

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**Form 8-K**

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**Current Report  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
Date of Report (Date of earliest event reported): April 23, 2015**

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**EnerSys**

(Exact name of registrant as specified in its charter)

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**Commission File Number: 1-32253**

**Delaware**  
(State or other jurisdiction  
of incorporation)

**23-3058564**  
(IRS Employer  
Identification No.)

**2366 Bernville Road, Reading, Pennsylvania 19605**  
(Address of principal executive offices, including zip code)

**(610) 208-1991**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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

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

On April 23, 2015, EnerSys (the “Company”) issued \$300 million in aggregate principal amount of its 5.00% Senior Notes due 2023 (the “Notes”). The Notes were issued pursuant to an indenture (the “Base Indenture”), as supplemented by that certain first supplemental indenture (the “First Supplemental Indenture” and, together with the Base Indenture, the “Indenture”) among the Company, its subsidiaries that guarantee its existing senior secured credit facilities (collectively, the “Guarantors”) and MUFG Union Bank, N.A., as trustee (the “Trustee”), each dated as of April 23, 2015. The Company intends to use the net proceeds from the sale of the Notes to redeem, settle, repurchase or otherwise repay and retire in full the approximately \$172.4 million principal amount of the Company’s outstanding 3.375% convertible notes due 2038 (the “Convertible Notes”), with the remaining net proceeds to be used to pay the premium on the Convertible Notes, partially repay outstanding revolving loans under its existing senior secured credit facilities and/or for general corporate purposes. However, the Company may elect to pay the premium on the Convertible Notes using cash, shares of its common stock or a combination thereof.

The Notes bear interest at a rate of 5.00% per annum accruing from April 23, 2015. Interest is payable semiannually in arrears on April 30 and October 30 of each year, commencing on October 30, 2015. The Notes will mature on April 30, 2023, unless earlier redeemed or repurchased in full. The Notes are unsecured and unsubordinated obligations of the Company. The Notes are fully and unconditionally guaranteed (the “Guarantees”), jointly and severally, by each of the Guarantors. The Guarantees are unsecured and unsubordinated obligations of the Guarantors.

Prior to January 30, 2023, the Company may redeem all or a portion of the Notes at a price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest and a “make whole” premium to, but excluding, the redemption date. On or after January 30, 2023, the Company may redeem all or a portion of the Notes at a price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the redemption date. If a change of control repurchase event occurs, the Company will be required to offer to repurchase the Notes at a price in cash equal to 101% of the aggregate principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the repurchase date.

The Indenture includes certain covenants, including limitations on the Company’s and its subsidiaries’ ability to, subject to exceptions, incur liens securing indebtedness, merge, consolidate or sell all or substantially all assets or enter into certain sale and leaseback transactions. The Indenture also provides for customary events of default and further provides that the Trustee or the holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the Notes immediately due and payable upon the occurrence and during the continuance of any event of default. In the case of certain events of bankruptcy, insolvency or reorganization, the entire outstanding principal amount of the Notes and any accrued and unpaid interest on the Notes automatically will become immediately due and payable.

The Notes were offered and sold to qualified institutional buyers in the United States pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”) and outside the United States pursuant to Regulation S under the Securities Act.

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

The information required by this Item 2.03 is set forth under Item 1.01 above and is hereby incorporated by reference in response to this Item 2.03.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

4.1 Indenture, dated as of April 23, 2015, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee.

4.2 First Supplemental Indenture, dated as of April 23, 2015, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee.

4.3 Form of 5.00% Senior Note due 2023 (included in Exhibit 4.2 hereto).

**Signature(s)**

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

EnerSys

Date: April 23, 2015

By: /s/ Richard W. Zuidema

Richard W. Zuidema

Executive Vice President

## Exhibit Index

<b>Exhibit No.</b>	<b>Description</b>
EX-4.1	Indenture, dated as of April 23, 2015, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee.
EX-4.2	First Supplemental Indenture, dated as of April 23, 2015, among EnerSys, the Guarantors party thereto and MUFG Union Bank, N.A., as Trustee.
EX-4.3	Form of 5.00% Senior Note due 2023 (included in Exhibit 4.2 hereto).

**INDENTURE**

**Dated as of April 23, 2015**

**Among**

**ENERSYS,**

**THE GUARANTORS NAMED HEREIN**

**and**

**MUFG UNION BANK, N.A.,**

**as Trustee**

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	1
Section 101. Definitions	1
Section 102. Compliance Certificates and Opinions	9
Section 103. Form of Documents Delivered to Trustee	10
Section 104. Acts of Holders; Record Dates	10
Section 105. Notices, Etc., to Trustee, Company and Guarantors	12
Section 106. Notice to Holders; Waiver	13
Section 107. Reserved	13
Section 108. Effect of Headings and Table of Contents	14
Section 109. Successors and Assigns	14
Section 110. Separability Clause	14
Section 111. Benefits of Indenture	14
Section 112. Governing Law	14
Section 113. Legal Holidays	14
Section 114. No Recourse Against Others	15
Section 115. WAIVER OF JURY TRIAL	15
Section 116. U.S.A. Patriot Act	15
Section 117. Execution in Counterparts	15
ARTICLE II SECURITY FORMS	15
Section 201. Forms Generally	15
Section 202. Form of Legend for Global Securities	16
Section 203. Form of Trustee's Certificate of Authentication	17
ARTICLE III THE SECURITIES	17
Section 301. Amount Unlimited; Issuable in Series	17
Section 302. Denominations	21
Section 303. Execution, Authentication, Delivery and Dating	21
Section 304. Temporary Securities	22
Section 305. Registration, Registration of Transfer and Exchange	23
Section 306. Mutilated, Destroyed, Lost and Stolen Securities	25
Section 307. Payment of Interest; Interest Rights Preserved	25
Section 308. Persons Deemed Owners	27
Section 309. Cancellation	27
Section 310. Computation of Interest	27
Section 311. CUSIP or ISIN Numbers	28
Section 312. Additional Amounts	28
Section 313. General Provisions Relating to Global Securities	29
ARTICLE IV SATISFACTION AND DISCHARGE	29

Section 401.	Satisfaction and Discharge of Indenture	29
Section 402.	Application of Trust Money	30
ARTICLE V REMEDIES		31
Section 501.	Events of Default	31
Section 502.	Acceleration of Maturity; Rescission and Annulment	32
Section 503.	Collection of Indebtedness and Suits for Enforcement by Trustee	34
Section 504.	Trustee May File Proofs of Claim	34
Section 505.	Trustee May Enforce Claims Without Possession of Securities	35
Section 506.	Application of Money Collected	35
Section 507.	Limitation on Suits	36
Section 508.	Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert Securities	36
Section 509.	Rights and Remedies Cumulative	37
Section 510.	Delay or Omission Not Waiver	37
Section 511.	Control by Holders	37
Section 512.	Waiver of Past Defaults	37
Section 513.	Undertaking for Costs	38
Section 514.	Waiver of Usury, Stay or Extension Laws	38
Section 515.	Restoration of Rights and Remedies	38
ARTICLE VI THE TRUSTEE		39
Section 601.	Certain Duties and Responsibilities of Trustee	39
Section 602.	Notice of Defaults	40
Section 603.	Certain Rights of Trustee	40
Section 604.	Not Responsible for Recitals or Issuance of Securities	42
Section 605.	May Hold Securities	42
Section 606.	Money Held in Trust	43
Section 607.	Compensation and Reimbursement	43
Section 608.	Conflicting Interests	44
Section 609.	Corporate Trustee Required; Eligibility	44
Section 610.	Resignation and Removal; Appointment of Successor	44
Section 611.	Acceptance of Appointment by Successor	46
Section 612.	Merger, Conversion, Consolidation or Succession to Business	47
Section 613.	Preferential Collection of Claims Against Company	48
Section 614.	Trustee's Application for Instructions from the Company	48
ARTICLE VII HOLDERS' LISTS AND REPORTS BY THE TRUSTEE, THE COMPANY AND THE GUARANTORS		48
Section 701.	Company to Furnish Trustee Names and Addresses of Holders	48
Section 702.	Preservation of Information; Communications to Holders	48
Section 703.	Reserved	49
Section 704.	Reports by the Company and the Guarantors	49



ARTICLE VIII MERGER, CONSOLIDATION OR SALE OF ASSETS	49
Section 801. Company May Consolidate, Merge or Transfer Assets on Certain Terms	49
Section 802. Successor Person Substituted	49
ARTICLE IX SUPPLEMENTAL INDENTURES	50
Section 901. Supplemental Indentures Without Consent of Holders	50
Section 902. Supplemental Indentures With Consent of Holders	51
Section 903. Execution of Supplemental Indentures	52
Section 904. Effect of Supplemental Indentures	53
Section 905. Reserved	53
Section 906. Notice of Supplemental Indenture; Reference in Securities to Supplemental Indentures	53
ARTICLE X COVENANTS	53
Section 1001. Payment of Principal, Premium, if any, and Interest	53
Section 1002. Maintenance of Office or Agency	54
Section 1003. Money for Securities Payments to Be Held in Trust	54
Section 1004. Statement by Responsible Officers as to Default	55
Section 1005. Waiver of Certain Covenants	56
ARTICLE XI REDEMPTION OF SECURITIES	56
Section 1101. Applicability of Article	56
Section 1102. Election to Redeem; Notice to Trustee	56
Section 1103. Selection by Trustee of Securities to Be Redeemed	57
Section 1104. Notice of Redemption	57
Section 1105. Deposit of Redemption Price	59
Section 1106. Securities Payable on Redemption Date	59
Section 1107. Securities Redeemed in Part	60
ARTICLE XII SINKING FUNDS	60
Section 1201. Applicability of Article	60
Section 1202. Satisfaction of Sinking Fund Payments with Securities	60
Section 1203. Redemption of Securities for Sinking Fund	61
ARTICLE XIII DEFEASANCE AND COVENANT DEFEASANCE	61
Section 1301. Company's Option to Effect Defeasance or Covenant Defeasance	61
Section 1302. Defeasance and Discharge	61
Section 1303. Covenant Defeasance	62
Section 1304. Conditions to Defeasance or Covenant Defeasance	62
Section 1305. Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions	64
Section 1306. Reinstatement	65
ARTICLE XIV GUARANTEE OF SECURITIES	65
Section 1401. Guarantee	65
Section 1402. Additional Guarantors	66

Section 1403.	Waiver	66
Section 1404.	Guarantee of Payment	66
Section 1405.	No Discharge or Diminishment of Guarantee	66
Section 1406.	Defenses of Company Waived	67
Section 1407.	Continued Effectiveness	67
Section 1408.	Subrogation	68
Section 1409.	Subordination	68
Section 1410.	Release of Guarantor and Termination of Guarantee	68
Section 1411.	Limitation of Guarantors' Liability	69
Section 1412.	No Obligation to Take Action Against the Company	70
Section 1413.	Execution and Delivery	70

## SCHEDULE I Schedule I-1

INDENTURE, dated as of April 23, 2015, among EnerSys, a Delaware corporation (herein called the “Company”), each of the Guarantors named herein (the “Guarantors”) and MUFG Union Bank, N.A., as Trustee (herein called the “Trustee”).

## RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its senior unsecured debt securities (herein called the “Securities”), to be issued in one or more series as provided in this Indenture.

Each Guarantor has duly authorized the execution and delivery of this Indenture to provide for its guarantee of the Securities (the “Guarantees”).

### NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as defined herein) thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof, as follows:

## ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

### Section 101. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular;
- (2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (3) unless the context otherwise requires, any reference to an “Article,” a “Section” or a “Schedule” refers to an Article, a Section or a Schedule, as the case may be, of this Indenture;
- (4) 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;
- (5) “including” means including without limitation;
- (6) when used with respect to any Security, the words “convert,” “converted” and “conversion” are intended to refer to the right of the Holder, the Company or the Guarantors to convert or exchange such Security into or for securities or other

property in accordance with such terms, if any, as may hereafter be specified for such Security as contemplated by Section 301, and these words are not intended to refer to any right of the Holder, the Company or the Guarantors to exchange such Security for other Securities of the same series and of like tenor pursuant to Section 304, 305, 306, 906 or 1107 or another similar provisions of this Indenture, unless the context otherwise requires; and references herein to the terms of any Security that may be converted mean such terms as may be specified for such Security as contemplated in Section 301; and

(7) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements and instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Indenture.

“Act,” when used with respect to any Holder, has the meaning specified in Section 104.

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

“Applicable Procedures” means, with respect to a Depository, as to any matter at any time, the policies and procedures of such Depository, if any, that are applicable to such matter at such time.

“Authorized Officer” means with respect to the Trustee, any officer assigned to the corporate trust department (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Indenture and, for the purposes of Section 601(3)(B) and the second sentence of Section 602, shall also include any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Bankruptcy Law” has the meaning specified in Section 501.

“Board of Directors” means the board of directors or comparable governing body of the Company constituted as of the date of any determination required to be made, or action required to be taken, pursuant to this Indenture.

“Business Day” means unless otherwise specified as contemplated by Section 113, any day except a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law, regulation or executive order to close.

“Company” means the Person named as the “Company” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“Company Request” or “Authentication Order” means, respectively, a written request or order signed by or on behalf of the Company by any Responsible Officer or director thereof (or any Person designated in writing by any such Person as authorized to execute and deliver Company Requests and Authentication Orders), and delivered to the Trustee.

“Company Resolution” means a copy of one or more resolutions certified by the secretary or an assistant secretary of the Company to have been duly adopted by the Board of Directors of the Company or any duly authorized committee thereof, and to be in full force and effect on the date of such certification and delivered to the Trustee.

“Corporate Trust Office” means the principal office of the Trustee at which, at any particular time, this Indenture shall be administered, which office is located as of the date of this Indenture at MUFG Union Bank, N.A., Corporate Trust, 350 California Street, 11th Floor, San Francisco, CA 94104, Attention: Corporate Trust, Fax No.: (415) 273-2492, Email: accountadministration-corporatetrust@unionbank.com or at any other time at such other address as the Trustee may designate from time to time by notice to the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Company).

“Covenant Defeasance” has the meaning specified in Section 1303.

“Credit Agreement” means the credit agreement entered into as of March 29, 2011 among the Company, the subsidiary guarantors party thereto, each lender from time to time party thereto and Bank of America, N.A., as administrative agent, as amended, or any replacement, renewal, extension, refinancing or other substitution thereof.

“Custodian” has the meaning specified in Section 501.

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

“Defaulted Interest” has the meaning specified in Section 307.

“Defeasance” has the meaning specified in Section 1302.

“Depository” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 301.

“Event of Default” has the meaning specified in Section 501.

“Exchange Act” means the U.S. Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Expiration Date” has the meaning specified in Section 104.

“GAAP” means generally accepted accounting principles in the United States (including, if applicable, International Financial Reporting Standards) as in effect on April 23, 2015.

“Global Security” means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 202 (or such legend as may be specified as contemplated by Section 301 for such Securities).

“Guarantees” has the meaning specified in the second recital of this Indenture and more particularly means any Guarantee made by each of the Guarantors as set forth in Article XIV hereof.

“Guarantors” means (i) each of the Persons listed on Schedule I attached hereto and (ii) in the future, any entity that becomes a Guarantor pursuant to Article XIV hereof, but in each case excluding Persons who cease to be Guarantors in accordance with this Indenture.

“Holder” means a Person in whose name a Security is registered in the Security Register.

“Indebtedness” of any person means, without duplication, (i) any obligation of such person for money borrowed, (ii) any obligation of such person evidenced by bonds, debentures, notes or other similar instruments and (iii) any reimbursement obligation of such person in respect of letters of credit or other similar instruments which support financial obligations which would otherwise become Indebtedness.

“Indenture” means this Indenture as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof. The term “Indenture” shall also include the terms of particular series of Securities established as contemplated by Section 301.

“interest” means, when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, interest payable after Maturity.

“Interest Payment Date” means, when used with respect to any Security, the Stated Maturity of an installment of interest on such Security.

“Maturity” means, when used with respect to any Security, the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“Notice of Default” means a written notice of the kind specified in Section 501(3).

“Obligations” has the meaning specified in Section 1401.

“Officers' Certificate” means a certificate signed by two Responsible Officers of the Company or any Guarantor, as the case may be, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel (who may be counsel for, including an employee or Responsible Officer of, the Company or for any Guarantor) and who shall be reasonably acceptable to the Trustee.

“Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

“Outstanding” means, when used with respect to Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

- (1) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (3) Securities as to which Defeasance has been effected pursuant to Section 1302;
- (4) Securities which have been paid or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to Section 306, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a *bona fide* purchaser in whose hands such Securities are valid obligations of the Company; and
- (5) Securities as to which any property deliverable upon conversion thereof has been delivered (or such delivery has been made available), or as to which any other particular conditions have been satisfied, in each case as may be provided for such Securities as contemplated in Section 301;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 502, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301, (C) the principal amount of a

Security denominated in one or more foreign currencies, composite currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301, of the principal amount of such Security (or, in the case of a Security described in clause (A) or (B) above, of the amount determined as provided in such clause), and (D) Securities owned by the Company, any Guarantor or any other obligor upon the Securities or any Affiliate of the Company, any Guarantor or such other obligor shall be disregarded and deemed not to be Outstanding (except (i) in the case where the Securities are 100% owned by the Company or any Affiliate of the Company and (ii) in the case of Securities owned by an Affiliate of the Company, with respect to any such request, demand, authorization, direction, notice, consent, waiver or other action hereunder that requires the consent of the Holder of each Outstanding Security of such series affected thereby pursuant to the terms of this Indenture), except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which a Responsible Officer actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company, any Guarantor or any other obligor upon the Securities or any Affiliate of the Company, any Guarantor or such other obligor.

“Paying Agent” means any Person authorized by the Company to pay the principal of or premium, if any, or interest on any Securities on behalf of the Company or any Guarantor.

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

“Place of Payment” means, when used with respect to the Securities of any series, the place or places where the principal of and premium, if any, and interest on the Securities of such series are payable as specified as contemplated by Section 301.

“Predecessor Security” means, with respect to any particular Security, every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Redemption Date” means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“Redemption Price” means, when used with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

“Regular Record Date” means, for the interest payable on any Interest Payment Date on the Securities of any series, the date specified for that purpose as contemplated by Section 301.



“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of the Company, or a Guarantor, as applicable.

“SEC” means the U.S. Securities and Exchange Commission, from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture the SEC 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.

“Securities” has the meaning specified in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Securities Act” means the U.S. Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 305.

“Senior Indebtedness” means, with respect to any Person, Indebtedness of such Person, whether outstanding on the date of this Indenture or thereafter incurred unless, in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such obligations are subordinate in right of payment to the Securities; provided, however, that Senior Indebtedness shall not include (1) any Indebtedness of such Person owing to any Subsidiary of the Company; or (2) any Indebtedness of such Person (and any accrued and unpaid interest in respect thereof) which is subordinate or junior in any respect to any other Indebtedness of such Person.

“Significant Subsidiary” means a “significant subsidiary” (as such term is defined in Rule 1-02(w) of Regulation S-X under the Securities Act or any successor provision) of the Company.

“Special Record Date” means, for the payment of any Defaulted Interest, a date fixed by the Trustee pursuant to Section 307.

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

“Subsidiary” of any Person means (i) a corporation a majority of the outstanding voting stock of which is at the time, directly or indirectly, owned by such Person, by one or more Subsidiaries of such Person, or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation), including, without limitation, a partnership or joint venture, in which such Person, one or more Subsidiaries thereof, or such Person and one or more Subsidiaries thereof, directly or indirectly, at the date of determination thereof, has at

least majority ownership interest entitled to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions).

“Triggering Guarantee” has the meaning specified in Section 1402.

“Trust Indenture Act” means the U.S. Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of such series.

“United States Alien” means, except as otherwise provided in or pursuant to this Indenture, any Person who, for United States Federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust, or a foreign partnership, one or more of the members of which is, for United States Federal income tax purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust.

“U.S. Government Obligation” has the meaning specified in Section 1304(1).

#### Section 102. Compliance Certificates and Opinions.

Upon any application or request by the Company or any Guarantor to the Trustee to take any action under any provision of this Indenture, the Company or such 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 satisfied and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been satisfied, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for certificates provided for in Section 1004) shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with or satisfied, as applicable; and

(4) a statement as to whether, in the opinion of each such individual, such covenant or condition has been complied with or satisfied, as applicable.

Section 103. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of a Responsible Officer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such Responsible Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such Officer's certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, a Responsible Officer or Responsible Officers stating that the information with respect to such factual matters is in the possession of the Company or a Guarantor, as the case may be, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 104. Acts of Holders; Record Dates.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company or the Guarantors. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and, subject to Section 601, conclusive in favor of the Trustee, the Company and the Guarantors, if made in the manner provided in this Section 104.

The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient.

The ownership of Securities shall be proved by the Security Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, any Security Registrar, any Paying Agent or the Company or any Guarantor in reliance thereon, whether or not notation of such action is made upon such Security.

The Company or any Guarantor may, in its discretion, set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series but shall have no obligation to do so; provided that none of the Company or any Guarantor may set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If not set by the Company or any Guarantor prior to the first solicitation of Holders of Outstanding Securities of the relevant series made by any Person in respect of such action or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be 30 days prior to the first solicitation of such vote or consent. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company or any Guarantor from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company or any Guarantor, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 502, (iii) any request to institute proceedings referred to in Section 507(2) or (iv) any direction referred to in Section 511, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other

Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company and the Guarantors in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106. Any failure of the Trustee to so notify the Company or the Guarantors, shall not in any way impair or affect the validity of any such act by the Holder or subject the Trustee to any liability hereunder.

With respect to any record date set pursuant to this Section 104, the party hereto which sets such record dates may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 106, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 104, the party hereto which set such record date shall be deemed to have initially designated the 90th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

Section 105. Notices, Etc., to Trustee, Company and Guarantors.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

- (1) the Trustee by any Holder or by the Company or a Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be by facsimile) to or with the Trustee at its Corporate Trust Office at the location specified in Section 101; or
- (2) the Company or a Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly

provided) if in writing and mailed, first-class postage prepaid or overnight delivery, to the Company or any Guarantor addressed to the attention of the Secretary of the Company or such Guarantor at the address of the Company's principal office specified in writing to the Trustee by the Company and, until further notice, at 2366 Bernville Road, Reading, Pennsylvania 19605, Attention: General Counsel.

The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company. The Trustee shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company or any other Person as a result of such reliance upon or compliance with such instructions or directions. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 106. Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid or overnight delivery, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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 by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Where this Indenture provides for notice of any event to a Holder of a Global Security, such notice shall be sufficiently given if given to the Depositary for such Security (or its designee), pursuant to the Applicable Procedures of the Depositary, not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice.

Section 107. Reserved.

Section 108. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109. Successors and Assigns.

All covenants and agreements in this Indenture by the Company and the Guarantors shall bind their respective successors and assigns, whether so expressed or not. All agreements of the Trustee in this Indenture shall bind its successors and assigns, whether so expressed or not.

Section 110. Separability Clause.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 111. Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. Governing Law.

This Indenture, the Securities and the Guarantees shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of law.

Section 113. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security, or any date on which a Holder has the right to convert such Holder's Security, shall not be a Business Day in the City of New York or at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section 113)) payment of principal and premium, if any, or interest, or the Redemption Price or conversion of such Security, need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, or on such conversion date. In the case, however, of Securities of a series bearing interest at a floating rate based on the London interbank offered rate (LIBOR), if any Interest Payment Date (other than the Redemption Date or Stated Maturity) would otherwise be a date that is not a Business Day, then the Interest Payment Date shall be postponed to the following date which is a Business Day, unless that Business Day falls in the next succeeding calendar month, in which case the Interest Payment Date will be the immediately preceding Business Day. No interest shall accrue for the period from and after any such Interest Payment Date, Redemption Date, Stated Maturity or

conversion date, as the case may be, to the date of such payment with respect to such Interest Payment Date, Redemption Date, Stated Maturity or conversion date.

Section 114. No Recourse Against Others.

To the fullest extent permitted by law, a director, partner, officer, employee, member, manager or stockholder as such of the Company or any Guarantor shall not have any liability for any obligations of the Company under the Securities, the Guarantors under the Guarantees or under this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 115. WAIVER OF JURY TRIAL.

EACH OF THE COMPANY, THE GUARANTORS, THE TRUSTEE AND THE HOLDERS, BY THEIR ACCEPTANCE OF THE SECURITIES, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING AS AMONG THE COMPANY, THE GUARANTORS AND THE TRUSTEE ONLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE GUARANTEES.

Section 116. U.S.A. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 117. Execution in Counterparts.

This Indenture may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile, email, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

**ARTICLE II  
SECURITY FORMS**

Section 201. Forms Generally.

The Securities of each series shall be in substantially such form or forms as shall be established by or pursuant to a Company Resolution or, subject to Section 303, set forth in, or determined in the manner provided in, an Officers' Certificate of the Company pursuant to a



Company Resolution, or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with applicable tax laws or the rules of any securities exchange or Depository therefor or as may, consistently herewith, be determined by the Responsible Officer executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Company Resolution, 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 Authentication Order contemplated by Section 303 for the authentication and delivery of such Securities. If all of the Securities of any series established by action taken pursuant to a Company Resolution are not to be issued at one time, it shall not be necessary to deliver a record of such action at the time of issuance of each Security of such series, but an appropriate record of such action shall be delivered at or before the time of issuance of the first Security of such series.

The definitive Securities shall be printed, lithographed or engraved on steel-engraved borders or may be produced in any other manner, all as determined by the Responsible Officers of the Company executing such Securities, as evidenced by their execution of such Securities.

Section 202. Form of Legend for Global Securities.

Unless otherwise specified as contemplated by Section 301 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (“DTC”) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR 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.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF. TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

Section 203. Form of Trustee's Certificate of Authentication.

The Trustee's certificates of authentication shall be in substantially the following form:

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

Dated:

MUFG Union Bank, N.A., as Trustee

By: \_\_  
Authorized Signatory

**ARTICLE III  
THE SECURITIES**

Section 301. Amount Unlimited; Issuable in Series.

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

The Securities may be issued in one or more series. The terms of the Securities shall be established in, or pursuant to, one or more Company Resolutions. In the event that such Securities are established pursuant to Company Resolutions, but such Company Resolutions do not set forth the final terms of such Securities, the establishment of such series of Securities shall be set forth in (a) an Officers' Certificate of the Company detailing such establishment, or (b) one or more indentures supplemental hereto, prior to the issuance of Securities of any series. Such Company Resolutions, Officers' Certificate or supplemental indenture, as applicable, shall set forth:

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);
- (2) the limit, if any, on the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1107 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder) or aggregate offering price;
- (3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more

Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

- (4) the date or dates on which the principal of any Securities of the series is payable or the method used to determine or extend those dates;
- (5) the rate or rates at which any Securities of the series shall bear interest, if any, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any such interest payable on any Interest Payment Date;
- (6) the place or places where the principal of and premium, if any, and interest on any Securities of the series shall be payable and the manner in which any payment may be made;
- (7) the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than by a Company Resolution, the manner in which any election by the Company to redeem the Securities shall be evidenced;
- (8) the obligation or the right, if any, of the Company to redeem or purchase any Securities of the series pursuant to any sinking fund or at the option of the Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation or right;
- (9) if other than minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which any Securities of the series shall be issuable;
- (10) if the amount of principal of or premium, if any, or interest on any Securities of the series may be determined with reference to a financial or economic measure or index or pursuant to a formula, the manner in which such amounts shall be determined;
- (11) if other than the currency of the United States of America, the currency, currencies or currency units in which the principal of or premium, if any, or interest on any Securities of the series shall be payable and the manner of determining the equivalent thereof in the currency of the United States of America for any purpose, including for purposes of the definition of "Outstanding" in Section 101;
- (12) if the principal of or premium, if any, or interest on any Securities of the series is to be payable, at the election of the Company or the Holder thereof, in one or more currencies or currency units other than that or those in which such

Securities are stated to be payable, the currency, currencies or currency units in which the principal of or premium, if any, or interest on such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(13) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(14) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(15) if other than by a Company Resolution, the manner in which any election by the Company to defease any Securities of the series pursuant to Section 1302 or Section 1303 shall be evidenced; whether any Securities of the series other than Securities denominated in U.S. dollars and bearing interest at a fixed rate are to be subject to Section 1302 or Section 1303; or, in the case of Securities denominated in U.S. dollars and bearing interest at a fixed rate, if applicable, that the Securities of the series, in whole or any specified part, shall not be defeasible pursuant to Section 1302 or Section 1303 or both such Sections;

(16) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 202 and any circumstances in addition to or in lieu of those set forth in clause (2) of the last paragraph of Section 305 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof and any other provisions governing exchanges or transfers of such Global Security;

(17) any addition to, deletion from or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502;

- (18) any addition to, deletion from or change in the covenants set forth in Article X which applies to Securities of the series;
- (19) if the Securities of the series are to be convertible into or exchangeable for cash and/or any securities or other property of any Person (including the Company), the terms and conditions upon which such Securities will be so convertible or exchangeable;
- (20) whether the Securities of the series will be guaranteed by any Person or Persons other than the Guarantors and, if so, the identity of such Person or Persons, the terms and conditions upon which such Securities shall be guaranteed and, if applicable, the terms and conditions upon which such guarantees may be subordinated to other indebtedness of the respective guarantors;
- (21) whether the Securities of the series will be secured by any collateral and, if so, the terms and conditions upon which such Securities shall be secured and, if applicable, upon which such liens may be subordinated to other liens securing other indebtedness of the Company or any guarantor;
- (22) if other than MUFG Union Bank, N.A. is to act as Trustee for the Securities of such series, the name and Corporate Trust Office of such Trustee;
- (23) if any priority of payment is set for the Securities of such series, the nature and terms of that priority of payment set for the Securities of the series;
- (24) if any of the Securities of such series will be issued as Original Issue Discount Securities, the terms on which such Securities of the series will be issued as Original Issue Discount Securities and the portion of the principal amount as shown on the face of those Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or at the time of any prepayment of those Securities or the method or methods for determining that portion of that principal amount payable at any of those times;
- (25) if additional amounts will be payable to Holders of Securities of such series pursuant to Section 312, the terms (other than the terms expressly set forth in Section 312) upon, and conditions under, which such additional amounts will be payable; and
- (26) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 901(12)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Company Resolution referred to above or pursuant to authority granted by one or more Company Resolutions and, subject to Section 303, set forth, or determined in the manner provided, in the Officers' Certificate of the Company referred to above or in any such indenture supplemental hereto.

All Securities of any one series need not be issued at one time and, unless otherwise provided in or pursuant to the Company Resolution referred to above and, subject to Section 303, set forth, or determined in the manner provided, in the Officers' Certificate of the Company referred to above or pursuant to authority granted by one or more Company Resolutions or in any such indenture supplemental hereto with respect to a series of Securities, additional Securities of a series may be issued, at the option of the Company, without the consent of any Holder, at any time and from time to time.

If any of the terms of the series are established by action taken pursuant to a Company Resolution, 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 Officers' Certificate of the Company setting forth the terms of the series.

Section 302. Denominations.

The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 301. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

Section 303. Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by any Responsible Officer of the Company. The signature on the Securities may be manual or facsimile.

Securities bearing the manual, facsimile, email or PDF signatures of individuals who were at any time the proper Responsible Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with an Authentication Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Authentication Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and, subject to Section 601, shall be fully protected in relying upon, an Officers' Certificate stating that all conditions precedent of this Indenture to the authentication and delivery of such Securities have been satisfied.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will adversely affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph of this Section 303, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate of the Company otherwise required pursuant to Section 301 or the Authentication Order and Officers' Certificate otherwise required pursuant to this Section 303 at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued, provided, however, that in the event that the aggregate principal amount of a series of Outstanding Securities is increased as contemplated by Section 301, the Company shall deliver the Authentication Order and the Officers' Certificate required pursuant to this Section 303.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 304. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and, upon delivery of an Authentication Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities of such series in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Responsible Officer or Responsible Officers executing such Securities may determine, as evidenced by their execution thereof.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for such series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

Section 305. Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the “Security Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed “Security Registrar” for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of like tenor and principal amount.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of like tenor and principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities, which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company and the respective Guarantors, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or such Holder’s attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906 or 1107 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of such series (or of such series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of the sending of a notice of redemption of any such Securities selected for redemption under Section 1103 and ending at the close of business on the day of such sending, or (B) to register the transfer of or exchange any



Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Neither the Trustee nor the Security Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

The provisions of clauses (1), (2), (3) and (4) of this paragraph shall apply only to Global Securities:

- (1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.
- (2) Notwithstanding any other provision in this Indenture, and subject to such applicable provisions, if any, as may be specified as contemplated by Section 301, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary has notified the Company that it is unwilling or unable to continue as Depositary with respect to such Global Security and a successor Depositary is not appointed by the Company within 90 days, (B) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor Depositary is not appointed by the Company within 90 days, (C) upon request of a Holder if there shall have occurred and be continuing an Event of Default with respect to such Global Security, (D) the Company so directs the Trustee by an Authentication Order or (E) there shall exist such circumstances, if any, in addition to, or in lieu of, the foregoing as have been specified for this purpose as contemplated by Section 301.
- (3) Subject to clause (2) above and to such applicable provisions, if any, as may be specified as contemplated by Section 301, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.
- (4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section 305, Section 304, 306, 906 or 1107 or otherwise, shall be

authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (1) evidence to their satisfaction of the destruction, loss or theft of any Security and (2) such security or indemnity as shall be required by them to save each of them and any agent of either of them harmless, then, in the absence of written notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount, having the Guarantees noted therein, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 306, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of counsel to the Company and the fees and expenses of the Trustee and its counsel) connected therewith.

Every new Security of any series issued pursuant to this Section 306 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company and the respective Guarantors, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and Guarantees duly issued hereunder.

The provisions of this Section 306 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 307. Payment of Interest; Interest Rights Preserved.

Except as otherwise provided as contemplated by Section 301 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one

or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest payable on Securities of a series to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Securities of such series in the manner set forth in Section 106, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such 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 manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section 307, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall

carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or made available for payment) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable. Notwithstanding the foregoing, the terms of any Security that may be converted may provide that the provisions of this paragraph do not apply, or apply with such additions, changes or omissions as may be provided thereby, to such Security.

Section 308. Persons Deemed Owners.

Prior to due presentment of a Security for registration of transfer, the Company, the Guarantors, the Trustee and any agent of the Company, a Guarantor or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and premium, if any, and, subject to Section 307, any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and none of the Company, the Guarantors, the Trustee nor any agent of the Company, a Guarantor or the Trustee shall be affected by notice to the contrary.

Section 309. Cancellation.

All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company or any Guarantor may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company or such Guarantor may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 309, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of in accordance with its customary procedures. The Trustee shall provide the Company or any Guarantor a list of all Securities that have been cancelled from time to time as requested in writing by the Company or such Guarantor.

Section 310. Computation of Interest.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 311. CUSIP or ISIN Numbers.

The Company in issuing any series of the Securities may use "CUSIP" or "ISIN" numbers and/or other similar numbers, if then generally in use, and thereafter with respect to such series, the Trustee may use such numbers in any notice of redemption with respect to such series; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities of such series or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities of such series, and any such redemption shall not be affected by any defect in or omission of such numbers. The Trustee shall be notified, in writing, of any change in the CUSIP or ISIN numbers.

Section 312. Additional Amounts.

If the Securities of any series provide for the payment of additional amounts, the Company will pay to the Holder of any Security of such series the additional amounts as provided in the terms of the Securities of such series. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of, premium, if any, or interest on, or in respect of, any Security of such series or the net proceeds received on the sale or exchange of any Security of such series, such mention shall be deemed to include mention of the payment of additional amounts provided for in this Section 312 to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section 312 and express mention of the payment of additional amounts, if applicable, in any provisions hereof shall not be construed as excluding additional amounts in those provisions hereof where such express mention is not made.

If the Securities of any series provide for the payment of additional amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal, and premium, if any, is made), and at least 10 days prior to each date of payment of principal, and premium, if any, or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company will furnish the Trustee and the applicable Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent whether such payment of principal of (and premium, if any) or interest on the Securities of such series shall be made to Holders of Securities of such series who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of such series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities, and the Company will pay to the Trustee or such Paying Agent the additional amounts required by this Section 312. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or reasonable expense incurred without

negligence, willful misconduct or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section 312.

Section 313. General Provisions Relating to Global Securities.

Owners of beneficial interests in the Securities evidenced by a Global Security will not be entitled to any rights under this Indenture with respect to such Global Security, and the Depositary or its nominee may be treated by the Company, the Guarantors, and the Trustee and any agent of the Company, the Guarantors or the Trustee, including any Security Registrar or Paying Agent as the owner and Holder of such Global Security for all purposes whatsoever. None of the Company, the Trustee, the Security Registrar, the Paying Agent or any other agent of the Company, the Guarantors or of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. None of the Company, the Guarantors, the Trustee, the Security Registrar, the Paying Agent or any other agent of the Company or of the Trustee shall have any responsibility or liability to any person for any acts or omissions of the Depositary or its nominee in respect of a Global Security, for the records of any such Depositary, including records in respect of beneficial ownership interests in respect of such Global Security, for any transactions between such Depositary and any participant or indirect participant in such Depositary or between or among such Depositary, any participant or indirect participant in such Depositary and/or any Holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, the Security Registrar or the Paying Agent or such agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or its nominee or impair, as between the Depositary or its nominee and such owners of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary or its nominee as Holder of any Global Security.

**ARTICLE IV**  
**SATISFACTION AND DISCHARGE**

Section 401. Satisfaction and Discharge of Indenture.

This Indenture shall, upon Company Request, cease to be of further effect with respect to any series of Securities specified in such Company Request (except as to any surviving rights of registration of transfer or exchange of Securities of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when:

(1) either:

(A) all Securities of such series that have been authenticated, except lost, stolen or destroyed Securities that have been replaced or paid and Securities for whose payment money has been deposited in trust and

thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(B) all Securities of such series that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of Securities, cash in U.S. dollars, non-callable government securities, or a combination of cash in U.S. dollars and non-callable government securities, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Securities not delivered to the Trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;

(2) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(3) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Securities at maturity or the Redemption Date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee each stating that all conditions precedent to satisfaction and discharge of this Indenture as to such series have been satisfied or waived.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of such series as to which it is Trustee and if the other conditions thereto are met.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 607 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section 401, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

Section 402. Application of Trust Money.

Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 shall be held in trust and applied by it, in accordance with the provisions of the applicable series of Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and premium, if any, and interest for whose payment such money has been deposited with the Trustee. All money deposited with the Trustee pursuant to Section 401 (and held by it or any Paying Agent) for the payment of

Securities subsequently converted into other property shall be returned to the Company upon Company Request. In the absence of any such Authentication Order, such funds will be held in cash.

## ARTICLE V REMEDIES

### Section 501. Events of Default.

Except as may be otherwise provided pursuant to Section 301 for Securities of any series, an “Event of Default” means, whenever used herein or in a Security issued hereunder with respect to Securities of any series, any one of the following events (whatever the reason for such Event of Default and whether it shall 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):

- (3) the Company does not pay interest, including any additional interest and any additional amounts, on any Security within 30 days of its due date;
- (4) the Company does not pay the principal of or any premium on any Security, including any additional amounts, when due and payable, at maturity, upon acceleration or redemption or otherwise;
- (5) the Company or any Guarantor remains in breach of a covenant or warranty in respect of this Indenture or any Security (other than a covenant included in this Indenture solely for the benefit of debt securities of another series) for 60 days after the Company receives a written notice of default, which notice must be sent by either the Trustee or Holders of at least 25% in principal amount of the Outstanding Securities (a “Notice of Default”);
- (6) a default resulting in acceleration of Indebtedness of the Company or any Subsidiary (other than intercompany Indebtedness) of at least \$75 million in aggregate principal amount, which acceleration has not been rescinded, annulled or satisfied in full after 30 days’ notice by the Holders of a majority in aggregate principal amount of such Indebtedness thereof;
- (7) the Company or any Significant Subsidiary, pursuant to or within the meaning of the Bankruptcy Law:
  - (A) commences a voluntary case or proceeding;
  - (B) consents to the entry of an order for relief against it in an involuntary case or proceeding;
  - (C) consents to the appointment of a Custodian of it or for all or substantially all of its property;



- (D) makes a general assignment for the benefit of its creditors;
- (E) files a petition in bankruptcy or answer or consent seeking reorganization or relief;
- (F) consents to the filing of such petition or the appointment of or taking possession by a Custodian; or
- (G) takes any comparable action under any foreign laws relating to insolvency;
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) is for relief against the Company or any Significant Subsidiary in an involuntary case, or adjudicates the Company or any Significant Subsidiary insolvent or bankrupt;
  - (B) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of the property of the Company or any Significant Subsidiary; or
  - (C) orders the winding up or liquidation of the Company or any Significant Subsidiary (or any similar relief is granted under any foreign laws),

and the order or decree remains unstayed and in effect for 90 days;

(9) except as otherwise permitted herein, any Guarantee of a Significant Subsidiary shall be held in any final, non-appealable judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor that is a Significant Subsidiary shall deny or disaffirm its obligations under its Guarantee for the Securities; or

(10) a final judgment for the payment of \$75 million or more (excluding any amounts covered by insurance or indemnities or that is bonded) rendered against the Company or any of its Significant Subsidiaries, which judgment is not satisfied, annulled, discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished.

The term "Bankruptcy Law" means Title 11, United States Code, or any similar Federal or state or foreign law for the relief of debtors. The term "Custodian" means any custodian, receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Securities of any series at the time Outstanding (other than an Event of Default with respect to the Company specified in Section 501(5) or Section 501(6) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series may declare the principal amount of all the Securities of such series (or, if any Securities of such series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof), together with any accrued and unpaid interest thereon, to be due and payable immediately, by a notice in writing to the Company and the Guarantors (and to the Trustee if given by Holders), and upon any such declaration, such principal amount (or specified amount), together with any accrued and unpaid interest thereon, shall become immediately due and payable. If an Event of Default with respect to the Company specified in Section 501(5) or Section 501(6) with respect to the Securities of any series at the time Outstanding occurs, the principal amount of all the Securities of such series (or, in the case of any Security of such series which specifies an amount to be due and payable thereon upon acceleration of the Maturity thereof, such amount as may be specified by the terms thereof), together with any accrued and unpaid interest thereon, shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. Upon payment of such amount, all obligations of the Company in respect of the payment of principal and interest of the Securities of such series shall terminate.

Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, at any time after such a declaration of acceleration with respect to the Securities of any series has been made and before a judgment or decree for payment of the money due based on such acceleration has been obtained by the Trustee as hereinafter in this Article V provided, the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, by written notice to the Company, the Guarantors and the Trustee, may rescind and annul such declaration and its consequences if:

- (1) the Company or any Guarantor has paid or deposited with the Trustee a sum sufficient to pay:
  - (A) all overdue interest on all Securities of such series,
  - (B) the principal of and premium, if any, on any Securities of such series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in the Securities of such series,
  - (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and
  - (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of such series, other than the nonpayment of the principal of Securities of such series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 512.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if (1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or (2) default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof, it will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and premium, if any, and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem necessary to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company, any Guarantor or any other obligor upon the Securities or the property of the Company, any Guarantor or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company or any Guarantor for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim for the whole amount of principal and premium, if any, and interest owing and unpaid in respect of the Securities 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, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by the Holder 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, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and for any other amounts due the Trustee under Section 607.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

Section 505. Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, any predecessor Trustee under Section 607, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article V, and any money or other property distributable in respect of the Company's obligations under this Indenture after the occurrence of an Event of Default, shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee (including any predecessor Trustee) under Section 607;

SECOND: To the payment of the amounts then due and unpaid for principal of and premium, if any, and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and premium, if any, and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company or the Guarantors.

Section 507. Limitation on Suits.

Except as otherwise provided in Section 508, no Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver, assignee, trustee, liquidator or sequestrator (or similar official) or for any other remedy hereunder, unless:

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default, specifying an Event of Default with respect to the Securities of such series;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series shall have made a written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee has failed to institute any such proceeding for 60 days after its receipt of such notice, request and offer of indemnity; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 508. Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert Securities.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and, subject to Section 307, interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or date for repayment, as the case may be, and, if the terms of such Security so provide, to convert such Security in accordance with its terms) and to institute suit for the

enforcement of any such payment and, if applicable, any such right to convert, and such rights shall not be impaired without the consent of such Holder.

Section 509. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 510. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 511. Control by Holders.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series; provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture, shall not be unduly prejudicial to the rights of Holders not joining the direction and shall not involve the Trustee in any personal liability, and
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Before proceeding to exercise any right or power hereunder at the direction of the Holders, the Trustee shall be entitled to receive from such Holders security or indemnity satisfactory to the Trustee against the costs, expenses, losses and liabilities which might be incurred by it in compliance with such request or direction.

Section 512. Waiver of Past Defaults.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series, upon

notice to the Company and the Trustee, waive any past Default hereunder with respect to such series and its consequences, except a Default

- (1) in the payment of the principal of or premium, if any, or interest on any Security of such series, or
- (2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 513. Undertaking for Costs.

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, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess reasonable costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section 513 nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company, any Guarantor or the Trustee, a suit by a Holder under Section 508, or a suit by Holders of more than 10% in aggregate principal amount of the Outstanding Securities.

Section 514. Waiver of Usury, Stay or Extension Laws.

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

Section 515. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Guarantors, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

**ARTICLE VI**  
**THE TRUSTEE**

Section 601. Certain Duties and Responsibilities of Trustee.

- (3) Except during the continuance of an Event of Default with respect to any series of Securities,
- (A) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Securities of such series, and no implied covenants or obligations shall be read into this Indenture against the Trustee with respect to such series; and
  - (B) in the absence of bad faith on its part, the Trustee may conclusively rely with respect to the Securities of such series, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).
- (4) In case an Event of Default with respect to any series of Securities has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to the Securities of such series, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.
- (5) 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:
- (A) this Section 601(3) shall not be construed to limit the effect of Section 601(1);
  - (B) the Trustee shall not be liable for any error of judgment made in good faith by an Authorized Officer, unless it shall be proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts;
  - (C) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of



the Holders of a majority in aggregate principal amount of the Outstanding Securities of any series, determined as provided in Sections 101, 104 and 511, 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 Securities of such series; and

(D) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any 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 repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(6) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 601.

Section 602. Notice of Defaults.

If a Default occurs with respect to Securities of any series and is continuing and written notice of such Default has been received by an Authorized Officer of the Trustee at the Corporate Trust Office of the Trustee, the Trustee shall give to each Holder of Securities of such series notice of Default within 90 days after such written notice is received by such Authorized Officer. Except in the case of a Default in payment of principal of or interest on any Security, the Trustee may withhold notice if and so long as it in good faith determines that withholding such notice is in the interests of Holders of Securities of such series.

Section 603. Certain Rights of Trustee.

Subject to the provisions of Section 601:

(3) the Trustee may conclusively rely and shall fully be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(4) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Authentication Order, and any resolution of the Board of Directors of the Company or a duly authorized committee thereof, as the case may be, shall be sufficiently evidenced by a Company Resolution thereof;

(5) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or

omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate of the Company or the Guarantors;

(6) the Trustee may consult with counsel of its selection 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 reliance thereon;

(7) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(8) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company or the Guarantors, personally or by agent or attorney at the sole cost of the Company or the Guarantors and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(9) 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;

(10) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder and to its agents;

(11) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(12) anything in this Indenture notwithstanding, in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(13) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services (it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances);

(14) the Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of such Default or Event of Default, as the case may be, has been received by an Authorized Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(15) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(16) the permissive right of the Trustee to take or refrain from taking action hereunder shall not be construed as a duty; and

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

Section 604. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company and the Guarantors, as the case may be, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Guarantees. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 605. May Hold Securities.

The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company or the Guarantors, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 606. Money Held in Trust.

Money held by the Trustee in trust hereunder shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 607. Compensation and Reimbursement.

The Company and each Guarantor, jointly and severally, agrees:

- (1) to pay to the Trustee from time to time such compensation as shall be agreed to in writing between the parties hereto for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel and all Persons not regularly in its employ), except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith, in each case as determined by a final order of a court of competent jurisdiction; and
- (3) to indemnify each of the Trustee or any predecessor Trustee and their officers, agents, directors and employees for, and to hold them harmless against, any and all loss, damage, claims, liability or expense incurred without negligence, willful misconduct or bad faith on its part, in each case as determined by a final order of a court of competent jurisdiction, arising out of or in connection with this Indenture, the Securities and the transactions contemplated hereby and thereby, including the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section 607.

In addition to, but without prejudice to its other rights under this Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) or (6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

“Trustee” for purposes of this Section 607 shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

As security for the performance of the obligations of the Company and the Guarantors under this Section 607, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 607, except with respect to funds held in trust for the benefit of the Holders of particular Securities for the payment of principal of and premium, if any, or interest.

The provisions of this Section 607 shall survive the satisfaction and discharge of the Securities, the termination for any reason of this Indenture and the resignation or removal of the Trustee.

Section 608. Conflicting Interests.

If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to, the provisions of the Trust Indenture Act and this Indenture.

To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

Section 609. Corporate Trustee Required; Eligibility.

There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, has a combined capital and surplus of at least \$50,000,000 and has its Corporate Trust Office in any city in the United States. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 609 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent annual report of condition so published. If at any time the Trustee with respect to the Securities of any series shall cease to be eligible in accordance with the provisions of this Section 609, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

Section 610. Resignation and Removal; Appointment of Successor.

No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

The Trustee or any successor hereafter appointed may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by the Company or by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, upon written notice delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If at any time:

- (3) the Trustee shall fail to comply with Section 608 after written request therefor by the Company, the Guarantors or any Holder who has been a *bona fide* Holder of a Security for at least six months, or
- (4) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company, the Guarantors or any such Holder, or
- (5) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company or the Guarantors may remove the Trustee with respect to all Securities or (B) subject to Section 513, Holders of 10% in aggregate principal amount of Securities of any series who have been *bona fide* Holders of such Securities for at least six months may, on behalf of themselves and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company or the Guarantors shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular

series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company or the Guarantors. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company the Guarantors or the Holders and accepted appointment in the manner required by Section 611, Holders of 10% in aggregate principal amount of Securities of any series who have been *bona fide* Holders of Securities of such series for at least six months may, on behalf of themselves and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Company or the Guarantors shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 611. Acceptance of Appointment by Successor.

In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company, the Guarantors and the retiring Trustee a written instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee, but, on the request of the Company, the Guarantors or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver a written instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder subject nonetheless to the lien provided for in Section 607.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the Guarantors, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) 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 retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or

those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) 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 other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring 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 retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company, the Guarantors or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates subject nonetheless to the lien provided for in Section 607.

Upon request of any such successor Trustee, the Company and the Guarantors 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 the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

Upon acceptance of appointment by a successor trustee as provided in this Section 611, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the Security Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 612. Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided that such Person shall be otherwise qualified and eligible under this Article VI, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, consolidation or sale to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities; and in case at that time any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee;



and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

Section 613. Preferential Collection of Claims Against Company.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or has been removed shall comply with Section 311(a) of the Trust Indenture Act to the extent indicated.

Section 614. Trustee's Application for Instructions from the Company.

Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed (to the extent not provided for in this Indenture) to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than 10 Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

**ARTICLE VII**  
**HOLDERS' LISTS AND REPORTS BY THE TRUSTEE,**  
**THE COMPANY AND THE GUARANTORS**

Section 701. Company to Furnish Trustee Names and Addresses of Holders.

If the Trustee is not the Security Registrar, the Company shall cause the Security Registrar to furnish to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of Securities of each series.

Section 702. Preservation of Information; Communications to Holders.

The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may dispose of any list furnished to it as provided in Section 701 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act, as if the Trust Indenture Act were applicable.

Section 703. Reserved.

Section 704. Reports by the Company and the Guarantors.

Delivery of reports, information and documents to the Trustee is for informational purposes only and shall not constitute a representation or warranty as to the accuracy or completeness of the reports, information and documents. The Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's or the Guarantors' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates of the Company).

### **ARTICLE VIII MERGER, CONSOLIDATION OR SALE OF ASSETS**

Section 801. Company May Consolidate, Merge or Transfer Assets on Certain Terms.

The Company is permitted to consolidate or merge with another Person or to sell all or substantially all of its assets to another Person, subject to meeting all of the following conditions:

- (18) the resulting, surviving or transferee Person (if other than the Company) must expressly assume through a supplemental indenture the Company's obligations under this Indenture;
- (19) immediately following the consolidation, merger, sale or conveyance, no Event of Default shall have occurred and be continuing; and
- (20) the resulting, surviving or transferee entity is a corporation or other entity organized and validly existing under the laws of the United States, any state or commonwealth thereof, the District of Columbia or any territory thereof.

Section 802. Successor Person Substituted.

Upon the consummation of a transaction contemplated by and consummated in accordance with Section 801, the successor Person shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, with the same effect

as if such successor Person had been an original party to this Indenture, and the Company shall be released from all of its liabilities and obligations under this Indenture and the Securities.

**ARTICLE IX**  
**SUPPLEMENTAL INDENTURES**

Section 901. Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, for any of the following purposes:

- (3) curing ambiguities, omissions, mistakes, errors, defects or inconsistencies;
- (4) providing for the assumption by a successor Person of the obligations of the Company under this Indenture;
- (5) adding Guarantees or co-issuers with respect to any series of Securities;
- (6) securing any series of Securities;
- (7) adding to the covenants of the Company for the benefit of the Holders or surrendering any right or power conferred upon the Company;
- (8) adding additional Events of Default;
- (9) making any change that does not adversely affect the rights of any Holder;
- (10) changing or eliminating any provisions of this Indenture so long as there are no Holders entitled to the benefit of the provisions;
- (11) complying with any requirement of the SEC in connection with the qualification, if any, of this Indenture under the Trust Indenture Act;
- (12) conforming the provisions of this Indenture and the Securities to the "Description of Notes" or similarly captioned section of any offering memorandum, offering circular, prospectus supplement or similar offering document relating to Securities of such series;
- (13) supplementing any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities so long as any such action shall not adversely affect the interests of any Holder of such series of Securities or any other series of Securities issued hereunder;
- (14) prohibiting or providing for the authentication and delivery of additional series of Securities;

- (15) providing for uncertificated Securities in addition to or in place of certificated Securities subject to applicable laws, or providing for the issuance of additional Securities of any series;
- (16) establishing the form or terms of Securities issued under this Indenture and coupons of any series of Securities pursuant to this Indenture and to change the procedures for transferring and exchanging such Securities so long as such change does not adversely affect the Holders of any outstanding Securities (except as required by applicable securities laws);
- (17) making any change to this Indenture that does not adversely affect the rights of any Holder of any series of Securities;
- (18) evidencing the acceptance of appointment by a successor trustee;
- (19) complying with the merger and consolidation provisions pursuant to this Indenture;
- (20) in the case of subordinated Securities, making any change to the provisions of this Indenture or any supplemental indenture relating to subordination that would limit or terminate the benefits available to any holder of Senior Indebtedness under such provisions (but only if each such holder of Senior Indebtedness under such provisions consents to such change); or
- (21) evidencing the release of any Guarantor pursuant to the terms of this Indenture.

Section 902. Supplemental Indentures With Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange for Securities), by Act of said Holders delivered to the Company, the Guarantors and the Trustee, the Company, the Guarantors and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security of such series affected thereby:

- (1) extend the maturity of any payment of principal of or any installment of interest on any Securities of such series;
- (2) reduce the principal amount of any Security of such series, or the interest, including additional interest, thereon, or any premium payable on any Security of such series upon redemption thereof;
- (3) change the Company's obligation to pay additional amounts;

- (4) change any Place of Payment where, or the currency in which, any Security of such series or any premium or interest is denominated as payable;
- (5) change the ranking of the Securities of such series;
- (6) impair the right to sue for the enforcement of any payment on or with respect to any Security of such series;
- (7) modify the Guarantees in any manner adverse to the Holders of the Securities, except as permitted by this Indenture; or
- (8) reduce the percentage in principal amount of Outstanding Securities of such series required to consent to any supplemental indenture, any waiver of compliance with provisions of this Indenture or specific defaults and their consequences provided for in this Indenture, or otherwise modify the sections in this Indenture relating to these consents.

For the avoidance of doubt, the Trustee shall not be responsible for making any determination as to whether or not the consent of Holders, or what percentage of such Holders, is required in connection with any amendment, supplement or waiver of any provision of this Indenture, the Securities or the Guarantees.

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

It shall not be necessary for any Act of Holders under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive, and, subject to Section 601, shall be fully protected in relying upon, in addition to the documents required by Section 102, an Opinion of Counsel and an Officers' Certificate each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent in this Indenture to the execution of such supplemental indenture, if any, have been satisfied; provided, however, that no such Opinion of Counsel shall be required in the case of any supplemental indenture executed and delivered concurrently with the original execution and delivery of this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. Any supplemental

indenture the sole effect of which is to add new Guarantors need not be executed and delivered by any then-existing Guarantor.

Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905. Reserved.

Section 906. Notice of Supplemental Indenture; Reference in Securities to Supplemental Indentures.

After a supplemental indenture (other than a supplemental indenture (i) the sole effect of which is to add new Guarantors or (ii) which is publicly available) under Sections 901 and 902 becomes effective, the Company shall send a notice regarding such supplemental indenture to the Holders. Any failure of the Company to send such notice shall not in any way impair or affect the validity of any such supplemental indenture.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

**ARTICLE X  
COVENANTS**

Section 1001. Payment of Principal, Premium, if any, and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and premium, if any, and interest on the Securities of such series in accordance with the terms of the Securities and this Indenture. Principal and interest shall be considered paid on the date due if, on or before 11:00 a.m. (New York City time) on such date, the Trustee or the Paying Agent (or, if the Company or any Subsidiary is the Paying Agent, the segregated account or separate trust fund maintained by the Company or such Subsidiary pursuant to Section 1003) holds in accordance with this Indenture money sufficient to pay all principal and interest then due.

The Company shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful as provided in Section 307.

Notwithstanding anything to the contrary contained in this Indenture, the Company, the Guarantors or the Paying Agent may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America or other domestic or foreign taxing authorities from principal or interest payments hereunder.

Section 1002. Maintenance of Office or Agency.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of such series may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion, and where notices and demands to or upon the Company in respect of the Securities of such series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

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

With respect to any Global Security, and except as otherwise may be specified for such Global Security as contemplated by Section 301, the Corporate Trust Office of the Trustee shall be the Place of Payment where such Global Security may be presented or surrendered for payment or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor; provided, however, that any such payment, presentation, surrender or delivery effected pursuant to the Applicable Procedures of the Depositary for such Global Security shall be deemed to have been effected at the Place of Payment for such Global Security in accordance with the provisions of this Indenture.

Section 1003. Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as Paying Agent with respect to any series of Securities, it will, on or before each due date for the principal of or premium, if any, or interest on any of the Securities of such series, segregate and hold in trust for the benefit of the Holders of such Securities a sum sufficient to pay the principal and premium, if any, and interest so becoming due until such sums shall be paid to such Holders or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, no later than 11:00 a.m. (New York City time) on each due date for the principal of or premium, if any, or interest on any Securities of such series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held in trust for the Holders of such Securities entitled to the same, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 1003, that such Paying Agent shall (i) hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Securities, (ii) notify the Trustee in writing of any default by the Company in making any such payment and (iii) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent. Upon any bankruptcy or reorganization proceeding relating to the Company, the Trustee shall be the Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Authentication Order direct any Paying Agent 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 money.

Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium, if any, or interest on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in The New York Times or The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

Section 1004. Statement by Responsible Officers as to Default.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company ending after the date hereof an Officers' Certificate of the Company stating that a review of the activities of the Company during the preceding fiscal year and of performance under this Indenture has been made under such Responsible Officer's supervision and whether or not, to the knowledge of such Responsible Officer, the Company has fulfilled all of its



obligations under this Indenture throughout such year, or, if it is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture applicable to it (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and status thereof of which such Responsible Officer may have knowledge.

The Company shall deliver to the Trustee, as soon as possible and in any event within 30 days after the Company becomes aware of the occurrence of any Default or Event of Default an Officers' Certificate setting forth the details of such Default or Event of Default and its status.

Section 1005. Waiver of Certain Covenants.

Except as otherwise specified as contemplated by Section 301 for Securities of such series, the Company or the Guarantors, as the case may be, may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Section 301(18), Section 901(5) or Section 901(8) for the benefit of the Holders of such series or in Article VIII, if before the time for such compliance the Holders of at least a majority in aggregate principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company or the Guarantors, as the case may be, and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

**ARTICLE XI**  
**REDEMPTION OF SECURITIES**

Section 1101. Applicability of Article.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for such Securities) in accordance with this Article XI.

Section 1102. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by a Company Resolution or an Officers' Certificate of the Company or in another manner specified as contemplated by Section 301 for such Securities. In case of any redemption at the election of the Company of the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 15 days prior to the date any notice of a redemption is to be given to the Holders pursuant to Section 1104 (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such

redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate of the Company evidencing compliance with such restriction.

Section 1103. Selection by Trustee of Securities to Be Redeemed.

If less than all of the Securities of any series are to be redeemed at any time, the Trustee will select the Securities of such series for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Securities are listed, as certified to the Trustee by the Company, or in the case of Global Securities, in compliance with the requirements of The Depository Trust Company ("DTC"), or if the Securities are not so listed or such exchange prescribes no method of selection or the Securities are not held through DTC or DTC prescribes no method of selection, on a pro rata basis or by such other method as the Trustee deems to be fair and appropriate, in each case, subject to adjustments so that no Security in an unauthorized denomination is redeemed in part and further; provided, however, that no Security of \$2,000 in aggregate principal amount shall be redeemed in part.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption as aforesaid, and in case of any Securities selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

The provisions of the preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 1104. Notice of Redemption.

Notices of redemption shall be sent by first-class mail, postage prepaid, mailed (or, in the case of Global Securities, delivered electronically in accordance with the procedures of the Depository) at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the address of such Holder appearing in the Security Register or otherwise in accordance with the procedures of DTC, except that redemption

notices may be sent more than 60 days prior to a Redemption Date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture. Any redemption and notice of redemption may, at the Company's discretion, be subject to the satisfaction of one or more conditions precedent.

All notices of redemption shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price (or the method of calculating such price);
- (3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the respective principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed;
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed, and if applicable, that interest thereon will cease to accrue on and after said date;
- (5) the place or places where each such Security is to be surrendered for payment of the Redemption Price;
- (6) for any Securities that by their terms may be converted, the terms of conversion, the date on which the right to convert the Security to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion;
- (7) that the redemption is for a sinking fund, if such is the case;
- (8) if applicable, the CUSIP, ISIN or any similar numbers of the Securities of such series; provided, however, that no representation will be made as to the correctness or accuracy of the CUSIP, ISIN or any similar number, if any, listed in such notice or printed on the Securities; and
- (9) if the redemption or notice of redemption is subject to satisfaction of one or more conditions precedent, that, in the Company's discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Company) or such redemption may not occur and such notice of redemption may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company) by the Redemption Date, or by the Redemption Date so delayed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request given at least 3 Business Days before

such notice is required to be sent (which may be rescinded or revoked at any time prior to the time at which the Trustee shall have given such notice to the Holders), by the Trustee in the name and at the expense of the Company. The notice, if given in the manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to send such notice or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Securities.

Section 1105. Deposit of Redemption Price.

By no later than 11:00 a.m. (New York City time) on any Redemption Date, the Company shall deposit or cause to be deposited with the Trustee or with a Paying Agent (or, if the Company or any Subsidiary is acting as Paying Agent, such party will segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date or the Securities of the series provide otherwise) accrued interest on, all the Securities which are to be redeemed on that date. All money, if any, earned on funds held by the Paying Agent shall be remitted to the Company. In addition, the Paying Agent shall promptly return to the Company any money deposited with the Paying Agent by the Company in excess of the amounts necessary to pay the Redemption Price of, and accrued interest, if any, on, all Securities to be redeemed.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 307 or in the terms of such Security) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, subject to the terms of such notice (including any conditions contained therein), on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together, if applicable, with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 301, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Dates according to their terms and the provisions of Section 307; provided further that, unless otherwise specified as contemplated by Section 301, if the Redemption Date is after a Regular Record Date and on or prior to the Interest Payment Date, the accrued and unpaid interest shall be payable to the Holder of the redeemed Securities registered on the relevant Regular Record Date.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any, shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 1107. Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and 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 Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. In the case of a Global Security, an appropriate notation will be made on such Security to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

**ARTICLE XII**  
**SINKING FUNDS**

Section 1201. Applicability of Article.

The provisions of this Article XII shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 301 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any series of Securities is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "optional sinking fund payment." If provided for by the terms of any series of Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of the series as provided for by the terms of such Securities.

Section 1202. Satisfaction of Sinking Fund Payments with Securities.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as

specified in the Securities so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 1203. Redemption of Securities for Sinking Fund.

Not less than 60 days (or such shorter period as shall be satisfactory to the Trustee) prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate of the Company specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 1202 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of, and at the expense of, the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

**ARTICLE XIII**  
**DEFEASANCE AND COVENANT DEFEASANCE**

Section 1301. Company's Option to Effect Defeasance or Covenant Defeasance.

Unless otherwise provided as contemplated by Section 301, Sections 1302 and 1303 shall apply to all Securities and each series of Securities, denominated in U.S. dollars and bearing interest at a fixed rate, in accordance with any applicable requirements provided pursuant to Section 301 and upon compliance with the conditions set forth below in this Article XIII; and the Company may elect, at its option at any time, to have Sections 1302 and 1303 applied to any Securities or any series of Securities, designated pursuant to Section 301 as being defeasible pursuant to such Section 1302 or 1303, in accordance with any applicable requirements provided pursuant to Section 301 and upon compliance with the conditions set forth below in this Article XIII. Any such election shall be evidenced by a Company Resolution, Officers' Certificate of the Company, one or more indentures supplemental hereto or in another manner specified as contemplated by Section 301 for such Securities.

Section 1302. Defeasance and Discharge.

Upon the Company's exercise of its option, if any, to have this Section 1302 applied to any Securities or any series of Securities, or if this Section 1302 shall otherwise apply to any Securities or any series of Securities, the Company and the Guarantors shall be deemed to have been discharged from their respective obligations with respect to such Securities and related Guarantees as provided in this Section 1302 on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that each of the Company and the Guarantors shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and Guarantees and to have satisfied all its other obligations under such Securities and Guarantees and this Indenture insofar

as such Securities and Guarantees are concerned (and the Trustee, at the expense of the Company or the Guarantors, as the case may be, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 1304 and as more fully set forth in such Section 1305, payments in respect of the principal of and premium, if any, and interest on such Securities when payments are due, (2) the Company's obligations with respect to such Securities and the Guarantors' obligations with respect to such Guarantees under Sections 304, 305, 306, 1002 and 1003, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article XIII. Subject to compliance with this Article XIII, the Company may exercise its option, if any, to have this Section 1302 applied to the Securities of any series and the related Guarantees notwithstanding the prior exercise of its option, if any, to have Section 1303 applied to such Securities and Guarantees.

Section 1303. Covenant Defeasance.

Upon the Company's exercise of its option, if any, to have this Section 1303 applied to any Securities or any series of Securities, or if this Section 1303 shall otherwise apply to any Securities or any series of Securities, (1) the Company and the Guarantors shall be released from their respective obligations under Section 801 and any covenants provided which were made a part of the terms of the Securities of such series in accordance with Section 301(18), Section 901(5), Section 901(8) or Section 1402 for the benefit of the Holders of such Securities and (2) the occurrence of any event specified in Section 501(3) and Section 501(12) shall be deemed not to be or result in an Event of Default, in each case with respect to such Securities and Guarantees as provided in this Section 1303 on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such Securities and Guarantees, each of the Company and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities and Guarantees shall be unaffected thereby.

Section 1304. Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions to the application of Section 1302 or 1303 to any Securities or any series of Securities:

(3) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 609 and agrees to comply with the provisions of this Article XIII applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will

provide money in an amount, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized, independent investment bank, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, without reinvestment, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of, premium, if any, and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "U.S. Government Obligation" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(4) In the event of an election to have Section 1302 apply to any Securities or any series of Securities, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Indenture, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(5) In the event of an election to have Section 1303 apply to any Securities or any series of Securities, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at



the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(6) In the event of an election to have Section 1302 apply to any Securities or any series of Securities, payment of such series of Securities may not thereafter be accelerated because of an Event of Default.

(7) In the event of an election to have Section 1303 apply to any Securities or any series of Securities, payment of such series of Securities may not thereafter be accelerated by reference to any covenant from which the Company is released.

(8) No Default or Event of Default with respect to such Securities or any other Securities shall have occurred and be continuing at the time of such deposit or, insofar as Section 501(5) or Section 501(6) are concerned, at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).

(9) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other material agreement or instrument (other than any agreement or instrument governing any other indebtedness being contemporaneously defeased, discharged or replaced) to which the Company is a party or by which it is bound.

(10) The Company shall have delivered to the Trustee an Officers' Certificate of the Company and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been satisfied (in each case, subject to the satisfaction of the condition in clause (6)).

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article XI.

Section 1305. Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions.

Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 1305 and Section 1306, the Trustee and any such other trustees are referred to collectively as the "Trustee") pursuant to Section 1304 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and premium, if any, and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 1304 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 Securities; provided that the Trustee shall be entitled to charge any such tax, fee or other charge to such Holder's account.

Anything in this Article XIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1304 with respect to any Securities which are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

Section 1306. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article XIII with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations under this Indenture and such Securities and Guarantees from which the Company and the Guarantors have been discharged or released pursuant to Section 1302 or 1303 shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIII with respect to such Securities and Guarantees, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 1305 with respect to such Securities and Guarantees in accordance with this Article XIII; provided, however, that (a) if the Company or the Guarantors makes any payment of principal of or premium, if any, or interest on any such Security following such reinstatement of its obligations, the Company or the Guarantors, as the case may be, shall be subrogated to the rights, if any, of the Holders of such Securities to receive such payment from the money so held in trust and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee or Paying Agent shall return all such money and U.S. Government Obligations to the Company or the Guarantors, as the case may be, promptly after receiving a written request therefor at any time, if such reinstatement of the obligations of the Company or the Guarantors, as the case may be, has occurred and continues to be in effect.

**ARTICLE XIV**  
**GUARANTEE OF SECURITIES**

Section 1401. Guarantee.

Each Guarantor hereby jointly and severally and fully and unconditionally guarantees to each Holder of a Security authenticated and delivered by the Trustee hereunder, and to the Trustee, the due and punctual payment in full of the principal of and premium, if any, and interest on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, and interest on the overdue principal and (to the extent permitted by law) interest, if any, on such Security and all other amounts due and payable under this Indenture (collectively, the "Obligations"), in

accordance with the terms of such Security and this Indenture. If the Company shall fail to pay when due any Obligations, for whatever reason, each Guarantor shall be jointly and severally obligated to pay in cash the same promptly. An Event of Default under this Indenture or the Security of any series shall entitle the Trustee or the Holders of such Securities to accelerate the Obligations of the Guarantors hereunder in the same manner and to the same extent as the Obligations of the Company.

Each Guarantor that makes a payment under its Guarantee will be entitled to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 1402. Additional Guarantors.

If, after the first original issue date of any series of Securities, a Subsidiary guarantees (such Guarantee being referred to as the "Triggering Guarantee") Senior Indebtedness of the Company under the Credit Agreement, then, within 20 Business Days thereof, the Company shall cause such Subsidiary to execute and deliver to the Trustee a supplemental indenture pursuant to which such Subsidiary shall guarantee payment of the Securities on the same terms and conditions as the original Guarantees from the initial Guarantors with such limitations as are set forth in the Triggering Guarantee. The Trustee shall have no responsibility or liability with respect to any limitations in the Triggering Guarantee and shall be fully protected in relying upon an Officers' Certificate of the Company as to any such limitations.

Section 1403. Waiver.

To the fullest extent permitted by applicable law, each Guarantor hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that no Guarantee will be discharged in respect of any Security except by complete performance of the Obligations contained in such Security and in this Article.

Section 1404. Guarantee of Payment.

Each Guarantee shall constitute a guarantee of payment when due and not a guarantee of collection. The Guarantors hereby agree that, in the event of a default in payment of any Obligation, whether at its Stated Maturity, by declaration of acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee, or by Holders, subject to the terms and conditions set forth in this Indenture, directly against the Guarantors to enforce the Guarantee without first proceeding against the Company.

Section 1405. No Discharge or Diminishment of Guarantee.

Subject to Section 1410, the obligations of each of the Guarantors hereunder shall be absolute and unconditional and not be subject to any reduction, limitation, termination, impairment or for any reason (other than the payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Securities, this Indenture or the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of the Trustee or any Holder of the Securities to assert any claim or demand or to enforce any remedy under this Indenture or any Security, any other guarantee or any other agreement, by any waiver, modification or indulgence of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, by any release of any other Guarantor pursuant to Section 1410 or by any other act or omission or delay to do any other act that may or might in any manner or to any extent vary the risk of any Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the payment in full in cash of all the Obligations); provided, however, that notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of the Guarantors, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration or the maturity thereof pursuant to Section 502 of this Indenture.

Section 1406. Defenses of Company Waived.

To the extent permitted by applicable law, each of the Guarantors waives any defense based on or arising out of any defense of the Company or any other Guarantor or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Company, other than final payment in full in cash of the Obligations. Each of the Guarantors waives any defense arising out of any such election even though such election operates to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of each of the Guarantors against the Company or any security.

Section 1407. Continued Effectiveness.

Subject to Section 1410, each of the Guarantors further agrees that its Guarantee with respect to any Security hereunder shall remain in full force and effect and continue to be irrevocable notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Obligation is rescinded or must otherwise be restored or returned by the Trustee or any Holder of any Security, whether as a "voidable preference," "fraudulent transfer" upon bankruptcy or

reorganization of the Company or otherwise, all as though such payment or performance had not been made, until the date upon which the entire Obligation, if any, and interest on such Security has been, or has been deemed pursuant to the provisions of this Indenture to have been paid in full. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned on any Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

Section 1408. Subrogation.

In furtherance of the foregoing and not in limitation of any other right of each of the Guarantors by virtue hereof, upon the failure of the Company to pay any Obligation when and as the same shall become due, each of the Guarantors hereby promises to and will, upon receipt of written demand by the Trustee or any Holder of the Securities of any series, forthwith pay, or cause to be paid, to the Holders in cash the amount of such unpaid Obligations, and thereupon the Holders shall, assign (except to the extent that such assignment would render a Guarantor a "creditor" of the Company within the meaning of Section 547 of Title 11 of the United States Code as now in effect or hereafter amended or any comparable provision of any successor statute) the amount of the Obligations owed to it and paid by such Guarantor pursuant to this Guarantee to such Guarantor, such assignment to be pro rata to the extent the Obligations in question were discharged by such Guarantor, or make such other disposition thereof as such Guarantor shall direct (all without recourse to the Holders, and without any representation or warranty by the Holders). If (a) a Guarantor shall make payment to the Holders of all or any part of the Obligations and (b) all the Obligations and all other amounts payable under this Indenture shall be paid in full, the Trustee will, at such Guarantor's request, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Obligations resulting from such payment by such Guarantor.

Section 1409. Subordination.

Upon payment by any Guarantor of any sums to the Holders, as provided above, all rights of such Guarantor against the Company, arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinated and junior in right of payment to the prior payment in full in cash of all the Obligations to the Trustee; provided, however, that any right of subrogation that such Guarantor may have pursuant to this Indenture is subject to Section 1408.

Section 1410. Release of Guarantor and Termination of Guarantee.

A Guarantor shall, upon the occurrence of any of the following events, be automatically and unconditionally released and discharged from all obligations under this Indenture and its Guarantee without any action required on the part of the Trustee or any Holder; provided that such Guarantor would not, immediately after such release and discharge, be required to become a Guarantor pursuant to Section 1402:

- (1) upon the sale or other disposition (including by way of consolidation or merger), in one transaction or a series of related transactions, of at least a majority of the

total voting power of the capital stock or other interests of such Guarantor (other than to the Company or any of its Subsidiaries), as permitted under this Indenture;

- (2) if at any time when no default has occurred and is continuing with respect to the Securities, such Guarantor no longer guarantees (or which Guarantee is being simultaneously released or will be immediately released after the release of the Guarantor) the Senior Indebtedness of the Company under the Credit Agreement; or
- (3) if the Company exercises its defeasance option or its covenant defeasance option as described under Article XIII hereof or if its Obligations under this Indenture are discharged in accordance with the terms of Section 401 hereof.

The Trustee shall deliver such instruments reasonably requested by the Company evidencing such release upon receipt of a request of the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 1410.

Section 1411. Limitation of Guarantors' Liability.

Each Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the Guarantee by such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Title 11 of the United States Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantor. To effectuate the foregoing intention, the Holders and such Guarantor hereby irrevocably agree that the obligations of such Guarantor under this Indenture and its Guarantee shall be limited to the maximum aggregate amount which, after giving effect to all other contingent and fixed liabilities of such Guarantor, and after giving effect to any collections from or payments made by or on behalf of, any other Guarantor in respect of the obligations of such Guarantor under its Guarantee or pursuant to any other obligations under this Indenture, will result in the obligations of such Guarantor under its Guarantee not constituting such fraudulent transfer or conveyance.

Each Guarantee is expressly limited so that in no event, including the acceleration of the Maturity of the Securities, shall the amount paid or agreed to be paid in respect of interest on the Securities (or fees or other amounts deemed payment for the use of funds) exceed the maximum permissible amount under applicable law, as in effect on the date hereof and as subsequently amended or modified to allow a greater amount of interest (or fees or other amounts deemed payment for the use of funds) to be paid under such Guarantee. If for any reason the amount in respect of interest (or fees or other amounts deemed payment for the use of funds) required by a Guarantee exceeds such maximum permissible amount, the obligation to pay interest under such Guarantee (or fees or other amounts deemed payment for the use of funds) shall be automatically reduced to such maximum permissible amount and any amounts collected by any holder of any Security in excess of the permissible amount shall be automatically applied to reduce the outstanding principal on such Security.

Section 1412. No Obligation to Take Action Against the Company.

Neither the Trustee, any Holder nor any other Person shall have any obligation to enforce or exhaust any rights or remedies or take any other steps under any security for the Obligations or against the Company or any other Person or any property of the Company or any other Person before the Trustee, such Holder or such other Person is entitled to demand payment and performance by any or all Guarantors of their liabilities and obligations under their Guarantee.

Section 1413. Execution and Delivery.

To evidence its Guarantee set forth in this Article XIV, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by a Responsible Officer of such Guarantor, and in the case of any Subsidiary that becomes a Guarantor in accordance with this Indenture, such Subsidiary's Guarantee shall be evidence by the execution and delivery on behalf of such Subsidiary of a supplemental indenture hereto by a Responsible Officer of such Subsidiary.

Each Guarantor hereby agrees that its Guarantee set forth in this Article XIV shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on any Securities.

If a Responsible Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates any Security, the Guarantee shall be valid nevertheless.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

\* \* \*

This 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.

*[Signature page follows]*



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

**EnerSys, as Issuer**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Executive Vice President

**EnerSys Capital Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Executive Vice President

**EnerSys Delaware Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: President

**EnerSys Energy Products Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: President

**Esfincoco, Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Vice President

**Esrnico, Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Vice President

*[Signature Page to Base Indenture]*

**Purcell Systems, Inc., as Guarantor**

By: /s/ Richard W. Zuidema

Name: Richard W. Zuidema

Title: President

**Hawker Powersource, Inc., as  
Guarantor**

By: /s/ Richard W. Zuidema

Name: Richard W. Zuidema

Title: Vice President

*[Signature Page to Base Indenture]*

**MUFG Union Bank, N.A., as Trustee**

By: /s/ Enrico (BOBBY) Reyes  
Name: Enrico (BOBBY) Reyes  
Title: Vice President

*[Signature Page to Base Indenture]*

**GUARANTORS**

EnerSys Capital Inc.

EnerSys Delaware Inc.

EnerSys Energy Products Inc.

Esfenco, Inc.

Esmco, Inc.

Purcell Systems, Inc.

Hawker Powersource, Inc.

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of April 23, 2015**

**Supplementing that Certain**

**INDENTURE**

**Dated as of April 23, 2015**

**Among**

**ENERSYS,**

**THE GUARANTORS NAMED HEREIN**

**and**

**MUFG UNION BANK, N.A.,**

**as Trustee**

**5.00% Senior Notes due 2023**

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## TABLE OF CONTENTS

	Page
ARTICLE I	
Issuance of Securities	
Section 1.1	Issuance of Notes; Principal Amount; Maturity; Title 2
Section 1.2	Interest 2
Section 1.3	No Sinking Fund. 3
Section 1.4	Relationship with Base Indenture. 3
ARTICLE II	
Definitions and Other Provisions of General Application	
Section 2.1	Definitions 4
ARTICLE III	
Security Forms	
Section 3.1	Form Generally 16
Section 3.2	Form of Note 17
Section 3.3	Transfer and Exchange of Global Securities 26
ARTICLE IV	
Remedies	
Section 4.1	Events of Default 27
Section 4.2	Waiver of Past Defaults 27
ARTICLE V	
Redemption of Securities	
Section 5.1	Optional Redemption 28
Section 5.2	Base Indenture 28
ARTICLE VI	
Particular Covenants	
Section 6.1	Limitation on Liens 28
Section 6.2	Repurchase at the Option of Holders of Notes 31
Section 6.3	Limitations on Sale and Leaseback Transactions. 32
Section 6.4	SEC Reports 33
ARTICLE VII	
Supplemental Indentures	
Section 7.1	Supplemental Indentures without Consent of Holders of Notes 33
Section 7.2	Supplemental Indentures with Consent of Holders of Notes 34
ARTICLE VIII	
Miscellaneous	
Section 8.1	Execution as Supplemental Indenture 35
Section 8.2	Not Responsible for Recitals or Issuance of Notes 35
Section 8.3	Separability Clause 35

Section 8.4	Successors and Assigns	35
Section 8.5	Execution and Counterparts	36
Section 8.6	Governing Law	36

This First Supplemental Indenture, dated as of April 23, 2015 (the “First Supplemental Indenture”), among EnerSys, a Delaware corporation (herein called the “Company”), the Guarantors party hereto (the “Guarantors”) and MUFG Union Bank, N.A., as Trustee under the Base Indenture (as defined herein) and hereunder (the “Trustee”), supplements that certain Indenture, dated as of April 23, 2015, among the Company, the Guarantors named therein and the Trustee (the “Base Indenture”) and subject to Section 1.4 hereof, together with this First Supplemental Indenture, the “Indenture”).

### RECITALS OF THE COMPANY

The Company and the Guarantors have heretofore executed and delivered to the Trustee the Base Indenture providing for the issuance from time to time of one or more series of the Company’s senior unsecured debt securities (herein and in the Base Indenture called the “Securities”), the forms and terms of which are to be determined as set forth in Sections 201 and 301 of the Base Indenture, and the guarantees thereof (the “Guarantees”) by the Guarantors.

Section 901 of the Base Indenture provides, among other things, that the Company, the Guarantors and the Trustee may enter into indentures supplemental to the Base Indenture for, among other things, the purposes of (a) establishing the form or terms of Securities of any series as permitted by Sections 201 and 301 of the Base Indenture and (b) adding to or changing any of the provisions to the Base Indenture in certain circumstances.

The Company desires to create a series of Securities designated as its “5.00% Senior Notes due 2023” pursuant to the terms of this First Supplemental Indenture.

The Company has duly authorized the execution and delivery of this First Supplemental Indenture and the Notes (as defined herein) to be issued from time to time, as provided for in the Indenture.

Each Guarantor has duly authorized its Guarantee of the Notes and to provide therefor each Guarantor has duly authorized the execution and delivery of this First Supplemental Indenture.

All things necessary have been done to make this First Supplemental Indenture a valid and legally binding agreement of the Company in accordance with its terms and to make the Notes, when executed by the Company and authenticated and delivered under the Indenture and duly issued by the Company, the valid and legally binding obligations of the Company.

All things necessary have been done to make the Guarantees, upon execution and delivery of this First Supplemental Indenture, the valid and legally binding obligations of each Guarantor and to make this First Supplemental Indenture a valid and legally binding agreement of each Guarantor, in accordance with its terms.



## ARTICLE I

Issuance of SecuritiesSection 1.1 Issuance of Notes; Principal Amount; Maturity; Title.

(1) On April 23, 2015, the Company shall issue and deliver to the Trustee, and the Trustee shall authenticate, the Initial Notes (as defined herein) substantially in the form set forth in Section 3.2 below, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Base Indenture and this First Supplemental Indenture, and with such letters, numbers, or other marks of identification and such legends or endorsements placed thereon as may be required to comply with applicable tax laws or the rules of any securities exchange or Depository therefor or as may, consistently herewith, be determined by the Responsible Officer executing such Notes, as evidenced by the execution of such Notes.

(2) The Initial Notes to be issued pursuant to the Indenture shall be issued in the aggregate principal amount of \$300,000,000 and shall mature on April 30, 2023 (the “Stated Maturity”), unless the Notes are redeemed prior to that date as described in Section 5.1. The aggregate principal amount of Initial Notes Outstanding at any time may not exceed \$300,000,000, except for Notes issued, authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes of the series pursuant to Sections 304, 305, 306, 906 or 1107 of the Base Indenture and except for any Notes which, pursuant to Section 303 of the Base Indenture, are deemed never to have been authenticated and delivered. The Company may without the consent of the Holders, issue additional Notes hereunder as part of the same series and on the same terms and conditions (and having the same Guarantors) and with the same CUSIP numbers as the Initial Notes, but such additional Notes may be offered at a different offering price or have a different issue date, initial interest accrual date or initial interest payment date (“Additional Notes”); provided that if any Additional Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, such Additional Notes may not have the same CUSIP number as the Initial Notes; provided further that such Additional Notes issued pursuant to Regulation S under the Securities Act may initially be issued under a temporary CUSIP during the applicable Restricted Period.

(3) The Notes shall be issued only in fully registered form without coupons in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

(4) Pursuant to the terms hereof and Sections 201 and 301 of the Base Indenture, the Company hereby creates a series of Securities designated as the “5.00% Senior Notes due 2023” of the Company (as amended or supplemented from time to time, that are issued under the Indenture, including both the Initial Notes and the Additional Notes, if any, the “Notes”), which Notes shall be deemed “Securities” for all purposes under the Base Indenture.

Section 1.2 Interest.

(1) Interest on a Note will accrue at the per annum rate of 5.00%, from and including the date specified on the face of such Note to, but excluding, the date on which the principal thereof is paid, deemed paid or made available for payment and, in each case, will be paid on the basis of a 360-day year comprised of twelve 30-day months.

(2) The Company shall pay interest on the Notes semi-annually in arrears on April 30 and October 30 of each year (each, an “Interest Payment Date”), commencing October 30, 2015.

(3) Interest shall be paid on each Interest Payment Date to the registered Holders of the Notes after the close of business on the Regular Record Date (as defined herein).

(4) Amounts due on the Stated Maturity or earlier Redemption Date of the Notes will be payable at the Corporate Trust Office. The Company shall make payments of principal, premium, if any, and interest or the Change of Control Payment (as defined herein) in connection with a Change of Control Triggering Event (as defined herein) in respect of the Notes in book-entry form to DTC in immediately available funds, while disbursement of such payments to owners of beneficial interests in Notes in book-entry form will be made in accordance with the procedures of DTC and its participants in effect from time to time. The Company may at any time designate additional Paying Agents or rescind the designation of any Paying Agent or approve a change in the office through which any Paying Agent acts, except that the Company shall be required to maintain a Paying Agent in each Place of Payment for the Notes. Neither the Company nor the Trustee shall impose any service charge for any transfer or exchange of a Note. However, the Company may require Holders of the Notes to pay any taxes or other governmental charges in connection with a transfer or exchange of Notes.

(5) If any Interest Payment Date, Stated Maturity or earlier Redemption Date or Change of Control Payment Date (as defined herein) falls on a day that is not a Business Day in the City of New York or in the Place of Payment, the Company shall make the required payment of principal, premium, if any, and/or interest or Change of Control Payment in connection with a Change of Control Triggering Event on the next succeeding Business Day as if it were made on the date payment was due, and no interest will accrue on the amount so payable for the period from and after that Interest Payment Date, Stated Maturity or earlier Redemption Date or Change of Control Payment Date, as the case may be, to such next succeeding Business Day.

### Section 1.3 No Sinking Fund.

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. For the avoidance of doubt, the Company may be required to offer to purchase Notes as described under Section 6.2 hereof. The Company may at any time, and from time to time, purchase Notes in the open market or otherwise.

### Section 1.4 Relationship with Base Indenture.

The terms and provisions contained in the Base Indenture will constitute, and are hereby expressly made, a part of this First Supplemental Indenture. However, to the extent any provision

of the Base Indenture conflicts with the express provisions of this First Supplemental Indenture, the provisions of this First Supplemental Indenture will govern and be controlling.

## ARTICLE II

### Definitions and Other Provisions of General Application

#### Section 2.1 Definitions.

For all purposes of this First Supplemental Indenture (except as herein otherwise expressly provided or unless the context of this First Supplemental Indenture otherwise requires):

(6) any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this First Supplemental Indenture;

(7) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this First Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision;

(8) “including” means including without limitation;

(9) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements and instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Indenture.

The terms defined in this Section 2.1 (except as herein otherwise expressly provided or unless the context of this First Supplemental Indenture otherwise requires) for all purposes of this First Supplemental Indenture and of any indenture supplemental hereto have the respective meanings specified in this Section 2.1. All other terms used in this First Supplemental Indenture that are defined in the Base Indenture, either directly or by reference therein (except as herein otherwise expressly provided or unless the context of this First Supplemental Indenture otherwise requires), have the respective meanings assigned to such terms in the Base Indenture, as in force at the date of this First Supplemental Indenture as originally executed; provided that any term that is defined in both the Base Indenture and this First Supplemental Indenture shall have the meaning assigned to such term in this First Supplemental Indenture.

“Acquired EBITDA” means, with respect to any Acquired Entity or Business for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business, as applicable, all as determined on a consolidated basis for such Acquired Entity or Business, as applicable.

“Acquired Entity or Business” has the meaning specified in the definition of the term “Consolidated EBITDA”.

“Additional Notes” has the meaning specified in Section 1.1(2).

“Applicable Procedures” means, with respect to a Depositary, as to any matter at any time, the policies and procedures of such Depositary, if any, that are applicable to such matter at such time.

“Attributable Indebtedness” means, with regard to a sale and leaseback arrangement of a Principal Property that is a Capitalized Lease, the amount thereof accounted for as a liability in accordance with GAAP.

“Below Investment Grade Rating Event” means the Notes are rated below an Investment Grade Rating by each of the Rating Agencies during the 60-day period following the earlier of (1) the occurrence of a Change of Control or (2) public notice of the Company’s intention to effect a Change of Control; provided, however, that if (i) during such 60-day period one or more Rating Agencies has publicly announced that it is considering the possible downgrade of the Notes, and (ii) a downgrade by each of the Rating Agencies that has made such an announcement would result in a Below Investment Grade Rating Event, then such 60-day period shall be extended for such time as the rating of the Notes by any such Rating Agency remains under publicly announced consideration for possible downgrade to a rating below an Investment Grade Rating and a downgrade by such Rating Agency to a rating below an Investment Grade Rating could cause a Below Investment Grade Rating Event. Notwithstanding the foregoing, a Below Investment Grade Rating Event will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Below Investment Grade Rating Event for purposes of the definition of “Change of Control Triggering Event”) if either Rating Agency shall have put forth a written statement to the effect that such downgrade is not attributable in whole or in part to the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the rating event).

“Capitalized Lease” means all leases that are required to be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than the Company or one of its Subsidiaries; (2) the adoption of a plan relating to the Company’s liquidation or dissolution; (3) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power of all shares of the capital stock of the Company entitled to vote generally in elections of directors; or (4) the Company consolidates with, or merges with or into, any “person” (as that term is used in

Section 13(d) of the Exchange Act), or any “person” (as that term is used in Section 13(d) of the Exchange Act) consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding voting stock of the Company or such other “person” (as that term is used in Section 13(d) of the Exchange Act) is converted into or exchanged for cash, securities or other property, other than any such transaction where the shares of the voting stock of the Company outstanding immediately prior to such transaction constitute, or are converted into or exchanged for, a majority of the voting stock of the surviving “person” (as that term is used in Section 13(d) of the Exchange Act) immediately after giving effect to such transaction.

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

“Change of Control Offer” has the meaning specified in Section 6.2(1).

“Change of Control Payment” has the meaning specified in Section 6.2(1).

“Change of Control Payment Date” has the meaning specified in Section 6.2(2).

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Below Investment Grade Rating Event.

“Clearstream” means Clearstream Banking, S.A.

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Bank as having a maturity comparable to the remaining term (“Remaining Life”) of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Notes.

“Comparable Treasury Price” means, with respect to any Redemption Date, (1) the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (2) if the Independent Investment Bank obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such Reference Treasury Dealer Quotations or, if only one such Reference Treasury Dealer Quotation is obtained, such Reference Treasury Dealer Quotation.

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

- (a) increased (without duplication) by the following:
- (i) provision for taxes based on income or profits or capital, including, without limitation, state franchise, excise and similar taxes and foreign withholding taxes of such Person paid or accrued during such period, including any penalties and interest relating to any tax examinations, deducted (and not added back) in computing Consolidated Net Income; *plus*
  - (ii) (w) consolidated interest expense of such Person for such period, (x) net losses or any obligations under any Swap Contracts or other derivative instruments entered into for the purpose of hedging interest rate, currency or commodities risk, (y) bank fees and (z) costs of surety bonds in connection with financing activities, in each case, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; *plus*
  - (iii) consolidated depreciation and amortization expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*
  - (iv) any fees, expenses or charges (other than depreciation or amortization expense) related to any equity offering, Investment, acquisition, disposition or recapitalization permitted hereunder or the incurrence of any Indebtedness (including a refinancing thereof) (in each case, whether or not successful), including (A) such fees, expenses or charges related to the incurrence of the Indebtedness and any other credit facilities or the offering of debt securities and (B) any amendment or other modification of the credit facilities or other Indebtedness or the offering of debt securities (in each case, whether or not successful), in each case, deducted (and not added back) in computing Consolidated Net Income; *plus*
  - (v) the amount of any restructuring charge or reserve, integration cost or other business optimization expense or cost that is deducted (and not added back) in such period in computing Consolidated Net Income, including costs related to the closure and/or consolidation of facilities and to exiting lines of business; *plus*
  - (vi) any other non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period; *plus*
  - (vii) pro forma adjustments in respect of cost savings, operating expense reductions and cost synergies projected by the Company in good faith to result from actions taken or expected to be taken (in the good faith determination of the Company) within twelve (12) months after the date any such transaction is consummated (which cost savings, synergies or

operating efficiencies shall be determined by the Company in good faith and shall be calculated on a Pro Forma Basis as though such cost savings, synergies or operating efficiencies had been realized on the first day of such period), net of the amount of actual benefits realized prior to or during such period from such actions; provided that, the Company shall have determined in good faith that such cost savings or synergies are reasonably identifiable, reasonably attributable to the actions specified and reasonably anticipated to result from such actions; plus

- (viii) non-cash expenses incurred in connection with stock options, stock appreciation rights or similar equity right; *plus*
  - (ix) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back; *plus*
  - (x) to the extent not already included in Consolidated Net Income, proceeds of business interruption insurance (to the extent actually received and net of expenses incurred to obtain such proceeds, unless otherwise deducted in determining Consolidated Net Income); *plus*
  - (xi) any net loss included in Consolidated Net Income attributable to non-controlling interests pursuant to the application of Accounting Standards Codification Topic 810-10-45; *plus*
  - (xii) realized foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Company and its Subsidiaries; *plus*
  - (xiii) net realized losses from Swap Contracts or embedded derivatives that require similar accounting treatment and the application of Accounting Standards Codification Topic 815 and related pronouncements;
- (b) decreased (without duplication) by the following:
- (i) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase Consolidated EBITDA in such prior period; *plus*

- (ii) realized foreign exchange income or gains resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Company and its Subsidiaries; *plus*
  - (iii) any net realized income or gains from any obligations under any Swap Contracts or embedded derivatives that require similar accounting treatment and the application of Accounting Standards Codification Topic 815 and related pronouncements; *plus*
  - (iv) any amount included in Consolidated Net Income of such Person for such period attributable to non-controlling interests pursuant to the application of Accounting Standards Codification Topic 810-10-45; *plus*
  - (v) the amount of any minority interest income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary; *plus*
  - (vi) cash payments made during such period in respect of non-cash items added back to Consolidated EBITDA pursuant to clause (a)(vi) above in a prior period; and
- (c) increased or decreased (without duplication) by, as applicable, any adjustments resulting from the application of Accounting Standards Codification Topic 460 or any comparable regulation.

There shall be included in determining Consolidated EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by the Company or any Subsidiary during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed of by the Company or such Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “Acquired Entity or Business”), based on the actual Acquired EBITDA of such Acquired Entity or Business for such period (including the portion thereof occurring during such period but prior to such acquisition). For purposes of determining the Secured Leverage Ratio, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations by the Company or any Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a “Sold Entity or Business”), based on the actual Disposed EBITDA of such Sold Entity or Business for such period (including the portion thereof occurring during such period but prior to such sale, transfer or disposition).

Any adjustments in the calculation of Consolidated Net Income shall be without duplication of any adjustments to Consolidated EBITDA, and any adjustments to Consolidated EBITDA shall be without duplication of any adjustments to Consolidated Net Income.



“Consolidated Net Income” means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided, however, that there will not be included in such Consolidated Net Income, without duplication:

- (1) any net income (loss) of any Person if such Person is not a Subsidiary will be included in such Consolidated Net Income only to the extent of the payment of dividends or disbursements by such Person during such period;
- (2) any net gain (or loss) from disposed, abandoned or discontinued operations and any net gain (or loss) on disposal of disposed, discontinued or abandoned operations of the Company or any Subsidiary;
- (3) any net gain (or loss) realized upon the sale or other disposition of any asset (including pursuant to any sale/leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by a Responsible Officer or the Board of Directors of the Company);
- (4) (i) any extraordinary, exceptional, unusual or nonrecurring gain, loss, charge or expense, or (ii) any charges, expenses or reserves in respect of any restructuring, relocation, redundancy or severance expense, new product introductions or one-time compensation charges;
- (5) the cumulative effect of a change in accounting principles;
- (6) any (i) non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards and (ii) income (loss) attributable to deferred compensation plans or trusts;
- (7) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness and any net gain (loss) from any write-off or forgiveness of Indebtedness;
- (8) any unrealized gains or losses in respect of any obligations under any Swap Contracts or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of any obligations under any Swap Contracts;
- (9) any unrealized foreign currency translation gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;
- (10) any acquisition accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and

deferred revenue required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Company and the Subsidiaries), as a result of any consummated acquisition, or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);

- (11) any impairment charge, write-down or write-off relating to goodwill, intangible assets, long-lived assets, investments in debt and equity securities;
- (12) any after-tax effect of income (loss) from the early extinguishment or cancellation of Indebtedness or any obligations under any Swap Contracts or other derivative instruments;
- (13) any non-cash items in respect of (x) pension and other post retirement obligations, (y) environmental obligations and (z) litigation or other disputes in respect of events and exposures will be excluded from Consolidated Net Income; and
- (14) any cash payments in respect of (x) pension and other post retirement obligations, (y) environmental obligations and (z) litigation or other disputes will be deducted from Consolidated Net Income (but only to the extent not already reducing Consolidated Net Income in accordance with GAAP) and in each case of clauses (x) through (z), excluding any payments in respect of charges taken on or prior to the date of this Indenture.

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

“Consolidated Net Tangible Assets” means the aggregate amount of assets after deducting therefrom (1) all current liabilities, except for (a) notes and loans payable, (b) current maturities of long-term debt and (c) current maturities of obligations under capital leases and (2) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on the most recent balance sheet of the Company and its consolidated Subsidiaries and computed in accordance with GAAP.

“Credit Agreement” means the credit agreement entered into as of March 29, 2011 among the Company, the subsidiary guarantors party thereto, each lender from time to time party thereto and Bank of America, N.A., as administrative agent, as amended, or any replacement, renewal, extension, refinancing or other substitution thereof.

“Disposed EBITDA” means, with respect to any Sold Entity or Business for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business, as applicable, all as determined on a consolidated basis for such Sold Entity or Business, as applicable.

“Disposition” means the sale, transfer, license, lease or other disposition of any property by any Person (including any sale and leaseback transaction), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“DTC” means The Depository Trust Company, a New York corporation.

“Euroclear” means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

“Event of Default” has the meaning specified in Section 4.1.

“Initial Notes” means Notes in an aggregate principal amount of \$300,000,000 initially issued under this First Supplemental Indenture in accordance with Section 1.1(2).

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Swap Contract.

“Independent Investment Bank” means an independent investment banking institution of national standing appointed by the Company, which may be one of the Reference Treasury Dealers.

“Interest Payment Date” has the meaning specified in Section 1.2(2).

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or debt or other securities of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor incurs debt for borrowed money in respect of such Person or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such

Investment, less any amount paid back, repaid, returned, distributed or otherwise received in respect of such Investment.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P.

“Issue Date” means April 23, 2015.

“Lien” means any pledge, mortgage, lien, encumbrance or other security interest (including conditional sale or other title retention agreements having substantially the same economic effect as any of the foregoing).

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

“Notes” has the meaning specified in Section 1.1(4).

“Principal Property” means any office, distribution center, warehouse, office building, operating facility, other parcel of real property or equipment (including related land and improvements thereon and fixtures comprising a part thereof) located within the United States of America owned or hereafter acquired by the Company or any of its Subsidiaries, having a book value in excess of 1.5% of Consolidated Net Tangible Assets at the time of determination thereof, in each case other than any such property or any portion of thereof which, in the opinion of the Board of Directors of the Company, is not of material importance to the total business conducted by the Company and its Subsidiaries, taken as a whole.

“Pro Forma Basis” and “Pro Forma Effect” means whenever a financial ratio or test is to be calculated on a pro forma basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Company are available (as determined in good faith by the Company).

- (a) For purposes of calculating the Secured Leverage Ratio, Specified Transactions that have been made (i) during the applicable Test Period and (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Company or any of its Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment, then the Secured Leverage Ratio shall be calculated to give pro forma effect thereto.

- (b) Whenever pro forma effect is to be given to Consolidated EBITDA with respect to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, operating initiatives, operating changes and synergies projected by the Company in good faith to be realizable as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a pro forma basis as though such cost savings, operating expense reductions, operating initiatives, operating changes and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions, operating initiatives, operating changes and synergies were realized during the entirety of such period), subject to the limitations set forth in and consistent with the definition of “Consolidated EBITDA.”
- (c) In the event that the Company or any Subsidiary incurs (including by assumption or Guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility), (i) during the applicable Test Period or subsequent to the end of the applicable Test Period and (ii) prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period.

“Rating Agencies” means (1) each of Moody’s and S&P; and (2) if either of Moody’s or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company’s control, a “nationally recognized statistical rating organization” within the meaning of Section 3(a)(62) under the Exchange Act, as amended, selected by the Company (as certified by a Company Resolution) as a replacement agency for Moody’s or S&P, or both, as the case may be.

“Reference Treasury Dealer” means any primary U.S. government securities dealer in New York City that the Company selects. The Company has selected Goldman, Sachs & Co. and its successors as a Reference Treasury Dealer.

“Reference Treasury Dealer Quotation” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Bank, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Bank by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date, or, in the case of a satisfaction and discharge, on the third Business Day prior to the date the Company deposits the amount required under the Indenture most nearly equal to the period from the Redemption Date to the maturity date.

“Regular Record Date” for interest payable in respect of any Note on any Interest Payment Date means the April 15 or October 15, as applicable, immediately preceding the relevant Interest Payment Date (whether or not a Business Day).

“Regulation S Global Note” has the meaning specified in Section 3.1(3).

“Restricted Period,” with respect to any Notes, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Notes are first offered to persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S, notice of which day shall be promptly given by the Company to the Trustee, and (b) the Issue Date, and with respect to any Additional Notes, it means the comparable period of 40 consecutive days.

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

“Secured Leverage Ratio” means, as of any date of determination, the ratio of (x) (i) the consolidated Indebtedness secured by a Lien as of such date less (ii) unrestricted cash and cash equivalents of the Company and its Subsidiaries to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Company are available, in each case with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of “Pro Forma Basis.”

“Security Registrar” means the Security Registrar for the Notes, which shall initially be MUFG Union Bank, N.A., or any successor entity thereof, subject to replacement as set forth in the Base Indenture.

“Sold Entity or Business” has the meaning ascribed to that term in “Consolidated EBITDA”.

“Specified Transaction” means any Investment, Disposition, or incurrence or repayment of Indebtedness.

“Stated Maturity” has the meaning specified in Section 1.1(2).

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward contracts, future contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, repurchase agreements, reverse repurchase agreements, sell buy back and buy sell back agreements, and securities lending and borrowing agreements or any other similar transactions or any combination of any of the foregoing

(including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Company ending on or prior to such date.

“Treasury Rate” means, with respect to any Redemption Date, (1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities”, for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Remaining Life, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month), (2) if the period from the Redemption Date to the maturity date of the Notes to be redeemed is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used, or (3) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date. The Treasury Rate shall be calculated by the Company on the third Business Day preceding the Redemption Date, or, in the case of a satisfaction and discharge, on the third Business Day prior to the date the Company deposits the amount required under the Indenture most nearly equal to the period from the Redemption Date to the maturity date.

“U.S. Person” means a “U.S. person” as defined in Regulation S under the Securities Act.

### ARTICLE III

#### Security Forms

##### Section 3.1 Form Generally.

(1) The Notes shall be in substantially the form set forth in Section 3.2 of this Article III, with such appropriate insertions, omissions, substitutions and other variations as are required

or permitted by the Base Indenture and this First Supplemental Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with applicable tax laws or the rules of any securities exchange or Depository therefore or as may, consistent herewith, be determined by the Responsible Officer executing such Notes, as evidenced by the execution thereof. All Notes shall be in fully registered form.

(2) The Notes shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the Responsible Officer of the Company executing such Notes, as evidenced by the execution of such Notes.

(3) Upon their original issuance, the Notes sold pursuant to Rule 144A under the Securities Act shall be issued in the form of one or more Global Securities in definitive, fully registered form without interest coupons.

Notes sold pursuant to Regulation S under the Securities Act initially shall be represented by one or more Global Securities in fully registered, global form without interest coupons (the "Regulation S Global Note"), which shall be registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream.

The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

Each such Global Security shall be duly executed by the Company, authenticated and delivered by the Trustee and shall be registered in the name of DTC, as Depository, or its nominee, and deposited with the Trustee, as custodian for DTC. Beneficial interests in the Global Securities will be shown on, and transfers will only be made through, the records maintained by DTC and its participants, including Clearstream and the Euroclear System.

### Section 3.2 Form of Note.

#### [FORM OF FACE OF NOTE]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY:

THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED



INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (4) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.].

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF. TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO THE DEPOSITORY TRUST COMPANY (“DTC”) OR ITS NOMINEE OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.].

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY FOR WHICH DTC IS TO BE THE DEPOSITARY:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR 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.]

EnerSys

5.00% SENIOR NOTE DUE 2023

No. \_\_\_\_\_

Principal Amount (US)\$ \_\_\_\_\_

CUSIP NO. \_\_\_\_\_

EnerSys, a Delaware corporation (herein called the “Company”, which term includes any successor Person under the First Supplemental Indenture referred to on the reverse hereof), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of \_\_\_\_\_ United States Dollars (U.S.\$ \_\_\_\_\_) (which amount may from time to time be increased or decreased to such other principal amounts by adjustments made on the records of the Security Registrar as set forth in the Schedule attached hereto) on [•], 20[•] and to pay interest thereon, from [•], 20[•], or from the most recent Interest Payment Date to which interest has been paid or duly provided for to but excluding the next Interest Payment Date, which shall be April 30 and October 30 of each year, commencing [•], 20[•], at the per annum rate of 5.00%, or as such rate may be adjusted pursuant to the terms hereof, per annum, until the principal hereof is paid or made available for payment.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the First Supplemental Indenture, be paid to the Person in whose name this Note is registered at the close of business on the Regular Record Date for such interest, which shall be the April 15 or October 15 immediately prior to the relevant Interest Payment Date (whether or not a Business Day). Except as otherwise provided in the First Supplemental Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Note 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 of which shall be given to Holders of Notes not less than 10 days prior to the Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Notes may be listed, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Payment of principal of, and premium, if any, and interest on this Note and the Change of Control Payment in connection with a Change of Control Triggering Event will be made at the Corporate Trust Office, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. With respect to Global Securities, the Company will make such payments by wire transfer of immediately available funds to DTC, or its nominee, as registered owner of the Global Securities. With respect to certificated Notes, the Company will make such payments by wire transfer of immediately available funds to a United States Dollar account maintained in the contiguous United States to each Holder of an aggregate principal amount of Notes in excess of U.S. \$5,000,000 that has furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date. If a Holder of a certificated Note (i) does not furnish such wire instructions as provided in the preceding sentence or (ii) holds U.S. \$5,000,000 or less aggregate principal amount of Notes, the Company will make such payments by mailing a check to such Holder’s registered address.

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.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof 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.

ENERSYS,  
as Issuer

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

### CERTIFICATE OF AUTHENTICATION

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

Dated:

MUFG UNION BANK, N.A.  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

### [FORM OF REVERSE OF NOTE]

1. *Indenture*. This Note is one of a duly authorized issue of securities of the Company designated as its "5.00% Senior Notes due 2023" (herein called the "Notes"), issued under a First Supplemental Indenture, dated as of April 23, 2015 (the "First Supplemental Indenture"), to an indenture, dated as of April 23, 2015 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Base Indenture" and herein with the First Supplemental Indenture, collectively, the "Indenture"), among the Company, the Guarantors and MUFG Union Bank, N.A., as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which reference is hereby made for a statement of the respective rights, limitations of rights, duties 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 aggregate principal amount of Initial Notes Outstanding at any time may not exceed \$300,000,000 in aggregate principal amount, except for,

or in lieu of, other Notes of the series pursuant to Sections 304, 305, 306, 906 or 1107 of the Base Indenture and except for any Notes which, pursuant to Section 303 of the Base Indenture, are deemed never to have been authenticated and delivered. The First Supplemental Indenture pursuant to which this Note is issued provides that Additional Notes may be issued thereunder. All terms used in this Note which are defined in the Indenture shall have the meanings assigned to them in the Indenture. In the event of a conflict or inconsistency between this Note and the Indenture, the provisions of the Indenture shall govern.

2. *Optional Redemption.* Prior to January 30, 2023, the Company may, at its option, at any time and from time to time, redeem all or any portion of the Notes on not less than 30 nor more than 60 days' prior notice sent by the Company to registered Holders of the Notes to be redeemed at a Redemption Price equal to the greater of: (i) 100% of the principal amount plus accrued and unpaid interest to, but excluding, the Redemption Date and (2) the sum, as determined by an Independent Investment Bank, of the present values of the remaining scheduled payments of principal and interest (exclusive of interest accrued to the Redemption Date) discounted to the Redemption Date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, plus accrued and unpaid interest to, but excluding, the Redemption Date.

On or after January 30, 2023, the Company may, at its option, at any time and from time to time, redeem all or any portion of the Notes on not less than 30 nor more than 60 days' prior notice sent to registered Holders of the Notes to be redeemed at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the Redemption Date.

3. *Change of Control Triggering Event.* If a Change of Control Triggering Event occurs, unless the Company has exercised its option to redeem all of the Notes, each Holder of Notes will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of that Holder's Notes at a repurchase price in cash equal to 101% of the aggregate principal amount of the Notes, plus accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of purchase, pursuant to the provisions of Section 6.2 of the First Supplemental Indenture.

4. *Global Security.* If this Note is a Global Security, then, in the event of a deposit or withdrawal of an interest in this Note, including an exchange, transfer, redemption, repurchase or conversion of this Note in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the Applicable Procedures.

5. *Defaults and Remedies.* If an Event of Default shall occur and be continuing, the principal of all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment of the amount of principal so declared due and payable, all obligations of the Company in respect of the payment of the principal of and interest on the Notes shall terminate.

No Holder of Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to the Indenture, or for the appointment of a receiver, assignee, trustee, liquidator or

sequestrator (or similar official) or for any other remedy hereunder (except actions for payment of overdue principal of, and premium, if any, or interest on such Notes in accordance with its terms), unless (i) such Holder has previously given written notice to the Trustee of a continuing Event of Default, specifying an Event of Default with respect to the Securities of such series; (ii) the Holders of not less than 25% in aggregate principal amount of the Outstanding Notes shall have made a written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture; (iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; (iv) the Trustee has failed to institute any such proceeding for 60 days after its receipt of such notice, request and offer of indemnity; and (v) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Notes of such series, it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of the Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under the Indenture, except in the manner provided in the Indenture and for the equal and ratable benefit of all of such Holders.

The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of principal of, and premium, if any, or interest hereon, on or after the respective due dates expressed herein.

*6. Amendment, Supplement and Waiver.* The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the Guarantors and the rights of the Holders of the Notes under the Indenture at any time by the Company, the Guarantors and the Trustee with the written consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Notes. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Outstanding Notes, 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 certain past defaults under the Indenture and their consequences. Any such consent or waiver by 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 or such other Note. Certain modifications or amendments to the Indenture require the consent of the Holder of each Outstanding Note affected.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair (without the consent of the Holder hereof) the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

*7. Registration and Transfer.* As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registerable on the Security Register. Upon surrender

for registration of transfer of this Note at the office or agency of the Company in a Place of Payment, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of like tenor and principal amount. As provided in the Indenture and subject to certain limitations therein set forth, at the option of the Holder, this Note may be exchanged for one or more new Notes of any authorized denominations and of like tenor and principal amount, upon surrender of this Note at such office or agency. Upon such surrender by the Holder, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of like tenor and principal amount. Every Note presented or surrendered for registration of transfer or for exchange shall be duly endorsed (if so required by the Company or the Trustee), or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or such Holder's attorney duly authorized in writing. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Guarantors, the Trustee and any agent of the Company, a Guarantor or the Trustee may treat the Person in whose name such Note is registered as the owner thereof for all purposes, whether or not such Note be overdue, and neither the Company, the Guarantors, the Trustee nor any agent of the Company, a Guarantor or the Trustee shall be affected by notice to the contrary.

8. *Guarantee.* As expressly set forth in the Base Indenture, payment of this Note is jointly and severally and fully and unconditionally guaranteed by the Guarantors that have become and continue to be Guarantors pursuant to the Indenture. Guarantors may be released from their obligations under the Indenture and their Guarantees under the circumstances specified in the Base Indenture.

9. *Governing Law.* **THE INDENTURE, THIS SECURITY AND THE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

#### ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM (= tenant in common)

TEN ENT (= tenants by the entireties (Cust))

JT TEN (= joint tenants with right of survivorship and not as tenants in common)

UNIF GIFT MIN ACT (= under Uniform Gifts to Minors Act )

Additional abbreviations may also be used though not in the above list.

#### ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this

Note to: \_\_\_\_\_

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_, as agent, to transfer this Note on the books of the Company. The agent may substitute another to act for him.

In connection with the assignment of the Notes evidenced by this certificate occurring prior to the date that is one year or six months, as the case may be (as specified in Rule 144(d) under the Securities Act), after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Company or any affiliate of the Company, the undersigned confirms that such Notes are being:

CHECK ONE BOX BELOW:

- 1 acquired for the undersigned's own account, without transfer; or
- 2 transferred to the Company; or
- 3 transferred pursuant to and in compliance with Rule 144A promulgated under the Securities Act of 1933, as amended (the "Securities Act"); or
- 4 Transferred pursuant to an effective registration statement under the Securities Act; or
- 5 transferred pursuant to and in compliance with Regulation S promulgated under the Securities Act; or
- 6 transferred to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3), or (7) under the Securities Act) that, prior to such transfer, furnished the Trustee with a signed letter containing certain representations and agreements relating to the transfer; or
- 7 transferred pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Company may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications

and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, such as the exemption provided by Rule 144A promulgated under the Securities Act.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature Guarantee:

\_\_\_\_\_  
(Signature must be guaranteed)

\_\_\_\_\_  
Signature

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 of the Securities Exchange Act.

**TO BE COMPLETED BY PURCHASER IF (1) OR (3) ABOVE IS CHECKED.**

**The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act, and is aware that the sale to it is being made in reliance on Rule 144A promulgated under the Securities Act and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.**

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

[SCHEDULE OF INCREASES AND DECREASES IN NOTE]

EnerSys

5.00% Senior Note due 2023

The initial principal amount of this Note is \$\_\_\_\_\_. The following increases or decreases in this Note have been made:



Date	Amount of decrease in Principal Amount of this Note	Amount of increase in Principal Amount of this Note	Principal Amount of this Note following such decrease or increase	Signature of authorized signatory of Trustee (1)
------	---	---	--	---

(1) Insert for Global Securities only

Section 3.3 Transfer and Exchange of Global Securities.

(1) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depositary, in accordance with the Indenture (including applicable restrictions on transfer set forth in the Indenture and in the Global Security) and the procedures of the Depositary therefor. A transferor of a beneficial interest in a Global Security to another Global Security shall deliver to the Security Registrar a duly completed Assignment Form in the form attached to the Global Security, any applicable certifications or opinions required by the Assignment Form and a written order given in accordance with the Applicable Procedures containing information regarding the participant account of the Depositary to be credited with a beneficial interest in the Global Security. The Security Registrar shall, in accordance with such instructions, instruct the Depositary to credit to the account of the Person specified in such instructions a beneficial interest in the Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.

(2) If the proposed transfer is a transfer of a beneficial interest in one Global Security to a beneficial interest in another Global Security, the Security Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Security to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Security Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Security from which such interest is being transferred. Prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an initial purchaser of the Notes).

(3) If the Company determines (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that a Note is eligible for resale after the date that is one year (in the case of a Note sold pursuant to Rule 144A under the Securities Act) or 40 days (in the case of a Note sold pursuant to Regulation S under the Securities Act) after the later of the Issue Date and the last date the Company or any of its affiliates was the owner of such Note or any predecessor of such Note pursuant to Rule 144 under the Securities Act (or a successor provision) without the need for current public information and that the applicable legend in either the first or second paragraph of Section 3.2 hereto (a "Restricted Legend") is no longer necessary or appropriate in order to ensure that

subsequent transfers of the Note (or a beneficial interest therein) are effected in compliance with the Securities Act, the Company may instruct the Trustee to cancel the Note and issue to the Holder thereof (or to its transferee) a new Note in any authorized denominations of like tenor and aggregate principal amount, registered in the name of the Holder thereof (or its transferee), that does not bear the Restricted Legend, and the Trustee, upon (i) receipt of an Authentication Order and the documents required by Section 102 of the Base Indenture and (ii) in the case of Global Securities, compliance by the Company with DTC's applicable procedures relating to the exchange and/or issuance of such new Note, will comply with such instruction.

## ARTICLE IV

### Remedies

#### Section 4.1 Events of Default.

“Event of Default” means, wherever used herein with respect to the Notes, any one of the following events (whatever the reason for such Event of Default and whether it shall 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):

- (1) an Event of Default pursuant to Section 501 of the Base Indenture; or
- (2) the Company's failure to pay the Change of Control Payment when due in connection with a Change of Control Triggering Event.

#### Section 4.2 Waiver of Past Defaults.

Section 512 of the Base Indenture shall not apply to the Notes, and, with respect to the Notes, any reference to Section 512 in the Base Indenture shall instead be deemed to refer to this Section 4.2.

Subject to Section 502 of the Base Indenture, the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes may on behalf of the Holders of all the Notes, upon notice to the Company and the Trustee, waive any past Default hereunder with respect to the Notes and its consequences, except a default:

- (4) in the payment of the principal of or premium, if any, or interest on any Note or the Change of Control Payment in connection with a Change of Control Triggering Event; or
- (5) in respect of a covenant or provision hereof or of the Base Indenture which under Article VII hereof or under Article IX of the Base Indenture cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this First Supplemental

Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

## ARTICLE V

### Redemption of Securities

#### Section 5.1 Optional Redemption.

Except as set forth below, the Notes are not redeemable at the option of the Company.

Prior to January 30, 2023, the Company may, at its option, at any time and from time to time, redeem all or any portion of the Notes on not less than 30 nor more than 60 days' prior notice sent by the Company to registered Holders of the Notes to be redeemed at a Redemption Price equal to the greater of:

- (6) 100% of the principal amount plus accrued and unpaid interest to, but excluding, the Redemption Date; and
- (7) the sum, as determined by an Independent Investment Bank, of the present values of the remaining scheduled payments of principal and interest (exclusive of interest accrued to the Redemption Date) discounted to the Redemption Date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, plus accrued and unpaid interest to, but excluding, the Redemption Date.

On or after January 30, 2023, the Company may, at its option, at any time and from time to time, redeem all or any portion of the Notes on not less than 30 nor more than 60 days' prior notice sent to registered Holders of the Notes to be redeemed at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the Redemption Date.

#### Section 5.2 Base Indenture.

Any redemption of the Notes under Section 5.1 above shall be in accordance with Article XI of the Base Indenture (*Redemption of Securities*).

## ARTICLE VI

### Particular Covenants

#### Section 6.1 Limitation on Liens.

The Company shall not, and shall not permit any Subsidiary to, directly or indirectly, incur, assume or guarantee any Indebtedness secured by a Lien on any of the Company's properties or assets or on any of the Company's Subsidiaries' capital stock, properties or assets, unless the Company secures the Notes equally and ratably with the Indebtedness secured by such

Lien for so long as such Indebtedness is so secured. The restrictions do not apply to Indebtedness that is secured by:

- (1) Liens securing Indebtedness in an aggregate principal amount not to exceed the greater of (i) \$950 million and (ii) the maximum principal amount of Indebtedness that could be incurred such that, after giving effect to such incurrence, the Secured Leverage Ratio would be no greater than 2.5 to 1.0, in each case outstanding at any one time;
- (2) Liens existing on the date the Notes are issued and any modifications, replacements, refinancings, restructurings, renewals or extensions thereof (other than Liens securing the Credit Agreement or any extension, renewal, replacement or refunding thereof); provided that any such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and after-acquired property subjected to a Lien pursuant to terms of the original Lien and the amount of new Indebtedness does not exceed the amount of Indebtedness being replaced, refinanced, restructured, extended or renewed (plus fees and expenses, including any premium and defeasance costs));
- (3) Liens existing on property (including capital stock) at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Subsidiary, in each case after the date hereof and any modifications, replacements, refinancings, restructurings, renewals or extensions thereof; provided that (x) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary, and (y) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and after-acquired property subjected to a Lien pursuant to terms existing at the time of such acquisition, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition);
- (4) Liens in favor of the Company or any Guarantor;
- (5) Liens on real property acquired after the date on which the Notes are first issued which secure Indebtedness incurred to acquire such real property or improve such real property, so long as (x) such Indebtedness is incurred on the date of acquisition of such real property or within 180 days of the acquisition of such real property; (y) such Liens secure Indebtedness in an amount no greater than the purchase price or improvement price, as the case may be, of such real property so acquired; and (z) such Liens do not extend to or cover any property of the Company or any Guarantor other than the real property so acquired;
- (6) Liens for taxes, assessments or governmental charges or claims which are (i) not overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue which are being contested in good faith or (ii) not yet subject to penalties for non-payment;

- (7) statutory and common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business;
- (8) Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;
- (9) Liens arising in the ordinary course of business securing insurance premiums or reimbursement or indemnity obligations under insurance policies, in each case payable to insurance carriers that provide insurance to the Company or any of its Subsidiaries or obligations in respect of letters of credit or bank guarantees that have been posted by the Company or the Guarantors or any Subsidiaries to support the payments of the items set forth in this clause (9);
- (10) Liens arising to secure (i) the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds, performance and completion guarantees and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business and (ii) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items set forth in sub-clause (i) of this clause (10);
- (11) easements, rights-of-way, land use regulations, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects or matters that would be disclosed in an accurate survey affecting real property which, in the aggregate, do not in any case materially and adversely interfere with the ordinary conduct of the business of the Company and its Subsidiaries (taken as a whole);
- (12) Liens on property or assets of any Subsidiary that is not the Company or a Guarantor securing Indebtedness of such Subsidiary;
- (13) Liens securing Hedging Obligations for non-speculative purposes; and
- (14) Liens securing judgments for the payment of money not constituting an Event of Default.

In the event that a Lien meets the criteria of more than one of the types of Liens (at the time of incurrence or at a later date), the Company in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Lien in any manner that complies with this definition and such Lien shall be treated as having been made pursuant only to the clause or clauses of above to which such Lien has been classified or reclassified. Provided, however, that Liens securing Indebtedness under the Credit Agreement outstanding on the date the Notes are first issued or any extension, renewal, replacement or refunding thereof will be deemed to be incurred on such date in reliance on the exception described in clause (1) above and the

Company shall not be permitted to reclassify all or any portion of a Lien incurred pursuant to clause (1) above on the Issue Date.

Section 6.2 Repurchase at the Option of Holders of Notes.

(1) If a Change of Control Triggering Event occurs, unless the Company has exercised its right to redeem all of the Notes as described under Section 5.1 hereof, Holders of Notes will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of their Notes pursuant to the offer described below (the “Change of Control Offer”) on the terms set forth herein. In the Change of Control Offer, the Company shall offer payment in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of purchase (the “Change of Control Payment”).

(2) Within 30 days following any Change of Control Triggering Event, or, at the Company’s option, prior to the date of consummation of any Change of Control, but after public announcement of the pending Change of Control, the Company shall send a notice to Holders of Notes, with a copy to the Trustee, describing the transaction or transactions that constitute the Change of Control and offering to repurchase the Notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is sent (the “Change of Control Payment Date”), pursuant to the procedures required by Article XI of the Base Indenture and described in such notice. The repurchase obligation with respect to any notice sent prior to the consummation of the Change of Control shall be conditioned on the Change of Control Triggering Event occurring on or prior to the payment date specified in the notice.

(3) The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control Triggering Event provisions of the Notes set forth in this First Supplemental Indenture, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Indenture by virtue of such conflict.

(4) On the Change of Control Payment Date, the Company shall, to the extent lawful:

- (A) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;
- (B) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes accepted for payment; and

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

(5) The Paying Agent shall promptly deliver to each Holder of Notes accepted for payment the purchase price for the Notes, and the Trustee, upon Authentication Order, shall promptly authenticate and deliver to each Holder a new Note equal in principal amount to any unpurchased portion of any Notes surrendered; provided that each new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

(6) The Company shall not be required to make an offer to repurchase the Notes upon a Change of Control Triggering Event if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by the Company and such third party purchases all Notes properly tendered and not withdrawn under its offer.

(7) In the event that Holders of not less than 90% of the aggregate principal amount of the outstanding Notes accept a Change of Control Offer and the Company (or any third party making such Change of Control Offer as described above) purchases all of the Notes held by such Holders, the Company will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the Notes that remain outstanding following such purchase at a Redemption Price equal to the Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest on the Notes that remain outstanding, to, but excluding, the Redemption Date.

### Section 6.3 Limitations on Sale and Leaseback Transactions.

The Company shall not and shall not permit any Subsidiary to enter into any arrangement with any person to lease a Principal Property (except for any arrangements that exist on the date the Notes are issued or that exist at the time any person that owns a Principal Property becomes a Subsidiary) which has been or is to be sold by the Company or the Subsidiary to such person unless:

- (1) the sale and leaseback arrangement involves a lease for a term of not more than three years;
- (2) the sale and leaseback arrangement is entered into between the Company and any Subsidiary or between the Company's Subsidiaries;
- (3) the Company or the Subsidiary would be entitled to incur Indebtedness secured by a Lien on the Principal Property, in an amount at least equal to any Attributable Indebtedness, pursuant to Section 6.1 hereof without having to secure equally and ratably the Notes; or
- (4) the proceeds of the sale and leaseback arrangement are at least equal to the fair market value (as determined by the Company's Board of Directors in good faith) of the Principal Property and the Company applies within 180 days after the sale an amount equal to the greater

of the net proceeds of the sale or the Attributable Indebtedness associated with the Principal Property, if any, to (i) the retirement of long-term debt for borrowed money that is not subordinated to the Notes and that is not debt owed to the Company or a Subsidiary, or (ii) the purchase or development of other property.

#### Section 6.4 SEC Reports.

(1) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall (i) file with the SEC or (ii) make publicly available to the registered Holders of the Notes, within 15 days after the time period specified in the SEC's rules and regulations:

- all quarterly and annual information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Company were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Company's certified independent registered accounting firm; and
- all current information that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports.

(2) In addition, the Company and the Guarantors have agreed that they shall make available to the Holders and to prospective investors, upon the request of such Holders, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act during any period in which the Company is not subject to Section 13 or 15(d) of the Exchange Act. For purposes of this Section 6.4, the Company and the Guarantors will be deemed to have furnished the reports to the Holders of Notes as required by this Section 6.4 if it has filed such reports with the SEC via the EDGAR filing system or such reports are publicly available.

(3) To the extent any information is not provided within the time periods specified above and such information is subsequently provided, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default or Event of Default with respect thereto shall be deemed to have been cured; provided that such cure shall not otherwise affect the rights of the Holders under Section 4.1 hereof if Holders of at least 25% in principal amount of the then total Outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the then-Outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure.

## ARTICLE VII

### Supplemental Indentures

#### Section 7.1 Supplemental Indentures without Consent of Holders of Notes.



For the purposes of the Base Indenture and this First Supplemental Indenture, no amendment to cure any ambiguity, defect or inconsistency in this First Supplemental Indenture, the Base Indenture or the Notes made solely to conform this First Supplemental Indenture, the Base Indenture or the Notes to the Description of the Notes contained in the Company's offering memorandum dated April 9, 2015 shall be deemed to adversely affect the interests of the Holders of any Notes.

Section 7.2 Supplemental Indentures with Consent of Holders of Notes.

Section 902 of the Base Indenture shall not apply to the Notes, and, with respect to the Notes, any reference to Section 902 in the Base Indenture shall instead be deemed to refer to this Section 7.2.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange for the Notes), by Act of said Holders delivered to the Company, the Guarantors and the Trustee, the Company, the Guarantors and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Holders of such Notes under the Indenture; provided, however, no such supplemental indenture shall, without the consent of the Holder of each Outstanding Note affected thereby:

- (5) extend the maturity of any payment of principal of or any installment of interest on any Note;
- (6) reduce the principal amount of any Note, or the interest, including additional interest, thereon, or any premium payable on any Note upon redemption thereof;
- (7) change the Company's obligation to pay additional amounts;
- (8) change any Place of Payment where, or the currency in which, any Note or any premium or interest is denominated as payable;
- (9) change the ranking of the Notes;
- (10) impair the right to sue for the enforcement of any payment on or with respect to any Note;
- (11) modify the Guarantees in any manner adverse to the Holders of the Notes, except as permitted by this First Supplemental Indenture; or
- (12) reduce the percentage in principal amount of Outstanding Notes required to consent to any supplemental indenture, any waiver of compliance with provisions of this First Supplemental Indenture or specific defaults and their consequences provided for in this First Supplemental Indenture, or otherwise modify the sections in this First Supplemental Indenture relating to these consents.

For the avoidance of doubt, the Trustee shall not be responsible for making any determination as to whether or not the consent of Holders, or what percentage of such Holders, is required in connection with any amendment, supplement or waiver of any provision of this First Supplemental Indenture, the Securities or the Guarantees.

It shall not be necessary for any Act of Holders under this Section 7.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Notwithstanding the foregoing, the provisions set forth under Section 6.2 hereof may be waived or modified with the consent of the Holders of a majority in aggregate principal amount of the Notes.

## ARTICLE VIII

### Miscellaneous

#### Section 8.1 Execution as Supplemental Indenture.

This First Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Base Indenture and this First Supplemental Indenture and the Base Indenture shall henceforth be read together, and any conflict between the Base Indenture and this First Supplemental Indenture shall be resolved as provided in Section 1.4 of this First Supplemental Indenture.

#### Section 8.2 Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company and the Guarantors, as the case may be, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture or of the Securities or the Guarantees. The Trustee shall not be accountable for the use or application by the Company of the Notes or the proceeds thereof.

#### Section 8.3 Separability Clause.

In case any provision in this First Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### Section 8.4 Successors and Assigns.

All covenants and agreements in this First Supplemental Indenture by the Company and the Guarantors shall bind their respective successors and assigns, whether so expressed or not. All agreements of the Trustee in this First Supplemental Indenture shall bind its successors and assigns, whether so expressed or not.

Section 8.5 Execution and Counterparts.

This First Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. This exchange of copies of this First Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto and may be used in lieu of the original First Supplemental Indenture and signature pages for all purposes.

Section 8.6 Governing Law.

This First Supplemental Indenture shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of law.

*[Signature page to follow]*

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

**EnerSys, as Issuer**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Executive Vice President

**EnerSys Capital Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Executive Vice President

**EnerSys Delaware Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: President

**EnerSys Energy Products Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: President

**Esfenco, Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Vice President

**Esrnico, Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Vice President

*[Signature Page to Supplemental Indenture]*

**Purcell Systems, Inc., as Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: President

**Hawker Powersources, Inc., as  
Guarantor**

By: /s/ Richard W. Zuidema  
Name: Richard W. Zuidema  
Title: Vice President

*[Signature Page to Supplemental Indenture]*

**MUFG Union Bank, N.A., as Trustee**

By: /s/ Enrico (BOBBY) Reyes  
Name: Enrico (BOBBY) Reyes  
Title: Vice President

*[Signature Page to Supplemental Indenture]*

Form of 5.00% Senior Note due 2023