the Company and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Nothing contained in this Section 7.6 shall limit the right of the holders of Senior Indebtedness to recover payments as contemplated by Section 7.3. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Senior Indebtedness (or a trustee on behalf of, or other representative of, such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or representative on behalf of any such holder.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article Seven, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article Seven, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 7.7. Reliance on Judicial Order or  
Certificate of Liquidating Agent.  
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Upon any payment or distribution of assets or securities referred to in this Article Seven, the Trustee and the Holders of the Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of the Notes for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other in-

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debtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Seven.

SECTION 7.8. Trustee's Relation to Senior  
Indebtedness.  
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The Trustee and any Paying Agent shall be entitled to all the rights set forth in this Article Seven with respect to any Senior Indebtedness which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Senior Indebtedness, and nothing in the Indenture or this Supplemental Indenture shall deprive the Trustee or any Paying Agent of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article Seven, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into the Indenture or this Supplemental Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness (except as provided in Section 7.3(b)). The Trustee shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to Holders of Notes or to the Company or to any other person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article Seven or otherwise.

SECTION 7.9. Subordination Rights Not Impaired  
by Acts or Omissions of the  
Company or Holders of Senior  
Indebtedness.  
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No right of any present or future holders of any Senior Indebtedness to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms of the Indenture or this Supplemental Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. The provisions of this Article Seven are intended to be for the benefit of, and shall be enforceable directly by, the holders of Senior Indebtedness.

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SECTION 7.10. Holders Authorize Trustee To  
Effectuate Subordination  
of Notes.  
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Each Holder of Notes by his acceptance of such Notes authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article Seven, and appoints the Trustee his attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, total liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of the Company, the filing of a claim for the unpaid balance of its or his Notes in the form required in those proceedings.

SECTION 7.11. This Article Not To Prevent  
Events of Default.  
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The failure to make a payment on account of principal of or interest on the Notes by reason of any provision of this Article Seven shall not be construed as preventing the occurrence of an Event of Default specified in clause (a) or (b) of Section 5.1.

SECTION 7.12. Trustee's Compensation Not  
Prejudiced.  
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Nothing in this Article Seven shall apply to amounts due to the Trustee pursuant to other sections in the Indenture or this Supplemental Indenture.

SECTION 7.13. No Waiver of Subordination  
Provisions.  
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Without in any way limiting the generality of Section 7.9, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Notes, without incurring responsibility to the Holders of the Notes and without impairing or releasing the subordination provided in this Article Seven or the obligations hereunder of the Holders of the Notes to the holders of Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness or any instrument evidencing the same or any agree-

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ment under which Senior Indebtedness is outstanding or secured; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (c) release any Person liable in any manner for the collection of Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 7.14. Subordination Provisions Not  
Applicable to Money Held in Trust  
for Holders; Payments May Be Paid  
Prior to Dissolution.  
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All money and United States Government Obligations deposited in trust with the Trustee pursuant to and in accordance with Article Four of this Supplemental Indenture shall be for the sole benefit of the Holders and shall not be subject to this Article Seven.

Nothing contained in this Article Seven or elsewhere in the Indenture

or this Supplemental Indenture shall prevent (i) the Company, except under the conditions described in Section 7.2, from making payments of principal of and interest on the Notes or from depositing with the Trustee any moneys for such payments or from effecting a termination of the Company's and the Guarantors' obligations under the Notes, the Indenture and this Supplemental Indenture as provided in Article Four, or (ii) the application by the Trustee of any moneys deposited with it for the purpose of making such payments of principal of and interest on the Notes, to the holders entitled thereto unless at least two Business Days prior to the date upon which such payment becomes due and payable, the Trustee shall have received the written notice provided for in Section 7.2(b) or in Section 7.6. The Company shall give prompt written notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of the Company.

SECTION 7.15. Acceleration of Notes.  
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If payment of the Notes is accelerated because of an Event of Default, the Company shall promptly notify holders of the Senior Indebtedness of the acceleration.

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ARTICLE EIGHT

SUBORDINATION OF GUARANTEE  
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SECTION 8.1. Guarantee Obligations  
Subordinated to Guarantor Senior  
Indebtedness.  
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Each Guarantor covenants and agrees, and the Trustee and each Holder of the Notes by his acceptance thereof likewise covenant and agree, that the Guarantee of such Guarantor shall be issued subject to the provisions of this Article Eight; and each person holding any Note, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that all payments of the principal of and interest on the Notes pursuant to the Guarantee made by or on behalf of any Guarantor shall, to the extent and in the manner set forth in this Article Eight, be subordinated and junior in right of payment to the prior payment in full in cash of all amounts payable under Guarantor Senior Indebtedness of such Guarantor.

SECTION 8.2. No Payment on Guarantees in  
Certain Circumstances.  
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(a) No direct or indirect payment (excluding any payment or distribution of Permitted Junior Securities) by or on behalf of any Guarantor of principal of or interest on the Notes pursuant to such Guarantor's Guarantee, whether pursuant to the terms of the Notes, upon acceleration or otherwise, shall be made if, at the time of such payment, there exists a default in the payment of all or any portion of the obligations on any Designated Guarantor Senior Indebtedness of such Guarantor, whether at maturity, on account of mandatory redemption or prepayment, acceleration or otherwise, and such default shall not have been cured or waived or the benefits of this sentence waived by or on behalf of the holders of such Designated Guarantor Senior Indebtedness. In addition, during the continuance of any non-payment event of default with respect to any Designated Guarantor Senior Indebtedness pursuant to which the maturity thereof may be immediately accelerated, and upon receipt by the Trustee of written notice (the "Guarantor Payment Blockage Notice") from the holder or holders of such Designated Guarantor Senior Indebtedness or the trustee or agent acting on behalf of such Designated Guarantor Senior Indebtedness, then, unless and until such non-payment event of default has been cured or waived or has ceased to exist or such Designated Guarantor Senior Indebtedness has been discharged or paid in full

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in cash or the benefits of these provisions have been waived by the holders of such Designated Guarantor Senior Indebtedness, no direct or indirect payment (excluding any payment or distribution of Permitted Junior Securities) shall be made by or on behalf of such Guarantor of principal or interest on the Notes during a period (a "Guarantor Blockage Period") commencing on the date of receipt of such notice by the Trustee and ending 179 days thereafter.

Notwithstanding anything herein or in the Notes to the contrary, (x) in no event shall a Guarantor Blockage Period extend beyond 179 days from the date the Guarantor Payment Blockage Notice in respect thereof was given, (y) there shall be a period of at least 181 consecutive days in each 360-day period when no Guarantor Blockage Period is in effect and (z) not more than one Guarantor Blockage Period may be commenced with respect to any Guarantor during any period of 360 consecutive days. No non-payment event of default that

existed or was continuing on the date of commencement of any Guarantor Blockage Period with respect to the Designated Guarantor Senior Indebtedness initiating such Guarantor Blockage Period (to the extent the holder of Designated Guarantor Senior Indebtedness, or trustee or agent, giving notice commencing such Guarantor Blockage Period had knowledge of such existing or continuing event of default) may be, or be made, the basis for the commencement of any other Guarantor Blockage Period by the holder or holders of such Designated Guarantor Senior Indebtedness or the trustee or agent acting on behalf of such Designated Guarantor Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such non-payment event of default has been cured or waived for a period of not less than 90 consecutive days.

(b) In the event that, notwithstanding the foregoing, any payment shall be made directly to the Trustee or any Holder when such payment is prohibited by Section 8.2(a), such payment shall be held in trust for the benefit of, and shall be paid over or delivered by the Trustee (if the Notice required by Section 8.6 has been received by the Trustee) or the Holder to, the holders of such Designated Guarantor Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Designated Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that, upon notice from the Trustee to the holders of such Designated Guarantor Senior Indebtedness that such prohibited payment has been made, the holders of such Designated Guarantor Senior Indebtedness (or their representative or representatives

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or a trustee or trustees) notify the Trustee in writing of the amounts then due and owing on such Designated Guarantor Senior Indebtedness, if any, and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Designated Guarantor Senior Indebtedness.

SECTION 8.3. Payment Over of Proceeds upon  
Dissolution, etc.  
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(a) Upon any payment or distribution of assets or securities of any Guarantor of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities), upon any dissolution or winding-up or total liquidation or reorganization of such Guarantor, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all Guarantor Senior Indebtedness of such Guarantor shall first be paid in full in cash before the Holders of the Notes or the Trustee on behalf of such Holders shall be entitled to receive any payment by such Guarantor of the principal of or interest on the Notes pursuant to such Guarantor's Guarantee, or any payment to acquire any of the Notes for cash, property or securities, or any distribution with respect to the Notes of any cash, property or securities (excluding any payment or distribution of Permitted Junior Securities). Before any payment may be made by, or on behalf of, any Guarantor of the principal of or interest on the Notes upon any such dissolution or winding-up or total liquidation or reorganization, any payment or distribution of assets or securities of such Guarantor of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities), to which the Holders of the Notes or the Trustee on their behalf would be entitled, but for the subordination provisions of the Indenture and this Supplemental Indenture, shall be made by such Guarantor or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, directly to the holders of the Guarantor Senior Indebtedness of such Guarantor (pro rata to such holders on the basis of the respective amounts of such Guarantor Senior Indebtedness held by such holders) or their representatives or to the trustee or trustees or agent or agents under any agreement or indenture pursuant to which any of such Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all such Guarantor Senior Indebtedness in full in cash after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of such Guarantor Senior Indebtedness.

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(b) In the event that, notwithstanding the foregoing provision prohibiting such payment or distribution, any payment or distribution of assets or securities of any Guarantor of any kind or character, whether in cash, property or securities (excluding any payment or distribution of Permitted Junior Securities), shall be made directly to the Trustee or any Holder of Notes at a time when such payment or distribution is prohibited by Section 8.3(a) and before all obligations in respect of the Guarantor Senior Indebtedness of such Guarantor are paid in full in cash, such payment or distribution shall be received and held in trust for the benefit of, and shall be paid over or delivered by the Trustee (if the Notice required by Section 8.6 has been received by the Trustee) or the Holder to, the holders of such Guarantor Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of such Guarantor Senior Indebtedness held by such holders) or their respective representatives, or to the trustee or trustees or agent or agents under any

indenture pursuant to which any of such Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, for application to the payment of such Guarantor Senior Indebtedness remaining unpaid until all such Guarantor Senior Indebtedness has been paid in full in cash after giving effect to any prior or concurrent payment, distribution or provision therefor to or for the holders of such Guarantor Senior Indebtedness.

The consolidation of any Guarantor with, or the merger of any Guarantor with or into, another corporation or the liquidation or dissolution of any Guarantor following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided in Article Six shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 8.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article Six.

SECTION 8.4. Subrogation.  
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Upon the payment in full in cash of all Guarantor Senior Indebtedness of a Guarantor, or provision for payment, the Holders of the Notes shall be subrogated to the rights of the holders of such Guarantor Senior Indebtedness to receive payments or distributions of cash, property or securities of such Guarantor made on such Guarantor Senior Indebtedness until the principal of and interest on the Notes shall be paid in full in cash; and, for the purposes of such subrogation, no payments or distributions to the holders of such Guarantor Senior Indebtedness of any cash, property or securities to which the Holders of the Notes or the Trustee on their behalf would be entitled except for the provisions of this Article Eight, and no payment over pursuant to the provisions of this Article Eight to the holders of such Guarantor Sen-

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ior Indebtedness by Holders of the Notes or the Trustee on their behalf shall, as between such Guarantor, its creditors other than holders of such Guarantor Senior Indebtedness, and the Holders of the Notes, be deemed to be a payment by such Guarantor to or on account of such Guarantor Senior Indebtedness. It is understood that the provisions of this Article Eight are and are intended solely for the purpose of defining the relative rights of the Holders of the Notes, on the one hand, and the holders of Guarantor Senior Indebtedness of each Guarantor, on the other hand.

If any payment or distribution to which the Holders of the Notes would otherwise have been entitled but for the provisions of this Article Eight shall have been applied, pursuant to the provisions of this Article Eight, to the payment of all amounts payable under Guarantor Senior Indebtedness, then and in such case, the Holders of the Notes shall be entitled to receive from the holders of such Guarantor Senior Indebtedness any payments or distributions received by such holders of Guarantor Senior Indebtedness in excess of the amount required to make payment in full in cash of such Guarantor Senior Indebtedness.

SECTION 8.5. Obligations of Guarantors  
Unconditional.  
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Nothing contained in this Article Eight or elsewhere in the Indenture or this Supplemental Indenture or in the Notes or the Guarantees is intended to or shall impair, as among each of the Guarantors and the Holders of the Notes, the obligation of each Guarantor, which is absolute and unconditional, to pay to the Holders of the Notes the principal of and interest on the Notes as and when the same shall become due and payable in accordance with the terms of the Guarantee of such Guarantor, or is intended to or shall affect the relative rights of the Holders of the Notes and creditors of any Guarantor other than the holders of Guarantor Senior Indebtedness of such Guarantor, nor shall anything herein or therein prevent the Holder of any Note or the Trustee on their behalf from exercising all remedies otherwise permitted by applicable law upon default under the Indenture or this Supplemental Indenture, subject to the rights, if any, under this Article Eight of the holders of Guarantor Senior Indebtedness in respect of cash, property or

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securities of any Guarantor received upon the exercise of any such remedy.

Without limiting the generality of the foregoing, nothing contained in this Article Eight shall restrict the right of the Trustee or the Holders of Notes to take any action to declare the Notes to be due and payable prior to their stated maturity pursuant to Section 5.1 or to pursue any rights or remedies hereunder; provided, however, that all Guarantor Senior Indebtedness of any Guarantor then due and payable shall first be paid in full before the Holders of the Notes or the Trustee are entitled to receive any direct or indirect payment from such Guarantor of principal of or interest on the Notes pursuant to such Guarantor's Guarantee.



SECTION 8.6. Notice to Trustee.  
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The Company and each Guarantor shall give prompt written notice to the Trustee of any fact known to the Company or such Guarantor which would prohibit the making of any payment to or by the Trustee in respect of the Notes pursuant to the provisions of this Article Eight. The Trustee shall not be charged with knowledge of the existence of any event of default with respect to any Guarantor Senior Indebtedness or of any other facts which would prohibit the making of any payment to or by the Trustee unless and until the Trustee shall have received notice in writing at its office to that effect signed by an Officer of the Company or such Guarantor, or by a holder of Guarantor Senior Indebtedness or trustee or agent therefor; and prior to the receipt of any such written notice, the Trustee shall, subject to Article Eleven of the Indenture, be entitled to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 8.6 at least two Business Days prior to the date upon which by the terms of the Indenture or this Supplemental Indenture any moneys shall become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Note), then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive any moneys from any Guarantor and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Nothing contained in this Section 8.6 shall limit the right of the holders of Guarantor Senior Indebtedness to recover payments as contemplated by Section 8.3. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Guarantor Senior Indebtedness

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(or a trustee on behalf of, or other representative of, such holder) to establish that such notice has been given by a holder of such Guarantor Senior Indebtedness or a trustee or representative on behalf of any such holder.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Guarantor Senior Indebtedness to participate in any payment or distribution pursuant to this Article Eight, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Guarantor Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article Eight, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 8.7. Reliance on Judicial Order or  
Certificate of Liquidating Agent.  
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Upon any payment or distribution of assets or securities of a Guarantor referred to in this Article Eight, the Trustee and the Holders of the Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of the Notes for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of Guarantor Senior Indebtedness of such Guarantor and other indebtedness of such Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Eight.

SECTION 8.8. Trustee's Relation to Guarantor  
Senior Indebtedness.  
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The Trustee and any Paying Agent shall be entitled to all the rights set forth in this Article Eight with respect to any Guarantor Senior Indebtedness which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Guarantor Senior Indebtedness, and nothing in this Supplemental Indenture shall deprive the Trustee or any Paying Agent of any of its rights as such holder.

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With respect to the holders of Guarantor Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article Eight, and no implied covenants or obligations with respect to the holders of Guarantor Senior Indebtedness shall be read into the Indenture or this Supplemental Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Guarantor Senior Indebtedness (except as provided in Section 8.3(b)). The Trustee shall not be liable to any such holders if the Trustee

shall in good faith mistakenly pay over or distribute to Holders of Notes or to the Company or to any other person cash, property or securities to which any holders of Guarantor Senior Indebtedness shall be entitled by virtue of this Article Eight or otherwise.

SECTION 8.9. Subordination Rights Not Impaired  
by Acts or Omissions of the  
Guarantors or Holders of Indebtedness.  
Guarantor Senior  
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No right of any present or future holders of any Guarantor Senior Indebtedness to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Guarantor or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by any Guarantor with the terms of the Indenture or this Supplemental Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. The provisions of this Article Eight are intended to be for the benefit of, and shall be enforceable directly by, the holders of Guarantor Senior Indebtedness.

SECTION 8.10. Holders Authorize Trustee To  
Effectuate Subordination of  
Guarantee.  
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Each Holder of Notes by his acceptance of such Notes authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article Eight, and appoints the Trustee his attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, total liquidation or reorganization of any Guarantor (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of such Guarantor, the filing of a claim for the unpaid

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balance of its or his Notes in the form required in those proceedings.

SECTION 8.11. This Article Not To Prevent  
Events of Default.  
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The failure to make a payment on account of principal of or interest on the Notes by reason of any provision of this Article Eight shall not be construed as preventing the occurrence of an Event of Default specified in clause (a) or (b) of Section 5.1.

SECTION 8.12. Trustee's Compensation Not  
Prejudiced.  
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Nothing in this Article Eight shall apply to amounts due to the Trustee pursuant to other sections in the Indenture or this Supplemental Indenture.

SECTION 8.13. No Waiver of Guarantee  
Subordination Provisions.  
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Without in any way limiting the generality of Section 8.9, the holders of Guarantor Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Notes, without incurring responsibility to the Holders of the Notes and without impairing or releasing the subordination provided in this Article Eight or the obligations hereunder of the Holders of the Notes to the holders of Guarantor Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Guarantor Senior Indebtedness or any instrument evidencing the same or any agreement under which Guarantor Senior Indebtedness is outstanding or secured; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Guarantor Senior Indebtedness; (c) release any Person liable in any manner for the collection of Guarantor Senior Indebtedness; and (d) exercise or refrain from exercising any rights against any Guarantor and any other Person.

SECTION 8.14. Payments May Be Paid Prior to  
Dissolution.  
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Nothing contained in this Article Eight or elsewhere in the Indenture or this Supplemental Indenture shall prevent (i) a Guarantor, except under the conditions described in Section 8.2, from making payments of principal of and interest on

the Notes, or from depositing with the Trustee any moneys for such payments, or (ii) the application by the Trustee of any moneys deposited with it for the purpose of making such payments of principal of and interest on the Notes, to the holders entitled thereto unless at least two Business Days prior to the date upon which such payment becomes due and payable, the Trustee shall have received the written notice provided for in Section 8.2(b) or in Section 8.6. The Guarantors shall give prompt written notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of such Guarantor.

ARTICLE NINE

MISCELLANEOUS PROVISIONS

SECTION 9.1. Ratification of Indenture.

Except as expressly modified or amended hereby, the Indenture continues in full force and effect and is in all respects confirmed and preserved.

SECTION 9.2. Governing Law.

This Supplemental Indenture, the Notes and the Guarantees will be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the conflicts of law principles thereof. This Supplemental Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and shall, to the extent applicable, be governed by such provisions.

SECTION 9.3. Counterparts.

This Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE TEN

GUARANTEES

The following provisions of this Article Ten apply to the Notes (but not with respect to any other series of Debt Se-

curities) and shall replace in its entirety Article Fourteen of the Indenture.

SECTION 10.1. Guarantors' Guarantee.

For value received, each of the Guarantors, in accordance with this Article Ten, hereby absolutely, unconditionally and irrevocably guarantees, jointly and severally, to the Trustee and the Holders, as if the Guarantors were the principal debtor, the punctual payment and performance when due of all Indenture Obligations (which for purposes of this Guarantee shall also be deemed to include all commissions, fees, charges, costs and other expenses (including reasonable legal fees and disbursements of one counsel) arising out of or incurred by the Trustee or the Holders in connection with the enforcement of this Guarantee).

SECTION 10.2. Continuing Guarantee; No Right of Set-Off; Independent Obligation.

(a) This Guarantee shall be a continuing guarantee of the payment and performance of all Indenture Obligations and shall remain in full force and effect until the payment in full of all of the Indenture Obligations and shall apply to and secure any ultimate balance due or remaining unpaid to the Trustee or the Holders; and this Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or from time to time of any sum of money for the time being due or remaining unpaid to the Trustee or the Holders. Each Guarantor, jointly and severally, covenants and agrees to comply with all obligations, covenants, agreements and provisions applicable to it in the Indenture and this Supplemental Indenture including those set forth in Article Six. Without limiting the generality of the foregoing, each of the Guarantors' liability shall extend to all amounts which constitute part of the Indenture Obligations and would be owed by the Company

under this Supplemental Indenture, the Indenture and the Notes but for the fact that they are unenforceable, reduced, limited, impaired, suspended or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company.

(b) Each Guarantor, jointly and severally, hereby guarantees that the Indenture Obligations will be paid to the Trustee without set-off or counterclaim or other reduction whatsoever (whether for taxes, withholding or otherwise) in lawful currency of the United States of America.

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(c) Each Guarantor, jointly and severally, guarantees that the Indenture Obligations shall be paid strictly in accordance with their terms regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the holders of the Notes.

(d) Each Guarantor's liability to pay or perform or cause the performance of the Indenture Obligations under this Guarantee shall arise forthwith after demand for payment or performance by the Trustee has been given to the Guarantors in the manner prescribed in Section 3.9 of the Indenture.

(e) Except as provided herein, the provisions of this Article Ten cover all agreements between the parties hereto relative to this Guarantee and none of the parties shall be bound by any representation, warranty or promise made by any Person relative thereto which is not embodied herein; and it is specifically acknowledged and agreed that this Guarantee has been delivered by each Guarantor free of any conditions whatsoever and that no representations, warranties or promises have been made to any Guarantor affecting its liabilities hereunder, and that the Trustee shall not be bound by any representations, warranties or promises now or at any time hereafter made by the Company to any Guarantor.

SECTION 10.3. Guarantee Absolute.  
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The obligations of the Guarantors hereunder are independent of the obligations of the Company under the Notes and this Supplemental Indenture and a separate action or actions may be brought and prosecuted against any Guarantor whether or not an action or proceeding is brought against the Company and whether or not the Company is joined in any such action or proceeding. The liability of the Guarantors hereunder is irrevocable, absolute and unconditional and (to the extent permitted by law) the liability and obligations of the Guarantors hereunder shall not be released, discharged, mitigated, waived, impaired or affected in whole or in part by:

(a) any defect or lack of validity or enforceability in respect of any Indebtedness or other obligation of the Company or any other Person under this Supplemental Indenture, the Indenture or the Notes, or any agreement or instrument relating to any of the foregoing;

(b) any grants of time, renewals, extensions, indulgences, releases, discharges or modifications which the

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Trustee or the Holders may extend to, or make with, the Company, any Guarantor or any other Person, or any change in the time, manner or place of payment of, or in any other term of, all or any of the Indenture Obligations, or any other amendment or waiver of, or any consent to or departure from, this Supplemental Indenture, the Indenture or the Notes, including any increase or decrease in the Indenture Obligations;

(c) the taking of security from the Company, any Guarantor or any other Person, and the release, discharge or alteration of, or other dealing with, such security;

(d) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction by any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Indenture Obligations and the obligations of any Guarantor hereunder;

(e) the abstention from taking security from the Company, any Guarantor or any other Person or from perfecting, continuing to keep perfected or taking advantage of any security;

(f) any loss, diminution of value or lack of enforceability of any security received from the Company, any Guarantor or any other Person, and including any other guarantees received by the Trustee;

(g) any other dealings with the Company, any Guarantor or any other Person, or with any security;

(h) the Trustee's or the Holders' acceptance of compositions from the Company or any Guarantor;

(i) the application by the Holders or the Trustee of all monies at any time and from time to time received from the Company, any Guarantor or any other Person on account of any indebtedness and liabilities owing by the Company or any Guarantor to the Trustee or the Holders, in such manner as the Trustee or the Holders deems best and the changing of such application in whole or in part and at any time or from time to time, or any manner of application of collateral, or proceeds thereof, to all or any of the Indenture Obligations, or the manner of sale of any Collateral;

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(j) the release or discharge of the Company or any Guarantor of the Notes or of any Person liable directly as surety or otherwise by operation of law or otherwise for the Notes, other than an express release in writing given by the Trustee, on behalf of the Holders, of the liability and obligations of any Guarantor hereunder;

(k) any change in the name, business, capital structure or governing instrument of the Company or any Guarantor or any refinancing or restructuring of any of the Indenture Obligations;

(l) the sale of the Company's or any Guarantor's business or any part thereof;

(m) subject to Section 10.14, any merger or consolidation, arrangement or reorganization of the Company, any Guarantor, any Person resulting from the merger or consolidation of the Company or any Guarantor with any other Person or any other successor to such Person or merged or consolidated Person or any other change in the corporate existence, structure or ownership of the Company or any Guarantor;

(n) the insolvency, bankruptcy, liquidation, winding-up, dissolution, receivership or distribution of the assets of the Company or its assets or any resulting discharge of any obligations of the Company (whether voluntary or involuntary) or of any Guarantor or the loss of corporate existence;

(o) subject to Section 10.14, any arrangement or plan of reorganization affecting the Company or any Guarantor;

(p) any other circumstance (including any statute of limitations) that might otherwise constitute a defense available to, or discharge of, the Company or any Guarantor; or

(q) any modification, compromise, settlement or release by the Trustee, or by operation of law or otherwise, of the Indenture Obligations or the liability of the Company or any other obligor under the Notes, in whole or in part, and any refusal of payment by the Trustee, in whole or in part, from any other obligor or other guarantor in connection with any of the Indenture Obligations, whether

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or not with notice to, or further assent by, or any reservation of rights against, each of the Guarantors.

#### SECTION 10.4. Right To Demand Full Performance.

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In the event of any demand for payment or performance by the Trustee from any Guarantor hereunder, the Trustee or the Holders shall have the right to demand its full claim and to receive all dividends or other payments in respect thereof until the Indenture Obligations have been paid in full, and the Guarantors shall continue to be jointly and severally liable hereunder for any balance which may be owing to the Trustee or the Holders by the Company under this Supplemental Indenture, the Indenture and the Notes. The retention by the Trustee or the Holders of any security, prior to the realization by the Trustee or the Holders of its rights to such security upon foreclosure thereon, shall not, as between the Trustee and any Guarantor, be considered as a purchase of such security, or as payment, satisfaction or reduction of the Indenture Obligations due to the Trustee or the Holders by the Company or any part thereof.

#### SECTION 10.5. Waivers.

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(a) Each Guarantor hereby expressly waives (to the extent permitted by law) notice of the acceptance of this Guarantee and notice of the existence, renewal, extension or the non-performance, non-payment, or non-observance on the part of the Company of any of the terms, covenants, conditions and provisions of this Supplemental Indenture, the Indenture or the Notes or any other notice whatsoever to or upon the Company or such Guarantor with respect to the

Indenture Obligations. Each Guarantor hereby acknowledges communication to it of the terms of this Supplemental Indenture, the Indenture and the Notes and all of the provisions therein contained and consents to and approves the same. Each Guarantor hereby expressly waives (to the extent permitted by law) diligence, presentment, protest and demand for payment.

(b) Without prejudice to any of the rights or recourses which the Trustee or the Holders may have against the Company, each Guarantor hereby expressly waives (to the extent permitted by law) any right to require the Trustee or the Holders to:

(i) initiate or exhaust any rights, remedies or recourse against the Company, any Guarantor or any other Person;

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(ii) value, realize upon, or dispose of any security of the Company or any other Person held by the Trustee or the Holders; or

(iii) initiate or exhaust any other remedy which the Trustee or the Holders may have in law or equity;

before requiring or becoming entitled to demand payment from such Guarantor under this Guarantee.

SECTION 10.6. The Guarantors Remain Obligated in Event the Company Is No Longer Obligated to Discharge Indenture Obligations.  
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It is the express intention of the Trustee and the Guarantors that if for any reason the Company has no legal existence, is or becomes under no legal obligation to discharge the Indenture Obligations owing to the Trustee or the Holders by the Company or if any of the Indenture Obligations owing by the Company to the Trustee or the Holders becomes irrecoverable from the Company by operation of law or for any reason whatsoever, this Guarantee and the covenants, agreements and obligations of the Guarantors contained in this Article Ten shall nevertheless be binding upon the Guarantors, as principal debtor, until such time as all such Indenture Obligations have been paid in full to the Trustee and all Indenture Obligations owing to the Trustee or the Holders by the Company have been discharged, or such earlier time as Section 4.1 shall apply to the Notes and the Guarantors shall be responsible for the payment thereof to the Trustee or the Holders upon demand.

SECTION 10.7. Fraudulent Conveyance; Subrogation.  
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(a) Any term or provision of this Guarantee to the contrary notwithstanding, the aggregate amount of the Indenture Obligations guaranteed hereunder shall be reduced to the extent necessary to prevent this Guarantee from violating or becoming voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

(b) Each Guarantor hereby waives all rights of subrogation or contribution, whether arising by contract or operation of law (including without limitation, any such right arising under federal bankruptcy law) or otherwise by reason of any payment by it pursuant to the provisions of this Article Ten.

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SECTION 10.8. Guarantee Is in Addition to Other Security.  
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This Guarantee shall be in addition to and not in substitution for any other guarantees or other security which the Trustee may now or hereafter hold in respect of the Indenture Obligations owing to the Trustee or the Holders by the Company and (except as may be required by law) the Trustee shall be under no obligation to marshal in favor of each of the Guarantors any other guarantees or other security or any moneys or other assets which the Trustee may be entitled to receive or upon which the Trustee or the Holders may have a claim.

SECTION 10.9. Release of Security Interests.  
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Without limiting the generality of the foregoing and except as otherwise provided in this Supplemental Indenture, each Guarantor hereby consents and agrees, to the fullest extent permitted by applicable law, that the rights of the Trustee hereunder, and the liability of the Guarantors hereunder, shall not be affected by any and all releases for any purpose of any collateral, if any, from the Liens and security interests created by any collateral document and that this Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Indenture Obligations is rescinded or must otherwise be returned by the Trustee upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

SECTION 10.10. No Bar to Further Actions.  
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Except as provided by law, no action or proceeding brought or instituted under Article Ten and this Guarantee and no recovery or judgment in pursuance thereof shall be a bar or defense to any further action or proceeding which may be brought under Article Ten and this Guarantee by reason of any further default or defaults under Article Ten and this Guarantee or in the payment of any of the Indenture Obligations owing by the Company.

SECTION 10.11. Failure To Exercise Rights Shall Not Operate as a Waiver; No Suspension of Remedies.  
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(a) No failure to exercise and no delay in exercising, on the part of the Trustee or the Holders, any right, power, privilege or remedy under this Article Ten and this

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Guarantee shall operate as a waiver thereof, nor shall any single or partial exercise of any rights, power, privilege or remedy preclude any other or further exercise thereof, or the exercise of any other rights, powers, privileges or remedies. The rights and remedies herein provided for are cumulative and not exclusive of any rights or remedies provided in law or equity.

(b) Nothing contained in this Article Ten shall limit the right of the Trustee or the Holders to take any action to accelerate the maturity of the Notes pursuant to Article Five or to pursue any rights or remedies hereunder or under applicable law.

SECTION 10.12. Trustee's Duties; Notice to Trustee.  
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(a) Any provision in this Article Ten or elsewhere in this Supplemental Indenture or the Indenture allowing the Trustee to request any information or to take any action authorized by, or on behalf of any Guarantor, shall be permissive and shall not be obligatory on the Trustee except as the Holders may direct in accordance with the provisions of this Supplemental Indenture and the Indenture or where the failure of the Trustee to request any such information or to take any such action arises from the Trustee's negligence or willful misconduct.

(b) The Trustee shall not be required to inquire into the existence, powers or capacities of the Company, any Guarantor or the officers, directors or agents acting or purporting to act on their respective behalf.

SECTION 10.13. Successors and Assigns.  
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All terms, agreements and conditions of this Article Ten shall extend to and be binding upon each Guarantor and its successors and permitted assigns and shall inure to the benefit of and may be enforced by the Trustee and its successors and assigns; provided, however, that the Guarantors may not assign any of their rights or obligations hereunder other than in accordance with Article Six.

SECTION 10.14. Release of Guarantee.  
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Concurrently with the payment in full of all of the Indenture Obligations, the Guarantors shall be released from and relieved of their obligations under this Article Ten. Upon

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the delivery by the Company to the Trustee of an Officer's Certificate and, if requested by the Trustee, an Opinion of Counsel to the effect that the transaction giving rise to the release of this Guarantee was made by the Company in accordance with the provisions of this Supplemental Indenture and the Notes, the Trustee shall execute any documents reasonably required in order to evidence the release of the Guarantors from their obligations under this Guarantee. If any of the Indenture Obligations are revived and reinstated after the termination of this Guarantee, then all of the obligations of the Guarantors under this Guarantee shall be revived and reinstated as if this Guarantee had not been terminated until such time as the Indenture Obligations are paid in full, and each Guarantor shall enter into an amendment to this Guarantee, reasonably satisfactory to the Trustee, evidencing such revival and reinstatement.

This Guarantee shall terminate with respect to each Guarantor and shall be automatically and unconditionally released and discharged as provided in Section 3.10.

SECTION 10.15. Execution of Guarantee.  
-----

To evidence the Guarantee, each Guarantor hereby agrees to execute the guarantee substantially in the form set forth in Exhibit C hereto, to be endorsed on each Note authenticated and delivered by the Trustee and that this Supplemental Indenture and the Indenture shall be executed on behalf of each Guarantor by its Chairman of the Board, its President, its Chief Operating Officer, its Chief Financial Officer, its Treasurer, one of its Vice Presidents, or one of its other officers (or officer's of the Company) duly authorized by such Guarantor's board of directors, and attested by an authorized officer. The signature of any of these officers on the Notes may be manual or facsimile.

ARTICLE ELEVEN

SUPPLEMENTAL INDENTURES  
-----

The following provisions of this Article Eleven apply to the Notes (but not with respect to any other series of Debt Securities) and shall replace in their entirety Sections 12.1 and 12.2 of the Indenture. To the extent this Article Eleven is inconsistent with or conflicts with any provisions of Arti-

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cle Twelve in the Indenture the provisions of this Article Eleven shall govern.

SECTION 11.1. Supplemental Indentures and Agreements Without Consent of Holders.  
-----

Without the consent of any Holders, the Company and the Guarantors, if any, when authorized by a Certified Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto or agreements or other instruments with respect to any Guarantee, in form and substance satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company, any Guarantor or any other obligor upon the Notes, and the assumption by any such successor of the covenants of the Company or such Guarantor or obligor herein and in the Notes and in any Guarantee;

(b) to add to the covenants of the Company, any Guarantor or any other obligor upon the Notes for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company, any Guarantor or any other obligor upon the Notes, as applicable, herein, in the Notes or in any Guarantee;

(c) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, in the Notes or in any Guarantee, or to make any other provisions with respect to matters or questions arising under this Supplemental Indenture, the Indenture, the Notes or any Guarantee; provided that, in each case, such provisions shall not adversely affect the interests of the Holders;

(d) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Supplemental Indenture and the Indenture under the Trust Indenture Act, as contemplated by Section 12.4 of the Indenture or otherwise;

(e) to add a Guarantor pursuant to the requirements of Section 3.10;

(f) to evidence and provide the acceptance of the appointment of a successor trustee hereunder; or

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(g) to mortgage, pledge, hypothecate or grant a security interest in favor of the Trustee for the benefit of the Holders as additional security for the payment and performance of the Indenture Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Trustee pursuant to this Supplemental Indenture, the Indenture or otherwise.

SECTION 11.2. Supplemental Indentures and Agreements with Consent of Holders.  
-----

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes, by act of said Holders delivered to the Company, each Guarantor, if any, and the Trustee, the Company and each Guarantor (if a party thereto) when authorized by a Certified Resolution, and the Trustee, may enter into an indenture or indentures



supplemental hereto or agreements or other instruments with respect to any Guarantee in form and substance satisfactory to the Trustee, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Supplemental Indenture or the Indenture or of modifying in any manner the rights of the Holders under this Supplemental Indenture, the Indenture, the Notes or any Guarantee; provided, however, that no such supplemental indenture, agreement or instrument shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) change the Stated Maturity of the principal of, or any installment of interest on, any Note, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change the coin or currency in which the principal of any Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the redemption date thereof);

(b) amend, change or modify the obligation of the Company to make and consummate an Offer with respect to any Asset Sale or Asset Sales in accordance with Section 3.9 or the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control in accordance with Section 3.11, including amend-

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ing, changing or modifying any definitions with respect thereto;

(c) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Supplemental Indenture or the Indenture or certain defaults hereunder and their consequences provided for in this Supplemental Indenture or the Indenture or with respect to any Guarantee;

(d) modify any of the provisions of this Section 11.2, Section 7.5 of the Indenture or Section 3.17 of this Supplemental Indenture, except to increase any such percentage or to provide that certain other provisions of this Supplemental Indenture or the Indenture cannot be modified or waived without the consent of the Holder of each Note affected thereby;

(e) except as otherwise permitted under Article Six, consent to the assignment or transfer by the Company or any Guarantor of any of its rights and obligations under this Supplemental Indenture or the Indenture; or

(f) amend or modify any of the provisions of this Supplemental Indenture or the Indenture relating to the subordination of the Notes or any Guarantee in any manner adverse to the Holders of the Notes or any Guarantee.

Upon the written request of the Company and each Guarantor, if any, accompanied by a copy of a Certified Resolution authorizing the execution of any such supplemental indenture or Guarantee, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall join with the Company and each Guarantor in the execution of such supplemental indenture or Guarantee.

It shall not be necessary for any act of Holders under this Section 11.2 to approve the particular form of any proposed supplemental indenture or Guarantee or agreement or instrument relating to any Guarantee, but it shall be sufficient if such act shall approve the substance thereof.

SECTION 11.3. Effect on Senior Indebtedness.  
-----

No supplemental indenture shall adversely affect the rights under Articles Seven and Eight hereof, or any defini-

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tions or provisions related thereto, or the Guarantees of any holder of Senior Indebtedness or Senior Guarantor Indebtedness unless the requisite holders of each issue of Senior Indebtedness or Senior Guarantor Indebtedness affected thereby shall have consented to such supplemental indenture.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first written above.

CANANDAIGUA BRANDS, INC.

By:

-----  
Name:  
Title:

BATAVIA WINE CELLARS, INC.

By: -----  
Name:  
Title:

BARTON INCORPORATED

By: -----  
Name:  
Title:

BARTON BRANDS, LTD.

By: -----  
Name:  
Title:

BARTON BEERS, LTD.

By: -----  
Name:  
Title:

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BARTON BRANDS OF CALIFORNIA, INC.

By: -----  
Name:  
Title:

BARTON BRANDS OF GEORGIA, INC.

By: -----  
Name:  
Title:

BARTON DISTILLERS IMPORT CORP.

By: -----  
Name:  
Title:

BARTON FINANCIAL CORPORATION

By: -----  
Name:  
Title:

STEVENS POINT BEVERAGE CO.

By: -----  
Name:  
Title:

CANANDAIGUA LIMITED

By: -----  
Name:  
Title:

MONARCH IMPORT COMPANY

By: \_\_\_\_\_  
Name:  
Title:

CANANDAIGUA WINE COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

THE VIKING DISTILLERY, INC.

By: \_\_\_\_\_  
Name:  
Title:

CANANDAIGUA EUROPE LIMITED

By: \_\_\_\_\_  
Name:  
Title:

ROBERTS TRADING CORP.

By: \_\_\_\_\_  
Name:  
Title:

POLYPHENOLICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

Exhibit A to  
Supplemental Indenture

Face of Note

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE OF A DEPOSITORY OR A SUCCESSOR DEPOSITORY. TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTIONS 2.6 AND 2.13 OF THE INDENTURE AND SECTION 2.8 OF THE SUPPLEMENTAL INDENTURE./\*/

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT AND ANY SUCH CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME

AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN./\*\*/

CANANDAIGUA BRANDS, INC.

8 1/2% SENIOR SUBORDINATED NOTE DUE 2009

CUSIP NO. \_\_\_\_\_

No. \$

- - - - -  
/\*/ Include this legend on any Global Security.

/\*\*/ Include this legend on any Global Security issued to Cede & Co. as nominee of The Depository Trust Company.

CANANDAIGUA BRANDS, INC., a Delaware corporation (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to or registered assigns, the principal sum of \_\_\_\_\_ United States dollars on March 1, 2009, at the office or agency of the Company referred to below, and to pay interest thereon from March 4, 1999, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on March 1 and September 1, in each year, commencing September 1, 1999 at the rate of 8 1/2% per annum, in United States dollars, until the principal hereof is paid or duly provided for. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the regular record date for such interest, which shall be February 15 or August 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid, or duly provided for, and interest on such defaulted interest at the interest rate borne by the Notes, to the extent lawful, shall forthwith cease to be payable to the Holder on such regular record date, and may be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice whereof shall be given to Holders of Notes not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of, premium, if any, and interest on this Note will be made at the office or agency of the Company maintained for that purpose, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company, (i) in the case of a Global Security, by wire or book entry transfer to the Depository Trust Company or its nominee, or (ii) in all other cases, by check mailed to the address of the Person entitled thereto as such address shall appear on the Security Register. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

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Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Note is entitled to the benefits of Guarantees by each of the Guarantors of the punctual payment when due of the Indenture Obligations made in favor of the Trustee for the benefit of the Holders. Reference is hereby made to Article Ten of the Supplemental Indenture for a statement of the respective rights, limitations of rights, duties and obligations under the Guarantees of each of the Guarantors.

Unless the certificate of authentication hereon has been duly executed by the Trustee referred to on the reverse hereof or by the authenticating agent appointed as provided in the Indenture by manual signature, this Note shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed by the manual or facsimile signature of its authorized officers.

Dated:

CANANDAIGUA BRANDS, INC.

By:

-----  
Name:  
Title:

Attest:

-----  
Authorized Officer

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TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the 8 1/2% Senior Subordinated Notes due 2009 referred to in the within-mentioned Indenture.

As Trustee, Harris Trust and Savings Bank

By:

-----  
Name:  
Title:

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Reverse of Note

CANANDAIGUA BRANDS, INC.

8 1/2% SENIOR SUBORDINATED NOTE DUE 2009

This Note is one of a duly authorized issue of Notes of the Company designated as its 8 1/2% Senior Subordinated Notes due 2009 (herein called the "Notes"), limited in aggregate principal amount to \$200,000,000, issued under an indenture (the "Basic Indenture") dated as of February 25, 1999, among the Company, the Guarantors and Harris Trust and Savings Bank, as trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture (as defined)), as supplemented by a supplemental indenture dated as of February 25, 1999 (the "Supplemental Indenture" and together with the Basic Indenture, the "Indenture"), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Guarantors, the Trustee and the Holders of the Notes, and of the terms upon which the Notes are, and are to be, authenticated and delivered.

The Indenture contains provisions for defeasance at any time of (a) the entire Indebtedness on the Notes or (b) certain restrictive covenants and related Defaults and Events of Default, in each case upon compliance with certain conditions set forth therein.

The Indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness (as defined in the Indenture), whether outstanding on the date of the Indenture or thereafter, and this Note is issued subject to such provisions. Each Holder of this Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in the Indenture and (c) appoints the Trustee his attorney-in-fact for such purpose; provided, however, that, subject to Section 4.4 of the Supplemental Indenture, the Indebtedness evidenced by this Note shall cease to be so subordinate and subject in right of payment upon any defeasance of this Note referred to in clause (a) or (b) of the preceding paragraph.

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The Notes will be redeemable at the option of the Company, in whole or in part, at any time on or after March 1, 2004, at the redemption prices (expressed as percentages of the principal amount) set forth below plus accrued and unpaid interest, if any, to the redemption date (subject to the right of Holders of record on the relevant regular record dates to receive interest due on the relevant Interest Payment Dates), if redeemed during the 12-month period beginning March 1 of the years indicated below:

Year - - - - -	Redemption Price -----
2004.....	104.250%
2005.....	102.833%
2006.....	101.417%
2007 and thereafter.....	100.000%

In addition, at any time and from time to time prior to March 1, 2002, the Company may redeem in the aggregate up to 35% of the originally issued aggregate principal amount of the Notes with the net cash proceeds of one or more Public Equity Offerings by the Company at a redemption price in cash equal to 108.500% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date); provided, however, that at least 65% of the originally issued aggregate principal amount of the Notes must remain outstanding immediately after giving effect to each such redemption (excluding any Notes held by the Company or any of its Affiliates). Notice of any such redemption must be given within 60 days after the date of the closing of the relevant Public Equity Offering of the Company.

Upon the occurrence of a Change of Control, each Holder may require the Company to repurchase all or a portion of such Holder's Notes in an amount of \$1,000 or integral multiples of \$1,000, at a purchase price in cash equal to 101% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date of repurchase.

Under certain circumstances, in the event the Net Cash Proceeds received by the Company from any Asset Sale, which proceeds are not used to repay Senior Indebtedness or invested in properties or assets used in the businesses of the Company or reasonably related thereto, exceeds a specified amount the Company will be required to apply such proceeds to

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the repayment of the Notes and certain indebtedness ranking pari passu to the Notes.

In the case of any redemption or repurchase of Notes in accordance with the Indenture, interest installments whose Stated Maturity is on or prior to the redemption date will be available to the Holders of such Notes of record as of the close of business on the relevant regular record date referred to on the face hereof. Notes (or portions thereof) for whose redemption and payment provision is made in accordance with the Indenture shall cease to bear interest from and after the date of redemption.

In the event of redemption or repurchase of this Note in accordance with the Indenture in part only, a new Note or Notes for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

If an Event of Default shall occur and be continuing, the principal amount of all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions (including certain amendments permitted without the consent of any Holders) as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Guarantors and the Holders under the Indenture and the Notes and the Guarantees at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Notes at the time Outstanding, on behalf of the Holders of all the Notes, to waive compliance by the Company and the Guarantors with certain provisions of the Indenture and the Notes and the Guarantees and their consequences. Any such consent or waiver by or on behalf of the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Note.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, any Guarantor or any other obligor on the Notes (in the event such Guarantor or other obligor is ob-

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ligated to make payments in respect of the Notes), which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Note at the times, place, and rate, and in the coin or currency, herein prescribed, subject to the subordination provisions of the Indenture.

If this Note is in certificated form, then as provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable on the security register of the Company, upon surrender of this Note for registration of transfer at the office or agency of the Company maintained for such purpose in The City of New York or at such other office or agency of the Company as may be maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the security registrar designated in accordance with Section 4.2 of the Indenture duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

If this Note is a Global Security, it is exchangeable for a Note in certificated form as provided in the Indenture and in accordance with the rules and procedures of the Trustee and the Depositary. In addition, certificated securities shall be transferred to all beneficial holders in exchange for their beneficial interests in the Global Security if (x) the Depositary notifies the Company that it is unwilling or unable to continue as depository for the Global Security and a successor depository is not appointed by the Company within 90 days or (y) there shall have occurred and be continuing an Event of Default and any note registrar designated in accordance with Section 4.2 of the Indenture has received a request from the Depositary. Upon any such issuance, the Trustee is required to register such certificated Notes in the name of, and cause the same to be delivered to, such Person or Persons (or the nominee of any thereof).

The Notes in certificated form are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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Prior to and at the time of due presentment of this Note for registration of transfer, the Company, any Guarantor, the Trustee and any agent of the Company, any Guarantor or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note is overdue, and neither the Company, the Trustee nor any agent shall be affected by notice to the contrary.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

All terms used in this Note which are defined in the Indenture and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

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FORM OF TRANSFER NOTICE

I or we assign and transfer this Note to:

Please insert social security or other identifying number of assignee

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-----  
-----

Print or type name, address and zip code of assignee and irrevocably appoint

-----  
(Agent), to transfer this Note on the books of the Company. The Agent may substitute another to act for him.

Dated \_\_\_\_\_ Signed \_\_\_\_\_  
(Sign exactly as name appears on the other side of this Note)

[Signature must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved guarantee medallion program pursuant to Securities and Exchange Commission Rule 17 Ad-15]

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This is one of the 8 1/2% Senior Subordinated Notes due 2009 referred to in the within-mentioned Indenture.

As Trustee, Harris Trust and Savings Bank

By: \_\_\_\_\_  
Authorized Officer

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EXHIBIT B  
-----

INTERCOMPANY NOTE

Evidences of all loans or advances ("Loans") made hereunder shall be reflected on the grid attached hereto. FOR VALUE RECEIVED, \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Maker"), HEREBY PROMISES TO PAY ON DEMAND to the order of \_\_\_\_\_ (the "Holder") the principal sum of the aggregate unpaid principal amount to all Loans (plus accrued interest thereon) at any time and from time to time made hereunder which has not been previously paid.

All capitalized terms used herein that are defined in, or by reference in, the Indenture among Canandaigua Brands, Inc., a Delaware corporation (the "Company"), the guarantors a party thereto and Harris Trust and Savings Bank, as trustee, dated as of February 25, 1998, as supplemented by Supplemental Indenture No. 1 dated as of February 25, 1999 (the "Indenture"), have the meanings assigned to such terms therein, or by reference therein, unless otherwise defined.

ARTICLE I

TERMS OF INTERCOMPANY NOTE

Section 1.01 Note Forgivable. Unless the Maker of the Loan hereunder \_\_\_\_\_ is either of the Company or any Guarantor, the Holder may not forgive any amounts owing under this intercompany note.

Section 1.02 Interest: Prepayment. (a) The interest rate \_\_\_\_\_ ("Interest Rate") on the Loans shall be a rate per annum reflected on the grid attached hereto.

(b) The interest, if any, payable on each of the Loans shall accrue from the date such Loan is made and, subject to Section 2.01, shall be payable upon demand of the Holder.

(c) If the principal or accrued interest, if any, of the Loans is not paid on the date demand is made, interest on the unpaid principal and interest will accrue at a rate equal to the Interest Rate, if any, plus 100 basis points per annum from maturity until the principal and interest on such Loans are fully paid.

(d) Subject to Section 2.01, any amounts hereunder may be prepaid at any time by the Maker.

Section 1.03 Subordination. All loans made to either of the Company \_\_\_\_\_ or any Guarantor shall be subordinated in right of payment to the payment and performance of the obligations of the Company and any Subsidiary under the Indenture, the Notes, the Guarantees or any other Indebtedness ranking senior to or pari passu with the Notes, or any Guarantees, including, without limitation, any Indebtedness incurred under the Credit Agreement; provided that with respect \_\_\_\_\_ to a Subsidiary in any specific instance, such Subsidiary is also an obligor under the Indenture, the Notes, a Guarantee or such other senior or pari passu Indebtedness, as the case may be, whether as a borrower, guarantor or pledgor of collateral.

ARTICLE II

EVENTS OF DEFAULT

Section 2.01 Events of Default. If after the date of issuance of \_\_\_\_\_ this Loan (i) an Event of Default has occurred under the Indenture, (ii) an "Event of Default" (as defined) has occurred under the Credit Agreement, or any



refinancing of the Credit Agreement or (iii) an "event of default" (as defined) has occurred on any other Indebtedness of the Company or any Guarantor, then (x) in the event the Maker is not either one of the Company or a Guarantor, all amounts owing under the Loans hereunder shall be immediately due and payable to the Holder, and (y) in the event the Maker is either the Company or a Guarantor, the amounts owing under the Loans hereunder shall not be due and payable; provided, however, that if such Event of Default or event of default has been

waived, cured or rescinded, such amounts shall no longer be due and payable in the case of clause (x), and such amounts may be payable in the case of clause (y). If the Holder is a Subsidiary, then the Holder hereby agrees that if it receives any payments or distributions on any Loan from the Company or a Guarantor which is not payable pursuant to clause (y) of the prior sentence after any Event of Default or event or default described in clauses (i), (ii) or (iii) above has occurred, is continuing and has not been waived, cured or rescinded, it will pay over and deliver forthwith to the Company or such Guarantor, as the case may be, all such payments and distributions.

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ARTICLE III

MISCELLANEOUS

Section 3.01 Amendments, Etc. No amendment or waiver of any

provision of this intercompany note, or consent to depart herefrom is permitted at any time for any reason, except with the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes.

Section 3.02 Assignment. No party to this Agreement may assign, in

whole or in part, any of its rights and obligations under this intercompany note, except to its legal successor in interest.

Section 3.03 Third Party Beneficiaries. The holders of the Notes or

any other Indebtedness ranking pari passu with or senior to, the Notes or any Guarantees, including without limitation, any Indebtedness incurred under the Credit Agreement, shall be third party beneficiaries to this intercompany note and shall have the right to enforce this intercompany note against the Company or any of its Subsidiaries.

Section 3.04 Headings. Article and Section headings in this

intercompany note are included for convenience of reference only and shall not constitute a part of this intercompany note for any other purpose.

Section 3.05 Entire Agreement. This intercompany note sets forth the

entire agreement of the parties with respect to its subject matter and supersedes all previous understandings, written or oral, in respect thereof.

Section 3.06 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND

CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF).

Section 3.07 Waivers. The Maker hereby waives presentment, demand

for payment, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement hereof.

By: \_\_\_\_\_  
Name:  
Title:

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BORROWINGS, MATURITIES, AND PAYMENTS OF PRINCIPAL

<TABLE>  
<CAPTION>

Date	Amount of Borrowing/ Principal	Maturity of Borrowing/ Principal	Amount Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By
<S>	<C>	<C>	<C>	<C>	<C>

</TABLE>

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GUARANTEES  
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For value received, each of the undersigned hereby unconditionally guarantees, jointly and severally, to the holder of this Note the payment of principal of, premium, if any, and interest on this Note upon which these Guarantees are endorsed in the amounts and at the time when due and payable whether by declaration thereof, or otherwise, and interest on the overdue principal and interest, if any, of this Note, if lawful, and the payment or performance of all other obligations of the Company under the Indenture or the Notes, to the holder of this Note and the Trustee, all in accordance with and subject to the terms and limitations of this Note and Article Ten of the Supplemental Indenture. These Guarantees will not become effective until the Trustee duly executes the certificate of authentication on this Note.

The Indebtedness evidenced by these Guarantees are, to the extent and in the manner provided in the Supplemental Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Guarantor Indebtedness (as defined in the Supplemental Indenture), whether Outstanding on the date of the Supplemental Indenture or thereafter, and these Guarantees are issued subject to such provisions.

Dated: \_\_\_\_\_

BATAVIA WINE CELLARS, INC.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON INCORPORATED

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON BRANDS, LTD.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON BEERS, LTD.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON BRANDS OF CALIFORNIA, INC.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON BRANDS OF GEORGIA, INC.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON DISTILLERS IMPORT CORP.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

THE VIKING DISTILLERY, INC.

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

BARTON FINANCIAL CORPORATION

Attest: \_\_\_\_\_  
Authorized Officer

By: \_\_\_\_\_

STEVENS POINT BEVERAGE CO.

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Officer

CANANDAIGUA LIMITED

Attest: -----  
Authorized Officer

By: -----

MONARCH IMPORT COMPANY

Attest: -----  
Authorized Officer

By: -----

CANANDAIGUA WINE COMPANY, INC.

Attest: -----  
Authorized Officer

By: -----

CANANDAIGUA EUROPE LIMITED

Attest: -----  
Authorized Officer

By: -----

ROBERTS TRADING CORP.

Attest: -----  
Authorized Officer

By: -----

POLYPHENOLICS, INC.

Attest: -----  
Authorized Officer

By: -----