
Section 1: 8-K (8-K)

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

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): November 19, 2015

**Summit Materials, Inc.
Summit Materials, LLC**
(Exact name of registrant as specified in its charter)

**Delaware
Delaware**
(State or Other Jurisdiction
of Incorporation)

**001-36873
333-187556**
(Commission
File Number)

**47-1984212
26-4138486**
(I.R.S. Employer
Identification No.)

**1550 Wynkoop Street, 3rd Floor
Denver, Colorado 80202**
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (303) 893-0012

Not Applicable
(Former Name or Address, if Changed Since Last Report)

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))
-

Item 1.01. Entry into a Material Definitive Agreement.

Third Supplemental Indenture with respect to 6.125% Senior Notes due 2023

On November 19, 2015, Summit Materials, LLC (the “Company”) and Summit Materials Finance Corp. (together with the Company, the “Issuers”), indirect subsidiaries of Summit Materials, Inc., issued and sold \$300.0 million aggregate principal amount of their 6.125% Senior Notes due 2023 (the “Additional Notes”), which mature on July 15, 2023, pursuant to a third supplemental indenture dated as of November 19, 2015 (the “Third Supplemental Indenture”) to the indenture dated as of July 8, 2015 governing the 6.125% Senior Notes due 2023 initially issued in an aggregate principal amount of \$350.0 million on July 8, 2015 (the “Existing Notes” and, together with the Additional Notes, the “Notes”), by and among the Issuers, the subsidiary guarantors named on the signature pages thereto (the “Guarantors”) and Wilmington Trust, National Association, as trustee (the “Trustee”) (as amended and supplemented, including by the Third Supplemental Indenture, the “Indenture”). The Additional Notes were sold within the United States only to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and outside the United States to non-U.S. persons in reliance on Regulation S under the Securities Act. The Additional Notes are treated as a single series with the Existing Notes and have substantially the same terms as those of the Existing Notes, provided that the Additional Notes are subject to the registration rights agreement described below. The Additional Notes and the Existing Notes will vote as one class under the Indenture.

The Additional Notes were issued at 99.375% of their par value. The Notes bear interest at a rate of 6.125% per year, payable semi-annually in arrears. The Issuers’ obligations under the Notes are guaranteed on a senior unsecured basis by all of the Company’s existing and future wholly-owned domestic restricted subsidiaries that guarantee its senior secured credit facilities. The Notes are not guaranteed by Summit Materials, Inc.

The net proceeds from the offering of the Additional Notes will be used to redeem the remaining \$153.8 million in aggregate principal amount of the Issuers’ outstanding 10 1/2% senior notes due 2020 and to pay related fees and expenses incurred in connection with the offering, with the remaining net proceeds to be used for general corporate purposes, which may include the repayment of certain other indebtedness.

Upon the occurrence of a change of control or upon the sale of certain assets in which the Issuers do not apply the proceeds as required, the holders of the Notes will have the right to require the Issuers to make an offer to repurchase each holder’s Notes at a price equal to 101% (in the case of a change of control) or 100% (in the case of an asset sale) of their principal amount, plus accrued and unpaid interest.

The Issuers may redeem all or a part of the Notes at any time prior to July 15, 2018 at a redemption price equal to 100% of the principal amount of the Notes being redeemed plus a make-whole premium and accrued and unpaid interest, if any, to, but not including, the redemption date. In addition, beginning on July 15, 2018, the Issuers may redeem all or a part of the Notes at a redemption price equal to 103.063% of the principal amount redeemed. The redemption price decreases to 101.531% and 100.000% of the principal amount redeemed on July 15, 2019 and July 15, 2020, respectively. In addition, at any time prior to July 15, 2018, the Issuers may redeem up to 40% of the Notes from the proceeds of certain equity offerings at a redemption price equal to 106.125% of the principal amount thereof, plus accrued and unpaid interest.

The Notes contain covenants limiting, among other things, the Company and the Guarantors’ ability to incur additional indebtedness or issue certain preferred shares, pay dividends, redeem stock or make other distributions, make certain investments, sell or transfer certain assets, create liens, consolidate, merge, sell or otherwise dispose of all or substantially all of the Company’s assets, enter into certain

transactions with affiliates, and designate subsidiaries as unrestricted subsidiaries. These covenants are subject to a number of important exceptions and qualifications. The Notes also contain customary events of default, the occurrence of which could result in the principal of and accrued interest on the Notes to become or be declared due and payable.

Registration Rights Agreement

On November 19, 2015, the Issuers, the Guarantors and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the initial purchasers of the Additional Notes described above, entered into a registration rights agreement with respect to the Additional Notes (the “Registration Rights Agreement”). In the Registration Rights Agreement, the Issuers and the Guarantors have agreed that they will use their respective commercially reasonable efforts to (i) file a registration statement on an appropriate registration form with respect to a registered offer to exchange the Additional Notes for new notes, with terms substantially identical in all material respects to the Additional Notes and (ii) cause the exchange offer registration statement to be declared effective under the Securities Act.

The Issuers and the Guarantors have agreed to use their commercially reasonable efforts to cause the exchange offer to be consummated or, if required, to have one or more shelf registration statements declared effective, within 270 days after the issue date of the Additional Notes.

If the Issuers and the Guarantors fail to satisfy this obligation (a “registration default”), the annual interest rate on the Additional Notes will increase by 0.25% for the first 90-day period immediately following the occurrence of the registration default. The annual interest rate on the Additional Notes will increase by an additional 0.25% for each subsequent 90-day period during which the registration default continues, up to a maximum additional interest rate of 1.0% per annum. If the registration default is corrected, the interest rate on the Additional Notes will revert to the original level.

If the Issuers must pay additional interest, they will pay holders of the Additional Notes in cash on the same dates that the Issuers make other interest payments on the Additional Notes, until the registration default is corrected.

Each of the foregoing descriptions of each of the Indenture, the Notes, the Third Supplemental Indenture and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of each of such documents, which are filed as Exhibits 4.1, 4.2, 4.3 and 4.4, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 1.02. Termination of Material Definitive Agreement.

On November 19, 2015, the Issuers deposited with Wilmington Trust, National Association, as trustee under the indenture governing the Issuers’ 10 ½% senior notes due 2020, funds sufficient to redeem all remaining \$153.8 million aggregate principal amount of 2020 Notes on December 7, 2015. Upon deposit of the redemption payment with the Trustee the indenture governing the 2020 Notes was satisfied and discharged.

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

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 4.1 Indenture, dated as of July 8, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 4.1 filed with the registrants' Current Report on Form 8-K filed on July 8, 2015 (File No. 001-36873)).
- 4.2 Form of 6.125% Senior Note due 2023 (included in Exhibit 4.1).
- 4.3 Third Supplemental Indenture, dated as of November 19, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Wilmington Trust, National Association, as trustee.
- 4.4 Registration Rights Agreement, dated November 19, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the initial purchasers.

SIGNATURES

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

Date: November 19, 2015

SUMMIT MATERIALS, INC.
SUMMIT MATERIALS, LLC

By: /s/ Anne Lee Benedict

Name: Anne Lee Benedict

Title: Chief Legal Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
4.1	Indenture, dated as of July 8, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Wilmington Trust, National Association, as trustee (incorporated by reference to Exhibit 4.1 filed with the registrants' Current Report on Form 8-K filed on July 8, 2015 (File No. 001-36873)).
4.2	Form of 6.125% Senior Note due 2023 (included in Exhibit 4.1).
4.3	Third Supplemental Indenture, dated as of November 19, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Wilmington Trust, National Association, as trustee.
4.4	Registration Rights Agreement, dated November 19, 2015, by and among Summit Materials, LLC, Summit Materials Finance Corp., the subsidiary guarantors named on the signature pages thereto and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the initial purchasers.

[\(Back To Top\)](#)

Section 2: EX-4.3 (EX-4.3)

Exhibit 4.3

THIRD SUPPLEMENTAL INDENTURE

Third Supplemental Indenture (this "**Supplemental Indenture**"), dated as of November 19, 2015, by and among Summit Materials, LLC, a Delaware limited liability company (the "**Company**"), Summit Materials Finance Corp., a Delaware corporation wholly-owned by the Company (the "**Co-Issuer**" and, together with the Company, the "**Issuers**"), the Guarantors party hereto (the "**Guarantors**") and Wilmington Trust, National Association, a national banking association, as trustee (the "**Trustee**").

WITNESSETH

WHEREAS, each of the Issuers and the Guarantors (as defined in the Indenture referred to below) has heretofore executed and delivered to the Trustee an indenture (the "**Base Indenture**"), dated as of July 8, 2015, as supplemented by a supplemental indenture, dated as of July 17, 2015 (the "**First Supplemental Indenture**"), a supplemental indenture, dated October 7, 2015 (the "**Second Supplemental Indenture**"), and as further supplemented by this Supplemental Indenture, the "**Indenture**") providing for the issuance of 6.125% Senior Notes due 2023;

WHEREAS, pursuant to the Indenture, the Issuers initially issued \$350,000,000 in aggregate principal amount of the Issuers' 6.125% Senior Notes due 2023 (the "**Existing Notes**");

WHEREAS, Section 2.01(d) of the Indenture provides that the Issuers may issue Additional Notes from time to time ranking *pari passu* with the Existing Notes (subject to the Issuers' compliance with Section 4.09 of the Indenture) without notice to or consent of the Holders, and such Additional Notes shall be consolidated with and form a single class with the Existing Notes and shall have the same terms as to status, redemption or otherwise as the Existing Notes;

WHEREAS, the Issuers and the Guarantors desire to execute and deliver this Supplemental Indenture for the purpose of issuing \$300,000,000 in aggregate principal amount of additional notes, having terms substantially identical in all material respects to the Existing Notes (the "**Notes**"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Additional Securities. As of the date hereof, the Issuers will issue, and the Trustee is directed to authenticate and deliver, the Notes under the Indenture, having terms substantially identical in all material respects to the Existing Notes, at an issue price of 99.375%, plus accrued and unpaid interest from July 8, 2015. The Existing Notes and the Notes shall be treated as a single class for all purposes under the Indenture.

(3) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Issuers or any of the Guarantors (other than the Issuers and the Guarantors) shall have any liability for any obligations of the Issuers or the Guarantors under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(4) Governing Law. THIS SUPPLEMENTAL INDENTURE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR

RELATED TO THIS SUPPLEMENTAL INDENTURE, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(5) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmissions shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

(6) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(7) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Issuers and the Guarantors.

(8) Continued Effect. Except as expressly supplemented and amended by this Supplemental Indenture, the Indenture shall continue in full force and effect in accordance with the provisions thereof, and the Indenture (as supplemented and amended by this Supplemental Indenture) is in all respects hereby ratified and confirmed. This Supplemental Indenture and all the terms and conditions of this Supplemental Indenture, with respect to the Notes, shall be and be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

[The remainder of this page is intentionally left blank.]

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

Issuers:

SUMMIT MATERIALS, LLC
SUMMIT MATERIALS FINANCE CORP.

By: /s/ Brian J. Harris

Name: Brian J. Harris

Title: Chief Financial Officer

[Third Supplemental Indenture Signature Page]

Guarantors:

ELAM CONSTRUCTION, INC.
ALLEYTON RESOURCE COMPANY, LLC
ALLEYTON SERVICES COMPANY, LLC
AUSTIN MATERIALS, LLC
CONTINENTAL CEMENT COMPANY, L.L.C.
KILGORE COMPANIES, LLC
RK HALL, LLC
SUMMIT MATERIALS CORPORATIONS I, INC.
SUMMIT MATERIALS HOLDINGS II, LLC
SUMMIT MATERIALS INTERNATIONAL, LLC
CONCRETE SUPPLY OF TOPEKA, INC.
CORNEJO & SONS, L.L.C.
HAMM, INC.
N. R. HAMM CONTRACTOR, LLC
N. R. HAMM QUARRY, LLC
PENNY'S CONCRETE AND READY MIX, L.L.C.
BOURBON LIMESTONE COMPANY
HINKLE CONTRACTING COMPANY, LLC
CON-AGG OF MO, L.L.C.
GREEN AMERICA RECYCLING, LLC
BUCKHORN MATERIALS, LLC
COLORADO COUNTY SAND & GRAVEL CO., L.L.C.
INDUSTRIAL ASPHALT, LLC
SCS MATERIALS, LLC
TROY VINES, INCORPORATED
B&B RESOURCES, INC.
KILGORE PARTNERS L.P.
LEGRAND JOHNSON CONSTRUCTION CO.
LEWIS & LEWIS, INC.

By: /s/ Anne Lee Benedict

Name: Anne Lee Benedict

Title: Secretary

[Third Supplemental Indenture Signature Page]

Trustee:

WILMINGTON TRUST, NATIONAL ASSOCIATION, a
national banking association, as Trustee

By: /s/ Joseph O'Donnell

Name: Joseph O'Donnell

Title: Vice President

[Third Supplemental Indenture Signature Page]

[\(Back To Top\)](#)

Section 3: EX-4.4 (EX-4.4)

Exhibit 4.4

**SUMMIT MATERIALS, LLC
SUMMIT MATERIALS FINANCE CORP.**

\$300,000,000 6.125% Senior Notes due 2023

REGISTRATION RIGHTS AGREEMENT

dated November 19, 2015

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS	1
2. EXCHANGE OFFER	5
3. SHELF REGISTRATION	9
4. ADDITIONAL INTEREST	10
5. REGISTRATION PROCEDURES	11
6. REGISTRATION EXPENSES	19
7. INDEMNIFICATION AND CONTRIBUTION	20
8. RULES 144 AND 144A	24
9. UNDERWRITTEN REGISTRATIONS	25
10. MISCELLANEOUS	25

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is dated as of November 19, 2015, and is entered into by and among SUMMIT MATERIALS, LLC, a Delaware limited liability company (the "Company"), SUMMIT MATERIALS FINANCE CORP., a Delaware corporation ("Finance Corp." and, together with the Company, the "Issuers"), each of the guarantors listed on the signature pages hereto (each, a "Guarantor", and collectively, the "Guarantors") and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative (the "Representative") of the several initial purchasers named on Annex A to the Purchase Agreement referenced below (collectively, the "Initial Purchasers").

This Agreement is entered into in connection with the Purchase Agreement, dated as of November 4, 2015 (the "Purchase Agreement"), by and among the Issuers, the Guarantors and the Representative on behalf of the Initial Purchasers, which provides for, among other things, the sale by the Issuers to the Initial Purchasers of \$300,000,000 in aggregate principal amount of the Issuers' 6.125% senior notes due 2023 (the "Notes"). The Notes are issued under that certain indenture dated as of July 8, 2015 (as amended, supplemented or otherwise modified to, and including, the date hereof, the "Base Indenture"), by and among the Issuers, the Guarantors and Wilmington Trust, National Association, as trustee, and a supplemental indenture, to be dated as of the date hereof, by and among the Issuers, the Guarantors and Wilmington Trust, National Association, as trustee (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). Pursuant to the Purchase Agreement and the Indenture, the Guarantors are required to guarantee, on an unsecured senior basis with respect to the Notes (the "Guarantees"), the obligations of the Issuers and the Guarantors under the Notes and the Indenture. References to the "Securities" shall mean, collectively, the Notes and the Guarantees. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Issuers have agreed to provide the registration rights set forth in this Agreement for the benefit of the Initial Purchasers and, except as otherwise set forth herein, any subsequent holder or holders of the Securities on the terms, and subject to the conditions, set forth herein. The execution and delivery of this Agreement is a condition to the Initial Purchasers' obligations under the Purchase Agreement.

The parties hereby agree as follows:

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

Additional Interest: See Section 4(a) hereof.

Advice: See the last paragraph of Section 5 hereof.

Agreement: See the introductory paragraphs hereto.

Applicable Period: See Section 2(b) hereof.

Board: See Section 3(a) hereof.

Business Day: Shall have the meaning ascribed to such term in Rule 14d-1(g)(3) under the Exchange Act.

Company: See the introductory paragraphs hereto.

Effectiveness Date: With respect to any Shelf Registration Statement, the 90th day after the Filing Date with respect thereto; *provided, however*, that if the Effectiveness Date would otherwise fall on a day that is not a Business Day, then the Effectiveness Date shall be the next succeeding Business Day.

Effectiveness Period: See Section 3(a) hereof.

Exchange Act: The Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

Exchange Notes: See Section 2(a) hereof.

Exchange Notes Guarantees: See Section 2(a) hereof.

Exchange Offer: See Section 2(a) hereof.

Exchange Offer Registration Statement: See Section 2(a) hereof.

Exchange Securities: See Section 2(a) hereof.

Existing Exchange Securities: the 6.125% Senior Notes due 2023 and the related guarantees thereto, of the same series under the Indenture as the Existing Securities without restrictive legends or transfer restrictions, that were issued to Holders of the Existing Securities in an exchange offer pursuant to the Existing Registration Rights Agreement.

Existing Registration Rights Agreement: the Registration Rights Agreement, dated as of July 8, 2015 by and among the Issuers, the Guarantors and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several initial purchasers.

Existing Securities: the \$350,000,000 aggregate principal amount of 6.125% Senior Notes due 2023 and the related guarantees thereto issued by the Issuers on July 8, 2015 under the Indenture, of which \$350,000,000 aggregate principal amount remain outstanding as of the date hereof.

Filing Date: The 90th day after the delivery of a Shelf Notice as required pursuant to Section 2(c) hereof; *provided, however*, that if the Filing Date would otherwise fall on a day that is not a Business Day, then the Filing Date shall be the next succeeding Business Day.

Finance Corp.: See the introductory paragraphs hereto.

FINRA: See Section 5(r) hereof.

Guarantees: See the introductory paragraphs hereto.

Guarantors: See the introductory paragraphs hereto.

Holder: Any holder of a Registrable Security or Registrable Securities, including, where applicable, each Participating Broker-Dealer.

Indenture: See the introductory paragraphs hereto.

Information: See Section 5(n) hereof.

Initial Purchasers: See the introductory paragraphs hereto.

Initial Shelf Registration: See Section 3(a) hereof.

Inspectors: See Section 5(n) hereof.

Issue Date: November 19, 2015, the date of original issuance of the Notes.

Issuers: See the introductory paragraphs hereto.

Notes: See the introductory paragraphs hereto.

Participant: See Section 7(a) hereof.

Participating Broker-Dealer: See Section 2(b) hereof.

Person: An individual, trustee, corporation, partnership, limited liability company, joint stock company, trust, unincorporated association, union, business association, firm or other legal entity.

Private Exchange: See Section 2(b) hereof.

Private Exchange Notes: See Section 2(b) hereof.

Prospectus: The prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or 430C under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

Purchase Agreement: See the introductory paragraphs hereof.

Records: See Section 5(n) hereof.

Registrable Securities: Each Security upon its original issuance and at all times subsequent thereto, each Exchange Security as to which Section 2(c)(iv) hereof is applicable upon original issuance and at all times subsequent thereto and each Private Exchange Note (and the related Guarantees) upon original issuance thereof and at all times subsequent thereto, until, in

each case, the earliest to occur of (i) a Registration Statement (other than, with respect to any Exchange Securities as to which Section 2(c)(iv) hereof is applicable, the Exchange Offer Registration Statement) covering such Security, Exchange Security or Private Exchange Note (and the related Guarantees) has been declared effective by the SEC and such Security, Exchange Security or such Private Exchange Note (and the related Guarantees), as the case may be, has been disposed of in accordance with such effective Registration Statement, (ii) such Security has been exchanged pursuant to the Exchange Offer for an Exchange Security or Exchange Securities that may be resold without restriction under state and federal securities laws, (iii) such Security, Exchange Security or Private Exchange Note (and the related Guarantees), as the case may be, ceases to be outstanding for purposes of the Indenture, (iv) the later of (x) the date which is two years after the date such Security was originally issued and (y) the date upon which such Security, Exchange Security or Private Exchange Note (and the related Guarantees), as the case may be, has been resold in compliance with Rule 144, *provided* that such Security, Exchange Security or Private Exchange Note (and the related Guarantees) does not bear any restrictive legend relating to the Securities Act and does not bear a restricted CUSIP number or (v) the Exchange Offer is consummated and such Security (x) is not a Security as to which a valid request for a Private Exchange has been timely delivered to the Issuers and (y) was not validly tendered in and not withdrawn from the Exchange Offer at the time of the consummation thereof.

Registration Default: See Section 4(a) hereof.

Registration Statement: Any registration statement of the Issuers that covers any of the Securities, the Exchange Securities or the Private Exchange Notes (and the related Guarantees) filed with the SEC under the Securities Act, including, in each case, the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

Representative: See the introductory paragraphs hereto.

Rule 144: Rule 144 under the Securities Act.

Rule 144A: Rule 144A under the Securities Act.

Rule 405: Rule 405 under the Securities Act.

Rule 415: Rule 415 under the Securities Act.

Rule 424: Rule 424 under the Securities Act.

SEC: The U.S. Securities and Exchange Commission.

Securities: See the introductory paragraphs hereto.

Securities Act: The Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

Shelf Notice: See Section 2(c) hereof.

Shelf Registration: See Section 3(b) hereof.

Shelf Registration Statement: Any Registration Statement relating to a Shelf Registration.

Shelf Suspension Period: See Section 3(a) hereof.

Subsequent Shelf Registration: See Section 3(b) hereof.

TIA: The Trust Indenture Act of 1939, as amended.

Trustee: The trustee under the Indenture and the trustee under any indenture (if different) governing the Exchange Securities and Private Exchange Notes (and the related Guarantees).

underwritten registration or underwritten offering: A registration in which securities of the Issuers are sold to one or more underwriters for reoffering to the public.

Except as otherwise specifically provided, all references in this Agreement to acts, laws, statutes, rules, regulations, releases, forms, no-action letters and other regulatory requirements (collectively, "Regulatory Requirements") shall be deemed to refer also to any amendments thereto and all subsequent Regulatory Requirements adopted as a replacement thereto having substantially the same effect therewith.

2. Exchange Offer

(a) Unless the Exchange Offer would violate applicable law or any applicable interpretation of the staff of the SEC, each of the Issuers and the Guarantors shall use their respective commercially reasonable efforts to prepare and file with the SEC one or more Registration Statements (each, an "Exchange Offer Registration Statement") on an appropriate registration form with respect to a registered offer (the "Exchange Offer") to exchange any and all of the Registrable Securities for a like aggregate principal amount of debt securities of the same series of the Issuers (such debt securities, the "Exchange Notes"), guaranteed, to the extent applicable, on an unsecured senior basis by the Guarantors, (the "Exchange Notes Guarantees" and, together with the Exchange Notes, the "Exchange Securities"), that are substantially identical in all material respects to the Notes except that the Exchange Notes (i) shall contain no restrictive legend thereon, (ii) interest thereon shall accrue from (A) the later of (x) the last date on which interest was paid on such Notes or (y) if such Notes are surrendered for exchange on a date in a period that includes the record date for an interest payment date to occur on or after the date of such exchange and as to which interest will be paid, the date of such interest payment date or (B) if no such interest has been paid, from the Issue Date and (iii) shall be entitled to the benefits of the Indenture or a trust indenture which is identical in all material respects to the Indenture (other than such changes to the Indenture or any such identical trust indenture as are necessary to comply with the TIA) and which, in either case, has been qualified under the TIA. The Exchange Offer shall comply with all applicable tender offer rules and regulations under the Exchange Act and other applicable laws. The Issuers and the Guarantors shall use their respective commercially reasonable efforts to (x) prepare and file with the SEC the Exchange Offer Registration Statement with respect to the Exchange Offer and cause the Exchange Offer Registration Statement to

be declared effective under the Securities Act; (y) keep the Exchange Offer open for at least 20 Business Days (or longer if required by applicable law) after the date that notice of the Exchange Offer is sent to Holders; and (z) consummate the Exchange Offer on or prior to the 270th day following the Issue Date (or if such 270th day is not a Business Day, the next succeeding Business Day).

Each Holder (including, without limitation, each Participating Broker-Dealer) that participates in the Exchange Offer, as a condition to participation in the Exchange Offer, will be required to represent to the Issuers in writing (which may be contained in the applicable letter of transmittal) substantially to the effect that: (i) any Exchange Securities acquired in exchange for Registrable Securities tendered are being acquired in the ordinary course of business of the Person receiving such Exchange Securities, whether or not such recipient is such Holder itself; (ii) at the time of the commencement or consummation of the Exchange Offer neither such Holder nor, to the actual knowledge of such Holder, any other Person receiving Exchange Securities from such Holder has an arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the provisions of the Securities Act; (iii) neither the Holder nor, to the knowledge of such Holder, any other Person receiving Exchange Securities from such Holder is an “affiliate” (as defined in Rule 405) of either Issuer or any Guarantor or, if it is an affiliate of either Issuer or any Guarantor, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable and will provide information to be included in the Shelf Registration Statement in accordance with Section 5 hereof in order to have their Securities included in the Shelf Registration Statement and benefit from provisions regarding Additional Interest in Section 4 hereof; (iv) if such Holder is not a broker-dealer, neither such Holder nor, to the knowledge of such Holder, any other Person receiving Exchange Securities from such Holder is engaging in or intends to engage in a distribution of the Exchange Securities; and (v) if such Holder is a Participating Broker-Dealer, such Holder has acquired the Registrable Securities for its own account in exchange for Securities that were acquired as a result of market-making activities or other trading activities and that it will comply with the applicable provisions of the Securities Act (including, but not limited to, the prospectus delivery requirements thereunder).

Upon consummation of the Exchange Offer in accordance with this Section 2, the provisions of this Agreement shall continue to apply, *mutatis mutandis*, solely with respect to Registrable Securities that are Private Exchange Notes (and the related Guarantees), Exchange Securities as to which Section 2(c)(iv) hereof is applicable and Exchange Securities held by Participating Broker-Dealers, and the Issuers and the Guarantors shall have no further obligation to register Registrable Securities (other than Private Exchange Notes (and the related Guarantees) and Exchange Securities as to which clause 2(c)(iv) hereof applies) pursuant to Section 3 hereof.

(b) The Issuers shall include within the Prospectus contained in the Exchange Offer Registration Statement a section entitled “Plan of Distribution,” which shall contain a summary statement of the positions taken or policies made by the staff of the SEC with respect to the potential “underwriter” status of any broker-dealer that is the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of Exchange Notes received by such broker-dealer in the Exchange Offer (a “Participating Broker-Dealer”), whether such positions or policies have been publicly disseminated by the staff of the SEC or such positions or policies represent the prevailing views of the staff of the SEC. Such “Plan of Distribution” section shall also expressly

permit, to the extent permitted by applicable policies and regulations of the SEC, the use of the Prospectus by all Participating Broker-Dealers, and include a statement describing the means by which Participating Broker-Dealers may resell the Exchange Securities in compliance with the Securities Act.

Each of the Issuers and the Guarantors shall use its commercially reasonable efforts to keep the Exchange Offer Registration Statement effective and to amend and supplement the Prospectus contained therein in order to permit such Prospectus to be lawfully delivered by all Persons subject to the prospectus delivery requirements of the Securities Act for such period of time as is necessary to comply with applicable law in connection with any resale of the Exchange Securities; *provided, however*, that such period shall not be required to exceed 90 days after the date on which the Exchange Offer Registration Statement is declared effective, such period as extended, if at all, pursuant to the last paragraph of Section 5 hereof (the “Applicable Period”).

If, immediately prior to consummation of the Exchange Offer, the Initial Purchasers hold any Notes acquired by them that have the status of an unsold allotment in the initial distribution, the Issuers, upon the written request of the Initial Purchasers or any such Holders, as the case may be, shall simultaneously with the delivery of the Exchange Notes issue and deliver to the Initial Purchasers, in exchange (the “Private Exchange”) for such Notes held by any such Initial Purchaser, a like principal amount of notes (the “Private Exchange Notes”) of the Issuers, guaranteed by the Guarantors, that are identical in all material respects to the Exchange Notes except for the placement of a restrictive legend on such Private Exchange Notes. The Private Exchange Notes shall be issued pursuant to the same indenture as the Exchange Notes and bear the same CUSIP number as the Exchange Notes if permitted by the CUSIP Service Bureau.

In connection with the Exchange Offer, the Issuers and the Guarantors shall:

- (1) mail, or cause to be mailed, to each Holder of record entitled to participate in the Exchange Offer a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;
- (2) use their respective commercially reasonable efforts to keep the Exchange Offer open for not less than 20 Business Days (or longer if required by applicable law) after the date that notice of the Exchange Offer is sent to Holders;
- (3) utilize the services of a depository for the Exchange Offer with an address in the Borough of Manhattan, The City of New York or in Wilmington, Delaware;
- (4) permit Holders to withdraw tendered Notes at any time prior to the close of business, New York time, on the last Business Day on which the Exchange Offer remains open; and
- (5) otherwise comply in all material respects with all laws, rules and regulations applicable to the Exchange Offer.

As soon as practicable after the close of the Exchange Offer and any Private Exchange, the Issuers and the Guarantors shall:

- (1) accept for exchange all Registrable Securities validly tendered and not validly withdrawn pursuant to the Exchange Offer and any Private Exchange;
- (2) deliver to the Trustee for cancellation all Registrable Securities so accepted for exchange; and
- (3) cause the Trustee to authenticate and deliver promptly to each Holder of Notes, Exchange Notes or Private Exchange Notes, as the case may be, equal in principal amount to the Notes of such Holder so accepted for exchange; *provided* that, in the case of any Notes held in global form by a depositary, authentication and delivery to such depositary of one or more replacement Notes in global form in an equivalent principal amount thereto for the account of such Holders in accordance with the Indenture shall satisfy such authentication and delivery requirement.

The Exchange Offer and the Private Exchange shall not be subject to any conditions, other than that (i) the Exchange Offer or Private Exchange, as the case may be, does not violate applicable law or any applicable interpretation of the staff of the SEC; (ii) no action or proceeding shall have been instituted or threatened in any court or by any governmental agency which might materially impair the ability of the Issuers to proceed with the Exchange Offer or the Private Exchange, and no material adverse development shall have occurred in any existing action or proceeding with respect to the Issuers and the Guarantors; (iii) all governmental approvals shall have been obtained, which approvals the Issuers deem necessary for the consummation of the Exchange Offer or Private Exchange and (iv) the Holders shall have satisfied customary conditions relating to the delivery of the Exchange Securities and the Private Exchange Notes (and related guarantees) and the execution and delivery of customary documentation relating to the Exchange Offer or Private Exchanges as applicable.

The Exchange Securities and the Private Exchange Notes (and related guarantees) shall be issued under (i) the Indenture or (ii) an indenture substantially identical in all material respects to the Indenture and which, in either case, has been qualified under the TIA or is exempt from such qualification and shall provide that the Exchange Securities shall not be subject to the transfer restrictions set forth in the Indenture. The Indenture or such other indenture shall provide that the Exchange Notes, the Private Exchange Notes and the Notes shall vote and consent together on all matters as one class and that none of the Exchange Notes, the Private Exchange Notes or the Notes will have the right to vote or consent as a separate class on any matter.

(c) If, (i) because of any change in law or in currently prevailing interpretations of the staff of the SEC, the Issuers or the Guarantors are not permitted to consummate the Exchange Offer within 270 days of the Issue Date, (ii) the Exchange Offer is not consummated within 270 days of the Issue Date, (iii) any holder of Private Exchange Notes so requests in writing to the Issuers at any time within 30 days after the consummation of the Exchange Offer, (iv) in the case of any Holder that participates in the Exchange Offer, such Holder does not receive Exchange Securities on the date of the exchange that may be sold without restriction under state and federal securities laws (other than due solely to the status of such Holder as an affiliate of

either Issuer or any Guarantor within the meaning of the Securities Act) or (v) any Initial Purchaser so requests with respect to the Securities or the Private Exchange Notes (and related guarantees) that have the status of unsold allotments in an initial distribution and so notifies the Issuers within 30 days after such Initial Purchaser or such Holder, as the case may be, first becomes aware of such status (but in any event (x) no earlier than the date upon which the Exchange Offer Registration Statement is declared effective and (y) no later than 30 days after the consummation of the Exchange Offer), in the case of each of clauses (i) through and including (v) of this sentence, then the Issuers and the Guarantors shall promptly deliver to the Trustee (to deliver to the Holders) written notice thereof (the “Shelf Notice”) and shall file a Shelf Registration pursuant to Section 3 hereof.

3. Shelf Registration

If at any time a Shelf Notice is delivered as contemplated by Section 2(c) hereof, then:

(a) Shelf Registration. The Issuers and the Guarantors shall promptly file with the SEC a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Securities (the “Initial Shelf Registration”). The Issuers and the Guarantors shall use their respective commercially reasonable efforts to file with the SEC the Initial Shelf Registration on or prior to the Filing Date. The Initial Shelf Registration shall be on Form S-1 or another appropriate form permitting registration of such Registrable Securities for resale by Holders in the manner or manners designated by them (including, without limitation, one or more underwritten offerings).

The Issuers and the Guarantors shall use their respective commercially reasonable efforts to cause the Shelf Registration to be declared effective under the Securities Act on or prior to the Effectiveness Date and to keep the Initial Shelf Registration continuously effective under the Securities Act until the earliest of (i) 360 days after the date that the Shelf Registration Statement is declared effective, (ii) the date on which all Registrable Securities covered by the Initial Shelf Registration have been sold in the manner set forth and as contemplated in the Initial Shelf Registration or, if applicable, a Subsequent Shelf Registration or (iii) the date on which all Registrable Securities have been otherwise sold (the “Effectiveness Period”); *provided, however*, that the Effectiveness Period in respect of the Initial Shelf Registration shall be extended to the extent required to permit dealers to comply with the applicable prospectus delivery requirements of Rule 174 under the Securities Act and as otherwise provided herein. Notwithstanding anything to the contrary in this Agreement, at any time, the Issuers may delay the filing of any Initial Shelf Registration Statement or delay or suspend the effectiveness thereof, for a reasonable period of time, but not in excess of 60 consecutive days or more than three (3) times during any calendar year (each, a “Shelf Suspension Period”), if the Board of Directors of each Issuer or a similar governing body of any parent company of the either Issuer (each, a “Board”) determines reasonably and in good faith that the filing of any such Initial Shelf Registration or the continuing effectiveness thereof would require the disclosure of non-public material information that, in the reasonable judgment of such Board, would be detrimental to either Issuer if so disclosed or would otherwise materially adversely affect a financing, acquisition, disposition, merger or other material transaction or such action is required by applicable law.

(b) Withdrawal of Stop Orders; Subsequent Shelf Registrations. If the Initial Shelf Registration or any Subsequent Shelf Registration ceases to be effective for any reason at any time during the Effectiveness Period (other than in the case of Shelf Suspension Period(s) permitted by this Agreement and other than because of the sale of all of the Securities registered thereunder), the Issuers and the Guarantors shall use their respective commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall file an additional Shelf Registration Statement pursuant to Rule 415 covering all of the Registrable Securities covered by and not sold under the Initial Shelf Registration or an earlier Subsequent Shelf Registration (each, a “Subsequent Shelf Registration”). If a Subsequent Shelf Registration is filed, the Issuers and the Guarantors shall use their respective commercially reasonable efforts to cause the Subsequent Shelf Registration to be declared effective under the Securities Act as soon as practicable after such filing and to keep such subsequent Shelf Registration continuously effective for a period equal to the number of days in the Effectiveness Period less the aggregate number of days during which the Initial Shelf Registration or any Subsequent Shelf Registration was previously continuously effective. As used herein, the term “Shelf Registration” means the Initial Shelf Registration and any Subsequent Shelf Registration.

(c) Supplements and Amendments. The Issuers and the Guarantors shall promptly supplement and/or amend the Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration, if required by the Securities Act, or if reasonably requested by the Holders of a majority in aggregate principal amount of the Registrable Securities (or their counsel) covered by such Registration Statement with respect to the information included therein with respect to one or more of such Holders, or, if reasonably requested by any underwriter of such Registrable Securities, with respect to the information included therein with respect to such underwriter.

4. Additional Interest

(a) The Issuers, the Guarantors and the Initial Purchasers agree that the Holders will suffer damages if the Issuers and the Guarantors fail to fulfill their obligations under Section 2 or Section 3 hereof, as further specified in this Section 4 (each, a “Registration Default”), and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Issuers and the Guarantors agree to pay, jointly and severally, as liquidated damages, additional interest to the Holders of the Notes affected thereby (“Additional Interest”) if (A) the Issuers and the Guarantors have neither (i) exchanged Exchange Securities for all Securities validly tendered in accordance with the terms of the Exchange Offer nor (ii) if applicable, had a Shelf Registration Statement declared effective, in either case on or prior to the 270th day after the Issue Date, (B) notwithstanding clause (A), the Issuers and the Guarantors are required to file a Shelf Registration Statement and such Shelf Registration Statement is not declared effective on or prior to the Effectiveness Date or (C), if applicable, a Shelf Registration Statement has been declared effective and such Shelf Registration Statement ceases to be effective at any time during the Effectiveness Period (other than because of the sale of all of the Securities registered thereunder). Such Additional Interest shall accrue on the principal amount of the Notes then outstanding affected thereby (but, following the consummation of the Exchange Offer, only on the principal amount of such Notes that could not be exchanged or were not exchanged as specified in Section 2(c) hereof) at a rate of 0.25% per annum for the first 90-day period (which rate will be increased by an additional 0.25% per annum for each subsequent 90-day period that such Additional

Interest continues to accrue, *provided* that the rate at which such Additional Interest accrues may in no event exceed 1.00% per annum) (such Additional Interest to be calculated by the Issuers) commencing on the (x) 271st day after the Issue Date in the case of (A) above, (y) the Effectiveness Date in the case of (B) above, or (z) the day on which such Shelf Registration Statement ceases to be effective in the case of (C) above; *provided, however*, that upon the exchange of the Exchange Securities for all Securities validly tendered (in the case of clause (A)(i) of this Section 4), upon the effectiveness of the applicable Shelf Registration Statement (in the case of clause (A)(ii) and clause (B) of this Section 4 (a)), or upon the effectiveness of the applicable Shelf Registration Statement which had ceased to remain effective (in the case of clause (C) of this Section 4), Additional Interest on the Notes in respect of which such events relate as a result of such clause (or the relevant subclause thereof), as the case may be, shall cease to accrue. Notwithstanding any other provisions of this Section 4, the Issuers and the Guarantors shall not be obligated to pay Additional Interest provided in Section 4(a)(A)(ii) or 4(a)(C) hereof during a Shelf Suspension Period permitted by Section 3(a) hereof. The obligation of the Issuers and the Guarantors to pay Additional Interest as set forth in this Section 4 shall be the sole and exclusive monetary remedy of the Holders and Participating Broker-Dealers for any Registration Default. Notwithstanding anything to the contrary herein, (i) the amount of Additional Interest payable shall not increase because more than one Registration Default has occurred and is continuing and (ii) a Holder or Participating Broker-Dealer that is not entitled to the benefits of the Shelf Registration shall not be entitled to Additional Interest with respect to any Registration Default that pertains to the Shelf Registration.

(b) The Issuers shall notify the Trustee within five Business Days after the occurrence of a Registration Default in respect of which Additional Interest is required to be paid. Any amounts of Additional Interest due pursuant to clause (a) of this Section 4 will be payable in cash semiannually on each January 15 and July 15 (to the Holders of record on the January 1 and July 1 immediately preceding such dates), in each case commencing with the first such date occurring after any such Additional Interest commences to accrue. The amount of Additional Interest will be determined by the Issuers by multiplying the applicable Additional Interest rate by the principal amount of the Registrable Securities affected by the Registration Default, multiplied by a fraction, the numerator of which is the number of days such Additional Interest rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360.

(c) For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, no Additional Interest will be owed in respect of any Existing Securities.

5. Registration Procedures

In connection with the filing of any Registration Statement pursuant to Section 2 or 3 hereof, the Issuers and the Guarantors shall use their respective commercially reasonable efforts to effect such registrations to permit the sale of the securities covered thereby in accordance with the intended method or methods of disposition thereof, and pursuant thereto and in

connection with any Registration Statement filed by the Issuers and the Guarantors hereunder the Issuers and the Guarantors shall:

(a) Use their respective commercially reasonable efforts to prepare and file with the SEC, a Registration Statement or Registration Statements as prescribed by Section 2 or 3 hereof, and use their respective commercially reasonable efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided, however*, that if (1) such filing is pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period relating thereto from whom the Issuers have received prior written notice that it will be a Participating Broker-Dealer in the Exchange Offer, before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Issuers and the Guarantors shall furnish to and afford counsel for the Holders of the Registrable Securities covered by such Registration Statement (with respect to a Registration Statement filed pursuant to Section 3 hereof), which shall be a single firm and which shall be Cahill Gordon & Reindel LLP or such other firm selected by the Holders holding a majority in principal amount of the Registrable Securities covered by such Registration Statement or counsel for such Participating Broker-Dealer (with respect to any such Registration Statement), as the case may be, and counsel to the managing underwriters, if any, a reasonable opportunity to review copies of all such documents (including copies of any documents to be incorporated by reference therein and all exhibits thereto) proposed to be filed (in each case at least three Business Days prior to such filing). The Issuers and the Guarantors shall not file any Registration Statement or Prospectus or any amendments or supplements thereto if the Holders of a majority in aggregate principal amount of the Registrable Securities covered by such Registration Statement, or any such Participating Broker-Dealer, as the case may be, their counsel, or the managing underwriters, if any, shall reasonably object.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Shelf Registration Statement or Exchange Offer Registration Statement, as the case may be, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period, the Applicable Period or until consummation of the Exchange Offer, as the case may be; cause the related Prospectus to be supplemented by any Prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424; and comply with the provisions of the Securities Act and the Exchange Act applicable to them with respect to the disposition of all securities covered by such Registration Statement as so amended or in such Prospectus as so supplemented and with respect to the subsequent resale of any securities being sold by a Participating Broker-Dealer covered by any such Prospectus in all material respects. The Issuers and the Guarantors shall be deemed not to have used their respective commercially reasonable efforts to keep a Registration Statement effective if they voluntarily take any action that is reasonably expected to result in selling Holders of the Registrable Securities covered thereby or Participating Broker-Dealers seeking to sell Exchange Securities not being able to sell such Registrable Securities or such Exchange Securities during that period unless such action is required by applicable law or permitted by this Agreement.

(c) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period relating thereto from whom the Issuers have received written notice that it will be a Participating Broker-Dealer in the Exchange

Offer, notify the selling Holders of Registrable Securities (with respect to a Registration Statement filed pursuant to Section 3 hereof), or each such Participating Broker-Dealer (with respect to any such Registration Statement), as the case may be, their counsel and the managing underwriters, if any, promptly (but in any event within three Business Days), and confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request, obtain, at the sole expense of the Issuers, one conformed copy of such Registration Statement or post-effective amendment including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the SEC of any stop order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any preliminary prospectus or the initiation of any proceedings for that purpose, (iii) if at any time when a prospectus is required by the Securities Act to be delivered in connection with sales of the Registrable Securities or resales of Exchange Securities by Participating Broker-Dealers, any of the representations and warranties of the Issuers and the Guarantors contained in any agreement (including any underwriting agreement) contemplated by Section 5(m) hereof cease to be true and correct in all material respects, (iv) of the receipt by the Issuers and the Guarantors of any notification with respect to the suspension of the qualification or exemption from qualification of a Registration Statement or any of the Registrable Securities or the Exchange Securities to be sold by any Participating Broker-Dealer for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, (v) of the happening of any event, the existence of any condition or any information becoming known that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or document incorporated or deemed to be incorporated therein by reference so that, in the case of the Registration Statement or any document incorporated or deemed to be incorporated by reference, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus or any document incorporated or deemed to be incorporated by reference, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (vi) of the Issuers' determination that a post-effective amendment to a Registration Statement would be appropriate.

(d) Use their respective commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of a Prospectus or suspending the qualification (or exemption from qualification) of any of the Registrable Securities or the Exchange Securities to be sold by any Participating Broker-Dealer, for sale in any jurisdiction, and, if any such order is issued, to use their commercially reasonable efforts to obtain the withdrawal of any such order as soon as possible.

(e) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer

who seeks to sell Exchange Securities during the Applicable Period and if requested during the Effectiveness Period by the managing underwriter or underwriters (if any), the Holders of a majority in aggregate principal amount of the Registrable Securities being sold in connection with an underwritten offering or any Participating Broker-Dealer, as the case may be, (i) as promptly as practicable incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters (if any), such Holders or any Participating Broker-Dealer, as the case may be, or counsel for either of them reasonably request to be included therein and (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as practicable after the Issuers and the Guarantors have received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment.

(f) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period, furnish to each selling Holder of Registrable Securities (with respect to a Registration Statement filed pursuant to Section 3 hereof) and to each such Participating Broker-Dealer who so requests (with respect to any such Registration Statement) and to their respective counsel and each managing underwriter, if any, upon request and at the sole expense of the Issuers, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if requested, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(g) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period, deliver to each selling Holder of Registrable Securities (with respect to a Registration Statement filed pursuant to Section 3 hereof), or each such Participating Broker-Dealer (with respect to any such Registration Statement), as the case may be, their respective counsel, and the underwriters, if any, at the sole expense of the Issuers, as many copies of the Prospectus or Prospectuses (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to the last paragraph of this Section 5, the Issuers and the Guarantors hereby consent to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders of Registrable Securities or each such Participating Broker-Dealer, as the case may be, and the underwriters or agents, if any, and dealers, if any, in connection with the offering and sale of the Registrable Securities covered by, or the sale by Participating Broker-Dealers of the Exchange Securities pursuant to, such Prospectus and any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Securities or any delivery of a Prospectus contained in the Exchange Offer Registration Statement by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period, use their respective commercially reasonable efforts to register or qualify, and to cooperate with the selling Holders of Registrable Securities or each such Participating Broker-Dealer, as the case may be, the managing underwriter or underwriters, if any, and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable

Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any selling Holder, Participating Broker-Dealer, or the managing underwriter or underwriters reasonably request in writing; *provided, however*, that where Exchange Securities held by Participating Broker-Dealers or Registrable Securities are offered other than through an underwritten offering, the Issuers and the Guarantors agree to use their respective commercially reasonable efforts to cause their counsel to perform Blue Sky investigations and file registrations and qualifications required to be filed pursuant to this Section 5(h), keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Exchange Securities held by Participating Broker-Dealers or the Registrable Securities covered by the applicable Registration Statement; *provided, however*, that the Issuers and the Guarantors shall not be required to (A) qualify generally to do business in any jurisdiction where they are not then so qualified, (B) take any action that would subject them to general service of process in any such jurisdiction where they are not then so subject or (C) subject themselves to taxation in excess of a nominal dollar amount in any such jurisdiction where they are not then so subject.

(i) If a Shelf Registration is filed pursuant to Section 3 hereof, cooperate with the selling Holders of Registrable Securities and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold, which certificates shall not bear any restrictive legends and shall be in a form eligible for deposit with The Depository Trust Company; and enable such Registrable Securities to be in such denominations (subject to applicable requirements contained in the Indenture) and registered in such names as the managing underwriter or underwriters, if any, or Holders may reasonably request.

(j) [Reserved].

(k) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period, upon the occurrence of any event contemplated by Section 5(c)(v) or 5(c)(vi) hereof, as promptly as practicable prepare and (subject to Section 5(a) hereof) file with the SEC, at the sole expense of the Issuers, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference so that (but only to such an extent that), as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder (with respect to a Registration Statement filed pursuant to Section 3 hereof) or to the purchasers of the Exchange Securities to whom such Prospectus will be delivered by a Participating Broker-Dealer (with respect to any such Registration Statement), in the case of the Registration Statement or any document incorporated or deemed to be incorporated by reference, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus or any document incorporated or deemed to be incorporated by reference, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Prior to the effective date of the first Registration Statement relating to the Registrable Securities, provide the Trustee with certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company.

(m) In connection with any underwritten offering of Registrable Securities pursuant to a Shelf Registration, enter into an underwriting agreement as is customary in underwritten offerings of debt securities similar to the Securities (including, without limitation, a customary condition to the obligations of the underwriters that the underwriters shall have received “cold comfort” letters and updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters from the independent certified public accountants of the Issuers (and, if necessary, any other independent certified public accountants of the Issuers, or of any business acquired by the Issuers, for which financial statements and financial data are, or are required to be, included or incorporated by reference in the Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in “cold comfort” letters in connection with underwritten offerings of debt securities similar to the Securities), and take all such other actions as are reasonably requested by the managing underwriter or underwriters in order to expedite or facilitate the registration or the disposition of such Registrable Securities and, in such connection, (i) make such representations and warranties to, and covenants with, the underwriters with respect to the business of the Issuers and the Guarantors (including any acquired business, properties or entity, if applicable), and the Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings of debt securities similar to the Securities, and confirm the same in writing if and when reasonably requested; (ii) use their respective commercially reasonable efforts to obtain the written opinions of counsel to the Issuers and the Guarantors, and written updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters, addressed to the underwriters covering the matters customarily covered in opinions reasonably requested in underwritten offerings (it being agreed that Simpson Thacher & Bartlett LLP is deemed to be counsel that is reasonably acceptable); and (iii) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures requested by the underwriters or no less favorable to the sellers than those set forth in Section 7 hereof (or such other provisions and procedures reasonably acceptable to Holders of a majority in aggregate principal amount of Registrable Securities covered by such Registration Statement and the managing underwriter or underwriters or agents, if any). The above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder.

(n) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Securities during the Applicable Period, make available for inspection by any Initial Purchaser, any selling Holder of such Registrable Securities being sold (with respect to a Registration Statement filed pursuant to Section 3 hereof), or each such Participating Broker-Dealer, as the case may be, any underwriter participating in any such disposition of Registrable Securities, if any, and any attorney (which shall be a single firm and which shall be Cahill Gordon & Reindel LLP or such other firm selected by the Holders holding a majority in principal amount of the Registrable Securities covered by such Registration Statement), accountant

or other agent retained by any such selling Holder or each such Participating Broker-Dealer (with respect to any such Registration Statement), as the case may be, or underwriter (any such Initial Purchasers, Holders, Participating Broker-Dealers, underwriters, attorneys, accountants or agents, collectively, the “Inspectors”), upon written request, at the offices where normally kept, during reasonable business hours, all pertinent financial and other records, pertinent corporate documents and instruments of each of the Issuers and Guarantors and subsidiaries of each of the Issuers and the Guarantors (collectively, the “Records”), as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Issuers and the Guarantors and any of their respective subsidiaries to supply, during reasonable business hours, all information (“Information”) reasonably requested by any such Inspector in connection with such due diligence responsibilities. Each Inspector shall agree in writing that it will keep the Records and Information confidential, to use the Records and Information only to the extent necessary for due diligence purposes under applicable securities laws, to abstain from using the Records and Information as the basis for any market transactions in Securities of the Issuers (or for any purpose other than the satisfaction of its due diligence responsibilities in connection with such Shelf Registration or Exchange Offer Registration Statement, as applicable) and that it will not disclose any of the Records or Information that the Issuers and the Guarantors determine, in good faith, to be confidential and notifies the Inspectors in writing are confidential unless (i) the disclosure of such Records or Information is necessary to avoid or correct a material misstatement or omission in such Registration Statement or Prospectus (in the case of any Prospectus, considered in the light of the circumstances under which it was made), (ii) the release of such Records or Information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such Records or Information is necessary or advisable, in the reasonable opinion of counsel for any Inspector, in connection with any action, claim, suit or proceeding, directly or indirectly, involving or potentially involving such Inspector and arising out of, based upon, relating to, or involving this Agreement or the Purchase Agreement, or any transactions contemplated hereby or thereby or arising hereunder or thereunder, or (iv) the information in such Records or Information has been made generally available to the public other than as a result of a disclosure or failure to safeguard such Records and Information by an Inspector or an “affiliate” (as defined in Rule 405) thereof; *provided*, that the foregoing gathering of Records and Information by the Inspectors shall, to the greatest extent possible, be coordinated on behalf of Holders and any other parties entitled thereto (including any Participating Broker-Dealers) by one counsel designated by them; and *provided, further*, that prior written notice shall be provided as soon as practicable to the Issuers of the potential disclosure of any information by such Inspector pursuant to clauses (i) or (ii) of this sentence to permit the Issuers to obtain a protective order (or waive the provisions of this paragraph (n)) and that such Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of the Holder (including any Participating Broker-Dealer) or any Inspector.

(o) Provide an indenture trustee for the Registrable Securities or the Exchange Securities, as the case may be, and cause the Indenture or the trust indenture provided for in Section 2(a) hereof, as the case may be, to be qualified under the TIA not later than the effective date of the first Registration Statement relating to the Registrable Securities; and in connection therewith, cooperate with the trustee under any such indenture and the Holders of the Registrable Securities, to effect such changes (if any) to such indenture as may be required for such indenture

to be so qualified in accordance with the terms of the TIA; and execute, and use its commercially reasonable efforts to cause such trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable such indenture to be so qualified in a timely manner.

(p) Comply in all material respects with all applicable rules and regulations of the SEC, and make generally available to their securityholders with regard to any applicable Registration Statement a consolidated earning statement (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) for the 12-month period beginning with the first month of each Issuer's first fiscal quarter commencing after the effective date of the first Registration Statement required by this Agreement; *provided* that this requirement shall be deemed satisfied by the Issuers by complying with the reporting covenant of the Indenture.

(q) If the Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Registrable Securities by Holders to the Issuers (or to such other Person as directed by the Issuers), in exchange for the Exchange Securities or the Private Exchange Notes (and the related Guarantees), as the case may be, if then in certificated form, the Issuers shall mark, or cause to be marked, on such Registrable Securities that such Registrable Securities are being cancelled in exchange for the Exchange Securities or the Private Exchange Notes (and the related Guarantees), as the case may be; in no event shall such Registrable Securities be marked as paid or otherwise satisfied.

(r) Cooperate with each seller of Registrable Securities covered by any Registration Statement and each underwriter, if any (including any "qualified independent underwriter" that is required to be retained in accordance with the rules and regulations of the Financial Industry Regulatory Authority, Inc. ("FINRA")), participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA.

(s) Upon consummation of the Exchange Offer, cause the Existing Exchange Securities and the Exchange Securities to have the same unrestricted CUSIP number, to the extent permitted by the CUSIP Services Bureau and The Depository Trust Company.

(t) Use their respective commercially reasonable efforts to take all other steps reasonably necessary to effect the registration of the Exchange Securities and/or Registrable Securities covered by a Registration Statement contemplated hereby.

The Issuers may require each seller of Registrable Securities as to which any registration is being effected to furnish to the Issuers in writing such information regarding such seller and the distribution of such Registrable Securities as the Issuers may, from time to time, reasonably request. The Issuers may exclude from such registration the Registrable Securities of any seller so long as such seller fails to furnish such information in writing within a reasonable time after receiving such request. Each seller as to which any Shelf Registration is being effected agrees to furnish promptly in writing to the Issuers all information required to be disclosed in order to make the information previously furnished to the Issuers by such seller not materially misleading.

If any such Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Issuers or the Guarantors, then such Holder shall have the right to require (to the extent not objected to by the SEC) (i) the insertion therein of language, in form and substance reasonably satisfactory to such Holder, to the effect that the holding by such Holder of such securities is not to be construed as a recommendation by such Holder of the investment quality of the securities covered thereby and that such holding does not imply that such Holder will assist in meeting any future financial requirements of the Issuers, or (ii) in the event that such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force, the deletion of the reference to such Holder in any amendment or supplement to the Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Each Holder of Registrable Securities and each Participating Broker-Dealer agrees by its acquisition of such Registrable Securities or Exchange Securities to be sold by such Participating Broker-Dealer, as the case may be, that, upon actual receipt of any notice from the Issuers of the happening of any event of the kind described in Section 5(c)(ii), 5(c)(iv), 5(c)(v), or 5(c)(vi) hereof, such Holder will forthwith discontinue disposition of such Registrable Securities covered by such Registration Statement or Prospectus or Exchange Securities to be sold by such Holder or Participating Broker-Dealer, as the case may be, until such Holder's or Participating Broker-Dealer's receipt of the copies of the supplemented or amended Registration Statement or Prospectus contemplated by Section 5(k) hereof, or until it is advised in writing (the "Advice") by the Issuers that the use of the applicable Registration Statement or Prospectus may be resumed, and has received copies of any amendments or supplements thereto. In the event that the Issuers shall give any such notice, each of the Applicable Period and the Effectiveness Period shall be extended by the number of days during such periods from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement or Exchange Securities to be sold by such Participating Broker-Dealer, as the case may be, shall have received (x) the copies of the supplemented or amended applicable Registration Statement or Prospectus contemplated by Section 5(k) hereof or (y) the Advice.

6. Registration Expenses

(a) All fees and expenses incident to the performance of or compliance with this Agreement by the Issuers and the Guarantors of their obligations under Sections 2, 3, 5 and 8 hereof shall be borne by the Issuers and the Guarantors, jointly and severally, whether or not the Exchange Offer Registration Statement or any Shelf Registration Statement is filed or becomes effective or the Exchange Offer is consummated, including, without limitation, (i) all registration and filing fees (including, without limitation, (A) fees with respect to filings required to be made with FINRA in connection with an underwritten offering pursuant to Section 9 (including, without limitation, reasonable fees and disbursements of counsel in connection with such filings) and (B) fees and expenses of compliance with state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel in connection with Blue Sky qualifications of the Registrable Securities or Exchange Securities and determination of the eligibility of the Registrable Securities or Exchange Securities for investment under the laws of such jurisdictions in the United States (x) where the Holders of Registrable Securities are located, in the case of the Exchange Securities, or (y) as provided in Section 5(h) hereof, in the case of Registrable

Securities or Exchange Securities to be sold by a Participating Broker-Dealer during the Applicable Period)), (ii) printing expenses, including, without limitation, printing Prospectuses if the printing of Prospectuses is requested by the managing underwriter or underwriters, if any, by the Holders of a majority in aggregate principal amount of the Registrable Securities included in any Registration Statement or in respect of Registrable Securities or Exchange Securities to be sold by any Participating Broker-Dealer during the Applicable Period, as the case may be, (iii) fees and expenses of the Trustee and any exchange agent retained by the Issuers and the Guarantors and their counsel, (iv) fees and disbursements of counsel for the Issuers and the Guarantors and, in the case of a Shelf Registration, reasonable fees and disbursements of one firm of counsel, plus one local counsel (if necessary) for all of the sellers of Registrable Securities selected by the Holder of a majority in aggregate principal amount of Registrable Securities covered by such Shelf Registration (which counsel shall be reasonably satisfactory to the Issuers) exclusive of any counsel retained pursuant to Section 7 hereof), (v) fees and disbursements of all independent certified public accountants referred to in Section 5(m) hereof (including, without limitation, the expenses of any “cold comfort” letters required by or incident to such performance), (vi) rating agency fees, if any, and any fees associated with making the Registrable Securities or Exchange Securities eligible for trading through The Depository Trust Company, (vii) Securities Act liability insurance, if the Issuers and the Guarantors desire such insurance, (viii) fees and expenses of all other Persons retained by the Issuers and the Guarantors, (ix) internal expenses of the Issuers and the Guarantors (including, without limitation, all salaries and expenses of officers and employees of the Issuers and the Guarantors performing legal or accounting duties), (x) the expense of any annual audit, (xi) any fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, and the obtaining of a rating of the securities, in each case, if applicable and (xii) the expenses relating to printing, word processing and distributing all Registration Statements, underwriting agreements, indentures and any other documents necessary in order to comply with this Agreement. Notwithstanding the foregoing or anything to the contrary, each Holder shall pay all underwriting discounts and commissions of any underwriters with respect to any Registrable Securities sold by or on behalf of such Holder in an underwritten offering.

(b) In connection with any Shelf Registration Statement required by this Agreement, the Issuers and the Guarantors, jointly and severally, will reimburse the Initial Purchasers and the Holders of Registrable Securities being resold pursuant to the “Plan of Distribution” contained in such Shelf Registration Statement for the reasonable fees and disbursements of not more than one counsel, who shall be Cahill Gordon & Reindel LLP or such other counsel as may be chosen by the Holders of a majority in principal amount of the Registrable Securities for whose benefit such Shelf Registration Statement is being prepared.

7. Indemnification and Contribution

(a) The Issuers and the Guarantors, jointly and severally, agree to indemnify and hold harmless each Holder of Registrable Securities and each Participating Broker-Dealer selling Exchange Securities during the Applicable Period, and each Person, if any, who controls such Person or its affiliates within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, the agents, employees, officers and directors of each Holder and each such Participating Broker-Dealer and the agents, partners, members, employees, officers, managers and directors of any such controlling Person and its affiliates (each, a “Participant”) against any

losses, claims, damages or liabilities, joint or several, to which any Participant may become subject under the Securities Act, the Exchange Act or otherwise, insofar as any such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if either of the Issuers or any of the Guarantors shall have furnished any amendments or supplements thereto); or

(ii) the omission or alleged omission to state, in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if either of the Issuers or any of the Guarantors shall have furnished any amendments or supplements thereto), a material fact required to be stated therein or necessary to make the statements therein (in the case of any such Prospectus, in the light of the circumstances under which such statement was made) not misleading;

and agree (subject to the limitations set forth in the proviso to this sentence) to reimburse, as incurred, the Participant for any reasonable legal or other expenses incurred by the Participant in connection with investigating, defending against or appearing as a third-party witness in connection with any such loss, claim, damage, liability or action; *provided, however*, neither the Issuers nor the Guarantors will be liable in any case under this Section 7(a) to the extent that any such loss, claim, damage, or liability (A) arises out of or is based upon any untrue statement or omission or alleged untrue statement or alleged omission made in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Issuers or any of the Guarantors shall have furnished any amendments or supplements thereto) or any amendment or supplement thereto in reliance upon and in conformity with written information relating to any Participant furnished to the Issuers or the Guarantors by such Participant specifically for use therein or (B) arising from an offer or sale of Securities or Exchange Securities occurring during a Shelf Suspension Period by a Holder or Participating Broker-Dealer to whom the Issuers theretofore provided notice thereof pursuant to Section 5(c) hereof. The indemnity provided for in this Section 7 will be in addition to any liability that the Issuers or any of the Guarantors may otherwise have to the indemnified parties. The Issuers and the Guarantors shall not be liable under this Section 7 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by the Issuers and the Guarantors, which consent shall not be unreasonably withheld.

(b) Each Participant, severally and not jointly, agrees to indemnify and hold harmless the Issuers, the Guarantors, their respective directors (or equivalent), their respective officers who sign any Registration Statement and each person, if any, who controls either Issuer or any Guarantor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages or liabilities to which the Issuers, the Guarantors or any such director, officer or controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue

statement of any material fact contained in any Registration Statement or Prospectus or any amendment or supplement thereto, (ii) the omission or the alleged omission to state therein a material fact necessary to make the statements therein not misleading (in the case of any such Prospectus, in the light of the circumstances under which such statements were made), in each case to the extent, but only to the extent, that such untrue statement or omission or alleged untrue statement or alleged omission was made in reliance upon and in conformity with written information concerning such Participant furnished to the Issuers or the Guarantors by or on behalf of such Participant specifically for use therein or (iii) an offer or sale of Securities or Exchange Securities occurring during a Shelf Suspension Period by a Holder or Participating Broker-Dealer to whom the Issuers theretofore provided notice thereof pursuant to Section 5(c) hereof; and subject to the limitation set forth immediately preceding this clause, will reimburse, as incurred, any reasonable legal or other expenses incurred by the Issuers, the Guarantors or any such director, officer or controlling person in connection with investigating or defending against or appearing as a third-party witness in connection with any such loss, claim, damage, liability or action in respect thereof. The indemnity provided for in this Section 7 will be in addition to any liability that the Participants may otherwise have to the indemnified parties. A Participant shall not be liable under this Section 7 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such Participant, which consent shall not be unreasonably withheld.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party of the commencement thereof in writing; but the omission to so notify the indemnifying party (i) will not relieve it from any liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraphs (a) and (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); *provided, however*, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest (based on the advice of counsel to the indemnified party); (ii) such action includes both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded (based on the advice of counsel to the indemnified party) that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to

the indemnifying party; (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. It is understood and agreed that the indemnifying party shall not, in connection with any proceeding or separate but related or substantially similar proceedings in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm (in addition to one local counsel in each applicable jurisdiction) representing the indemnified parties under paragraph (a) or paragraph (b) of this Section 7, as the case may be, who are parties to such action or actions. Any such separate firm for any Participants shall be designated in writing by Participants who sold a majority in interest of the Registrable Securities and Exchange Securities sold by all such Participants in the case of paragraph (a) of this Section 7 or the Issuers in the case of paragraph (b) of this Section 7. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any statement as to, or any admission of, fault, culpability or failure to act by or on behalf of any indemnified party. All fees and expenses reimbursed pursuant to this paragraph (c) shall be reimbursed as they are incurred and following a written request therefor.

(d) After notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof and approval by such indemnified party of counsel appointed to defend such action, the indemnifying party will not be liable to such indemnified party under this Section 7 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof, unless (i) the indemnified party shall have employed separate counsel in accordance with the third sentence of paragraph (c) of this Section 7 or (ii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party. After such notice from the indemnifying party to such indemnified party, the indemnifying party will not be liable for the costs and expenses of any settlement of such action effected by such indemnified party without the prior written consent of the indemnifying party (which consent shall not be unreasonably withheld), unless such indemnified party waived in writing its rights under this Section 7, in which case the indemnified party may effect such a settlement without such consent.

(e) In circumstances in which the indemnity agreement provided for in the preceding paragraphs of this Section 7 is unavailable to, or insufficient to hold harmless, an indemnified party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) (other than for the reasons specified in Section 7(a) or 7(b) hereof, including by virtue of the failure of an indemnified party to notify the indemnifying party of its right to indemnification pursuant to paragraph (a) or (b) of this Section 7, where such failure materially prejudices the indemnifying party (through the forfeiture of substantial rights or defenses)), each indemnifying party, in order to provide for just and equitable contribution, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or

actions in respect thereof) in such proportion as is appropriate to reflect (i) the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the offering of the Securities or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, not only such relative benefits but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions or alleged statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof). The relative benefits received by the Issuers and the Guarantors on the one hand and the Participants on the other shall be deemed to be in the same proportion that the total net proceeds from the offering (before deducting expenses) of the Securities received by the Issuers bear to the total discounts and commissions received by the Participants in connection with the initial sale of the Securities by the Issuers (or if such Participant did not receive a discount from the Issuers with respect to the initial sale of the Securities by the Issuers, the net proceeds received by such Participant from the sale of Securities, Exchange Securities or Private Exchange Notes pursuant to such Registration Statement). The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers and the Guarantors on the one hand, or the Participants on the other hand, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission, and any other equitable considerations appropriate in the circumstances. The parties agree that it would not be equitable if the amount of such contribution were determined by *pro rata* or per capita allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the first sentence of this paragraph (e). Notwithstanding any other provision of this paragraph (e), no Participant shall be obligated to make contributions hereunder that in the aggregate exceed the total discounts, commissions and other compensation or net proceeds, as applicable, on the sale of Securities received by such Participant in connection with the sale of the Securities, less the aggregate amount of any damages that such Participant has otherwise been required to pay by reason of the untrue or alleged untrue statements or the omissions or alleged omissions to state a material fact, and no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (e), each person, if any, who controls a Participant within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Participants, and each director, member or manager, as applicable, of each of the Issuers and the Guarantors, each officer of each of the Issuers and the Guarantors and each person, if any, who controls each of the Issuers and the Guarantors within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, shall have the same rights to contribution as the Issuers and the Guarantors.

8. Rules 144 and 144A

The Issuers and the Guarantors covenant and agree that they will use their respective commercially reasonable efforts to file the reports required to be filed by them under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in a timely manner in accordance with the requirements of the Securities Act and the Exchange Act and, if at any time the Issuers and the Guarantors are not required to file such reports and do not otherwise file such reports pursuant to the terms of the Indenture, the Issuers and the Guarantors

will, upon the request of any Holder or beneficial owner of Registrable Securities, make available such information necessary to permit sales pursuant to Rule 144A. The Issuers and the Guarantors further covenant and agree, for so long as any Registrable Securities remain outstanding that they will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act and Rule 144A unless the Issuers and the Guarantors are then subject to Section 13 or 15(d) of the Exchange Act or otherwise file such reports pursuant to the terms of the Indenture and reports filed thereunder satisfy the information requirements of Rule 144A then in effect.

9. Underwritten Registrations

The Issuers and the Guarantors shall not be required to assist in an underwritten offering unless requested by the Holders of a majority in aggregate principal amount of the Registrable Securities. If any of the Registrable Securities covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will manage the offering will be selected by the Holders of a majority in aggregate principal amount of such Registrable Securities included in such offering and shall be reasonably acceptable to the Issuers and the Guarantors.

No Holder of Registrable Securities may participate in any underwritten registration hereunder unless such Holder (a) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

10. Miscellaneous

(a) No Inconsistent Agreements. None of the Issuers or the Guarantors have as of the date hereof entered, and none of the Issuers or the Guarantors shall after the date of this Agreement enter, into any agreement with respect to any of the Issuers' or Guarantors' securities that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Issuers' or Guarantors' other issued and outstanding securities, if any, under any such agreements. None of the Issuers or the Guarantors will enter into any agreement with respect to any of the Issuers' or Guarantors' securities which will grant to any Person piggy-back registration rights with respect to any Registration Statement.

(b) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, otherwise than with the prior written consent of (I) the Issuers and the Guarantors, and (II) (A) the Holders of not less than a majority in aggregate principal amount of the then outstanding Registrable Securities and (B) in circumstances that would adversely affect the Participating Broker-Dealers, the Participating Broker-Dealers holding not less than a majority

in aggregate principal amount of the Exchange Notes held by all Participating Broker-Dealers; *provided, however*, that Section 7 hereof and this Section 10(b) may not be amended, modified or supplemented without the prior written consent of each Holder and each Participating Broker-Dealer (including any person who was a Holder or Participating Broker-Dealer of Registrable Securities or Exchange Securities, as the case may be, disposed of pursuant to any Registration Statement) affected by any such amendment, modification or supplement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Securities may be given by Holders of at least a majority in aggregate principal amount of the Registrable Securities being sold pursuant to such Registration Statement; and *provided, further*, that no consent is necessary from any Holder or Participating Broker-Dealer in the event that this Agreement is amended, modified or supplemented for the purpose of curing any ambiguity, defect or inconsistency that does not adversely affect the rights of any Holder or Participating Broker-Dealer (as applicable).

(c) Notices. All notices and other communications (including, without limitation, any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, next-day air courier or facsimile:

(i) If to a Holder of the Registrable Securities or any Participating Broker-Dealer, at the most current address of such Holder or Participating Broker-Dealer, as the case may be, set forth on the records of the registrar under the Indenture, with a copy in like manner to the Initial Purchasers as follows:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, New York 10036
Facsimile: (917) 267-7085
Attention: Legal Department

with a copy to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Facsimile: (212) 378-2500
Attention: William J. Miller, Esq.

(ii) If to the Initial Purchasers, at the address specified in Section 10(d)(i) hereof;

(iii) If to the Issuers or any of the Guarantors, at the address as follows:

Summit Materials, LLC
1550 Wynkoop Street, 3rd Floor
Denver, Colorado 80202
Facsimile: (303) 893-0012
Attention: Anne Lee Benedict, Chief Legal Officer

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Facsimile: (212) 455-2502
Attention: Edward P. Tolley III and Edgar J. Lewandowski

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; one Business Day after being timely delivered to a next-day air courier; and upon receipt of confirmation, if sent by facsimile.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address and in the manner specified in such Indenture.

(d) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without limitation, and without the need for an express assignment, subsequent Holders of Registrable Securities; *provided, however,* that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Registrable Securities from such Holder and *provided, further,* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture.

(e) **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) **Headings.** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) **Governing Law.** **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK. EACH OF THE PARTIES HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

(h) **Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable,

the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their respective commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(i) Notes Held by Either Issuer or Any of the Guarantors or Any of Their Respective Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by either Issuer or any of the Guarantors or any of their respective controlled affiliates (as such term is defined in Rule 405) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(j) Third-Party Beneficiaries. Holders of Registrable Securities and Participating Broker-Dealers are intended third-party beneficiaries of this Agreement, and this Agreement may be enforced by such Persons to the extent necessary to protect the rights of the Holders hereunder.

(k) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Holders and Initial Purchasers on the one hand and the Issuers and the Guarantors on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Issuers:

SUMMIT MATERIALS, LLC
SUMMIT MATERIALS FINANCE CORP.

By: /s/ Brian J. Harris

Name: Brian J. Harris

Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

Guarantors:

ELAM CONSTRUCTION, INC.
ALLEYTON RESOURCE COMPANY, LLC
ALLEYTON SERVICES COMPANY, LLC
AUSTIN MATERIALS, LLC
CONTINENTAL CEMENT COMPANY, L.L.C.
KILGORE COMPANIES, LLC
RK HALL, LLC
SUMMIT MATERIALS CORPORATIONS I, INC.
SUMMIT MATERIALS HOLDINGS II, LLC
SUMMIT MATERIALS INTERNATIONAL, LLC
CONCRETE SUPPLY OF TOPEKA, INC.
CORNEJO & SONS, L.L.C.
HAMM, INC.
N. R. HAMM CONTRACTOR, LLC
N. R. HAMM QUARRY, LLC
PENNY'S CONCRETE AND READY MIX, L.L.C.
BOURBON LIMESTONE COMPANY
HINKLE CONTRACTING COMPANY, LLC
CON-AGG OF MO, L.L.C.
GREEN AMERICA RECYCLING, LLC
BUCKHORN MATERIALS, LLC
COLORADO COUNTY SAND & GRAVEL CO., L.L.C.
INDUSTRIAL ASPHALT, LLC
SCS MATERIALS, LLC
TROY VINES, INCORPORATED
B&B RESOURCES, INC.
KILGORE PARTNERS, L.P.
LEGRAND JOHNSON CONSTRUCTION CO.
LEWIS & LEWIS, INC.

By: /s/ Anne Lee Benedict

Name: Anne Lee Benedict

Title: Secretary

[Signature Page to Registration Rights Agreement]

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
Acting on behalf of itself and as a Representative of the
several Initial Purchasers

By: Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: Douglas M. Ingram
Authorized Signatory

[Signature Page to Registration Rights Agreement]

[\(Back To Top\)](#)