

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

**Amendment No. 5**

to

**Form S-1**

**REGISTRATION STATEMENT**

UNDER

*THE SECURITIES ACT OF 1933*

**BERRY PLASTICS GROUP, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

3089  
(Primary Industrial  
Classification Code Number)  
101 Oakley Street  
Evansville, IN 47710  
(812) 424-2904

20-5234618  
(I.R.S. Employer  
Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jonathan D. Rich  
Chief Executive Officer  
101 Oakley Street  
Evansville, IN 47710  
(812) 424-2904

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copy to:*

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**Approximate date of commencement of proposed sale to the public:** As promptly as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common Stock, \$0.01 par value per share	33,823,528	\$18.00	\$608,823,504	\$69,771(3)

(1) Estimated pursuant to Rule 457(a) under the Securities Act of 1933, as amended. Includes 4,411,764 additional shares of common stock that the underwriters have the option to purchase.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) of the Securities Act of 1933, as amended.

(3) The Registrant previously paid \$57,300 of the total registration fee in connection with prior filings of this Registration Statement.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said section 8(a), may determine.**

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion  
Preliminary Prospectus dated September 19, 2012

**PROSPECTUS**

**29,411,764 Shares**



**Berry Plastics Group, Inc.**

**Common Stock**

This is Berry Plastics Group, Inc.'s initial public offering. Berry Plastics Group, Inc. is selling 29,411,764 shares of its common stock.

After the completion of this offering, funds affiliated with Apollo Global Management, LLC will continue to own a majority of the voting power of our outstanding common stock. As a result, we expect to be a "controlled company" within the meaning of the corporate governance standards of the New York Stock Exchange ("NYSE"). See "Principal Stockholders."

We expect the public offering price to be between \$16.00 and \$18.00 per share. Currently, no public market exists for the shares. We have applied to list our shares of common stock on the NYSE under the symbol "BERY."

Investing in our common stock involves risks that are described in the "[Risk Factors](#)" section beginning on page 12 of this prospectus.

	<u>Per Share</u>	<u>Total</u>
Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds, before expenses, to us	\$	\$

We have agreed to allow the underwriters to purchase up to an additional 4,411,764 shares from us, at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock against payment on or about \_\_\_\_\_, 2012.

**BofA Merrill Lynch**

**Citigroup**

**Barclays**

**Deutsche Bank Securities**

**Credit Suisse**

**Goldman, Sachs & Co.**

**Baird**

**Lazard Capital Markets**

**Wells Fargo Securities**

**SunTrust Robinson  
Humphrey**

**Lebenthal & Co., LLC**

**Apollo Global Securities**

The date of this prospectus is \_\_\_\_\_, 2012.

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**BERRY**  
PLASTICS™  
AND SUBSIDIARIES  
LEADERSHIP BY DESIGN



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You should rely only on the information contained in this prospectus and any free writing prospectus prepared by us or on our behalf that we have referred you to. We and the underwriters have not authorized anyone to provide you with additional or different information. If anyone provides you with additional, different or inconsistent information, you should not rely on it. We are not making an offer of these securities in any state or other jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus and any free writing prospectus is accurate as of any date other than the date of the applicable document regardless of its time of delivery or the time of any sales of our common stock. Our business, financial condition, results of operations or cash flows may have changed since the date of the applicable document.

## **INDUSTRY AND MARKET DATA**

This prospectus includes industry and trade association data, forecasts and information that we have prepared based, in part, upon data, forecasts and information obtained from independent trade associations, industry publications and surveys and other information available to us. Some data are also based on our good-faith estimates, which are derived from management’s knowledge of the industry and independent sources. Industry publications and surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable. Although we believe these sources are reliable, we have not independently verified the information. In certain of the markets in which we operate, it may be difficult to directly ascertain industry or market data. Unless otherwise noted, statements as to our market share and market position are approximated and based on management experience and estimates using the above-mentioned third-party data combined with our internal analysis and estimates. While we are not aware of any misstatements regarding our industry data presented herein, our estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading “Risk Factors” in this prospectus. Similarly, while we believe our internal research is reliable, such research has not been verified by any independent sources.

## NON-GAAP FINANCIAL MEASURES

Adjusted EBITDA and Adjusted Free Cash Flow, as presented in this prospectus, are supplemental financial measures that are not required by, or presented in accordance with, accounting principles generally accepted in the United States (“GAAP”). Adjusted EBITDA and Adjusted Free Cash Flow are not GAAP financial measures and should not be considered as an alternative to operating or net income or cash flows from operating activities, in each case determined in accordance with GAAP.

We define “Adjusted Free Cash Flow” as cash flow from operating activities less additions to property, plant and equipment. We use Adjusted Free Cash Flow as a measure of liquidity because it assists us in assessing our company’s ability to fund its growth through its generation of cash. We believe Adjusted Free Cash Flow is useful to an investor in evaluating our liquidity because Adjusted Free Cash Flow and similar measures are widely used by investors, securities analysts and other interested parties in our industry to measure a company’s liquidity without regard to revenue and expense recognition, which can vary depending upon accounting methods. Although we use Adjusted Free Cash Flow as a liquidity measure to assess our ability to generate cash, the use of Adjusted Free Cash Flow has important limitations, including that: (1) Adjusted Free Cash Flow does not reflect the cash requirements necessary to service principal payments on our indebtedness; and (2) Adjusted Free Cash Flow removes the impact of accrual basis accounting on asset accounts and non-debt liability accounts.

We define “Adjusted EBITDA” as net income (loss) before depreciation and amortization, income tax expense (benefit), interest expense (net) and certain restructuring and business optimization charges and as adjusted for unrealized cost reductions and acquired businesses, including unrealized synergies, which are more particularly defined in our credit documents and the indentures governing our notes. Adjusted EBITDA is used by our lenders for debt covenant compliance purposes and by our management as one of several measures to evaluate management performance. Adjusted EBITDA eliminates certain charges that we believe do not reflect operations and underlying operational performance. Although we use Adjusted EBITDA as a financial measure to assess the performance of our business, the use of Adjusted EBITDA has important limitations, including that (1) Adjusted EBITDA does not represent funds available for dividends, reinvestment or other discretionary uses, or account for one-time expenses and charges; (2) Adjusted EBITDA does not reflect cash outlays for capital expenditures or contractual commitments; (3) Adjusted EBITDA does not reflect changes in, or cash requirements for, working capital; (4) Adjusted EBITDA does not reflect the interest expense or the cash requirements necessary to service interest or principal payments on indebtedness; (5) Adjusted EBITDA does not reflect income tax expense or the cash necessary to pay income taxes; (6) Adjusted EBITDA excludes depreciation and amortization and, although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA does not reflect cash requirements for such replacements; and (7) Adjusted EBITDA does not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations.

Adjusted EBITDA and Adjusted Free Cash Flow may be calculated differently by other companies, including other companies in our industry, limiting their usefulness as comparative measures. Because of these limitations, you should consider Adjusted EBITDA and Adjusted Free Cash Flow alongside other performance measures and liquidity measures, including operating income, various cash flow metrics, net income and our other GAAP results.

## PROSPECTUS SUMMARY

*The following summary highlights information contained elsewhere in this prospectus and is qualified in its entirety by the more detailed information and consolidated financial statements included elsewhere in this prospectus. This summary is not complete and may not contain all of the information that may be important to you. You should carefully read the entire prospectus, including the “Risk Factors” section and our consolidated financial statements and notes to those statements, before making an investment decision. As used in this prospectus, “Berry,” the “company,” “we,” “our” and “us” mean Berry Plastics Group, Inc. and its subsidiaries on a consolidated basis.*

### Our Company

We are a leading provider of value-added plastic consumer packaging and engineered materials with a 30-year track record of delivering high-quality customized solutions to our customers. Our products utilize our proprietary research and development platform, which includes a continually evolving library of Berry-owned molds, patents, manufacturing techniques and technologies. We sell our solutions predominantly into consumer-oriented end markets, such as food and beverage, healthcare and personal care, which together represented 76% of our sales in the 12 months ending June 30, 2012. Our customers look to us for solutions that have high consumer impact in terms of form, function and branding. Representative examples of our products include thermoform drink cups, thin-wall containers, blow-molded bottles, specialty closures, prescription vials, specialty plastic films, adhesives and corrosion protection materials. We have also been one of the most active acquirers of plastic packaging businesses globally, having acquired more than 30 businesses since 1988, including eleven acquisitions completed in the past six years. We believe our focus on delivering unique and customized solutions to our customers and our ability to successfully integrate strategic acquisitions have enabled us to grow at rates in excess of our industry peers, having achieved a compound annual net sales growth rate over the last eleven and a half years of 24%.

We believe that we have created one of the largest product libraries in our industry, allowing us to be a comprehensive solution provider to our customers. We have more than 13,000 customers, which consist of a diverse mix of leading national, mid-sized regional and local specialty businesses. The size and scope of our customer network allow us to introduce new products we develop or acquire to a vast audience that is familiar with, and we believe partial to, our brand. In fiscal 2011, no single customer represented more than 3% of net sales and our top ten customers represented less than 17% of net sales. We currently supply our customers through 82 strategically located manufacturing facilities throughout the United States (68 locations) and select international locations (14 locations). We believe our manufacturing processes and our ability to leverage our scale to reduce expenses on items, such as raw materials, position us as a low-cost manufacturer relative to our competitors. For example, we believe based on management estimates that we are one of the largest global purchasers of plastic resins, at more than 2.5 billion pounds per year, which gives us both unique insight into this market as well as scale purchasing savings.

We enjoy market leadership positions in many of our markets, with 76% of net sales during the 12 months ended June 30, 2012 in markets in which management estimates we held the #1 or #2 market position. We look to build leadership in markets where we have a strategic angle and can achieve attractive profit margins through technology and design leadership and a competitive cost position such as highly decorated plastic containers. We believe that our product and technology development capabilities are best-in-class, supported by a newly built research and design facility located in Evansville, Indiana (which we refer to in this prospectus as the “Berry Research and Design Center”) and a network of more than 200 engineers and material scientists. We seek to have our product and technology development efforts provide a meaningful impact on sales. An example of our focused new product development is our thermoform plastic drink cup technology. We identified an unfulfilled need in the market with an opportunity for significant return on invested capital and ultimately introduced the technology to the market in 2001. This product line has grown steadily since introduction and generated \$400 million of net sales during the 12 months ended June 30, 2012.







Our success is driven by our more than 15,000 employees. Over the past 30 years, we have developed a culture that incorporates both loyalty to best practices and acceptance of new perspectives, which we have often identified from the companies we have acquired. Our employees hold themselves accountable to exceed the expectations of our customers and to create value for our stakeholders. Consistent with this focus on value creation, approximately 375 employees own equity in the company. As of June 30, 2012 and before giving effect to this offering, employees owned more than 20% of our fully diluted equity.

We believe the successful execution of our business strategy has enabled us to outperform the growth of our industry over the past decade with Adjusted EBITDA increasing from \$80 million in 2000 to \$784 million for the 12 months ended June 30, 2012, representing a compound annual growth rate (which we refer to in this prospectus as a “CAGR”) of 22%. For the 12 months ended June 30, 2012, Berry had pro forma net sales of \$4.8 billion, Adjusted EBITDA of \$784 million, net loss of \$212 million and Adjusted Free Cash Flow of \$199 million. For a reconciliation of Adjusted EBITDA and Adjusted Free Cash Flow to the nearest GAAP measures, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.”

**Our Businesses**

We organize our business into: Rigid Packaging, Engineered Materials and Flexible Packaging. We strive to leverage the talents, technologies and resources of each segment for the benefit of Berry as a whole. We believe this practice has enabled us to cross-fertilize technologies, materials and manufacturing processes across our entire platform to create unique solutions for our customers, developing a partnership approach and strong long-term relationships.

The table below is a summary of our business and some of our key product lines:

(\$ in millions)	<u>Rigid Packaging</u>	<u>Engineered Materials</u>	<u>Flexible Packaging</u>
<b>Adjusted EBITDA for the 12 months ended June 30, 2012</b>	 \$832	 \$176	 \$76
<b>Operating Income for the 12 months ended June 30, 2012</b>	\$253	(\$46)	(\$96)
<b>Product Examples</b>	<ul style="list-style-type: none"> <li>• Foodservice Items</li> <li>• Housewares</li> <li>• Containers</li> </ul>	<ul style="list-style-type: none"> <li>• Overcaps</li> <li>• Closures</li> <li>• Bottles</li> <li>• Prescription Vials</li> <li>• Tubes</li> </ul>	<ul style="list-style-type: none"> <li>• Tapes</li> <li>• CPG</li> <li>• FIBC</li> <li>• Food Wrap</li> <li>• Shrink Films</li> <li>• Trash Bags</li> <li>• Stretch Films</li> </ul>
			



**Rigid Packaging (68% of Adjusted EBITDA for 12 months ended June 30, 2012)**

Our Rigid Packaging business primarily consists of containers, foodservice items, housewares, closures, overcaps, bottles, prescription vials, and tubes. The largest end uses for these products are consumer-oriented end markets such as food and beverage, retail mass marketers, healthcare, personal care and household chemical. We believe that we offer the broadest line of rigid packaging products among industry participants and, according to management estimates, we maintained the #1 or #2 market positions in markets representing approximately 78% of the Rigid Packaging business net sales for the 12 months ended June 30, 2012. Many of our products are manufactured from proprietary molds that we develop and own, which we believe would result in significant costs to our customers to switch to a different supplier. In addition to a complete product line, we have sophisticated decorating capabilities and in-house graphic arts and tooling departments, which allow us to integrate ourselves into, and, we believe, add significant value to, our customers' packaging design processes. For the 12 months ended June 30, 2012, our Rigid Packaging business had pro forma net sales and Adjusted EBITDA of \$2.7 billion and \$532 million, respectively.

**Engineered Materials (22% of Adjusted EBITDA for 12 months ended June 30, 2012)**

Our Engineered Materials business primarily consists of pipeline corrosion protection solutions, specialty tapes and adhesives, polyethylene-based film products, and can liners served to a variety of end markets including oil, water and gas infrastructure, industrial and consumer-oriented end markets. We believe that we offer one of the broadest product lines among industry participants and, according to management estimates, we maintained the #1 or #2 market position in markets representing approximately 65% of Engineered Materials net sales for the 12 months ended June 30, 2012. For the 12 months ended June 30, 2012, our Engineered Materials business had net sales and Adjusted EBITDA of \$1.4 billion and \$176 million, respectively.

**Flexible Packaging (10% of Adjusted EBITDA for 12 months ended June 30, 2012)**

Our Flexible Packaging business consists of high barrier, multilayer film products as well as finished flexible packages such as printed bags and pouches. The largest end uses for our flexible products are consumer-oriented end markets such as food and beverage, medical and personal care. We believe that we offer one of the broadest product lines among industry participants and, according to management estimates, we maintained the #1 or #2 market position in markets representing approximately 89% of Flexible Packaging business net sales for the 12 months ended June 30, 2012. For the 12 months ended June 30, 2012, our Flexible Packaging segment had net sales and Adjusted EBITDA of \$753 million and \$76 million, respectively.

**Our Strengths**

We believe our strong financial performance is the direct result of the following competitive strengths:

**Leading market positions in profitable product lines.** Our profitability is enhanced by what we believe are our market-leading positions in high value-added product lines, such as thermoform drink cups, pharmaceutical packaging and thin-wall containers, among others. We have focused on achieving #1 or #2 positions in product lines in which we can realize attractive margins through (1) product innovation, differentiated technology and quality manufacturing processes; (2) leveraging our broad customer network; (3) our low-cost manufacturing platform; and (4) superior customer service. For the 12 months ended June 30, 2012, 76% of our net sales were derived from products in which management estimates we held a #1 or #2 market position.

**Leader in developing and commercializing new technologies.** We believe our product and technology development capabilities are best-in-class. Our research efforts focus on projects with the potential to deliver unique performance characteristics that add value for our customers, command a sustainable premium price, develop customer loyalty and support the overall profitability of our company. We believe we have a track record of commercializing new products that generate incremental organic profitability well in excess of our company

and industry averages. Our thermoformed plastic drink cups are an example of a successful commercialization of a new technology that we internally developed to address an unfilled need of our customers. Since introducing this technology to the market, we have developed the product line into a business which delivered \$400 million of net sales for the 12 months ended June 30, 2012.

**Large and diversified customer base in attractive end markets.** We sell our packaging solutions to more than 13,000 customers spanning a diverse mix of leading national, mid-sized regional and local specialty businesses. For the 12 months ended June 30, 2012, no single customer represented more than 3% of net sales and our top ten customers in total represented less than 17% of net sales. We believe the size and diversity of our customer network gives us a competitive advantage as we are able to market new products we develop or acquire seamlessly to a large customer base. Furthermore, our customer network is primarily involved in consumer-oriented end markets, such as food and beverage, healthcare and personal care, which we believe are growth end markets.

**Scale and low-cost operations drive profitability.** We believe that our proprietary tools and technologies, manufacturing capabilities, operating expertise and purchasing scale provide us with a competitive advantage in the marketplace. Our competitive success is due, in part, to our having capitalized on economies of scale to lower costs in a number of critical functions:

- Our large, high-volume equipment, longer production runs and flexible, cross-facility manufacturing capabilities result in lower unit-production costs than many of our competitors;
- Our position as one of the largest purchasers of packaging-grade resins globally at more than 2.5 billion pounds per year provides considerable purchasing power and enhances the reliability of our supply of resins; and
- Our global network of 82 strategically located manufacturing facilities provides increased opportunities to optimize transportation costs and realize distribution efficiencies and allows for quick turnaround times to our customers.

**Track record in mergers and acquisitions.** We have successfully integrated over 30 acquisitions since 1988, including eleven over the past six years. These acquisitions have enabled us to (1) develop new business platforms; (2) add products to market to our customer network; (3) create incremental profitability by achieving synergies; (4) acquire manufacturing processes and technologies; and (5) capitalize on the best practices of acquired companies. Our management team seeks to acquire companies at attractive, value-enhancing multiples, utilizing what we believe is our flexible, low-cost capital structure to fund the transactions. In September 2011, we acquired Rexam Specialty and Beverage Closures for a multiple of purchase price to Adjusted EBITDA (including synergies) of 4.5x and funded the transaction entirely with debt financing under our revolving asset-based credit facility, which carries a LIBOR plus 2% interest rate. This transaction was immediately deleveraging for us and accretive to shareholder value while also increasing free cash flow generation.

**Outsized earnings growth, attractive margins and strong free cash flow generation.** We believe our earnings growth has exceeded the growth of our industry, with Adjusted EBITDA growing from \$80 million in 2000 to \$784 million for the 12 months ended June 30, 2012, representing a CAGR of 22%. We also believe we maintain attractive profit margins and generate significant Adjusted Free Cash Flow for our stockholders relative to our peers. For the 12 months ended June 30, 2012, our Adjusted EBITDA margin was 16%, and we generated Adjusted Free Cash Flow of \$199 million. We believe our profit margins and Adjusted Free Cash Flow generation are stable and increasing, driven by new product launches, market share gains, stable input cost pass-through, cost improvement actions, disciplined capital spending, prudent working capital management, minimal contingent liabilities and strategic investments in new projects and acquisitions with synergies.

**Proven management and employee culture with significant equity ownership.** We believe that our management team is among the deepest and most experienced in the packaging industry. Our management team has been responsible for developing and executing our strategy that has generated consistent year-over-year sales growth and the successful integration of more than 30 acquisitions. We believe our employees have developed a unique culture in which each employee throughout the entire company is aligned, focused and holds each other accountable to achieve goals that drive value creation for our stakeholders. Our employee ownership pool is deep with approximately 375 individual employees owning equity in the Company. As of June 30, 2012, employees owned more than 20% of the shares in our company on a fully diluted basis before giving effect to this offering.

### **Our Strategy**

We intend to capitalize on our market-leading position in high value-added plastic consumer packaging and highly engineered materials to increase revenues and profits and maximize cash flow. We seek to achieve this objective by executing on the following strategies:

**Develop and commercialize new product technologies.** We intend to continue to focus our product and technology development efforts on projects that we believe have significant profit potential. We have several projects in various stages of development that we believe can be commercialized into attractive organic growth and profit opportunities. Certain projects in development involve leveraging what we believe is our unique expertise in both rigid and flexible packaging technologies and manufacturing processes to create unique hybrid packaging solutions that address a need in the market that is not addressable by either technology on its own. We also have certain projects underway that we are developing in close collaboration with specific customers, which upon successful commercialization would allow us to enter into a new market backed by the strength of both our products and our broad existing customer base.

**Continue to make acquisitions in our industry.** Given the breadth of our product offering, multiple business platforms in rigid and flexible packaging and scale of our customer network, we believe we have the broadest opportunity set for acquisitions in our industry. Furthermore, we believe we have a competitive advantage over our peers in mergers and acquisitions due to our (1) historical acquisition track record; (2) flexibility to utilize purchase price funding sources with attractive cost of capital; and (3) ability to leverage our scale to generate incremental synergies versus our peers. We intend to continue to apply a selective and disciplined acquisition strategy, focused on enhancing our scale, product diversity and geographic reach, while bolstering our financial performance through synergies and additional cash generation. We continue to evaluate acquisition opportunities on an ongoing basis and may at any time be in preliminary discussions with third parties.

**Continue to drive Adjusted Free Cash Flow generation.** We continually focus on ways to increase our Adjusted Free Cash Flow through new business generation and also disciplined capital and cost management strategies. We intend to further increase profitability and Adjusted Free Cash Flow generation with a continued emphasis on operational excellence, including (1) leveraging our scale to reduce material costs; (2) efficiently reinvesting capital into our manufacturing processes to enhance technological leadership and achieve productivity gains; (3) focusing on ways to streamline operations through overhead rationalization; and (4) working with our engineering and research and development teams to replace existing materials with lower cost alternatives. Furthermore, we believe there are significant incremental opportunities to improve Adjusted EBITDA margins in our Engineered Materials and Flexible Packaging businesses through increased focus on utilizing our asset base on more value-added products.

**Increase sales to existing customers.** We believe we have significant opportunities to increase our share of packaging sales made to our network of more than 13,000 existing customers. We believe our ability to offer our customers a comprehensive solution through our breadth of product offering yields economic benefits to our customers that cannot be matched by many of our competitors. We will also continue to develop and acquire new products that we can distribute through our customer network, which we believe will allow these products to gain instant scale and traction. We are also working with several customers to expand internationally.

**Realize value from recent capital investments and acquisitions.** In fiscal 2011, we invested \$110 million of capital in new growth projects including a new pharmaceutical package for a major retailer, additional thermoforming capacity, and new printing technology, among others. We expect the majority of these projects to be up and running by the end of 2012 and expect them to be a contributor to organic growth over the next several years. In fiscal 2011, we also undertook a number of cost saving actions including six plant consolidations and the implementation of numerous cost-reduction initiatives. Furthermore, in September 2011, we completed the acquisition of the Rexam Specialty and Beverage Closures business, and believe that we will realize, or have put actions in place to realize, approximately \$20 million of synergies by the end of the 2012 calendar year.

#### **Risk Factors**

Participating in this offering involves substantial risk. Our ability to execute our strategy also is subject to certain risks. The risks described under the heading “Risk Factors” immediately following this summary may cause us not to realize the full benefits of our strengths or may cause us to be unable to successfully execute all or part of our strategy. Some of the more significant challenges and risks include the following:

- our substantial indebtedness;
- the risk of increases in prices or unavailability of key inputs, such as plastic resins, for our products;
- the intense competition we face in the sale of our products;
- the risks associated with potential acquisitions that we have completed and that we may pursue as part of our growth strategy;
- our reliance on patent and trademark rights and unpatented proprietary know-how and trade secrets; and
- the impact of current and future environmental and other governmental requirements and regulations.

Before you participate in this offering, you should carefully consider all of the information in this prospectus, including matters set forth under the heading “Risk Factors.”

#### **Income Tax Receivable Agreement**

In connection with this offering, we will enter into an income tax receivable agreement that will provide for the payment by us to our existing stockholders, option holders and holders of our stock appreciation rights of 85% of the amount of cash savings, if any, in U.S. federal, foreign, state and local income tax that we actually realize (or are deemed to realize in the case of a change of control) as a result of the utilization of our and our subsidiaries’ net operating losses attributable to periods prior to this offering. Assuming our initial public offering occurred as of June 30, 2012, we expect to pay between \$310 million and \$350 million in cash related to this agreement, based on our current taxable income estimates, and will record a liability on our consolidated balance sheet for 85% of our net operating losses upon consummation of our initial public offering. See “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Certain Relationships and Related Party Transactions—Income Tax Receivable Agreement.”

### **Principal Stockholders**

Our principal stockholders are investment funds affiliated with or managed by Apollo Global Management, LLC, which we refer to in this prospectus as “Apollo,” including Apollo Investment Fund VI, L.P. and Apollo Investment Fund V, L.P., along with their parallel investment funds, as well as investment funds affiliated with or managed by Graham Partners, Inc. and investment entities affiliated with Donald C. Graham.

Founded in 1990, Apollo is one of the world’s largest alternative investment managers, with total assets under management of \$105 billion as of April 1, 2012, and a team of 601 employees located in ten offices around the world.

Graham Partners manages approximately \$1.6 billion in equity capital across multiple private investment funds and related entities, and is a member of “The Graham Group,” an alliance of independently owned and operated industrial and investment management businesses, which all share in the common legacy of entrepreneur Donald C. Graham. We refer to Graham Partners, Inc. and The Graham Group in this prospectus as “Graham Partners.”

### **Additional Information**

Berry Plastics Group, Inc. was incorporated in Delaware on November 18, 2005. The principal executive offices of Berry Plastics Group, Inc. are located at 101 Oakley Street, Evansville, Indiana 47710, and the telephone number there is (812) 424-2904. We also maintain an Internet site at <http://www.berryplastics.com>. Our website and the information contained therein or connected thereto shall not be deemed to be incorporated into this prospectus or registration statement of which this prospectus forms a part and you should not rely on any such information in making your decision whether to purchase our securities.

**The Offering**

Common stock offered	29,411,764 shares.
Common stock to be outstanding after this offering	112,600,136 shares (117,011,900 shares if the underwriters exercise their option to purchase additional shares in full).
Listing	We have applied to list our common stock on the NYSE under the symbol “BERY.”
Option to Purchase Additional Shares	We have agreed to allow the underwriters to purchase up to an additional 4,411,764 shares from us, at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus.
Use of proceeds	<p>Assuming an initial public offering price of \$17.00 per share, which is the midpoint of the offering price range set forth on the cover page of this prospectus, we estimate that the net proceeds to us from the sale of our common stock in this offering will be \$468 million (or \$538 million if the underwriters exercise in full their option to purchase additional shares of common stock from us), after deducting estimated underwriting discounts and commissions and offering expenses.</p> <p>We currently intend to use \$468 million million of net proceeds to redeem or repurchase \$455 million of the 11% Senior Subordinated Notes due September 15, 2016, and any remaining proceeds for working capital and general corporate purposes.</p>
Dividends	<p>We do not currently anticipate paying dividends on our common stock following this offering. Any declaration and payment of future dividends to holders of our common stock may be limited by restrictive covenants in our debt agreements, and will be at the sole discretion of our Board of Directors and will depend on many factors, including our financial condition, earnings, capital requirements, level of indebtedness, statutory and contractual restrictions applying to the payment of dividends and other considerations that our Board of Directors deems relevant. See “Dividend Policy,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources,” and “Description of Capital Stock—Common Stock.”</p>
Conflicts of Interest	<p>Apollo Global Securities, LLC, an underwriter of this offering, is an affiliate of Apollo, our controlling stockholder. Since Apollo beneficially owns more than 10% of our outstanding common stock, a “conflict of interest” is deemed to exist under Rule 5121(f)(5)(B) of the Conduct Rules of the Financial Industry Regulatory Authority, or FINRA. In addition, affiliates of Goldman, Sachs &amp; Co., an underwriter of this offering, will receive more than 5% of net offering proceeds by virtue of their ownership of our 11.0% senior subordinated notes outstanding and will have a “conflict of interest”</p>

pursuant to Rule 5121(f)(5)(C)(ii) of the Conduct Rules of FINRA. Accordingly, this offering will be made in compliance with the applicable provisions of Rule 5121. As such, any underwriter that has a conflict of interest pursuant to Rule 5121 will not confirm sales to accounts in which it exercises discretionary authority without the prior written consent of the customer. Pursuant to Rule 5121, a “qualified independent underwriter” (as defined in Rule 5121) must participate in the preparation of the prospectus and perform its usual standard of due diligence with respect to the registration statement and this prospectus. Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as qualified independent underwriter for the offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 of the Securities Act. See “Underwriting (Conflicts of Interest).”

Risk Factors

You should carefully read and consider the information set forth under “Risk Factors” beginning on page 12 of this prospectus and all the other information set forth in this prospectus before investing in our stock.

Except as otherwise indicated, all information in this prospectus:

- assumes no exercise of the underwriters’ option to purchase additional shares to buy up to additional shares from us;
- reflects a 12.25-for-1 stock split, which we refer to as the “stock split,” which will be effective upon the consummation of this offering; and
- does not give effect to the exercise of outstanding options or shares reserved for issuance under the 2006 Equity Incentive Plan or the 2012 Long-Term Incentive Plan that we intend to adopt in connection with the completion of this offering.

**SUMMARY HISTORICAL CONSOLIDATED FINANCIAL DATA**

The following table sets forth certain historical financial data for Berry Plastics Group, Inc. Our fiscal year is the 52- or 53-week period ending generally on the Saturday closest to September 30. Fiscal 2010 represents a 53-week period. The summary historical financial data as of and for the fiscal years ended October 1, 2011, October 2, 2010 and September 26, 2009 have been derived from our audited consolidated financial statements and related notes included in this prospectus. The summary historical financial data set forth below should be read in conjunction with and is qualified in its entirety by reference to the audited consolidated financial statements and the related notes included in this prospectus.

The summary historical financial data as of and for the three quarterly periods ended June 30, 2012 and July 2, 2011 have been derived from our unaudited financial statements included in this prospectus. The unaudited interim consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and reflect all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the financial information set forth in those statements.

The unaudited last twelve months financial data for the three quarterly periods ending June 30, 2012 has been calculated by subtracting the data for the three quarterly periods ended July 2, 2011 from the data for the year ended October 1, 2011 and adding the data for the three quarterly periods ended June 30, 2012.

Our historical results are not necessarily indicative of results to be expected in any future period, and results for the three quarterly periods ended June 30, 2012, are not necessarily indicative of results to be expected for the full year.

In September 2012, the Company approved a 12.25-for-1 stock split, which will become effective upon the consummation of this offering.

The following financial information should be read in conjunction with “Selected Historical Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and our historical consolidated financial statements and the related notes included in this prospectus.

(\$ in millions, shares in thousands)	Unaudited Last Twelve Months <sup>(a)</sup>	Unaudited Three Quarterly Periods Ended		Audited Year Ended		
	June 30, 2012	June 30, 2012	July 2, 2011	October 1, 2011	October 2, 2010	September 26, 2009
<b>Statement of Operations Data:</b>						
Net sales	\$ 4,791	\$ 3,562	\$ 3,332	\$ 4,561	\$ 4,257	\$ 3,187
Cost of sales	4,009	2,972	2,841	3,878	3,667	2,641
Operating expenses <sup>(b)</sup>	671	372	342	641	466	360
Operating income	111	218	149	42	124	186
Other expense (income) <sup>(c)</sup>	(7)	(1)	67	61	(27)	(373)
Net interest expense	331	247	243	327	313	304
Income (loss) before income taxes	(213)	(28)	(161)	(346)	(162)	255
Income tax expense (benefit)	(1)	(8)	(54)	(47)	(49)	99
Loss on discontinued operations	—	—	—	—	—	4
Net income (loss)	\$ (212)	\$ (20)	\$ (107)	\$ (299)	\$ (113)	\$ 152
Income (loss) per share—basic	(2.54)	\$ (0.24)	\$ (1.27)	\$ (3.55)	\$ (1.34)	\$ 1.80
Income (loss) per share—diluted	(2.54)	\$ (0.24)	\$ (1.27)	\$ (3.55)	\$ (1.34)	\$ 1.79
Number of shares used in per share calculations— basic	83,606	83,508	84,219	84,121	84,525	84,635
Number of shares used in per share calculations— diluted	83,606	83,508	84,219	84,121	84,525	84,746



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(\$ in millions, shares in thousands)	Unaudited Last Twelve Months <sup>(a)</sup>	Unaudited Three Quarterly Periods Ended		Audited Year Ended		
	June 30, 2012	June 30, 2012	July 2, 2011	October 1, 2011 <sup>(b)</sup>	October 2, 2010	September 26, 2009 <sup>(c)</sup>
<b>Balance Sheet Data (at period end):</b>						
Working capital <sup>(d)</sup>	\$ 552	\$ 552	\$ 671	\$ 571	\$ 653	\$ 351
Total assets	5,114	5,114	5,250	5,217	5,344	4,216
Long-term debt obligations, excluding current portion	4,530	4,530	4,434	4,581	4,397	3,422
<b>Cash Flows Data:</b>						
Cash from operating activities	\$ 400	\$ 278	\$ 205	\$ 327	\$ 112	\$ 413
Cash from investing activities	(610)	(213)	(126)	(523)	(852)	(195)
Cash from financing activities	77	(68)	(55)	90	878	(398)
<b>Other Financial Data:</b>						
Capital expenditures	\$ 201	\$ 167	\$ 126	\$ 160	\$ 223	\$ 194
Depreciation	247	182	173	238	210	158
Amortization of intangibles	107	81	80	106	107	96
<b>Pro Forma Data:</b>						
Pro forma interest expense <sup>(e)</sup>	281	209		277		
Pro forma income (loss)	(184)	—		(271)		
Pro forma income (loss) per share—basic <sup>(f)</sup>	(1.63)	0.00		(2.39)		
Pro forma income (loss) per share—diluted <sup>(f)</sup>	(1.63)	0.00		(2.39)		
Pro forma number of shares used in pro forma per share calculation—basic <sup>(f)</sup>	113,018	112,920		113,533		
Pro forma number of shares used in pro forma per share calculation—diluted <sup>(f)</sup>	113,018	114,507		113,533		
Tax sharing obligation <sup>(g)</sup>	310	310				
Long-term debt obligations, excluding current portion	4,075	4,075		4,126		

- (a) References to financial results as of and for the last twelve months ended June 30, 2012 have been calculated by subtracting the data for the nine months ended July 2, 2011 from the data for the year ended October 1, 2011, and adding the data for the nine months ended June 30, 2012.
- (b) Year ended October 1, 2011 and last twelve months ended June 30, 2012 include a \$165 non-cash goodwill impairment.
- (c) Year ended September 26, 2009 includes a \$368 gain on repurchase of debt.
- (d) Represents total current assets less total current liabilities.
- (e) Represents pro forma interest expense assuming repayment of \$455 million of the 11% Senior Subordinated Notes due September 15, 2016, assuming this offering occurred at the beginning of the respective period.
- (f) Represents the pro forma income (loss) per share and weighted average shares outstanding assuming this offering occurred at the beginning of the respective period.
- (g) Represents the obligation we will record upon entering into the income tax receivable agreement in connection with our initial public offering. See “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Certain Relationships and Related Party Transactions—Income Tax Receivable Agreement.”

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risk factors set forth below as well as the other information contained in this prospectus before investing in our common stock. Any of the following risks could materially and adversely affect our business, financial condition or results of operations. In such a case, you may lose part or all of your original investment.*

### Risks Related to Our Business

***Our substantial indebtedness could affect our ability to meet our obligations and may otherwise restrict our activities.***

We have a significant amount of indebtedness. As of June 30, 2012, the end of our third 2012 fiscal quarter, we had total indebtedness (including current portion) of \$4,578 million with cash and cash equivalents totaling \$38 million. We would have been able to borrow a further \$394 million under the revolving portion of our senior secured credit facilities, subject to the solvency of our lenders to fund their obligations and our borrowing base calculations. We are permitted by the terms of our debt instruments to incur substantial additional indebtedness, subject to the restrictions therein. Our inability to generate sufficient cash flow to satisfy our debt obligations, or to refinance our obligations on commercially reasonable terms, would have a material adverse effect on our business, financial condition and results of operations.

Our substantial indebtedness could have important consequences. For example, it could:

- limit our ability to borrow money for our working capital, capital expenditures, debt service requirements or other corporate purposes;
- require us to dedicate a substantial portion of our cash flow to payments on our indebtedness, which would reduce the amount of cash flow available to fund working capital, capital expenditures, product development and other corporate requirements;
- increase our vulnerability to general adverse economic and industry conditions; and
- limit our ability to respond to business opportunities, including growing our business through acquisitions.

In addition, the credit agreements and indentures governing our current indebtedness contain, and any future debt instruments would likely contain, financial and other restrictive covenants, which will impose significant operating and financial restrictions on us, including restrictions on our ability to, among other things:

- incur or guarantee additional debt;
- pay dividends and make other restricted payments;
- create or incur certain liens;
- make certain investments;
- engage in sales of assets and subsidiary stock;
- enter into transactions with affiliates;
- transfer all or substantially all of our assets or enter into merger or consolidation transactions; and
- make capital expenditures.

As a result of these covenants, we will be limited in the manner in which we conduct our business, and we may be unable to engage in favorable business activities or finance future operations or capital needs. Furthermore, a failure to comply with these covenants could result in an event of default, which, if not cured or waived, could have a material adverse affect on our business, financial condition and results of operations.

***Increases in resin prices or a shortage of available resin could harm our financial condition and results of operations.***

To produce our products, we use large quantities of plastic resins. Plastic resins are subject to price fluctuations, including those arising from supply shortages and changes in the prices of natural gas, crude oil and other petrochemical intermediates from which resins are produced. Over the past several years, we have at times experienced rapidly increasing resin prices. If rapid increases in resin prices continue, our revenue and profitability may be materially and adversely affected, both in the short term as we attempt to pass through changes in the price of resin to customers under current agreements and in the long term as we negotiate new agreements or if our customers seek product substitution.

We source plastic resin primarily from major industry suppliers. We have long-standing relationships with certain of these suppliers but have not entered into a firm supply contract with any of them. We may not be able to arrange for other sources of resin in the event of an industry-wide general shortage of resins used by us, or a shortage or discontinuation of certain types of grades of resin purchased from one or more of our suppliers. In addition, the largest supplier of the company's total resin material requirements represented approximately 20% of purchases for the 12 months ending June 30, 2012. Any such shortage may materially negatively impact our competitive position versus companies that are able to better or more cheaply source resin.

***We may not be able to compete successfully and our customers may not continue to purchase our products.***

We face intense competition in the sale of our products and compete with multiple companies in each of our product lines. We compete on the basis of a number of considerations, including price, service, quality, product characteristics and the ability to supply products to customers in a timely manner. Our products also compete with metal, glass, paper and other packaging materials as well as plastic packaging materials made through different manufacturing processes. Some of these competitive products are not subject to the impact of changes in resin prices which may have a significant and negative impact on our competitive position versus substitute products. Our competitors may have financial and other resources that are substantially greater than ours and may be better able than us to withstand higher costs. In addition, our success may depend on our ability to adapt to technological changes, and if we fail to enhance existing products and develop and introduce new products and new production technologies in a timely fashion in response to changing market conditions and customer demands, our competitive position could be materially and adversely affected. Furthermore, some of our customers do and could in the future choose to manufacture the products they require for themselves. Each of our product lines faces a different competitive landscape. Competition could result in our products losing market share or our having to reduce our prices, either of which would have a material adverse effect on our business and results of operations and financial condition. In addition, since we do not have long-term arrangements with many of our customers, these competitive factors could cause our customers to shift suppliers and/or packaging material quickly.

***We may pursue and execute acquisitions, which could adversely affect our business.***

As part of our growth strategy, we plan to consider the acquisition of other companies, assets and product lines that either complement or expand our existing business and create economic value. We cannot assure you that we will be able to consummate any such transactions or that any future acquisitions will be consummated at acceptable prices and terms.

We continually evaluate potential acquisition opportunities in the ordinary course of business, including those that could be material in size and scope. Acquisitions involve a number of special risks, including:

- the diversion of management's attention and resources to the assimilation of the acquired companies and their employees and to the management of expanding operations;
- the incorporation of acquired products into our product line;
- problems associated with maintaining relationships with employees and customers of acquired businesses;

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- the increasing demands on our operational systems;
- ability to integrate and implement effective disclosure controls and procedures and internal controls for financial reporting within the allowable time frame as permitted by Sarbanes-Oxley Act;
- possible adverse effects on our reported operating results, particularly during the first several reporting periods after such acquisitions are completed; and
- the loss of key employees and the difficulty of presenting a unified corporate image.

We may become responsible for unexpected liabilities that we failed or were unable to discover in the course of performing due diligence in connection with historical acquisitions and any future acquisitions. We have typically required selling stockholders to indemnify us against certain undisclosed liabilities. However, we cannot assure you that indemnification rights we have obtained, or will in the future obtain, will be enforceable, collectible or sufficient in amount, scope or duration to fully offset the possible liabilities associated with the business or property acquired. Any of these liabilities, individually or in the aggregate, could have a material adverse effect on our business, financial condition and results of operations.

In addition, we may not be able to successfully integrate future acquisitions without substantial costs, delays or other problems. The costs of such integration could have a material adverse effect on our operating results and financial condition. Although we conduct what we believe to be a prudent level of investigation regarding the businesses we purchase, in light of the circumstances of each transaction, an unavoidable level of risk remains regarding the actual condition of these businesses. Until we actually assume operating control of such businesses and their assets and operations, we may not be able to ascertain the actual value or understand the potential liabilities of the acquired entities and their operations. Furthermore, we may not realize all of the cost savings and synergies we expect to achieve from our current strategic initiatives due to a variety of risks, including, but not limited to, difficulties in integrating shared services with our business, higher than expected employee severance or retention costs, higher than expected overhead expenses, delays in the anticipated timing of activities related to our cost-saving plans and other unexpected costs associated with operating our business. If we are unable to achieve the cost savings or synergies that we expect to achieve from our strategic initiatives, it could adversely affect our business, financial condition and results of operations.

***We may not be successful in protecting our intellectual property rights, including our unpatented proprietary know-how and trade secrets, or in avoiding claims that we infringed on the intellectual property rights of others.***

In addition to relying on patent and trademark rights, we rely on unpatented proprietary know-how and trade secrets, and employ various methods, including confidentiality agreements with employees and consultants, customers and suppliers to protect our know-how and trade secrets. However, these methods and our patents and trademarks may not afford complete protection and there can be no assurance that others will not independently develop the know-how and trade secrets or develop better production methods than us. Further, we may not be able to deter current and former employees, contractors and other parties from breaching confidentiality agreements and misappropriating proprietary information and it is possible that third parties may copy or otherwise obtain and use our information and proprietary technology without authorization or otherwise infringe on our intellectual property rights. Additionally, we have licensed, and may license in the future, patents, trademarks, trade secrets, and similar proprietary rights to third parties. While we attempt to ensure that our intellectual property and similar proprietary rights are protected when entering into business relationships, third parties may take actions that could materially and adversely affect our rights or the value of our intellectual property, similar proprietary rights or reputation. In the future, we may also rely on litigation to enforce our intellectual property rights and contractual rights, and, if not successful, we may not be able to protect the value of our intellectual property. Any litigation could be protracted and costly and could have a material adverse effect on our business and results of operations regardless of its outcome.

Our success depends in part on our ability to obtain, or license from third parties, patents, trademarks, trade secrets and similar proprietary rights without infringing on the proprietary rights of third parties. Although we

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believe our intellectual property rights are sufficient to allow us to conduct our business without incurring liability to third parties, our products may infringe on the intellectual property rights of such persons. Furthermore, no assurance can be given that we will not be subject to claims asserting the infringement of the intellectual property rights of third parties seeking damages, the payment of royalties or licensing fees and/or injunctions against the sale of our products. Any such litigation could be protracted and costly and could have a material adverse effect on our business, financial condition and results of operations.

### ***Current and future environmental and other governmental requirements could adversely affect our financial condition and our ability to conduct our business.***

Our operations are subject to federal, state, local and foreign environmental laws and regulations that impose limitations on the discharge of pollutants into the air and water, establish standards for the treatment, storage and disposal of solid and hazardous wastes and require clean up of contaminated sites. While we have not been required historically to make significant capital expenditures in order to comply with applicable environmental laws and regulations, we cannot predict with any certainty our future capital expenditure requirements because of continually changing compliance standards and environmental technology. Furthermore, violations or contaminated sites that we do not know about (including contamination caused by prior owners and operators of such sites or newly discovered information) could result in additional compliance or remediation costs or other liabilities, which could be material. We have limited insurance coverage for potential environmental liabilities associated with historic and current operations and we do not anticipate increasing such coverage in the future. We may also assume significant environmental liabilities in acquisitions. In addition, federal, state, local and foreign governments could enact laws or regulations concerning environmental matters that increase the cost of producing, or otherwise adversely affect the demand for, plastic products. Legislation that would prohibit, tax or restrict the sale or use of certain types of plastic and other containers, and would require diversion of solid wastes such as packaging materials from disposal in landfills, has been or may be introduced in the U.S. Congress, state legislatures and other legislative bodies. While container legislation has been adopted in a few jurisdictions, similar legislation has been defeated in public referenda in several states, local elections and many state and local legislative sessions. Although we believe that the laws promulgated to date have not had a material adverse effect on us, there can be no assurance that future legislation or regulation would not have a material adverse effect on us. Furthermore, a decline in consumer preference for plastic products due to environmental considerations could have a negative effect on our business.

The Food and Drug Administration, which we refer to as the FDA, regulates the material content of direct-contact food and drug packages we manufacture pursuant to the Federal Food, Drug and Cosmetic Act. Furthermore, some of our products are regulated by the Consumer Product Safety Commission, which we refer to as the CPSC, pursuant to various federal laws, including the Consumer Product Safety Act and the Poison Prevention Packaging Act. Both the FDA and the CPSC can require the manufacturer of defective products to repurchase or recall these products and may also impose fines or penalties on the manufacturer. Similar laws exist in some states, cities and other countries in which we sell products. In addition, laws exist in certain states restricting the sale of packaging with certain levels of heavy metals and imposing fines and penalties for noncompliance. Although we use FDA-approved resins and pigments in our products that directly contact food and drug products and we believe our products are in material compliance with all applicable requirements, we remain subject to the risk that our products could be found not to be in compliance with these and other requirements. A recall of any of our products or any fines and penalties imposed in connection with noncompliance could have a materially adverse effect on us. See “Business—Environmental Matters and Government Regulation.”

### ***In the event of a catastrophic loss of one of our key manufacturing facilities, our business would be adversely affected.***

While we manufacture our products in a large number of diversified facilities and maintain insurance covering our facilities, including business interruption insurance, a catastrophic loss of the use of all or a portion of one of our key manufacturing facilities due to accident, labor issues, weather conditions, natural disaster or otherwise, whether short or long-term, could have a material adverse effect on us.

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***Goodwill and other intangibles represent a significant amount of our net worth, and a future write-off could result in lower reported net income and a reduction of our net worth.***

As of June 30, 2012, the net value of our goodwill and other intangibles was \$2,641 million. We are no longer required or permitted to amortize goodwill reflected on our balance sheet. We are, however, required to evaluate goodwill reflected on our balance sheet when circumstances indicate a potential impairment, or at least annually, under the impairment testing guidelines outlined in the standard. Future changes in the cost of capital, expected cash flows, or other factors may cause our goodwill to be impaired, resulting in a non-cash charge against results of operations to write off goodwill for the amount of impairment. If a future write-off is required, the charge could have a material adverse effect on our reported results of operations and net worth in the period of any such write-off.

***Disruptions in the overall economy and the financial markets may adversely impact our business.***

Our industry is affected by current economic factors, including the deterioration of national, regional and local economic conditions, declines in employment levels, and shifts in consumer spending patterns. Disruptions in the overall economy and volatility in the financial markets could reduce consumer confidence in the economy, negatively affecting consumer spending, which could be harmful to our financial position and results of operations. As a result, decreased cash flow generated from our business may adversely affect our financial position and our ability to fund our operations. In addition, macroeconomic disruptions, as well as the restructuring of various commercial and investment banking organizations, could adversely affect our ability to access the credit markets. The disruption in the credit markets may also adversely affect the availability of financing for our operations. There can be no assurance that government responses to the disruptions in the financial markets will restore consumer confidence, stabilize the markets, or increase liquidity and the availability of credit.

### **Risks Related to an Investment in our Common Stock and this Offering**

***There is no existing market for our common stock and we do not know if one will develop, which could impede your ability to sell your shares and depress the market price of our common stock.***

Prior to this offering, there has not been a public market for our common stock. We cannot predict the extent to which investor interest in the company will lead to the development of an active trading market on the NYSE or otherwise, or how liquid that market might become. If an active trading market does not develop, you may have difficulty selling any of our common stock that you buy. The initial public offering price for the common stock will be determined by negotiations between us and the representatives of the underwriters and may not be indicative of prices that will prevail in the open market following this offering. See "Underwriting." Consequently, you may not be able to sell our common stock at prices equal to or greater than the price you paid in this offering.

***The price of our common stock may fluctuate significantly and you could lose all or part of your investment.***

Volatility in the market price of our common stock may prevent you from being able to sell your shares of common stock at or above the price you paid for them. The market price for our common stock could fluctuate significantly for various reasons, including:

- our operating and financial performance and prospects;
- our quarterly or annual earnings or those of other companies in our industry;
- conditions that impact demand for our products and services;
- future announcements concerning our business or our competitors' businesses;
- the public's reaction to our press releases, other public announcements and filings with the SEC;
- changes in earnings estimates or recommendations by securities analysts who track our common stock;
- market and industry perception of our success, or lack thereof, in pursuing our growth strategy;

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- strategic actions by us or our competitors, such as acquisitions or restructurings;
- changes in government and environmental regulation;
- general market, economic and political conditions;
- changes in accounting standards, policies, guidance, interpretations or principles;
- arrival and departure of key personnel;
- the number of shares to be publicly traded after this offering;
- sales of common stock by us, Apollo, Graham Partners or members of our management team;
- adverse resolution of new or pending litigation against us;
- changes in general market, economic and political conditions in the United States and global economies or financial markets, including those resulting from natural disasters, terrorist attacks, acts of war and responses to such events; and
- material weakness in our internal costs over financial reporting.

In addition, in recent years, the stock market has experienced significant price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies. The changes frequently appear to occur without regard to the operating performance of the affected companies. Hence, the price of our common stock could fluctuate based upon factors that have little or nothing to do with the company, and these fluctuations could materially reduce our share price.

### ***We had net losses in recent years and we may not be profitable in the future.***

We generated net income in only one of our last five fiscal years, and during the remaining four fiscal years, we incurred net losses of over \$100 million per year. We may not generate net income from operations in the future, and continuing net losses may limit our ability to execute our strategy. Factors contributing to our financial performance include non-cash impairment charges, depreciation/amortization on our long lived tangible and intangible assets, interest expense on our debt obligations as well as other factors more fully disclosed in “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

### ***Apollo controls us, and its interests may conflict with or differ from your interests as a stockholder.***

After the consummation of this offering, funds affiliated with our equity sponsor, Apollo, will indirectly beneficially own approximately 57% of our common stock, assuming the underwriters do not exercise their option to purchase additional shares. If the underwriters exercise in full their option to purchase additional shares, funds affiliated with Apollo will indirectly beneficially own approximately 55% of our common stock. As a result, Apollo will have the power to elect all of our directors. Therefore, Apollo effectively will have the ability to prevent any transaction that requires the approval of our Board of Directors or our stockholders, including the approval of significant corporate transactions such as mergers and the sale of substantially all of our assets. Thus, Apollo will continue to be able to significantly influence or effectively control our decisions.

The amended and restated stockholders agreement that we have agreed to enter into upon consummation of this offering will provide that, except as otherwise required by applicable law, if Apollo continues to hold (a) at least 50% of our outstanding common stock, it will have the right to designate no fewer than that number of directors that would constitute a majority of our Board of Directors, (b) at least 30% but less than 50% of our outstanding common stock, it will have the right to designate up to five director nominees, (c) at least 20% but less than 30% of our outstanding common stock, it will have the right to designate up to four director nominees, and (d) at least 10% but less than 20% of our outstanding common stock, it will have the right to designate up to three director nominees. The agreement will also provide that if the size of the Board of Directors is increased or decreased at any time, Apollo’s nomination rights will be proportionately increased or decreased, respectively, rounded up to the nearest whole number, except that if the Board of Directors increases its size within 180 days

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of the date of the agreement, Apollo will have the right to designate director nominees to fill each newly created directorship. In addition, the agreement will require the approval of a majority of the directors nominated by Apollo voting on the matter for certain important matters, including certain mergers and acquisitions, issuance of equity and incurrence of debt, so long as Apollo beneficially owns at least 25% of our outstanding common stock. Therefore, Apollo will continue to be able to significantly influence or effectively control our decisions. See “Certain Relationships and Related Party Transactions—Stockholders Agreement,” “Management—Apollo Approval of Certain Matters” and “Description of Capital Stock—Composition of Board of Directors; Election and Removal of Directors.”

The interests of Apollo could conflict with or differ from your interests as a holder of our common stock. For example, the concentration of ownership held by Apollo could delay, defer or prevent a change of control of the company or impede a merger, takeover or other business combination that you as a stockholder may otherwise view favorably. In addition, a sale of a substantial number of shares of stock in the future by funds affiliated with Apollo or Graham could cause our stock price to decline.

Additionally, Apollo and Graham are in the business of making or advising on investments in companies and hold (and may from time to time in the future acquire) interests in or provide advice to businesses that directly or indirectly compete with certain portions of our business or are suppliers or customers of ours. Apollo and Graham may also pursue acquisitions that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us.

***We expect to be a “controlled company” within the meaning of the NYSE rules and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements.***

Upon the closing of this offering, funds affiliated with Apollo will continue to control a majority of our voting common stock. As a result, we expect to qualify as a “controlled company” within the meaning of the NYSE corporate governance standards. Under the NYSE rules, a company of which more than 50% of the voting power for the election of directors is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain NYSE corporate governance requirements, including:

- the requirement that a majority of the Board of Directors consists of independent directors;
- the requirement that we have a nominating/corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities;
- the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- the requirement for an annual performance evaluation of the nominating/corporate governance and compensation committees.

Following this offering, we intend to utilize these exemptions. As a result, we will not have a majority of independent directors nor will our nominating/corporate governance and compensation committees consist entirely of independent directors, and we will not be required to have an annual performance evaluation of the nominating/corporate governance and compensation committees. See “Management.” Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to such corporate governance requirements.

***We have no plans to pay regular dividends on our common stock, so you may not receive funds without selling your common stock.***

We have no plans to pay regular dividends on our common stock. Any declaration and payment of future dividends to holders of our common stock may be limited by restrictive covenants of our debt agreements, will be at the sole discretion of our Board of Directors and will depend on many factors, including our financial condition, earnings, capital requirements, level of indebtedness, statutory and contractual restrictions applying to the payment of dividends and other considerations that our Board of Directors deems relevant.

The terms of our senior secured credit facilities and the indentures governing our notes may restrict our ability to pay cash dividends on our common stock. Our debt instruments contain covenants that restrict our ability to pay dividends on our common stock, as well as the ability of our subsidiaries to pay dividends to us.



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See “Description of Certain Indebtedness” and “Description of Capital Stock—Common Stock.” Furthermore, we will be permitted under the terms of our debt instrument to incur additional indebtedness, which may restrict or prevent us from paying dividends on our common stock. Agreements governing any future indebtedness, in addition to those governing our current indebtedness, may not permit us to pay dividends on our common stock.

### ***Future sales or the possibility of future sales of a substantial amount of our common stock may depress the price of shares of our common stock.***

Future sales or the availability for sale of substantial amounts of our common stock in the public market could adversely affect the prevailing market price of our common stock and could impair our ability to raise capital through future sales of equity securities.

Effective upon consummation of this offering, we will amend and restate our certificate of incorporation, among other reasons, to increase our authorized capital stock so that it consists of 450 million authorized shares, of which 400 million shares, par value \$0.01, will be designated as common stock and 50 million shares, par value \$0.01, will be designated as preferred stock. Upon consummation of this offering, 112,600,136 shares will be outstanding. This number includes 29,411,764 shares that we are selling in this offering, which will be freely transferable without restriction or further registration under the Securities Act of 1933, as amended, which we refer to as the Securities Act. The remaining 83,188,372 shares of our common stock outstanding, including the shares of common stock owned by funds affiliated with Apollo, Graham Partners and certain members of our management, will be restricted from immediate resale under the federal securities laws and the lock-up agreements between our current stockholders and the underwriters, but may be sold in the near future. See “Underwriting.” Following the expiration of the applicable lock-up period, all these shares of our common stock will be eligible for resale under Rule 144 or Rule 701 of the Securities Act, subject to volume limitations and applicable holding period requirements. See “Shares Eligible for Future Sale” for a discussion of the shares of our common stock that may be sold into the public market in the future.

We may issue shares of our common stock or other securities from time to time as consideration for future acquisitions and investments. If any such acquisition or investment is significant, the number of shares of our common stock, or the number or aggregate principal amount, as the case may be, of other securities that we may issue may in turn be substantial. We may also grant registration rights covering those shares of our common stock or other securities in connection with any such acquisitions and investments.

We cannot predict the size of future issuances of our common stock or the effect, if any, that future issuances and sales of our common stock will have on the market price of our common stock. Sales of substantial amounts of our common stock (including shares of our common stock issued in connection with an acquisition), or the perception that such sales could occur, may adversely affect prevailing market prices for our common stock.

### ***Delaware law and our organizational documents may impede or discourage a takeover, which could deprive our investors of the opportunity to receive a premium for their shares.***

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change of control would be beneficial to our existing stockholders. In addition, provisions of our amended and restated certificate of incorporation and bylaws that we expect to be effective upon consummation of this offering may make it more difficult for, or prevent a third party from, acquiring control of us without the approval of our Board of Directors. Among other things, these provisions:

- classify our Board of Directors so that only some of our directors are elected each year;
- do not permit cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- delegate the sole power of a majority of the Board of Directors to fix the number of directors;

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- provide the power of our Board of Directors to fill any vacancy on our board, whether such vacancy occurs as a result of an increase in the number of directors or otherwise;
- authorize the issuance of “blank check” preferred stock without any need for action by stockholders;
- eliminate the ability of stockholders to call special meetings of stockholders;
- prohibit stockholders from acting by written consent if less than 50.1% of our outstanding common stock is controlled by Apollo; and
- establish advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, under the amended and restated stockholders agreement that we have agreed to enter into upon consummation of this offering, until such time as Apollo no longer beneficially owns at least 25% of the total number of shares of our common stock outstanding at any time, the approval of a majority of the members of our board of directors, which must include the approval of a majority of the directors nominated by Apollo voting on the matter, will be required for certain business combinations and to approve certain other matters. See “Management—Apollo Approval of Certain Matters and Rights to Nominate Certain Directors,” “Certain Relationships and Related Party Transactions—Stockholders Agreement” and “Description of Capital Stock—Composition of Board of Directors; Election and Removal of Directors.”

The foregoing factors, as well as the significant common stock ownership by our equity sponsor, could impede a merger, takeover or other business combination or discourage a potential investor from making a tender offer for our common stock, which, under certain circumstances, could reduce the market value of our common stock. See “Description of Capital Stock” and “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

***We may issue shares of preferred stock in the future, which could make it difficult for another company to acquire us or could otherwise adversely affect holders of our common stock, which could depress the price of our common stock.***

Our amended and restated certificate of incorporation to be in effect following this offering will authorize us to issue one or more series of preferred stock. Our Board of Directors will have the authority to determine the preferences, limitations and relative rights of shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our stockholders. Our preferred stock could be issued with voting, liquidation, dividend and other rights superior to the rights of our common stock. The potential issuance of preferred stock may delay or prevent a change in control of us, discouraging bids for our common stock at a premium to the market price, and materially and adversely affect the market price and the voting and other rights of the holders of our common stock.

***You will suffer immediate and substantial dilution in the net tangible book value of the common stock you purchase.***

Prior investors have paid substantially less per share than the price in this offering. The initial offering price is substantially higher than the net tangible book value per share of the outstanding common stock immediately after this offering. Accordingly, based on an assumed initial public offering price of \$17.00 per share (the midpoint of the range set forth on the cover page of this prospectus), purchasers of common stock in this offering will experience immediate and substantial dilution of approximately \$(43.35) per share in net tangible book value of the common stock. See “Dilution.”

***Berry Plastics Group, Inc. is a holding company and relies on dividends and other payments, advances and transfers of funds from its subsidiaries to meet its obligations and pay dividends.***

Berry Plastics Group, Inc. has no direct operations and no significant assets other than ownership of 100% of the stock of Berry Plastics Corporation. Because Berry Plastics Group, Inc. conducts its operations through its

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subsidiaries, it depends on those entities for dividends and other payments to generate the funds necessary to meet its financial obligations, and to pay any dividends with respect to our common stock. Legal and contractual restrictions in the agreements governing current and future indebtedness of Berry Plastics Group, Inc.'s subsidiaries, as well as the financial condition and operating requirements of Berry Plastics Group, Inc.'s subsidiaries, may limit Berry Plastics Group, Inc.'s ability to obtain cash from its subsidiaries. The earnings from, or other available assets of, Berry Plastics Group, Inc.'s subsidiaries may not be sufficient to pay dividends or make distributions or loans to enable Berry Plastics Group, Inc. to pay any dividends on our common stock.

### ***The additional requirements of having a class of publicly traded equity securities may strain our resources and distract management.***

Although our principal operating subsidiary voluntarily files periodic reports with the Securities and Exchange Commission, or the "SEC," after the consummation of this offering, we will be subject to additional reporting requirements of the Securities Exchange Act of 1934, or the Exchange Act and the Sarbanes-Oxley Act of 2002, which we refer to as the "Sarbanes-Oxley Act." The Sarbanes-Oxley Act requires that we maintain effective disclosure controls and procedures and internal control for financial reporting. Under Section 404 of the Sarbanes-Oxley Act, our independent public accountants auditing our financial statements must attest to the effectiveness of our internal control over financial reporting. In order to continue to maintain the effectiveness of our disclosure controls and procedures and internal control over financial reporting following the consummation of this offering, significant resources and management oversight will be required. Furthermore, if we are unable to conclude that our disclosure controls and procedures and internal control over financial reporting are effective, or if our independent public accounting firm is unable to provide us with an unqualified report as to management's assessment of the effectiveness of our internal control over financial reporting in future years, investors may lose confidence in our financial reports and our stock price may decline.

In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act, which we refer to as "Dodd-Frank" and which amended the Sarbanes-Oxley Act and other federal laws, has created uncertainty for public companies, and we cannot predict with any certainty the requirements of the regulations that will ultimately be adopted under Dodd-Frank or how such regulations will affect the cost of compliance for a company with publicly traded common stock. There is likely to be continuing uncertainty regarding compliance matters because the application of these laws and regulations, which are subject to varying interpretations, may evolve over time as new guidance is provided by regulatory and governing bodies. We intend to invest resources to comply with these evolving laws and regulations, which may result in increased general and administrative expenses and divert management's time and attention from other business concerns. Furthermore, if our compliance efforts differ from the activities that regulatory and governing bodies expect or intend due to ambiguities related to interpretation or practice, we may face legal proceedings initiated by such regulatory or governing bodies and our business may be harmed. In addition, new rules and regulations may make it more difficult for us to attract and retain qualified directors and officers and may make it more expensive for us to obtain director and officer liability insurance.

### ***If securities analysts do not publish research or reports about our company, or if they issue unfavorable commentary about us or our industry or downgrade our common stock, the price of our common stock could decline.***

The trading market for our common stock will depend in part on the research and reports that third-party securities analysts publish about our company and our industry. One or more analysts could downgrade our common stock or issue other negative commentary about our company or our industry. In addition, we may be unable or slow to attract research coverage. Alternatively, if one or more of these analysts cease coverage of our company, we could lose visibility in the market. As a result of one or more of these factors, the trading price of our common stock could decline.

***We will be required to pay our existing owners for certain tax benefits, which amounts are expected to be material.***

We will enter into an income tax receivable agreement with our existing stockholders, option holders and holders of our stock appreciation rights that will provide for the payment by us to our existing stockholders of 85% of the amount of cash savings, if any, in U.S. federal, foreign, state and local income tax that we and our subsidiaries actually realize as a result of the utilization of our net operating losses attributable to periods prior to this offering.

These payment obligations are our obligations and not obligations of any of our subsidiaries. The actual utilization of net operating losses as well as the timing of any payments under the income tax receivable agreement will vary depending upon a number of factors, including the amount, character and timing of our and our subsidiaries' taxable income in the future.

We expect that the payments we make under this income tax receivable agreement will be material. Assuming no material changes in the relevant tax law, and that we and our subsidiaries earn sufficient income to realize the full tax benefits subject to the income tax receivable agreement, we expect that future payments under the income tax receivable agreement will aggregate to between \$310 million and \$350 million.

If we had completed our initial public offering as of June 30, 2012, we would have recorded a liability of \$310 million, which represents the full obligation for our recognized deferred tax assets, with an offset to Additional Paid in Capital if the income tax receivable agreement had been executed. We expect to record a stock compensation charge in connection with our initial public offering related to the income tax receivable agreement for the payments to option holders and holders of our stock appreciation rights. Any future changes in the realizability of our net operating loss carry forwards that were generated prior to our initial public offering, will impact the amount of the liability that will be paid to our shareholders, option holders or holders of our stock appreciation rights. Changes in the realizability of these tax assets will be recorded in income tax expense (benefit) and any changes in the obligation under the income tax receivable agreement will be recorded in other income (expense). Based on our current taxable income estimates, we expect to repay the majority of this obligation by the end of our 2016 fiscal year.

In addition, the income tax receivable agreement provides that upon certain mergers, stock and asset sales, other forms of business combinations or other changes of control, the income tax receivable agreement will terminate and we will be required to make a payment equal to the present value of future payments under the income tax receivable agreement, which payment would be based on certain assumptions, including those relating to our and our subsidiaries' future taxable income. In these situations, our obligations under the income tax receivable agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control.

For tax reasons, special timing rules will apply to payments associated with stock options and stock appreciation rights. Such payments will generally be deemed invested in a notional account rather than made on the scheduled payment dates, and the account will be distributed on the fifth anniversary of this offering.

Our counterparties under this agreement will not reimburse us for any payments previously made under the income tax receivable agreement if such benefits are subsequently disallowed (although future payments would be adjusted to the extent possible to reflect the result of such disallowance). As a result, in certain circumstances, payments could be made under the income tax receivable agreement in excess of our cash tax savings. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Certain Relationships and Related Party Transactions—Tax Receivable Agreement."

***Our operating subsidiary Berry Plastics Corporation identified a prior deficiency in its disclosure controls and procedures.***

Under applicable SEC regulations, management of a reporting company, with the participation of the principal executive officer and principal financial officer, must periodically evaluate the company's "disclosure controls and procedures," which are defined generally as controls and other procedures of a reporting company designed to ensure that information required to be disclosed by the reporting company in its periodic reports filed with the SEC is recorded, processed, summarized, and reported on a timely basis. In conjunction with a review of the SEC of our wholly owned subsidiary Berry Plastics Corporation's fiscal 2011 annual report, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of Berry Plastics Corporation's disclosure controls and procedures were not effective to ensure that information required to be disclosed was reported at the acceptable level of detail for the period covered by this report. We identified deficient disclosure in the section "Critical Accounting Policy and Estimates: Goodwill and Other Indefinite Lived Intangible Assets." In that disclosure, we did not provide readers with sufficient information explaining the factors that led to the recognition of the goodwill impairment charge, along with the future implications to our business. We also identified deficient disclosure in the section "Management's Discussion and Analysis of Financial Condition and Results of Operations." In that disclosure, we did not provide readers with sufficient informative narrative explanations of our financial statements. In addition, we identified deficient disclosure in our condensed consolidating financial statements, in which we did not provide appropriate disclosure and presentation of certain intercompany activity. To remediate these deficiencies, in addition to our historical disclosure controls and procedures, we have begun a more comprehensive review and approval procedure of disclosures related to our "Critical Accounting Policies and Estimates" and "Management's Discussion and Analysis" to ensure the level of information we disclose provides readers with a sufficient level of detail to understand these policies and estimates. We believe that these actions will remediate the weakness in our disclosure controls and procedures; however, we cannot assure you that additional deficiencies in our disclosure controls and procedures will not occur in the future.

## CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This prospectus contains “forward-looking statements” which involve risks and uncertainties. You can identify forward-looking statements because they contain words such as “believes,” “expects,” “may,” “will,” “should,” “would,” “could,” “seeks,” “approximately,” “intends,” “plans,” “estimates,” or “anticipates” or similar expressions that relate to our strategy, plans or intentions. All statements we make relating to our estimated and projected earnings, margins, costs, expenditures, cash flows, growth rates and financial results or to our expectations regarding future industry trends are forward-looking statements. In addition, we, through our senior management, from time to time make forward-looking public statements concerning our expected future operations and performance and other developments. These forward-looking statements are subject to risks and uncertainties that may change at any time, and, therefore, our actual results may differ materially from those that we expected. We derive many of our forward-looking statements from our operating budgets and forecasts, which are based upon many detailed assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and it is impossible for us to anticipate all factors that could affect our actual results. All forward-looking statements are based upon information available to us on the date of this prospectus.

Important factors that could cause actual results to differ materially from our expectations, which we refer to as cautionary statements, are disclosed under “Risk Factors” and elsewhere in this prospectus, including, without limitation, in conjunction with the forward-looking statements included in this prospectus. All forward-looking information in this prospectus and subsequent written and oral forward-looking statements attributable to us, or to persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements. Some of the factors that we believe could affect our results include:

- risks associated with our substantial indebtedness and debt service;
- changes in prices and availability of resin and other raw materials and our ability to pass on changes in raw material prices on a timely basis;
- performance of our business and future operating results;
- risks related to our acquisition strategy and integration of acquired businesses;
- reliance on unpatented know-how and trade secrets;
- increases in the cost of compliance with laws and regulations, including environmental, safety, production and product laws and regulations;
- risks related to disruptions in the overall economy and the financial markets may adversely impact our business;
- catastrophic loss of one of our key manufacturing facilities, natural disasters and other unplanned business interruptions;
- risks of competition, including foreign competition, in our existing and future markets;
- general business and economic conditions, particularly an economic downturn;
- the ability of our insurance to cover fully our potential exposures; and
- the other factors discussed in the section of this prospectus titled “Risk Factors.”

We caution you that the foregoing list of important factors may not contain all of the material factors that are important to you. In addition, in light of these risks and uncertainties, the matters referred to in the forward-looking statements contained in this prospectus may not in fact occur. Accordingly, investors should not place undue reliance on those statements. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

## USE OF PROCEEDS

Assuming an initial public offering price of \$17.00 per share, which is the midpoint of the offering price range set forth on the cover page of this prospectus, we estimate that the net proceeds to us from the sale of shares of our common stock in this offering will be \$468 million (or \$538 million if the underwriters exercise in full their option to purchase additional shares of common stock from us), after deducting estimated underwriting discounts and offering expenses.

We currently intend to use \$468 million of net proceeds to redeem or repurchase \$455 million of the 11% Senior Subordinated Notes due September 15, 2016, and any remaining proceeds for working capital and general corporate purposes. The redemption or repurchase will include a \$13 million premium. See “Underwriting (Conflicts of Interest)” for further information.

## **DIVIDEND POLICY**

We do not currently anticipate paying dividends on our common stock following this offering. Any declaration and payment of future dividends to holders of our common stock will be at the discretion of our Board of Directors and will depend on many factors, including our financial condition, earnings, capital requirements, level of indebtedness, statutory and contractual restrictions applying to the payment of dividends and other considerations that our Board of Directors deems relevant. Because we are a holding company and have no direct operations, we will only be able to pay dividends from our available cash on hand and any funds we receive from our subsidiaries. The terms of our indebtedness may restrict us from paying dividends, or may restrict our subsidiaries from paying dividends to us. Under Delaware law, dividends may be payable only out of surplus, which is our net assets minus our liabilities and our capital, or, if we have no surplus, out of our net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. See “Description of Certain Indebtedness,” and “Description of Capital Stock—Common Stock.”



## CAPITALIZATION

The following table sets forth cash and cash equivalents and capitalization as of June 30, 2012:

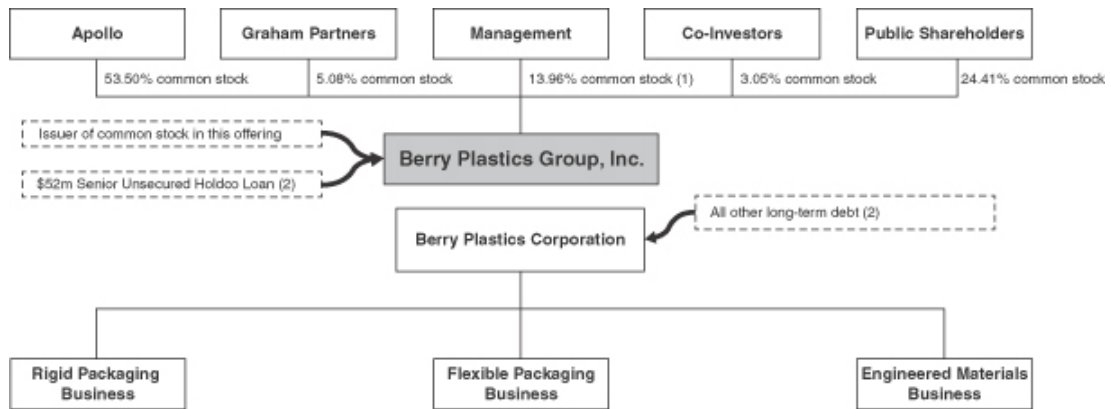
- on a historical basis;
- on an as adjusted basis to reflect the sale of approximately 29,411,764 shares of our common stock in this offering at the initial public offering price of \$17.00 per share, which is the midpoint of the offering price range set forth on the cover page of this prospectus, providing net proceeds to us from this offering (after deducting the estimated underwriting discounts and commissions and other expenses) of approximately \$468 million and the application of the net proceeds as described in “Use of Proceeds”; and
- also reflects the impact of Tax Receivable Agreement, which is a reduction of Paid-in capital and the retirement of the 11% Senior Subordinated Notes.

This table should be read together with “Use of Proceeds,” “Selected Historical Consolidated Financial Data,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and the combined financial statements and notes to those statements included elsewhere in this prospectus. The information presented below has been adjusted to reflect the stock split that will be effective upon the consummation of this offering.

(\$ in millions)	(Unaudited) As of June 30, 2012	
	Historical	As Adjusted
Cash and cash equivalents	\$ 38	\$ 38
Long-term debt, including current portion:		
Term loan	1,137	1,137
Revolving line of credit	163	163
First Priority Senior Secured Floating Rate Notes	681	681
8 3/4% First Priority Notes	370	370
Second Priority Senior Secured Floating Rate Notes	210	210
9 1/2% Second Priority Notes	500	500
Senior Unsecured Term Loan	54	54
9 3/4% Second Priority Notes	800	800
10 1/4% Senior Subordinated Notes	127	127
11% Senior Subordinated Notes	455	—
Debt discount, net	(10)	(10)
Capital leases and other	91	91
Total debt	4,578	4,123
Redeemable shares	15	—
Stockholders’ deficit:		
Common stock; \$0.01 par value; 400,000,000 shares authorized; 84,696,218 shares issued; 83,209,232 shares outstanding (actual); 112,620,996 shares outstanding (as adjusted)	1	1
Paid-in capital	138	315
Notes receivable—common stock	(2)	(2)
Noncontrolling interest	3	3
Accumulated deficit	(583)	(600)
Accumulated other comprehensive loss	(44)	(44)
Total stockholders’ deficit	(487)	(327)
Total capitalization	\$ 4,106	\$ 3,796

**OWNERSHIP AND ORGANIZATIONAL STRUCTURE**

The following diagram sets forth our ownership and organizational structure as of immediately following the completion of this offering (ownership percentages are given assuming the underwriters do not exercise their option to purchase additional shares). Except as otherwise indicated, each of the beneficial owners has, to our knowledge, sole voting and investment power with respect to the indicated shares of common stock. See “Principal Stockholders” and “Capitalization.”



- (1) Includes shares of common stock owned by former members of management.
- (2) See “Capitalization” and “Description of Certain Indebtedness.”

## DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the net tangible book value per share of our common stock upon completion of this offering. Dilution results from the fact that the per share offering price of our common stock is substantially in excess of the book value per share attributable to our existing equityholders.

Our net tangible book (deficit) as of June 30, 2012 was \$(3,113) million, or \$(37.41) per share of common stock. Net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the number of shares of common stock outstanding as of that date.

After giving effect to the sale by us of shares of common stock in this offering at the assumed initial public offering price of \$17 per share (the midpoint of the range set forth on the cover of this prospectus) and the execution of the income tax receivable agreement, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our as adjusted net tangible book value (deficit) as of June 30, 2012 would have been \$2,968 million, or \$26.35 per share. This amount represents an immediate dilution of \$43.35 per share to new investors. The following table illustrates this dilution per share, giving effect to the stock split that will be effective upon the consummation of this offering:

Assumed initial public offering price per share of common stock	\$ 17.00
Net tangible book deficit per share of common stock as of June 30, 2012	\$(37.41)
Increase in net tangible book value per share attributable to this offering <sup>(1)</sup>	<u>11.06</u>
Adjusted net tangible book value (deficit) per share after this offering	(26.35)
Dilution per share to new investors	<u><u>\$ (43.35)</u></u>

(1) Net tangible book deficit is calculated by subtracting goodwill, identifiable intangibles and deferred financing costs from total net assets.

If the underwriters exercise their option to purchase additional shares in full, our as adjusted net tangible book value (deficit) will increase to \$(24.75) per share, representing an increase to existing holders of \$12.66 per share, and there will be an immediate dilution of \$(41.75) per share to new investors.

Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us in connection with the offering, a \$1.00 increase (decrease) in the assumed public offering price of \$17.00 per share would increase (decrease) the adjusted net tangible book value attributable to this offering by \$0.25 per share and the dilution to new investors by \$0.75 per share and decrease (increase) the as adjusted net tangible book deficit after this offering by \$0.25 per share.

The following table summarizes, as of June 30, 2012, as adjusted to give effect to this offering, the difference between the number of shares of our common stock purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders and by new investors, at the assumed initial public offering price of \$17.00 per share, before deducting the estimated underwriting discounts and commissions and offering expenses payable by us in connection with this offering:

	Shares Purchased		Total Consideration		Average Price per Share
	Number	Percent	Amount (\$ in millions)	Percent	
Existing stockholders	83,209,232	73.9%	\$ 147	22.7%	\$ 1.77
New investors in this offering	29,411,764	26.1%	\$ 500	77.3%	\$ 17.00
<b>Total</b>	<u>112,620,996</u>	<u>100.0%</u>	<u>\$ 647</u>	<u>100.0%</u>	<u>\$ 5.74</u>

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The number of shares purchased is based on shares of common stock outstanding as of June 30, 2012. The discussion and table above exclude shares of common stock issuable upon exercise of outstanding options issued, and additional shares of common stock reserved, under our 2006 Equity Incentive Plan. To the extent outstanding options are exercised, new investors will experience further dilution. If the underwriters exercise their option to purchase additional shares in full, the common stock held by existing stockholders will decrease to 71% of the total number of shares of our common stock outstanding after the offering, and the number of shares of our common stock held by new investors will increase to 33,823,528, or 29% of the total shares of our common stock outstanding after this offering.

## SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA

The following table presents our selected historical consolidated financial data. This information should be read in conjunction with, and is qualified by reference to, the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the audited and unaudited consolidated financial statements of Berry Plastics Group, Inc. and their notes included elsewhere in this prospectus, as well as the other financial information included in this prospectus. We derived the consolidated statement of operations data for fiscal 2009, 2010 and 2011, as well as the consolidated balance sheet data at October 1, 2011 and October 2, 2010 from our audited consolidated financial statements included elsewhere in this prospectus. The financial statements for fiscal 2009, 2010 and 2011 have not yet been revised to reflect the adoption of ASU 2011-05, *Presentation of Comprehensive Income*, as amended by ASU 2011-12, *Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05*. We derived the audited consolidated statement of operations data for fiscal 2007 and 2008 as well as the audited consolidated balance sheet data at September 26, 2009, September 27, 2008, and September 29, 2007 from our audited consolidated financial statements not included in this prospectus. We derived the unaudited consolidated statement of operations data for the three quarterly periods ended June 30, 2012 and July 2, 2011, as well as the unaudited consolidated balance sheet data at June 30, 2012, from our unaudited interim consolidated financial statements included elsewhere in this prospectus. We derived the unaudited interim consolidated balance sheet data at July 2, 2011 from our unaudited interim consolidated financial statements not included in this prospectus. The unaudited interim consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and reflect all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the financial information set forth in those statements. Our historical results are not necessarily indicative of results to be expected in any future period, and results for the two quarterly periods ended June 30, 2012 are not necessarily indicative of results to be expected for the full year.

(\$ in millions)	Three Quarterly Periods Ended		Year Ended				
	June 30, 2012	July 2, 2011	October 1, 2011	October 2, 2010	September 26, 2009	September 27, 2008	September 29, 2007
<b>Statement of Operations Data:</b>	Unaudited		Audited				
Net sales	\$ 3,562	\$ 3,332	\$ 4,561	\$ 4,257	\$ 3,187	\$ 3,513	\$ 3,055
Cost of sales	2,972	2,841	3,878	3,667	2,641	3,019	2,583
Gross profit	590	491	683	590	546	494	472
Selling, general and administrative expenses	227	200	275	272	229	247	244
Amortization of intangibles	81	80	106	107	96	93	78
Restructuring and impairment charges	30	36	221	41	11	10	39
Other operating expenses	34	26	39	46	24	33	44
Operating income	218	149	42	124	186	111	67
Other expense (income)	(1)	67	61	(27)	(373)	—	37
Net interest expense	247	243	327	313	304	321	257
Income (loss) before income taxes	(28)	(161)	(346)	(162)	255	(210)	(227)
Income tax expense (benefit)	(8)	(54)	(47)	(49)	99	(72)	(96)
Minority interest	—	—	—	—	—	—	(3)
Loss on discontinued operations	—	—	—	—	4	—	—
Net income (loss)	\$ (20)	\$ (107)	\$ (299)	\$ (113)	\$ 152	\$ (138)	\$ (128)
Comprehensive income (loss)	\$ (18)	\$ (101)	\$ (324)	\$ (112)	\$ 128	\$ (154)	\$ (128)
<b>Net Income (Loss) Available to Common Stockholders:</b>							
Basic	\$ (0.24)	\$ (1.27)	\$ (3.55)	\$ (1.34)	\$ 1.80	\$ (1.63)	\$ (1.51)
Diluted	(0.24)	(1.27)	(3.55)	(1.34)	1.79	(1.63)	(1.51)
<b>Balance Sheet Data (at period end):</b>							
Cash and cash equivalents	\$ 38	\$ 171	\$ 42	\$ 148	\$ 10	\$ 190	\$ 15
Property, plant and equipment, net	1,235	1,086	1,250	1,146	875	863	785
Total assets	5,114	5,250	5,217	5,344	4,216	4,766	3,915
Long-term debt obligations, excluding current portion	4,530	4,434	4,581	4,397	3,422	4,124	3,188
Total liabilities	5,586	5,480	5,668	5,474	4,236	4,923	3,918
Redeemable shares	15	14	16	11	—	—	—
Total stockholders’ deficit	(487)	(244)	(467)	(141)	(20)	(157)	(3)
<b>Cash Flow and Other Financial Data:</b>							
Net cash from operating activities	\$ 278	\$ 205	\$ 327	\$ 112	\$ 413	\$ 10	\$ 74
Net cash from investing activities	(213)	(126)	(523)	(852)	(195)	(656)	(164)
Net cash from financing activities	(68)	(55)	90	878	(398)	821	23

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion in conjunction with the consolidated financial statements of Berry Plastics Group, Inc. and its subsidiaries and the accompanying notes thereto, which information is included elsewhere herein. This discussion contains forward-looking statements and involves numerous risks and uncertainties, including, but not limited to, those described in the "Risk Factors" section. Our actual results may differ materially from those contained in any forward-looking statements.*

### Overview

We are a leading provider of value-added plastic consumer packaging and engineered materials with a 30-year track record of delivering high-quality customized solutions to our customers. Our products utilize our proprietary research and development platform, which includes a continually evolving library of Berry-owned molds, patents, manufacturing techniques and technologies. We sell our solutions predominantly into consumer-oriented end-markets, such as food and beverage, healthcare and personal care, which together represented 76% of our sales in the 12 months ended June 30, 2012. Our customers look to us for solutions that have high consumer impact in terms of form, function and branding. Representative examples of our products include thermoform drink cups, thin-wall containers, blow-molded bottles, specialty closures, prescription vials, specialty plastic films, adhesives and corrosion protection materials. We have also been one of the most active acquirers of plastic packaging businesses globally, having acquired more than 30 businesses since 1988, including eleven acquisitions completed in the past six years. We believe our focus on delivering unique and customized solutions to our customers and our ability to successfully integrate strategic acquisitions have enabled us to grow at rates in excess of our industry peers, having achieved a compound annual net sales growth rate over the last eleven and a half years of 24%.

We believe that we have created one of the largest product libraries in our industry, allowing us to be a comprehensive solution provider to our customers. We have more than 13,000 customers, which consist of a diverse mix of leading national, mid-sized regional and local specialty businesses. The size and scope of our customer network allow us to introduce new products we develop or acquire to a vast audience that is familiar with, and we believe partial to, our brand. In fiscal 2011, no single customer represented more than 3% of net sales and our top ten customers represented less than 17% of net sales. We currently supply our customers through 82 strategically located manufacturing facilities throughout the United States (68 locations) and select international locations (14 locations). We believe our manufacturing processes and our ability to leverage our scale to reduce expenses on items, such as raw materials, position us as a low-cost manufacturer relative to our competitors. For example, we believe based on management estimates that we are one of the largest global purchasers of plastic resins, at more than 2.5 billion pounds per year, which gives us both unique insight into this market as well as scale purchasing savings.

We enjoy market leadership positions in many of our markets, with 76% of net sales during the 12 months ended June 30, 2012 in markets in which management estimates we held the #1 or #2 market position. We look to build leadership in markets where we have a strategic angle and can achieve attractive profit margins through technology and design leadership and a competitive cost position such as highly decorated plastic containers. We believe that our product and technology development capabilities are best-in-class, supported by a newly built Berry Research and Design Center in Evansville, Indiana and a network of more than 200 engineers and material scientists. We seek to have our product and technology development efforts provide a meaningful impact on sales. An example of our focused new product development is our thermoform plastic drink cup technology. We identified an unfulfilled need in the market with an opportunity for significant return on invested capital and ultimately introduced the technology to the market in 2001. This product line has grown steadily since introduction and generated \$400 million of net sales during the 12 months ended June 30, 2012.

Our success is driven by our more than 15,000 employees. Over the past 30 years, we have developed a culture that incorporates both loyalty to best practices and acceptance of new perspectives, which we have often

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identified from the companies we have acquired. Our employees hold themselves accountable to exceed the expectations of our customers and to create value for our stakeholders. Consistent with this focus on value creation, approximately 375 employees own equity in the company. As of June 30, 2012 and before giving effect to this offering, employees owned more than 20% of our fully diluted equity.

We believe the successful execution of our business strategy has enabled us to outperform the growth of our industry over the past decade with Adjusted EBITDA increasing from \$80 million in 2000 to \$784 million for the 12 months ended June 30, 2012, representing a CAGR of 22%. For the 12 months ended June 30, 2012, Berry had pro forma net sales of \$4.8 billion, Adjusted EBITDA of \$784 million, net loss of \$215 million and Adjusted Free Cash Flow of \$199 million. For a reconciliation of Adjusted EBITDA and Adjusted Free Cash Flow to the nearest GAAP measures, see “—Liquidity and Capital Resources.”

### Executive Summary

**Business.** We have historically operated our business in four operating segments: Rigid Open Top, Rigid Closed Top (which together make up our Rigid Packaging business), Specialty Films and Tapes, Bags and Coatings. Effective January 1, 2012, we realigned our operating segments to enhance the company’s current product portfolio and leverage our rigid and flexible technologies to serve our customers with innovative packaging solutions. Our new operating segments and the description of our results in this prospectus are aligned into the following four segments: Rigid Open Top, Rigid Closed Top (together our Rigid Packaging business), Engineered Materials, and Flexible Packaging. The Rigid Packaging business sells primarily containers, foodservice items, housewares, closures, overcaps, bottles, prescription containers and tubes. Our Engineered Materials segment sells specialty tapes, adhesives, laminated coatings, polyethylene based film products and waste bags. The Flexible Packaging segment sells primarily high barrier, multilayer film products as well as printed bags and pouches.

**Raw Material Trends.** Our primary raw material is plastic resin. Polypropylene and polyethylene account for approximately 90% of our plastic resin purchases based on the pounds purchased. Plastic resins are subject to price fluctuations, including those arising from supply shortages and changes in the prices of natural gas, crude oil and other petrochemical intermediates from which resins are produced. The average industry prices, as published in Chem Data as of June 30, 2012 per pound were as follows by fiscal year:

	Polyethylene Butene Film			Polypropylene		
	2012	2011	2010	2012	2011	2010
1st quarter	\$ .68	\$ .68	\$ .71	\$ .79	\$ .78	\$ .70
2nd quarter	.76	.72	.67	.88	.95	.82
3rd quarter	.72	.79	.68	.85	1.08	.84
4th quarter	—	.73	.62	—	.98	.77

We expect that plastic resin cost volatility will continue in calendar year 2012 as prices are expected to decline slightly during the fourth fiscal quarter. Due to differences in the timing of passing through resin cost changes to our customers on escalator/de-escalator programs, segments are negatively impacted in the short term when plastic resin costs increase and are positively impacted when plastic resin costs decrease. Recently, the Company has made progress towards shortening these timing lags, but we still have a number of customers whose prices adjust quarterly based on various index prices. This timing lag in passing through raw material cost changes could affect our results as plastic resin costs fluctuate.

**Outlook.** The Company is impacted by general economic and industrial growth, plastic resin availability and affordability, and general industrial production. Our business has both geographic and end market diversity, which reduces the effect of any one of these factors on our overall performance. Our results are affected by our ability pass through raw material cost changes to our customers, improve manufacturing productivity and adapt to volume changes of our customers. We seek to improve our overall profitability by implementing cost reduction programs for our manufacturing, selling and general and administrative expenses.

## Acquisitions, Dispositions and Facility Rationalizations

We have a long history of acquiring and integrating companies, having completed eleven transactions in the last six years. We maintain an opportunistic acquisition strategy, which is focused on improving our long-term financial performance, enhancing our market positions and expanding our product lines or, in some cases, providing us with a new or complementary product line. We believe we have been one of the most active acquirers of plastic packaging businesses globally, having acquired more than 30 businesses since 1988. In our acquisitions, we seek to obtain businesses for attractive post-synergy multiples, creating value for our stockholders from synergy realization, leveraging the acquired products across our customer base, creating new platforms for future growth, and assuming best practices from the businesses we acquire.

The company has included the expected benefits of acquisition integrations within our unrealized synergies, which are in turn recognized in earnings after an acquisition has been fully integrated. While the expected benefits on earnings is estimated at the commencement of each transaction, once the execution of the plan and integration occur, we are generally unable to accurately estimate or track what the ultimate effects have been due to system integrations and movements of activities to multiple facilities. As historical business combinations have not allowed us to accurately separate realized synergies compared to what was initially identified, we measure the synergy realization based on the overall segment profitability post integration. In connection with our acquisitions, we have in the past and may in the future incur charges related to reductions and rationalizations.

We also include the expected impact of our restructuring plans within our unrealized synergies which are in turn recognized in earnings after the restructuring plans are completed. While the expected benefits on earnings is estimated at the commencement of each plan, due to the nature of the matters we are generally unable to accurately estimate or track what the ultimate effects have been due to movements of activities to multiple facilities.

### *LINPAC Packaging Filmco, Inc.*

In August 2011, the company acquired 100% of the common stock of Filmco from LINPAC USA Holdings, Inc., a subsidiary of the UK-based LINPAC Group, for a purchase price of \$19 million. Filmco is a manufacturer of PVC stretch film packaging for fresh meats, produce, freezer and specialty applications. The newly added business is operated in the company's Engineered Materials reporting segment. To finance the purchase, the company used cash on hand and existing credit facilities. The Filmco acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

### *Rexam Specialty and Beverage Closures*

In September 2011, the company acquired 100% of the capital stock of Rexam SBC. The aggregate purchase price was \$351 million (\$340 million, net of cash acquired). Rexam SBC's primary products include plastic closures, fitments and dispensing closure systems, and jars. The business is operated in the company's Rigid Packaging business. To finance the purchase, the company used cash on hand and existing credit facilities. The Rexam SBC acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

### *STOPAQ®*

In June 2012, the Company acquired 100% of the shares of Frans Nooren Beheer B.V. and its operating companies ("Stopaq") for a purchase price of \$65 million (\$62 million, net of cash acquired). Stopaq is the inventor and manufacturer of patented visco-elastic technologies for use in corrosion prevention, sealing and insulation applications ranging from pipelines to subsea piles to rail and cable joints. The newly added business



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is operated in the Company's Engineered Materials reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Stopaq acquisition has been accounted for under the purchase method of accounting, and accordingly, the preliminary purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

### *Plant Rationalizations*

During fiscal 2011, the company announced the intention to shut down three facilities within its Engineered Materials division with the affected business accounting for approximately \$110 million of annual net sales. The company also announced the intention to shut down two facilities within its Flexible Packaging division with the affected business accounting for approximately \$20 million of annual net sales. The company also announced its intention to shut down a manufacturing location within its Rigid Closed Top operating segments with the affected business accounting for approximately \$14 million of annual net sales. The majority of the operations related to these shutdowns were transferred to other facilities. The primary factors contributing to these shut downs included volume declines and integration of acquisitions. The volume declines were primarily attributed to the company pursuing a strategy of raising price to improve product profitability in markets with historically lower margins. Plant rationalizations are frequently part of the overall acquisition strategy when the company estimates acquisition synergies. As of fiscal 2011, the company anticipates these restructuring initiatives will require future charges of \$3 million that the company intends to fund with cash from operations and \$4 million of future cost savings.

## **Financial Statement Presentation**

The following paragraphs provide a brief description of certain items and accounting policies that appear in our financial statements and general factors that impact these items.

### *Net Sales*

Net sales represent gross sales less deductions taken for sales returns and allowances, sales term discounts and incentive rebates programs.

### *Cost of Sales*

Cost of sales includes all costs of manufacturing to bring a product to its sale condition. Such costs include direct and indirect materials, direct and indirect labor costs, including fringe benefits, supplies, utilities, depreciation, insurance, pension and postretirement benefits, and other manufacturing related costs. The largest component of our costs of sales is the cost of materials, and the most significant component of this is plastic resin.

### *Selling, general and administrative expenses*

Selling, general and administrative expenses primarily include sales and marketing, finance and administration, research and development and information technology costs. Our major cost elements include salary and wages, fringe benefits, travel and information technology costs.

### *Amortization expense*

Amortization expense includes the amortization of the company's definite lived intangible assets.

### *Restructuring and impairment charges*

Restructuring and impairment charges include severance, non-cash impairment charges and other expenses associated with the company's facility rationalization programs and also includes non-cash impairment charges for goodwill impairments.

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### *Other operating expenses*

Other operating expenses primarily consists of management fees to our sponsors, acquisition integration expenses and transaction costs associated with acquisitions.

### *Other expense (income)*

Other expense (income) primarily consists of gains or losses on the extinguishment of debt and the changes in the fair value of any derivative instruments.

### *Interest expense*

Interest expense represents the cash and non-cash interest for all of the company's outstanding indebtedness. Based on \$468 million of IPO proceeds (at the midpoint of the range set forth on the cover) anticipated to be available for repayment of the company's 11% Senior Subordinated Notes, our annualized cash interest expense will be reduced by approximately \$50 million.

## **Comparison of the Three Quarterly Periods Ended June 30, 2012 (the "YTD") and the Three Quarterly Periods Ended July 2, 2011 (the "Prior YTD")**

*Net Sales.* Net sales increased from \$3,332 million in the Prior YTD to \$3,562 million in the YTD. This increase is primarily attributed to acquisition volume of 11% relating to the Rexam SBC and Filmco acquisition and increased selling prices of 4% partially offset by a volume decline of 8%. The following discussion in this section provides a comparison of net sales by business segment.

(in millions)	Three Quarterly Periods Ended		\$ Change	% Change
	June 30, 2012	July 2, 2011		
Net sales:				
Rigid Open Top	\$ 912	\$ 905	\$ 7	1%
Rigid Closed Top	1,085	746	339	45%
Engineered Materials	1,010	1,083	(73)	(7%)
Flexible Packaging	555	598	(43)	(7%)
Total net sales	\$3,562	\$3,332	\$ 230	7%

Net sales in the Rigid Open Top business increased from \$905 million in the Prior YTD to \$912 million in the YTD as a result of net selling price increases of 5% partially offset by a volume decline of 4%. The volume decline is primarily attributed to the Company pursuing a strategy to improve profitability in products with historically lower margins. Net sales in the Rigid Closed Top business increased from \$746 million in the Prior YTD to \$1,085 million in the YTD primarily as a result of 47% acquisition volume attributed to Rexam SBC acquisition and net selling price increases of 2% partially offset by a volume decline of 4%. The volume decline is primarily attributed to general market softness. The Engineered Materials business net sales decreased from \$1,083 million in the Prior YTD to \$1,010 million in the YTD as a result of a volume decline of 10% partially offset by net selling price increases of 3%. The volume decline is primarily attributed to a decrease in sales volumes due to the strategy we implemented in fiscal 2011 to improve margins in markets where our products were historically undervalued. Net sales in the Flexible Packaging business decreased from \$598 million in the Prior YTD to \$555 million in the YTD as a result of a volume decline of 12% partially offset by 5% net selling price increases. The volume decline is primarily due to a decrease in sales volumes due to the strategy implemented in fiscal 2011 discussed above.

*Operating Income.* Operating income increased from \$149 million (4% of Net Sales) in the Prior YTD to \$218 million (6% of Net Sales) in the YTD. This increase is primarily attributed to \$47 million from the relationship of net selling price to raw material costs, \$21 million decrease of depreciation expense, \$8 million

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decrease in amortization expense, \$6 million decrease of integration expenses, and \$15 million of improved manufacturing efficiencies partially offset by \$24 million from volume declines described above, \$3 million of increased selling, general and administrative expenses and \$1 million of operating loss from acquisitions. The operating income from acquisition for periods without comparable prior year activity includes \$24 million of selling, general and administrative expenses, \$8 million of business integration expenses and \$10 million of amortization expense. The following discussion in this section provides a comparison of operating income by business segment.

(in millions)	Three Quarterly Periods Ended		\$ Change	% Change
	June 30, 2012	July 2, 2011		
Operating income (loss):				
Rigid Open Top	\$ 122	\$102	\$ 20	20%
Rigid Closed Top	58	57	1	2%
Engineered Materials	39	14	25	179%
Flexible Packaging	(1)	(24)	23	96%
Total operating income	\$ 218	\$149	\$ 69	46%

Operating income for the Rigid Open Top business increased from \$102 million (11% of net sales) in the Prior YTD to \$122 million (13% of sales) in the YTD. This increase is primarily attributed to a \$26 million improvement in the relationship of net selling price to raw material costs and \$5 million reduction of depreciation and amortization expense partially offset by a decline in manufacturing efficiencies of \$6 million, \$4 million from volume declines described above and \$4 million increase of selling, general and administrative expenses. Operating income for the Rigid Closed Top business increased from \$57 million (8% of sales) in the Prior YTD to \$58 million (5% of net sales) in the YTD. This increase is primarily attributed to a \$16 million increase of manufacturing efficiencies, \$2 million reduction of selling, general and administrative expense and \$8 million reduction of depreciation and amortization expense offset by negative \$2 million from acquisition volume, \$6 million decrease in the relationship of net selling price to raw material costs, \$8 million from the volume decline described above and \$8 million of increase business integration expense. Operating income for the Engineered Materials business improved from \$14 million (1% of net sales) in the Prior YTD to \$39 million (4% of net sales) in the YTD. This increase is primarily attributed to a \$13 million improvement in the relationship of net selling price to raw material costs, \$9 million of improved operating performance in manufacturing, \$4 million reduction of depreciation and amortization expense, \$1 million from acquisition volume and \$6 million of reduced business integration expenses partially offset by \$7 million of volume decline described above as the majority of the segment's costs are variable and \$1 million increase in selling, general and administrative expenses. Operating loss for the Flexible Packaging business improved from \$24 million (-4% of net sales) in the Prior YTD to \$1 million (0% of net sales) in the YTD. This improvement is primarily attributed to a \$14 million improvement in the relationship of net selling price to raw material costs, \$9 million reduction of business integration costs and \$11 million reduction of depreciation and amortization expense partially offset by \$4 million from the volume decline and a \$3 million decline in manufacturing efficiencies.

*Other Expense (Income) Net.* Other expense (income) moved from expense of \$67 million in the Prior YTD to income of \$1 million in the YTD. The Prior YTD Other expense is primarily related to the loss on extinguishment of debt of \$68 million attributed to the write-off of deferred fees, debt discount and the premiums paid related to the debt extinguishment of the Company's 8<sup>7</sup>/<sub>8</sub>% Second Priority Senior Secured Notes partially offset by a gain attributed to the fair value adjustment for our interest rate swaps. The YTD is primarily related to fair value adjustments for the interest rate swaps.

*Interest Expense.* Interest expense increased from \$243 million in the Prior YTD to \$248 million in the YTD primarily as a result of increased borrowings to finance the acquisitions of Rexam SBC and Filmco.

*Interest Income.* Interest income was \$1 million for the YTD.

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*Income Tax Benefit.* For the YTD, we recorded \$8 million or an effective tax rate of 26% compared to \$54 million or an effective tax rate of 33% in the Prior YTD due to the relative impact of non-deductible items and valuation allowance established for certain international entities.

*Net Income (Loss).* Net loss improved from \$107 million in the Prior YTD to \$20 million in the YTD for the reasons discussed above.

### Discussion of Results of Operations for Fiscal 2011 Compared to Fiscal 2010

*Net Sales.* Net sales increased to \$4,561 million for fiscal 2011 from \$4,257 million for fiscal 2010. This increase is primarily attributed to (1) increased selling prices of 9% as a result of higher plastic resin costs as noted in the “Raw Material Trends” section above and the company pursuing a strategy to improve product profitability in markets with historically lower margins and (2) acquisition volume growth of 5% partially offset by a base volume decline of 7%. The following discussion in this section provides a comparison of net sales by business segment.

(in millions)	Fiscal Year		\$ Change	% Change
	2011	2010		
Net sales:				
Rigid Open Top	\$1,261	\$1,160	\$ 101	9%
Rigid Closed Top	1,053	970	83	9%
Rigid Packaging	\$2,314	\$2,130	\$ 184	9%
Engineered Materials	1,451	1,457	(6)	0%
Flexible Packaging	796	670	126	19%
Total net sales	\$4,561	\$4,257	\$ 304	7%

Net sales in the Rigid Open Top business increased from \$1,160 million in fiscal 2010 to \$1,261 million in fiscal 2011 as a result of net selling price increases of 10% due to the factors noted above and acquisition growth attributed to Superfos Packaging, Inc. (“Superfos”) of 1% partially offset by a base volume decline. The base volume decline is primarily attributed to a decrease in sales volumes in various container products due to market softness partially offset by continued volume growth in thermoforming drink cups as capital investments from prior periods provided additional capacity. Net sales in the Rigid Closed Top business increased from \$970 million in fiscal 2010 to \$1,053 million in fiscal 2011 as a result of net selling price increases of 6% due to the factors noted above and acquisition volume growth attributed to Rexam SBC of 4% partially offset by a base volume decline. The base volume decline is primarily attributed to a decrease in sales volumes in closures and tubes due to softness in the personal care market. Net sales in the Engineered Materials business decreased from \$1,457 million in fiscal 2010 to \$1,451 million in fiscal 2011 as a result of a base volume decline of 11% partially offset by acquisition volume growth attributed to Pliant Corporation (“Pliant”) and Filmco of 3% and net selling price increases of 8% due to the factors listed above. The base volume decline is primarily attributed to a decrease in sales volumes in bags, sheeting, institutional can liners and stretch film. The bags and sheeting decreases were primarily due to the loss of the private label Wal-Mart waste bag business and our decision to exit certain sheeting businesses during fiscal 2010. The declines in institutional can liners and stretch film were primarily attributed to the company strategically addressing products with profitability that was lower than the value we believed our product provided to our customers. Net sales in the Flexible Packaging business increased from \$670 million in fiscal 2010 to \$796 million in fiscal 2011 primarily as a result of net selling price increases of 13% due to the factors listed above and acquisition growth attributed to Pliant of 19% partially offset by a base volume decline of 13%. The base volume decline is primarily attributed to a decrease in sales volumes in personal care films and barrier films. These declines were primarily attributed to the company strategically addressing products with profitability that was lower than the value we believed our products provided to our customers.

*Operating Income.* Operating income decreased from \$124 million in fiscal 2010 to \$42 million in fiscal 2011. This decrease is primarily attributed to a \$165 million non-cash goodwill impairment, \$11 million increase

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integration and business optimization expenses excluding acquisition activity for periods without comparable prior year activity, \$15 million increase in depreciation expense excluding acquisition activity for periods without comparable prior year activity and \$13 million from base volume decline described above partially offset by \$61 million from the relationship of net selling price to raw material costs, \$5 million decrease in amortization expense excluding acquisition activity for periods without comparable prior year activity, \$9 million of operating income from acquisitions for periods without comparable prior year activity and \$48 million of improved operating performance. The operating income from acquisition for periods without comparable prior year activity includes \$2 million of selling, general and administrative expenses and \$4 million of amortization expense. The following discussion in this section provides a comparison of operating income by business segment.

(in millions)	Fiscal Year		\$ Change	% Change
	2011	2010		
Operating income (loss):				
Rigid Open Top	\$ 155	\$124	\$ 31	25%
Rigid Closed Top	77	73	4	5%
Rigid Packaging	\$ 232	\$197	\$ 35	18%
Engineered Materials	(71)	4	(75)	(1,875%)
Flexible Packaging	(119)	(77)	(42)	(55%)
Total operating income	\$ 42	\$124	\$ (82)	(66%)

Operating income for the Rigid Open Top business increased from \$124 million (11% of net sales) for fiscal 2010 to \$155 (12% of net sales) million in fiscal 2011. This increase is primarily attributed to \$19 million of improved operating performance in manufacturing, \$22 million from the relationship of net selling price to raw material costs and \$4 million reduction of business optimization expense partially offset by \$9 million of higher selling, general and administrative expenses and \$9 million of higher depreciation and amortization expense. Operating income for the Rigid Closed Top business increased from \$73 million (8% of net sales) for fiscal 2010 to \$77 million (7% of net sales) in fiscal 2011. This increase is primarily attributed to \$16 million of improved operating performance in manufacturing partially offset by a \$2 million negative relationship of net selling price to raw material costs, \$3 million of higher selling, general and administrative costs, \$5 million increase in restructuring costs and \$4 million decline from base volume partially offset by \$4 million of operating income from acquisitions. Engineered Materials operating income declined from \$4 million (0% of net sales) of operating income for fiscal 2010 to \$71 million (negative 5% of net sales) of operating loss in fiscal 2011. This decline is primarily attributed to an \$88 million non-cash goodwill impairment charge in fiscal 2011, \$11 million increase of integration and business optimization costs and \$2 million from base volume decline described above as the majority of the segment's costs are variable partially offset by \$12 million of improved operating performance, \$9 million improvement from the relationship of net selling price to raw material costs, \$6 million of lower selling, general and administrative expenses. Operating loss for the Flexible Packaging business increased from \$77 million (negative 11% of net sales) for fiscal 2010 to \$119 million (negative 15% of net sales) in fiscal 2011. This increase is primarily attributed to a \$77 million non-cash goodwill impairment charge in fiscal 2011 and \$7 million from base volume decline partially offset by \$1 million of improved operating performance, \$32 million improvement in the relationship of net selling price to raw material costs, \$5 million from acquisitions and \$4 million of lower selling, general and administrative expenses.

*Other Expense (Income), Net.* Other expense of \$61 million recorded in fiscal 2011 is primarily attributed to a \$68 million loss on extinguishment of debt attributed to the write-off of \$14 million of deferred financing fees, \$17 million of non-cash debt discount and \$37 million of premiums paid related to the debt extinguishment of the company's 8<sup>7</sup>/<sub>8</sub>% Second Priority Senior Secured Notes. Other income recorded in fiscal 2010 is primarily attributed to a \$13 million gain related to the repurchase of debt and a \$13 million gain attributed to the fair value adjustment for our interest rate swaps. See footnote 3 to the Consolidated Financial Statements for further discussion on debt repurchases and footnote 4 to the Consolidated Financial Statements for further discussion of financial instruments and fair value measurements.

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*Interest Expense.* Interest expense increased from \$313 million in fiscal 2010 to \$327 million in fiscal 2011 primarily as a result of increased borrowings to fund acquisitions.

*Income Tax Benefit.* For fiscal 2011, we recorded an income tax benefit of \$47 million or an effective tax rate of 14% compared to an income tax benefit of \$49 million or an effective tax rate of 30% in fiscal 2010. The effective tax rate is less than the statutory rate primarily attributed to the non-cash goodwill impairment charge in fiscal 2011 which is not tax deductible and the establishment of a valuation allowance for certain foreign operating losses where the benefits are not expected to be realized.

*Net Loss.* Net loss was \$299 million for fiscal 2011 compared to \$113 million for fiscal 2010 for the reasons discussed above.

### Discussion of Results of Operations for Fiscal 2010 Compared to Fiscal 2009

*Net Sales.* Net sales increased to \$4,257 million for fiscal 2010 from \$3,187 million for fiscal 2009. This increase includes base volume growth of 7% due to the company electing to aggressively protect market share during a soft economic period and acquisition volume growth of 27% attributed to Pliant and Superfos. The following discussion in this section provides a comparison of net sales by business segment.

(in millions)	Fiscal Year		\$ Change	% Change
	2010	2009		
Net sales:				
Rigid Open Top	\$ 1,160	\$ 1,028	\$ 132	13%
Rigid Closed Top	970	857	113	13%
Rigid Packaging	\$ 2,130	\$ 1,885	\$ 245	13%
Engineered Materials	1,457	1,219	238	19%
Flexible Packaging	670	83	587	707%
Total net sales	\$ 4,257	\$ 3,187	\$ 1,070	34%

Net sales in the Rigid Open Top business increased from \$1,028 million in fiscal 2009 to \$1,160 million in fiscal 2010 as a result of base volume growth of 9% and acquisition growth attributed to Superfos. The base volume growth is primarily attributed to increased sales volumes in various container products and continued volume growth in thermoforming drink cups resulting in the company electing to expand our thermoformed drink cup capacity with significant capital investment in fiscal 2010. Net sales in the Rigid Closed Top business increased from \$857 million in fiscal 2009 to \$970 million in fiscal 2010 primarily as a result of base volume growth of 14% partially offset by net selling price decreases of 1%. The base volume growth is primarily attributed to increased sales volumes in closures and bottles due to factors listed above. Net sales in the Engineered Materials business increased from \$1,219 million in fiscal 2009 to \$1,457 million in fiscal 2010 primarily as a result of acquisition volume growth attributed to Pliant. Net sales in the Flexible Packaging business increased from \$83 million in fiscal 2009 to \$670 million in fiscal 2010 primarily as a result of acquisition volume growth attributed to Pliant and a base volume growth of 6% due to factors listed above.

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*Operating Income.* Operating income decreased from \$186 million in fiscal 2009 to \$124 million in fiscal 2010. This decrease is primarily attributed to \$13 million increase integration and business optimization expenses excluding acquisition activity for periods without comparable prior year activity, \$31 million of operating losses from acquisitions for periods without comparable prior year activity, \$11 million increase in depreciation expense excluding acquisition activity for periods without comparable prior year activity and \$72 million from the relationship of net selling price to raw material costs partially offset by \$47 million from base volume growth described above, \$6 million decrease in amortization expense excluding acquisition activity for periods without comparable prior year activity, \$6 million of lower selling general and administrative expense excluding the impact of acquisition activity for periods without comparable prior year activity and \$3 million of improved operating performance. The operating loss from acquisition for periods without comparable prior year activity includes \$49 million of selling, general and administrative expenses, \$40 million of integration and business optimization expense and \$17 million of amortization expense. The following discussion in this section provides a comparison of operating income by business segment.

(in millions)	Fiscal Year		\$ Change	% Change
	2010	2009		
Operating income (loss):				
Rigid Open Top	\$ 124	\$ 114	\$ 10	9%
Rigid Closed Top	73	58	15	26%
Rigid Packaging	\$ 197	\$ 172	\$ 25	15%
Engineered Materials	4	27	(23)	(85%)
Flexible Packaging	(77)	(13)	(64)	(492%)
Total operating income	\$ 124	\$ 186	\$ (62)	(33%)

Operating income for the Rigid Open Top business increased from \$114 million (11% of net sales) for fiscal 2009 to \$124 million (11% of net sales) in fiscal 2010. The increase is attributed to \$21 million increase from base volume growth, \$5 million of lower selling, general and administrative expenses, \$18 million reduction of integration and business optimization expense and \$6 million from acquisitions partially offset by a \$28 million negative relationship of net selling price to raw material cost, \$6 million increase in depreciation expense and an \$8 million decline in operations. Operating income for the Rigid Closed Top business increased from \$58 million (7% of net sales) for fiscal 2009 to \$73 million (8% of net sales) in fiscal 2010. The increase is primarily attributable to \$27 million from base volume growth and \$2 million from improved operating performance in manufacturing partially offset by a \$12 million negative relationship of net selling price to raw material cost. Operating income for the Engineered Materials business decreased from \$27 million (2% of net sales) for fiscal 2009 to \$4 million (0% of net sales) in fiscal 2010. The decline is primarily attributable to a \$31 million negative relationship of net selling price to raw material cost partially offset by \$8 million of improved operating performance in manufacturing, \$7 million higher depreciation and amortization expense and \$2 million lower selling, general and administrative expenses. Operating loss for the Flexible Packaging business increased from \$13 million (negative 16% of net sales) for fiscal 2009 to \$77 million (negative 11% of net sales) in fiscal 2010. The increased operating loss is primarily attributable to \$37 million from acquisitions, including \$26 million of transaction costs, and \$33 million increase of integration and business optimization expense partially offset by \$7 million lower depreciation and amortization expense.

*Other Income.* Other income recorded in fiscal 2010 is primarily attributed to a \$13 million gain related to the repurchase of debt and a \$13 million gain attributed to the fair value adjustment for our interest rate swaps. Other income recorded in fiscal 2009 is primarily attributed to a \$368 million gain related to the repurchase of debt and a \$6 million gain attributed to the fair value adjustment for our interest rate swaps. See footnote 3 to the Consolidated Financial Statements for further discussion debt repurchases and footnote 4 to the Consolidated Financial Statements for further discussion of financial instruments and fair value measurements.

*Interest Expense.* Interest expense increased by \$9 million in fiscal 2010 primarily as a result of increased borrowings partially offset by a decline in borrowing rates on variable rate debt partially attributed to the swap agreement that expired in November 2009.

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*Income Tax Expense (Benefit).* For fiscal 2010, we recorded an income tax benefit of \$49 million or an effective tax rate of 30%, which is a change of \$148 million from the income tax expense of \$99 million or an effective tax rate of 39% in fiscal 2009. The effective tax rate is different than the statutory rate primarily attributed to the relative impact to permanent items and establishment of valuation allowance for certain foreign operating losses where the benefits are not expected to be realized.

*Net Income (Loss).* Net loss was \$113 million for fiscal 2010 compared to a net income of \$152 million for fiscal 2009 for the reasons discussed above.

### **Income Tax Matters**

At fiscal year-end 2011, the company had unused federal operating loss carryforwards of \$904 million which begin to expire in 2021 and \$33 million of foreign operating loss carryforwards. Alternative minimum tax credit carryforwards of \$8 million are available to the company indefinitely to reduce future years' federal income taxes. The net operating losses are subject to an annual limitation under guidance from the Internal Revenue Code, however the annual limitation is in excess of the net operating loss, so effectively no limitation exists. As part of the effective tax rate calculation, if we determine that a deferred tax asset arising from temporary differences is not likely to be utilized, we will establish a valuation allowance against that asset to record it at its expected realizable value. The company has not provided a valuation allowance on its net federal net operating loss carryforwards in the United States because it has determined that future reversal of its temporary taxable differences will occur in the same periods and are of the same nature as the temporary differences giving rise to the deferred tax assets. The company has provided a valuation allowance against a portion of the state operating loss carryforwards because it is unlikely they will be utilized. Our valuation allowance against deferred tax assets was \$43 million and \$47 million at the end of fiscal 2011 and 2010, respectively, related to certain foreign and state operating loss carryforwards. In connection with our initial public offering, we will enter into an income tax receivable agreement, whereby we will pay our existing shareholders, option holders and holders of our stock appreciation rights 85% of the amount of cash savings from the utilization of our and our subsidiaries' federal, foreign, state and local net operating loss carryforwards. Assuming our initial public offering occurred as of June 30, 2012, we expect to pay between \$310 million and \$350 million in cash related to this agreement, based on our current taxable income estimates. Any changes in our valuation allowance subsequent to our initial public offering that related to our net operating loss carryforwards that were generated prior to our initial public offering will be treated as income tax expense (benefit) in our consolidated statement of operations. Any changes in the amount we expect to pay under the income tax receivable agreement is based on the realizability of the underlying deferred tax assets, and the related change in our obligation under the income tax receivable agreement would be recognized in the statement of operations in other income (expense).

### **Liquidity and Capital Resources**

#### *Berry Plastics Corporation Senior Secured Credit Facility*

Our wholly owned subsidiary Berry Plastics Corporation's senior secured credit facilities consist of a \$1,200 million term loan and a \$650 million asset-based revolving line of credit ("*Credit Facility*"). The term loan matures in April 2015 and the revolving line of credit matures in June 2016, subject to certain conditions. The availability under the revolving line of credit is the lesser of \$650 million or a defined borrowing base which is calculated based on available accounts receivable and inventory. The revolving line of credit allows up to \$130 million of letters of credit to be issued instead of borrowings under the revolving line of credit. At June 30, 2012, the company had \$163 million outstanding on the revolving credit facility, \$39 million outstanding letters of credit and a \$54 million borrowing base reserve providing unused borrowing capacity of \$394 million under the revolving line of credit. The company was in compliance with all covenants as of June 30, 2012.

Berry Plastics Corporation's fixed charge coverage ratio, as defined in the revolving credit facility, is calculated based on a numerator consisting of Adjusted EBITDA less pro forma adjustments, income taxes paid



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in cash and capital expenditures, and a denominator consisting of scheduled principal payments in respect of indebtedness for borrowed money, interest expense and certain distributions. Berry Plastics Corporation is obligated to sustain a minimum fixed charge coverage ratio of 1.0 to 1.0 under the revolving credit facility at any time when the aggregate unused capacity under the revolving credit facility is less than 10% of the lesser of the revolving credit facility commitments and the borrowing base (and for 10 business days following the date upon which availability exceeds such threshold) or during the continuation of an event of default. At June 30, 2012, the company had unused borrowing capacity of \$394 million under the revolving credit facility and thus was not subject to the minimum fixed charge coverage ratio covenant. Our fixed charge coverage ratio was 1.8 to 1.0 at June 30, 2012.

Despite not having financial maintenance covenants, Berry Plastics Corporation's debt agreements contain certain negative covenants. The failure to comply with these negative covenants could restrict Berry Plastics Corporation's ability to incur additional indebtedness, effect acquisitions, enter into certain significant business combinations, make distributions or redeem indebtedness. The term loan facility contains a negative covenant first lien secured leverage ratio covenant of 4.0 to 1.0 on a pro forma basis for a proposed transaction, such as an acquisition or incurrence of additional first lien debt. Berry Plastics Corporation's first lien secured leverage ratio was 3.1 to 1.0 at June 30, 2012.

A key financial metric utilized in the calculation of the first lien leverage ratio is Adjusted EBITDA as defined in Berry Plastics Corporation's senior secured credit facilities. The following table reconciles Berry Plastics Corporation's Adjusted EBITDA for fiscal 2011, the twelve months ended and quarterly period ended June 30, 2012 to net loss.

(in millions)	Fiscal 2011	Four Quarters ended June 30, 2012	Quarterly Period Ended June 30, 2012
Adjusted EBITDA	\$ 750	\$ 784	\$ 203
Net interest expense	(327)	(331)	(82)
Depreciation and amortization	(344)	(355)	(86)
Income tax benefit (expense)	47	1	(7)
Business optimization and other expense	(42)	(59)	(11)
8.875% Second Priority Notes extinguishment <sup>(a)</sup>	(68)	—	—
Restructuring and impairment <sup>(b)</sup>	(221)	(215)	(4)
Pro forma acquisitions	(55)	(16)	(2)
Unrealized cost savings	(39)	(21)	(2)
Net loss	<u>\$ (299)</u>	<u>\$ (212)</u>	<u>\$ 9</u>
Cash flow from operating activities	\$ 327	\$ 400	\$ 123
Additions to property, plant and equipment	(160)	(201)	(61)
Adjusted free cash flow	<u>\$ 167</u>	<u>\$ 199</u>	<u>\$ 62</u>
Cash flow from investing activities	(523)	(610)	(122)
Cash flow from financing activities	90	77	6

(a) Includes \$14 of non-cash write off of deferred financing fees, \$17 of non-cash write off of debt discount and \$37 of premiums paid for extinguishment of debt.

(b) Includes: \$165 of non-cash goodwill impairment for fiscal 2011 and four quarters ended June 30, 2012.

While the determination of appropriate adjustments in the calculation of Adjusted EBITDA is subject to interpretation under the terms of the Credit Facility, management believes the adjustments described above are in accordance with the covenants in the Credit Facility. Adjusted EBITDA should not be considered in isolation or construed as an alternative to net income (loss) or other measures as determined in accordance with GAAP. In addition, other companies in our industry or across different industries may calculate bank covenants and related definitions differently than we do, limiting the usefulness of our calculation of Adjusted EBITDA as a comparative measure.

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### *Contractual Obligations and Off Balance Sheet Transactions*

Our contractual cash obligations at the end of fiscal 2011 are summarized in the following table (and do not give effect to the application of the proceeds from this offering).

	Payments due by period as of the end of fiscal 2011 (in millions)				
	Total	< 1 year	1-3 years	4-5 years	> 5 years
Long-term debt, excluding capital leases	\$4,542	\$ 24	\$ 279	\$ 2,937	\$ 1,302
Capital leases <sup>(a)</sup>	120	27	48	33	12
Fixed interest rate payments <sup>(b)</sup>	1,536	248	473	402	413
Variable interest rate payments <sup>(c)</sup>	219	56	130	33	—
Operating leases	247	47	63	46	91
Redeemable shares	16	5	9	2	—
Funding of pension and other postretirement obligations <sup>(d)</sup>	8	8	—	—	—
Total contractual cash obligations <sup>(e)</sup>	<u>\$6,688</u>	<u>\$ 415</u>	<u>\$ 1,002</u>	<u>\$ 3,453</u>	<u>\$ 1,818</u>

The table above does not give any effect to the use of proceeds from this offering to redeem long term debt or the effect of the Tax Receivable Agreement.

(a) Includes anticipated interest of \$22 million over the life of the capital leases.

(b) Includes variable rate debt subject to interest rate swap agreements.

(c) Based on applicable interest rates in effect at the end of fiscal 2011.

(d) Pension and other postretirement contributions have been included in the above table for the next year. The amount is the estimated contributions to our defined benefit plans. The assumptions used by the actuary in calculating the projection includes weighted average return on pension assets of approximately 8% for 2011. The estimation may vary based on the actual return on our plan assets.

(e) Excludes Uncertain Tax Positions as we believe that any potential required payment would reduce the Net Operating Loss Carryforward and not result in a material cash payment by the company.

### *Cash Flows from Operating Activities*

Net cash provided by operating activities increased from \$205 million in the Prior YTD to \$278 million in the YTD. This increase is primarily attributed to improved operating performance.

Net cash provided by operating activities was \$327 million for fiscal 2011 compared to \$112 million of cash flows provided by operating activities for fiscal 2010. The change is primarily the result of an improvement in working capital and improved profitability, excluding non-cash charges.

Net cash provided by operating activities was \$112 million for fiscal 2010 compared to \$413 million of cash flows provided by operating activities for fiscal 2009. The change is primarily the result of a change in working capital and acquisition costs incurred of \$22 million in fiscal 2010. The working capital change is primarily attributed to higher volumes and increased raw material costs.

### *Cash Flows from Investing Activities*

Net cash used for investing activities decreased from \$126 million in the Prior YTD to \$213 million in the YTD primarily as a result of increased capital spending and acquisition of Stopaq. Our capital expenditures are forecasted to be approximately \$230 million for fiscal 2012 and will be funded from cash flows from operating activities and existing liquidity.

Net cash used for investing activities was \$523 million for fiscal 2011 compared to net cash used of \$852 million for fiscal 2010. The change is primarily a result of the acquisitions of Pliant and Superfos and higher capital spending in fiscal 2010 partially offset by the acquisitions of Rexam SBC and Filmco in fiscal 2011.

Net cash used for investing activities was \$852 million for fiscal 2010 compared to net cash used of \$195 million for fiscal 2009. The change is primarily a result of the acquisition of Pliant and Superfos in fiscal 2010.

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### *Cash Flows from Financing Activities*

Net cash used for financing activities was \$55 million in the Prior YTD compared to \$68 million in the YTD. The change is primarily attributed to the net cash used for repayments on the revolving line of credit in the YTD.

Net cash provided by financing activities was \$90 million for fiscal 2011 compared to net cash provided by financing activities of \$878 million for fiscal 2010. This change is primarily attributed to the issuance of the 9<sup>3</sup>/<sub>4</sub>% Second Priority Notes in fiscal 2010 partially offset by borrowing on the existing line of credit to fund the Rexam SBC acquisition in fiscal 2011.

Net cash provided by financing activities was \$878 million for fiscal 2010 compared to net cash used for financing activities of \$398 million for fiscal 2009. This change is primarily attributed to the \$620 million debt issued in November 2009 in order to fund the Pliant acquisition and \$500 million of 9<sup>1</sup>/<sub>2</sub>% Second Priority Notes in April 2010.

We will enter into an income tax receivable agreement with our existing stockholders and option holders that will provide for the payment of 85% of the cash savings, if any, in U.S. Federal, foreign, state and local net operating loss carryforwards. Assuming our initial public offering occurred as of June 30, 2012, we expect to pay between \$310 million and \$350 million in cash related to this agreement, based on our current taxable income estimates, and will record a liability on our consolidated balance sheet for 85% of our net operating losses upon consummation of our initial public offering. Based on our current taxable income projections, we would pay a majority of this obligation by the end of Fiscal 2016. We plan to fund the payments under the income tax receivable agreement with cash flow from operations and borrowings under our revolving line of credit. See “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Certain Relationships and Related Party Transactions—Income Tax Receivable Agreement.”

Based on our current level of operations, we believe that cash flow from operations and available cash, together with available borrowings under our senior secured credit facilities, will be adequate to meet our short-term liquidity needs over the next twelve months. We base such belief on historical experience and the funds available under the senior secured credit facilities. In addition, we believe that we have the business strategy and resources to generate free cash flow from operations in the long-term. We do not expect this free cash flow to be sufficient to cover all long-term debt obligations and intend to refinance these obligations prior to maturity. This will require market conditions to allow for such refinancing (see under the heading “Risk Factors” for further disclosure. However, we cannot predict our future results of operations and our ability to meet our obligations involves numerous risks and uncertainties, including, but not limited to, those described in the “Risk Factors” section in this prospectus. In particular, increases in the cost of resin which we are unable to pass through to our customers on a timely basis or significant acquisitions could severely impact our liquidity. At June 30, 2012, our cash balance was \$38 million, and we had unused borrowing capacity of \$394 million under our revolving line of credit.

### **Critical Accounting Policies**

We disclose those accounting policies that we consider to be significant in determining the amounts to be utilized for communicating our consolidated financial position, results of operations and cash flows in the first note to our consolidated financial statements included elsewhere herein. Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements in conformity with these principles requires management to make estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Actual results are likely to differ from these estimates, but management does not believe such differences will materially affect our financial position or results of operations. We believe that the following accounting policies are the most critical because they have the greatest impact on the presentation of our financial condition and results of operations.

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*Revenue Recognition.* Revenue from the sales of products is recognized at the time title and risks and rewards of ownership pass to the customer (either when the products reach the free-on-board shipping point or destination depending on the contractual terms), there is persuasive evidence of an arrangement, the sales price is fixed and determinable and collection is reasonably assured.

*Accrued Rebates.* We offer various rebates to our customers in exchange for their purchases. These rebate programs are individually negotiated with our customers and contain a variety of different terms and conditions. Certain rebates are calculated as flat percentages of purchases, while others include tiered volume incentives. These rebates may be payable monthly, quarterly, or annually. The calculation of the accrued rebate balance involves significant management estimates, especially where the terms of the rebate involve tiered volume levels that require estimates of expected annual sales. These provisions are based on estimates derived from current program requirements and historical experience. We use all available information when calculating these reserves. Our accrual for customer rebates was \$60 million and \$50 million as of fiscal year-end 2011 and 2010, respectively.

*Impairments of Long-Lived Assets.* In accordance with the guidance from the FASB for the impairment or disposal of long-lived assets we review long-lived assets for impairment whenever events or changes in circumstances indicate the carrying amount of such assets may not be recoverable. Impairment losses are recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amounts. The impairment loss is measured by comparing the fair value of the asset to its carrying amount. We recognized non-cash asset impairment of long-lived assets of \$35 million, \$19 million and \$8 million in fiscal 2011, fiscal 2010 and fiscal 2009, respectively, related to our facility rationalization programs.

*Goodwill and Other Indefinite Lived Intangible Assets.* We are required to perform a review for impairment of goodwill and other indefinite lived intangibles to evaluate whether events and circumstances have occurred that may indicate a potential impairment, or on an annual basis. Goodwill is considered to be impaired if we determine that the carrying value of the reporting unit exceeds its fair value. Other indefinite lived intangibles are considered to be impaired if the carrying value exceeds the fair value.

In accordance with our policy, we completed our most recent annual evaluation for impairment of goodwill as of the first day of the fourth fiscal quarter of 2011. We utilized a six year discounted cash flow analysis with a terminal year in combination with a comparable company market approach to determine the fair value of our reporting units. As of October 2, 2011, we had four operating segments, Rigid Open Top, Rigid Closed Top, Specialty Films and Tapes, Bags & Coatings. Each of the operating segments has goodwill with the exception of the Tapes, Bags & Coatings segment. For purposes of conducting our annual goodwill impairment test, we have determined that our operating segments are the same as our reporting units. We determined that each of the components within each of our respective operating segments have similar economic characteristics and therefore should be aggregated into one reporting unit. We reached this conclusion because within each of our operating segments, we have similar products and production processes which allow us to share assets and resources across the product lines. We regularly re-align our production equipment and manufacturing facilities in order to take advantage of cost savings opportunities, obtain synergies and create manufacturing efficiencies. In addition, we utilize our research and development centers, design center, tool shops, and graphics center which all provide benefits to each of the operating segments and work on new products that can not only benefit one product line, but can benefit multiple product lines. We also believe that the goodwill is recoverable from the overall operations of the segment given the similarity in production processes, synergies from leveraging the combined resources, common raw materials, common research and development, similar margins and similar distribution methodologies.

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The company's goodwill, fair value and carrying value of our reporting units are as follows:

(in millions)	Fair Value as of July 2, 2011	Carrying Value as of July 2, 2011	Goodwill as of	
			October 1, 2011	October 2, 2010
Rigid Open Top	\$ 2,110	\$ 1,719	\$ 690	\$ 691
Rigid Closed Top	1,800	1,542	819	771
Specialty Films	865	982	86	238
			<u>\$ 1,595</u>	<u>\$ 1,700</u>

In connection with our annual impairment test in fiscal 2011, despite generating positive free cash flow in fiscal 2011, we determined that the estimated carrying value of the Specialty Films reporting unit calculated as part of the Step 1 impairment test declined by approximately \$225 million resulting in the reporting unit's estimated carrying value exceeding its fair value. This determination required us to perform a Step 2 impairment analysis under ASC 350. Based on our valuation on the Step 2 impairment test, we recorded a goodwill impairment charge of \$165 million. Following our impairment charge, the carrying value of our Specialty Films reporting unit was \$817 million.

In fiscal 2011, we experienced a base volume decline of 11% in our Specialty Films segment. This base volume decline of 11% occurred because of a pricing strategy that we implemented in our second fiscal quarter and continued throughout the remainder of fiscal 2011. This base volume decline of 11% compares to base volume growth of 4% used in our fiscal 2010 annual impairment test. The volume declines we experienced impacted most of our product lines, which included products acquired as part of the Pliant acquisition and integrated into our combined Specialty Films product lines. These price increases drove declines in our overall volumes when comparing fiscal 2011 to fiscal 2010. Since Pliant was acquired out of bankruptcy in the first quarter of fiscal 2010, we did not have a full year of operating results in fiscal 2010 and this resulted in an increase in our 2011 segment net sales of 12% due to the full year impact which offset this 11% loss in volume. We assumed a 2011 net sales growth rate of 4% for Pliant within our fiscal 2010 annual impairment test compared to a 2% decline in Pliant's actual net sales on a pro forma basis. This volume decline resulted in net sales of \$1.5 billion for fiscal 2011 (as adjusted for selling price changes, primarily due to the fluctuation in the cost of plastics resins, our primary raw material input, which is largely passed through to customers) compared to the projected net sales of \$1.7 billion used in our 2010 annual impairment test. This decline in net sales volume resulted in our assuming a lower sales volume base to grow future earnings during year one through year six of our discounted cash flow model, as we do not anticipate recovering the volume lost to competition as a result of the strategy mentioned above. As a result, the estimated carrying value of the Specialty Films Segment was reduced by approximately \$65 million.

In addition, as a result of a more complete understanding of the Pliant business post integration and the focus on higher margin business noted above, we believe a higher level of capital investment is required in order to achieve desired segment margins. In our fiscal 2011 annual impairment test we estimated a required level of capital investment of 3-4% of sales in years one through six and a terminal year capital investment rate of 4% of sales compared to 2-3% of sales in years one through six and a terminal year capital investment rate of 3% of sales assumed in our fiscal 2010 annual impairment test. When comparing our fiscal 2010 annual impairment test to our fiscal 2011 annual impairment test the increased levels of capital investment assumed in years one through six of our discounted cash flow model resulted in an estimated carrying value decline of approximately \$85 million.

When comparing our fiscal 2010 annual impairment test to our fiscal 2011 annual impairment test the increased level of capital investment coupled with a lower sales base to grow future earnings mentioned above resulted in a terminal year reduction in the segment's discounted future cash flows of approximately \$75 million.

We expect to grow our Specialty Films segment in the future at 2-3% through the terminal year, where we have estimated that our terminal growth rate will remain at 3%. We believe the volume declines experienced in

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fiscal 2011 are primarily attributed to the pricing strategy mentioned above and are not an accurate reflection of the reporting unit's long term growth rates. The goodwill in our Specialty Films segment consisted of goodwill from our Pliant acquisition (\$226 million) and other previous flexible film acquisitions. If we continue to experience significant volume declines in future years, this could result in additional impairment charges to goodwill in our Specialty Films segment. In addition, if we are unable to maintain or improve our operating margin for our Specialty Films segment, this could also lead to additional impairment charges. A volume decline of greater than 3% in our Specialty Films segment could result in a future impairment.

We also completed our annual impairment test for our Rigid Open Top and Rigid Closed Top reporting units. The fair value of our Rigid Open Top and Rigid Closed Top reporting units substantially exceeded the carrying value of the reporting units by 23% and 17%, respectively for fiscal 2011. Our forecasts for Rigid Open Top and Rigid Closed Top include overall growth of 3-4% through and including the terminal year, which is 3%. Growth by reporting unit varies from year-to-year between segments. A significant decline in our revenue and earnings could result in an impairment charge; however, our Rigid Open Top and Rigid Closed Top reporting units have historically provided consistent operating cash flows excluding the restructuring charges and acquisition integrations that we have undertaken. We also performed our annual impairment test for fiscal 2011 of our indefinite lived intangible assets, which primarily relate to our Rigid Packaging business. The cash flow assumptions, growth rates and risks to these cash flows are similar to those used in our analysis to determine the fair value of our combined Rigid Packaging businesses. The annual impairment test did not result in any impairment as the fair value exceeded the carrying value. A decline of greater than 10% in the fair value of our trademarks could result in future impairments.

Given the uncertainty in economic trends, revenue and earnings growth, the cost of capital and other risk factors discussed under the heading "Risk Factors", there can be no assurance that when we complete our future annual or other periodic reviews for impairment of goodwill that an additional material impairment charge will not be recorded as a result. In addition, historically we have grown our business by acquiring and integrating companies into our existing operations. We may not, however, achieve the expected benefits of integrating such acquisitions into our business that we anticipated at the time of the transaction or at the time that we performed our annual impairment tests, which may impact the overall recoverability of our goodwill and indefinite lived intangible assets in future periods. We believe based on our current forecasts and estimates that we will not recognize any future impairment charge, but given the current uncertainty in the economic trends, our forecasts and estimates could change quickly and materially in future periods and differ substantially from actual results. Goodwill totaled \$1,595 million and \$1,700 million at the end of fiscal 2011 and 2010, respectively. Indefinite lived trademarks totaled \$220 at the end of fiscal 2011 and 2010, respectively. Effective with our segment realignment on January 1, 2012, goodwill was allocated to the new operating segments based on an estimated fair value. We considered whether any potential impairment existed after the operations were realigned into their new reporting structure and no additional impairment was determined due to this reorganization. Goodwill as of June 30, 2012 and October 1, 2011 under the new and old segment reporting structure is as follows:

(in millions)	June 30, 2012	October 1, 2011
Goodwill (New Segments):		
Rigid Open Top	\$ 681	\$ 681
Rigid Closed Top	812	819
Engineered Materials	102	55
Flexible Packaging	40	40
	<u>\$ 1,635</u>	<u>\$ 1,595</u>

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(in millions)	June 30, 2012	October 1, 2011
Goodwill (Old Segments):		
Rigid Open Top	\$ 690	\$ 690
Rigid Closed Top	812	819
Specialty Films	84	86
Tapes, Bags and Coatings	49	—
	<u>\$ 1,635</u>	<u>\$ 1,595</u>

The Company conducted their annual step one evaluation of goodwill and other intangibles as of the first date of the fourth quarter and preliminarily determined no impairment existed for any of our reporting units. The Company has experienced volume declines in certain of our reporting units, however our cost reduction initiatives and profitability in these reporting units have been consistent with our estimated operating plan and previous cash flow estimates and we believe that our long term forecasts are still appropriate. We have utilized a consistent methodology with prior years, which leverages a six year discounted cash flow analysis with a terminal year in combination with a comparable company market approach to determine the fair value of our reporting units.

*Deferred Taxes and Effective Tax Rates.* We estimate the effective tax rates (“ETR”) and associated liabilities or assets for each legal entity of ours in accordance with authoritative guidance. We use tax planning to minimize or defer tax liabilities to future periods. In recording ETRs and related liabilities and assets, we rely upon estimates, which are based upon our interpretation of United States and local tax laws as they apply to our legal entities and our overall tax structure. Audits by local tax jurisdictions, including the United States Government, could yield different interpretations from our own and cause the company to owe more taxes than originally recorded. For interim periods, we accrue our tax provision at the ETR that we expect for the full year. As the actual results from our various businesses vary from our estimates earlier in the year, we adjust the succeeding interim periods’ ETRs to reflect our best estimate for the year-to-date results and for the full year. As part of the ETR, if we determine that a deferred tax asset arising from temporary differences is not likely to be utilized, we will establish a valuation allowance against that asset to record it at its expected realizable value. In multiple foreign jurisdictions, the company believes that it will not generate sufficient future taxable income to realize the related tax benefits. The company has provided a full valuation allowance against its foreign net operating losses included within the deferred tax assets in multiple foreign jurisdictions. The company has not provided a valuation allowance on its federal net operating losses in the United States because it has determined that future reversals of its temporary taxable differences will occur in the same periods and are of the same nature as the temporary differences giving rise to the deferred tax assets. Our valuation allowance against deferred tax assets was \$43 million and \$47 million as of fiscal year-end 2011 and 2010, respectively.

*Restructuring.* Our restructuring charges consist of four primary costs: workforce reduction or severance, lease termination, non-cash asset impairments and other facility exit costs. We estimate severance costs when we have an established severance policy, statutory requirements dictate the severance amounts, or we have an established pattern of paying by a specific formula. Where we have provided notice of cancellation pursuant to a lease agreement or abandoned space and have no intention of reoccupying it, we recognize a loss. The loss reflects our best estimate of the net present value of the future cash flows associated with the lease at the date we vacate the property or sign a sublease arrangement. To determine the loss, we estimate sublease income based on current market quotes for similar properties. When we finalize definitive agreements with the sublessee, we adjust our sublease losses for actual outcomes. We record non-cash asset impairments on property and equipment that we have no intention of redeploying elsewhere within our company. To determine the loss, we estimate fair value based on market knowledge for similar properties and equipment. We recognize other facility exit costs associated with exit and disposal activities as they are incurred, including moving costs and consulting and legal fees.

Based on a critical assessment of our accounting policies and the underlying judgments and uncertainties affecting the application of those policies, we believe that our consolidated financial statements provide a

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meaningful and fair perspective of the company and its consolidated subsidiaries. This is not to suggest that other risk factors such as changes in economic conditions, changes in material costs, our ability to pass through changes in material costs, and others could not materially adversely impact our consolidated financial position, results of operations and cash flows in future periods.

### **Quantitative and Qualitative Disclosures about Market Risk**

#### *Interest Rate Sensitivity*

We are exposed to market risk from changes in interest rates primarily through our senior secured credit facilities, senior secured first priority notes, second priority senior secured notes and senior unsecured term loan. Our senior secured credit facilities are comprised of (i) a \$1,200 million term loan and (ii) a \$650 million revolving credit facility. At June 30, 2012, the company had \$163 million outstanding on the revolving credit facility. The net outstanding balance of the term loan was \$1,137 million at June 30, 2012. Borrowings under our senior secured credit facilities bear interest, at our option, at either an alternate base rate or an adjusted LIBOR rate for a one-, two-, three- or six-month interest period, or a nine- or twelve-month period, if available to all relevant lenders, in each case, plus an applicable margin. The alternate base rate is the mean the greater of (i) in the case of our term loan, Credit Suisse's prime rate or, in the case of our revolving credit facility, Bank of America's prime rate and (ii) one-half of 1.0% over the weighted average of rates on overnight Federal Funds as published by the Federal Reserve Bank of New York. Our \$681 million of senior secured first priority notes accrue interest at a rate per annum, reset quarterly, equal to LIBOR plus 4.75%. Our second priority senior secured floating rate notes of \$210 million bear interest at a rate of LIBOR plus 3.875% per annum, which resets quarterly. Our senior unsecured term loan bears interest based on (1) a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus  $\frac{1}{2}$  of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Credit Suisse as its "prime rate" plus 525 basis points or (2) LIBOR plus 625 basis points.

At June 30, 2012, the LIBOR rate of 0.46% was applicable to the term loan, first priority senior secured floating rate notes second priority senior secured floating rate notes and senior unsecured term loan. If the LIBOR rate increases 0.25% and 0.50%, we estimate an annual increase in our interest expense of \$3 million and \$6 million, respectively.

In November 2010, the company entered into two separate interest rate swap transactions to protect \$1 billion of the outstanding variable rate term loan debt from future interest rate volatility. The first agreement had a notional amount of \$500 million and became effective in November 2010. The agreement swaps three-month variable LIBOR contracts for a fixed three-year rate of 0.8925% and expires in November 2013. The second agreement had a notional amount of \$500 million and became effective in December 2010. The agreement swaps three-month variable LIBOR contracts for a fixed three-year rate of 1.0235% and expires in November 2013. The counterparties to these agreements are with global financial institutions. In August 2011, the company began utilizing one-month LIBOR contracts for the underlying senior secured credit facility. The company's change in interest rate selection caused the company to lose hedge accounting on both of the interest rate swaps. The company recorded subsequent changes in fair value in the Consolidated Statement of Operations and will amortize the unrealized losses to Interest expense through the end of the respective swap agreements. A 0.25% change in LIBOR would not have a material impact on the fair value of the interest rate swaps.

#### *Resin Cost Sensitivity*

We are exposed to market risk from changes in plastic resin prices that could impact our results of operations and financial condition. Our plastic resin purchasing strategy is to deal with only high-quality, dependable suppliers. We believe that we have maintained strong relationships with these key suppliers and expect that such relationships will continue into the foreseeable future. The resin market is a global market and, based on our experience, we believe that adequate quantities of plastic resins will be available at market prices, but we can give you no assurances as to such availability or the prices thereof. If the price of resin increased or decreased by 5% this would result in a material change to our cost of goods sold.



## BUSINESS

### General

We believe we are a leading provider of value-added plastic consumer packaging and engineered materials with a 30-year track record of delivering high-quality customized solutions to our customers. Our products utilize our proprietary research and development platform, which includes a continually evolving library of Berry-owned molds, patents, manufacturing techniques and technologies. We sell our solutions predominantly into consumer-oriented end-markets, such as food and beverage, healthcare and personal care, which together represented 76% of our sales in the 12 months ended June 30, 2012. We believe our customers look to us for solutions that have high consumer impact in terms of form, function and branding. Representative examples of our products include thermoform drink cups, thin-wall containers, blow-molded bottles, specialty closures, prescription vials, specialty plastic films, adhesives and corrosion protection materials. We have also been one of the most active acquirers of plastic packaging businesses globally, having acquired more than 30 businesses since 1988, including eleven acquisitions completed in the past six years. We believe our focus on delivering unique and customized solutions to our customers and our ability to successfully integrate strategic acquisitions have enabled us to grow at rates in excess of our industry peers, having achieved a compound annual net sales growth rate over the last eleven and a half years of 24%.

We believe that we have created one of the largest product libraries in our industry, allowing us to be a comprehensive solution provider to our customers. We have more than 13,000 customers, which consist of a diverse mix of leading national, mid-sized regional and local specialty businesses. The size and scope of our customer network allow us to introduce new products we develop or acquire to a vast audience that is familiar with, and we believe partial to, our brand. In fiscal 2011, no single customer represented more than 3% of net sales and our top ten customers represented less than 17% of net sales. We currently supply our customers through 82 strategically located manufacturing facilities throughout the United States (68 locations) and select international locations (14 locations). We believe our manufacturing processes and our ability to leverage our scale to reduce expenses on items, such as raw materials, position us as a low-cost manufacturer relative to our competitors. For example, we believe based on management estimates that we are one of the largest global purchasers of plastic resins, at more than 2.5 billion pounds per year, which gives us both unique insight into this market as well as scale purchasing savings.

We enjoy market leadership positions in many of our markets, with 76% of net sales in markets in which management estimates we held the #1 or #2 market position during the 12 months ended June 30, 2012. We look to build leadership in markets where we have a strategic angle and can achieve attractive profit margins through technology and design leadership and a competitive cost position such as highly decorated plastic containers. We believe that our product and technology development capabilities are best-in-class, supported by a newly built Berry Research and Design Center in Evansville, Indiana and a network of more than 200 engineers and material scientists. We seek to have our product and technology development efforts provide a meaningful impact on sales. An example of our focused new product development is our thermoform plastic drink cup technology. We identified an unfulfilled need in the market with an opportunity for significant return on invested capital and ultimately introduced the technology to the market in 2001. This product line has grown steadily since introduction and generated \$400 million of net sales during the 12 months ended June 30, 2012.

Our success is driven by our more than 15,000 employees. Over the past 30 years, we have developed a culture that incorporates both loyalty to best practices and acceptance of new perspectives, which we have often identified from the companies we have acquired. Our employees hold themselves accountable to exceed the expectations of our customers and to create value for our stakeholders. Consistent with this focus on value creation, approximately 375 employees own equity in the company. As of June 30, 2012 and before giving effect to this offering, employees own more than 20% of our fully diluted equity.

We believe the successful execution of our business strategy has enabled us to outperform the growth of our industry over the past decade with Adjusted EBITDA increasing from \$80 million in 2000 to \$784 million for the 12 months ended June 30, 2012, representing a CAGR of 22%. For the 12 months ended June 30, 2012, Berry

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had pro forma net sales of \$4.8 billion, operating income of \$111 million, Adjusted EBITDA of \$784 million, net loss of \$212 million and Adjusted Free Cash Flow of \$199 million. For a reconciliation of Adjusted EBITDA and Adjusted Free Cash Flow, see “—Liquidity and Capital Resources.”

### **Acquisitions**

#### *LINPAC Packaging Filmco, Inc.*

In August 2011, we acquired 100% of the common stock of Filmco for a purchase price of \$19 million. Filmco is a manufacturer of PVC stretch film packaging for fresh meats, produce, freezer and specialty applications. The business is operated in our Engineered Materials segment. To finance the purchase, we used cash on hand and existing credit facilities. The Filmco acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

#### *Rexam Specialty and Beverage Closures*

In September 2011, we acquired 100% of the capital stock of Rexam SBC. The aggregate purchase price was \$351 million (\$340 million, net of cash acquired). Rexam SBC's primary products include plastic closures, fitments and dispensing closure systems, and jars. The business is operated in our Rigid Packaging business. To finance the purchase, we used cash on hand and existing credit facilities. The Rexam SBC acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

#### *STOPAQ®*

In June 2012, the Company acquired 100% of the shares of Frans Nooren Beheer B.V. and its operating companies (“Stopaq”) for a purchase price of \$65 million (\$62 million, net of cash acquired). Stopaq is the inventor and manufacturer of patented visco-elastic technologies for use in corrosion prevention, sealing and insulation applications ranging from pipelines to subsea piles to rail and cable joints. The newly added business is operated in the Company's Engineered Materials reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Stopaq acquisition has been accounted for under the purchase method of accounting, and accordingly, the preliminary purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

### **Product Overview**

Effective January 1, 2012, we realigned our operating segments to enhance the company's current product portfolio and leverage our rigid and flexible technologies to serve our customers with innovative packaging solutions. Our new operating segments are aligned into the following four segments: Rigid Open Top, Rigid Closed Top (which together make up our Rigid Packaging business), Engineered Materials and Flexible Packaging.

#### *Rigid Packaging*

Our Rigid Packaging business primarily consists of containers, foodservice items, housewares, closures, overcaps, bottles, prescription vials, and tubes. The largest end uses for our packages are consumer-oriented end markets such as food and beverage, retail mass marketers, healthcare, personal care and household chemical. We believe that we offer the broadest rigid packaging product line among industry participants and, according to management estimates, we maintained the #1 or #2 market positions in markets representing approximately 78% of rigid plastic sales for the 12 months ended June 30, 2012. Many of our products are manufactured from proprietary molds that we develop and own, which we believe would result in significant costs to our customers to switch to a different supplier. In addition to a complete product line, we have sophisticated decorating

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capabilities and in-house graphic arts and tooling departments, which allow us to integrate ourselves into, and, we believe, add significant value to, our customers' packaging design processes. For the 12 months ended June 30, 2012, our Rigid Packaging business had pro forma net sales, operating income and Adjusted EBITDA of \$2.7 billion, \$253 million and \$532 million, respectively. Our primary competitors include Airlite, Letica, Polyainers, Silgan, Aptar Group and Reynolds. These competitors individually only compete on certain of our products, whereas we offer the entire selection of rigid products described below.

- *Containers.* We manufacture a collection of nationally branded container products and also seek to develop customized container products for niche applications by leveraging of our state-of-the-art design, decoration and graphic arts capabilities. We believe this mix allows us to both achieve significant economies of scale, while also maintaining an attractive portfolio of specialty products. Our container capacities range from four ounces to five gallons and are offered in various styles with accompanying lids, bails and handles, some of which we produce, as well as a wide array of decorating options. We have long-standing supply relationships with many of the nation's leading food and consumer products companies, including Dannon, Dean Foods, General Mills, Kraft, Kroger and Unilever.
- *Foodservice.* We believe that we are one of the largest providers of large size thermoformed polypropylene ("PP") and injection-molded plastic drink cups in the United States. We believe we are the leading producer of 32 ounce or larger thermoformed PP drink cups and offer a product line with sizes ranging from 12 to 52 ounces. Our thermoform process uses PP instead of more expensive polystyrene ("PS") or polyethylene terephthalate ("PET") in producing deep draw drink cups to generate a cup with a competitive cost advantage versus thermoformed PS or PET drink cups. Additionally, we produce injection-molded plastic cups that range in size from 12 to 64 ounces. Primary markets for our plastic drink cups are quick service and family dining restaurants, convenience stores, stadiums and retail stores. Many of our cups are decorated, often as promotional items, and we believe we have a reputation in the industry for innovative, state-of-the-art graphics. Selected drink cup customers and end users include Hardee's, McDonald's, Quik Trip, Starbucks, Subway, Wendy's and Yum! Brands.
- *Housewares.* Our participation in the housewares market is focused on producing semi-disposable plastic home and party and plastic garden products. Examples of our products include plates, bowls, pitchers, tumblers and outdoor flowerpots. We sell virtually all of our products in this market through major national retail marketers and national chain stores, such as Walmart. PackerWare is our recognized brand name in these markets and PackerWare branded products are often co-branded by our customers. Our strategy in this market has been to provide high value to consumers at a relatively modest price, consistent with the key price points of the retail marketers. We believe outstanding service and the ability to deliver products with timely combination of color and design further enhance our position in this market.
- *Closures and Overcaps.* We believe we are a leading producer of closures and overcaps across several of our product lines, including continuous-thread and child-resistant closures, as well as aerosol overcaps. We currently sell our closures into numerous end markets, including pharmaceutical, vitamin/nutritional, healthcare, food/beverage and personal care. In addition to traditional closures, we are a provider of a wide selection of custom closure solutions including fitments and plugs for medical applications, cups and spouts for liquid laundry detergent, and dropper bulb assemblies for medical and personal care applications. Further, we believe that we are the leading domestic producer of injection-molded aerosol overcaps. Our aerosol overcaps are used in a wide variety of consumer goods including spray paints, household and personal care products, insecticides and numerous other commercial and consumer products. We believe our technical expertise and manufacturing capabilities provide us a low-cost position that has allowed us to become a leading provider of high-quality closures and overcaps to a diverse set of leading companies. We believe our manufacturing advantage is driven by our position on the forefront of various technologies, including the latest in single- and bi-injection

processes, compression molding of thermoplastic and thermoset resins, precise reproduction of colors, automation and vision technology, and proprietary packing technology that minimizes freight cost and warehouse space. A majority of our overcaps and closures are manufactured from proprietary molds, which we design, develop, and own. In addition to these molds, we utilize state-of-the art lining, assembly, and decorating equipment to enhance the value and performance of our products in the market. Our closure and aerosol overcap customers include McCormick, Bayer, Coca-Cola, Diageo, Pepsico, Wyeth, Kraft, Sherwin-Williams and S.C. Johnson.

- *Bottles and Prescription Containers.* Our bottle and prescription container businesses target markets similar to our closure business. We believe, based on management estimates, that we are the leading supplier of spice containers in the United States and have a leadership position in various food and beverage, vitamin and nutritional markets, as well as selling bottles into prescription and pharmaceutical applications. Additionally, we believe we are a leading supplier in the prescription container market, supplying a complete line of amber containers with both one-piece and two-piece child-resistant closures. We offer an extensive line of stock polyethylene ("PE") and PET bottles for the vitamin and nutritional markets. Our design capabilities, along with internal engineering strength give us the ability to compete on customized designs to provide desired differentiation from traditional packages. We also offer our customers decorated bottles with hot stamping, silk screening and labeling. We sell these products to personal care, pharmaceutical, food and consumer product customers, including McCormick, Pepsico, Carriage House, Perrigo, CVS, NBTY, Target Stores, John Paul Mitchell and Novartis.
- *Tubes.* We believe that we are one of the largest suppliers of extruded plastic squeeze tubes in the United States. We offer a complete line of tubes in a wide variety of sizes. We have also introduced laminate tubes to complement our extruded tube business. Our focus and investments are made to ensure that we are able to meet the increasing trend towards large diameter tubes with high-end decoration. We have several proprietary designs in this market that combine tube and closure that we believe are viewed as very innovative both in appearance and functionality, as well as from a sustainability standpoint. The majority of our tubes are sold in the personal care market, focusing on products like facial/cold creams, shampoos, conditioners, bath/shower gels, lotions, sun care, hair gels and anti-aging creams. We also sell our tubes into the pharmaceutical and household chemical markets. We believe that our ability to provide creative package designs, combined with a complementary line of closures, makes us a preferred supplier for many customers in our target markets including Kao Brands, L'Oreal, Avon, and Procter & Gamble.

#### *Engineered Materials*

Our Engineered Materials division primarily consists of pipeline corrosion protection solutions, specialty tapes and adhesives, polyethylene based film products and can liners. We believe that we offer one of the broadest product lines among industry participants and, according to management estimates, we maintained the #1 or #2 market position in markets representing approximately 65% of divisional sales for the 12 months ended June 30, 2012. For the 12 months ended June 30, 2012, our Engineered Materials division had revenue, operating loss and Adjusted EBITDA of \$1.4 billion, \$46 million and \$176 million, respectively. Our primary competitors include AEP, Sigma and 3M. The Engineered Materials division primarily includes the following product groups:

- *Corrosion Protection Products.* We believe we are a leading global producer of anti-corrosion products to infrastructure, rehabilitation and new pipeline projects throughout the world. We believe our products deliver superior performance across all climates and terrains for the purpose of sealing, coupling, rehabilitation and corrosion protection of pipelines. Products include heat-shrinkable coatings, single- and multi-layer sleeves, pipeline coating tapes, anode systems for cathodic protection and epoxy coatings. These products are used in oil, gas and water supply and construction applications. Our customers primarily include contractors managing discrete construction projects around the world as well as distributors and applicators. Our corrosion protection products customers include Tyco Electronics, Northwest Pipe and Midwestern Pipeline Products.

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- *Tape Products.* We believe we are the leading North American manufacturer of cloth and foil tape products. Other tape products include high-quality, high-performance liners of splicing and laminating tapes, flame-retardant tapes, vinyl-coated and carton sealing tapes, electrical, double-faced cloth, masking, mounting, OEM medical and specialty tapes. These products are sold under the National™, Nashua®, and Polyken® brands in the United States. Tape products are sold primarily through distributors and directly to end users and are used predominantly in industrial, HVAC, automotive, construction and retail market applications. In addition to serving our core tape end markets, we believe we are also a leading producer of tapes in the niche aerospace, construction and medical end markets. We believe that our success in serving these additional markets is principally due to a combination of technical and manufacturing expertise leveraged in favor of customized applications. Our tape products customers include Home Depot, Gorilla Glue and RH Elliott.
- *Retail Bags.* We manufacture and sell a diversified portfolio of PE-based film products to end users in the retail markets. These products are sold under leading brands such as Ruffies® and Film-Gard®. Our products include drop cloths and retail trash bags. These products are sold primarily through wholesale outlets, hardware stores and home centers, paint stores and mass merchandisers. Our retail trash bag customers include Home Depot, Walmart, True Value and ACE.
- *FIBC.* We manufacture customized PP-based, woven and sewn containers for the transportation and storage of raw materials such as seeds, titanium dioxide, clay and resin pellets. Our FIBC customers include Texene LLC and Pioneer Hi-Bred Intl.
- *PVC Films.* We believe, based on management estimates, that we are a world leader in PVC films offering a broad array of PVC meat film and agricultural film. Our products are used primarily to wrap fresh meats, poultry and produce for supermarket applications. In addition, we offer a line of boxed products for food service and retail sales. We service many of the leading supermarket chains, club stores and wholesalers including Kroger, Publix, Walmart/Sams, Costco and SuperValu. We believe we are a leading innovator and specialize in lighter gauge sustainable solutions like our recent Revolution™ product line offering.
- *Institutional Can Liners.* We sell trash-can liners and food bags for offices, restaurants, schools, hospitals, hotels, municipalities and manufacturing facilities. We also sell products under the Big City®, Hospi-Tuff®, Plas-Tuff®, Rhino-X® and Steel-Flex® brands. Our institutional customers include Unisource and Gordon Food Service.
- *Stretch Films.* We produce both hand and machine-wrap stretch films, which are used by end users to wrap products and packages for storage and shipping. We sell stretch film products to distributors and retail and industrial end users under the MaxTech® and PalleTech® brands. Our stretch films customers include XPEDX and Unisource.

### *Flexible Packaging*

Our Flexible Packaging division consists of high barrier, multilayer film products as well as finished flexible packages such as printed bags and pouches. The largest end uses for our flexible products are consumer-oriented end markets such as food and beverage, medical and personal care. We believe that we offer one of the broadest product lines among industry participants and, according to management estimates, we maintained the #1 or #2 market position in markets representing approximately 89% of divisional sales for the 12 months ended June 30, 2012. For the 12 months ended June 30, 2012, our Flexible Packaging division had net sales, operating loss and Adjusted EBITDA of \$753 million, \$96 million and \$76 million, respectively. Our primary competitors include Printpak, Tredegar and Bemis. The Flexible Packaging division includes the following product groups:

- *Barrier/Sealant Films.* We manufacture and sell a wide range of highly specialized, made-to-order film products ranging from mono layer to coextruded films having up to nine layers, lamination films sold primarily to flexible packaging converters and used for peelable lid stock, stand-up pouches, pillow pouches and other flexible packaging formats. We also manufacture barrier films used for cereal, cookie, cracker and dry mix packages that are sold directly to food manufacturers like Kraft and

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Pepsico. We also manufacture films for specialized industrial applications ranging from lamination film for carpet padding to films used in solar panel construction.

- *Personal Care Films.* We believe we are a major supplier of component and packaging films used for personal care hygiene applications predominantly sold in North America and Latin America. The end use applications include disposable baby diapers, feminine care, adult incontinence, hospital and tissue and towel products. Our personal care customers include Kimberly Clark, SCA, Johnson and Johnson, First Quality and other leading private label manufacturers. Our “Lifetime of Solutions™” approach promotes an innovation pipeline that seeks to integrate both product and equipment design into leading edge customer and consumer solutions.
- *Printed Products.* We are a converter of printed bags, pouches and rollstock. Our manufacturing base includes integrated extrusion that combines with printing, laminating, bagmaking, Innolok® and laser-score converting processes. We believe we are a leading supplier of printed film products for the fresh bakery, tortilla and frozen vegetable markets with brands such as SteamQuick® Film, Freshview™ bags and Billboard™ SUPs. Our customers include Mission Foods and Hostess Brands.
- *Coated and Laminated Packaging.* We manufacture specialty coated and laminated products for a wide variety of packaging applications. The key end markets and applications for our products include food, consumer, healthcare, industrial and military pouches, roll wrap, multi-wall bags and fiber drum packaging. Our products are sold under the MarvelGuard™ and MarvelSeal™ brands and are predominately sold to converters who transform them into finished goods. Our flexible packaging customers include Covidien and Morton Salt.

## **Marketing and Sales**

We reach our large and diversified base of over 13,000 customers through our direct field sales force of dedicated professionals and the strategic use of distributors. Our field sales, production and support staff meet with customers to understand their needs and improve our product offerings and services. Our scale enables us to dedicate certain sales and marketing efforts to particular products, customers or geographic regions, when applicable, which enables us to develop expertise that we believe is valued by our customers. In addition, because we serve common customers across segments, we have the ability to efficiently utilize our sales and marketing resources to minimize costs. Highly skilled customer service representatives are strategically located throughout our facilities to support the national field sales force. In addition, telemarketing representatives, marketing managers and sales/marketing executives oversee the marketing and sales efforts. Manufacturing and engineering personnel work closely with field sales personnel and customer service representatives to satisfy customers’ needs through the production of high-quality, value-added products and on-time deliveries.

We believe that we have differentiated ourselves from competitors by building a reputation for high-quality products, customer service and innovation. Our sales team monitors customer service in an effort to ensure that we remain the primary supplier for our key accounts. This strategy requires us to develop and maintain strong relationships with our customers, including end users as well as distributors and converters. We have a technical sales team with significant knowledge of our products and processes, particularly in specialized products. This knowledge enables our sales and marketing team to work closely with our research and development organization and our customers to co-develop products and formulations to meet specific performance requirements. This partnership approach enables us to further expand our relationships with our existing customer base, develop relationships with new customers and increase sales of new products.

## **Research, Product Development and Design**

We believe our technology base and research and development support are among the best in the plastics packaging industry. Using three-dimensional computer-aided design technologies, our full-time product designers develop innovative product designs and models for the packaging market. We can simulate the

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molding environment by running unit-cavity prototype molds in small injection-molding, thermoform, compression and blow molding machines for research and development of new products. Production molds are then designed and outsourced for production by various companies with which we have extensive experience and established relationships or built by our in-house tooling division located in Evansville, Indiana. Our engineers oversee the mold-building process from start to finish. Many of our customers work in partnership with our technical representatives to develop new, more competitive products. We have enhanced our relationships with these customers by providing the technical service needed to develop products combined with our internal graphic arts support. We also utilize our in-house graphic design department to develop color and styles for new rigid products. Our design professionals work directly with our customers to develop new styles and use computer-generated graphics to enable our customers to visualize the finished product.

Additionally, at our major technical centers, including the Berry Research and Design Center in Evansville, Indiana, as well as facilities in Lancaster, Pennsylvania; Homer, Louisiana; Chippewa Falls, Wisconsin; Evansville, Indiana; and Perrysburg, Ohio, we prototype new ideas, conduct research and development of new products and processes, and qualify production systems that go directly to our facilities and into production. We also have technical centers, complete product testing and quality laboratories at our Lancaster, Pennsylvania and Perrysburg, Ohio facilities. At our pilot plant in Homer, Louisiana, we are able to experiment with new compositions and processes with a focus on minimizing waste and improving productivity. With this combination of manufacturing simulation and quality systems support we are able to improve time to market and reduce cost. We spent \$20 million, \$21 million and \$16 million on research and development in fiscal 2011, 2010 and 2009, respectively.

### **Sources and Availability of Raw Materials**

The most important raw material purchased by us is plastic resin. Our plastic resin purchasing strategy is to work with only high-quality, dependable suppliers. We believe that we have maintained strong relationships with our key suppliers and expect that such relationships will continue into the foreseeable future. The resin market is a global market and, based on our experience, we believe that adequate quantities of plastic resins will be available at market prices, but we can give you no assurances as to such availability or the prices thereof.

We also purchase various other materials, including natural and butyl rubber, tackifying resins, chemicals and adhesives, paper and packaging materials, polyester staple, raw cotton, linerboard and kraft, woven and non-woven cloth and foil. These materials are generally available from a number of suppliers.

### **Employees**

As of June 30, 2012, we employed over 15,000 employees. Approximately 11% of our employees are covered by collective bargaining agreements. Four of our 12 agreements, covering approximately 1,200 employees, were scheduled for renegotiation in fiscal 2012, and each of them has been renegotiated as of June 30, 2012. The remaining agreements expire after fiscal 2012. Our relations with employees remain satisfactory and there have been no significant work stoppages or other labor disputes during the past three years.

### **Patents, Trademarks and Other Intellectual Property**

We rely on a combination of patents, trade secrets, unpatented know-how, trademarks, copyrights and other intellectual property rights, nondisclosure agreements and other protective measures to protect our proprietary rights. While we consider our intellectual property to be important to our business in the aggregate, we do not believe that any individual item of our intellectual property portfolio is material to our current business. The remaining duration of our patents ranges from one to 17 years.

We employ various methods, including confidentiality and non-disclosure agreements with third parties, employees and consultants, to protect our trade secrets and know-how. We have licensed, and may license in the future, patents, trademarks, trade secrets, and similar proprietary rights to and from third parties.

## **Environmental Matters and Government Regulation**

Our past and present operations and our past and present ownership and operations of real property are subject to extensive and changing federal, state, local and foreign environmental laws and regulations pertaining to the discharge of materials into the environment, handling and disposition of wastes, and cleanup of contaminated soil and ground water, or otherwise relating to the protection of the environment. We believe that we are in substantial compliance with applicable environmental laws and regulations. However, we cannot predict with any certainty that we will not in the future incur liability, which could be significant under environmental statutes and regulations with respect to noncompliance with environmental laws, contamination of sites formerly or currently owned or operated by us (including contamination caused by prior owners and operators of such sites) or the off-site disposal of regulated materials, which could be material.

We may from time to time be required to conduct remediation of releases of regulated materials at our owned or operated facilities. None of our pending remediation projects are expected to result in material costs. Like any manufacturer, we are also subject to the possibility that we may receive notices of potential liability in connection with materials that were sent to third-party recycling, treatment, and/or disposal facilities under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and comparable state statutes, which impose liability for investigation and remediation of contamination without regard to fault or the legality of the conduct that contributed to the contamination, and for damages to natural resources. Liability under CERCLA is retroactive, and, under certain circumstances, liability for the entire cost of a cleanup can be imposed on any responsible party. No such notices are currently pending which are expected to result in material costs.

The Food and Drug Administration (“FDA”) regulates the material content of direct-contact food and drug packages, including certain packages we manufacture pursuant to the Federal Food, Drug and Cosmetics Act. Certain of our products are also regulated by the Consumer Product Safety Commission (“CPSC”) pursuant to various federal laws, including the Consumer Product Safety Act and the Poison Prevention Packaging Act. Both the FDA and the CPSC can require the manufacturer of defective products to repurchase or recall such products and may also impose fines or penalties on the manufacturer. Similar laws exist in some states, cities and other countries in which we sell our products. In addition, laws exist in certain states restricting the sale of packaging with certain levels of heavy metals, imposing fines and penalties for noncompliance. Although we use FDA approved resins and pigments in our products that directly contact food and drug products and believe they are in material compliance with all such applicable FDA regulations, and we believe our products are in material compliance with all applicable requirements, we remain subject to the risk that our products could be found not to be in compliance with such requirements.

The plastics industry, including us, is subject to existing and potential federal, state, local and foreign legislation designed to reduce solid wastes by requiring, among other things, plastics to be degradable in landfills, minimum levels of recycled content, various recycling requirements, disposal fees and limits on the use of plastic products. In particular, certain states have enacted legislation requiring products packaged in plastic containers to comply with standards intended to encourage recycling and increased use of recycled materials. In addition, various consumer and special interest groups have lobbied from time to time for the implementation of these and other similar measures. We believe that the legislation promulgated to date and such initiatives to date have not had a material adverse effect on us. There can be no assurance that any such future legislative or regulatory efforts or future initiatives would not have a material adverse effect on us.

## **Properties**

We lease or own our principal offices and manufacturing facilities. We believe that our property and equipment is well-maintained, in good operating condition and adequate for our present needs. The locations of our principal manufacturing facilities, by country, are as follows: United States—68 locations (38 Rigid Packaging, 19 Engineered Materials, 11 Flexible Packaging); Canada—4 locations (1 Rigid Packaging, 2



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Engineered Materials, 1 Flexible Packaging); Mexico—3 locations (2 Engineered Materials, 1 Flexible Packaging); India, The Netherlands and Belgium (Engineered Materials); Germany and Australia (Engineered Materials); and Brazil and Malaysia (Rigid Packaging). The Evansville, Indiana facility serves as our world headquarters.

We lease our facilities in the following locations: Evansville, IN; Louisville, KY; Lawrence, KS; Peosta, IA; Phoenix, AZ; Quad Cities, IA; Phillipsburg, NJ; Bloomington, IN; Chicago, IL; Bowling Green, KY; Syracuse, NY; Jackson, TN; Anaheim, CA; Aurora, IL; Cranbury, NJ; Charlotte, NC; Easthampton, MA; Lathrop, CA; Hanover, MD; Tacoma, WA; Baltimore, MD; Chippewa Falls, WI; Atlanta, GA; Mexico City, Mexico; and Dunkirk, NY.

### **Legal Proceedings**

We are party to various legal proceedings involving routine claims that are incidental to our business. Although our legal and financial liability with respect to such proceedings cannot be estimated with certainty, we believe that any ultimate liability would not be material to the business, financial condition, results of operations or cash flows.

## MANAGEMENT

### Directors and Executive Officers

The following table provides information regarding the executive officers and members of the Board of Directors of Berry Plastics Group, Inc.

<u>Name</u>	<u>Age</u>	<u>Title</u>
Jonathan D. Rich <sup>(3)</sup>	57	Chairman, Chief Executive Officer and Director
Randall J. Becker	56	Chief Operating Officer and President
James M. Kratochvil	56	Chief Financial Officer
B. Evan Bayh	56	Director
Anthony M. Civale <sup>(1)(2)</sup>	38	Director
Donald C. Graham <sup>(1)</sup>	79	Director
Steven C. Graham <sup>(2)</sup>	53	Director
Joshua J. Harris	47	Director
Robert V. Seminara <sup>(1)(2)(3)</sup>	40	Director
David B. Heller	45	Director Nominee*

(1) Member of the Compensation Committee.

(2) Member of the Audit Committee.

(3) Member of the Executive Committee.

\* Appointment effective upon consummation of this offering.

**Jonathan D. Rich** assumed the role of Chairman and Chief Executive Officer of Berry Plastics Group, Inc. in October 2010. Prior to becoming CEO, Dr. Rich served as President and Chief Executive Officer of Momentive Performance Materials, Inc. from June 2007 until October 2010. Prior to Momentive, Dr. Rich held executive positions at Goodyear Tire and Rubber from 2000 until 2007, including President of Goodyear North American Tire and President of Goodyear Chemical. Dr. Rich began his career at General Electric in 1982, where he was employed for 18 years in a variety of R&D, operational and executive roles. Mr. Rich's position as Chief Executive Officer, his extensive management experience and his skills in business leadership and strategy qualify him to serve as a director of the company.

**Randall J. Becker** was named President and Chief Operating Officer of Berry Plastics Group, Inc. in December 2009. Mr. Becker formerly served as an Executive Vice President of Operations and has served in a variety of operational and executive roles over his 22 years of service with the company.

**James M. Kratochvil** has been Chief Financial Officer of Berry Plastics Group, Inc. since 1991. Mr. Kratochvil was formerly employed by our predecessor company from 1985 to 1991 as Controller.

**B. Evan Bayh** has been a member of our Board of Directors since 2011. Mr. Bayh is a former U.S. Senator and Indiana Governor. He was a member of the U.S. Senate from the state of Indiana from 1998 until his retirement in 2011. While in the Senate, he served on a variety of committees, including the Banking, Housing and Urban Affairs Committee, and the Committee on Small Business and Entrepreneurship. Prior to serving in the Senate, Mr. Bayh served as Indiana Governor from 1988 to 1997. Mr. Bayh's many years of service in elected office, including as the chief executive of a large Midwestern state, qualifies him to serve as a director of the company.

**Anthony M. Civale** has been a member of our Board of Directors since 2006. Mr. Civale is the Lead Partner and Chief Operating Officer of Apollo Capital Management, LLC and co-founded Apollo's senior credit and structured credit businesses. He joined Apollo in 1999. Prior to that time, Mr. Civale was employed by Deutsche Bank Securities, Inc. in the Financial Sponsors Group within its Corporate Finance Division. Mr. Civale also serves on the board of directors of HFA Holdings Limited, a multi-billion hedge fund of funds operator. In addition to these corporate boards, Mr. Civale also serves on the board of directors of Youth INC, a non-profit organization serving New York City children, and is a member of the Board of Trustees of

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Middlebury College. Mr. Civale has previously served on the boards of directors of Harrah's Entertainment, Goodman Global, Inc. Prestige Cruises and Covalence Specialty materials. Mr. Civale graduated from Middlebury College with a BA in Political Science. Mr. Civale's extensive financial and business experience qualify him to serve as a director of the company.

**Donald C. Graham** founded "The Graham Group," an alliance of independently owned and operated industrial businesses and investment management firms, and has been a member of our Board of Directors since 2006. Over nearly half a century, Mr. Graham built a substantial family industrial concern—founding consumer packaging, capital equipment and building products businesses, and investing in companies serving a wide range of consumer and industrial sectors. Mr. Graham founded Graham Packaging Company, in which he sold a controlling interest in 1998 and retained a minority ownership position until the company was sold in 2011; as of that point, The Graham Group's three legacy industrial businesses operated in more than 90 locations worldwide. Mr. Graham participates on several advisory boards of The Graham Group's independently owned and managed investment concerns and continues to provide guidance as an active board member of and investor in many underlying portfolio companies. Mr. Graham is Steven C. Graham's father. Mr. Graham's leadership of The Graham Group and his extensive financial and business experience, including in the packaging industry, qualify him to serve as a director of the company.

**Steven C. Graham** serves as Senior Managing Principal of Graham Partners and has been a member of our Board of Directors since 2006. Prior to founding Graham Partners in 1988, Mr. Graham worked in the Investment Banking Division of Goldman, Sachs & Co. in New York and as an Acquisition Officer for the RAF Group, a private investment firm headquartered in Philadelphia, Pennsylvania. Mr. Graham serves on the boards of over ten portfolio companies of Graham Partners and on the firm's Investment Committee; he also serves on the Advisory Board of certain unaffiliated private investment funds managed by other general partners. Mr. Graham also serves on the Board of Advisors for the Center for Private Equity and Entrepreneurship at the Tuck School of Business at Dartmouth College, Williams College Endowment's Non-marketable Assets Advisory Committee, and other charitable and for-profit advisory boards. Mr. Graham earned his B.A. with a double major in Philosophy and English from Williams College in 1982 and his M.B.A. from Dartmouth College's Amos Tuck School of Business in 1986. Mr. Graham is Donald C. Graham's son. Mr. Graham's extensive financial and business experience qualify him to serve as a director of the company.

**Joshua J. Harris** has been a member of our Board of Directors since 2006. Mr. Harris is a Senior Managing Director of Apollo Global Management, LLC and Managing Partner of Apollo Management, L.P., which he co-founded in 1990. Prior to 1990, Mr. Harris was a member of the Mergers and Acquisitions Group of Drexel Burnham Lambert Incorporated. Mr. Harris also currently serves on the boards of directors of Apollo Global Management, LLC, LyondellBasell Industries, CEVA Group plc, Momentive Performance Materials and the holding company for Constellium. Mr. Harris has previously served on the boards of directors of Verso Paper, Metals USA, Nalco, Allied Waste Industries, Pacer International, General Nutrition Centers, Furniture Brands International, Compass Minerals Group, Alliance Imaging, NRT Inc., Covalence Specialty Materials, United Agri Products, Quality Distribution, Whitmire Distribution, and Noranda Aluminum. Mr. Harris graduated summa cum laude and Beta Gamma Sigma from the University of Pennsylvania's Wharton School of Business with a Bachelor of Science Degree in Economics and received his MBA from the Harvard School of Business, where he graduated as a Baker and Loeb Scholar. Mr. Harris' leadership of Apollo and his extensive financial and business experience qualify him to serve as a director of the company.

**Robert V. Seminara** has been a member of our Board of Directors since 2006. Mr. Seminara joined Apollo Management in 2003. Prior to that time, Mr. Seminara was a member of the Private Equity Group at Evercore Partners from 1996 to 2003. Prior to his tenure at Evercore, Mr. Seminara was employed by Lazard Frères & Co. in the firm's Media & Communications Group. Mr. Seminara also serves on the board of directors of Skylink Aviation and is a member of the Board of Managers of Momentive Performance Materials Holdings LLC. Mr. Seminara graduated summa cum laude with a B.S. in Economics from the University of Pennsylvania's Wharton School of Business. Mr. Seminara's extensive financial and business experience qualify him to serve as a director of the company.

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**David B. Heller** will become a member of our Board of Directors upon the consummation of this offering. Mr. Heller is the former Global Co-Head of the Securities Division at Goldman, Sachs & Co., where he also served on the Management Committee. He joined Goldman Sachs in 1989 in New York and also spent significant time living and working in Tokyo and London during his career with the firm. He retired from Goldman in March of 2012. Currently he serves as a Trustee for the Acumen Fund, the New Museum of Contemporary Art, Project Morry, and Third Way. He earned a B.A. from Harvard College and continues to be involved with the university as Co-Chair of his class fundraising efforts. Mr. Heller's extensive financial experience qualifies him to serve as a director of the company.

### **Composition of Board of Directors**

The Company currently has seven directors and, upon the appointment of Mr. David B. Heller as an independent director upon the consummation of this offering, will have eight directors. We intend to avail ourselves of the "controlled company" exception under applicable stock exchange rules, which eliminates the requirements that we have a majority of independent directors on our board of directors and that we have compensation and nominating/corporate governance committees composed entirely of independent directors. We will be required, however, to have an audit committee with one independent director during the 90-day period beginning on the date of effectiveness of the registration statement filed with the SEC in connection with this offering and of which this prospectus is part. After such 90-day period and until one year from the date of effectiveness of the registration statement, we will be required to have a majority of independent directors on our audit committee. Thereafter, we will be required to have an audit committee comprised entirely of independent directors.

If at any time we cease to be a "controlled company" under stock exchange rules, the board of directors will take all action necessary to comply with the applicable stock exchange rules, including appointing a majority of independent directors to the board of directors and establishing certain committees composed entirely of independent directors, subject to a permitted "phase-in" period.

Upon consummation of this offering, we intend to divide our board of directors into three classes. The members of each class will serve staggered, three-year terms (other than with respect to the initial terms of the Class I and Class II directors, which will be one and two years, respectively). Upon the expiration of the term of a class of directors, directors in that class will be elected for three-year terms at the annual meeting of stockholders in the year in which their term expires. Upon consummation of this offering:

- Mr. Donald C. Graham and Mr. Heller, whose appointment will be effective upon the consummation of this offering, will be Class I directors, whose initial terms will expire at the 2013 annual meeting of stockholders;
- Mr. Bayh, Mr. Civale and Mr. Steven C. Graham will be Class II directors, whose initial terms will expire at the 2014 annual meeting of stockholders; and
- Mr. Rich, Mr. Harris and Mr. Seminara will be Class III directors, whose initial terms will expire at the 2015 annual meeting of stockholders.

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of our directors. This classification of our board of directors may have the effect of delaying or preventing changes in control.

At each annual meeting following completion of this offering, our stockholders will elect the successors to our directors. Our executive officers and key employees serve at the discretion of our board of directors. Directors may be removed for cause by the affirmative vote of the holders of a majority of our common stock.

### **Apollo Approval of Certain Matters**

Under the amended and restated stockholders agreement that we have agreed to enter into with Apollo and certain stockholders upon consummation of this offering, until such time as Apollo no longer beneficially owns at least 25% of the total number of shares of our common stock outstanding at any time, the approval of a majority of the members of our board of directors, which must include the approval of a majority of the directors nominated by Apollo voting on the matter, will be required for amendments to our certificate of incorporation and bylaws, certain business combinations, the incurrence of certain indebtedness, certain capital expenditures, the declaration of dividends or other distributions other than intra-company dividends or distributions, changes in the size of the board of directors and to approve certain other matters. See “Certain Relationships and Related Party Transactions—Stockholders Agreement” and “Description of Capital Stock—Composition of Board of Directors; Election and Removal of Directors.”

### **Director Independence**

As a privately held company, none of the current directors are considered independent under the rules of the NYSE. However, our Board of Directors has determined that Mr. Heller, whose appointment will be effective upon the consummation of this offering, is independent under the rules of the NYSE and satisfies the independence standards for the Audit Committee established by the Securities and Exchange Commission and the rules of the NYSE. Mr. Rich is not considered independent under any general listing standards due to his current and past employment relationship with us, and Messrs. Civale, Donald C. Graham, Steven C. Graham, Harris, Bayh and Seminara are not considered independent under any general listing standards due to their relationships with Apollo and Graham Partners, our largest stockholders. As funds affiliated with Apollo will continue to control a majority of our voting stock following the offering, under NYSE listing standards, we expect to qualify as a “controlled company” and, accordingly, be exempt from requirements to have a majority of independent directors and a nominating/corporate governance committee and a compensation committee each composed entirely of independent directors.

### **Board Committees**

Our Board of Directors comprises a Compensation Committee, an Audit Committee and an Executive Committee. Following the completion of this offering, we will also have a Nominating and Governance Committee that will be constituted prior to the completion of the offering.

#### *Audit Committee*

Our Audit Committee currently consists of Messrs. Civale, Steven C. Graham and Seminara. Mr. Heller will be appointed to serve on the Audit Committee upon the consummation of this offering, at which time Messrs. Civale and Steven C. Graham will no longer serve on the Audit Committee. Our Board of Directors has determined that Mr. Heller satisfies the requirements for independence and financial literacy under the rules and regulations of the NYSE and the Securities and Exchange Commission, qualifies as an audit committee financial expert as defined under Securities and Exchange Commission rules and regulations, and satisfies the financial sophistication requirements of the NYSE.

The principal duties and responsibilities of our Audit Committee are to oversee and monitor the following:

- the annual appointment of auditors, including the independence, qualifications and performance of our auditors and the scope of audit and non-audit assignments and related fees;
- the accounting principles we use in financial reporting;
- our financial reporting process and internal auditing and control procedures;
- our risk management policies;

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- the integrity of our financial statements; and
- our compliance with legal, ethical and regulatory matters.

### *Compensation Committee*

Our Compensation Committee consists of Messrs. Civale, Donald C. Graham and Seminara. The principal duties and responsibilities of our Compensation Committee are the following:

- approval and recommendation to our Board of Directors of all compensation plans for the CEO of the company, all employees of the company and its subsidiaries who report directly to the CEO, and other members of the Senior Management Group, as well as all compensation for our Board of Directors;
- approval of short-term compensation of the Senior Management Group and recommendation of short-term compensation for members of our Board of Directors;
- approval and authorization of grants under the company's or its subsidiaries' incentive plans, including all equity plans and long-term incentive plans; and
- the preparation of any report on executive compensation required by SEC rules and regulations, if any.

### *Nominating and Governance Committee*

Prior to the completion of the offering, our Board of Directors will appoint Messrs. Rich, Seminara and Bayh to serve on the Nominating and Governance Committee. The principal duties and responsibilities of our Nominating and Governance Committee will be the following:

- implementation and review of criteria for membership on our Board of Directors and its committees;
- recommendation of proposed nominees for election to our Board of Directors and membership on its committees; and
- recommendations to our Board of Directors regarding governance and related matters.

### *Executive Committee*

Our Executive Committee consists of Messrs. Rich and Seminara. The principal duties and responsibilities of our Executive Committee are the following:

- the exercise of the powers and duties of the Board of Directors between board meetings and while the Board is not in session, subject to applicable law and our organizational documents; and
- the implementation of the policy decisions of our Board of Directors.

## **Code of Ethics**

We have a Code of Business Ethics that applies to all employees, including our Chief Executive Officer and senior financial officers. These standards are designed to deter wrongdoing and to promote the highest ethical, moral and legal conduct of all employees. Our Code of Business Ethics can be obtained, free of charge, at our Corporate Headquarters in our Human Resources Department and is posted on our website.

## COMPENSATION DISCUSSION AND ANALYSIS

The company has a Compensation Committee comprised of Messrs. Seminara, Donald Graham and Civalo. The Compensation Committee makes all final compensation decisions for our executive officers, including each of our “named executive officers” identified in our Summary Compensation Table and established the annual salaries and bonuses paid to vice presidents and above (which we collectively refer to as the “Senior Management Group”) for fiscal 2011. Below is a discussion of the principles outlining our executive compensation program.

### Compensation Philosophy and Analysis

Our goal as an employer is to ensure that our pay practices are equitable as compared to market practice, facilitate appropriate retention, and reward exceptional performance. In the past, we have conducted studies to better understand compensation programs of other manufacturing companies similar in size to the company. Our studies have reviewed base salary, bonus, and a time based option value for one year, and based on such studies, we believe that our compensation levels generally fall at the lower end of other comparable companies.

The company believes that executive compensation should be designed to align closely the interests of its executive officers and stockholders and to attract, motivate, reward and retain superior management talent. The company utilizes the following guidelines pertaining to executive compensation:

- pay compensation that is competitive with the practices of other manufacturing businesses that are similar in size to the company;
- wage enhancements aligned with the performance of the company;
- pay for performance by:
  - setting performance goals determined by our CEO and the Board of Directors for our officers and providing a short-term incentive award opportunity through a bonus plan that is based upon achievement of these goals; and
  - providing long-term incentive opportunities in the form of stock options, in order to retain those individuals with the leadership abilities necessary for increasing long-term shareholder value while aligning their interests with those of our investors and stockholders.

### Role of Compensation Committee

The Compensation Committee’s specific roles are to:

- approve and recommend to our Board of Directors all compensation plans for (1) the CEO of the company, (2) all employees of the company and its subsidiaries who report directly to the CEO, and (3) other members of the Senior Management Group, as well as all compensation for our Board of Directors;
- approve the short-term compensation of the Senior Management Group and to recommend short-term compensation for members of our Board of Directors;
- approve and authorize grants under the company’s or its subsidiaries’ incentive plans, including all equity plans and long-term incentive plans; and
- prepare any report on executive compensation required by Securities and Exchange Commission rules and regulations for inclusion in our annual proxy statement, if any.

### Role of Executive Officers

Our CEO, COO, CFO and Executive Vice President – HR annually review the performance versus annual goals of each of our executive officers. This information, along with the performance of the company and market

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data, determines the wage adjustment recommendation presented to the Compensation Committee. All other compensation recommendations with respect to executive officers of the company are made by the CEO pursuant to policies established in consultation with the Compensation Committee and recommendations from the Human Resource Department.

The Compensation Committee evaluates the performance of the CEO and determines the CEO's compensation in light of the goals and objectives of the compensation program. The Compensation Committee expects to review, on at least an annual basis, the performance of the CEO as compared with the achievement of the company's goals and any individual goals. The CEO, together with the Human Resource Department, will assess the performance and compensation of the other named executive officers annually. The Human Resource Department, together with the CEO, will review annually the performance of each member of the Senior Management Group as compared with the achievement of the company or operating division goals, as the case may be, together with each executive's individual goals. The Compensation Committee can exercise its discretion in modifying any recommended adjustments or awards to the executives. Both performance and compensation are evaluated to ensure that the company is able to attract and retain high quality executives in vital positions and that their compensation, taken as a whole, is competitive and appropriate compared to that of similarly situated executives in other corporations within the company's industry.

### **Executive Compensation Program**

The compensation of our executive officers is generally classified into the following three categories: (1) base salary, (2) annual bonus, and (3) long-term equity awards in the form of company stock options. The company has selected these elements because each is considered useful and/or necessary to meet one or more of the principal objectives of the company's business. Base salary and bonus targets are set with the goal of motivating our named executive officers and adequately compensating and rewarding them on a day-to-day basis for the time spent and the services they perform. Our equity programs are geared toward providing an incentive and reward for the achievement of long-term business objectives, retaining key talent and more closely aligning the interests of management with our stockholders.

The compensation program for our named executive officers is reviewed on an annual basis. In setting individual compensation levels for a particular executive, the total compensation package is considered along with the executive's past and expected future contributions to our business.

#### *Base Salary*

Our executive officers' base salaries depend on their position within the company and its subsidiaries, the scope of their responsibilities, the period during which they have been performing those responsibilities and their overall performance. Base salaries are reviewed annually and are generally adjusted from time to time to realign salaries with market levels after taking into account individual responsibilities, performance and experience.

#### *Annual Bonus*

The company has a long history of sharing profits with employees. This philosophy is embedded in our corporate culture and is one of many practices that has enabled the company to continually focus on improvement and be successful.

Our named executive officers participate in our Executive Profit Sharing Bonus Program, which is subject to approval by our Board of Directors every year. Depending on our overall business performance, which for calendar year 2011 was specifically related to our attainment of Adjusted EBITDA (excluding the impact of current-year acquisitions) and our growth, each named executive officer is eligible to receive a bonus ranging from zero to 108% of his or her annual base salary. These target ranges are the same for all members of the Senior Management Group and are subject to change at the discretion of the Compensation Committee. Performance objectives are generally set on an annual basis. The applicable performance period is the calendar year in which the bonus award opportunity is granted.



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In determining the amount each named executive officer earns under the Executive Profit Sharing Bonus Program, 75% of the target value of the award is earned based on attaining 100% of the applicable annual Adjusted EBITDA target, and 25% is based on attaining a pre-established level of growth in the equity value of the company. By meeting both targets, named executive officers qualify to earn 68.5% of their annual base salary. Bonus payments are thus directly tied to the performance of the company. Upon approval by our Board of Directors, bonuses are, to the extent earned, generally paid on an annual basis on a date determined by the Compensation Committee.

### *New Annual Bonus Plan*

In connection with the consummation of this offering, we intend to adopt the Berry Plastics Group, Inc. Executive Bonus Plan. The Executive Bonus Plan is intended to provide an incentive for superior work and to motivate covered key executives toward even greater achievement and business results, to tie their goals and interests to those of ours and our stockholders and to enable us to attract and retain highly qualified executives. Under the Executive Bonus Plan, we may pay bonuses (including, without limitation, discretionary bonuses) to key executives, including executive officers, based upon such terms and conditions as our board of directors or compensation committee may in its discretion determine. The Executive Bonus Plan will be administered by our board of directors and/or Compensation Committee. We may amend or terminate the Executive Bonus Plan at any time in our sole discretion. Any amendments to the Executive Bonus Plan will require stockholder approval only to the extent required by applicable law, rule or regulation.

### *Equity Compensation Plan*

In 2006, we adopted the 2006 Equity Incentive Plan. The 2006 Equity Incentive Plan permits us to grant stock options, stock appreciation rights, and rights to purchase shares to employees, directors or consultants of the company or any of its subsidiaries. The 2006 Equity Incentive Plan is administered by our Board of Directors or, if designated by our Board of Directors, by the Compensation Committee. Approximately one million shares of our common stock have been reserved for issuance under the 2006 Equity Incentive Plan.

As discussed below, we have awarded stock options to members of our management, including our named executive officers. However, the Compensation Committee has not established any formal program or practice regarding the amount or timing of equity award grants to our employees. We do not have any program, plan or practice for selecting grant dates for awards under the 2006 Equity Incentive Plan in coordination with the release of material nonpublic information. Under the 2006 Equity Incentive Plan, the exercise price for option awards is the fair market value of our common stock on the date of grant. Historically, the fair market value of a share of our common stock was determined by the Board of Directors by applying industry-appropriate multiples to our then-current EBITDA. This valuation took into account a level of net debt that excluded cash required for working capital purposes. After the consummation of this offering, we expect that the fair market value of a share of our common stock will be determined for this purpose by reference to the public trading price of a share of our common stock on the date of grant of the option (*e.g.*, using a weighted average or closing price). The Compensation Committee is not prohibited from granting awards at times when it is in possession of material nonpublic information. However, no inside information was taken into account in determining the number of options previously awarded or the exercise price for those awards, and we did not “time” the release of any material nonpublic information to affect the value of those awards.

From time to time, we grant management participants stock options or stock appreciation rights under the 2006 Equity Incentive Plan. In connection with the grants, we enter into stock option or stock appreciation right award agreements with management participants. The Compensation Committee believes that the granting of awards under the 2006 Equity Incentive Plan promotes, on a short- and long-term basis, an enhanced personal interest for our executives and an alignment of those interests with the goals and strategies of the company and the interests of our stockholders. The Compensation Committee also believes that the equity grants provide not only financial rewards to such executives for achieving company goals but also provide additional incentives for executives to remain with the company.

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Generally, options granted under the 2006 Equity Incentive Plan become vested and exercisable over a five-year period. Unless set forth otherwise in the applicable award agreement, time-based options generally vest in 20% increments on each of the first five anniversaries of the grant date, performance-based options generally vest upon achievement of certain EBITDA or IRR targets, and all options granted and outstanding under the plan vest on the ninth anniversary of the date of grant. In each case, the vesting of options is generally subject to the grantee's continued employment at the company or at one of its subsidiaries as of the applicable vesting date.

The 2006 Equity Incentive Plan (as supplemented by a side letter) provides for payment to holders of vested outstanding stock options and stock appreciation rights of special dividends and a *pro rata* share of transaction fees that may be paid to Apollo and Graham Partners in connection with certain extraordinary transactions. Absent an agreement otherwise, dividends and transaction fees in respect of unvested options and stock appreciation rights are credited to an account (and funded through the use of a "rabbi" trust) and paid to the option or stock appreciation right holder upon the earlier of the second anniversary of the date of payment of dividends or transaction fees generally (as the case may be), the holder's death, disability, retirement, termination without cause or resignation for good reason or a change of control of us (as such terms are defined in the 2006 Equity Incentive Plan). The above terms and conditions regarding payments and credits in the event of special dividends will expire upon the consummation of the offering.

The maximum term of options granted under the 2006 Equity Incentive Plan is ten years. Subject to certain exceptions set forth in the applicable stock option award agreement, unvested options will automatically be forfeited upon termination (in the case of a termination for cause, vested options are also forfeited), and all vested options held by the participant upon a termination of employment (other than for cause) will expire 90 days after termination (or one year after termination in the case of termination due to death or disability). In the case of a termination of employment due to death or disability, an additional 20% of an individual's options will vest. Twenty percent of each grantee's option grants becomes vested upon a "change in control" of us, and 40% of each grantee's option grants becomes vested if such change in control results in the achievement of a targeted internal rate of return. In the case of Dr. Jonathan Rich, our Chief Executive Officer, different vesting terms and conditions apply to his unvested stock options in the event his employment is terminated under certain circumstances or there is a change of control of us. After the consummation of the offering, we expect that the terms and conditions of the 2006 Equity Incentive Plan, and the terms and conditions of the new equity plan we anticipate adopting prior to the offering, will provide for different treatment of outstanding options and other equity-based awards upon a change in control of us.

Shares of company common stock acquired under the 2006 Equity Incentive Plan are subject to restrictions on transfer, repurchase rights, and other limitations as set forth in award agreements adopted under the 2006 Equity Plan and the company's stockholder's agreement. As set forth in the award agreements adopted under the 2006 Equity Plan and the company's stockholder's agreement, upon the consummation of the offering, these transfer restrictions will no longer apply (subject to certain exceptions) because our shares of common stock will be publicly traded.

### *New Equity Compensation Plan*

In connection with the consummation of this offering, we intend to adopt the Berry Plastics Group, Inc. 2012 Long-Term Incentive Plan, which we refer to as the "2012 Plan." The following is a description of the material terms of the 2012 Plan.

*Purpose.* The purposes of the 2012 Plan are to further the growth and success of Berry Plastics Group, Inc. and to reward and incentivize the outstanding performance of our key employees, directors, consultants and other service providers by aligning their interests with those of stockholders through equity-based compensation and enhanced opportunities for ownership of shares of our common stock.

*Administration.* The 2012 Plan will be administered by our board of directors and/or the compensation committee thereof, or such other committee of the board of directors as the board of directors may from time to time designate (the committee administering the 2012 Plan is referred to in this description as the "committee").

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Among other things, the committee will have the authority to select individuals to whom awards may be granted, to determine the type of awards, to determine the terms and conditions of any such awards, to interpret the terms and provisions of the 2012 Plan and awards granted thereunder and to otherwise administer the plan.

*Eligibility.* Persons who serve or agree to serve as employees of, directors of, consultants to or other service providers of Berry Plastics Group, Inc. on the date of the grant will be eligible to be granted awards under the 2012 Plan.

*Shares Available.* Subject to adjustment, the 2012 Plan authorizes the issuance of up to 9,297,750 shares of common stock pursuant to the grant or exercise of nonqualified stock options, incentive stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards. The maximum number of shares of common stock pursuant to incentive stock options will be 929,775 shares of common stock.

If any award is forfeited or if any stock option or other stock award terminates without being exercised, or if any shares of common stock are not actually purchased pursuant to such stock awards, shares of common stock subject to such awards will be available for subsequent distribution of awards under the 2012 Plan. If the option price of any stock option granted under the 2012 Plan will be satisfied by delivering shares of common stock to us (by actual delivery or attestation), only the number of shares of common stock issued net of the shares of common stock delivered or attested to will be deemed delivered for purposes of determining the maximum number of shares of common stock available for delivery under the 2012 Plan. To the extent any shares are not delivered to a participant because such shares are used to satisfy any applicable tax-withholding obligation, such shares will not be deemed to have been delivered for purposes of determining the maximum number of shares of common stock available for delivery under the 2012 Plan.

*Change in Capitalization or Change in Control.* In the event of certain extraordinary corporate transactions, the committee or the board of directors may make such substitutions or adjustments as it deems appropriate and equitable to (i) the aggregate number and kind of shares or other securities reserved for issuance and delivery under the 2012 Plan, (ii) the various maximum limitations set forth in the 2012 Plan, (iii) the number and kind of shares or other securities subject to outstanding awards; and (iv) the exercise price of outstanding options and stock appreciation rights, among others.

The committee may, in its discretion, provide for the acceleration of vesting or exercisability of awards either (i) upon a change in control of Berry Plastics Group, Inc., (ii) upon a specified date following a change in control of Berry Plastics Group, Inc., or (iii) upon specified terminations of employment following a change in control of Berry Plastics Group, Inc. The committee may provide for such treatment as a term of an award or may provide for such treatment following the granting of an award.

*Types of Awards.* As indicated above, several types of awards will be available for grant under the 2012 Plan. A summary of the types of awards available under the 2012 Plan is set forth below.

*Stock Options and Stock Appreciation Rights.* Stock options granted under the 2012 Plan may either be incentive stock options or nonqualified stock options. Stock appreciation rights granted under the plan may either be granted alone or in tandem with a stock option. The exercise price of options and stock appreciation rights cannot be less than 100% of the fair market value of the stock underlying the options or stock appreciation rights on the date of grant. Optionees may pay the exercise price in cash or, if approved by the committee, in common stock (valued at its fair market value on the date of exercise) or a combination thereof, or by "cashless exercise" through a broker or by withholding shares otherwise receivable on exercise. The term of options and stock appreciation rights shall be as determined by the committee, but an incentive stock option, which we refer to as "ISO," may not have a term longer than ten years from the date of grant. The committee will determine the vesting and exercise schedule of options and stock appreciation rights and the extent to which they will be exercisable after the award holder's employment terminates. Generally, and subject to the terms of the applicable award agreement, unvested options and stock appreciation rights terminate upon the termination of employment and vested options and stock appreciation

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rights will remain exercisable for 90 days after the award holder's termination for any other reason. Vested options and stock appreciation rights also will terminate upon the optionee's termination for "cause" (as defined in the 2012 Plan). Stock options and stock appreciation rights are transferable only by will or by the laws of descent and distribution, or pursuant to a qualified domestic relations order or in the case of nonqualified stock options or stock appreciation rights, as otherwise expressly permitted by the committee including, if so permitted, pursuant to a transfer to the participant's family members, to a charitable organization, whether directly or indirectly or by means of a trust or partnership or otherwise.

*Restricted Stock.* Restricted stock may be granted with such restriction periods as the committee may designate. The committee may provide at the time of grant that the vesting of restricted stock will be contingent upon the achievement of applicable performance goals and/or continued service. The terms and conditions of restricted stock awards (including any applicable performance goals) need not be the same with respect to each participant. During the restriction period, the committee may require that the stock certificates evidencing restricted shares be held by Berry Plastics Group, Inc. Restricted stock may not be sold, assigned, transferred, pledged or otherwise encumbered, and is forfeited upon termination of employment, unless otherwise provided by the committee. Other than such restrictions on transfer and any other restrictions the committee may impose, the participant will have all the rights of a stockholder with respect to the restricted stock award.

*Restricted Stock Units.* The committee may grant restricted stock units payable in cash or shares of Berry Plastics Group, Inc. common stock, conditioned upon continued service and/or the attainment of performance goals determined by the committee. The terms and conditions of restricted stock unit awards (including any applicable performance goals) need not be the same with respect to each participant.

*Other Stock-Based Awards.* Under the 2012 Plan, the committee will be able to grant other types of equity-based awards based upon our common stock, including unrestricted stock, convertible debentures and dividend equivalent rights.

*Transferability.* The 2012 Plan will provide that awards generally will not be assignable or otherwise transferable, except by will, by designation of a beneficiary, and the laws of descent and distribution or to the extent otherwise permitted by the committee.

*Duration of the Plan.* We intend that the 2012 Plan will have a term of ten years from the date of its adoption by our board of directors.

*Amendment and Discontinuance.* The board of directors may amend, alter or discontinue the 2012 Plan, but no amendment, alteration or discontinuance may materially impair the rights of an optionee under an option or a recipient of a stock appreciation right, restricted stock award or restricted stock unit award previously granted without the optionee's or recipient's consent. The 2012 Plan expressly permits the committee to increase or decrease the exercise price of any or all outstanding awards under the 2012 Plan, to grant new options or stock appreciation rights in exchange for the surrender and cancellation of any or all outstanding stock options or stock appreciation rights, and to buy from a participant a stock option or stock appreciation right previously granted with payment in cash, securities or other consideration. Amendments to the 2012 Plan require stockholder approval to the extent such approval is required by applicable law or the listing standards of any applicable exchange.

### *Tax Considerations*

This paragraph is intended only as a brief summary of the federal income tax rules that are generally relevant to nonqualified options. The laws governing the tax aspects of awards are highly technical and such laws are subject to change. Upon the grant of a nonqualified option under the 2012 Plan, the optionee will not recognize any taxable income and we will not be entitled to a deduction. Upon the exercise of such an option, the excess of the fair market value of the shares acquired on the exercise of the option over the exercise price will constitute compensation taxable to the optionee as ordinary income. In computing our U.S. federal income tax, we will generally be entitled to a deduction in an amount equal to the compensation taxable to the optionee. As

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discussed more fully below, Section 162(m) of the Code generally disallows a tax deduction to public companies for compensation paid to a company's chief executive officer or any of its other three most highly compensated executive officers, other than the chief financial officer, in excess of \$1 million in any year, but nonqualified options generally qualify for an exception to this limitation. In any case, as discussed below, we expect a "grandfathering" exception to this limitation to apply to the 2012 Plan until (a) the first material modification of such plan or agreement; (b) the first meeting of our stockholders held to elect directors that occurs after 2015; or (c) such other date required by Section 162(m) of the Code.

### *Expected Grants Following this Offering*

We currently expect to grant under the new equity plan described above awards with respect to approximately 2.8 million shares in the aggregate at the offering price to employees, officers and non-employee directors, including our named executive officers, immediately following the consummation of this offering. It is currently expected that such awards will be in the form of options to purchase shares of common stock of the Company, which options will have an exercise price equal to the price of shares sold in this offering and be subject to time-based vesting conditions, except for non-employee directors, whose options will be fully vested upon grant.

### **Compensation Programs and Risk Management**

We have determined that any risks arising from our compensation programs and policies are not reasonably likely to have a material adverse effect on the company. Our compensation programs and policies mitigate risk by combining performance-based, long-term compensation elements with payouts that are highly correlated to the value delivered to the company and its stockholders. The combination of performance measures applicable to annual bonuses and equity compensation awards granted to our executive officers and the multi-year vesting schedules applicable to equity awards granted to our executives encourages our executives to maintain both a short- and long-term view with respect to company performance.

### **Post-Employment Compensation**

We provide post-employment compensation to our employees, including our named executive officers, as a continuance of the post-retirement programs sponsored by prior owners of the company. The Compensation Committee believes that offering such compensation allows us to attract and retain qualified employees and executives in a highly competitive marketplace and rewards our employees and executives for their contribution to the company during their employment.

A principal component of our post-employment executive officer compensation program is a qualified defined contribution 401(k) plan and a retirement health plan, which plans apply to all of our employees generally. Additionally, as described in more detail below, each of our named executive officers is party to employment agreements with us that provide for termination rights and benefits. Under the 401(k) plan, the company awards a \$200 lump sum contribution annually for participating in the plan and matches dollar-for-dollar the first \$300 contributed by participants, with an additional match equal to 10% of the applicable participant's elective deferrals made during the plan year (subject to the limits set forth under the Internal Revenue Code). Participants who contribute at least \$1,000 will also receive an additional \$150 lump-sum deposit at the end of the year. Company matching contributions are immediately vested upon contribution.

### **Perquisites and Other Personal Benefits**

The Compensation Committee periodically reviews the perquisites provided to our executive officers to ensure that they are reasonable, competitive and consistent with the overall compensation program. Such perquisites include for certain of our executive officers (as set forth in more detail in the Summary Compensation Table and accompanying footnotes) use of a company-provided car and financial planning and tax assistance.

### **Section 162(m) of the Internal Revenue Code**

From and after the time that our compensation programs become subject to Section 162(m) of the Internal Revenue Code, we intend to consider the structure of base salary, bonus and equity award compensation in order to maintain the deductibility of compensation under Section 162(m), to the extent we believe it is in the best interests of our stockholders to do so. However, the Board of Directors will take into consideration other factors, together with Section 162(m) considerations, in making executive compensation decisions and could, in certain circumstances, approve and authorize compensation that is not fully tax deductible. Transition provisions under Section 162(m) may apply for a period of approximately three to four years following the consummation of this offering to certain compensation arrangements that were entered into by us because we were not publicly held.

### **Compensation Program Following the Offering**

The design of our compensation program following this offering is an ongoing process. We believe that, following the offering, we will have more flexibility in designing compensation programs to attract, motivate and retain our executives, including permitting us to regularly compensate executives with non-cash compensation reflective of our stock performance in relation to a comparative group in the form of publicly traded equity. Accordingly, as described above, we intend to adopt the Berry Plastics Group, Inc. Executive Bonus Plan and the 2012 Plan in connection with the offering.

We currently anticipate that our named executive officers (other than Messrs. Kratochvil and Becker, whose agreements expired in December 2011) will continue to be subject to employment agreements that are substantially similar to their existing employment agreements that are described herein. It is also currently anticipated that our current named executive officers will hold substantially similar positions following the offering.

While we are still in the process of determining specific details of the compensation program that will take effect following the offering, it is currently anticipated that our compensation program following the offering will be based on the same principles and designed to achieve the same objectives as our current compensation program.

### **Compensation Committee Interlocks and Insider Participation**

During fiscal 2011, no officer or employee served as a member of the Compensation Committee. Messrs. Seminara, Donald Graham and Civale, members of our Compensation Committee, have relationships with our equity sponsors, Apollo and Graham Partners. We may pay fees to our equity sponsors for providing management, consulting, or other advisory services. As such, Messrs. Seminara, Donald Graham and Civale may be indirect beneficiaries of the relationship between our equity sponsors and us. For more information about these relationships, see "Certain Relationships and Related Party Transactions."

**Summary Compensation Table**  
(in dollars)

<u>Name and Principal Position</u>	<u>Fiscal Year</u>	<u>Salary</u>	<u>Bonus</u>	<u>Stock Awards</u>	<u>All Other Compensation</u>	<u>Total</u>
Jonathan D. Rich	2011	\$834,329	\$ 30,740	\$733,239 <sup>(1)</sup>	\$ 25,993 <sup>(2)</sup>	\$1,624,301
Chairman and Chief Executive Officer	2010	—	—	—	—	—
	2009	—	—	—	—	—
Ira G. Boots	2011	\$428,558 <sup>(3)</sup>	\$137,435	\$ —	\$ 621,778 <sup>(4)</sup>	\$1,187,771
Former—Chairman and Chief Executive Officer	2010	879,661	592,854	—	22,864	1,495,379
	2009	870,068	172,464	—	20,424	1,062,956
Randall J. Becker	2011	\$522,729	\$ 75,000	\$ —	\$ 2,325	\$ 600,054
Chief Operating Officer	2010	422,617	143,331	—	2,736	568,684
	2009	206,805	41,772	—	1,852	250,429
James M. Kratochvil	2011	\$512,552	\$ 72,759	\$ —	\$ 14,171 <sup>(5)</sup>	\$ 599,482
Chief Financial Officer	2010	448,688	313,864	—	—	762,552
	2009	460,847	91,352	—	—	552,199
Thomas E. Salmon	2011	\$408,910	\$ 60,633	\$ —	\$ 2,263	\$ 471,806
President—Engineered Materials Division	2010	376,595	261,553	—	12,449	650,597
	2009	385,265	76,143	—	1,873	463,281
G. Adam Unfried	2011	\$357,032	\$ 51,176	\$ —	\$ 2,333	\$ 410,541
President—Rigid Packaging—Open Top	2010	312,609	204,705	—	2,185	519,499
	2009	298,840	55,865	—	2,098	356,803

- (1) Equals the aggregate grant date fair value, as computed in accordance with FASB ASC Topic 718, of the grants of nonqualified stock options to Mr. Rich under the 2006 Equity Incentive Plan as set forth below under the “Grants of Plan-Based Awards” table. For a description of the assumptions used to value these options, please refer to Note 1 to the “Notes to Consolidated Financial Statements.”
- (2) Equals the sum of (1) \$25,133 in relocation expenses reimbursed to Dr. Rich and (2) \$860 in costs of group life insurance coverage provided to the executive.
- (3) Reflects base salary paid to the executive from October 2, 2010 through the effective date of his retirement on December 31, 2010.
- (4) Equals the sum of (1) payment of \$151,529 in unused vacation time accrued as of the effective date of the executive’s retirement from the company on December 31, 2010, (2) \$450,000 in consulting fees paid to the executive after his retirement from the company for the period beginning January 1, 2011 and ending October 1, 2011, (3) \$15,244 in costs incurred by the company for the executive’s use of a company-provided vehicle, (4) \$3,725 in costs of group life insurance coverage provided to the executive, and (5) \$1,280 in matching contributions made by the company to the executive’s account under the company 401(k) plan.
- (5) Equals the sum of (1) \$12,250 in costs incurred by the company for the executive’s use of a company-provided vehicle, and (2) \$1,001 in costs of group life insurance coverage provided to the executive, and (3) \$920 in matching contributions made by the company to the executive’s account under the company 401(k) plan.

**Employment and Consulting Agreements**

Messrs. Becker and Kratochvil were party to employment agreements with the company that expired in December 2011, and Messrs. Unfried and Salmon are party to agreements that remain in effect unless terminated according to their terms. The employment agreements provide for base salary as disclosed in the “Summary Compensation Table” above. Salaries are subject in each case to annual adjustment at the discretion of the company. The employment agreements generally entitle each executive to participate in all incentive compensation and welfare plans established for executive officers.

The company may terminate the employment agreements for “cause” or due to a “disability” (as such terms are defined in the agreements). Specifically, if Mr. Salmon or Mr. Unfried is terminated by the company without

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“cause” (as such term is defined in their respective agreements), each is entitled to: (1) a *pro rata* portion of the annual bonus awarded to the executive for the year in which termination occurs, and (2) (A) if terminated prior to January 1, 2015, continuation of base salary for one year after termination, and (B) if terminated on or after January 1, 2015, severance benefits pursuant to the provisions of the Berry Plastics Corporation Severance Pay Plan in effect on the date of termination. If Mr. Kratochvil or Mr. Becker is terminated without “cause” (in the case of Mr. Kratochvil, a termination without cause includes a termination by reason of death or “disability”) or if either resigns for “good reason” (as such terms are defined in their respective agreements), each is entitled to: (1) the greater of (A) continuation of base salary for one year after termination and (B) 1/12 of one year’s base salary for each year of employment (subject to a maximum of 30 years) with the company and its predecessors, and (2) a *pro rata* portion of the annual bonus awarded to him for the year in which termination occurs. Each employment agreement also includes customary noncompetition, nondisclosure and nonsolicitation provisions.

In October 2010, the company and Jonathan Rich entered into an employment agreement. The employment agreement provides for base salary as disclosed in the “Summary Compensation Table” above. Salary is subject to annual adjustment at the discretion of the Compensation Committee of the Board of Directors. The agreement generally entitles Dr. Rich to an annual performance-based target bonus equal to 68.5% of his then-current annual base salary and to participate in all welfare plans established for executive officers. If Dr. Rich’s employment is terminated by the company without “cause,” if Dr. Rich resigns for “good reason,” or if his employment is terminated by reason of death or disability, in each case (other than death) subject to his execution of a release of claims and compliance with the restrictive covenants set forth in his agreement, he is entitled to (1) cash severance equal to 18 months’ base salary, payable in monthly installments, (2) a prorated bonus based on actual performance for the year in which termination occurs and (3) for the severance continuation period, a monthly amount equal to the amount by which the monthly COBRA continuation coverage premium exceeds the active employee monthly premium under the company’s group medical plans. The employment agreement also includes customary noncompetition, nondisclosure and nonsolicitation provisions.

In October 2010, the company and Mr. Boots entered into a letter agreement regarding Mr. Boots’ retirement as an employee of the company in December 2010, his subsequent engagement as a consultant and other related matters. Following his retirement, Mr. Boots may continue to use a company-leased vehicle until August 2013. Additionally, Mr. Boots is entitled to post-retirement medical insurance coverage under the company’s Health and Welfare Plan for Early Retirees, and is providing consulting services to the company over a five-year period that began in January 2011, for which he is being paid 20 quarterly payments of \$112,500 each. Pursuant to the agreement, Mr. Boots’ vested options to purchase our common stock generally are terminating in 20% increments on March 31 of each of 2011, 2012, 2013, 2014 and 2015, and Mr. Boots forfeited all of his unvested options to purchase our common stock.

### Grants of Plan-Based Awards for the 2011 Fiscal Year

The table below sets forth the grants to our named executive officers in fiscal 2011 under the 2006 Equity Incentive Plan.

<u>Name</u>	<u>Grant Date</u>	<u>All Other Option Awards: Number of Securities Underlying Options (#)</u>	<u>Exercise or Base Price of Option Awards (\$/sh)</u>	<u>Grant Date Fair Value of Stock and Option Awards</u>
Jonathan Rich <sup>(1)</sup>	10/04/10	408,329	\$ 6.12	\$ 733,239
Jonathan Rich <sup>(2)</sup>	10/04/10	816,659	\$ 6.12	—

- (1) Represents options that (i) have an exercise price fixed at \$6.12 per share, which was the fair market value of a share of our common stock on the date of grant, and (ii) vest and become exercisable over a five-year period, beginning in fiscal 2011 based on continued service with the company.
- (2) Represents options that (i) have an exercise price fixed at \$6.12 per share, which was the fair market value of a share of our common stock on the date of grant, and (ii) vest and become exercisable based on the achievement of certain financial targets.



**Outstanding Equity Awards at Fiscal Year-End Table**

The following table shows the number of outstanding equity awards held by each of our named executive officers as of October 1, 2011.

<u>Name</u>	<u>Number of Securities Underlying Unexercised Options (#) Exercisable</u>	<u>Number of Securities Underlying Unexercised Options (#) Unexercisable</u>	<u>Option Exercise Price (\$/sh)</u>	<u>Option Expiration Date</u>
Jonathan Rich	—	1,225,000 <sup>(1)</sup>	6.12	10/04/20
James M. Kratochvil	247,878	7,680 <sup>(2)</sup>	8.16	9/20/16
Randall J. Becker	123,957	3,822 <sup>(3)</sup>	8.16	6/04/17
Randall J. Becker	11,172	52,699 <sup>(4)</sup>	6.18	1/01/20
G. Adam Unfried	162,545	5,034 <sup>(5)</sup>	8.16	9/20/16
Thomas E. Salmon	20,947	12,568 <sup>(6)</sup>	8.16	6/04/17
Thomas E. Salmon	43,781	48,387 <sup>(7)</sup>	9.21	1/01/18

- (1) The executive's unvested options vest as follows: (i) with respect to 408,329 options, 20% vested on October 4, 2011, and 20% vest on October 4 of each of 2012, 2013, 2014 and 2015, and (ii) 816,659 options vest upon the attainment of certain performance criteria.
- (2) The executive's unvested options vested on December 31, 2011.
- (3) The executive's unvested options vested on December 31, 2011.
- (4) The executive's unvested options vest as follows: (i) with respect to 20,763 options, approximately 1,592 vest at the end of each calendar quarter beginning with the calendar quarter ending December 31, 2011, and (ii) with respect to 31,935 options, approximately 6,382 vest at the end of each calendar year beginning with the 2011 calendar year based on the attainment of performance criteria.
- (5) The executive's unvested options vested on December 31, 2011.
- (6) The executive's unvested options vest as follows: (i) 833 options vested on December 31, 2011, (ii) 833 options vest on March 31, 2012, and (iii) with respect to 10,902 options, approximately 3,356 options vest at the end of each calendar year beginning with the 2011 calendar year based on the attainment of performance criteria.
- (7) The executive's unvested options vest as follows: (i) with respect to 11,539 options, approximately 2,303 options vest at the end of each calendar quarter beginning with the calendar quarter ending December 31, 2011, and (ii) with respect to 36,848 options, 9,212 options vest at the end of each calendar year beginning with the 2011 calendar year based on the attainment of performance criteria.

**Option Exercises for the 2011 Fiscal Year**

No options were exercised by our named executive officers in fiscal 2011.

**Potential Payments Upon Termination or Change-in-Control**

As discussed above, Messrs. Unfried, Salmon and Dr. Rich are party to employment agreements with the company. Messrs. Becker and Kratochvil were party to employment agreements with the company that expired in December 2011. If Mr. Becker or Mr. Kratochvil is terminated without "cause" (in the case of Mr. Kratochvil, a termination without cause includes a termination by reason of death or "disability") or if either resigns for "good reason" (as such terms are defined in their respective agreements), each is entitled to: (1) the greater of (A) continuation of base salary for one year after termination and (B) 1/12 of one year's base salary for each year of employment (subject to a maximum of 30 years) with the company and its predecessors, and (2) a *pro rata* portion of the annual bonus awarded to him for the year in which termination occurs. If Mr. Salmon or Mr. Unfried is terminated by the company without "cause" (as such term is defined in their respective agreements), the executive is entitled to: (1) a *pro rata* portion of the annual bonus awarded to the executive for

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the year in which termination occurs, and (2) (A) if terminated prior to January 1, 2015, continuation of base salary for one year after termination, and (B) if terminated on or after January 1, 2015, severance benefits pursuant to the provisions of the Berry Plastics Corporation Severance Pay Plan in effect on the date of termination. If Dr. Rich is terminated by the company without “cause,” he resigns for “good reason” or if his employment is terminated by reason of death or disability, in each case (other than death) subject to his execution of a release of claims and compliance with the restrictive covenants set forth in his agreement, he is entitled to (1) cash severance equal to 18 months’ base salary, payable in monthly installments, (2) a prorated bonus based on actual performance for the year in which termination occurs, and (3) for the severance continuation period, a monthly amount equal to the amount by which the monthly COBRA continuation coverage premium exceeds the active employee monthly premium under the company’s group medical plans.

Under the company’s form of option award agreements, as described above, unvested options will automatically be forfeited upon a termination without cause (in the case of a termination for cause, vested options are also forfeited). In the case of a termination of employment due to death or disability, an additional 20% of an executive’s options will vest. Twenty percent of each executive’s option grants becomes vested upon a “change in control” of us, and 40% becomes vested if such change in control results in the achievement of a targeted internal rate of return. In the case of Dr. Rich, different vesting terms and conditions apply to his unvested stock options in the event his employment is terminated under certain circumstances or there is a change of control of us. Assuming that the employment of each of our named executive officers had been terminated on October 1, 2011, the exercise price of any options held by such executive would have either exceeded or been materially close in value to the options on the date of such executive’s termination of employment.

If each of our named executive officers had been terminated without “cause” on October 1, 2011, Messrs. Kratochvil, Becker, Salmon, Unfried and Dr. Rich would have received cash severance amounts of approximately \$1,462,000, \$1,316,000, \$689,000, \$602,000 and \$1,823,000, respectively.

### **Compensation for Directors**

Non-employee directors receive \$12,500 per quarter plus \$2,000 for each meeting they attend and are reimbursed for out-of-pocket expenses incurred in connection with their duties as directors. For fiscal 2011, we paid non-employee directors’ fees on a combined basis as shown in the following table.

<u>Name</u>	<u>Fees Earned or Paid</u>	<u>Option Awards</u>	<u>Total</u>
Anthony M. Civale	\$ 60,000	\$ —	\$60,000
Patrick J. Dalton <sup>(1)</sup>	54,000	—	54,000
Donald C. Graham	58,000	—	58,000
Steven C. Graham	52,000	—	52,000
Joshua J. Harris	56,000	—	56,000
Robert V. Seminara	66,000	—	66,000

(1) Mr. Dalton resigned from the Board of Directors effective February 8, 2012.

**Equity Compensation Plan Information**

The following table provides information as of the end of our 2011 fiscal year regarding shares of common stock of Berry Plastics Group, Inc. that may be issued under our existing equity compensation plan, the 2006 Equity Incentive Plan, which is the only plan under which equity awards have been granted.

<u>Plan category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u> (a)	<u>Weighted average exercise price of outstanding options, warrants and rights</u> (b)	<u>Number of securities remaining available for future issuance under equity compensation plan (excluding securities referenced in column (a))</u> (c)
Equity compensation plans not approved by security holders <sup>(1)</sup>	10,826,232	7.70	1,512,606
Total	<u>10,826,232</u>	<u>7.70</u>	<u>1,512,606</u>

- (1) Includes the 2006 Equity Incentive Plan, which our Board of Directors adopted in September 2006, and for which there were 7,318,346 options exercisable at the end of our 2011 fiscal year.
- (2) Does not include shares of Berry Plastics Group, Inc. Common Stock already purchased as such shares are already reflected in the company's outstanding shares.

**2006 Equity Incentive Plan**

In 2006, we adopted the 2006 Equity Incentive Plan. The purpose of the 2006 Equity Incentive Plan is to further our growth and success, to enable our directors, executive officers and employees to acquire shares of our common stock, thereby increasing their personal interest in our growth and success, and to provide a means of rewarding outstanding performance by such persons. Options granted under the 2006 Equity Incentive Plan may not be assigned or transferred, except to us or by will or the laws of descent or distribution. The 2006 Equity Incentive Plan terminates ten years after adoption and no options may be granted under the plan thereafter. The 2006 Equity Incentive Plan allows for the issuance of non-qualified options, options intended to qualify as "incentive stock options" within the meaning of the Internal Revenue Code, stock appreciation rights and other rights to purchase shares of our common stock.

The employees participating in the 2006 Equity Incentive Plan receive options and stock appreciation rights under the 2006 Equity Incentive Plan pursuant to individual option and stock appreciation rights agreements, the terms and conditions of which (subject to certain exceptions) are substantially identical. Each option agreement provides for the issuance of options to purchase common stock of the company.

At the end of the 2011 fiscal year, there were outstanding options to purchase 10,782,965 shares of our common stock and stock appreciation rights with respect to 43,267 shares of our common stock.

**PRINCIPAL STOCKHOLDERS**

The following table sets forth certain information, as of September 18, 2012, regarding the beneficial ownership of the common stock of Berry Plastics Group, Inc. with respect to:

- each person that is a beneficial owner of more than 5% of its outstanding common stock;
- each director and each executive officer named in the Summary Compensation Table; and
- all directors and executive officers as a group.

Upon the completion of this offering, investment funds affiliated with Apollo will own, in the aggregate, approximately 53.50% of our common stock, assuming the underwriters do not exercise their option to purchase additional shares of our common stock. As a result, we will qualify as a “controlled company” within the meaning of the corporate governance rules of the NYSE.

<u>Name and Address of Owner<sup>(1)</sup></u>	<u>Upon Completion of the Offering</u>	
	<u>Number of Shares of Common Stock<sup>(1)</sup></u>	<u>Percent of Class</u>
Apollo Funds <sup>(2)</sup>	64,465,055	53.50%
Graham Berry Holdings, L.P. <sup>(3)</sup>	6,125,000	5.08%
James M. Kratochvil <sup>(4)</sup>	1,085,949	*
Jonathan Rich <sup>(4)</sup>	571,670	*
Randall J. Becker <sup>(4)</sup>	466,540	*
G. Adam Unfried <sup>(4)</sup>	316,025	*
Thomas E. Salmon <sup>(4)</sup>	195,595	*
B. Evan Bayh <sup>(5)(6)</sup>	24,500	*
Anthony M. Civale <sup>(5)(6)</sup>	43,254	*
Donald C. Graham <sup>(5)(7)</sup>	24,500	*
Steven C. Graham <sup>(5)(7)</sup>	24,500	*
Joshua J. Harris <sup>(5)(6)</sup>	43,254	*
Robert V. Seminara <sup>(5)(6)</sup>	43,254	*
David B. Heller <sup>(4)</sup> (director nominee)	—	*
All directors and executive officers as a group (12 persons, including director nominee)	2,839,041	2.36%

\* Less than 1% of common stock outstanding.

- (1) The amounts and percentages of common stock beneficially owned are reported on the basis of regulations of the SEC governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a “beneficial owner” of a security if that person has or shares voting power, which includes the power to vote or direct the voting of such security, or investment power, which includes the power to dispose of or to direct the disposition of such security. Securities that can be so acquired are deemed to be outstanding for purposes of computing such person’s ownership percentage, but not for purposes of computing any other person’s percentage. Under these rules, more than one person may be deemed beneficial owner of the same securities and a person may be deemed to be a beneficial owner of securities as to which such person has no economic interest. Except as otherwise indicated in these footnotes, each of the beneficial owners has, to our knowledge, sole voting and investment power with respect to the indicated shares of common stock.
- (2) The amount reported includes shares held of record by Apollo V Covalence Holdings, L.P. (“Covalence V”), Apollo Investment Fund V, L.P. (“AIF V”), Covalence Co-Investment Holdings LLC (“Covalence Co-Invest”), Apollo Investment Fund VI, L.P. (“AIF VI”), AP Berry Holdings, L.P. (“AP Holdings”) and BPC Co-Investment Holdings LLC (“BPC Co-Investment LLC,” and together with Covalence V, AIF V, Covalence Co-Invest, AIF VI and AP Holdings, the “Funds”). Apollo V Covalence Holdings, LLC (“Covalence LLC”) is the general partner of Covalence V, Apollo Advisors V, L.P. (“Advisors V”) is the general partner of AIF V, AP Berry Holdings, LLC (“AP Holdings LLC”) is the general partner of AP Holdings and the fiduciary of Apollo Overseas Partners (Germany) VI, L.P.

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(“Overseas Germany”) with respect to Overseas Germany’s investment in our common stock. Apollo Advisors VI, L.P. (“Advisors VI”) is the general partner of AIF VI and the managing general partner of Overseas Germany. Apollo Capital Management V, Inc. (“ACM V”) is the general partner of Advisors V, and Apollo Capital Management VI, LLC (“ACM VI”) is the general partner of Advisors VI. Apollo Principal Holdings I, L.P. (“Principal I”) is the sole stockholder of ACM V and the sole member of ACM VI. Apollo Principal Holdings I GP, LLC (“Principal I GP”) is the general partner of Apollo Principal.

Apollo Management V, L.P. (“Management V”) is the manager of Covalence LLC and Covalence Co-Invest, and the investment manager of AIF V, and as such has voting and investment power over the shares of our common stock held by AIF V, Covalence V and Covalence Co-Invest. Apollo Management VI, L.P. (“Management VI”) is the manager of AP Holdings LLC, BPC Co-Investment LLC and Overseas Germany, and the investment manager of AIF VI, and as such has voting and investment power over the shares of our common stock held by AP Holdings, BPC Co-Investment LLC and AIF VI. AIF V Management, LLC (“AIF V LLC”) is the general partner of Management V and AIF VI Management, LLC (“AIF VI LLC”) is the general partner of Management VI. Apollo Management, L.P. (“Apollo Management”) is the sole member and manager of AIF V LLC and AIF VI LLC, and Apollo Management GP, LLC (“Apollo Management GP”) is the general partner of Apollo Management. Apollo Management Holdings, L.P. (“Management Holdings”) is the sole member and manager of Apollo Management GP, and Apollo Management Holdings GP, LLC (“Management Holdings GP”) is the general partner of Management Holdings. Leon Black, Joshua Harris and Marc Rowan are the managers of Principal I GP, and the managers, as well as executive officers, of Management Holdings GP.

Covalence V, AIF V, Covalence Co-Invest, AIF VI, AP Holdings and BPC Co-Investment LLC each disclaims beneficial ownership of all of the shares of our common stock held by any of the other Funds. Each of Covalence LLC, AP Holdings, LLC, Overseas Germany, Advisors V, Advisors VI, ACM V, ACM VI, Principal I, Principal I GP, Management V, Management VI, AIF V LLC, AIF VI LLC, Apollo Management, Apollo Management GP, Management Holdings and Management Holdings GP, and Messrs. Black, Harris and Rowan, disclaims beneficial ownership of all shares of our common stock held or beneficially owned by any of the Funds, except to the extent of any pecuniary interest therein. The address of Covalence V, AP Holdings, AIF V, AIF VI, Covalence LLC, AP Holdings LLC, Advisors V, Advisors VI, ACM V, ACM VI, Principal I and Principal I GP is One Manhattanville Road, Suite 201, Purchase, New York 10577. The address of Overseas Germany is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands. The address of each of Covalence Co-Invest and BPC Co-Investment LLC is c/o Apollo Management VI, L.P., 9 West 57th Street, New York, New York 10019. The address of Management V, Management VI, AIF V LLC, AIF VI LLC, Apollo Management, Apollo Management GP, Management Holdings and Management Holdings GP, and Messrs. Black, Harris and Rowan, is 9 West 57th Street, 43rd Floor, New York, New York 10019.

- (3) Graham Partners II, L.P., as the sole member of the general partner of Graham Berry Holdings, L.P., has the voting and investment power over the shares held by Graham Berry Holdings, L.P. Each of Messrs. Steven Graham and Donald Graham, who have relationships with Graham Partners II, L.P. and/or Graham Berry Holdings, L.P., disclaim beneficial ownership of any shares of Berry Plastics Group, Inc. that may be deemed beneficially owned by Graham Partners II, L.P. or Graham Berry Holdings, L.P. except to the extent of any pecuniary interest therein. Each of Graham Partners II, L.P. and its affiliates disclaims beneficial ownership of any such shares in which it does not have a pecuniary interest. The address of Graham Partners II, L.P. and Graham Berry Holdings, L.P. is 3811 West Chester Pike, Building 2, Suite 200, Newtown Square, Pennsylvania 19073.
- (4) The address of Messrs. Kratochvil, Becker, Unfried, Salmon, Heller and Dr. Rich is c/o Berry, 101 Oakley Street, Evansville, Indiana 47710. Total includes underlying options that are vested or scheduled to vest within 60 days of \_\_\_\_\_.
- (5) Total represents underlying options that are vested or scheduled to vest within 60 days of \_\_\_\_\_ for each of Messrs. Bayh, Civale, Donald Graham, Steven Graham, Harris and Seminara. Options for 24,500 shares beneficially owned by Steven Graham are held of record by Graham Partners Inc.
- (6) The address of Messrs. Bayh, Civale, Harris and Seminara is c/o Apollo Management, L.P., 9 West 57th Street, New York, New York 10019.
- (7) The address of Messrs. Steven Graham and Donald Graham is c/o Graham Partners, Inc. is 3811 West Chester Pike, Building 2, Suite 200, Newtown Square, Pennsylvania 19073.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

### Stockholders Agreement

Apollo, Graham Partners and certain of our employees who invested in Berry Plastics Group, Inc. entered into a stockholders agreement in 2007 that we have agreed to amend and restate upon consummation of this offering. The amended and restated stockholders agreement will provide for, among other things, a restriction on the transferability of the equity ownership of the company of each employee and certain other stockholders that are parties thereto, certain restrictions on each such person's ability to compete with us or solicit our employees or customers, piggyback registration rights, repurchase rights by the company and Apollo in certain circumstances, demand registration rights for Apollo and Graham and board and information rights for Apollo.

In addition, the amended and restated stockholders agreement will provide that, except as otherwise required by applicable law, if Apollo continues to hold (a) at least 50% of our outstanding common stock, it will have the right to designate no fewer than that number of directors that would constitute a majority of our Board of Directors, (b) at least 30% but less than 50% of our outstanding common stock, it will have the right to designate up to five director nominees, (c) at least 20% but less than 30% of our outstanding common stock, it will have the right to designate up to four director nominees, and (d) at least 10% but less than 20% of our outstanding common stock, it will have the right to designate up to three director nominees. The agreement will also provide that if the size of the Board of Directors is increased or decreased at any time, Apollo's nomination rights will be proportionately increased or decreased, respectively, rounded up to the nearest whole number, except that if the Board of Directors increases its size within 180 days of the date of the agreement, Apollo will have the right to designate director nominees to fill each newly created directorship. The amended and restated stockholders agreement will provide that, except as otherwise required by applicable law, the company will take all action within its power to cause all persons nominated by Apollo pursuant to the provisions described above to be included in the slate of nominees recommended by the Board of Directors to our stockholders for election as directors at each annual meeting of our stockholders and will use all reasonable efforts to cause the election of each such nominee, including soliciting proxies in favor of the election of such nominees. In addition, except as otherwise required by applicable law, Apollo will have the right to designate a replacement to fill a vacancy on our Board of Directors that was designated by Apollo and we will be required to take all action within our power to cause such vacancy to be filled by the replacement designated by Apollo (including by promptly appointing such designee to the board of directors). Once Apollo owns less than 10% of our outstanding common stock, it will have no right to designate director nominees under the amended and restated stockholders agreement. See "Description of Capital Stock—Composition of Board of Directors; Election and Removal of Directors."

Under the amended and restated stockholders agreement, the approval of a majority of the members of our board of directors, which must include the approval of a majority of the directors nominated by Apollo voting on the matter, will be required under certain circumstances. These include, as to us and, to the extent applicable, each of our subsidiaries:

- the amendment, modification or repeal of any provision of our certificate of incorporation and bylaws or similar organizational documents in a manner that adversely affects Apollo;
- the issuance of additional shares of any class of our capital stock (other than any award under any stockholder approved equity compensation plan or any intra-company issuance among us and our subsidiaries);
- a merger or consolidation of us with or into any other entity, or transfer (by lease, assignment, sale or otherwise) of all or substantially all of our and our subsidiaries' assets, taken as a whole, to another entity, the entry into or agreement to undertake any transaction that would constitute a "Change of Control" as defined in our or our subsidiaries' principal credit facilities or note indentures;
- the consummation of any acquisition of the stock or assets of any other entity (other than any of our subsidiaries), in a single transaction or a series of related transactions, involving consideration in

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excess of \$75.0 million in the aggregate, or the entry into any joint venture requiring a capital contribution in excess of \$75.0 million;

- the incurrence of indebtedness, in a single transaction or a series of related transactions, aggregating to more than \$75.0 million, except for borrowings under a revolving credit facility that has previously been approved or is in existence (with no increase in maximum availability) on the date of closing of this offering;
- making a single or series of related capital expenditures in excess of \$25.0 million in any fiscal year;
- the declaration of any dividends or other distributions (other than intra-company dividends or distributions of any of our subsidiaries);
- the termination of the Chief Executive Officer or designation of a new Chief Executive Officer;
- a change in the size of the board of directors; and
- the creation of any non-wholly owned subsidiary of us or any of our subsidiaries.

These approval rights will terminate at such time as Apollo no longer beneficially owns at least 25% of our outstanding common stock. See “Management—Apollo Approval of Certain Matters and Rights to Nominate Certain Directors” and “Description of Capital Stock—Composition of Board of Directors; Election and Removal of Directors.”

The amended and restated stockholders agreement will provide that Apollo may make one or more written demands of us to require us to register the shares of our common stock owned by Apollo, and Graham may make up to three such demands with respect to the shares of common stock owned by Graham. In addition, Apollo, Graham and the stockholders that are parties to the agreement will have piggyback rights entitling them to require us to register shares of our common stock owned by them in connection with any registration statements filed by us after the completion of this offering, subject to certain exceptions. We have agreed to indemnify Apollo and such stockholders (to the extent they are selling stockholders in any such registration) against losses suffered by them in connection with any untrue or alleged untrue statement of a material fact contained in any registration statement, prospectus or preliminary prospectus or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statement therein not misleading, except insofar as the same may be caused by or contained in any information furnished in writing to us by such selling stockholder for use therein.

### **Management and Transaction Fees**

Prior to this offering, the company has been charged a management fee by Apollo Management VI, L.P., an affiliate of its principal stockholder and Graham Partners, for the provision of management consulting and advisory services provided each year. The management fee is the greater of \$3 million or 1.25% of Adjusted EBITDA per year. The company paid \$9 million of total management fees to Apollo and Graham Partners in fiscal 2011.

In connection with this offering, the management services agreement with Apollo and Graham Partners will be terminated.

In connection with the Rexam SBC acquisition, our management and the sponsors received a transaction fee of \$5 million, including \$3.5 million paid to Apollo and \$329,000 paid to Graham Partners.

In connection with the reorganization of Pliant, our management and the sponsors received a structuring fee of \$7 million, including \$5.0 million paid to Apollo, \$475,000 paid to Graham and \$148,000 paid to Ira Boots. Our sponsors also received approximately 17.5 cents per dollar of principal amount with respect to the interests they held in Pliant’s existing second lien notes, or approximately \$20.3 million in cash in the aggregate for

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Apollo and \$1.7 million in cash in the aggregate for Graham Partners, such 17.5 cents upon Pliant's exit from bankruptcy being equal to the amount received by all other holders of Pliant's existing second lien notes upon Pliant's exit from bankruptcy.

### **Income Tax Receivable Agreement**

Following our initial public offering, we expect to be able to utilize net operating losses that arose prior to the initial public offering and are therefore attributable to our existing stockholders, option holders and holders of stock appreciation rights (*i.e.*, Apollo, management and other investors). These net operating loss carryforwards will reduce the amount of tax that we and our subsidiaries would otherwise be required to pay in the future.

We will enter into an income tax receivable agreement and thereby distribute to our existing stockholders, option holders and holders of our stock appreciation rights the right to receive payment by us of 85% of the amount of cash savings, if any, in U.S. federal, state, local, and foreign income tax that we and our subsidiaries actually realize (or are deemed to realize in the case of a change of control and certain subsidiary dispositions, as discussed below) as a result of the utilization of our and our subsidiaries' net operating losses attributable to periods prior to this offering.

For purposes of the income tax receivable agreement, cash savings in income tax will be computed by reference to the reduction in the liability for income taxes resulting from the utilization of the tax benefits subject to the income tax receivable agreement. The term of the income tax receivable agreement will commence upon consummation of this offering and will continue until all relevant tax benefits have been utilized or have expired.

Our counterparties under the income tax receivable agreement will not reimburse us for any payments previously made if such tax benefits are subsequently disallowed (although future payments would be adjusted to the extent possible to reflect the result of such disallowance). As a result, in such circumstances we could make payments under the income tax receivable agreement that are greater than our actual cash tax savings.

While the actual amount and timing of any payments under the income tax receivable agreement will vary depending upon a number of factors, including the amount and timing of the taxable income we and our subsidiaries generate in the future, and our and our subsidiaries' use of net operating loss carryforwards, we expect that during the term of the income tax receivable agreement, the payments that we may make could be material. Assuming no material changes in the relevant tax law and that we and our subsidiaries earn sufficient taxable income to realize the full tax benefits subject to the income tax receivable agreement, we would expect that future payments under the income tax receivable agreement will aggregate to approximately \$310 to \$350 million.

If we had completed our initial public offering as of June 30, 2012, we would have recorded a liability of \$310 million, which represents the full obligation for our recognized deferred tax assets, with an offset to Additional Paid in Capital if the income tax receivable agreement had been executed. We expect to record a stock compensation charge in connection with our initial public offering related to the income tax receivable agreement for the payments to option holders and holders of our stock appreciation rights. Any future changes in the realizability of our net operating loss carry forwards that were generated prior to our initial public offering, will impact the amount of the liability that will be paid to our shareholders, option holders and holders of our stock appreciation rights. Changes in the realizability of these tax assets will be recorded in income tax expense (benefit) and any changes in the obligation under the income tax receivable agreement will be recorded in other income (expense). Based on our current taxable income estimates, we expect to repay the majority of this obligation by the end of our 2016 fiscal year. We expect to pay between \$310 million and \$350 million in cash related to this agreement, based on our current taxable income estimates. We plan to use cash flow from operations and availability under our line of credit to fund this obligation.

If we undergo a change of control, the income tax receivable agreement will terminate and we will be required to make a payment equal to the present value of future payments under the income tax receivable



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agreement, which payment would be based on certain assumptions, including those relating to our and our subsidiaries' future taxable income. Additionally, if we sell or otherwise dispose of any of our subsidiaries in a transaction that is not a change of control, we will be required to make a payment equal to the present value of future payments under the income tax receivable agreement attributable to the tax benefits of such subsidiary that is sold or disposed of, applying the assumptions described above. Under limited circumstances, payments in connection with stock options and stock appreciation rights may, for tax reasons, need to be deferred following a change of control until the fifth anniversary of this offering.

The income tax receivable agreement provides that in the event that we breach any of our material obligations under it, whether as a result of our failure to make any payment when due (subject to a specified cure period), failure to honor any other material obligation under it or by operation of law as a result of the rejection of it in a case commenced under the United States Bankruptcy Code or otherwise, then all our payment and other obligations under the income tax receivable agreement will be accelerated and will become due and payable applying the same assumptions described above. Such payments could be substantial and could exceed our actual cash tax savings under the income tax receivable agreement.

Because we are a holding company with no operations of our own, our ability to make payments under the income tax receivable agreement is dependent on the ability of our subsidiaries to make distributions to us. Our credit agreement and Berry Plastics Corporation's outstanding notes restrict the ability of our subsidiaries to make distributions to us, which could affect our ability to make payments under the income tax receivable agreement. To the extent that we are unable to make payments under the income tax receivable agreement for any reason, such payments will be deferred and will accrue interest at a rate of LIBOR plus 5.00% per annum until paid.

### **Other Related Party Transactions**

Certain of our management, stockholders and related parties and their affiliates have independently acquired and held financial debt instruments of the company as of June 30, 2012. During fiscal 2011, interest expense included \$1.3 million related to this debt.

### **Review and Approval of Related Party Transactions**

Upon consummation of this offering, we intend to adopt a formal written policy for the review, approval or ratification of transactions with related persons.

## DESCRIPTION OF CERTAIN INDEBTEDNESS

### Senior Secured Credit Facilities

Berry Plastics Corporation is a party to senior secured credit facilities that include a term loan in the principal amount of \$1,200 million and a revolving credit facility which provides borrowing availability equal to the lesser of (a) \$650 million or (b) the borrowing base, which is a function, among other things, of Berry Plastics Corporation's and certain of its subsidiaries' accounts receivable and inventory. The term loan matures on April 3, 2015 and the revolving credit facility matures on the earlier of June 28, 2016 and the date that is 45 days prior to the earliest scheduled maturity of Berry Plastics Corporation's first lien notes, second lien notes (other than the second priority floating rate notes in certain circumstances) or term loan, except to the extent such debt is refinanced according to certain requirements.

The borrowing base is, at any time of determination, an amount (net of reserves) equal to the sum of:

- 85% of the net amount of eligible accounts receivable; and
- 85% of the net orderly liquidation value of eligible inventory.

The revolving credit facility includes borrowing capacity available for letters of credit and for borrowings on same-day notice, referred to as swingline loans.

At June 30, 2012, we had unused borrowing capacity of \$394 million under the revolving credit facility after giving effect to outstanding letters of credit and borrowing base reserve.

The borrowings under the senior secured credit facilities bear interest at a rate equal to an applicable margin plus, as determined at our option, either (a) a base rate ("Base Rate") determined by reference to the higher of (1) the prime rate of Credit Suisse, Cayman Islands Branch, as administrative agent, in the case of the term loan facility or Bank of America, N.A., as administrative agent, in the case of the revolving credit facility and (2) the U.S. federal funds rate plus  $\frac{1}{2}$  of 1% or (b) a eurodollar rate ("LIBOR") determined by reference to the costs of funds for eurodollar deposits in dollars in the London interbank market for the interest period relevant to such borrowing adjusted for certain additional costs. The initial applicable margin for LIBOR rate borrowings under the revolving credit facility as amended on June 28, 2011 was 1.75% to 2.25% and under the term loan is 2.00%. The initial applicable margin for base rate borrowings under the revolving credit facility as amended was 0.00% and under the term loan was 1.00%. The applicable margin for such borrowings under the revolving credit facility is adjusted depending on quarterly average daily unused borrowing capacity under the revolving credit facility.

The term loan facility requires minimum quarterly principal payments of \$3 million for the first eight years, commencing in June 2007, with the remaining amount payable on April 3, 2015. In addition, Berry Plastics Corporation must prepay the outstanding term loan, subject to certain exceptions, with:

- 50% (which percentage is subject to a minimum of 0% upon the achievement of certain leverage ratios) of excess cash flow (as defined in the term loan credit agreement); and
- 100% of the net cash proceeds of all non-ordinary course asset sales and casualty and condemnation events, if Berry Plastics Corporation does not reinvest or commit to reinvest those proceeds in assets to be used in its business or to make certain other permitted investments within 15 months, subject to certain limitations.

In addition to paying interest on outstanding principal under the senior secured credit facilities, Berry Plastics Corporation is required to pay a commitment fee to the lenders under the revolving credit facilities in respect of the unutilized commitments thereunder at a rate equal to 0.375% to 0.50% per annum depending on the average daily available unused borrowing capacity. Berry Plastics Corporation also pays a customary letter of credit fee, including a fronting fee of 0.125% per annum of the stated amount of each outstanding letter of credit, and customary agency fees.

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Berry Plastics Corporation may voluntarily repay outstanding loans under the senior secured credit facilities at any time without premium or penalty, other than customary “breakage” costs with respect to eurodollar loans.

The senior secured credit facilities contain a number of covenants that, among other things, restrict, subject to certain exceptions, Berry Plastics Corporation’s ability and the ability of its subsidiaries to:

- sell assets;
- incur additional indebtedness;
- repay other indebtedness;
- pay dividends and distributions or repurchase our capital stock;
- create liens on assets;
- make investments, loans, guarantees or advances;
- make certain acquisitions;
- engage in mergers or consolidations;
- enter into sale leaseback transactions;
- engage in certain transactions with affiliates;
- amend certain material agreements governing our indebtedness;
- amend organizational documents;
- change the business conducted by Berry Plastics Corporation and its subsidiaries;
- change Berry Plastics Corporation’s fiscal year end; and
- enter into agreements that restrict dividends from subsidiaries.

In addition, the revolving credit facility requires Berry Plastics Corporation to maintain a minimum fixed charge coverage ratio at any time when the aggregate unused revolver capacity falls below either 10% of the lesser of the revolving credit facility commitments and the borrowing base (and for ten consecutive days following the date upon which availability exceeds such threshold) or during the continuation of an event of default. In that event, Berry Plastics Corporation must satisfy a minimum fixed charge coverage ratio requirement of 1.0:1.0. The term loan facility also requires Berry Plastics Corporation to use commercially reasonable efforts to maintain corporate ratings from each of Moody’s and S&P for the term loan facility. The senior secured credit facilities also contain certain other customary affirmative covenants and events of default.

All obligations under the senior secured credit facilities are unconditionally guaranteed by Berry Plastics Group, Inc. and, subject to certain exceptions, each of Berry Plastics Corporation’s existing and future direct and indirect domestic subsidiaries. The guarantees of those obligations are secured by substantially all of Berry Plastics Corporation’s assets and those of each domestic subsidiary guarantor as well as the equity interests in Berry Plastics Corporation held by Berry Plastics Group, Inc.

### **First Priority Senior Secured Notes**

In April 2008, Berry Plastics Corporation issued \$681 million in aggregate principal amount of first priority floating rate senior secured notes due 2015 (the “existing first priority floating rate notes”). In November 2009, certain subsidiaries of Berry Plastics Corporation issued \$370 million in aggregate principal amount of 8 1/4% first priority senior secured notes due 2015 (the “existing first priority fixed rate notes,” and together with the existing first priority floating rate notes, the “existing first priority senior secured notes”), and in December 2009, Berry Plastics Corporation assumed the obligations in respect of the existing first priority fixed rate notes.

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The existing first priority senior secured notes are secured senior obligations of Berry Plastics Corporation and are guaranteed on a first priority senior secured basis by each of Berry Plastics Corporation's subsidiaries that guarantees our senior secured credit facilities. The existing first priority floating rate notes mature on February 15, 2015. Interest on the existing first priority floating rate notes accrues at a rate per annum, reset quarterly, equal to LIBOR plus 4.75%. The existing first priority fixed rate notes mature on November 15, 2015. Interest on the existing first priority fixed rate notes accrues at 8 1/4% per annum.

On or after April 15, 2010, Berry Plastics Corporation may redeem some or all of the existing first priority floating rate notes at the redemption prices set forth in the indenture relating to the existing first priority floating rate notes.

Berry Plastics Corporation's existing first priority fixed rate notes may be redeemed, at its option, prior to November 15, 2012, at a price equal to 100% of the principal amount of the existing first priority fixed rate notes redeemed plus an applicable premium as of, and accrued and unpaid interest and additional interest, if any, to the applicable redemption date. On or after November 15, 2012, Berry Plastics Corporation may redeem some or all of the existing first priority fixed rate notes at the redemption prices set forth in the indenture relating to the existing first priority fixed rate notes. In addition, on or prior to November 15, 2012, Berry Plastics Corporation may redeem in the aggregate up to 35% of the original aggregate principal amount of the existing first priority senior secured notes issued as of the time of such redemptions, with the net cash proceeds of one or more equity offerings at specified redemption prices.

Upon the occurrence of a change of control, Berry Plastics Corporation is required to offer to repurchase all of the existing first priority senior secured notes at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase.

The indentures relating to the existing first priority senior secured notes contain a number of covenants that, among other things and subject to certain exceptions, restrict the ability of Berry Plastics Corporation and its restricted subsidiaries to incur indebtedness or issue disqualified stock or preferred stock, pay dividends or redeem or repurchase stock, make certain types of investments, sell assets, incur certain liens, enter into agreements restricting dividends or other payments from subsidiaries and enter into certain transactions with affiliates.

The indentures relating to the existing first priority senior secured notes provide that Berry Plastics Corporation may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not Berry Plastics Corporation is the surviving person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any person unless certain requirements in the applicable Indenture are met.

Each indenture relating to the existing first priority senior secured notes also provides for events of default, which, if any of them occurs, would permit or require the principal, premium, if any, interest and any other monetary obligations on all the then outstanding existing first priority senior secured notes outstanding under such indenture to be due and payable immediately.

### **Second Priority Senior Secured Notes**

In September 2006, Berry Plastics Corporation issued \$225 million in aggregate principal amount of floating rate notes (the "second priority floating rate notes") and \$525 million in fixed rate notes (the "2006 second priority fixed rate notes"). In November 2009, certain subsidiaries of Berry Plastics Corporation issued \$250 million in aggregate principal amount of 8 7/8% second priority senior secured notes due 2014 (the "2009 second priority fixed rate notes"), and in December 2009, Berry Plastics Corporation assumed the obligations in respect of such notes. In connection with the issuance of \$800 million of second priority notes (the "November 2010 second priority notes") in November 2010, Berry Plastics Corporation conducted tender offers to purchase

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for cash any and all of the outstanding 2006 second priority fixed rate notes and 2009 second priority fixed rate notes. Berry Plastics Corporation also redeemed all such notes not validly tendered in the tender offers, and satisfied and discharged the indenture relating to the 2009 second priority fixed rate notes. Berry Plastics Corporation used the proceeds from the issuance of the November 2010 second priority notes along with cash on hand to fund the repurchase of the 2006 second priority fixed rate notes and the 2009 second priority fixed rate notes pursuant to the tender offers and subsequent redemption of such notes.

In April 2010, Berry Plastics Corporation issued \$500 million in aggregate principal amount of 9 1/2% second priority senior secured notes due 2018 (the “April 2010 second priority fixed rate notes,” and together with the November 2010 second priority notes and the second priority floating rate notes, the “existing second priority senior secured notes”). The second priority floating rate notes will mature on September 15, 2014; the April 2010 second priority fixed rate notes will mature on May 15, 2018; and the November 2010 second priority notes will mature on January 15, 2021. All of Berry Plastics Corporation’s existing second priority senior secured notes are secured, senior obligations and are guaranteed on a second priority secured, senior basis by each of Berry Plastics Corporation’s subsidiaries that guarantees its senior secured credit facilities. No principal payments are required with respect to the existing second priority senior secured notes prior to maturity.

The April 2010 second priority fixed rate notes may be redeemed, at Berry Plastics Corporation’s option, prior to May 15, 2014, at a price equal to 100% of the principal amount of the April 2010 second priority fixed rate notes redeemed, plus accrued and unpaid interest and additional interest, if any, to the redemption date, plus an applicable premium. On or after May 15, 2014, Berry Plastics Corporation may redeem some or all of the April 2010 second priority fixed rate notes at redemption prices set forth in the indenture relating to the April 2010 second priority fixed rate notes. The November 2010 second priority notes may be redeemed, at Berry Plastics Corporation’s option, prior to January 15, 2016, at a price equal to 100% of the principal amount of the 2010 second priority fixed rate notes redeemed, plus accrued and unpaid interest and additional interest, if any, to the redemption date, plus an applicable premium. On or after January 15, 2016, Berry Plastics Corporation may redeem some or all of the November 2010 second priority notes at redemption prices set forth in the indenture relating to the November 2010 second priority notes. The second priority floating rate notes may be redeemed, at Berry Plastics Corporation’s option, at redemption prices set forth in the indenture relating to such notes. If a change of control occurs, Berry Plastics Corporation must give holders of the existing second priority senior secured notes an opportunity to sell their notes at a purchase price of 101% of the principal amount plus accrued and unpaid interest.

The indentures relating to the existing second priority senior secured notes contain a number of covenants that, among other things and subject to certain exceptions, restrict the ability of Berry Plastics Corporation and its restricted subsidiaries to incur indebtedness or issue disqualified stock or preferred stock, pay dividends or redeem or repurchase stock, make certain types of investments, sell assets, incur certain liens, enter into agreements restricting dividends or other payments from subsidiaries, enter into certain transactions with affiliates and consolidate, merge or sell all or substantially all of its assets.

The indentures relating to the existing second priority senior secured notes provide that Berry Plastics Corporation may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not Berry Plastics Corporation is the surviving person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any person unless certain requirements in the applicable indenture are met.

Each indenture relating to the existing second priority senior secured notes also provides for events of default, which, if any of them occurs, would permit or require the principal, premium, if any, interest and any other monetary obligations on all the then-outstanding existing second priority senior secured notes under such indenture to be due and payable immediately.

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### **Senior Subordinated Notes**

Berry Plastics Corporation issued, in a private placement exempt from the Securities Act, \$425 million of 11% Senior Subordinated Notes due September 15, 2016 (the “11% senior subordinated notes”). The 11% senior subordinated notes are senior subordinated obligations of Berry Plastics Corporation and rank junior to all other senior indebtedness of Berry Plastics Corporation that does not contain similar subordination provisions. No principal payments are required with respect to the 11% senior subordinated notes prior to maturity.

Berry Plastics Corporation also issued \$265 million of 10 1/4% Senior Subordinated Notes due March 1, 2016 (the “10 1/4% senior subordinated notes,” and together with the 11% senior subordinated notes, the “senior subordinated notes”). The currently outstanding 10 1/4% senior subordinated notes are senior subordinated obligations of Berry Plastics Corporation and rank junior to all other senior indebtedness of Berry Plastics Corporation that does not contain similar subordination provisions. No principal payments are required with respect to the 10 1/4% senior subordinated notes prior to maturity.

The senior subordinated notes may be redeemed at Berry Plastics Corporation’s option under circumstances and at redemption prices set forth in the applicable indenture. Upon the occurrence of a change of control, Berry Plastics Corporation is required to offer to repurchase all of the senior subordinated notes at a purchase price of 101% of the principal amount plus accrued and unpaid interest.

The indentures relating to the senior subordinated notes each contain a number of covenants that, among other things and subject to certain exceptions, restrict the ability of Berry Plastics Corporation and its restricted subsidiaries to incur indebtedness or issue disqualified stock or preferred stock, pay dividends or redeem or repurchase stock, make certain types of investments, sell assets, incur certain liens, enter into agreements restricting dividends or other payments from subsidiaries, enter into certain transactions with affiliates and consolidate, merge or sell all or substantially all of its assets.

The indentures relating to the senior subordinated notes provide that Berry Plastics Corporation may not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not Berry Plastics Corporation is the surviving person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any person unless certain requirements in the Indenture are met.

Each indenture relating to the senior subordinated notes also provides for events of default, which, if any of them occurs, would permit or require the principal, premium, if any, interest and any other monetary obligations on all the senior subordinated notes then outstanding under such indenture to be due and payable immediately, subject to certain exceptions and qualifications.

### **Covenant Compliance**

Berry Plastics Corporation’s fixed charge coverage ratio, as defined in the revolving credit facility, is calculated based on a numerator consisting of Adjusted EBITDA less income taxes paid in cash and capital expenditures, and a denominator consisting of scheduled principal payments in respect of indebtedness for borrowed money, interest expense and certain distributions. Berry Plastics Corporation’s fixed charge coverage ratio, as defined in the indentures relating to the existing first priority senior secured notes, existing second priority senior secured notes and senior subordinated notes, is calculated based on a numerator consisting of Adjusted EBITDA, and a denominator consisting of interest expense and certain distributions. Berry Plastics Corporation is required, under its debt incurrence covenant, to use a rolling four quarter Adjusted EBITDA in its calculations.

Berry Plastics Corporation is required to maintain a minimum fixed charge coverage ratio of 1.0:1.0 under the revolving credit facility at any time when the aggregate unused capacity under the revolving credit facility is less than either 10% of the lesser of the revolving credit facility commitments and the borrowing base (and for

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10 consecutive days following the date upon which availability exceeds such threshold) or during the continuation of an event of default. At June 30, 2012, Berry Plastics Corporation had unused borrowing capacity of \$394 million under the revolving credit facility subject to a borrowing base.

Failure to maintain a first lien secured indebtedness ratio of 4.0 to 1.0 under the term loan facility, a fixed charge coverage ratio of 2.0:1.0 under the indentures relating to the senior subordinated notes, the existing first priority senior secured notes and the existing second priority senior secured notes, and unused borrowing capacity under the revolving credit facility of at least 15% of the lesser of the borrowing base and the aggregate revolving commitments (the "minimum amount"), or, if between \$45 million and such minimum amount, a fixed charge coverage ratio of 1.0:1.0 under the revolving credit facility, can result in limiting our long-term growth prospects by hindering Berry Plastics Corporation's ability to incur additional indebtedness, effect acquisitions, enter into certain significant business combinations, make distributions or redeem indebtedness.

### **Berry Plastics Group, Inc. Term Loan Credit Agreement**

Berry Plastics Group, Inc. entered into a term loan credit facility on June 5, 2007, providing for term loans of \$500 million in original principal amount. The term loans mature on June 5, 2014, are unsecured senior obligations of Berry Plastics Group, Inc. and are not guaranteed by any of its subsidiaries.

The borrowings under the Berry Plastics Group, Inc. term loan facility bear interest at a rate equal to an applicable margin plus, as determined at Berry Plastics Group, Inc.'s option, either (a) a base rate ("Base Rate") determined by reference to the higher of (1) the prime rate of Credit Suisse, Cayman Islands Branch, as administrative agent, and (2) the U.S. federal funds rate plus 1/2 of 1% or (b) a eurodollar rate ("LIBOR") determined by reference to the costs of funds for eurodollar deposits in dollars in the London interbank market for a three-month interest period, adjusted for certain additional costs. The initial applicable margin for LIBOR borrowings under the Berry Plastics Group, Inc. term loan facility was 6.25% per annum, and the initial applicable margin for base rate borrowings was 5.25% per annum.

For any interest period ending on or prior to June 5, 2012, Berry Plastics Group, Inc. may, at its option, elect to pay interest on the term loans (a) in cash, (b) by increasing the outstanding principal amount of the term loans by the amount of interest accrued during such interest period (a "PIK Election") or (c) by paying 50% of the interest accrued during such period in cash and 50% by PIK Election. Any portion of interest subject to a PIK Election shall be payable at LIBOR plus the applicable margin plus an additional 0.75% per annum. With respect to any interest period ending after June 5, 2012, interest will be payable in cash.

If the term loans would otherwise constitute "applicable high yield discount obligations" within the meaning of Section 163(i)(1) of the Internal Revenue Code of 1986, as amended (the "Code") from time to time and the regulations promulgated and the rulings issued thereunder, then at the end of each interest period ending after June 5, 2012, Berry Plastics Group, Inc. must repay in cash a portion of each term loan then outstanding equal to the portion of a term loan required to be repaid to prevent such term loan from being treated as an "applicable high yield discount obligation." In other words, Berry Plastics Group, Inc. expects that it will have to repay in cash \$12 million, which is recorded in current portion of long-term debt on the Consolidated Balance Sheet at the end of the first interest period ending after June 5, 2012 (and at the end of each subsequent interest period) a principal amount of Berry Plastics Group, Inc. term loans sufficient to cause the accrued and unpaid interest (including interest paid by PIK election) not to exceed the amount of interest that accrued on the term loans during the one-year period beginning on June 5, 2007.

Berry Plastics Group, Inc. may repay some or all of the term loans, at its option, at 100% of the principal amount of the term loans repaid, plus accrued and unpaid interest.

Upon the occurrence of a change of control of Berry Plastics Group, Inc., lenders of Berry Plastics Group, Inc. term loans have the right to have their loans repaid at 101% of the principal amount thereof plus accrued and unpaid interest.

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The credit agreement relating to the Berry Plastics Group, Inc. term loans contains a number of covenants that, among other things and subject to certain exceptions, restrict the ability of Berry Plastics Group, Inc. and its restricted subsidiaries to incur indebtedness or issue disqualified stock or preferred stock, pay dividends or redeem or repurchase stock, make certain types of investments, sell assets, incur certain liens, enter into agreements restricting dividends or other payments from subsidiaries, enter into certain transactions with affiliates and consolidate, merge or sell all or substantially all of their assets. The outstanding balance of the Senior Unsecured Term Loan was \$54 million as of June 30, 2012.



## DESCRIPTION OF CAPITAL STOCK

*The following is a description of the material terms of our amended and restated certificate of incorporation and amended and restated bylaws as each will be in effect as of the consummation of this offering, except as otherwise indicated by reference to our current certificate of incorporation and current bylaws, and of specific provisions of Delaware law.*

### General

We will amend and restate our certificate of incorporation, to be effective upon consummation of the offering, at which time our capital stock will consist of a total of 450 million authorized shares, of which 400 million shares, par value \$0.01 per share, will be designated as common stock and 50 million shares, par value \$0.01, will be designated as preferred stock. Immediately following the completion of this offering, we will have 112,600,136 shares of common stock outstanding. There will be no shares of preferred stock outstanding immediately following this offering.

### Common Stock

*Voting Rights.* Holders of common stock will be entitled to one vote per share on all matters to be voted upon by the stockholders. The holders of common stock will not have cumulative voting rights in the election of directors.

*Dividend Rights.* Holders of common stock will be entitled to receive ratably dividends if, as and when dividends are declared from time to time by our Board of Directors out of funds legally available for that purpose, after payment of dividends required to be paid on outstanding preferred stock, as described below, if any. Under Delaware law, we can only pay dividends either out of “surplus” or out of the current or the immediately preceding year’s net profits. Surplus is defined as the excess, if any, at any given time, of the total assets of a corporation over its total liabilities and statutory capital. The value of a corporation’s assets can be measured in a number of ways and may not necessarily equal their book value.

*Liquidation Rights.* Upon liquidation, dissolution or winding up, the holders of common stock will be entitled to receive ratably the assets available for distribution to the stockholders after payment of liabilities and accrued but unpaid dividends and liquidation preferences on any outstanding preferred stock.

*Other Matters.* The common stock will have no preemptive or conversion rights. There will be no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of our common stock will be fully paid and non-assessable, and the shares of our common stock offered in this offering, upon payment and delivery in accordance with the underwriting agreement, will be fully paid and non-assessable.

### Preferred Stock

Pursuant to our amended and restated certificate of incorporation, shares of preferred stock will be issuable from time to time, in one or more series, with the designations of the series, the voting rights of the shares of the series (if any), the powers, preferences and relative, participation, optional or other special rights (if any), and any qualifications, limitations or restrictions thereof as our Board of Directors from time to time may adopt by resolution (and without further stockholder approval), subject to certain limitations. Each series will consist of that number of shares as will be stated and expressed in the certificate of designations providing for the issuance of the stock of the series.

### Composition of Board of Directors; Election and Removal of Directors

In accordance with our amended and restated certificate of incorporation and our amended and restated bylaws, the number of directors comprising our Board of Directors will be determined from time to time by our Board of Directors, and only a majority of the Board of Directors may fix the number of directors. We intend to

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avail ourselves of the “controlled company” exception under applicable national securities exchange corporate governance rules, which exempts us from certain requirements, including the requirements that we have a majority of independent directors on our Board of Directors and that we have compensation and nominating and corporate governance committees composed entirely of independent directors. We will, however, remain subject to the requirement that we have an audit committee composed entirely of independent members.

We currently have seven directors and, upon the appointment of Mr. Heller upon the consummation of this offering, will have eight directors. Our amended and restated bylaws will provide that our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible. As a result, approximately one-third of our Board of Directors will be elected at the annual meeting of stockholders, with such elections decided by plurality vote, each year, except as provided in the amended and restated stockholders agreement that we have agreed to enter into upon consummation of this offering. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our Board. Each director will hold office until his successor is duly elected and qualified or until his earlier death, resignation or removal. Any vacancies on our Board of Directors may be filled only by the affirmative vote of a majority of the remaining directors, although less than a quorum, except as provided in the amended and restated stockholders agreement, as described below. Our amended and restated certificate of incorporation will provide that stockholders do not have the right to cumulative votes in the election of directors. At any meeting of our Board of Directors, except as otherwise required by law, a majority of the total number of directors that the company would have if there were no vacancies will constitute a quorum for all purposes.

The amended and restated stockholders agreement the company has agreed to enter into with Apollo and certain stockholders upon consummation of this offering will provide that, except as otherwise required by applicable law, if Apollo continues to hold (a) at least 50% of our outstanding common stock, it will have the right to designate no fewer than that number of directors that would constitute a majority of our Board of Directors, (b) at least 30% but less than 50% of our outstanding common stock, it will have the right to designate up to five director nominees, (c) at least 20% but less than 30% of our outstanding common stock, it will have the right to designate up to four director nominees, and (d) at least 10% but less than 20% of our outstanding common stock, it will have the right to designate up to three director nominees. The agreement will provide that if the size of the Board of Directors is increased or decreased at any time, Apollo’s nomination rights will be proportionately increased or decreased, respectively, rounded up to the nearest whole number, except that if the Board of Directors increases its size within 180 days of the date of the agreement, Apollo will have the right to designate director nominees to fill each newly created directorship. The amended and restated stockholders agreement will provide that, except as otherwise required by applicable law, the company will take all action within its power to cause all persons nominated by Apollo pursuant to the provisions described above to be included in the slate of nominees recommended by the Board of Directors to our stockholders for election as directors at each annual meeting of our stockholders and will use all reasonable efforts to cause the election of each such nominee, including soliciting proxies in favor of the election of such nominees. In addition, except as otherwise required by applicable law, Apollo will have the right to designate a replacement to fill a vacancy on our Board of Directors that was designated by Apollo and we will be required to take all action within our power to cause such vacancy to be filled by the replacement designated by Apollo (including by promptly appointing such designee to the board of directors). Once Apollo owns less than 10% of our outstanding common stock, it will have no right to designate director nominees under the amended and restated stockholders agreement. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

In addition, the amended and restated stockholders agreement will provide that until such time as Apollo no longer beneficially owns at least 25% of the total number of shares of our common stock outstanding at any time, the approval of a majority of the members of our board of directors, which must include the approval of a majority of the directors nominated by Apollo voting on the matter, will be required for amendments to our certificate of incorporation and bylaws, certain business combinations, the incurrence of certain indebtedness, certain capital expenditures, the declaration of dividends or other distributions other than intra-company dividends or distributions, changes in the size of the board of directors and to approve certain other matters. See

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“Management—Apollo Approval of Certain Matters and Rights to Nominate Certain Directors” and “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

### **Special Meetings of Stockholders**

Our amended and restated bylaws will provide that special meetings of the stockholders may be called only by the Board of Directors or chairman, and only proposals included in the company’s notice or otherwise brought before the meeting by or at the direction of the Board may be considered at such special meetings.

### **Section 203 of the DGCL**

In our amended and restated certificate of incorporation, we will elect not to be subject to Section 203 of the General Corporation Law of the State of Delaware (the “DGCL”). In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a three-year period following the time that this stockholder becomes an interested stockholder, unless the business combination is approved in the manner prescribed therein. A “business combination” includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns (or, in some cases, within three years prior, did own) 15% or more of the corporation’s voting stock.

### **Certain Corporate Anti-Takeover Provisions**

Certain provisions in our amended and restated certificate of incorporation and amended and restated bylaws summarized below may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests, including attempts that might result in a premium being paid over the market price for the shares held by stockholders.

#### ***Preferred Stock***

Our amended and restated certificate of incorporation will contain provisions that permit our Board of Directors to issue, without any further vote or action by the stockholders, shares of preferred stock in one or more series and, with respect to each such series, to fix the number of shares constituting the series and the designation of the series, the voting rights (if any) of the shares of the series, and the powers, preferences and relative, participation, optional and other special rights, if any, and any qualifications, limitations or restrictions, of the shares of such series. See “—Preferred Stock.”

#### ***Classified Board; Number of Directors***

Our amended and restated certificate of incorporation and amended and restated bylaws will provide that our Board of Directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible, and the number of directors on our Board of Directors may be fixed only by the majority of our Board of Directors, as described above in “—Composition of Board of Directors; Election and Removal of Directors.”

#### ***Removal of Directors, Vacancies***

Our amended and restated certificate of incorporation will provide that stockholders will be able to remove directors only by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of directors and only for cause. Vacancies on our Board of Directors may be filled only by a majority of our Board of Directors then in office, although less than a quorum, except as provided in the amended and restated stockholders agreement that we have agreed to enter into upon consummation of this offering, which will provide that except as otherwise required by applicable law, Apollo will have the right to designate a replacement to fill a vacancy on our Board of Directors that was designated by Apollo. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

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### ***No Cumulative Voting***

Our amended and restated certificate of incorporation will provide that stockholders do not have the right to cumulative votes in the election of directors. Cumulative voting rights would be available to the holders of our common stock if our amended and restated certificate of incorporation did not negate cumulative voting.

### ***No Stockholder Action by Written Consent; Calling of Special Meetings of Stockholders***

Our amended and restated certificate of incorporation will not permit stockholder action without a meeting by consent if less than 50.1% of our outstanding common stock is owned by affiliates of Apollo. Our amended and restated bylaws also will provide that special meetings of the stockholders may be called only by the Board or chairman, and only proposals included in the company's notice or otherwise brought before the meeting by or at the direction of the Board may be considered at such special meetings.

### ***Advance Notice Requirements for Stockholders Proposals and Director Nominations***

Our amended and restated bylaws will provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual meeting of stockholders, must provide timely notice thereof in writing. To be timely, a stockholder's notice generally will have to be delivered to and received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, that in the event that the date of such meeting is advanced more than 30 days prior to, or delayed by more than 60 days after, the anniversary of the preceding year's annual meeting of our stockholders, a stockholder's notice to be timely will have to be so delivered not earlier than the close of business on the 120th day prior to such meeting and not later than the close of business on the later of the 90th day prior to such meeting or, if the first public announcement of the date of such meeting is less than 100 days prior to the date of such meeting, the 10th day following the day on which public announcement of the date of such meeting is first made. Our amended and restated bylaws will also specify certain requirements as to the form and content of a stockholder's notice. These provisions may preclude stockholders from bringing matters before an annual meeting of stockholders or from making nominations for directors at an annual meeting of stockholders.

### ***Delaware Takeover Statute***

In our amended and restated certificate of incorporation we will elect not to be subject to Section 203 of the DGCL, which would have imposed additional requirements regarding certain mergers and other business combinations.

All the foregoing proposed provisions of our amended and restated certificate of incorporation and amended and restated bylaws could discourage potential acquisition proposals and could delay or prevent a change in control. In addition, under the amended and restated stockholders agreement that we have agreed to enter into upon consummation of this offering, until such time as Apollo no longer beneficially owns at least 25% of the total number of shares of our common stock outstanding at any time, the approval of a majority of the members of our board of directors, which must include the approval of a majority of the directors nominated by Apollo voting on the matter, will be required for certain business combinations and to approve certain other matters. See "Management—Apollo Approval of Certain Matters and Rights to Nominate Certain Directors" and "Certain Relationships and Related Party Transactions—Stockholders Agreement."

These provisions are intended to enhance the likelihood of continuity and stability in the composition of the Board of Directors and in the policies formulated by the Board of Directors and to discourage certain types of transactions that may involve an actual or threatened change of control. These same provisions may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interest. In addition, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our common stock that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management.

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### **Corporate Opportunity**

Our amended and restated certificate of incorporation will provide that no officer or director of us who is also an officer, director, employee, managing director or other affiliate of Apollo or Graham will be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that any such individual directs a corporate opportunity to Apollo or Graham, as applicable, instead of us, or does not communicate information regarding a corporate opportunity to us that the officer, director, employee, managing director or other affiliate has directed to Apollo or Graham, as applicable.

### **Amendment of Our Certificate of Incorporation**

Under Delaware law, our amended and restated certificate of incorporation will provide that it may be amended only with the affirmative vote of a majority of the outstanding stock entitled to vote in the election of directors; provided that Apollo's prior written consent is required for any amendment, modification or repeal of the provisions discussed above regarding the ability of Apollo-related directors to direct or communicate corporate opportunities to Apollo.

### **Amendment of Our Bylaws**

Our amended and restated bylaws will provide that except as provided in the amended and restated stockholders agreement that we have agreed to enter into in connection with the consummation of this offering, they can be amended by the vote of a majority of the shares present in person or represented by proxy at a meeting of the stockholders and entitled to vote or by the vote of a majority of the Board.

### **Limitation of Liability and Indemnification**

Our amended and restated certificate of incorporation will limit the liability of our directors to the maximum extent permitted by Delaware law. Delaware law provides that directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except with respect to liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the DGCL (governing distributions to stockholders); or
- for any transaction from which the director derived any improper personal benefit.

However, if the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. The modification or repeal of this provision of our amended and restated certificate of incorporation will not adversely affect any right or protection of a director existing at the time of such modification or repeal.

Our amended and restated certificate of incorporation will provide that we will, to the fullest extent from time to time permitted by law, indemnify our directors and officers against all liabilities and expenses in any suit or proceeding, arising out of their status as an officer or director or their activities in these capacities. We will also indemnify any person who, at our request, is or was serving as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise. We may, by action of our Board of Directors, provide indemnification to our employees and agents within the same scope and effect as the foregoing indemnification of directors and officers.

The right to be indemnified will include the right of an officer or a director to be paid expenses in advance of the final disposition of any proceeding, provided that, if required by law, we receive an undertaking to repay such amount if it will be determined that he or she is not entitled to be indemnified.

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Our Board of Directors may take such action as it deems necessary to carry out these indemnification provisions, including adopting procedures for determining and enforcing indemnification rights and purchasing insurance policies. Our Board of Directors may also adopt bylaws, resolutions or contracts implementing indemnification arrangements as may be permitted by law. Neither the amendment nor the repeal of these indemnification provisions, nor the adoption of any provision of our amended and restated certificate of incorporation inconsistent with these indemnification provisions, will eliminate or reduce any rights to indemnification relating to their status or any activities prior to such amendment, repeal or adoption.

We believe these provisions will assist in attracting and retaining qualified individuals to serve as directors.

### **Listing**

We have applied to list our shares of common stock on the NYSE under the symbol “BERY.”

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock will be Computershare Trust Company, N.A.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and no predictions can be made about the effect, if any, that market sales of shares of our common stock or the availability of such shares for sale will have on the market price prevailing from time to time. Nevertheless, the actual sale of, or the perceived potential for the sale of, our common stock in the public market may have an adverse effect on the market price for the common stock and could impair our ability to raise capital through future sales of our securities. See “Risk Factors—Risks Related to an Investment in our Common Stock and this Offering—Future sales or the possibility of future sales of a substantial amount of our common stock may depress the price of shares of our common stock.”

### Sale of Restricted Shares

Upon completion of this offering, we will have an aggregate of 112,600,136 shares of our common stock outstanding. Of these shares, the 29,411,764 shares of our common stock to be sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares which may be acquired by any of our “affiliates” as that term is defined in Rule 144 under the Securities Act, which will be subject to the resale limitations of Rule 144. The remaining 83,188,372 shares of our common stock outstanding will be restricted securities, as that term is defined in Rule 144, and may in the future be sold without restriction under the Securities Act to the extent permitted by Rule 144 or any applicable exemption under the Securities Act.

We have granted Apollo and Graham demand and incidental registration rights with respect to the shares of our common stock owned by it after this offering, and we have also granted certain employees and others who own equity in the company incidental registration rights with respect to the shares of our common stock owned by them after this offering. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

### Equity Incentive Plan

We intend to file one or more registration statements on Form S-8 under the Securities Act following this offering to register our shares of common stock that are issuable pursuant to the 2012 Plan. These registration statements are expected to become effective upon filing. Shares covered by these registration statements will then be eligible for sale in the public markets, subject to any applicable lock-up agreements and to Rule 144 limitations applicable to affiliates.

### Lock-up Agreements

The company and its executive officers, directors and significant stockholders, including Apollo and Graham, have agreed not to directly or indirectly, sell or dispose of any shares of our common stock for a period of 180 days from the date of this prospectus, subject to certain exceptions, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. See “Underwriting” for a description of these lock-up provisions.

### Rule 144

In general, under Rule 144 under the Securities Act, a person (or persons whose shares are aggregated) who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months (including any period of consecutive ownership of preceding non-affiliated holders), will be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year will be entitled to sell those shares without regard to the provisions of Rule 144.

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A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of one percent of the then-outstanding shares of our common stock or the average weekly trading volume of our common stock during the four calendar weeks preceding such sale. Such sales are also subject to certain manner of sales provisions, notice requirements and the availability of current public information about us.

### **Rule 701**

In general, under Rule 701 under the Securities Act, an employee, consultant or advisor who purchases shares of our common stock from us in connection with a compensatory stock or option plan or other written agreement is eligible to resell those shares 90 days after the effective date of the registration statement of which this prospectus forms a part in reliance on Rule 144, but without compliance with some of the restrictions, including the holding period restriction, contained in Rule 144.



**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS  
FOR NON-U.S. HOLDERS**

The following is a general discussion of material U.S. federal income tax considerations with respect to the ownership and disposition of our common stock applicable to non-U.S. holders who acquire such shares in this offering. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the "Code"), U.S. Treasury regulations promulgated thereunder, and administrative rulings and court decisions in effect as of the date hereof, all of which are subject to change at any time, possibly with retroactive effect.

For purposes of this discussion, the term "non-U.S. holder" means a beneficial owner of our common stock that is not, for U.S. federal income tax purposes, a partnership or any of the following:

- a citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in the United States or under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (1) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (2) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person for U.S. federal income tax purposes.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds shares of our common stock, the tax treatment of a person treated as a partner generally will depend on the status of the partner and the activities of the partnership. Persons that for U.S. federal income tax purposes are treated as a partner in a partnership holding shares of our common stock should consult their tax advisors.

This discussion assumes that a non-U.S. holder holds shares of our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all aspects of U.S. federal income taxation that may be important to a non-U.S. holder in light of that holder's particular circumstances or that may be applicable to holders subject to special treatment under U.S. federal income tax law (including, for example, financial institutions, dealers in securities, traders in securities that elect mark-to-market treatment, insurance companies, tax-exempt entities, holders who acquired our common stock pursuant to the exercise of employee stock options or otherwise as compensation, entities or arrangements treated as partnerships for U.S. federal income tax purposes, holders liable for the alternative minimum tax, certain former citizens or former long-term residents of the United States, and holders who hold our common stock as part of a hedge, straddle, constructive sale or conversion transaction). In addition, this discussion does not address U.S. federal tax laws other than those pertaining to the U.S. federal income tax, nor does it address any aspects of the unearned income Medicare contribution tax pursuant to the Health Care and Education Reconciliation Act of 2010, or U.S. state, local or non-U.S. taxes. Accordingly, prospective investors should consult with their own tax advisors regarding the U.S. federal, state, local, non-U.S. income and other tax considerations of acquiring, holding and disposing of shares of our common stock.

**THIS SUMMARY IS NOT INTENDED TO CONSTITUTE A COMPLETE DESCRIPTION OF ALL TAX CONSEQUENCES RELATING TO THE OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK. WE RECOMMEND THAT PROSPECTIVE HOLDERS OF OUR COMMON STOCK CONSULT WITH THEIR TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM (INCLUDING THE APPLICATION AND EFFECT OF ANY STATE, LOCAL, NON-U.S. INCOME AND OTHER TAX LAWS) OF THE OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK.**

## **Dividends**

In general, any distributions we make to a non-U.S. holder with respect to its shares of our common stock that constitute dividends for U.S. federal income tax purposes will be subject to U.S. withholding tax at a rate of 30% of the gross amount (or a reduced rate prescribed by an applicable income tax treaty) unless the dividends are effectively connected with a trade or business carried on by the non-U.S. holder within the United States (and, if an income tax treaty applies, are attributable to a permanent establishment of the non-U.S. holder within the United States). A distribution will constitute a dividend for U.S. federal income tax purposes to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. Any distribution not constituting a dividend will be treated as first reducing the adjusted basis in the non-U.S. holder's shares of our common stock and, to the extent it exceeds the adjusted basis in the non-U.S. holder's shares of our common stock, as gain from the sale or exchange of such shares.

Dividends effectively connected with a U.S. trade or business (and, if an income tax treaty applies, attributable to a U.S. permanent establishment) of a non-U.S. holder generally will not be subject to U.S. withholding tax if the non-U.S. holder complies with applicable certification and disclosure requirements. Instead, such dividends generally will be subject to U.S. federal income tax on a net income basis, in the same manner as if the non-U.S. holder were a resident of the United States. A non-U.S. holder that is a corporation may be subject to an additional "branch profits tax" at a rate of 30% (or such lower rate as may be specified by an applicable income tax treaty) on its "effectively connected earnings and profits," subject to certain adjustments.

## **Gain on Sale or Other Disposition of our Common Stock**

In general, a non-U.S. holder will not be subject to U.S. federal income or, subject to the discussion below under the heading "Information Reporting and Backup Withholding," withholding tax on any gain realized upon the sale or other disposition of our common stock unless:

- the gain is effectively connected with a trade or business carried on by the non-U.S. holder within the United States and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment of the non-U.S. holder;
- the non-U.S. holder is an individual and is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are satisfied; or
- we are or have been a U.S. real property holding corporation (a "USRPHC") for U.S. federal income tax purposes at any time within the shorter of the five-year period ending on the date of the disposition and the non-U.S. holder's holding period and certain other conditions are satisfied. We believe that we currently are not, and we do not anticipate becoming, a USRPHC.

Gain that is effectively connected with the conduct of a trade or business in the United States generally will be subject to U.S. federal income tax, net of certain deductions, at regular U.S. federal income tax rates. If the non-U.S. holder is a foreign corporation, the branch profits tax described above also may apply to such effectively connected gain. An individual non-U.S. holder who is subject to U.S. federal income tax because the non-U.S. holder was present in the United States for 183 days or more during the year of sale or other disposition of our common stock will be subject to a flat 30% tax on the gain derived from such sale or other disposition, which may be offset by U.S. source capital losses.

## **Information Reporting and Backup Withholding**

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to, and the tax withheld with respect to, each non-U.S. holder. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable tax treaty. Copies of this information also may be made available under the provisions of a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established.

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U.S. backup withholding tax (currently, at a rate of 28%) is imposed on certain payments to persons that fail to furnish the information required under the U.S. information reporting rules. Dividends paid to a non-U.S. holder generally will be exempt from backup withholding if the non-U.S. holder provides a properly executed IRS Form W-8BEN or otherwise establishes an exemption.

Under U.S. Treasury regulations, the payment of proceeds from the disposition of our common stock by a non-U.S. holder effected at a U.S. office of a broker generally will be subject to information reporting and backup withholding, unless the beneficial owner, under penalties of perjury, certifies, among other things, its status as a non-U.S. holder or otherwise establishes an exemption. The payment of proceeds from the disposition of our common stock by a non-U.S. holder effected at a non-U.S. office of a broker generally will not be subject to backup withholding and information reporting, except as noted below. In the case of proceeds from a disposition of our common stock by a non-U.S. holder effected at a non-U.S. office of a broker that is:

- a U.S. person;
- a “controlled foreign corporation” for U.S. federal income tax purposes;
- a foreign person 50% or more of whose gross income from certain periods is effectively connected with a U.S. trade or business; or
- a foreign partnership if at any time during its tax year (a) one or more of its partners are U.S. persons who, in the aggregate, hold more than 50% of the income or capital interests of the partnership or (b) the foreign partnership is engaged in a U.S. trade or business;

information reporting will apply unless the broker has documentary evidence in its files that the owner is a non-U.S. holder and certain other conditions are satisfied, or the beneficial owner otherwise establishes an exemption (and the broker has no knowledge or reason to know to the contrary). Backup withholding will apply if the sale is subject to information reporting and the broker has actual knowledge that you are a United States person.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder’s U.S. federal income tax liability, if any, provided that the required information is furnished to the Internal Revenue Service in a timely manner.

### **New Legislation**

Under recently enacted legislation and administrative guidance, a 30% withholding tax would be imposed on dividends paid after December 31, 2013 and the gross proceeds from the sale of stock paid after December 31, 2014 to certain foreign financial institutions, investment funds and other non-U.S. persons that fail to comply with information reporting and certain other requirements in respect of their direct and indirect U.S. stockholders and/or U.S. accountholders. Such payments would include dividends and the gross proceeds from the sale or other disposition of our common stock.

## UNDERWRITING (CONFLICTS OF INTEREST)

Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

<u>Underwriter</u>	<u>Number of Shares</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Citigroup Global Markets Inc.	
Barclays Capital Inc.	
Deutsche Bank Securities Inc.	
Credit Suisse Securities (USA) LLC	
Goldman, Sachs & Co.	
Robert W. Baird & Co. Incorporated	
Lazard Capital Markets LLC	
Wells Fargo Securities, LLC	
SunTrust Robinson Humphrey, Inc.	
Lebenthal & Co., LLC	
Apollo Global Securities, LLC	
Total	<u>29,411,764</u>

The underwriting agreement provides that the underwriters' obligation to purchase shares of common stock depends on the satisfaction of the conditions contained in the underwriting agreement including:

- the obligation to purchase all of the shares of common stock offered hereby (other than those shares of common stock covered by their option to purchase additional shares as described below), if any of the shares are purchased;
- the representations and warranties made by us to the underwriters are true;
- there is no material change in our business or the financial markets; and
- we deliver customary closing documents to the underwriters.

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

There is no established trading market for shares of our common stock and a liquid trading market may not develop. It is also possible that the shares will not trade at or above the initial offering price following the offering.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

### Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of \$        per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of \$        per share to other dealers. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

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The following table shows the underwriting discounts and expenses we will pay to the underwriters. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

	<u>Per Share</u>	<u>Without Option</u>	<u>With Option</u>
Public offering price	\$	\$	\$
Underwriting discounts and commissions	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

The expenses of the offering, not including the underwriting discount, are estimated at approximately \$4.7 million and are payable by us.

### **Option to Purchase Additional Shares**

We have granted an option to the underwriters to purchase up to 4,411,764 additional shares at the public offering price, less the underwriting discount. The underwriters may exercise this option for 30 days from the date of this prospectus solely to cover any options to purchase additional shares. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

### **Lock-Up Agreements**

We, all of our directors and executive officers and certain of our other existing stockholders, including affiliates of Apollo, have agreed that, subject to certain exceptions, for 180 days after the date of this prospectus, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc., we and they will not directly or indirectly, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (2) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of shares of our common stock, whether any such swap or transaction described in clause (1) or (2) above is to be settled by delivery of our common stock or such other securities, in cash or otherwise.

The 180-day restricted period described in the preceding paragraph will be extended if:

- during the last 17 days of the restricted period referred to above we issue an earnings release or material news or a material event relating to us occurs; or
- prior to the expiration of the restricted period referred to above, we announce that we will issue an earnings release or we become aware that material news or a material event relating to us will occur during the 16-day period beginning on the last day of the restricted period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day restricted period beginning on the issuance of the earnings release or the announcement of the material news or material event, unless such extension is waived in writing by Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc.

Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc., in their sole discretion, may release our common stock and other securities subject to the lock-up agreements described above in whole or in part at any time with or without notice. When determining whether or not to release our common stock and other securities from the lock-up agreements, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. will consider, among other factors, the holder's reasons for requesting the release, the number of shares of our common stock and other securities for which the release is being requested and market conditions at the time.

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### **Listing**

We have applied to list our shares of common stock on the NYSE under the symbol “BERY.” In order to meet the requirements for listing on that exchange, the underwriters have undertaken to sell a minimum number of shares to a minimum number of beneficial owners as required by that exchange.

### **Determination of Offering Price**

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations among us and the representatives of the underwriters. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representative believes to be comparable to us;
- our financial information;
- the history of, and the prospects for, our company and the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

### **Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representative may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option to purchase additional shares. “Naked” short sales are sales in excess of the option to purchase additional shares. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a

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decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representative will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

### **Electronic Distribution**

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

### **Reserved Share Program**

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to some of our employees, officers and directors, and some employees, officers and directors of our subsidiaries. If these persons purchase reserved shares, it will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus. Reserved shares purchased by our officers and directors will be subject to the lock-up provisions described above.

### **Other Relationships**

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses. Certain underwriters or their respective affiliates act as lenders or agents under, and as consideration therefor received customary fees and expenses in connection with, our credit facilities and certain underwriters or their respective affiliates are holders of certain of our outstanding notes.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments including serving as counterparties to certain derivative and hedging arrangements and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

Lazard Frères & Co. LLC referred this transaction to Lazard Capital Markets LLC and will receive a referral fee from Lazard Capital Markets LLC in connection therewith.

An affiliate of Goldman, Sachs & Co. owns 100% of the issued and outstanding 11.0% senior subordinated notes that will be repaid with the proceeds of this offering.

## Conflicts of Interest

Apollo Global Securities, LLC, an underwriter of this offering, is an affiliate of Apollo, our controlling stockholder. Since Apollo beneficially owns more than 10% of our outstanding common stock, a “conflict of interest” is deemed to exist under Rule 5121(f)(5)(B) of the Conduct Rules of the Financial Industry Regulatory Authority, or FINRA. In addition, affiliates of Goldman, Sachs & Co., an underwriter of this offering, will receive more than 5% of net offering proceeds by virtue of their ownership of our 11.0% senior subordinated notes outstanding and will have a “conflict of interest” pursuant to Rule 5121(f)(5)(C)(ii) of the Conduct Rules of FINRA. Accordingly, this offering will be made in compliance with the applicable provisions of Rule 5121. As such, any underwriter that has a conflict of interest pursuant to Rule 5121 will not confirm sales to accounts in which it exercises discretionary authority without the prior written consent of the customer. Pursuant to Rule 5121, a “qualified independent underwriter” (as defined in Rule 5121) must participate in the preparation of the prospectus and perform its usual standard of due diligence with respect to the registration statement and this prospectus. Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as qualified independent underwriter for the offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 of the Securities Act.

## Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “Relevant Member State”), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the “Relevant Implementation Date”), no offer of shares may be made to the public in that Relevant Member State other than:

- A. to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- B. to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives; or
- C. in any other circumstances falling within Article 3(2) of the Prospectus Directive,  
provided that no such offer of shares shall require the Company or the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State (other than a Relevant Member State where there is a Permitted Public Offer) who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (A) it is a “qualified investor” within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive, and (B) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, the shares acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than “qualified investors” as defined in the Prospectus Directive, or in circumstances in which the prior consent of the representatives has been given to the offer or resale. In the case of any shares being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of \_\_\_\_\_ has been obtained to each such proposed offer or resale.

The company, the representatives and their affiliates will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement.



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This prospectus has been prepared on the basis that any offer of shares in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Relevant Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the company nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

For the purpose of the above provisions, the expression “an offer to the public” in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression “Prospectus Directive” means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

### **Notice to Prospective Investors in the United Kingdom**

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are “qualified investors” (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the “Order”) and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “*relevant persons*”). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

### **Notice to Prospective Investors in Switzerland**

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

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

### **Notice to Prospective Investors in the Dubai International Financial Centre**

This document relates to an exempt offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority. This document is intended for distribution only to persons of a type specified in those rules. It must not be delivered to, or relied on by, any other person. The Dubai Financial Services Authority

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has no responsibility for reviewing or verifying any documents in connection with exempt offers. The Dubai Financial Services Authority has not approved this document nor taken steps to verify the information set out in it, and has no responsibility for it. The shares which are the subject of the offering contemplated by this prospectus may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this document you should consult an authorised financial adviser.

### **Notice to Prospective Investors in Hong Kong**

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

### **Notice to Prospective Investors in Singapore**

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

### **Notice to Prospective Investors in Japan**

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries’ rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law. The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

## LEGAL MATTERS

Wachtell, Lipton, Rosen & Katz, New York, New York, will pass upon for us the validity of the shares of our common stock offered hereby. The underwriters have been represented by Cahill Gordon & Reindel LLP, New York, New York.

## EXPERTS

The consolidated financial statements of Berry Plastics Group, Inc. as of October 1, 2011 and October 2, 2010 and for each of the three years in the period ended October 1, 2011, appearing in the Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of Pliant Corporation at December 31, 2008 and for the year ended December 31, 2008, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Notes 1 and 18 to the consolidated financial statements) appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

## AVAILABLE INFORMATION

We have filed with the United States Securities and Exchange Commission, a registration statement on Form S-1 under the Securities Act relating to the common stock that includes important business and financial information about us that is not included in or delivered with this prospectus. If we have made references in this prospectus to any contracts, agreements or other documents and also filed any of those contracts, agreements or other documents as exhibits to the registration statement, you should read the relevant exhibit for a more complete understanding of the document or the matter involved.

Our subsidiary Berry Plastics Corporation files annual, quarterly and current reports and other information with the SEC. You may read and copy any document we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>.

You may obtain copies of the information and documents incorporated by reference in this prospectus at no charge by writing or telephoning us at the following address or telephone number:

Berry Plastics Group, Inc.  
101 Oakley Street  
Evansville, IN 47710  
Attention: Chief Legal Officer  
(812) 424-2904

We also maintain an Internet site at <http://www.berryplastics.com>. We will, as soon as reasonably practicable after the electronic filing of our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports (if applicable), make available such reports free of charge on our website. **Our website and the information contained therein or connected thereto shall not be deemed to be incorporated into this prospectus or registration statement of which this prospectus forms a part and you should not rely on any such information in making your decision whether to purchase our securities.**

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**Berry Plastics Group, Inc.**  
**Consolidated Balance Sheets**  
(In Millions of Dollars)

	June 30, 2012 (Unaudited)	October 1, 2011
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 38	\$ 42
Accounts receivable (less allowance for doubtful accounts of \$3 at June 30, 2012 and \$4 at October 1, 2011)	513	543
Inventories:		
Finished goods	338	338
Raw materials and supplies	230	240
	<u>568</u>	<u>578</u>
Deferred income taxes	61	62
Prepaid expenses and other current assets	45	30
Total current assets	<u>1,225</u>	<u>1,255</u>
Property, plant and equipment		
Land, buildings and improvements	261	268
Equipment and construction in progress	1,998	1,836
	<u>2,259</u>	<u>2,104</u>
Less accumulated depreciation	1,024	854
	<u>1,235</u>	<u>1,250</u>
Goodwill, intangible assets and deferred costs, net	2,641	2,704
Other assets	13	8
Total assets	<u>\$ 5,114</u>	<u>\$ 5,217</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 339	\$ 352
Accrued expenses and other current liabilities	286	286
Current portion of long-term debt	48	46
Total current liabilities	<u>673</u>	<u>684</u>
Long-term debt, less current portion	4,530	4,581
Deferred income taxes	224	233
Other long-term liabilities	159	170
Total liabilities	<u>5,586</u>	<u>5,668</u>
Commitments and contingencies		
Redeemable shares	15	16
Stockholders' equity (deficit):		
Common stock; \$0.01 par value: 400,000,000 shares authorized; 84,696,218 shares issued as of June 30, 2012 and October 1, 2011 and 83,209,232 and 83,863,047 shares outstanding as of June 30, 2012 and October 1, 2011	1	1
Paid-in capital	138	142
Notes receivable—common stock	(2)	(2)
Non-controlling interest	3	3
Accumulated deficit	(583)	(563)
Accumulated other comprehensive loss	(44)	(48)
Total stockholders' equity (deficit)	<u>(487)</u>	<u>(467)</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 5,114</u>	<u>\$ 5,217</u>

*See notes to consolidated financial statements.*

**Berry Plastics Group, Inc.**  
**Consolidated Statements of Operations and**  
**Comprehensive Income (Loss)**  
(Unaudited)  
(In Millions of Dollars)

	Quarterly Period Ended		Three Quarterly Periods Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
Net sales	\$ 1,242	\$ 1,187	\$ 3,562	\$ 3,332
Costs and expenses:				
Cost of goods sold	1,028	1,000	2,972	2,841
Selling, general and administrative	76	67	227	200
Amortization of intangibles	27	27	81	80
Restructuring and impairment charges	4	5	30	36
Other operating expenses	9	9	34	26
Operating income	98	79	218	149
Other expense (income), net	—	1	(1)	67
Interest expense	82	82	248	243
Interest income	—	—	(1)	—
Net income (loss) before income taxes	16	(4)	(28)	(161)
Income tax expense (benefit)	7	1	(8)	(54)
Net income (loss)	<u>\$ 9</u>	<u>\$ (5)</u>	<u>\$ (20)</u>	<u>\$ (107)</u>
Comprehensive income (loss)	<u>\$ 3</u>	<u>\$ (13)</u>	<u>\$ (18)</u>	<u>\$ (101)</u>
Net income (loss) per share				
Basic	0.11	(0.06)	(0.24)	(1.27)
Diluted	0.10	(0.06)	(0.24)	(1.27)
Weighted-average number of shares outstanding: (thousands)				
Basic	83,190	83,937	83,508	84,219
Diluted	86,228	83,937	83,508	84,219

*See notes to consolidated financial statements.*

**Berry Plastics Group, Inc.**  
**Consolidated Statement of Changes in Stockholders' Equity**  
**For the Three Quarterly Periods Ended June 30, 2012 and July 2, 2011**  
(Unaudited)  
(In Millions of Dollars)

	<u>Common Stock</u>	<u>Paid-in Capital</u>	<u>Notes Receivable- Common Stock</u>	<u>Non Controlling Interest</u>	<u>Accumulated Other Comprehensive Income</u>	<u>Accumulated Deficit</u>	<u>Total</u>
Balance at October 2, 2010	\$ 1	\$ 147	\$ (2)	\$ —	\$ (23)	\$ (264)	\$(141)
Redeemable stock	—	(5)	—	—	—	—	(5)
Purchase of common stock	—	1	—	—	—	—	1
Stock compensation expense	—	1	—	—	—	—	1
Derivative amortization	—	—	—	—	1	—	1
Net loss	—	—	—	—	—	(107)	(107)
Interest rate hedges, net of tax	—	—	—	—	(2)	—	(2)
Currency translation	—	—	—	—	8	—	8
Balance at July 2, 2011	1	144	(2)	—	(16)	(371)	(244)
Balance at October 1, 2011	\$ 1	\$ 142	\$ (2)	\$ 3	\$ (48)	\$ (563)	\$(467)
Redeemable shares	—	(6)	—	—	—	—	(6)
Stock compensation expense	—	2	—	—	—	—	2
Derivative amortization	—	—	—	—	2	—	2
Net loss	—	—	—	—	—	(20)	(20)
Currency translation	—	—	—	—	2	—	2
Balance at March 31, 2012	<u>\$ 1</u>	<u>\$ 138</u>	<u>\$ (2)</u>	<u>\$ 3</u>	<u>\$ (44)</u>	<u>\$ (583)</u>	<u>\$(487)</u>

*See notes to consolidated financial statements.*

**Berry Plastics Group, Inc.**  
**Consolidated Statements of Cash Flows**  
(Unaudited)  
(In Millions of Dollars)

	<b>Three Quarterly Periods Ended</b>	
	<b>June 30, 2012</b>	<b>July 2, 2011</b>
<b>Operating activities</b>		
Net loss	\$ (20)	\$ (107)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation	182	173
Amortization of intangibles	81	80
Non-cash interest expense	18	13
Non-cash interest income	(1)	—
Deferred income tax expense (benefit)	(10)	(55)
Loss on disposal and impairment of assets	20	20
Loss on extinguishment of debt	—	68
Other non-cash expense (income)	3	(3)
Changes in operating assets and liabilities:		
Accounts receivable, net	37	(23)
Inventories	4	6
Prepaid expenses and other assets	(5)	14
Accounts payable and other liabilities	(31)	19
Net cash from operating activities	<u>278</u>	<u>205</u>
<b>Investing activities</b>		
Additions to property, plant and equipment	(167)	(126)
Proceeds from sale of assets	9	2
Acquisition of businesses, net of cash acquired	(55)	(2)
Net cash from investing activities	<u>(213)</u>	<u>(126)</u>
<b>Financing activities</b>		
Proceeds from long-term borrowings	—	800
Repayments on long-term borrowings	(62)	(832)
Debt financing costs	—	(22)
Purchase of common stock	(6)	(1)
Net cash from financing activities	<u>(68)</u>	<u>(55)</u>
Effect of exchange rate changes on cash	(1)	(1)
Net change in cash	(4)	23
Cash and cash equivalents at beginning of period	42	148
Cash and cash equivalents at end of period	<u>\$ 38</u>	<u>\$ 171</u>

*See notes to consolidated financial statements.*



**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements**  
(Unaudited)

*(In Millions of dollars, except as otherwise noted)*

**1. Background and Nature of Operations**

Berry Plastics Group, Inc. (“Berry” or the “Company”) is one of the world’s leading manufacturers and marketers of plastic packaging products, plastic film products, specialty adhesives and coated products. The Company is primarily owned by affiliates of Apollo Management, L.P. (“Apollo”) and Graham Partners. The Company’s key principal products include containers, drink cups, bottles, closures and overcaps, tubes and prescription containers, trash bags, stretch films, engineered films, printed films and tapes which we sell into a diverse selection of attractive and stable end markets, including food and beverage, healthcare, personal care, quick service and family dining restaurants, custom and retail, agricultural, horticultural, institutional, industrial, construction, aerospace, and automotive.

**2. Basis of Presentation**

The accompanying unaudited Consolidated Financial Statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) pursuant to the rules and regulations of the Securities and Exchange Commission for interim reporting. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the periods presented are not necessarily indicative of the results that may be expected for the full fiscal year. The accompanying financial statements include the results of the Company and its wholly and majority owned subsidiaries. For further information, refer to the consolidated financial statements and footnotes included elsewhere in this prospectus. All intercompany transactions have been eliminated. The Company issued financial statements by filing with the Securities and Exchange Commission and has evaluated subsequent events up to the time of the filing.

*Stock Split*

In September, 2012 the Board of Directors approved a 12.25 for-one stock split of the Company’s common stock, which will become effective prior to the effectiveness of the registration statement for the initial public offering. The effect of the stock split on outstanding shares and earnings per share has been retroactively applied to all periods presented.

*Related Party Transactions and Allocations*

The Company has recorded management fees of \$2 and \$2 for the quarterly period ended and \$7 and \$6 for the three quarterly periods ended June 30, 2012 and July 2, 2011, charged by Apollo and other investors to the Company.

**3. Acquisitions**

*Rexam Specialty and Beverage Closures*

In September 2011, the Company acquired 100% of the capital stock of Rexam Closures Kentucky Inc., Rexam Delta Inc., Rexam Closures LLC, Rexam Closure Systems LLC, Rexam de Mexico S. de R.L. de C.V., Rexam Singapore PTE Ltd., Rexam Participacoes Ltda. and Rexam Plasticos do Brasil Ltda. (collectively, “Rexam SBC”) pursuant to an Equity Purchase Agreement by and among Rexam Inc., Rexam Closures and Containers Inc., Rexam Closure Systems Inc., Rexam Plastic Packaging Inc., Rexam Brazil Closure Inc., Rexam Beverage

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Can South America S.A. and the Company. The aggregate purchase price was \$351 (\$340, net of cash acquired and working capital settlement during 2012). Rexam SBC's primary products include plastic closures, fitments and dispensing closure systems, and jars. The newly added business is operated in the Company's Rigid Closed Top reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Rexam SBC acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

The Company is finalizing its allocation of the purchase price to deferred income taxes. The Company has recognized goodwill on this transaction as a result of expected synergies. A portion of the goodwill will not be deductible for tax purposes. The following table summarizes the preliminary allocation of the net purchase price and the estimated fair values of the assets acquired and liabilities assumed at the date of the acquisition:

Working capital	\$ 69
Property and equipment	199
Intangible assets	43
Goodwill	42
Other long-term liabilities	(13)
Net assets acquired	<u>\$340</u>

Pro forma net sales and pro forma net loss was \$1,316 and \$4 for the quarterly period ended July 2, 2011 and pro forma net sales and pro forma net loss was \$3,686 and \$101 for the three quarterly periods ended July 2, 2011, respectively. The pro forma net sales and net loss assume that the Rexam SBC acquisition had occurred as of the beginning of the respective period. The pro forma information presented above is for informational purposes only and is not necessarily indicative of the operating results that would have occurred had the Rexam SBC acquisition been consummated at the beginning of the respective period, nor is it necessarily indicative of future operating results. Further, the information reflects only pro forma adjustments for additional interest expense, amortization and closing expenses, net of the applicable income tax effects.

### *STOPAQ®*

In June 2012, the Company acquired 100% of the shares of Frans Nooren Beheer B.V. and its operating companies ("Stopaq") for a purchase price of \$65 (\$62, net of cash acquired). Stopaq is the inventor and manufacturer of patented visco-elastic technologies for use in corrosion prevention, sealing and insulation applications ranging from pipelines to subsea piles to rail and cable joints. The newly added business is operated in the Company's Engineered Materials reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Stopaq acquisition has been accounted for under the purchase method of accounting, and accordingly, the preliminary purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date. The Company has not finalized the purchase price allocation and it is subject to change. The Company has recognized goodwill on this transaction as a result of expected synergies. A portion of the goodwill will not be deductible for tax purposes.

**4. Restructuring and Impairment Charges**

The Company incurred restructuring costs related to severance, asset impairment and facility exit costs of \$4 and \$5 for the quarterly period ended and \$30 and \$36 for the three quarterly periods ended as of June 30, 2012 and July 2, 2011, respectively. The tables below set forth the significant components of the restructuring charges recognized for the quarterly period ended June 30, 2012 and July 2, 2011, by segment:

	Quarterly Period Ended		Three Quarterly Periods Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
<b>Rigid Open Top</b>				
Severance and termination benefits	\$ —	\$ —	\$ —	\$ 1
Total	\$ —	\$ —	\$ —	\$ 1
<b>Rigid Closed Top</b>				
Severance and termination benefits	\$ 1	\$ —	\$ 3	\$ 2
Facility exit costs and other	1	—	2	—
Asset impairment	—	—	4	—
Total	\$ 2	\$ —	\$ 9	\$ 2
<b>Engineered Materials</b>				
Severance and termination benefits	\$ 1	\$ —	\$ 3	\$ 2
Facility exit costs and other	1	1	2	6
Asset impairment	—	2	16	16
Total	\$ 2	\$ 3	\$ 21	\$ 24
<b>Flexible Packaging</b>				
Severance and termination benefits	\$ —	\$ 1	\$ —	\$ 5
Facility exit costs and other	—	1	—	2
Asset impairment	—	—	—	2
Total	\$ —	\$ 2	\$ —	\$ 9
<b>Consolidated</b>				
Severance and termination benefits	\$ 2	\$ 1	\$ 6	\$ 10
Facility exit costs and other	2	2	4	8
Asset impairment	—	2	20	18
Total	\$ 4	\$ 5	\$ 30	\$ 36

The table below sets forth the activity with respect to the restructuring accrual at October 1, 2011 and June 30, 2012:

	Severance and termination benefits	Facilities exit costs and other	Non-cash	Total
Balance at fiscal year end 2010	\$ 3	\$ 3	\$ —	\$ 6
Charges	11	10	35	56
Non-cash asset impairment	—	—	(35)	(35)
Cash payments	(10)	(10)	—	(20)
Balance at October 1, 2011	4	3	—	7
Charges	6	4	20	30
Non-cash asset impairment	—	—	(20)	(20)
Cash payments	(6)	(4)	—	(10)
Balance at June 30, 2012	\$ 4	\$ 3	\$ —	\$ 7

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During the first fiscal quarter the Company made the decision to exit operations in the Engineered Materials division. This decision resulted in non-cash impairment charges of \$17 recorded in Restructuring and impairment charges on the Consolidated Statement of Operations. The exited operations were immaterial to the Company and Engineered Materials segment.

### 5. Accrued Expenses, Other Current Liabilities and Other Long-Term Liabilities

The following table sets forth the totals included in Accrued expenses and other current liabilities on the Consolidated Balance Sheets.

	June 30, 2012	October 1, 2011
Employee compensation, payroll and other taxes	\$ 76	\$ 101
Interest	65	63
Rebates	68	60
Other	77	62
	<u>\$ 286</u>	<u>\$ 286</u>

The following table sets forth the totals included in Other long-term liabilities on the Consolidated Balance Sheets.

	June 30, 2012	October 1, 2011
Lease retirement obligation	\$ 20	\$ 20
Sale-lease back deferred gain	33	35
Pension liability	73	79
Other	33	36
	<u>\$ 159</u>	<u>\$ 170</u>

### 6. Long-Term Debt

Long-term debt consists of the following:

	<u>Maturity Date</u>	June 30, 2012	October 1, 2011
Term loan	April 2015	\$ 1,137	\$ 1,146
Revolving line of credit	June 2016	163	195
First Priority Senior Secured Floating Rate Notes	February 2015	681	681
8 1/4% First Priority Senior Secured Notes	November 2015	370	370
Second Priority Senior Secured Floating Rate Notes	September 2014	210	210
9 1/2% Second Priority Senior Secured Notes	May 2018	500	500
9 3/4% Second Priority Senior Secured Notes	January 2021	800	800
Senior Unsecured Term Loan	June 2014	54	56
10 1/4% Senior Subordinated Notes	March 2016	127	127
11% Senior Subordinated Notes	September 2016	455	455
Debt discount, net		(10)	(13)
Capital leases and other	Various	91	100
		<u>4,578</u>	<u>4,627</u>
Less current portion of long-term debt		(48)	(46)
		<u>\$ 4,530</u>	<u>\$ 4,581</u>

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The current portion of long-term debt consists primarily of \$12 of principal payments on the term loan, \$12 applicable high yield discount obligation and \$23 of principal payments related to capital lease obligations. The Company was in compliance with its covenants as of June 30, 2012.

BP Parallel LLC, a non-guarantor subsidiary of the Company, invested \$4 to purchase assignments of \$5 of Berry Group's senior unsecured term loan ("Senior Unsecured Term Loan") during the first fiscal quarter 2012.

### 7. Financial Instruments and Fair Value Measurements

As part of the overall risk management, the Company uses derivative instruments to reduce exposure to changes in interest rates attributed to the Company's floating-rate borrowings. For those derivative instruments that are designated and qualify as hedging instruments, the Company must designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, cash flow hedge, or a hedge of a net investment in a foreign operation. To the extent hedging relationships are found to be effective, as determined by FASB guidance, changes in fair value of the derivatives are offset by changes in the fair value of the related hedged item are recorded to Accumulated other comprehensive loss. Management believes hedge effectiveness is evaluated properly in preparation of the financial statements.

#### *Cash Flow Hedging Strategy*

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative instrument is reported as a component of Accumulated other comprehensive loss and reclassified into earnings in the same line item associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings.

In November 2010, the Company entered into two separate interest rate swap transactions to manage cash flow variability associated with \$1 billion of the outstanding variable rate term loan debt (the "2010 Swaps"). The first agreement had a notional amount of \$500 and became effective in November 2010. The agreement swaps three month variable LIBOR contracts for a fixed three year rate of 0.8925% and expires in November 2013. The second agreement had a notional amount of \$500 and became effective in December 2010. The agreement swaps three month variable LIBOR contracts for a fixed three year rate of 1.0235% and expires in November 2013. In August 2011, the Company began utilizing 1-month LIBOR contracts for the underlying senior secured credit facility. The Company's change in interest rate selection caused the Company to lose hedge accounting on both of the interest rate swaps. The Company recorded subsequent changes in fair value in the Consolidated Statement of Operations and will amortize the unrealized losses to Interest expense through the end of the respective swap agreements.

Derivatives not designated as hedging instruments under FASB guidance	Liability Derivatives		
	Balance Sheet Location	June 30, 2012	October 1, 2011
Interest rate swaps—2010 Swaps	Other long-term liabilities	\$ 7	\$ 8

The effect of the derivative instruments on the Consolidated Statement of Operations for the quarterly period ended June 30, 2012 and July 2, 2011, are as follows:

Derivatives not designated as hedging instruments under FASB guidance	Statement of Operations Location	Quarterly Period Ended		Three Quarterly Periods Ended	
		June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
Interest rate swaps—2010 Swaps	Other expense (income)	\$ —	\$ —	\$ —	\$ (1)
	Interest expense	\$ 1	\$ —	\$ 2	\$ 1

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The Fair Value Measurements and Disclosures section of the Accounting Standards Codification (“Codification” or “ASC”) defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, and establishes a framework for measuring fair value. This section also establishes a three-level hierarchy (Level 1, 2 or 3) for fair value measurements based upon the observability of inputs to the valuation of an asset or liability as of the measurement date. This section also requires the consideration of the counterparty’s or the Company’s nonperformance risk when assessing fair value.

The Company’s interest rate swap fair values were determined using Level 2 inputs as other significant observable inputs were not available.

The Company’s financial instruments consist primarily of cash and cash equivalents, investments, long-term debt, interest rate swap agreements and capital lease obligations. The fair value of the Company’s investments and long-term debt were determined using Level 2 inputs, which include using quoted prices in inactive markets or significant other observable inputs for identical or comparable assets or liabilities. The fair value of our investments exceeded book value at June 30, 2012 and October 1, 2011, by \$93 and \$159, respectively. The following table summarizes our long-term indebtedness for which the book value was in excess of the fair value:

	June 30, 2012	October 1, 2011
First Priority Senior Secured Floating Rate Notes	\$ 3	\$ 61
9 1/2% Second Priority Notes	—	83
9 3/4% Second Priority Notes	—	140
Second Priority Senior Secured Floating Rate Notes	5	38
Senior Unsecured Term Loan	8	8
11% Senior Subordinated Notes	—	64
10 1/4% Senior Subordinated Notes	—	18

### *Non-recurring Fair Value Measurements*

The Company has certain assets that are measured at fair value on a non-recurring basis when impairment indicators are present. The assets are adjusted to fair value only when the carrying values exceed the fair values. The categorization of the framework used to price the assets is considered a Level 3, due to the subjective nature of the unobservable inputs used to determine the fair value. These assets include primarily our definite lived and indefinite lived intangible assets, including Goodwill and our property plant and equipment. The Company conducted our annual step one evaluation of goodwill and other intangibles as of the first date of the fourth quarter and preliminarily determined no impairment existed for any of our reporting units. The Company has experienced volume declines in certain of our reporting units, however our cost reduction initiatives and profitability in these reporting units have been consistent with our estimated operating plan and previous cash flow estimates and we believe that our long term forecasts are still appropriate. We have utilized a consistent methodology with prior years, which leverages a six year discounted cash flow analysis with a terminal year in combination with a comparable company market approach to determine the fair value of our reporting units.

Included in the following table are the major categories of assets measured at fair value on a non-recurring basis as of June 30, 2012, along with the impairment loss recognized on the fair value measurement during the period:

### *Valuation of Property, Plant and Equipment and Definite Lived Intangible Assets*

The Company periodically realigns their manufacturing operations which results in facilities being closed and shut down and equipment transferred to other facilities or equipment being scrapped. The Company utilizes appraised values to corroborate the fair value of the facilities and has utilized a scrap value based on prior facility shut downs to estimate the fair value of the equipment, which has approximated the actual value that was received. When impairment indicators exist, the Company will also perform an undiscounted cash flow analysis

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to determine the recoverability of the Company's long lived assets. The Company wrote-down their property, plant, and equipment with a carrying value of \$1,238 to its fair value of \$1,235, which resulted in an impairment charge of \$3 for the three quarterly periods ended June 30, 2012. The Company wrote-down their definite lived intangible assets with a carrying value of \$803 to their fair value of \$786, which resulted in an impairment charge of \$17 for the three quarterly periods ended June 30, 2012. These charges were due to their decision to exit certain operations that were immaterial to the Company's consolidated operations. The Company also wrote-down their property, plant, and equipment with a carrying value of \$1,104 to its fair value of \$1,086, which resulted in an impairment charge of \$18 for the three quarterly periods ended July 2, 2011.

	As of June 30, 2012					
	Level 1	Level 2	Level 3	Total	Quarter Ended June 30, 2012 Impairment Loss	Three Quarterly Periods Ended June 30, 2012 Impairment Loss
	Quoted Prices in Active Markets for Identical Assets or Liabilities	Significant Other Observable Inputs	Significant Unobservable Inputs			
Definite lived intangible assets	\$ —	\$ —	\$ 786	\$ 786	\$ —	\$ 17
Property, plant, and equipment	—	—	1,235	1,235	—	3
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 2,021</b>	<b>\$ 2,021</b>	<b>\$ —</b>	<b>\$ 20</b>

	As of July 2, 2011					
	Level 1	Level 2	Level 3	Total	Quarter Ended July 2, 2011 Impairment Loss	Three Quarterly Periods Ended July 2, 2011 Impairment Loss
	Quoted Prices in Active Markets for Identical Assets or Liabilities	Significant Other Observable Inputs	Significant Unobservable Inputs			
Property, plant, and equipment	—	—	\$ 1,086	\$ 1,086	\$ 2	\$ 18
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 1,086</b>	<b>\$ 1,086</b>	<b>\$ 2</b>	<b>\$ 18</b>

## 8. Income Taxes

The effective tax rate from continuing operations was 26% and 33% for the three quarterly periods ended June 30, 2012 and July 2, 2011, respectively. A reconciliation of income tax benefit, computed at the federal statutory rate, to income tax expense (benefit), as provided for in the financial statements, is as follows:

	Quarterly Period Ended		Three Quarterly Periods Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
Income tax expense (benefit) computed at statutory rate	\$ 5	\$ (1)	\$ (10)	\$ (56)
State income tax expense (benefit), net of federal taxes	—	—	—	(1)
Change in valuation allowance	—	1	1	3
Other	2	1	1	—
<b>Income tax expense (benefit)</b>	<b>\$ 7</b>	<b>\$ 1</b>	<b>\$ (8)</b>	<b>\$ (54)</b>

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**9. Operating Segments**

Effective January 1, 2012 the Company reorganized its flexible films businesses, which included the Tapes, Bags and Coatings and Specialty Films divisions, into two new operating divisions; Flexible Packaging and Engineered Materials. The Company's operations are organized into four reporting segments: Rigid Open Top, Rigid Closed Top, Engineered Materials, and Flexible Packaging. The prior year amounts have been restated for the new operating segments. The Company has manufacturing and distribution centers in the United States, Canada, Mexico, Belgium, Australia, Brazil, Malaysia, Germany and India. The United States operation represents 93% of the Company's net sales and 94% of the long-lived assets. The Canadian operations represent 2% of net sales and 2% of long-lived assets. Mexican operations represent 1% of net sales and 2% of long-lived assets. Belgium operations represent 2% of net sales. All other jurisdictions represent less than 1% of net sales or long-lived assets. Selected information by reportable segment is presented in the following table:

	Quarterly Period Ended		Three Quarterly Periods Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
<b>Net sales:</b>				
Rigid Open Top	\$ 329	\$ 340	\$ 912	\$ 905
Rigid Closed Top	374	266	1,085	746
Engineered Materials	345	378	1,010	1,083
Flexible Packaging	194	203	555	598
Total net sales	\$ 1,242	\$ 1,187	\$ 3,562	\$ 3,332
<b>Operating income (loss):</b>				
Rigid Open Top	\$ 46	\$ 47	\$ 122	\$ 102
Rigid Closed Top	31	20	58	57
Engineered Materials	19	15	39	14
Flexible Packaging	2	(3)	(1)	(24)
Total operating income	\$ 98	\$ 79	\$ 218	\$ 149
<b>Depreciation and amortization:</b>				
Rigid Open Top	\$ 24	\$ 25	\$ 70	\$ 74
Rigid Closed Top	31	23	99	69
Engineered Materials	16	17	50	55
Flexible Packaging	15	18	44	55
Total depreciation and amortization	\$ 86	\$ 83	\$ 263	\$ 253

	June 30, 2012	October 1, 2011
<b>Total assets:</b>		
Rigid Open Top	\$ 1,835	\$ 1,818
Rigid Closed Top	1,909	1,963
Engineered Materials	837	841
Flexible Packaging	533	595
Total assets	\$ 5,114	\$ 5,217
<b>Goodwill:</b>		
Rigid Open Top	\$ 681	\$ 681
Rigid Closed Top	812	819
Engineered Materials	102	55
Flexible Packaging	40	40
Total goodwill	\$ 1,635	\$ 1,595



## 10. Contingencies and Commitments

The Company is party to various legal proceedings involving routine claims which are incidental to the business. Although the legal and financial liability with respect to such proceedings cannot be estimated with certainty, the Company believes that any ultimate liability would not be material to the business, financial condition, results of operations or cash flows of the Company.

## 11. Recent Financial Accounting Standards

In May 2011, the FASB issued Accounting Standards Update No. 2011-04: Fair Value Measurement (Topic 820), Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS's ("ASU 2011-04"). ASU 2011-04 amends the fair value measurement and disclosure guidance in ASC 820, *Fair Value Measurement*, to converge US GAAP and IFRS requirements for measuring amounts at fair value as well as disclosures about these requirements. Many of the amendments clarify existing concepts and are generally not expected to result in significant changes to how many companies currently apply the fair value principles. In certain instances, however, the FASB changed a principle to achieve convergence, and while limited, these amendments have the potential to significantly change practice for some companies. The adoption of this standard on January 1, 2012 did not have a material impact on the Company's consolidated financial statements.

In June 2011, the FASB issued Accounting Standards Update No. 2011-05: Comprehensive Income ("ASU 2011-05"). ASU 2011-05 amends current presentation guidance by eliminating the option for an entity to present the components of comprehensive income as part of the statement of changes in stockholder's equity and requires presentation of comprehensive income in a single continuous financial statement or in two separate but consecutive financial statements. The amendments in ASU 2011-05 do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. The Company adopted this standard on January 1, 2012 and has included the comprehensive income in a single continuous financial statement within its consolidated financial statements.

In September 2011, the FASB issued Accounting Standards Update No. 2011-08: Testing for Goodwill Impairment ("ASU 2011-08"). ASU 2011-08 amends current goodwill impairment testing guidance by providing entities with an option to perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. ASU 2011-08 will be effective for interim and annual goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of ASU 2011-08 is not expected to have a material impact on the Company's consolidated financial statements.

In December 2011, the FASB issued Accounting Standards Update No. 2011-12: Comprehensive Income (Topic 220), Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05 ("ASU 2011-12"). This ASU 2011-12 defers the ASU 2011-05 requirement that companies present reclassification adjustments for each component of accumulated other comprehensive income (AOCI) in both net income and other comprehensive income (OCI) on the face of the financial statements. Companies are still required to present reclassifications out of AOCI on the face of the financial statements or disclose those amounts in the notes to the financial statements. The ASU also defers the requirement to report reclassification adjustments in interim periods. The Company adopted this standard on January 1, 2012 and has included the comprehensive income in a single continuous financial statement within its consolidated financial statements.

## 12. Basic and Diluted Net Income (Loss) per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the corresponding weighted average number of common shares, including redeemable shares, outstanding for the period. Diluted net income (loss) per share reflects the potential dilution that could occur if securities or contracts to issue common stock were exercised or converted. The following tables and discussion provide a reconciliation of the numerator and

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denominator of the basic and diluted net income (loss) per share computations. The calculation below provides net income or loss on both a basic and diluted basis for quarter and three quarters ended June 30, 2012 and July 2, 2011 (in thousands).

	Quarterly Period Ended		Three Quarterly Periods Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
Net income (loss)	\$ 9	\$ (5)	\$ (20)	\$ (107)
Weighted average shares of common stock outstanding—basic	83,190	83,937	83,508	84,219
Weighted average shares of common stock outstanding	83,190	83,937	83,508	84,219
Other common stock equivalents	3,038	—	—	—
Weighted average shares of common stock outstanding—diluted	86,228	83,937	83,508	84,219
<b>Basic net income (loss) per share</b>				
Basic net income (loss) per share available to common shareholders	\$ 0.11	\$ (0.06)	\$ (0.24)	\$ (1.27)
<b>Diluted net income (loss) per share</b>				
Basic net income (loss) per share available to common shareholders	\$ 0.10	\$ (0.06)	\$ (0.24)	\$ (1.27)

The conversion of stock options is not included in the calculation of diluted net loss per common share for the three quarterly periods ended June 30, 2012 or the quarterly and three quarterly periods ended July 2, 2011 as the effect of these conversions would be antidilutive to the net loss available to common shareholders. Thus, the weighted average common equivalent shares used for purposes of computing diluted EPS are the same as those used to compute basic EPS for these periods. Shares excluded from the calculation as the effect of their conversion into shares of our common stock would be antidilutive were 10,684,156 and 10,749,926 as of June 30, 2012 and July 2, 2011, respectively.

### 13. Redeemable Shares

The Company has common stock outstanding to former employees that will be repurchased by the Company. Redemption of this common stock will be based on the fair value of the stock on the fixed redemption date and this redemption is out of the control of the Company. The redemption dates range from three to five years per agreement, and require the shares to be bought back in equal increments at each anniversary date through the end of the agreement. The Company has repurchase commitments through FY15 and will repurchase 731,252; 481,156; and 292,518 during the fiscal years 2013, 2014 and 2015, respectively. This redeemable common stock is recorded at its fair value in temporary equity and changes in the fair value are recorded in additional paid in capital each period. The total number of redeemable shares outstanding as of June 30, 2012 and October 1, 2011 are 1,504,925 and 2,170,137, respectively. Upon completion of a successful IPO, the redemption requirement terminates and the Company is no longer required to repurchase these shares.

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Shareholders of Berry Plastics Group, Inc.

We have audited the accompanying consolidated balance sheets of Berry Plastics Group, Inc. as of October 1, 2011 and October 2, 2010, and the related consolidated statements of operations, changes in stockholders' equity (deficit) and comprehensive loss, and cash flows for each of the three years in the period ended October 1, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Berry Plastics Group, Inc. at October 1, 2011 and October 2, 2010, and the consolidated results of its operations and its cash flows for each of the three years in the period ended October 1, 2011, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Indianapolis, Indiana

March 23, 2012, except for the "Stock Split" section of Note 1,  
as to which the date is \_\_\_\_\_, 2012

The foregoing report is in the form in which it will be signed  
upon completion of the "Stock Split" as described in Note 1 to  
the consolidated financial statements

**Berry Plastics Group, Inc.**  
**Consolidated Balance Sheets**  
(In Millions of Dollars)

	October 1, 2011	October 2, 2010
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 42	\$ 148
Accounts receivable (less allowance for doubtful accounts of \$4 at fiscal year-end 2011 and 2010)	543	485
Inventory	578	583
Deferred income taxes	62	53
Prepaid expenses and other current assets	30	46
Total current assets	1,255	1,315
Property, plant and equipment	1,250	1,146
Goodwill, intangible assets and deferred costs	2,704	2,872
Other assets	8	11
Total assets	\$ 5,217	\$ 5,344
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 352	\$ 362
Accrued expenses and other current liabilities	286	271
Current portion of long-term debt	46	29
Total current liabilities	684	662
Long-term debt, less current portion	4,581	4,397
Deferred income taxes	233	255
Other long-term liabilities	170	160
Total liabilities	5,668	5,474
Commitments and contingencies		
Redeemable shares	16	11
Stockholders' deficit:		
Common stock; \$0.01 par value: 400,000,000 shares authorized; 84,696,218 shares issued as of October 1, 2011 and October 2, 2010 and 83,863,047 and 84,172,580 shares outstanding as of October 1, 2011 and October 2, 2010	1	1
Paid-in capital	142	147
Notes receivable—common stock	(2)	(2)
Non controlling interest	3	—
Accumulated deficit	(563)	(264)
Accumulated other comprehensive loss	(48)	(23)
Total stockholders' deficit	(467)	(141)
Total liabilities and stockholders' equity	\$ 5,217	\$ 5,344

*See notes to consolidated financial statements*

**Berry Plastics Group, Inc.**  
**Consolidated Statements of Operations**  
(In Millions of Dollars)

	Fiscal years ended		
	October 1, 2011	October 2, 2010	September 26, 2009
Net sales	\$ 4,561	\$ 4,257	\$ 3,187
Costs and expenses:			
Cost of goods sold	3,878	3,667	2,641
Selling, general and administrative	275	272	229
Amortization of intangibles	106	107	96
Restructuring and impairment charges	221	41	11
Other operating expenses	39	46	24
Operating income	42	124	186
Gain on repurchase of debt	(4)	(13)	(368)
Other expense (income)	65	(14)	(5)
Interest expense	327	313	304
Net income (loss) from continuing operations before income taxes	(346)	(162)	255
Income tax expense (benefit)	(47)	(49)	99
Net income (loss) from continuing operations	(299)	(113)	156
Discontinued operations, net of tax	—	—	4
Net income (loss)	\$ (299)	\$ (113)	\$ 152
Basic net income (loss) per share:			
Continuing operations	\$ (3.55)	\$ (1.34)	\$ 1.84
Loss on discontinued operations	—	—	(0.04)
Total	\$ (3.55)	\$ (1.34)	\$ 1.80
Diluted net income (loss) per share:			
Continuing operations	\$ (3.55)	\$ (1.34)	\$ 1.84
Loss discontinued operations	—	—	(0.05)
Total	\$ (3.55)	\$ (1.34)	\$ 1.79
Weighted-average common shares outstanding:			
(thousands)			
Basic	84,121	84,525	84,635
Diluted	84,121	84,525	84,746

*See notes to consolidated financial statements*

**Berry Plastics Group, Inc.**  
**Consolidated Statements of Changes in Stockholders'**  
**Equity (Deficit) and Comprehensive Loss**  
(In Millions of Dollars Excluding Share Data)

	Common Stock	Paid-in Capital	Notes Receivable- Common Stock	Non Controlling Interest	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total	Comprehensive Income (Loss)
Balance at September 27, 2008	\$ 1	\$ 160	\$ (2)	\$ —	\$ (12)	\$ (303)	\$(156)	
Stock compensation expense	—	1	—	—	—	—	1	
Management investment	—	(1)	—	—	—	—	(1)	
Interest rate hedge amortization	—	—	—	—	8	—	8	
Net income	—	—	—	—	—	152	152	\$ 152
Currency translation	—	—	—	—	(16)	—	(16)	(16)
Defined benefit pension and retiree health benefit plans, net of tax	—	—	—	—	(4)	—	(4)	(4)
Interest rate hedges, net of tax	—	—	—	—	(4)	—	(4)	(4)
Balance at September 26, 2009	1	160	(2)	—	(28)	(151)	(20)	128
Stock compensation expense	—	1	—	—	—	—	1	
Interest rate hedge amortization	—	—	—	—	4	—	4	
Fair value adjustment of redeemable stock	—	(14)	—	—	—	—	(14)	
Treasury stock, net	—	—	—	—	—	—	—	
Net loss	—	—	—	—	—	(113)	(113)	(113)
Currency translation	—	—	—	—	6	—	6	6
Defined benefit pension and retiree health benefit plans, net of tax	—	—	—	—	(5)	—	(5)	(5)
Balance at October 2, 2010	1	147	(2)	—	(23)	(264)	(141)	(112)
Stock compensation expense	—	2	—	—	—	—	2	
Non controlling interest	—	—	—	3	—	—	3	
Fair value adjustment of redeemable stock	—	(7)	—	—	—	—	(7)	
Treasury stock, net	—	—	—	—	—	—	—	
Net loss	—	—	—	—	—	(299)	(299)	(299)
Currency translation	—	—	—	—	(10)	—	(10)	(10)
Interest rate hedges, net of tax	—	—	—	—	(6)	—	(6)	(6)
Defined benefit pension and retiree health benefit plans, net of tax	—	—	—	—	(9)	—	(9)	(9)
Balance at October 1, 2011	<u>\$ 1</u>	<u>\$ 142</u>	<u>\$ (2)</u>	<u>\$ 3</u>	<u>\$ (48)</u>	<u>\$ (563)</u>	<u>\$(467)</u>	<u>\$ (324)</u>

*See notes to consolidated financial statements*

**Berry Plastics Group, Inc.**  
**Consolidated Statements of Cash Flows**  
(In Millions of Dollars)

	Fiscal years ended		
	October 1, 2011	October 2, 2010	September 26, 2009
<b>Operating Activities:</b>			
Net income (loss)	\$ (299)	\$ (113)	\$ 152
Adjustments to reconcile net cash from operating activities:			
Depreciation	238	210	158
Amortization of intangibles	106	107	96
Non-cash interest expense	21	31	79
Write-off of deferred financing fees and loss on extinguishment of debt	68	1	8
Non-cash gain on debt repurchase	(4)	(13)	(376)
Deferred income taxes (benefit) expense	(51)	(52)	97
Impairment of fixed assets and goodwill	200	19	8
Discontinued operations, net of income taxes	—	—	4
Stock compensation	2	1	12
Other non-cash items	(5)	(15)	(9)
Changes in operating assets and liabilities:			
Restricted cash	—	—	33
Accounts receivable, net	(11)	(41)	85
Inventory	59	(118)	123
Prepaid expenses and other assets	25	12	17
Accounts payable and other liabilities	(22)	83	(74)
Net cash from operating activities	327	112	413
<b>Investing Activities:</b>			
Additions to property, plant and equipment	(160)	(223)	(194)
Proceeds from disposal of assets	5	29	4
Acquisitions of business, net of cash acquired	(368)	(658)	(5)
Net cash from investing activities	(523)	(852)	(195)
<b>Financing Activities:</b>			
Proceeds from long-term borrowings	995	1,097	4
Repayment of long-term debt	(880)	(178)	(402)
Purchase of common stock	(2)	(3)	1
Debt financing costs	(23)	(38)	(1)
Net cash from financing activities	90	878	(398)
Effect of currency translation on cash	—	—	—
Net increase (decrease) in cash and cash equivalents	(106)	138	(180)
Cash and cash equivalents at beginning of period	148	10	190
Cash and cash equivalents at end of period	\$ 42	\$ 148	\$ 10

*See notes to consolidated financial statements.*

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements**  
(In millions of dollars, except as otherwise noted)

**1. Basis of Presentation and Summary of Significant Accounting Policies**

**Background**

Berry Plastics Group, Inc. (“Berry Group” or the “Company”) through its wholly-owned subsidiary Berry Plastics Corporation (“Berry”) is one of the world’s leading manufacturers and marketers of plastic packaging products, plastic film products, specialty adhesives and coated products. The Company’s key principal products include containers, drink cups, bottles, closures and overcaps, tubes and prescription containers, trash bags, stretch films and tapes which we sell into a diverse selection of attractive and stable end markets, including food and beverage, healthcare, personal care, quick service and family dining restaurants, custom and retail, agricultural, horticultural, institutional, industrial, construction, aerospace, and automotive.

In September, 2012 the Board of Directors approved a 12.25 for-one stock split of the Company’s common stock, which will become effective prior to the effectiveness of the registration statement for the initial public offering. The effect of the stock split on outstanding shares and earnings per share has been retroactively applied to all periods presented.

**Basis of Presentation**

Berry Group is primarily owned by affiliates of Apollo Management, L.P. (“Apollo”) and Graham Partners. Periods presented in these financial statements include fiscal periods ending October 1, 2011 (“fiscal 2011”), October 2, 2010 (“fiscal 2010”), and September 26, 2009 (“fiscal 2009”). Berry Group, through its wholly-owned subsidiaries operates in four primary segments: Rigid Open Top, Rigid Closed Top, Specialty Films, and Tapes, Bags and Coatings. Effective January 1, 2012, the Company realigned their operating segments into four new reportable segments: Rigid Open Top, Rigid Closed Top, Flexible Packaging and Engineered Materials. The Company’s customers are located principally throughout the United States, without significant concentration in any one region or with any one customer. The Company performs periodic credit evaluations of its customers’ financial condition and generally does not require collateral. The Company’s fiscal year is based on fifty-two or fifty three week periods. Fiscal 2010 represents a fifty three week period. The Company has evaluated subsequent events through the date the financial statements were issued.

**Consolidation**

The consolidated financial statements include the accounts of Berry Group and its subsidiaries, all of which includes our wholly owned and majority owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. Where our ownership of consolidated subsidiaries is less than 100% the non controlling interests are reflected in stockholders equity.

**Revenue Recognition**

Revenue from the sales of products is recognized at the time title and risks and rewards of ownership pass to the customer (either when the products reach the free-on-board shipping point or destination depending on the contractual terms), there is persuasive evidence of an arrangement, the sales price is fixed and determinable and collection is reasonably assured. Provisions for certain rebates, sales incentives, trade promotions, coupons, product returns and discounts to customers are accounted for as reductions in gross sales to arrive at net sales. In accordance with the Revenue Recognition standards of the ASC, the Company provides for these items as reductions of revenue at the later of the date of the sale or the date the incentive is offered. These provisions are based on estimates derived from current program requirements and historical experience.

Shipping, handling, purchasing, receiving, inspecting, warehousing, and other costs of distribution are presented in cost of goods sold in the statements of operations. The Company classifies amounts charged to its customers for shipping and handling in Net sales in the Consolidated Statement of Operations.



**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**Vendor Rebates, Purchases of Raw Materials and Concentration of Risk**

The Company receives consideration in the form of rebates from certain vendors. The Company accrues these as a reduction of inventory cost as earned under existing programs, and reflects as a reduction of cost of goods sold at the time that the related underlying inventory is sold to customers.

The largest supplier of the Company's total resin material requirements represented 31% of purchases in fiscal 2011. The Company uses a variety of dependable suppliers to meet its resin requirements.

**Research and Development**

Research and development costs are expensed when incurred. The Company incurred research and development expenditures of \$20, \$21, and \$16 in fiscal 2011, 2010, and 2009, respectively.

**Stock-Based Compensation**

The compensation guidance of the FASB requires that the compensation cost relating to share-based payment transactions be recognized in financial statements based on alternative fair value models. The share-based compensation cost is measured based on the fair value of the equity or liability instruments issued. At fiscal year-end 2011, the Company has one share-based compensation plan, the 2006 Equity Incentive Plan, which is more fully described in footnote 12. During fiscal 2007 a one-time dividend was paid. Holders of vested stock options received \$14, while an additional \$35 was paid to nonvested option holders on the second anniversary of the dividend grant date. In December 2008, the Executive Committee of Berry Group modified the vesting provisions related to the amounts held in escrow. This resulted in the immediate vesting and accelerating the recognition of the remaining unrecorded stock compensation expense of \$11 in fiscal 2009. The Company recorded total stock compensation expense of \$2, \$1, and \$12 for fiscal years 2011, 2010, and 2009, respectively.

The Company utilizes the Black-Scholes option valuation model for estimating the fair value of the stock options. The model allows for the use of a range of assumptions. Expected volatilities utilized in the Black-Scholes model are based on implied volatilities from traded stocks of peer companies. Similarly, the dividend yield is based on historical experience and the estimate of future dividend yields. The risk-free interest rate is derived from the U.S. Treasury yield curve in effect at the time of grant. The expected lives of the grants are derived from historical experience and expected behavior. The fair value for options granted have been estimated at the date of grant using a Black-Scholes model, with the following weighted average assumptions:

	Fiscal year		
	2011	2010	2009
Risk-free interest rate	1.3%	2.6%	1.7-2.5%
Dividend yield	0.0%	0.0%	0.0%
Volatility factor	.32-.34	.33	.36-.37
Expected option life	5 years	5 years	5 years

**Foreign Currency**

For the non-U.S. subsidiaries that account in a functional currency other than U.S. Dollars, assets and liabilities are translated into U.S. Dollars using period-end exchange rates. Sales and expenses are translated at the average exchange rates in effect during the period. Foreign currency translation gains and losses are included as a component of Accumulated other comprehensive income (loss) within stockholders' equity. Gains and losses resulting from foreign currency transactions, the amounts of which are not material in any period presented are included in the Consolidated Statements of Operations.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**Cash and Cash Equivalents**

All highly liquid investments purchased with a maturity of three months or less from the time of purchase are considered to be cash equivalents.

**Allowance for Doubtful Accounts**

The Company's accounts receivable and related allowance for doubtful accounts are analyzed in detail on a quarterly basis and all significant customers with delinquent balances are reviewed to determine future collectibility. The determinations are based on legal issues (such as bankruptcy status), past history, current financial and credit agency reports, and the experience of the credit representatives. Reserves are established in the quarter in which the Company makes the determination that the account is deemed uncollectible. The Company maintains additional reserves based on its historical bad debt experience. The following table summarizes the activity for the fiscal years 2011, 2010 and 2009 for the allowance for doubtful accounts:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Allowance for doubtful accounts, beginning	4	3	4
Bad debt expense	1	2	3
Write-offs against allowance	<u>(1)</u>	<u>(1)</u>	<u>(4)</u>
Allowance for doubtful accounts, ending	4	4	3

**Inventories**

Inventories are stated at the lower of cost or market and are valued using the first-in, first-out method. Management periodically reviews inventory balances, using recent and future expected sales to identify slow-moving and/or obsolete items. The cost of spare parts inventory is charged to manufacturing overhead expense when incurred. We evaluate our reserve for inventory obsolescence on a quarterly basis and review inventory on-hand to determine future salability. We base our determinations on the age of the inventory and the experience of our personnel. We reserve inventory that we deem to be not salable in the quarter in which we make the determination. We believe, based on past history and our policies and procedures, that our net inventory is salable. Inventory at fiscal year-end 2011 and fiscal year-end 2010 was:

	<u>2011</u>	<u>2010</u>
<b>Inventories:</b>		
Finished goods	338	316
Raw materials and supplies	<u>240</u>	<u>267</u>
	<u>578</u>	<u>583</u>

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**Property, Plant and Equipment**

Property, plant and equipment are stated at cost. Depreciation is computed primarily by the straight-line method over the estimated useful lives of the assets ranging from 15 to 25 years for buildings and improvements and two to 10 years for machinery, equipment, and tooling. Leasehold improvements are depreciated over the shorter of the useful life of the improvement or the lease term. Repairs and maintenance costs are charged to expense as incurred. The Company capitalized interest of \$3 in 2011 and \$2 in fiscal 2010 and 2009. Property, plant and equipment at fiscal year-end 2011 and fiscal year-end 2010 was:

	<u>2011</u>	<u>2010</u>
Property, plant and equipment:		
Land, buildings and improvements	268	261
Equipment and construction in progress	<u>1,836</u>	<u>1,546</u>
	2,104	1,807
Less accumulated depreciation	<u>854</u>	<u>661</u>
	<u>1,250</u>	<u>1,146</u>

**Long-lived Assets**

Long-lived assets, including property, plant and equipment and definite lived intangible assets are reviewed for impairment at the product-line level in accordance with the Property, Plant and Equipment standard of the ASC whenever facts and circumstances indicate that the carrying amount may not be recoverable. Specifically, this process involves comparing an asset's carrying value to the estimated undiscounted future cash flows the asset is expected to generate over its remaining life. If this process were to result in the conclusion that the carrying value of a long-lived asset would not be recoverable, a write-down of the asset to fair value would be recorded through a charge to operations. Fair value is determined based upon discounted cash flows or appraisals as appropriate. Long-lived assets that are held for sale are reported at the lower of the assets' carrying amount or fair value less costs related to the assets' disposition. In connection with our facility rationalizations, we recorded impairment charges totaling \$35, \$19, and \$8 to write-down fixed assets to their net realizable values in connection with facility rationalizations during fiscal years 2011, 2010, and 2009 respectively.

**Goodwill**

The Company follows the principles provided by the Goodwill and Other Intangibles standard of the ASC. Goodwill is not amortized but rather tested annually for impairment. The Company performs their annual impairment test on the first day of the fourth quarter in each respective fiscal year. The Company has four operating segments, Rigid Open Top, Rigid Closed Top, Specialty Films and Tapes, Bags & Coatings. Each of the operating segments has goodwill with the exception of the Tapes, Bags & Coatings segment. For purposes of conducting the annual goodwill impairment test, the Company has determined that the operating segments are the reporting units. Each component within each respective operating segment has similar economic characteristics and therefore have been aggregated into one reporting unit. The Company completed the annual impairment test and determined the carrying value of the Specialty Films division exceeded its fair value. The Company performed the second step of its evaluation to calculate the impairment and as a result recorded a goodwill impairment charge of \$165 in Restructuring and impairment charges on the Consolidated Statement of Operations in fiscal 2011. See Note 4 for additional discussion. The changes to fair value that triggered the impairment charge were primarily attributed to base volume declines in our Specialty Films reporting unit that were experienced in fiscal 2011 due to our strategy to increase prices.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

The changes in the carrying amount of goodwill by reportable segment are as follows (in millions):

	<u>Rigid Open Top</u>	<u>Rigid Closed Top</u>	<u>Specialty Films</u>	<u>Total</u>
Balance at fiscal year-end 2009	\$ 646	\$ 768	\$ 17	\$1,431
Adjustment for income taxes	—	—	(2)	(2)
Foreign currency translation adjustment	—	3	—	3
Goodwill from acquisitions	45	—	223	268
Balance at fiscal year-end 2010	<u>\$ 691</u>	<u>\$ 771</u>	<u>\$ 238</u>	<u>\$1,700</u>
Adjustment for income taxes	—	6	4	10
Foreign currency translation adjustment	—	(1)	—	(1)
Impairment of goodwill	—	—	(165)	(165)
Goodwill from acquisitions	(1)	43	9	51
Balance at fiscal year-end 2011	<u>\$ 690</u>	<u>\$ 819</u>	<u>\$ 86</u>	<u>\$1,595</u>

**Deferred Financing Fees**

Deferred financing fees are being amortized to interest expense using the effective interest method over the lives of the respective debt agreements.

**Intangible Assets**

Customer relationships are being amortized using an accelerated amortization method which corresponds with the customer attrition rates used in the initial valuation of the intangibles over the estimated life of the relationships which range from 11 to 20 years. Technology intangibles are being amortized using the straight-line method over the estimated life of the technology which is 11 years. License intangibles are being amortized using the straight-line method over the life of the license which is 10 years. Patent intangibles are being amortized using the straight-line method over the shorter of the estimated life of the technology or the patent expiration date ranging from 10 to 20 years, with a weighted-average life of 15 years. The Company evaluates the remaining useful life of intangible assets on a periodic basis to determine whether events and circumstances warrant a revision to the remaining useful life. Trademarks that are expected to remain in use, which are indefinite lived intangible assets, are required to be reviewed for impairment annually. We completed the annual impairment test of tradenames and noted no impairment.

	<u>Customer Relationships</u>	<u>Trademarks</u>	<u>Other Intangibles</u>	<u>Accumulated Amortization</u>	<u>Total</u>
Balance at fiscal year-end 2009	\$ 1,032	\$ 265	\$ 53	\$ (287)	\$1,063
Amortization expense	—	—	—	(109)	(109)
Acquisition Intangibles	113	12	23	—	148
Balance at fiscal year-end 2010	<u>\$ 1,145</u>	<u>\$ 277</u>	<u>\$ 76</u>	<u>\$ (396)</u>	<u>\$1,102</u>
Adjustment for income taxes	—	—	(4)	—	(4)
Amortization expense	—	—	—	(106)	(106)
Acquisition Intangibles	33	9	10	—	52
Balance at fiscal year-end 2011	<u>\$ 1,178</u>	<u>\$ 286</u>	<u>\$ 82</u>	<u>\$ (502)</u>	<u>\$1,044</u>

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**Insurable Liabilities**

The Company records liabilities for the self-insured portion of workers' compensation, health, product, general and auto liabilities. The determination of these liabilities and related expenses is dependent on claims experience. For most of these liabilities, claims incurred but not yet reported are estimated by utilizing actuarial valuations based upon historical claims experience.

**Income Taxes**

The Company accounts for income taxes under the asset and liability approach, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequence of events that have been recognized in the Company's financial statements or income tax returns. Income taxes are recognized during the period in which the underlying transactions are recorded. Deferred taxes, with the exception of non-deductible goodwill, are provided for temporary differences between amounts of assets and liabilities as recorded for financial reporting purposes and such amounts as measured by tax laws. If the Company determines that a deferred tax asset arising from temporary differences is not likely to be utilized, the Company will establish a valuation allowance against that asset to record it at its expected realizable value. The Company recognizes uncertain tax positions when it is more likely than not that the tax position will be sustained upon examination by relevant taxing authorities, based on the technical merits of the position. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. The Company's effective tax rate is dependent on many factors including: the impact of enacted tax laws in jurisdictions in which the Company operates; the amount of earnings by jurisdiction, due to varying tax rates in each country; and the Company's ability to utilize foreign tax credits related to foreign taxes paid on foreign earnings that will be remitted to the U.S.

**Comprehensive Loss**

Comprehensive loss is comprised of net loss and other comprehensive losses. Other comprehensive losses include net unrealized gains or losses resulting from currency translations of foreign subsidiaries, changes in the value of our derivative instruments and adjustments to the pension liability.

The accumulated balances related to each component of other comprehensive income (loss) were as follows (amounts below are net of taxes):

	Currency Translation	Defined Benefit Pension and Retiree Health Benefit Plans	Interest Rate Hedges	Accumulated Other Comprehensive Loss
Beginning Balance 10/2/2010	\$ 11	\$ 12	\$ —	\$ 23
Other Comprehensive Loss	10	9	6	25
Balance as of 10/1/2011	<u>\$ 21</u>	<u>\$ 21</u>	<u>\$ 6</u>	<u>\$ 48</u>

**Accrued Rebates**

The Company offers various rebates to customers based on purchases. These rebate programs are individually negotiated with customers and contain a variety of different terms and conditions. Certain rebates are calculated as flat percentages of purchases, while others included tiered volume incentives. These rebates may be payable monthly, quarterly, or annually. The calculation of the accrued rebate balance involves significant management estimates, especially where the terms of the rebate involve tiered volume levels that require estimates of expected

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

annual sales. These provisions are based on estimates derived from current program requirements and historical experience. The accrual for customer rebates was \$60 and \$50 at the end of fiscal 2011 and 2010, respectively and is included in Accrued expenses and other current liabilities.

**Pension**

Pension benefit costs include assumptions for the discount rate, retirement age, and expected return on plan assets. Retiree medical plan costs include assumptions for the discount rate, retirement age, and health-care-cost trend rates. Periodically, the Company evaluates the discount rate and the expected return on plan assets in its defined benefit pension and retiree health benefit plans. In evaluating these assumptions, the Company considers many factors, including an evaluation of the discount rates, expected return on plan assets and the health-care-cost trend rates of other companies; historical assumptions compared with actual results; an analysis of current market conditions and asset allocations; and the views of advisers.

**Net Income (Loss) Per Share**

The Company calculates basis net income (loss) per share based on the weighted-average number of outstanding common shares. The Company calculates diluted net income (loss) per share based on the weighted-average number of outstanding common shares plus the effect of dilutive securities.

**Use of Estimates**

The preparation of the financial statements in conformity with U.S. generally accepted accounting principles requires management to make extensive use of estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities and the reported amounts of sales and expenses. Actual results could differ materially from these estimates. Changes in estimates are recorded in results of operations in the period that the event or circumstances giving rise to such changes occur.

**Recently Issued Accounting Pronouncements**

In December 2007, the FASB issued authoritative guidance that establishes accounting and reporting standards that require (i) noncontrolling interests to be reported as a component of equity; (ii) changes in a parent's ownership interest while the parent retains its controlling interest to be accounted for as equity transactions; and (iii) any retained noncontrolling equity investment upon the deconsolidation of a subsidiary to be initially measured at fair value. The guidance is to be applied prospectively at the beginning of the first annual reporting period on or after December 15, 2008. We implemented the new standard effective in fiscal 2010. The adoption did not have a material impact on our consolidated financial statements.

In January 2010, the FASB issued an amendment to standard "Fair Value Measurements and Disclosure," to require reporting entities to separately disclose the amounts and business rationale for significant transfers in and out of Level 1 and Level 2 fair value measurements and separately present information regarding purchase, sale, issuance, and settlement of Level 3 fair value measures on a gross basis. This standard is effective for interim and annual reporting periods beginning after December 15, 2009 with the exception of disclosures regarding the purchase, sale, issuance, and settlement of Level 3 fair value measures which are effective for fiscal years beginning after December 15, 2010. We implemented the new standard effective in fiscal 2011. The adoption did not have an impact on our consolidated financial statements.

In June 2011, the FASB issued *Accounting Standards Update No. 2011-05: Comprehensive Income* ("ASU 2011-05"). ASU 2011-05 amends current presentation guidance by eliminating the option for an entity to present the components of comprehensive income as part of the statement of changes in stockholder's equity and requires

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

presentation of comprehensive income in a single continuous financial statement or in two separate but consecutive financial statements. The amendments in ASU 2011-05 do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. ASU 2011-05 will be effective for the Company on January 1, 2012. The Company is currently assessing the impact of ASU 2011-05 to the presentation of its Statement of Comprehensive Income within its consolidated financial statements.

In September 2011, the FASB issued *Accounting Standards Update No. 2011-08: Testing for Goodwill Impairment* (“ASU 2011-08”). ASU 2011-08 amends current goodwill impairment testing guidance by providing entities with an option to perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. ASU 2011-08 will be effective for interim and annual goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of ASU 2011-08 is not expected to have a material impact on the Company’s consolidated financial statements.

## 2. Acquisitions

The Company maintains a selective and disciplined acquisition strategy, which is focused on improving our long term financial performance, enhancing our market positions and expanding our product lines or, in some cases, providing us with a new or complementary product line. Most businesses we have acquired had profit margins that are lower than that of our existing business, which resulted in a temporary decrease in our margins. The Company has historically achieved significant reductions in manufacturing and overhead costs of acquired companies by introducing advanced manufacturing processes, exiting low-margin businesses or product lines, reducing headcount, rationalizing facilities and machinery, applying best practices and capitalizing on economies of scale. In connection with our acquisitions, we have in the past and may in the future incur charges related to these reductions and rationalizations.

The Company has a long history of acquiring and integrating companies. The Company has been able to achieve these synergies by eliminating duplicative costs and rationalizing facilities and integrating the production into the most efficient operating facility. While the expected benefits on earnings are estimated at the commencement of each transaction, once the execution of the plan and integration occur, the Company is generally unable to accurately estimate or track what the ultimate effects on future earnings have been due to systems integrations and movement of activities to multiple facilities. The historical business combinations have not allowed the Company to accurately separate realized synergies compared to what was initially identified during the due diligence phase of each acquisition.

### *Rexam Specialty and Beverage Closures*

In September 2011, the Company acquired 100% of the capital stock of Rexam Closures Kentucky Inc., Rexam Delta Inc., Rexam Closures LLC, Rexam Closure Systems LLC, Rexam de Mexico S. de R.L. de C.V., Rexam Singapore PTE Ltd., Rexam Participacoes Ltda. and Rexam Plasticos do Brasil Ltda. (collectively, “Rexam SBC”) pursuant to an Equity Purchase Agreement by and among Rexam Inc., Rexam Closures and Containers Inc., Rexam Closure Systems Inc., Rexam Plastic Packaging Inc., Rexam Brazil Closure Inc., Rexam Beverage Can South America S.A. and the Company. The aggregate purchase price was \$351 (\$347, net of cash acquired). Rexam SBC’s primary products include plastic closures, fitments and dispensing closure systems, and jars. The newly added business is operated in the Company’s Rigid Closed Top reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Rexam SBC acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

The acquisition was accounted for as a business combination using the purchase method of accounting. The Company has not finalized the purchase price allocation and it is subject to change. The Company is finalizing their allocation of the purchase price to the fair value on property and equipment, intangibles, and reviewing all of the working capital acquired. The Company has recognized goodwill on this transaction as a result of expected synergies. A portion of the goodwill will not be deductible for tax purposes. The following table summarizes the preliminary allocation of purchase price and the estimated fair values of the assets acquired and liabilities assumed at the date of the acquisition:

Working capital	\$ 74
Property and equipment	199
Intangible assets	43
Goodwill	50
Other long-term liabilities	(15)
Net assets acquired	<u>\$351</u>

*LINPAC Packaging Filmco, Inc.*

In August 2011, the Company acquired 100% of the common stock of LINPAC Packaging Filmco, Inc. ("Filmco") from LINPAC USA Holdings, Inc., a subsidiary of the UK-based LINPAC Group for a purchase price of \$19. Filmco is a manufacturer of PVC stretch film packaging for fresh meats, produce, freezer and specialty applications. The newly added business is operated in the Company's Specialty Films reporting segment. To finance the purchase, the Company used cash on hand and existing credit facilities. The Filmco acquisition has been accounted for under the purchase method of accounting, and accordingly, the preliminary purchase price has been allocated to the identifiable assets and liabilities based on estimated fair values at the acquisition date. The Company has primarily allocated the purchase price to property and equipment, intangible assets, working capital and goodwill.

*Pliant Corporation*

In December 2009, the Company obtained control of 100% of the capital stock of Pliant Corporation ("Pliant") upon Pliant's emergence from reorganization pursuant to a proceeding under Chapter 11 of the Bankruptcy Code for a purchase price of \$600 (\$574, net of cash acquired). Pliant is a leading manufacturer of value-added films and flexible packaging for food, personal care, medical, agricultural and industrial applications. The newly added business is operated in the Company's Specialty Films reporting segment. The acquisition was accounted for as a business combination using the purchase method of accounting. The Company has recognized goodwill on this transaction as a result of expected synergies. Goodwill will not be deductible for tax purposes. The following table summarizes the final allocation of purchase price and the estimated fair values of the assets acquired and liabilities assumed at the date of the acquisition:

Working capital	\$ 126
Property and equipment	242
Intangible assets	119
Goodwill	226
Other long-term liabilities	(113)
Net assets acquired	<u>\$ 600</u>



**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

*Superfos Packaging, Inc.*

In December 2009, the Company acquired 100% of the outstanding common stock of Superfos Packaging, Inc., a manufacturer of injection molded plastic rigid open top containers and other plastic packaging products primarily for food, industrial and personal care end markets. The newly added business is primarily operated in the Company's Rigid Open Top reporting segment. The purchase price was \$82 (\$80, net of cash acquired) and was funded from cash on hand and the revolving line of credit.

Pro forma net sales were \$4,996 and \$4,943 and pro forma net losses were \$307 and \$186 for fiscal 2011 and 2010, respectively. The pro forma net sales and net loss assume that the Rexam SBC and Pliant acquisition had occurred as of the beginning of the respective periods.

The pro forma information presented above is for informational purposes only and is not necessarily indicative of the operating results that would have occurred had the Rexam SBC and Pliant acquisitions been consummated at the beginning of the respective period, nor is it necessarily indicative of future operating results. Further, the information reflects only pro forma adjustments for additional interest expense, amortization and closing expenses, net of the applicable income tax effects.

**3. Long-Term Debt**

Long-term debt consists of the following as of fiscal year-end 2011 and 2010:

	<u>Maturity Date</u>	<u>2011</u>	<u>2010</u>
Term loan	April 2015	\$ 1,146	\$ 1,158
Revolving line of credit	June 2016	195	—
First Priority Senior Secured Floating Rate Notes	February 2015	681	681
8 1/4% First Priority Notes	November 2015	370	370
8 7/8% Second Priority Notes	September 2014	—	773
Second Priority Senior Secured Floating Rate Notes	September 2014	210	212
9 1/2% Second Priority Notes	May 2018	500	500
Senior Unsecured Term Loan	June 5, 2014	56	52
9 3/4% Second Priority Notes	January 2021	800	—
10 1/4% Senior Subordinated Notes	March 2016	127	168
11% Senior Subordinated Notes	September 2016	455	455
Debt discount, net		(13)	(33)
Capital leases and other	Various	100	90
		<u>4,627</u>	<u>4,426</u>
Less current portion of long-term debt		<u>(46)</u>	<u>(29)</u>
		<u>\$ 4,581</u>	<u>\$ 4,397</u>

*Senior Secured Credit Facility*

In fiscal 2007, the Company entered into senior secured credit facilities that include a term loan in the principal amount of \$1,200 term loan and a revolving credit facility ("Credit Facility"), which was amended in June 2011 to increase the commitments under its revolving credit facility by \$150 to a total of \$650 and extended the maturity to June 2016, subject to certain conditions. The Credit Facility provides borrowing availability equal to the lesser of (a) \$650 or (b) the borrowing base, which is a function, among other things, of the Company's accounts receivable and inventory.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

The borrowings under the senior secured credit facilities bear interest at a rate equal to an applicable margin plus, as determined at the Company's option, either (a) a base rate determined by reference to the higher of (1) the prime rate of Credit Suisse, Cayman Islands Branch, as administrative agent, in the case of the term loan facility or Bank of America, N.A., as administrative agent, in the case of the revolving credit facility and (2) the U.S. federal funds rate plus 1/2 of 1% or (b) LIBOR (0.37% for the term loan at fiscal year-end 2011) determined by reference to the costs of funds for eurodollar deposits in dollars in the London interbank market for the interest period relevant to such borrowing Bank Compliance for certain additional costs. The applicable margin for LIBOR rate borrowings under the revolving credit facility range from 1.75% to 2.25% and for the term loan is 2.00%. The initial applicable margin for base rate borrowings under the revolving credit facility is 0% and under the term loan is 1.00%.

The term loan facility requires minimum quarterly principal payments of \$3 for the first eight years, which commenced in June 2007, with the remaining amount payable in April 2015. In addition, the Company must prepay the outstanding term loan, subject to certain exceptions, with (1) beginning with the Company's first fiscal year after the closing, 50% (which percentage is subject to a minimum of 0% upon the achievement of certain leverage ratios) of excess cash flow (as defined in the credit agreement); and (2) 100% of the net cash proceeds of all non-ordinary course asset sales and casualty and condemnation events, if the Company does not reinvest or commit to reinvest those proceeds in assets to be used in its business or to make certain other permitted investments within 15 months, subject to certain limitations.

In addition to paying interest on outstanding principal under the senior secured credit facilities, the Company is required to pay a commitment fee to the lenders under the revolving credit facilities in respect of the unutilized commitments thereunder at a rate equal to 0.375% to 0.50% per annum depending on the average daily available unused borrowing capacity. The Company also pays a customary letter of credit fee, including a fronting fee of 0.125% per annum of the stated amount of each outstanding letter of credit, and customary agency fees.

The Company may voluntarily repay outstanding loans under the senior secured credit facilities at any time without premium or penalty, other than customary "breakage" costs with respect to eurodollar loans. The senior secured credit facilities contain various restrictive covenants that, among other things and subject to specified exceptions, prohibit the Company from prepaying other indebtedness, and restrict its ability to incur indebtedness or liens, make investments or declare or pay any dividends. All obligations under the senior secured credit facilities are unconditionally guaranteed by Berry Group and, subject to certain exceptions, each of the Company's existing and future direct and indirect domestic subsidiaries. The guarantees of those obligations are secured by substantially all of the Company's assets as well as those of each domestic subsidiary guarantor.

The Company's fixed charge coverage ratio, as defined in the revolving credit facility, is calculated based on a numerator consisting of adjusted EBITDA less pro forma adjustments, income taxes paid in cash and capital expenditures, and a denominator consisting of scheduled principal payments in respect of indebtedness for borrowed money, interest expense and certain distributions. We are obligated to sustain a minimum fixed charge coverage ratio of 1.0 to 1.0 under the revolving credit facility at any time when the aggregate unused capacity under the revolving credit facility is less than 10% of the lesser of the revolving credit facility commitments and the borrowing base (and for 10 business days following the date upon which availability exceeds such threshold) or during the continuation of an event of default. At the end of fiscal 2011, the Company had unused borrowing capacity of \$417 under the revolving credit facility subject to a borrowing base and thus was not subject to the minimum fixed charge coverage ratio covenant. The fixed charge ratio was 1.6 to 1.0, at the end of fiscal 2011. Despite not having financial maintenance covenants, our debt agreements contain certain negative covenants. The failure to comply with these negative covenants could restrict our ability to incur additional indebtedness, effect acquisitions, enter into certain significant business combinations, make distributions or redeem

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indebtedness. The term loan facility contains a negative covenant first lien secured leverage ratio covenant of 4.0 to 1.0 on a pro forma basis for a proposed transaction, such as an acquisition or incurrence of additional first lien debt. Our first lien secured leverage ratio was 3.3 to 1.0 at the end of fiscal 2011.

At fiscal year-end 2011, there was \$195 outstanding on the revolving line of credit and \$38 in letters of credit outstanding. At fiscal year-end 2011, the Company had unused borrowing capacity of \$417 under the revolving line of credit subject to the Company's borrowing base calculations.

*Senior Unsecured Term Loan*

On June 5, 2007, the Company entered into a \$500 million senior unsecured term loan agreement ("Senior Unsecured Term Loan") with a syndicate of lenders. The Senior Unsecured Term Loan matures on June 5, 2014 and was sold at a 1% discount, which is being amortized over the life of the loan. Interest on the agreement is payable on a quarterly basis and bears interest at the Company's option based on (1) a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Credit Suisse as its "prime rate" plus 525 basis points or (2) LIBOR (0.37% at fiscal year-end 2011) plus 625 basis points. The Senior Unsecured Term Loan contains a payment in kind ("PIK") option which allows the Company to forgo paying cash interest and to add the PIK interest to the outstanding balance of the loan. This option expires on the five year anniversary of the loan. The Company at its election may make the quarterly interest payments in cash, may make the payments by paying 50% of the interest in cash and 50% in PIK interest or 100% in PIK interest for the first five years. The notes are unsecured and there are no guarantees by the Company or any of its subsidiaries. The Company elected to use the PIK option to forgo paying cash interest and have added \$4 million and \$5 million to the outstanding balance of the loan in fiscal 2011 and fiscal 2010, respectively.

The Company, at its election, may call the notes up to the first anniversary date for 100% of the principal balance plus accrued and unpaid interest and an applicable premium. The Company's call option for the notes between the one year and two year and two year and three year anniversary dates changes to 102% and 101% of the outstanding principal balance plus accrued and unpaid interest, respectively. The notes also contain a put option which allows the lender to require the Company to repay any principal and applicable PIK interest that has accrued if the Company has an applicable high yield discount obligation ("AHYDO") within the definition outlined in the Internal Revenue Code, section 163(i)(1) at each payment period subsequent to the five year anniversary date. The Company has estimated a fiscal 2012 AHYDO payment of \$12 which is recorded in Current portion of long-term debt on the Consolidated Balance Sheet. The Company was in compliance with all covenants at October 1, 2011.

In fiscal 2010 and 2009, BP Parallel LLC ("BP Parallel"), a non-guarantor subsidiary of the Company, invested \$25 million and \$166 million to purchase assignments from non-affiliated third parties at then-prevailing market prices of \$33 million and \$515 million of principal of the Senior Unsecured Term Loan, respectively. We recognized a net gain of \$8 million and \$343 million on the repurchase of the Senior Unsecured Term Loan in fiscal 2010 and 2009, respectively which is recorded in Other expense (income) in our Consolidated Statements of Operations. BP Parallel did not purchase assignments of the Senior Unsecured Term Loan in 2011.

*9<sup>3</sup>/<sub>4</sub>% Second Priority Senior Secured Notes*

In November 2010, the Company completed a private placement of \$800 aggregate principal amount of 9<sup>3</sup>/<sub>4</sub>% Second Priority Senior Secured Notes due in January 2021. In connection with the private placement we conducted tender offers to purchase, for cash, our 8<sup>7</sup>/<sub>8</sub>% Second Priority Senior Secured Notes due in 2014. The private placement resulted in the Company recording non-cash write offs of \$14 for deferred financing fees, \$17

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of debt discounts and cash premiums of \$37 included in Other operating expenses on the Consolidated Statement of Operations. The proceeds of this offering were used to fund the repurchase of the 8<sup>7/8</sup>% Second Priority Senior Secured Notes pursuant to the tender offers and subsequent redemption of such notes.

The Company's \$800 in aggregate principal amount of 9<sup>3/4</sup>% Second Priority Senior Secured Notes mature in January 2021. No principal payments are required prior to maturity. Interest on the notes is due semi-annually on January 15 and July 15, commencing in July 2011. The notes are guaranteed on a second priority secured basis by substantially all of the Company's existing and future guarantor subsidiaries that secure its obligations under its senior secured credit facilities, subject to certain exceptions and rank equally in right of payment to all existing and future senior secured indebtedness. The Company was in compliance with all covenants at fiscal year-end 2011.

Future maturities of long-term debt as of fiscal year-end 2011 are as follows:

2012	\$ 46
2013	33
2014	284
2015	1,811
2016	1,156
Thereafter	1,310
	<u>\$4,640</u>

Interest paid was \$300 in fiscal 2011, \$244 in fiscal 2010, and \$236 in fiscal 2009.

In fiscal 2011, BP Parallel purchased \$41 of 10<sup>1/4</sup>% Senior Subordinated Notes for \$38 in cash, plus accrued interest. The repurchase resulted in a net gain, which is recorded in Other income in our Consolidated Statements of Operations. The Company funded the purchases with cash on hand.

BP Parallel purchased \$2 and \$13 of Second Priority Senior Secured Floating Rate Notes for \$1 and \$11 in cash, plus accrued interest, in fiscal 2011 and fiscal 2010, respectively. The repurchase resulted in gains which are recorded in Other income in our Consolidated Statements of Operations. The Company funded the purchases with cash on hand.

#### **4. Financial Instruments and Fair Value Measurements**

As part of the overall risk management, the Company uses derivative instruments to reduce exposure to changes in interest rates attributed to the Company's floating-rate borrowings. For those derivative instruments that are designated and qualify as hedging instruments, the Company must designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, cash flow hedge, or a hedge of a net investment in a foreign operation. To the extent hedging relationships are found to be effective, as determined by FASB guidance, changes in fair value of the derivatives are offset by changes in the fair value of the related hedged item are recorded to Accumulated other comprehensive loss. Management believes hedge effectiveness is evaluated properly in preparation of the financial statements.

##### Cash Flow Hedging Strategy.

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative instrument is reported as a component of Accumulated other comprehensive loss and

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reclassified into earnings in the same line item associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings.

In August 2007, the Company entered into two separate interest rate swap transactions to manage cash flow variability associated with \$600 of the outstanding variable rate term loan debt (the “2007 Swaps”). The swap agreements became effective in November 2007. The first agreement had a notional amount of \$300 and became effective in November 2007 and swaps three month variable LIBOR contracts for a fixed two year rate of 4.875% and expired in November 2009. The second agreement had a notional amount of \$300 and became effective in November 2007 and swaps three month variable LIBOR contracts for a fixed three year rate of 4.920% and expired in November 2010. In 2008, the Company began utilizing 1-month LIBOR contracts for the underlying senior secured credit facility. The Company’s change in interest rate selection caused the Company to lose hedge accounting on both of the interest rate swaps. The Company recorded changes in fair value in the Consolidated Statement of Operations.

In November 2010, the Company entered into two separate interest rate swap transactions to manage cash flow variability associated with \$1 billion of the outstanding variable rate term loan debt (the “2010 Swaps”). The first agreement had a notional amount of \$500 and became effective in November 2010. The agreement swaps three month variable LIBOR contracts for a fixed three year rate of 0.8925% and expires in November 2013. The second agreement had a notional amount of \$500 and became effective in December 2010. The agreement swaps three month variable LIBOR contracts for a fixed three year rate of 1.0235% and expires in November 2013. In August 2011, the Company began utilizing 1-month LIBOR contracts for the underlying senior secured credit facility. The Company’s change in interest rate selection caused the Company to lose hedge accounting on both of the interest rate swaps. The Company recorded changes in fair value in the Consolidated Statement of Operations and will amortize the previously recorded unrealized losses as of fiscal year-end 2011 to Interest expense through the end of the respective swap agreements.

<u>Derivatives not designated as hedging instruments under FASB guidance</u>	<u>Liability Derivatives</u>		
	<u>Balance Sheet Location</u>	<u>2011</u>	<u>2010</u>
Interest rate swaps—2007 Swaps	Accrued exp and other current liabilities	\$ —	\$ 1
Interest rate swaps—2010 Swaps	Other long-term liabilities	\$ 8	\$ —

The effect of the derivative instruments on the Consolidated Statement of Operations are as follows:

<u>Derivatives not designated as hedging instruments under FASB guidance</u>	<u>Statement of Operations Location</u>	<u>2011</u>	<u>2010</u>
	Interest rate swaps—2007 Swaps	Other income	\$ (1)
Interest expense		\$ 1	\$ 7
Interest rate swaps—2010 Swaps	Other income	\$ (2)	\$ —
	Interest expense	\$ 1	\$ —

The Fair Value Measurements and Disclosures section of the ASC defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, and establishes a framework for measuring fair value. This section also establishes a three-level hierarchy (Level 1, 2 or 3) for fair value measurements based upon the observability of inputs to the valuation of an asset or liability as of the measurement date. This section also requires the consideration of the counterparty’s or the Company’s nonperformance risk when assessing fair value.

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The Company's interest rate swap fair values were determined using Level 2 inputs as other significant observable inputs were not available.

The Company's financial instruments consist primarily of cash and cash equivalents, investments, long-term debt, interest rate swap agreements and capital lease obligations. The fair value of our investments exceeded book value at fiscal year-end 2011 and 2010, by \$159 and \$172, respectively. The following table summarizes our long-term indebtedness for which the book value was in excess of the fair value:

	<u>2011</u>	<u>2010</u>
First Priority Senior Secured Floating Rate Notes	<b>61</b>	34
8 <sup>7</sup> / <sub>8</sub> % Second Priority Notes	—	17
9 <sup>1</sup> / <sub>2</sub> % Second Priority Notes	<b>83</b>	31
9 <sup>3</sup> / <sub>4</sub> % Second Priority Notes	<b>140</b>	—
Second Priority Senior Secured Floating Rate Notes	<b>38</b>	32
Senior Unsecured Term Loan	<b>8</b>	12
11% Senior Subordinated Notes	<b>64</b>	34
10 <sup>1</sup> / <sub>4</sub> % Senior Subordinated Notes	<b>18</b>	13

*Redeemable Common Stock*

The Company has common stock outstanding to former employees that will be repurchased by the Company. Redemption of this common stock will be based on the fair value of the stock on the fixed redemption date and this redemption is out of the control of the Company. This redeemable common stock is recorded at its fair value in temporary equity and changes in the fair value are recorded in additional paid in capital each period. Under the 2006 Equity Incentive Plan, the exercise price for option awards is the fair market value of common stock on the date of grant. Historically, the fair market value of a share of common stock was determined by the Board of Directors by applying industry-appropriate multiples to current EBITDA. This valuation took into account a level of net debt that excluded cash required for working capital purposes. The categorization of the framework used to price these liabilities is considered a Level 3, due to the subjective nature of the unobservable inputs used to determine the fair value. Upon completion of a successful IPO, the redemption requirement terminates and the Company is no longer required to repurchase these shares. The fair value as of October 1, 2011 and October 2, 2010 is \$16 and \$11, respectively.

Non-recurring Fair Value Measurements

The Company has certain assets that are measured at fair value on a non-recurring basis under the circumstances and events described in Note 1 and Note 10. The assets are adjusted to fair value only when the carrying values exceed the fair values. The categorization of the framework used to price the assets is considered a Level 3, due to the subjective nature of the unobservable inputs used to determine the fair value (see Note 1 and 10 for additional discussion).

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Included in the following table are the major categories of assets measured at fair value on a non-recurring basis as of October 1, 2011, along with the impairment loss recognized on the fair value measurement for the year then ended:

	As of October 1, 2011			Total	Year Ended October 1, 2011 Impairment Loss
	Level 1 Quoted Prices in Active Markets for Identical Assets or Liabilities	Level 2 Significant Other Observable Inputs	Level 3 Significant Unobservable Inputs		
Indefinite-lived trademarks	\$ —	\$ —	\$ 220	\$ 220	\$ —
Goodwill	—	—	1,595	1,595	165
Property, plant, and equipment	—	—	1,250	1,250	35
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 3,065</b>	<b>\$3,065</b>	<b>\$ 200</b>

	As of October 2, 2010			Total	Year Ended October 2, 2010 Impairment Loss
	Level 1 Quoted Prices in Active Markets for Identical Assets or Liabilities	Level 2 Significant Other Observable Inputs	Level 3 Significant Unobservable Inputs		
Indefinite-lived trademarks	\$ —	\$ —	\$ 220	\$ 220	\$ —
Goodwill	—	—	1,700	1,700	—
Property, plant, and equipment	—	—	1,146	1,146	19
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 3,066</b>	<b>\$3,066</b>	<b>\$ 19</b>

	As of September 26, 2009			Total	Year Ended September 26, 2009 Impairment Loss
	Level 1 Quoted Prices in Active Markets for Identical Assets or Liabilities	Level 2 Significant Other Observable Inputs	Level 3 Significant Unobservable Inputs		
Indefinite-lived trademarks	\$ —	\$ —	\$ 220	\$ 220	\$ —
Goodwill	—	—	1,431	1,431	—
Property, plant, and equipment	—	—	875	875	8
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 2,526</b>	<b>\$2,526</b>	<b>\$ 8</b>

**Valuation of Goodwill and Indefinite Lived Intangible Assets**

ASC Topic 350 requires the Company to test goodwill for impairment at least annually using a two-step process. The first step is a screen for potential impairment, while the second step measures the amount of impairment. The Company conducts the two-step impairment test on the first day of the fourth fiscal quarter, unless indications of impairment exist during an interim period. When assessing its goodwill for impairment, the Company utilizes a discounted cash flow analysis in combination with a comparable company market approach to determine the fair value of their reporting units and corroborate the fair values. The Company utilizes a relief from royalty method

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to value their indefinite lived trademarks and uses the forecasts that are consistent with those used in the reporting unit analysis. The Company has three reporting units (Rigid Open Top, Rigid Closed Top and Specialty Films) which have goodwill as more fully discussed in Note 1. The Company performed their annual impairment test and determined that the \$251 carrying value of the Specialty Films reporting unit exceeded its fair value of \$86 and recognized a \$165 impairment. The primary driver of the impairment charge related to an 11% sales volume decline in their Specialty Films reporting unit in Fiscal 2011 driven by strategies to increase prices along with higher future capital expenditure estimates to maintain and grow margins. The Company also completed their annual impairment test on their Rigid Open Top and Rigid Closed Top reporting units for Goodwill and their annual impairment test for Trademarks and did not recognize any impairment charges. The Company's has assumed revenue growth of 2-4% for the various reporting units with a terminal year growth rate of 3%. The Company has also calculated their weighted average cost of capital by using peer companies to determine an appropriate measure. The Company utilizes a comparable company market approach to reconcile and corroborate the discounted cash flow.

**Valuation of Property, Plant and Equipment and Definite Lived Intangible Assets**

The Company periodically realigns their manufacturing operations which results in facilities being closed and shut down and equipment transferred to other facilities or equipment being scrapped. The Company utilizes appraised values to corroborate the fair value of the facilities and has utilized a scrap value based on prior facility shut downs to estimate the fair value of the equipment, which has approximated the actual value that was received. When impairment indicators exist, the Company will also perform an undiscounted cash flow analysis to determine the recoverability of the Company's long lived assets. The Company wrote-down their property, plant, and equipment with a carrying value of \$1,285 to its fair value of \$1,250, which resulted in an impairment charge of \$35 during fiscal 2011. The Company wrote-down their property, plant, and equipment with a carrying value of \$1,165 to its fair value of \$1,146, which resulted in an impairment charge of \$19 during fiscal 2010. The Company wrote-down their property, plant, and equipment with a carrying value of \$883 to its fair value of \$875, which resulted in an impairment charge of \$8 during fiscal 2009. The Company did not recognize any impairment charges on the definite lived intangible assets.

**5. Goodwill, Intangible Assets and Deferred Costs**

The following table sets forth the gross carrying amount and accumulated amortization of the Company's goodwill, intangible assets and deferred costs as of the fiscal year-end 2011 and 2010:

	<u>2011</u>	<u>2010</u>	<u>Amortization Period</u>
Deferred financing fees	\$ 104	\$ 110	Respective debt
Accumulated amortization	(39)	(40)	
Deferred financing fees, net	65	70	
Goodwill	1,595	1,700	Indefinite lived
Customer relationships	1,178	1,145	11 – 20 years
Trademarks (indefinite lived)	220	220	Indefinite lived
Trademarks (definite lived)	66	57	8-15 years
Other intangibles	82	76	10-20 years
Accumulated amortization	(502)	(396)	
Intangible assets, net	1,044	1,102	
Total Goodwill, Intangible Assets and Deferred Costs	<u>\$ 2,704</u>	<u>\$ 2,872</u>	



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The Company recorded a goodwill impairment charge in the Specialty Films segment in fiscal 2011. See footnote 1 for further discussion. Future amortization expense for definite lived intangibles at fiscal year-end 2011 for the next five fiscal years is \$107, \$100, \$94, \$86 and \$80 each year for fiscal years ending 2012, 2013, 2014, 2015, and 2016, respectively.

#### 6. Lease and Other Commitments and Contingencies

The Company leases certain property, plant and equipment under long-term lease agreements. Property, plant and equipment under capital leases are reflected on the Company's balance sheet as owned. The Company did not enter into any new capital leases during fiscal 2009 and entered into new capital lease obligations totaling \$45 and \$29 during fiscal 2010 and fiscal 2011, respectively, with various lease expiration dates through 2018. The Company records amortization of capital leases in Cost of goods sold in the Consolidated Statement of Operations. Assets under operating leases are not recorded on the Company's balance sheet. Operating leases expire at various dates in the future with certain leases containing renewal options. The Company had minimum lease payments or contingent rentals of \$14 and \$12 and asset retirement obligations of \$6 and \$7 at fiscal year-end 2011 and fiscal year-end 2010, respectively. Total rental expense from operating leases was \$59 in fiscal 2011 and \$56 for fiscal 2010 and 2009.

Future minimum lease payments for capital leases and noncancellable operating leases with initial terms in excess of one year as of fiscal year-end 2011, are as follows:

	<u>Capital Leases</u>	<u>Operating Leases</u>
2012	\$ 27	\$ 47
2013	27	36
2014	21	27
2015	23	24
2016	10	22
Thereafter	12	91
	<u>120</u>	<u>\$ 247</u>
Less: amount representing interest	(22)	
Present value of net minimum lease payments	<u>\$ 98</u>	

The Company is party to various legal proceedings involving routine claims which are incidental to its business. Although the Company's legal and financial liability with respect to such proceedings cannot be estimated with certainty, the Company believes that any ultimate liability would not be material to its financial position, results of operations or cash flows. The Company has various purchase commitments for raw materials, supplies and property and equipment incidental to the ordinary conduct of business.

At the end of fiscal 2011, we employed over 16,000 employees. Approximately 11% of our employees are covered by collective bargaining agreements. Four of our twelve agreements, covering approximately 1,200 employees, are scheduled for renegotiation in fiscal 2012. The remaining agreements expire after fiscal 2012.

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**7. Accrued Expenses, Other Current Liabilities and Other Long-Term Liabilities**

The following table sets forth the totals included in Accrued expenses and other current liabilities as of fiscal year-end 2011 and 2010.

	<u>2011</u>	<u>2010</u>
Employee compensation, payroll and other taxes	\$101	\$ 80
Interest	63	56
Rebates	60	50
Other	62	85
	<u>\$286</u>	<u>\$271</u>

The following table sets forth the totals included in Other long-term liabilities as of fiscal year-end 2011 and 2010.

	<u>2011</u>	<u>2010</u>
Lease retirement obligation	\$ 20	\$ 19
Sale-lease back deferred gain	35	37
Pension liability	79	67
Other	36	37
	<u>\$170</u>	<u>\$160</u>

**8. Income Taxes**

The components of income tax expense (benefit) for the fiscal years ended 2011, 2010 and 2009 are as follows:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Current			
United States			
Federal	\$—	\$—	\$—
State	1	3	2
Non-U.S.	3	—	—
Current income tax provision	4	3	2
Deferred:			
United States			
Federal	(57)	(38)	93
State	7	(11)	5
Non-U.S.	(1)	(3)	(1)
Deferred income tax provision (benefit)	(51)	(52)	97
Expense (Benefit) for income taxes	<u>\$ (47)</u>	<u>\$ (49)</u>	<u>\$ 99</u>

U.S. income (loss) from continuing operations before income taxes was \$(342), \$(140) and \$268 for the fiscal years ended 2011, 2010 and 2009, respectively. Non-U.S. loss from continuing operations before income taxes was \$(4), \$(22) and \$(13) for the fiscal years ended 2011, 2010 and 2009, respectively.

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The reconciliation between U.S. Federal income taxes at the statutory rate and the Company's benefit for income taxes on continuing operations for the fiscal years ended 2011, 2010, and 2009 are as follows:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
U.S. Federal income tax expense (benefit) at the statutory rate	\$(121)	\$ (57)	\$ 89
Adjustments to reconcile to the income tax provision:			
U.S. State income tax expense, net of valuation allowance	8	(8)	6
Impairment of goodwill	58	—	—
Permanent differences	1	2	—
Transaction costs	1	3	—
Changes in Foreign Valuation Allowance	3	3	3
Rate differences between U.S. and Foreign	1	4	1
Other	2	4	—
Expense (benefit) for income taxes	<u>\$ (47)</u>	<u>\$ (49)</u>	<u>\$ 99</u>

Deferred income taxes result from temporary differences between the amount of assets and liabilities recognized for financial reporting and tax purposes. The components of the net deferred income tax liability at fiscal year-end 2011 and 2010 are as follows:

	<u>2011</u>	<u>2010</u>
Deferred tax assets:		
Allowance for doubtful accounts	\$ 4	\$ 4
Deferred gain on sale-leaseback	15	20
Accrued liabilities and reserves	58	51
Inventory	8	7
Net operating loss carryforward	406	380
Alternative minimum tax (AMT) credit carryforward	8	12
Other	15	5
Total deferred tax assets	<u>514</u>	<u>479</u>
Valuation allowance	(43)	(47)
Total deferred tax assets, net of valuation allowance	<u>471</u>	<u>432</u>
Deferred tax liabilities:		
Property, plant and equipment	143	152
Intangible assets	347	344
Debt extinguishment	132	131
Other	4	7
Total deferred tax liabilities	<u>626</u>	<u>634</u>
Net deferred tax liability	<u><u>\$(155)</u></u>	<u><u>\$(202)</u></u>

In the U.S. the Company had \$904 of Federal net operating loss carryforwards. As of fiscal year-end 2011, the Company had foreign net operating loss carryforwards of \$33. The Federal net operating loss carryforwards will expire in future years beginning in 2021. AMT credit carryforwards totaling \$8 are available to the Company indefinitely to reduce future years' Federal income taxes.

The Company believes that it will not generate sufficient future taxable income to realize the tax benefits in certain foreign jurisdictions related to the deferred tax assets. The Company also has certain State net operating

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losses that may expire before they are fully utilized. Therefore, the Company has provided a full valuation allowance against certain of its foreign net operating losses and a valuation allowance against certain of its state net operating losses included within the deferred tax assets.

Prior changes in ownership have created limitations under Sec. 382 of the internal revenue code on annual usage of net operating loss carryforwards. However, the Company's Federal net operating loss carryforwards are available for immediate use. As part of the effective tax rate calculation, if we determine that a deferred tax asset arising from temporary differences is not likely to be utilized, we will establish a valuation allowance against that asset to record it at its expected realizable value. The Company has not provided a valuation allowance on its Federal net operating loss carryforwards in the United States because it has determined that future rewards of its temporary taxable differences will occur in the same periods and are of the same nature as the temporary differences giving rise to the deferred tax assets. Our valuation allowance against deferred tax assets was \$43 and \$47 as of fiscal year-end 2011 and 2010, respectively, related to the foreign operating loss carryforwards, U.S. State operating loss carryforwards, and foreign tax credit carryforwards. The Company paid cash taxes of \$2, \$3 and \$4 in fiscal 2011, fiscal 2010 and fiscal 2009, respectively.

#### *Uncertain Tax Positions*

We adopted the provisions of the Income Taxes standard of the Codification. This interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with guidance provided by FASB and prescribes a recognition threshold of more-likely-than-not to be sustained upon examination. Our policy to include interest and penalties related to gross unrecognized tax benefits within our provision for income taxes did not change. There was no adjustment to retained earnings upon adoption.

The following table summarizes the activity related to our gross unrecognized tax benefits for fiscal 2011 and fiscal 2010:

	<u>2011</u>	<u>2010</u>
Beginning unrecognized tax benefits	\$34	\$ 30
Gross increases—tax positions in prior periods	3	1
Gross decreases— tax positions in prior periods	(4)	—
Gross increases—from acquisitions	2	3
Gross increases—current period tax positions	1	1
Settlements	(2)	—
Lapse of statute of limitations	(1)	(1)
Ending unrecognized tax benefits	<u>\$33</u>	<u>\$ 34</u>

The amount of unrecognized tax benefits that, if recognized, would affect our effective tax rate was \$9 and \$8 for fiscal year-end 2010 and 2011, respectively.

As of fiscal year-end 2011, we have \$1 accrued for payment of interest and penalties related to our uncertain tax positions. Our penalties and interest related to uncertain tax positions are included in income tax expense.

We and our subsidiaries are routinely examined by various taxing authorities. Although we file U.S. Federal, U.S. State, and foreign tax returns, our major tax jurisdiction is the U.S. The IRS has completed an examination of our 2003 tax year. Our 2004—2010 tax years remain subject to examination by the IRS for U.S. Federal tax purposes. There are various other on-going audits in various other jurisdictions that are not material to our financial statements.

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At November 1, 2011, we had unremitted earnings from foreign subsidiaries including earnings that have been or are intended to be permanently reinvested for continued use in foreign operations and that, if distributed, would result in additional income tax expense at approximately the U.S. statutory rate. We have identified non U.S. funds from Germany, Australia, Belgium and India that are not permanently reinvested and have recognized deferred tax liabilities for additional tax expense that we expect to incur upon repatriation of earnings that are not sourced from previously taxed income. We have not recognized a deferred tax liability for temporary differences related to these investments since such determination is not practical nor considered to be material.

**9. Retirement Plan**

The Company maintains nine defined benefit pension plans which cover certain manufacturing facilities. The Company also maintains a retiree health plan, which covers certain healthcare and life insurance benefits for certain retired employees and their spouses. Eight of the nine defined benefit plans and the retiree health plan are frozen plans. The Company uses fiscal year-end as a measurement date for the retirement plans.

The Company sponsors two defined contribution 401(k) retirement plans covering substantially all employees. Contributions are based upon a fixed dollar amount for employees who participate and percentages of employee contributions at specified thresholds. Contribution expense for these plans was \$6 for fiscal 2011 and 2010 and \$1 for fiscal 2009.

The Company participates in one multiemployer plan. Contributions to the plan are based on specific percentages of employee compensation and are immaterial.

The projected benefit obligations of the Company's plans presented herein are equal to the accumulated benefit obligations of such plans. The tables below exclude the obligations related to the foreign plans as the U.S. plans represent approximately 93% of the total. The net PBO for foreign plans is approximately \$5. The net amount of liability recognized is included in Other long-term liabilities on the Consolidated Balance Sheets.

	Defined Benefit Pension Plans		Retiree Health Plan	
	2011	2010	2011	2010
<b>Change in Projected Benefit Obligations (PBO)</b>				
PBO at beginning of period	\$ 175	\$ 59	\$ 4	\$ 5
Service cost	—	—	—	—
Business combinations	—	107	—	—
Interest cost	8	7	—	—
Actuarial loss (gain)	4	9	—	(1)
Benefits paid	(8)	(7)	—	—
PBO at end of period	<u>\$ 179</u>	<u>\$ 175</u>	<u>\$ 4</u>	<u>\$ 4</u>
<b>Change in Fair Value of Plan Assets</b>				
Plan assets at beginning of period	\$ 112	\$ 39	\$—	\$—
Actual return on plan assets	(2)	7	—	—
Business combinations	—	67	—	—
Company contributions	7	6	—	1
Benefits paid	(8)	(7)	—	(1)
Plan assets at end of period	<u>109</u>	<u>112</u>	<u>—</u>	<u>—</u>
<b>Net amount recognized</b>	<u>\$ (70)</u>	<u>\$ (63)</u>	<u>\$ (4)</u>	<u>\$ (4)</u>

**Berry Plastics Group, Inc.**  
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At the end of fiscal 2011 the Company had \$38 of net unrealized losses recorded in Accumulated other comprehensive loss on the Consolidated Balance Sheets. The Company expects \$2 to be realized in fiscal 2012.

The following table presents significant weighted-average assumptions used to determine benefit obligation and benefit cost for the fiscal years ended:

(Percents)	Defined Benefit Pension Plans		Retiree Health Plan	
	2011	2010	2011	2010
Weighted-average assumptions:				
Discount rate for benefit obligation	4.42	4.84	4.5	5.0
Discount rate for net benefit cost	4.84	5.25	5.0	5.0
Expected return on plan assets for net benefit costs	8.0	8.0	8.0	8.0

In evaluating the expected return on plan assets, the Company considered its historical assumptions compared with actual results, an analysis of current market conditions, asset allocations, and the views of advisers. The return on plan assets is derived from target allocations and historical yield by asset type. Health-care-cost trend rates were assumed to increase at an annual rate of 7.0% in 2011 and thereafter. A one-percentage-point change in these assumed health care cost trend rates would not have a material impact on our postretirement benefit obligation.

The table below discloses fair values of each pension plan asset category and level within the fair value hierarchy in which it falls. There was no material changes or transfers between level 3 assets and the other levels.

<u>Fiscal 2011 Asset Category</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash and cash equivalents	\$ 4	\$ —	\$ —	\$ 4
U.S. large cap comingled equity funds	—	28	—	28
U.S. mid cap equity mutual funds	10	—	—	10
U.S. small cap equity mutual funds	5	—	—	5
International equity mutual funds	11	—	—	11
Real estate equity investment funds	3	—	—	3
Corporate bond mutual funds	30	—	—	30
Guaranteed investment account	—	—	12	12
Other	6	—	—	6
<b>Total</b>	<b>\$ 69</b>	<b>\$ 28</b>	<b>\$ 12</b>	<b>\$109</b>

<u>Fiscal 2010 Asset Category</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash and cash equivalents	\$ 3	\$ —	\$ —	\$ 3
U.S. large cap comingled equity funds	—	23	—	23
U.S. mid cap equity mutual funds	11	—	—	11
U.S. small cap equity mutual funds	6	—	—	6
International equity mutual funds	11	—	—	11
Real estate equity investment funds	3	—	—	3
Corporate bond mutual funds	37	—	—	37
Guaranteed investment account	—	—	12	12
Other	5	—	1	6
<b>Total</b>	<b>\$ 76</b>	<b>\$ 23</b>	<b>\$ 13</b>	<b>\$112</b>

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**Notes to Consolidated Financial Statements (continued)**  
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The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid for the fiscal years ending as follows:

	<u>Defined Benefit Pension Plans</u>	<u>Retiree Health Plan</u>
2012	\$ 9	\$ 1
2013	9	—
2014	9	—
2015	9	—
2016	10	—
2017-2021	51	1

In fiscal 2012, the Company expects to contribute \$8 to its retirement plans to satisfy minimum funding requirements for the year.

Net pension and retiree health benefit expense included the following components as of fiscal 2011 and 2010:

	<u>2011</u>	<u>2010</u>
<b>Defined Benefit Pension Plans</b>		
Service cost	\$—	\$—
Interest cost	9	8
Amortization	1	1
Expected return on plan assets	(9)	(8)
Net periodic benefit cost	<u>\$ 1</u>	<u>\$ 1</u>

Our defined benefit pension plan asset allocations as of fiscal year-end 2011 and 2010 are as follows:

	<u>2011</u>	<u>2010</u>
<b>Asset Category</b>		
Equity securities and equity-like instruments	53%	49%
Debt securities	32	40
Other	15	11
Total	<u>100%</u>	<u>100%</u>

The Company's retirement plan assets are invested with the objective of providing the plans the ability to fund current and future benefit payment requirements while minimizing annual Company contributions. The plans' asset allocation strategy reflects a long-term growth strategy with approximately 40-50% allocated to growth investments and 40-50% allocated to fixed income investments and 5-10% in other, including cash. The retirement plans held \$5 principal of the Company's 10 1/4% Senior Subordinated Notes at the end of fiscal 2011 and 2010, respectively. The Company re-addresses the allocation of its investments on an annual basis.

#### **10. Restructuring and Impairment Charges**

The Company announced various restructuring plans in the last three fiscal years which included shutting down facilities in all four of the Company's operating segments.

During fiscal 2009, the Company announced the intention to shut down one manufacturing facility within its Specialty Films division and one manufacturing facility within its Rigid Open Top division. The \$8 of non-cash

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
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asset impairment costs recognized in fiscal 2009 related to these restructuring plans has been reported as Restructuring and impairment charges in the Consolidated Statements of Operations. The remaining liability has been included within Accrued expenses and other current liabilities on the Consolidated Balance Sheet. The affected business accounted for less than \$65 of annual net sales with majority of the operations transferred to other facilities.

During fiscal 2010, the Company announced the intention to shut down three manufacturing facilities within its Tapes, Bags, & Coatings division. The affected Tapes, Bags & Coatings business accounted for \$83 of annual net sales with majority of the operations transferred to other facilities. The Company also announced the intention to shut down two manufacturing facilities within its Specialty Films division. The affected Specialty Films business accounted for less than \$30 of annual net sales with majority of the operations transferred to other facilities. The Company recorded \$19 of non-cash asset impairment costs in fiscal 2010 related to these restructuring plans and has been reported as Restructuring and impairment charges in the Consolidated Statements of Operations. These impairments were for building and equipment that exceeded net realizable value as of the valuation dates.

During fiscal 2011, the Company announced the intention to shut down five facilities within its Specialty Films division. The affected Specialty Films business accounted for approximately \$130 of annual net sales with the majority of the operations transferred to other facilities. The Company also announced its intention to shut down a manufacturing location within its Rigid Closed Top division. The affected Rigid Closed Top business accounted for approximately \$14 of annual net sales with the majority of the operations transferred to other facilities. The Company recorded \$35 of non-cash asset impairment costs in fiscal 2011 related to these restructuring plans and has been reported as Restructuring and impairment charges in the Consolidated Statements of Operations. These impairments were for building and equipment that exceeded net realizable value as of the valuation dates.

The table below sets forth the Company's estimate of the total cost of the restructuring programs since 2007, the portion recognized through fiscal year-end 2011 and the portion expected to be recognized in a future period:

	Expected Total Costs	Cumulative charges through Fiscal 2011	To be Recognized in Future
Severance and termination benefits	\$ 27	\$ 27	\$ —
Facility exit costs	49	46	3
Asset impairment	80	80	—
Other	4	4	—
Total	<u>\$ 160</u>	<u>\$ 157</u>	<u>\$ 3</u>



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The tables below sets forth the significant components of the restructuring charges recognized for the fiscal years ended 2011, 2010 and 2009, by segment:

	Fiscal Year		
	2011	2010	2009
<b>Rigid Open Top</b>			
Severance & termination benefits	\$ 2	\$—	\$—
Facility exit costs	—	2	2
Non-cash asset impairment	—	—	5
Total	<u>\$ 2</u>	<u>\$ 2</u>	<u>\$ 7</u>
<b>Rigid Closed Top</b>			
Severance & termination benefits	\$ 3	\$—	\$—
Facility exit costs	1	3	—
Non-cash asset impairment	4	—	—
Total	<u>\$ 8</u>	<u>\$ 3</u>	<u>\$—</u>
<b>Specialty Films</b>			
Severance & termination benefits	\$ 5	\$ 7	\$—
Facility exit costs	4	8	1
Non-cash asset impairment	20	11	3
Total	<u>\$ 29</u>	<u>\$ 26</u>	<u>\$ 4</u>
<b>Tapes, Bags and Coatings</b>			
Severance & termination benefits	\$ 1	\$—	\$—
Facility exit costs	5	2	—
Non-cash asset impairment	11	8	—
Total	<u>\$ 17</u>	<u>\$ 10</u>	<u>\$—</u>
<b>Consolidated</b>			
Severance & termination benefits	\$ 11	\$ 7	\$—
Facility exit costs	10	15	3
Non-cash asset impairment	35	19	8
Total	<u>\$ 56</u>	<u>\$ 41</u>	<u>\$ 11</u>

The table below sets forth the activity with respect to the restructuring accrual at fiscal year-end 2011 and 2010:

	Employee Severance and Benefits	Facilities Exit Costs	Non- cash charges	Total
Balance at fiscal year-end 2009	\$ —	\$ 3	\$ —	\$ 3
Charges	8	14	19	41
Non-cash asset impairment	—	—	(19)	(19)
Acquisition liability assumed	1	—	—	1
Cash payments	(6)	(14)	—	(20)
Balance at fiscal year-end 2010	3	3	—	6
Charges	11	10	35	56
Non-cash asset impairment	—	—	(35)	(35)
Cash payments	(10)	(10)	—	(20)
Balance at fiscal year-end 2011	<u>\$ 4</u>	<u>\$ 3</u>	<u>\$ —</u>	<u>\$ 7</u>

**Berry Plastics Group, Inc.**  
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The restructuring costs accrued as of fiscal year-end 2011 will result in future cash outflows, which are not expected to be material.

**11. Related Party Transactions**

*Management Fee*

The Company is charged a management fee by an affiliate of its principal stockholder and Graham for the provision of management consulting and advisory services provided throughout the year. The management fee is the greater of \$3 or 1.25% of adjusted EBITDA. Total management fees charged by Apollo and Graham were \$9 in fiscal 2011, \$8 in fiscal 2010 and \$6 in fiscal 2009. The management fees are classified in Other Operating Expenses in the Statement of Operations.

In connection with the Rexam SBC acquisition, Berry management and the sponsors received a transaction fee of \$5. In connection with the reorganization of Pliant, Berry management and the sponsors received a structuring fee of \$7, and our Sponsors also received approximately 17.5 cents per dollar of principal amount with respect to the interests they held in Pliant's existing second lien notes, or approximately \$22 in cash in the aggregate, such 17.5 cents upon Pliant's exit from bankruptcy being equal to the amount received by all other holders of Pliant's existing second lien notes upon Pliant's exit from bankruptcy.

*Other Related Party Transactions*

Certain of our management, stockholders and related parties and its affiliates have independently acquired and held financial debt instruments of the Company as of October 2, 2010. During fiscal 2010, interest expense includes \$8 related to this debt.

**12. Stockholders' Equity**

*2006 Equity Incentive Plan*

In connection with Apollo's acquisition of the Company, we adopted an equity incentive plan pursuant to which options to acquire up to 7,071,337 shares of Berry Group's common stock may be granted. Prior to fiscal 2011, the plan was amended to allow for an additional 5,267,500 options to be granted. Options granted under the 2006 Equity Incentive Plan may not be assigned or transferred, except to Berry Group or by will or the laws of descent or distribution. The 2006 Equity Incentive Plan terminates ten years after adoption and no options may be granted under the plan thereafter. The 2006 Equity Incentive Plan allows for the issuance of non-qualified options, options intended to qualify as "incentive stock options" within the meaning of the Internal Revenue Code of 1986, as amended, and stock appreciation rights. The employees participating in the 2006 Equity Incentive Plan receive options and stock appreciation rights under the 2006 Equity Incentive Plan pursuant to individual option and stock appreciation rights agreements, the terms and conditions of which are substantially identical. Each option agreement provides for the issuance of options to purchase common stock of Berry Group. Options granted under the 2006 Equity Incentive Plan had an exercise price per share that either (1) was fixed at the fair market value of a share of common stock on the date of grant or (2) commenced at the fair market value of a share of common stock on the date of grant and increases at the rate of 15% per year during the term. Some options granted under the plan become vested and exercisable over a five-year period based on continued service. Other options become vested and exercisable based on the achievement by the Company of certain financial targets. Upon a change in control, the vesting schedule with respect to certain options accelerate for a portion of the shares subject to such options. Since Berry Group's common stock is not highly liquid, except in certain limited circumstances, the stock options may not be redeemable.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
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During fiscal 2007 a one-time dividend was paid. Holders of vested stock options received \$14, while an additional \$35 was paid to nonvested option holders on the second anniversary of the dividend grant date. In December 2008, the Executive Committee of Berry Group modified the vesting provisions related to the amounts held in escrow. This resulted in the immediate vesting and accelerating the recognition of the remaining unrecorded stock compensation expense of \$11 in selling, general and administrative expenses recorded in fiscal 2009.

The Company recognized total stock based compensation of \$2, \$1, and \$12 for fiscal 2011, 2010 and 2009, respectively.

Information related to the 2006 Equity Incentive Plan as of the fiscal year-end 2011 and 2010 is as follows:

	2011		2010	
	Number Of Shares	Weighted Average Exercise Price	Number Of Shares	Weighted Average Exercise Price
Options outstanding, beginning of period	10,614,883	\$ 7.78	9,812,287	\$ 8.12
Options granted	1,552,418	6.13	1,558,617	6.15
Options exercised or cash settled	—	—	—	—
Options forfeited or cancelled	(1,341,069)	7.94	(756,021)	8.47
Options outstanding, end of period	<u>10,826,232</u>	<u>\$ 7.70</u>	<u>10,614,883</u>	<u>\$ 7.78</u>
Option price range at end of period	\$3.04 - \$9.21		\$3.04 - \$9.21	
Options exercisable at end of period	7,318,346		6,055,812	
Options available for grant at period end	1,512,606		1,723,955	
Weighted average fair value of options granted during period	\$1.88		\$2.12	

The fair value for options granted have been estimated at the date of grant using a Black-Scholes model, generally with the following weighted average assumptions:

	2011	2010	2009
Risk-free interest rate	1.3%	2.6%	1.7 - 2.5%
Dividend yield	0.0%	0.0%	0.0%
Volatility factor	.32 - .34	.33	.36 - .37
Expected option life	5 years	5 years	5 years

The following table summarizes information about the options outstanding at fiscal year-end 2011:

<u>Range of Exercise Prices</u>	<u>Number Outstanding</u>	<u>Weighted Average Remaining Contractual Life</u>	<u>Weighted Average Exercise Price</u>	<u>Aggregate Intrinsic Value of Options Outstanding</u>	<u>Number Exercisable</u>
\$3.04 - \$9.21	10,826,232	5 years	\$ 7.70	\$ 2	7,318,346

As of October 1, 2011, total unrecognized compensation expense related to nonvested awards is \$2, and the weighted-average period over which it is expected to be recognized is 3.22 years.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
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*Notes Receivable from Management*

Berry Group has adopted an employee stock purchase program pursuant to which a number of non-executive employees had the opportunity to invest in Berry Group on a leveraged basis. In the event that an employee defaults on a promissory note used to purchase such shares, Berry Group's only recourse is to the shares of Berry Group securing the note. In this manner, non-executive management acquired 1,201,137 shares in the aggregate. Certain of these amounts were repaid by the employees in connection with the special one-time dividend. The receivable was \$2 at the end of fiscal 2011 and 2010.

*Redeemable Common Stock*

The Company has common stock outstanding to former employees that will be repurchased by the Company. Redemption of this common stock will be based on the fair value of the stock on the fixed redemption date and this redemption is out of the control of the Company. The redemption dates range from three to five years per agreement. The Company has repurchase commitments through FY15 and will repurchase 709,238; 709,238; 459,142; and 292,518 during the next four fiscal years, respectively. This redeemable common stock is recorded at its fair value in temporary equity and changes in the fair value are recorded in additional paid in capital each period. The total number of redeemable shares outstanding as of October 1, 2011 and October 2, 2010 are 2,170,136 and 1,836,569, respectively.

**13. Segment and Geographic Data**

The Company's operations are organized into four reportable segments: Rigid Open Top, Rigid Closed Top, Specialty Films, and Tapes, Bags and Coatings. The Company has manufacturing and distribution centers in the United States, Canada, Mexico, Belgium, Australia, Germany, Brazil, Malaysia and India. The United States operations represent 92% of net sales and 94% of the long lived assets. The Canadian operations represent 3% of net sales and 2% of long lived assets. Mexican operations represent 2% of net sales and 2% of long lived assets. Belgium operations represent 2% of net sales. All other jurisdictions represent less than 1% of net assets or long lived assets. Selected information by reportable segment is presented in the following table.

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Net Sales			
Rigid Open Top	\$ 1,291	\$ 1,192	\$ 1,063
Rigid Closed Top	1,053	970	857
Specialty Films	1,609	1,433	551
Tapes, Bags and Coatings	608	662	716
	<u>\$ 4,561</u>	<u>\$ 4,257</u>	<u>\$ 3,187</u>
Operating income (loss)			
Rigid Open Top	\$ 156	\$ 124	\$ 119
Rigid Closed Top	77	73	58
Specialty Films	(187)	(54)	(10)
Tapes, Bags and Coatings	(4)	(19)	19
	<u>\$ 42</u>	<u>\$ 124</u>	<u>\$ 186</u>

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
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	<u>2011</u>	<u>2010</u>	<u>2009</u>
Depreciation and amortization			
Rigid Open Top	\$103	\$ 95	\$ 83
Rigid Closed Top	95	91	93
Specialty Films	104	86	34
Tapes, Bags and Coatings	42	45	44
	<u>\$344</u>	<u>\$317</u>	<u>\$254</u>

	<u>2011</u>	<u>2010</u>
Total Assets		
Rigid Open Top	\$1,839	\$1,951
Rigid Closed Top	1,963	1,593
Specialty Films	1,000	1,290
Tapes, Bags and Coatings	415	510
	<u>\$5,217</u>	<u>\$5,344</u>

	<u>2011</u>	<u>2010</u>
Goodwill		
Rigid Open Top	\$ 690	\$ 691
Rigid Closed Top	819	771
Specialty Films	86	238
Tapes, Bags and Coatings	—	—
	<u>\$1,595</u>	<u>\$1,700</u>

#### 14. Net Income (Loss) Per Share

Basic net income or loss per share is calculated by dividing the net income or loss attributable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Diluted net income or loss per share is computed by dividing the net income or loss attributable to common stockholders by the weighted-average number of common share equivalents outstanding for the period determined using the treasury-stock method and the if-converted method. For purposes of this calculation, stock options are considered to be common stock equivalents and are only included in the calculation of diluted net income or loss per share when their effect is dilutive. The Company's redeemable common stock is included in the weighted-average number of common shares outstanding for calculating basic and diluted net income or loss per share.

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**Notes to Consolidated Financial Statements (continued)**  
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The following tables and discussion provide a reconciliation of the numerator and denominator of the basic and diluted net loss per share computations. The calculation below provides net income or loss on both a basic and diluted basis for Fiscal 2011, 2010 and 2009 (in thousands).

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Net income (loss) from continuing operations	\$ (299)	\$ (113)	\$ 156
Net income (loss) from discontinued operations	—	—	(4)
Net income (loss)	<u>(299)</u>	<u>(113)</u>	<u>152</u>
Weighted average shares of common stock outstanding—basic	<u>84,121</u>	<u>84,525</u>	<u>84,635</u>
Weighted average shares of common stock outstanding	84,121	84,525	84,635
Other common stock equivalents	—	—	111
Weighted average shares of common stock outstanding—diluted	<u>84,121</u>	<u>84,525</u>	<u>84,746</u>
<b>Basic net income (loss) per share</b>			
Basic net income (loss) per share from continuing operations	\$ (3.55)	\$ (1.34)	\$ 1.84
Basic net income (loss) per share from discontinued operations	—	—	(0.04)
Basic net income (loss) per share available to common shareholders	<u>\$ (3.55)</u>	<u>\$ (1.34)</u>	<u>\$ 1.80</u>
<b>Diluted net income (loss) per share</b>			
Basic net income (loss) per share from continuing operations	\$ (3.55)	\$ (1.34)	\$ 1.84
Basic net income (loss) per share from discontinued operations	—	—	(0.05)
Basic net income (loss) per share available to common shareholders	<u>\$ (3.55)</u>	<u>(1.34)</u>	<u>\$ 1.79</u>

The conversion of stock options is not included in the calculation of diluted net loss per common share as of October 1, 2011 and October 2, 2010 as the effect of these conversions would be antidilutive to the net loss available to common shareholders. Thus, the weighted average common equivalent shares used for purposes of computing diluted EPS are the same as those used to compute basic EPS for these periods. Shares excluded from the calculation as the effect of their conversion into shares of our common stock would be antidilutive were 10,826,232 and 10,614,882 as of October 1, 2011 and October 2, 2010, respectively.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**15. Condensed Financial Statements of the Registrant, Berry Plastics Group, Inc.**

*Condensed Balance Sheets of the Registrant (millions)*

	October 1, 2011	October 2, 2010
<b>Assets</b>		
Current assets		
Cash & cash equivalents	\$ —	\$ —
Deferred income taxes	62	53
Total current assets	62	53
Deferred costs	5	7
Investment in subsidiary	441	740
Total assets	<u>508</u>	<u>800</u>
<b>Liabilities and Stockholders' Equity</b>		
Accrued interest expense	\$ 12	\$ 12
Current portion of long-term debt	147	—
Total Current Liabilities	159	12
Long-term debt, less current portion	550	647
Deferred income taxes	233	255
Other long-term liabilities	17	16
Total liabilities	<u>959</u>	<u>930</u>
Commitments and contingencies		
Redeemable shares	16	11
Total stockholders' equity (deficit)	<u>(467)</u>	<u>(141)</u>
Total liabilities and stockholders' equity	<u>\$ 508</u>	<u>\$ 800</u>

See notes to condensed financial statements of the Registrant and notes to consolidated financial statements of Berry Plastics Group, Inc.

*Condensed Statement of Operations of the Registrant (millions)*

	Fiscal Year Ended		
	October 1, 2011	October 2, 2010	September 26, 2009
Interest Expense	\$ 50	\$ 48	\$ 54
Equity in net loss (income) of subs	296	114	(309)
Income (Loss) Before Taxes	(346)	(162)	255
Income Tax (benefit) expense	(47)	(49)	99
Net Income (Loss)	<u>\$ (299)</u>	<u>\$ (113)</u>	<u>\$ 156</u>

See notes to condensed financial statements of the Registrant and notes to consolidated financial statements of Berry Plastics Group, Inc.

**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

*Condensed Statement of Cash Flows of the Registrant (millions)*

	<b>Fiscal year ended</b>		
	<b>October 1, 2011</b>	<b>October 2, 2010</b>	<b>September 26, 2009</b>
Cash Flows from Operating Activities	\$ 2	\$ 3	\$ —
Cash Flows from Financing Activities	(2)	(3)	—
Net increase (decrease) in cash and cash equivalents	—	—	—
Cash and cash equivalents at beginning of period	—	—	—
Cash and cash equivalents at end of period	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

See notes to condensed financial statements of the Registrant and notes to consolidated financial statements of Berry Plastics Group, Inc.

*Notes to Condensed Financial Statements of the Registrant*

**Background and Basis of Presentation**

These condensed parent company financial statements have been prepared in accordance with Rule 12-04 of Regulation S-X, as the restricted net assets of Berry Plastics Group Inc.'s subsidiaries exceeds 25 percent of the consolidated net assets of Berry Plastics Group, Inc. These statements should be read in conjunction with the Consolidated Statements and notes thereto of Berry Plastics Group, Inc.

We are a holding company and conduct substantially all of our business operations through our subsidiaries. We have prepared the financial statements of the registrant using the equity method and all intercompany activity between Berry Plastics Group, Inc. and its subsidiaries has been eliminated.

**Long-term debt**

Berry Plastics Group, Inc. entered into a \$500 million senior unsecured term loan agreement ("Senior Unsecured Term Loan") with a syndicate of lenders on June 5, 2007. The Senior Unsecured Term Loan matures on June 5, 2014. Interest is due quarterly on the unsecured term loan, and the Company may at its option elect the payment in kind option, which allows Berry Plastics Group, Inc. to forgo paying cash interest and add it to the balance outstanding. The Company at its option, may elect to prepay \$147 of the senior unsecured term loan in order to maintain deductibility for income tax purposes. In Fiscal 2009 and 2010, a wholly-owned subsidiary of Berry Plastics Group, Inc., BP Parallel LC repurchased outstanding principal assignments of \$33 and \$515 for \$25 and \$166, which resulted in a gain in the consolidated financial statements of Berry Plastics Group, Inc. BP Parallel is the legal holder of the outstanding principal assignments, and they have not been legally extinguished. Please see footnote 3 in the consolidated financial statements of Berry Plastics Group, Inc. for additional discussion of our long-term debt.

**Commitments and Contingencies and Redeemable Shares**

For a discussion of our commitments and contingencies, please read Note 6—Leases and Other Commitments and Contingencies of our consolidated financial statements. Please read Note 12—Stockholders Equity of our consolidated financial statements for a discussion of our Redeemable Common Stock.

**Income Taxes**

For a discussion of income taxes, please read Note 8 – Income Taxes of our consolidated financial statements.

**Related Party Transactions**

For a discussion of our related party transactions, please read Note 11—Related Party Transactions of our consolidated financial statements.



**Berry Plastics Group, Inc.**  
**Notes to Consolidated Financial Statements (continued)**  
(In millions of dollars, except as otherwise noted)

**16. Subsequent Events**

Beginning January 1, 2012, the Company will be reorganizing its flexible films businesses, which include the Tapes, Bags and Coatings, and Specialty Films divisions, into two new operating divisions. These new divisions will be named Flexible Packaging and Engineered Materials. The purpose of structuring the businesses in this manner is to significantly enhance the Company's current product portfolio in the finished flexible packaging space. This move will allow the Company to leverage its unique innovation capabilities at the interface of rigid and flexible technologies and to serve customers with innovative packaging solutions. The following tables highlight what the new segment presentation would have looked like for Fiscal 2011, Fiscal 2010 and Fiscal 2009:

	<u>2011</u>	<u>2010</u>	<u>2009</u>
<b>Net Sales</b>			
Rigid Open Top	<b>\$1,261</b>	\$1,160	\$1,028
Rigid Closed Top	<b>1,053</b>	970	857
Engineered Materials	<b>1,451</b>	1,457	1,219
Flexible Packaging	<b>796</b>	670	83
	<u><b>\$4,561</b></u>	<u>\$4,257</u>	<u>\$3,187</u>
<b>Operating income (loss)</b>			
Rigid Open Top	<b>\$ 155</b>	\$ 124	\$ 114
Rigid Closed Top	<b>77</b>	73	58
Engineered Materials	<b>(71)</b>	4	27
Flexible Packaging	<b>(119)</b>	(77)	(13)
	<u><b>\$ 42</b></u>	<u>\$ 124</u>	<u>\$ 186</u>
<b>Depreciation and amortization</b>			
Rigid Open Top	<b>\$ 102</b>	\$ 93	\$ 81
Rigid Closed Top	<b>95</b>	91	93
Engineered Materials	<b>72</b>	72	65
Flexible Packaging	<b>75</b>	61	15
	<u><b>\$ 344</b></u>	<u>\$ 317</u>	<u>\$ 254</u>
<b>Total Assets</b>			
Rigid Open Top	<b>\$1,818</b>	\$1,926	
Rigid Closed Top	<b>1,963</b>	1,593	
Engineered Materials	<b>841</b>	985	
Flexible Packaging	<b>595</b>	840	
	<u><b>\$5,217</b></u>	<u>\$5,344</u>	
<b>Goodwill</b>			
Rigid Open Top	<b>\$ 681</b>	\$ 682	
Rigid Closed Top	<b>819</b>	771	
Engineered Materials	<b>55</b>	134	
Flexible Packaging	<b>40</b>	113	
	<u><b>\$1,595</b></u>	<u>\$1,700</u>	

## Report of Independent Auditors

To the Board of Directors and Shareholders of  
Pliant Corporation

We have audited the accompanying consolidated balance sheet of Pliant Corporation and Subsidiaries as of December 31, 2008 and the related consolidated statements of operations, cash flows and changes in stockholders' deficit for the year ended December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Pliant Corporation and Subsidiaries at December 31, 2008 and the consolidated results of their operations and their cash flows for the year ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that Pliant Corporation will continue as a going concern. As more fully described in Note 1 and 18 to the consolidated financial statements, the Company filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code and Companies' Creditors Arrangement Act in Canada on February 11, 2009, which raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to this matter are also described in Note 18. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of the liabilities that may result from the outcome of this uncertainty.

/s/ ERNST & YOUNG LLP

Chicago, Illinois  
April 27, 2009

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**As of December 31, 2008 (Dollars in Thousands, Except per Share Data)**

	<u>2008</u>
<b>ASSETS</b>	
<b>CURRENT ASSETS:</b>	
Cash and cash equivalents	\$ 28,485
Receivables:	
Trade accounts, net of allowances of \$3,922	114,325
Other	2,784
Inventories	79,923
Prepaid expenses and other	5,890
Income taxes receivable	722
Deferred income taxes	10,705
Total current assets	<u>242,834</u>
PLANT AND EQUIPMENT, net	270,072
GOODWILL	2,422
OTHER INTANGIBLE ASSETS, net	3,869
OTHER ASSETS	13,283
Total assets	<u>\$ 532,480</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	
<b>CURRENT LIABILITIES:</b>	
Current portion of long-term debt and debt in default	\$ 857,881
Trade accounts payable	61,688
Accrued liabilities:	
Interest payable	11,944
Customer rebates	9,291
Other	34,502
Total current liabilities	<u>975,306</u>
LONG-TERM DEBT, net of current portion	—
OTHER LIABILITIES	32,255
DEFERRED INCOME TAXES	38,633
Total liabilities	<u>1,046,194</u>
<b>STOCKHOLDERS' DEFICIT:</b>	
Redeemable Preferred Stock—Series AA—335,650 shares authorized, par value \$.01 per share, with a redemption and liquidation value of \$1,000 per share plus accumulated dividends, 334,894 shares outstanding at December 31, 2008	302,424
Redeemable Preferred Stock—Series M—8,000 shares authorized, par value \$.01 per share, 8,000 shares outstanding at December 31, 2008	—
Common stock—par value \$.01 per share; 100,050,000 shares authorized, 97,348 shares outstanding at December 31, 2008	1
Paid in capital	155,341
Accumulated deficit	(930,426)
Accumulated other comprehensive loss	(41,054)
Total stockholders' deficit	<u>(513,714)</u>
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	<u>\$ 532,480</u>

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF OPERATIONS**  
**For the Year Ended December 31, 2008 (Dollars in Thousands)**

	<u>2008</u>
NET SALES	\$ 1,127,649
COST OF SALES	1,052,428
Gross profit	<u>75,221</u>
OPERATING EXPENSES:	
Selling, general and administrative	67,936
Research and development	6,285
Impairment of goodwill and intangibles	75,066
Impairment of fixed assets	6,604
Restructuring and other costs	20,230
Reorganization and other costs	3,358
Total operating expenses	<u>179,479</u>
OPERATING INCOME (LOSS)	(104,258)
INTEREST EXPENSE—Current and Long Term debt	(93,623)
OTHER INCOME, net	150
INCOME (LOSS) FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	<u>(197,731)</u>
INCOME TAX EXPENSE (BENEFIT):	
Current	1,280
Deferred	18,183
Total income tax expense (benefit)	<u>19,463</u>
NET INCOME (LOSS)	<u>\$ (217,194)</u>

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' DEFICIT**  
**For the Year Ended December 31, 2008 (In Thousands)**

	Total	Preferred Stock				Common Stock			Accumulated Deficit	Accumulated Other Comprehensive Loss
		Series AA		Series M		Delaware Corporation		Paid In Capital		
	Shares	Amount	Shares	Amount	Shares	Amount				
BALANCE—December 31, 2007	335	\$247,355	—	\$ —	100	\$ 1	\$155,341	\$ (658,163)	\$ (12,478)	
Comprehensive loss:										
Net Loss	(217,194)							\$ (217,194)		
Change in unrecognized pension benefit costs	(16,035)								(16,035)	
Foreign currency translation adjustment	(12,541)								(12,541)	
Comprehensive loss:	(245,770)									
Preferred stock dividends	—	55,069						(55,069)		
BALANCE—December 31, 2008	335	\$302,424	—	\$ —	100	\$ 1	\$155,341	\$ (930,426)	\$ (41,054)	

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
**For the Year Ended December 31, 2008 (Dollars in Thousands)**

	2008
Cash flows from operating activities:	
Net income (loss)	\$(217,194)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:	
Depreciation and amortization	44,806
Impairment of fixed assets	17,154
Amortization and write-off of deferred financing costs and accretion of debt discount	7,290
Payment-in-kind interest on debt	41,413
Deferred income taxes	22,122
Provision for losses on accounts receivable	522
Write down of impaired goodwill and intangibles	75,066
(Gain) or loss on disposal of assets	(10)
Changes in operating assets and liabilities:	
Trade accounts receivable	4,385
Other receivables	430
Inventories	25,190
Prepaid expenses and other	(2,679)
Intangible assets and other assets	(452)
Trade accounts payable	(28,594)
Accrued liabilities	(988)
Income taxes payable/receivable	381
Other liabilities	(5,228)
Net cash provided by (used in) operating activities	<u>(16,386)</u>
Cash flows from investing activities:	
Capital expenditures for plant and equipment	(27,141)
Proceeds from sale of assets	2,959
Net cash used in investing activities	<u>(24,182)</u>
Cash flows from financing activities:	
Payment of financing fees	(1,431)
Borrowings under revolver	55,000
Borrowings (payments) under finance and capital leases	9,810
Net cash provided by (used in) financing activities	<u>63,379</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(1,584)</u>
Net increase (decrease) in cash and cash equivalents	21,227
Cash and cash equivalents, beginning of the year	7,258
Cash and cash equivalents, end of the year	<u>\$ 28,485</u>
Supplemental disclosures of cash flow information:	
Cash paid during the year for:	
Interest	\$ 45,546
Income taxes	<u>\$ 507</u>

**PLIANT CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Summary of Significant Accounting Policies**

*Nature of Operations.* Pliant Corporation and its subsidiaries (collectively “Pliant” or the “Company”) produce polymer-based (plastic), value-added films for flexible packaging, personal care, medical, agricultural and industrial applications. Our manufacturing facilities are located in the United States, Canada, Mexico, Germany and Australia.

*Principles of Consolidation.* The consolidated financial statements include the accounts of Pliant Corporation and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

*Bankruptcy Filing.* On January 3, 2006, Pliant and ten subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking relief under the provisions of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The cases are being jointly administered under the caption “In re: Pliant Corporation, et al., Case No. 06-10001.” Three of Pliant’s subsidiaries with Canadian operations commenced ancillary proceedings in a Canadian court to recognize the bankruptcy proceedings as “foreign proceedings” pursuant to Canada’s Companies’ Creditors Arrangement Act (“CCAA”). Pliant’s subsidiaries in Australia, Germany and Mexico were not included in the filings.

On June 19, 2006, the Company filed with the Bankruptcy Court its Fourth Amended Joint Plan of Reorganization (the “Plan”) which was approved by the Bankruptcy Court on June 23, 2006. On July 18, 2006, the Company consummated its reorganization through a series of transactions contemplated in the Plan. See Note 17 “Reorganization” for further details. On July 18, 2006, the Company filed with the Bankruptcy Court a notice announcing the effectiveness of the Plan and the Company emerged from bankruptcy.

On February 11, 2009, Pliant Corporation and certain of its subsidiaries (collectively, the “Debtors”), filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (the “Chapter 11 Cases”) seeking relief under the provisions of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered under the caption “In re: Pliant Corporation et al.,” Case No. 09-10443. In addition, certain of the Company’s Canadian subsidiaries filed an application commencing recognition proceedings (the “CCAA Proceedings”) under Section 18.6 of the Companies’ Creditors Arrangement Act (Canada) (the “CCAA”) with the Ontario Superior Court of Justice (the “Canadian Court”). The Debtors will continue to operate their businesses as “debtors-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. Pliant’s subsidiaries in Australia, Germany and Mexico were not included in the filings and will continue their business operations without supervision from the Bankruptcy Court and will not be subject to the chapter 11 requirements of the Bankruptcy Code. (See note 18— Subsequent Events, for details on the Chapter 11 Cases.)

American Institute of Certified Public Accountants Statement of Position 90-7, “Financial Reporting by Entities in Reorganization under the Bankruptcy Code” (“SOP 90-7”), applied to the Company’s financial statements in 2006 while the Company operated under the provisions of Chapter 11 and will apply to periods subsequent to February 11, 2009. SOP 90-7 generally does not change the manner in which financial statements are prepared. However, it does require that the financial statements for periods subsequent to the filing of the Chapter 11 petition distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business. Expenses, realized gains and losses, and provisions for losses that can be directly associated with the reorganization of the business are reported separately as reorganization costs in the statements of operations. Liabilities affected by implementation of a plan of reorganization are reported at amounts expected to be allowed, even if they may be settled for lesser amounts. In addition, reorganization related items that significantly impact cash provided by continuing operations are disclosed separately in the statement of cash flows.

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*Use of Estimates.* The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Revenue Recognition.* Sales revenue is recognized when title transfers, the risks and rewards of ownership have been transferred to the customer, the price is fixed and determinable and collection of the related receivable is probable, which is generally at the time of shipment. Revenue is reduced by rebates made to customers based on an estimate of the amount of the rebate at the time the sale is recorded.

*Accounts Receivable.* Accounts receivable consist primarily of amounts due to the Company from its normal business activities. Accounts receivable amounts are determined to be past due when the amount is overdue based on contractual terms. The Company maintains an allowance for doubtful accounts to reflect the expected uncollectibility of accounts receivable based on past collection history and specific risks identified among uncollected amounts. Accounts receivable are charged off against the allowance for doubtful accounts when we have determined that the receivable will not be collected. Collateral is generally not required for accounts receivable. One customer represented approximately 6% of consolidated receivables at December 31, 2008.

*Inventories.* Inventories consist principally of finished film and packaging products and the raw materials necessary to produce them. Inventories are carried at the lower of cost (on a first-in, first-out basis) or market value. Resin costs comprise the majority of our total manufacturing costs. Resin shortages or significant increases in the price of resin could have a significant adverse effect on the Company's business.

*Plant and Equipment.* Plant and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated economic useful lives of the assets as follows:

Land improvements	20 years
Buildings and improvements	20 years
Computer Equipment and Software	3-7 years
Machinery and equipment	7-15 years
Furniture, fixtures and vehicles	3-7 years
Leasehold improvements	Lower of useful life (10-20 years or term of lease agreement)

Maintenance and repairs are charged to expense as incurred and costs of improvements and betterments are capitalized. Upon disposal, related costs and accumulated depreciation are removed from the accounts and resulting gains or losses are reflected in operations.

Costs incurred in connection with the construction or major rebuild of equipment are capitalized as construction in progress. No depreciation is recognized on these assets until placed in service.

*Goodwill and Other Intangible Assets.* Goodwill is deemed to have an indefinite life and not amortized, but subject to an annual impairment test based on the fair value of the assets. Amortization of intangible assets is computed using the straight-line method over the estimated economic useful lives of 5-15 years. The Company evaluates the carrying value of goodwill during the fourth quarter of each year and between annual evaluations if events occur or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying amount. When evaluating whether goodwill is impaired, the Company compares the fair value of the reporting unit to which the goodwill is assigned to the reporting unit's carrying amount, including goodwill. The fair value of the reporting unit is estimated using a combination of the discounted cash flow method, a variation of the income approach, and the guideline company approach, a variation of the market approach. If the carrying amount of a reporting unit exceeds its fair value, then the amount of the impairment loss



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must be measured. The impairment loss would be calculated by comparing the implied fair value of reporting unit goodwill to its carrying amount. In calculating the implied fair value of reporting unit goodwill, the fair value of the reporting unit is allocated to all of the other assets and liabilities of that unit based on their fair values. The excess of the fair value of a reporting unit over the amount assigned to its other assets and liabilities is the implied fair value of goodwill. An impairment loss would be recognized when the carrying amount of goodwill exceeds its implied fair value.

*Impairment of Long-Lived Assets.* When events or conditions indicate a potential impairment, the Company evaluates the carrying value of long-lived assets, including amortizable intangible assets, based upon current and expected undiscounted cash flows, and recognizes an impairment when the estimated undiscounted cash flows are less than the carrying value of the asset. Measurement of the amount of impairment, if any, is based upon the difference between the asset's carrying value and fair value.

*Other Assets.* Other assets consist primarily of deferred debt issuance costs, deposits, and spare parts. Deferred debt issuance costs are amortized using a straight line method which approximates the effective yield method.

*Cash and Cash Equivalents.* For the purpose of the consolidated statements of cash flows, we consider short-term highly liquid investments with maturity when purchased of three months or less to be cash equivalents.

*Income Taxes.* Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial and tax reporting purposes. The Company, like other multi-national companies, is regularly audited by federal, state and foreign tax authorities, and tax assessments may arise several years after tax returns have been filed. Accordingly, tax reserves have been recorded when, in management's judgment, it is not probable that the Company's tax position will ultimately be sustained. While predicting the outcome of the audits involves uncertainty and requires estimates and informed judgments, the Company believes that the recorded tax liabilities are adequate and appropriate. The judgments and estimates made at a point in time may change based on the outcome of tax audits, as well as changes to or further interpretation of regulations. Income tax expense is adjusted in the period in which these events occur or when the statute of limitations for a specific exposure item has expired.

*Foreign Currency Translation.* The accounts of the Company's foreign subsidiaries are translated into U.S. dollars using the exchange rate at each balance sheet date for assets and liabilities and an average exchange rate for each month for revenues, expenses, gains and losses. Transactions are translated using the exchange rate at each transaction date. Where the local currency is the functional currency, translation adjustments are recorded as a separate component of stockholders' equity (deficit). Where the U.S. dollar is the functional currency, translation adjustments are recorded in other income within current operations.

*Shipping and Handling Costs.* Shipping and handling costs are included in cost of sales.

### *New Accounting Pronouncements*

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). On January 1, 2008, the Company adopted SFAS 157 which defines fair value, establishes a market-based framework or hierarchy for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 is applicable whenever another accounting pronouncement requires or permits assets and liabilities to be measured at fair value. SFAS 157 does not expand or require any new fair value measures; however the application of this statement may change current practice. In February 2008, the Financial Accounting Standards Board ("FASB") decided that an entity need not apply this standard to nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis until 2009. Accordingly, our adoption of this standard in 2008 was limited to financial assets and liabilities and did not have a material

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effect on our financial condition or results of operations. We are still in the process of evaluating this standard with respect to its effect on nonfinancial assets and liabilities and therefore have not yet determined the impact that it will have on our financial statements upon full adoption in 2009. Nonfinancial assets and liabilities for which we have not applied the provisions of SFAS 157 include those measured at fair value in impairment testing and those initially measured at fair value in a business combination.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115 (“SFAS 159”)* which permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. The Company adopted this statement as of January 1, 2008 and has elected not to apply the fair value option to any of its financial instruments at this time.

In December 2007, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 141(R), *Business Combinations (“SFAS 141(R)”)*, which replaces SFAS 141. SFAS 141(R) establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non-controlling interest in acquiree and the goodwill acquired. The Statement also establishes disclosure requirements, which will enable users to evaluate the nature and financial effects of the business combination. SFAS 141(R) is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 141(R) will have an impact on accounting for business combinations once adopted, but the effect is dependent upon acquisitions at that time.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an Amendment of Accounting Research Bulletin No. 51 (“SFAS 160”)*. SFAS 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent’s ownership interest, and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. SFAS 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS 160 is effective for the Company beginning January 1, 2009. The Company is currently evaluating the impact, if any, of the adoption of SFAS 160 on its consolidated financial position or results of operations.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities—an amendment of SFAS No. 133 (“SFAS 161”)*. SFAS 161 changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why an entity uses derivation instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows. SFAS 161 is effective for the Company’s financial statements issued beginning January 1, 2009, with early application encouraged. SFAS 161 encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company is currently evaluating the impact the adoption of SFAS 161 will have on its future disclosures.

## 2. Inventories

Inventories consisted of the following at December 31, 2008 (in dollars in thousands):

	2008
Finished goods	\$42,176
Raw materials and other	28,032
Work-in-process	9,715
Total	<u>\$79,923</u>

### 3. Restructuring and Other Costs

Restructuring and other costs include plant closing costs (including costs related to relocation of manufacturing equipment), charges for impairment of fixed assets related to plant closures, office closing costs and other costs related to workforce reductions. The following table summarizes restructuring and other costs for the year ended December 31, 2008 (in dollars in thousands):

	2008
<b><i>Plant closing costs</i></b>	
Severance	\$ 3,841
Relocation of production lines	1,147
Leases	55
Other plant closing costs	3,431
<b><i>Office closing and workforce reduction cost</i></b>	
Severance	484
Leases	—
Other office closure costs	722
<b><i>Total Plant/Office</i></b>	9,680
Fixed asset impairments related to plant closures	10,550
<b><i>Total Restructuring and other costs</i></b>	<u>\$20,230</u>

Restructuring and other costs for the year ended December 31, 2008 includes \$4.3 million of severance, \$10.6 million of fixed asset impairments and \$4.6 million of costs associated with the relocation of product production and equipment between plants in connection with the Company's April 2008 announced consolidated plant consolidation program. In addition, \$0.5 million of severance costs and \$0.7 million of other costs were incurred in connection with the Company's 2008 reduction in workforce program.

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The following table summarizes the roll-forward of the reserve from December 31, 2007 to December 31, 2008 (dollars in thousands):

	12/31/2007		Accruals for the Year Ended December 31, 2008							12/31/08	
	# Employees Terminated	Accrual Balance	Additional Employees	Severance	Relocated Production Lines	Leases	Other Plant Closure Costs	Total	Payments /Charges	# Employees Terminated	Accrual Balance
<b>Plant Consolidation:</b>											
Leases	—	\$ 920	—	\$ —	\$ —	\$ 55	\$ —	\$ 55	\$ (124)	—	\$ 851
Langley	6	207	—	95	—	—	214	309	(345)	—	171
Barrie	—	19	—	—	—	—	14	14	(33)	—	—
South Deerfield	—	—	74	1,605	395	—	1,227	3,227	(1,629)	74	1,598
Harrington	—	—	46	760	463	—	802	2,025	(1,265)	46	760
Dalton	—	—	79	1,118	34	—	726	1,878	(760)	79	1,118
Newport News	—	—	22	263	255	—	448	966	(717)	22	249
<b>Total Plant Consolidation</b>	<b>6</b>	<b>1,146</b>	<b>221</b>	<b>3,841</b>	<b>1,147</b>	<b>55</b>	<b>3,431</b>	<b>8,474</b>	<b>(4,873)</b>	<b>221</b>	<b>4,747</b>
<b>Office Closing and Workforce Reduction Costs:</b>											
Canadian Restructuring	—	\$ —	—	\$ —	\$ —	\$ —	\$ 5	\$ 5	\$ (5)	—	\$ —
2007 Reduction in Workforce	49	463	—	73	—	—	21	94	(488)	—	69
2008 Reduction in Workforce	—	—	30	411	—	—	696	1,107	(1,083)	2	24
<b>Total Office</b>	<b>49</b>	<b>\$ 463</b>	<b>30</b>	<b>\$ 484</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 722</b>	<b>\$ 1,206</b>	<b>\$ (1,576)</b>	<b>2</b>	<b>\$ 93</b>
<b>Total Plant/Office</b>	<b>55</b>	<b>\$ 1,609</b>	<b>251</b>	<b>\$ 4,325</b>	<b>\$ 1,147</b>	<b>\$ 55</b>	<b>\$ 4,153</b>	<b>\$ 9,680</b>	<b>\$ (6,449)</b>	<b>223</b>	<b>\$ 4,840</b>
<b>Fixed Asset Impairments related to Plant Consolidations:</b>											
South Deerfield								\$ 997			
Orillia								76			
Toronto								633			
Harrington								1,844			
Dalton								377			
McAlester								383			
Newport News								5,998			
Kent								242			
	<b>55</b>	<b>1,609</b>	<b>251</b>	<b>4,325</b>	<b>1,147</b>	<b>55</b>	<b>4,153</b>	<b>20,230</b>	<b>(6,449)</b>	<b>223</b>	<b>4,840</b>

**Plant Consolidations:**

**2008**—During 2008, the Company initiated a consolidated plant consolidation program whereby the following four production plants will be closed and their production products and equipment relocated to other existing facilities: South Deerfield, Massachusetts and Dalton, Georgia facilities in our Engineered Films segment, Harrington, Delaware and Newport News, Virginia in our Specialty Films segment. Severance, fixed asset impairments, and product and equipment relocation related costs for these activities totaled \$4.3 million, \$10.6 million and \$4.6 million, respectively. In addition, the Company initiated a reduction in workforce whereby approximately 60 employees were severed for a total cost of \$1.2 million, of which \$1.1 million was recorded at Corporate and \$0.1 million in the Engineered Films segment.

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### 4. Plant and Equipment

The cost and the related accumulated depreciation at December 31, 2008 is as follows (in thousands):

	<u>2008</u>
Land and improvements	\$ 6,805
Buildings and improvements	78,479
Machinery and equipment	511,022
Computer equipment and software	42,534
Furniture, fixtures and vehicles	5,811
Leasehold improvements	5,313
Construction in progress	15,744
	<u>665,708</u>
Less accumulated depreciation and amortization	<u>(395,636)</u>
Plant and equipment, net	<u>\$ 270,072</u>

The depreciation expense for the year ended December 31, 2008 was \$43.2 million.

During the year ended December 31, 2008, the Company recorded an impairment charge of \$6.6 million mainly related to computer software; \$6.4 million in Corporate, and \$0.2 million Engineered Films. In addition, the Company recorded an impairment charge of \$10.5 million in restructuring and other costs in 2008 in connection with the Company's plant consolidation program; \$6.0 million in Corporate, \$2.2 million in its Specialty Films segment, \$1.5 million in its Engineered Films segment, \$0.6 million in its Industrial segment, and \$0.2 million in its Printed Products segment.

### 5. Goodwill and Intangible Assets

In July 2001, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 142 ("SFAS 142") "Goodwill and Other Intangible Assets." SFAS 142, effective for fiscal years beginning after December 15, 2001, requires that ratable amortization of goodwill be replaced with periodic tests of goodwill impairment and that intangible assets, other than goodwill, which have determinable useful lives, be amortized over their useful lives. As required by SFAS 142, the Company stopped amortizing goodwill effective January 1, 2002 and evaluates goodwill for impairment under SFAS 142 guidelines. The Company's annual impairment test is conducted on October 1 of each year based on a methodology including prices of comparable businesses and discounted cash flows. See Note 1 "Summary of Significant Accounting Policies" for further details. Based on our 2008 annual impairment test, goodwill was impaired in our Specialty Films and Engineered Films segments and intangible assets were impaired in our Engineered Films segment. Goodwill write downs totaling \$69.8 million and write downs of intangible assets totaling \$5.3 million were recorded as the implied fair values of these reporting units were estimated to be below their respective carrying values. This impairment was triggered by a reduction in profitability and increased carrying values of inventories and receivables, coupled with reductions in accounts payable due to credit term reductions, resulting in increased carrying values of net assets in excess of the calculated implied fair value.

The Company has four operating segments, all of which have goodwill. The changes in the carrying value of goodwill for the year ended December 31, 2008 was as follows (in thousands):

	<u>Specialty Films</u>	<u>Printed Products</u>	<u>Industrial Films</u>	<u>Engineered Films</u>	<u>Corporate/ Other</u>	<u>Total</u>
Balance as of December 31, 2007	\$ 21,595	\$ —	\$ 2,715	\$ 48,217	\$ —	\$ 72,527
Foreign exchange rate adjustment	—	—	(293)	—	—	(293)
Goodwill impairment	(21,595)	—	—	(48,217)	—	(69,812)
Balance as of December 31, 2008	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,422</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,422</u>

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Other intangible assets, are as follows as of December 31, 2008 (in thousands):

	2008	
	Gross Carrying Value	Accumulated Amortization
Other intangible assets:		
Customer lists	\$ 18,412	\$ (15,018)
Other	22,728	(22,253)
Total	<u>\$ 41,140</u>	<u>\$ (37,271)</u>

The weighted average remaining amortization periods for customer lists is 4.5 years for 2008. The weighted average remaining amortization periods for other intangibles is 0.2 years for 2008.

The estimated amortization for each of the next five years on the other intangible assets included above is as follows (in thousands):

Year Ending December 31	
2009	\$664
2010	588
2011	566
2012	412
2013	409

Amortization expense for other intangible assets was approximately \$1.6 million for the year ended December 31, 2008.

## 6. Long-Term Debt

Long-term debt as of December 31, 2008 consists of the following (in thousands):

	2008
Credit Facilities:	
Revolver, variable interest, 5.9% as of December 31, 2008	\$ 173,579
Senior secured discount notes at 11.35% (formerly 11 1/8%) (2004 Notes)	7,843
Senior secured notes, interest at 11 1/8% (2003 Notes)	250,000
Senior secured notes, interest at 11.85% (formerly 11 5/8%) (Amended 2004 Notes)	380,671
Senior subordinated notes, interest at 18.0% (2007 Notes)	24,000
Obligations under capital leases	21,788
Total	857,881
Less current portion	(857,881)
Long-term portion	<u>\$ —</u>

On February 11, 2009, the Company and certain of its subsidiaries (collectively, the "Debtors"), filed Chapter 11 Petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and certain of the Company's Canadian subsidiaries filed an application commencing the CCAA Proceedings. The filing of the Chapter 11 Petition and the Canadian Petition constituted an event of default under the Company's debt obligations, and those debt obligations became automatically and immediately due and payable, although any actions to enforce such payment obligations are stayed as a result of the filing of the Chapter 11 Petition and the Canadian Petition. As a result, the Company's outstanding debt is classified as current in the accompanying consolidated balance sheet as of December 31, 2008. (See Note 18.)

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### *Current Credit Facilities*

On July 18, 2006, the Company and/or certain of its subsidiaries entered into (i) a Working Capital Credit Agreement, among the Company, certain of its subsidiaries, the lenders party thereto, Merrill Lynch Bank USA, as administrative agent, and Merrill Lynch Commercial Finance Corp., as sole lead arranger and book manager (the "Working Capital Credit Agreement"), and (ii) a Fixed Asset Credit Agreement, among Pliant Corporation Pty Ltd., Pliant Corporation of Canada Ltd., Pliant Film Products GmbH and Aspen Industrial, S.A. de C.V., as borrowers, the lenders party thereto, Merrill Lynch Bank USA, as administrative agent, and Merrill Lynch Commercial Finance Corp., as sole lead arranger and book manager (the "Fixed Asset Credit Agreement," and together with the Working Capital Credit Agreement, the "Revolving Credit Facilities"). The Revolving Credit Facilities provide up to \$200 million of total commitments, subject to the previously disclosed borrowing base. The Working Capital Credit Agreement includes a \$20 million letter of credit sub-facility, with letters of credit reducing availability thereunder, and each of the Revolving Credit Facilities includes sub-limits for loans to certain of the foreign subsidiaries of the Company which are borrowers under the Revolving Credit Facilities.

The Revolving Credit Facilities will mature on the earlier of (a) July 18, 2011 or (b) one month prior to the respective maturity dates of the Company's senior notes if these senior notes have not been refinanced in full: May 15, 2009 with respect to the Company's 2004 Notes and Amended 2004 Notes, and August 15, 2009 with respect to the Company's 2003 Notes. The interest rates for all loans other than those made to the Company's German subsidiary range from, in the case of alternate base rate loans, the alternate base rate (either prime rate or .50% over the Federal Funds Rate) plus 1.75% to the alternate base rate plus 2.00% and, in the case of Eurodollar loans, LIBOR plus 2.75% to LIBOR plus 3.00%, in each case depending on the amount of available credit. The interest rates for loans made in connection with the loans to the Company's German subsidiary are, in the case of alternate base rate loans, the alternate base rate plus 5.00% and, in the case of Eurodollar loans, LIBOR plus 6.00%. The commitment fee for the unused portion of the Revolving Credit Facilities is 0.375% per annum.

The Revolving Credit Facilities contain covenants that will limit the ability of Pliant and its subsidiaries, subject to certain exceptions, to, among other things, incur or guarantee additional indebtedness, issue preferred stock or become liable in respect of any obligation to purchase or redeem stock, create liens, merge or consolidate with other companies, change lines of business, make certain types of investments, sell assets, enter into certain sale and lease-back and swap transactions, pay dividends on or repurchase stock, make distributions with respect to certain debt obligations, enter into transactions with affiliates, restrict dividends or other payments from the Company's subsidiaries, modify corporate and certain material debt documents, cancel certain debt, or change its fiscal year or accounting policies. The Revolving Credit Facilities also require the Company to comply with a fixed charge coverage ratio of 1.00 to 1.00 for the first year of the facility and of 1.10 to 1.00 thereafter; provided, that such coverage ratio shall only apply during periods in which the amount of availability is and remains less than \$20 million for a specified number of days. Once the amount of availability increases and remains above \$20 million for a specified number of days, such coverage ratio becomes inapplicable. In addition, the amount of availability under the Revolving Credit Facilities must not be less than \$10 million at any time. The loans will automatically become immediately due and payable without notice upon the occurrence of an event of default involving insolvency or bankruptcy of the Company or any of its subsidiaries. Upon the occurrence and during the continuation of any other event of default under the Revolving Credit Facilities, by notice given to the Company, the administrative agent of the Revolving Credit Facilities may, and if directed by the Required Lenders (as defined in the Revolving Credit Facilities) must, terminate the commitments and/or declare all outstanding loans to be immediately due and payable.

The Working Capital Credit Agreement is secured by a first-priority security interest in substantially all our inventory, receivables and deposit accounts, capital stock of, or other equity interests in, our existing and future domestic subsidiaries and first-tier foreign subsidiaries, investment property and certain other assets of the Company and its subsidiaries and a second-priority security interest in fixed assets of the Company and its subsidiaries party to the Working Capital Credit Agreement. The Fixed Asset Credit Agreement is secured by a first-priority security interest in the fixed assets of certain foreign subsidiaries of the Company and a second-priority security interest in capital stock of the fixed asset borrowers and their subsidiaries.

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As of December 31, 2008, the Company had borrowings of \$173.6 million under the Revolving Credit Facilities, along with \$28.5 million in cash and cash equivalents, of which \$3.6 million is a compensating balance associated with our Canadian operations' borrowings.

### *2007 Notes*

On June 14, 2007, the Company entered into the 2007 Note Indenture among the Company and Pliant Corporation International, Uniplast U.S., Inc. and Uniplast Industries Co., as guarantors (collectively, the "2007 Note Guarantors"), and the Bank of New York Trust Company, N.A., as trustee (the "2007 Note Trustee") with respect to the issuance on such date of the Company's 18% Senior Subordinated Notes due 2012 (the "2007 Notes") in an aggregate principal amount of \$24 million (the "2007 Notes Indenture"). The 2007 Note Indenture provides that interest will accrue on the 2007 Notes from the date of issuance at the rate of 18% per annum until maturity on July 15, 2012 and will be payable semi-annually on each January 15 and July 15, commencing July 15, 2007, to holders of record of the 2007 Notes on the immediately preceding January 1 or July 1. Pursuant to the 2007 Note Indenture, the Company may redeem the 2007 Notes in whole or in part at the applicable redemption price, which in each of the first four years is equal to a de-escalating premium over par, plus accrued and unpaid interest to the redemption date, as set forth in the 2007 Notes. The 2007 Note Indenture provides the holders of the 2007 Notes with the right to require the Company to repurchase the 2007 Notes at a repurchase price equal to the then applicable redemption price plus accrued and unpaid interest upon a change of control of the Company (as defined in the 2007 Note Indenture). The 2007 Note Indenture does not provide for a sinking fund with respect to the 2007 Notes. The 2007 Notes Indenture contains customary provisions that may result in an event of default, after notice and expiration of a cure period in certain circumstances, and acceleration of the indebtedness thereunder, including failure to timely pay principal and interest on the 2007 Notes or comply with the covenants set forth in the 2007 Note Indenture.

The 2007 Note Indenture contains various covenants including, among other things, covenants limiting the incurrence of indebtedness and restricting certain payments, limiting restrictions on the ability of subsidiaries to make distributions to the Company, limiting sales of assets and subsidiary stock and the entry into affiliate transactions, as well as provisions governing merger and change of control transactions. The Company may be required under certain circumstances to offer to repurchase 2007 Notes with the proceeds of certain asset sales. Upon a change of control transaction, holders of 2007 Notes may require the Company (subject to certain exceptions) to repurchase 2007 Notes at a purchase price equal to 101% of the principal amount plus accrued and unpaid interest. In addition, upon the occurrence and during the continuation of any other event of default under the 2007 Note Indenture, by notice given to the Company, the 2007 Note Trustee or holders of at least 25% in principal amount of the 2007 Notes may declare the principal of and accrued and unpaid interest on all the 2007 Notes to be immediately due and payable.

### *Amended 2004 Notes*

As of December 31, 2008, the Company had \$380.7 million aggregate principal amount of 11.85% (formerly 11 <sup>5</sup>/<sub>8</sub>%) Senior Secured Notes due 2009 (the "Amended 2004 Notes") outstanding. The Amended 2004 Notes accrued payment-in-kind interest at the rate of 11 <sup>5</sup>/<sub>8</sub>% from the date of issuance until July 18, 2006, on which date the interest rate was increased by .225% to 11.85% in accordance with the Plan. Such incremental interest rate increase of .225% also accrues as payment-in-kind interest. The Amended 2004 Notes mature on June 15, 2009 and interest is payable semi-annually on each June 15 and December 15.

The Amended 2004 Notes are secured on a first-priority basis by a security interest in our real property, fixtures, equipment, intellectual property and other assets other than the second-priority collateral and on a second-priority basis by a security interest in substantially all our inventory, receivables and deposit accounts, 100% of the capital stock of or other equity interests in existing and future domestic subsidiaries and foreign subsidiaries that are note guarantors, 65% of the capital stock of or other equity interests in existing and future



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first-tier foreign subsidiaries that are not note guarantors, investment property and certain other assets of the Company and the note guarantors. The Amended 2004 Notes are guaranteed by the Company's existing and future domestic restricted subsidiaries and certain foreign subsidiaries.

On or after December 15, 2007, the Company may redeem some or all of the Amended 2004 Notes at the following redemption prices (expressed as percentages of the sum of the principal amount plus accrued and unpaid interest): 102.906% if redeemed on or after December 15, 2008 and prior to June 15, 2009; and 100.000% if redeemed on June 15, 2009.

### *2004 Notes*

As of December 31, 2008, the Company had \$7.8 million of 11.35% (formerly 11 <sup>1</sup>/<sub>8</sub>%) Senior Secured Discount Notes due 2009 (the "2004 Notes") outstanding. The 2004 Notes accreted at the rate of 11 <sup>1</sup>/<sub>8</sub>% from the date of issuance until July 18, 2006, on which date the interest rate was increased by .225% to 11.35% in accordance with the Plan. The 2004 Notes accreted at the rate of 11.35% until December 15, 2006 to an aggregate principal amount of \$1,000.88 per \$1,000 stated principal amount. Commencing on December 15, 2006, interest on the 2004 Notes began accruing at the rate of 11.35% with such incremental interest rate increase of .225% accruing as payment-in-kind interest and the remaining 11 <sup>1</sup>/<sub>8</sub>% payable in cash semiannually on June 15 and December 15, commencing on June 15, 2007. The 2004 Notes mature on June 15, 2009.

The 2004 Notes are secured by a first-priority security interest in the first-priority note collateral and a second-priority security interest in the second-priority note collateral. The 2004 Notes are guaranteed by the Company's existing and future domestic restricted subsidiaries and certain foreign subsidiaries.

On or after June 15, 2007, the Company may redeem some or all of the 2004 Notes at the following redemption prices (expressed as percentages of the sum of the principal amount plus accrued and unpaid interest): 102.781% if redeemed on or after June 15, 2008 and prior to June 15, 2009; and 100.00% if redeemed on June 15, 2009.

### *2003 Notes*

As of December 31, 2008, the Company had \$250 million of 11 <sup>1</sup>/<sub>8</sub>% Senior Secured Notes due 2009 (the "2003 Notes") outstanding. The 2003 Notes accrued interest from the date of issuance through September 30, 2006 at the rate of 11 <sup>1</sup>/<sub>8</sub>% and will continue to accrue interest at such rate through the date of maturity. The 2003 Notes mature on September 1, 2009 and interest is payable in cash semiannually on each March 1 and September 1.

The 2003 Notes rank equally with the Company's existing and future senior debt and rank senior to its existing and future subordinated indebtedness, including the 2006 Notes. The 2003 Notes are secured by a second priority security interest in both the first priority note collateral and the second priority note collateral. The 2003 Notes are guaranteed by some of the Company's subsidiaries.

On or after June 1, 2007, the Company may redeem some or all of the 2003 Notes at the following redemption prices (expressed as a percentage of the sum of the principal amount plus accrued and unpaid interest): 102.781% if redeemed on or after June 1, 2008 and prior to June 1, 2009; and 100% if redeemed on or after June 1, 2009.

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### *Interest Expense*

Interest expense—current and long-term debt in the statement of operations for 2008 is as follows (in thousands):

	<u>2008</u>
Interest expense accrued, net	\$86,333
Recurring amortization of financing fees	7,290
<b>TOTAL</b>	<b>\$93,623</b>
Cash interest payments	<u>\$45,546</u>

The Company capitalized interest on capital projects of \$1.2 million in 2008.

### **7. Leases**

*Capital Leases.* The Company has acquired certain land, building, machinery and equipment under capital lease arrangements that expire at various dates through 2022. At December 31, 2008 the gross amounts of plant and equipment and related accumulated depreciation recorded under capital leases were as follows (in thousands):

	<u>2008</u>
Land and building	\$ 7,551
Machinery and equipment	25,230
<b>Total assets held under capital leases</b>	<b>32,781</b>
Less: accumulated depreciation	(9,247)
	<u>\$23,534</u>

In July 2008, the Company refinanced production equipment for \$12.1 million in its Macedon, New York facility in its Printed Products segment.

Amortization expense associated with capital leases is included in depreciation expense.

*Operating Leases.* The Company has non-cancelable operating leases, primarily for vehicles, equipment, warehouse, and office space that expire through 2015, as well as month-to-month leases. The total expense recorded under all operating lease agreements in the accompanying consolidated statements of operations is approximately \$4.3 million for the year ended December 31, 2008. Future minimum lease payments under operating leases and the present value of future minimum capital lease payments (with interest rates between 8.9% and 37%) as of December 31, 2008 are as follows (in thousands):

<u>Year Ending December 31</u>	<u>Operating Leases</u>	<u>Capital Leases</u>
2009	\$ 4,786	\$ 3,125
2010	3,426	3,152
2011	2,771	2,994
2012	2,391	1,941
2013	1,992	1,918
Thereafter	225	8,452
<b>Total minimum lease payments</b>	<b>\$ 15,591</b>	<b>\$ 21,582</b>
Amounts representing interest		(10,770)
<b>Present value of net minimum capital lease payments</b>		<b><u>\$ 10,812</u></b>

[Table of Contents](#)**8. Income Taxes**

The components of income (loss) from continuing operations before income taxes for the year ended December 31, 2008 are as follows (in thousands):

	<u>2008</u>
United States	\$(192,493)
Foreign	(5,238)
Total	<u>\$(197,731)</u>

The following is a summary of domestic and foreign provisions for current and deferred income taxes and a reconciliation of the U.S. statutory income tax rate to the effective income tax rate.

The provisions (benefits) for income taxes for the year ended December 31, 2008 are as follows (in thousands):

	<u>2008</u>
Current:	
Federal	\$ —
State	288
Foreign	992
Total current	<u>1,280</u>
Deferred:	
Federal	21,614
State	793
Foreign	(4,224)
Total deferred	<u>18,183</u>
Total income tax expense (benefit)	<u>\$19,463</u>

The effective income tax rate reconciliations for the year ended December 31, 2008 are as follows (in thousands):

	<u>2008</u>
Income (loss) from continuing operations before income taxes	\$(197,731)
Expected income tax provision (benefit) at U.S. statutory rate of 35%	(69,206)
Increase (decrease) resulting from:	
Financial reorganization expenses	828
Goodwill	21,102
State taxes	(1,313)
Change in valuation allowances	69,723
Foreign rate difference	(549)
Other, net	(1,122)
Total income tax expense	<u>\$ 19,463</u>
Effective income tax rate	<u>9.8%</u>

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Components of net deferred income tax assets and liabilities as of December 31, 2008 are as follows (in thousands):

	<u>2008</u>
Deferred income tax assets:	
Net operating loss carry forwards	\$ 129,804
AMT and foreign tax credit carry forwards	4,713
Accrued pension costs	7,686
Accrued employee benefits	5,768
Accrued plant closing costs	1,772
Allowance for doubtful trade accounts receivable	1,038
Inventory related costs	1,137
Deferred tax asset related to FIN48	2,247
Other	1,041
	<u>155,206</u>
Valuation Allowance	(132,809)
Total deferred income tax assets	<u>22,397</u>
Deferred income tax liabilities:	
Tax depreciation in excess of book depreciation	(46,140)
Amortization of intangibles	825
Other	(5,010)
Total deferred income tax liabilities	<u>(50,325)</u>
Net deferred income tax liability	<u>\$ (27,928)</u>
As reported on consolidated balance sheets:	
Net current deferred income tax asset	\$ 10,705
Net non-current deferred income tax liability	(38,633)
Net deferred income tax liability	<u>\$ (27,928)</u>

In 2007, the FASB issued Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes" which clarifies the application of FAS 109 by prescribing the minimum threshold a tax position must meet before being recognized in the financial statements. Under FIN 48, the financial statement effect of a tax position is initially recognized when it is more likely than not the position will be sustained upon examination. A tax position that meets the "more likely than not" recognition threshold is initially and subsequently measured as the largest amount of benefit, determined on a cumulative probability basis, that is more likely than not to be realized upon ultimate settlement with the taxing authority.

A reconciliation of the total of unrecognized tax benefits at the beginning and end of the year is as follows:

<u>(DOLLARS IN THOUSANDS)</u>	<u>2008</u>
Balance of unrecognized benefits at Beginning of Year	\$2,763
Gross amount of increases in unrecognized tax benefits as a result of positions taken during the current year	178
The amounts of decreases in unrecognized benefits relating to settlements with taxing authorities	(584)
Reduction in unrecognized tax benefits due to the lapse of applicable statute of limitation	—
The amount of change in unrecognized tax benefits due to exchange rate variation	(555)
Balance of unrecognized tax benefits at End of Year	<u>\$1,802</u>

All of our unrecognized tax benefits at December 31, 2008 would affect the effective tax rate if recognized. The tax years 2005-2008 remain open to examination by major United States taxing jurisdictions to which we are

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subject. In addition, for all tax years prior to 2005 generating an NOL, tax authorities can adjust the amount of the NOL to the extent it is utilized or reported in an open year.

Also as a result of FIN 48 we recognized a deferred tax asset of approximately \$2.2 million. Due to uncertainty regarding realization a valuation allowance of approximately \$2.2 million has been recorded to deferred tax asset related of FIN 48.

We recognize interest and penalties related to unrecognized tax benefits as a component of income tax expense. At December 31, 2008, we had accrued approximately \$0.6 million of interest and \$0.3 million of penalties related to certain tax positions, respectively.

The net operating loss carry forwards for federal tax purposes are approximately \$315.3 million. These losses expire in 2021 through 2028. Due to uncertainty regarding realization, valuation allowances of approximately \$98.6 in 2008 have been recorded to offset the deferred tax asset related to the federal net operating losses.

The net operating loss carry forward for state tax purposes are approximately \$13.7 million. These losses expire in 2010 through 2028. Due to uncertainty regarding realization, a valuation allowance of approximately \$10.2 million (\$6.6 million, net of federal income tax) in 2008 has been recorded to offset the deferred tax asset related to the net operating losses.

As a result of a Section 382 ownership change in December 2008, certain federal and state net operating losses are permanently limited for future use. A full valuation has been recorded for those net operating losses that are permanently limited. These permanently limited net operating losses may be used to offset cancellation of debt income that may arise out of subsequent bankruptcy proceedings.

The net operating loss carry forwards for Canadian tax purposes are approximately \$0.8 million. These losses expire in 2028. Due to uncertainty regarding realization, a valuation allowance of approximately \$0.1 million has been recorded to offset the deferred tax asset related to the net operating loss in Canada.

The alternative minimum tax credit carry forwards for federal tax purposes are approximately \$1.2 million. These credits do not expire but are limited to the extent that the regular tax liability for a future year exceeds the tentative minimum tax for the year. Due to uncertainty regarding realization, a valuation allowance of approximately \$1.2 million has been recorded to offset the deferred tax asset related to the alternative minimum tax credit.

The charitable contributions deduction carry forwards for federal and state tax purposes are approximately \$0.5 million. Due to uncertainty regarding realization, a valuation allowance of approximately \$0.2 million has been recorded to offset the deferred tax asset related to the charitable contributions deductions.

U.S. pension expenses of approximately \$25.2 million net of deferred tax assets of approximately \$9.8 million have been charged to Other Comprehensive Income. Due to uncertainty regarding realization of the deferred tax assets, a valuation allowance of approximately \$9.8 million has been recorded to Other Comprehensive Income to offset the deferred tax asset.

The net operating loss carry forwards for Mexican tax purposes are approximately \$34.9 million. These losses expire in 2012 through 2018. Due to uncertainty regarding realization, a valuation allowance of approximately \$10.0 million has been recorded to offset the deferred tax asset related to the net operating losses in Mexico.

The foreign tax credit carry forwards for federal tax purposes are approximately \$3.6 million expiring in 2010 through 2011. Due to uncertainty regarding realization, valuation allowances of approximately \$3.6 million for 2008 has been recorded to offset the deferred tax asset related to the foreign tax credits.

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Undistributed earnings of foreign subsidiaries amounted to approximately \$28.7 million as of December 31, 2008. Approximately \$16.9 million is considered to be permanently invested and \$11.8 million may be distributed in future years. Upon distribution of those earnings in the form of dividends or otherwise, the Company would be subject to both U.S. income taxes, subject to an adjustment for foreign tax credits, and withholding taxes payable to foreign countries. Determination of the amount of unrecognized deferred U.S. income tax liability, related to the amount considered permanently invested, is not practicable because of the complexities associated with the calculation.

### **9. Employee Benefit Plans**

*Defined Contribution Plan.* The Company sponsors a salary deferral plan covering substantially all of its non-union domestic employees. Plan participants may elect to make voluntary contributions to this plan up to 15% of their compensation. The Company matches employee contributions up to 3% of the participants' compensation. The Company expensed approximately \$2.6 million as its contribution to this plan for the year ended December 31, 2008. In addition, the Company sponsors salary deferral plans for its Canadian employees consistent with local practices and regulations. The Company expensed \$0.1 million in 2008 as its contributions to these plans.

*Defined Benefit Plans.* The Company sponsors three noncontributory defined benefit pension plans (the "United States Plans") covering domestic employees with 1,000 or more hours of service. The Company funds its plans in amounts to fulfill the minimum funding requirements of the Employee Retirement Income Security Act of 1974. Contributions are intended to not only provide for benefits attributed to service to date but also for those expected to be earned in the future. In the second quarter of 2004, the Company redesigned its retirement programs which led to the curtailment and "freeze" of the pension plan for U.S. salaried employees effective June 30, 2004. The Company also sponsors two defined benefit plans in Canada ("Canadian Plans") and one defined benefit plan in Germany (the "Germany Plan").

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Total net periodic benefit cost for the year ended December 31, 2008 includes the following components (in thousands):

	<u>2008</u>
<b>United States Plans</b>	
Service cost-benefits earned during the period	\$ 244
Interest cost on projected benefit obligation	5,231
Expected return on assets	(6,653)
Curtailment loss	507
Other	128
Net periodic benefit cost	<u>\$ (543)</u>
<b>Canadian Plans</b>	
Service cost-benefits earned during the period	\$ 145
Interest cost on projected benefit obligation	314
Expected return on assets	\$ (438)
Special termination benefits	199
Curtailment gain	(329)
Net periodic benefit cost	<u>\$ (109)</u>
<b>Germany Plan</b>	
Service cost-benefits earned during the period	\$ 167
Interest cost on projected benefit obligation	193
Actuarial loss	(285)
Net periodic benefit cost	<u>\$ 75</u>
<b>Employer Contributions</b>	
2009 Expected to plan trusts	\$ 2,781
<b>Expected Benefit Payments</b>	
2009	\$ 6,473
2010	3,879
2011	4,082
2012	4,362
2013	4,678
2014-2018	27,853
<b>Weighted-Average Assumptions Used to Determine Net Periodic Benefit Cost</b>	
Discount rate:	
U.S. Plans	6.29%
Canadian Plans	5.20%
Germany Plan	6.25%
Expected rate of return on plan assets:	
U.S. Plans	9.00%
Canadian Plans	6.50%
Rate of compensation increase (non-union plans):	
U.S. Plans	—
Canadian Plans	—
Germany Plan	3.00%

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### Expected Rate of Return Assumption

The rate of investment return assumption was developed through analysis of historical market returns, current market conditions, and the fund's past experience. Estimates of future market returns by asset category are lower than actual long-term historical returns in order to generate a conservative forecast.

### Investment Strategy

The Company's investment portfolio contains a diversified blend of equity and debt securities. Furthermore, equity investments are diversified across domestic and international stocks as well as large and small capitalizations. Investment risk is measured and monitored on an ongoing basis through quarterly investment portfolio reviews. The target allocation of equity securities is 58% of the plan assets. The target allocation of debt and other securities is 42% of the plan assets. As of December 31, 2008 the actual allocations of plan assets are as follows:

	<u>2008</u>
Equity Securities	46%
Debt Securities	45%
Other	9%
	<u>100%</u>

### Measurement date

Pliant uses a measurement date of December 31 for its pension plans. The following tables set forth the funded status of the United States Plans, the Canadian Plans, and the Germany Plan as of December 31, 2008 and the amounts recognized in the consolidated balance sheets at those dates (in thousands):

#### United States Plans:

	<u>2008</u>
Change in benefit obligation:	
Obligation at January 1	\$ 85,074
Service cost	244
Interest cost	5,230
Actuarial gain	(3,826)
Benefits paid	(3,454)
Obligation at December 31	<u>\$ 83,268</u>
Change in plan assets:	
Fair value of assets at January 1	\$ 73,704
Actual return on plan assets	(13,822)
Employer contributions	3,317
Benefit payments	(3,454)
Fair value of plan assets at December 31	<u>\$ 59,745</u>
Underfunded status at December 31	<u>\$ 23,523</u>

Amounts recognized in the balance sheet consist of (in thousands):

	<u>2008</u>
Other liabilities	\$ 23,523
Accumulated other comprehensive income, net of taxes of \$0	(24,917)



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The projected benefit obligation, accumulated benefit obligation, and fair value of assets for plans with an accumulated benefit obligation in excess of plan assets were as follows (in thousands):

	<u>2008</u>
Projected benefit obligation	\$83,268
Accumulated benefit obligation	83,268
Fair value of Assets	59,745
<b>Weighted-Average Assumptions Used to Determine Benefit Obligations as of December 31</b>	
Discount rate	6.53%
Rate of Compensation increase	— %

### Canadian Plans:

	<u>2008</u>
Change in benefit obligation:	
Obligation at January 1	\$ 6,633
Service cost	145
Interest cost	314
Actuarial (gain) loss	(1,045)
Benefits paid	(199)
Special termination benefits	199
Curtailments	(376)
Changes due to exchange rate	(1,095)
Obligation at December 31	<u>\$ 4,576</u>
Change in plan assets:	
Fair value of assets at January 1	\$ 6,993
Actual return on plan assets	(1,350)
Employer contributions	601
Benefit payments	(199)
Changes due to exchange rate	(1,162)
Fair value of plan assets at December 31	<u>\$ 4,883</u>
Overfunded status at December 31	<u>\$ 307</u>

Amounts recognized in the balance sheet consist of (in thousands):

	<u>2008</u>
Other assets	\$ 586
Other liabilities	(280)
Accumulated other comprehensive income	(125)

The projected benefit obligation, accumulated benefit obligation, and fair value of assets for plans with an accumulated benefit obligation in excess of plan assets were as follows (in thousands):

	<u>2008</u>
Projected benefit obligation	\$2,744
Fair value of Assets	2,465
<b>Weighted-Average Assumptions Used to Determine Benefit Obligations as of December 31</b>	
Discount rate	6.50%
Rate of Compensation increase	3.50%

[Table of Contents](#)**Germany Plan:**

	<u>2008</u>
Change in benefit obligation:	
Obligation at January 1	\$3,676
Service cost	167
Interest cost	193
Benefits paid	(67)
Actuarial (gain)/loss	(285)
Change due to exchange rate	(347)
Obligation at December 31	<u>\$3,337</u>
Fair value of plan assets at December 31	<u>\$ —</u>
Underfunded status at December 31	<u>\$3,337</u>

Amounts recognized in the balance sheet consist of (in thousands):

	<u>2008</u>
Other liabilities	<u>\$3,337</u>
Accumulated other comprehensive income	113

<b>Weighted-Average Assumptions Used to Determine Benefit Obligations as of December 31</b>	<u>2008</u>
Discount rate	6.25%
Rate of Compensation increase	3.00%

The cash surrender value of life insurance policies for Germany Plan participants included in other assets in the consolidated balance sheet is approximately \$1.3 million as of December 31, 2008.

*Other Foreign Plans.* Employees in Australia and Mexico are covered by various post employment arrangements consistent with local practices and regulations. Such obligations are not significant and are included in the consolidated financial statements in other liabilities.

*Other Domestic Plans.* As part of the acquisition of Blessings Corporation in 1998, the Company assumed two supplemental retirement plans covering certain former employees of Blessings Corporation. The liability for these plans at December 31, 2008 was approximately \$1.7 million, of which \$0.2 million is in current liabilities at and \$1.5 million in other liabilities at December 31, 2008. This liability was frozen at the time of the acquisition. The amount of unrecognized actuarial losses for these plans included in accumulated other comprehensive income at December 31, 2008 was \$0.3 million.

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*Accumulated Other Comprehensive Income.* The following summarizes the changes in net unrecognized pension benefit costs included in accumulated other comprehensive income as of December 31, 2008.

	<u>2008</u>
Change in unrecognized pension benefit costs:	
Net unrecognized actuarial losses at January 1	\$ (8,589)
Actuarial gains (losses) in current period	(16,793)
Amortization of net actuarial losses	74
Changes due to exchange rates	113
Net unrecognized actuarial losses at December 31	(25,195)
Net unrecognized prior service cost at January 1	(571)
Prior service cost in current period	—
Amortization of prior service costs	64
Curtailment effects	507
Net unrecognized prior service cost at December 31	—
Net unrecognized pension benefit costs	<u>\$(25,195)</u>

The actuarial loss included in accumulated other comprehensive income and expected to be recognized in net periodic pension cost during 2009 is \$0.6 million.

### **10. Redeemable Stock**

Among the transactions effected pursuant to the Plan, as of July 18, 2006 the Company (i) extinguished its Series B Redeemable Preferred Stock, no par value (“Series B Preferred Stock”), (ii) issued 335,592 shares of Series AA Redeemable Preferred Stock, par value \$.01 per share (“Series AA Preferred Stock”) and 100,003 shares of Common Stock, par value \$.01 per share (“Common Stock”) and (iii) entered into a Stockholders Agreement dated July 18, 2006 (the “Stockholders’ Agreement”) with respect to the Common Stock and a Registration Rights Agreement dated July 18, 2006 (the “Registration Rights Agreement”) with respect to the Series AA Preferred Stock. In addition, on July 18, 2006, the Company’s Deferred Cash Incentive Plan (the “Cash Plan”) and 2006 Restricted Stock Incentive Plan (the “Stock Plan”) became effective.

The Stockholders’ Agreement provides for certain restrictions on transfer of the Common Stock and requires that all transferees of Common Stock become a party to the Stockholders’ Agreement. The Stockholders’ Agreement also grants to certain holders of Common Stock the right to purchase their pro rata share of any new equity securities issued by the Company, subject to exceptions for acquisitions, management equity and certain other transactions. The Stockholders’ Agreement also contains “drag-along rights” that require all holders of Common Stock to participate in and vote in favor of certain sales of the Company approved by the Board of Directors and certain holders of Common Stock.

*Common Stock.* In connection with the Plan, on July 18, 2006, the Company issued 100,003 shares of Common Stock.

*Series AA Preferred Stock.* In connection with the Plan, on July 18, 2006, the Company issued approximately 335,600 shares of Series AA Preferred Stock. Except for certain circumstances which require their consent, the holders of Series AA Preferred Stock do not have voting rights, but do have the right to elect 2 out of the 7 members of the Company’s Board of Directors.

Holders of shares of the Series AA Preferred Stock are entitled to receive, when, as and if declared by the Board of Directors, dividends at the rate of 13% per year on the Stated Value (as hereinafter defined) of each share of Series AA Preferred Stock. Dividends on the Series AA Preferred Stock are cumulative from the date of issue, accrue, whether or not they have been declared, quarterly in arrears on March 31, June 30, September 30

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and December 31 of each year. The “Stated Value” of each share of Series AA Preferred Stock is equal to \$1,000 per share plus accumulated and unpaid dividends for quarterly periods ending on or prior to the date of determination minus any distributions (other than dividends not otherwise added to the Stated Value) made with respect to such Series AA Preferred Stock.

The Company may not declare, pay or set aside for payment any dividends on the Common Stock unless it has paid or declared and set aside for payment full cumulative dividends on the shares of Series AA Preferred Stock.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, holders of Series AA Preferred Stock will be entitled to a liquidation preference over the holders of Common Stock equal to the Stated Value of each share of Series AA Preferred Stock plus accrued and unpaid dividends thereon. The Series AA Preferred Stock is redeemable at the option of the Company at any time, in whole or in part, at an amount equal to the Stated Value thereof plus accrued and unpaid dividends thereon. The Series AA Preferred Stock is convertible into the Company’s other equity securities. If the Series AA Preferred Stock has not been redeemed or repurchased by July 18, 2011, the holders of at least 40% of the outstanding shares of Series AA Preferred Stock shall have the right to cause all of the outstanding class of Series AA Preferred Stock to be converted into a number of shares of Common Stock equal to 99.9% of the number of fully diluted shares of Common Stock after giving effect to such conversion (excluding shares, if any, of Common Stock issued to stockholders of the other party to a merger qualifying for the “Merger Exception” as defined in our Amended and Restated Certificate of Incorporation).

*Series M Preferred Stock.* On February 20, 2007, the Company issued 8,000 shares of Series M Preferred Stock, par value \$.01 per share (“Series M Preferred Stock”) to certain employees pursuant to the Company’s Stock Plan. The Series M Preferred Stock, participates in the enterprise value of the Company upon a “liquidation event” or upon an 80% “redemption” of the shares of Series AA Preferred Stock or upon a public offering, to the extent the proceeds exceed \$224.8 million. A participant’s restricted Series M Preferred Stock vests monthly over a 36 month period beginning with the July 18, 2006 emergence from bankruptcy, or upon a liquidation event, redemption, or public offering; or upon certain terminations of employment within a limited period before an accelerated vesting event.

Upon receiving their awards in February 2007, participants purchased their shares of Series M Preferred Stock for \$20 per share. The shares were issued for an aggregate purchase price of \$160,000. At that time, the fair market value of the shares of Series M Preferred Stock (as determined by an appraisal by an independent appraisal firm), was \$103 per share. Each participant made an election under Section 83(b) of the Internal Revenue Code to pay tax at that time on the \$83 difference between those amounts; and the Company paid a bonus of \$138 per share (the tax-grossed-up amount of the \$83 difference) to each participant to enable the participant to pay such taxes. If a participant’s employment terminates, his restricted shares that are not vested are forfeited (that is, repurchased by the company for the \$20 per share that the participant paid for it). The Company may repurchase (other than from Mr. Bevis) restricted shares that were vested upon termination. Repurchase is at fair market value as of the date of termination if the repurchase occurs within 180 days of the termination of employment, otherwise at fair market value as of the date of the repurchase. Fifty percent of the repurchase price may be paid on a deferred basis in certain circumstances.

Dividends on the Series M Preferred Stock are paid only under certain circumstances, including redemption of shares of Series AA Preferred Stock, described in the Certificate of Incorporation. If those circumstances exist, dividends are required to be paid on the Series M Preferred Stock regardless of whether full cumulative dividends on the Series AA Preferred Stock have been paid or declared and set aside for payment.

Otherwise, upon a liquidation event or redemption of shares of Series AA Preferred Stock, the Series M Preferred Stock is redeemed for an amount equivalent to the participants’ share of the Stock Plan’s 8% share of the proceeds in excess of the \$224.8 million hurdle amount (subject to certain adjustments). Upon a public offering the Series M Preferred Stock is converted to common stock.

## 11. Commitments and Contingencies

*Environmental Contingencies.* The Company's operations are subject to extensive environmental laws and regulations concerning emissions to the air, discharges to surface and subsurface waters, and the generation, handling, storage, transportation, treatment, and disposal of waste materials, as adopted by various governmental authorities in the jurisdictions in which it operates. The Company makes every reasonable effort to remain in full compliance with existing governmental laws and regulations concerning the environment.

*Litigation.* The Company is involved in ongoing litigation matters from time to time in the ordinary course of its business. In the Company's opinion, none of such litigation is material to its financial condition or results of operations.

On February 11, 2009, Pliant and certain of its subsidiaries filed voluntary petitions in the Bankruptcy Code seeking relief under Chapter 11 of the Bankruptcy Code. The cases are being jointly administered under the caption "In re: Pliant Corporation, et al., Case No. 09-10443." Certain of Pliant's subsidiaries with Canadian operations commenced ancillary proceedings in a Canadian court to recognize the Chapter 11 bankruptcy proceedings as "foreign proceedings." The Company's operations in Mexico, Germany, and Australia were not included in the Chapter 11 filing. As a consequence of the Company's commencement of these bankruptcy proceedings, substantially all pending claims and litigation against it in the United States and Canada were automatically stayed.

## 12. Operating Segments

Operating segments are components of the Company's business for which separate financial information is available that is evaluated regularly by its chief operating decision maker in deciding how to allocate resources and in assessing performance. This information is reported on the basis that it is used internally for evaluating segment performance.

The Company has four operating segments: Specialty Films, which manufactures personal care, medical and agricultural films; Printed Products, which produces printed rollstock, bags and sheets used to package food and consumer goods; Industrial Films segment, which manufactures stretch film used to bundle, unitize and protect palletized loads during shipping and storage and PVC films used by supermarkets, delicatessens and restaurants to wrap meat, cheese and produce; Engineered Films segment, which manufactures film for sale to converters of flexible packaging and a variety of barrier and custom films for smaller niche flexible packaging and industrial markets.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies. Sales and transfers between our segments are eliminated in consolidation. The Company evaluates the performance of its operating segments based on net sales (excluding intercompany sales) and segment profit. The segment profit reflects income from continuing operations adjusted for interest expense, income taxes, depreciation, amortization, restructuring and other costs and other non-cash charges (principally the impairment of goodwill, intangible assets and fixed assets). The Company's operating segments are managed separately with separate management teams, because each segment has differing products, customer requirements, technology and marketing strategies.

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Segment profit and segment assets as of and for the year ended December 31, 2008 are presented in the following table (in thousands). Certain reclassifications have been made to the prior year amounts to be consistent with the 2008 presentation.

	Specialty Films	Printed Products	Industrial Films	Engineered Films	Corporate/ Other	Total
2008						
Net sales to customers	\$ 228,218	\$ 226,212	\$ 331,732	\$ 336,807	\$ 4,680	\$ 1,127,649
Intersegment sales	9,338	9	3,332	27,786	(40,465)	—
Total net sales	237,556	226,221	335,064	364,593	(35,785)	1,127,649
Depreciation and amortization	9,776	10,805	6,935	12,757	4,533	44,806
Interest expense	72	3,229	563	1,679	88,080	93,623
Segment profit (loss)	15,914	12,391	21,307	20,640	(24,296)	45,956
Segment total assets	108,264	128,548	92,317	144,359	58,992	532,480
Capital expenditures	3,615	10,107	1,487	10,245	1,687	27,141

A reconciliation of the totals reported for the operating segments to the totals reported in the consolidated financial statements is as follows (in thousands):

	2008
<b>Profit or Loss</b>	
Total segment profit	\$ 45,956
Depreciation and amortization	(44,806)
Impairment of fixed assets	(6,604)
Impairment of goodwill and intangible assets	(75,066)
Reorganization costs	(3,358)
Restructuring and other costs	(20,230)
Interest expense	(93,623)
Gain on extinguishment of debt	—
Income (loss) from continuing operations before income taxes	\$(197,731)
<b>Assets</b>	
Total assets for reportable segments	\$ 473,488
Other unallocated assets	58,992
Total consolidated assets	\$ 532,480

There were no sales to a single customer in 2008 that was more than 10% of consolidated net sales. Net sales and long-lived assets of our US and foreign operations are as follows:

	2008
<b>Net Sales</b>	
United States	\$ 933,582
Foreign countries <sup>(1)</sup>	194,067
Total	\$ 1,127,649
<b>Long-lived assets</b>	
United States	240,541
Foreign countries	29,531
Total	\$ 270,072
<b>Total Assets</b>	
United States	443,449
Foreign countries	89,031
Total	\$ 532,480

(1) Foreign countries include Australia, Canada, Germany and Mexico, none of which individually represents 10% of consolidated net sales or long-lived assets.

### 13. Estimated Fair Value of Financial Instruments

The estimated fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale. In the case of cash and cash equivalents, accounts receivable and accounts payable, the carrying amount is considered a reasonable estimate of fair value. The fair value of fixed debt in 2008 was obtained from market quotes. Fair value estimates are made at a specific point in time. Because no market exists for a significant portion of the Company's financial instruments, fair value estimates are based on judgments regarding current economic conditions, risk characteristics of various financial instruments, interest rate levels, and other factors. These estimates are subjective in nature and involve uncertainties and matters of judgment and therefore cannot be determined or relied on with any degree of certainty. Changes in assumptions could significantly affect the estimates.

Below is a summary of the Company's financial instruments' carrying amounts and estimated fair values as of December 31 2008, (in thousands):

	2008	
	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>
<b>Financial assets:</b>		
Cash and cash equivalents	\$ 28,485	\$ 28,485
Accounts receivable	\$ 114,325	\$ 114,325
Total financial assets	<u>\$ 142,810</u>	<u>\$ 142,810</u>
<b>Financial liabilities:</b>		
Floating rate debt	\$ 173,579	\$ 173,579
Fixed rate debt	684,302	221,555
Accounts payable	61,688	61,688
Total financial liabilities	<u>\$ 919,569</u>	<u>\$ 456,822</u>

### 14. Accumulated Other Comprehensive Income/(Loss)

The components of accumulated other comprehensive income/(loss) as of December 31, 2008, were as follows (in thousands):

	2008
Net unrecognized pension benefit costs, net of taxes of \$0	<u>\$(25,195)</u>
Foreign currency translation adjustments	(15,859)
Accumulated other comprehensive income/(loss)	<u>\$(41,054)</u>

## 15. Condensed Consolidating Financial Statements

The following condensed consolidating financial statements present, in separate columns, financial information for (i) Pliant (on a parent only basis) with its investment in its subsidiaries recorded under the equity method, (ii) guarantor subsidiaries (as specified in the Indenture dated as of May 30, 2003, as amended (the “2003 Indenture”) relating to the 2003 Notes, the First Supplemental Indenture with respect to the Amended and Restated Indenture relating to the 2004 Notes and the Amended 2004 Notes and the 2007 Notes Indenture relating to the 2007 Notes (the 2003 Indenture, the Amended and Restated Indenture, as amended by the First Supplemental Indenture, and the 2007 Notes Indenture, collectively, the “Indentures”) on a combined basis, with any investments in non-guarantor subsidiaries specified in the Indentures recorded under the equity method, (iii) direct and indirect non-guarantor subsidiaries on a combined basis, (iv) the eliminations necessary to arrive at the information for Pliant and its subsidiaries on a consolidated basis, and (v) Pliant on a consolidated basis, in each case as of December 31, 2008 and for the year ended December 31, 2008. The 2003 Notes, the 2004 Notes, the Amended 2004 Notes and the 2007 Notes are fully and unconditionally guaranteed on a joint and several basis by each guarantor subsidiary and each guarantor subsidiary is 100% owned, directly or indirectly, by Pliant, except that the 2003 Notes are not guaranteed by Uniplast Industries Co. and the Amended 2004 Notes are not guaranteed by Pliant Solutions Corporation (“Pliant Solutions”). Substantially all of the assets of Pliant Solutions were sold on September 30, 2004, the remainder disposed prior to December 31, 2005 and Pliant Solutions dissolved as of December 27, 2007. There are no contractual restrictions limiting transfers of cash from guarantor and non-guarantor subsidiaries to Pliant. The condensed consolidating financial statements are presented herein, rather than separate financial statements for each of the guarantor subsidiaries, because management believes that separate financial statements relating to the guarantor subsidiaries are not material to investors.



**Condensed Consolidating Balance Sheet  
As of December 31, 2008 (In Thousands)**

	<u>Pliant Corporation Parent Only</u>	<u>Combined Guarantors</u>	<u>Combined Non- Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Pliant Corporation</u>
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 23,996	\$ 924	\$ 3,565	\$ —	\$ 28,485
Receivables	88,428	4,130	24,551	—	117,109
Inventories	66,065	2,301	11,557	—	79,923
Prepaid expenses and other	2,951	378	2,561	—	5,890
Income taxes receivable	(228)	359	591	—	722
Deferred income taxes	10,690	14	1	—	10,705
Total current assets	<u>191,902</u>	<u>8,106</u>	<u>42,826</u>	<u>—</u>	<u>242,834</u>
Plant and equipment, net	240,541	6,505	23,026	—	270,072
Goodwill	1,118	—	1,304	—	2,422
Intangible assets, net	475	3,394	—	—	3,869
Investment in subsidiaries	(22,237)	—	—	22,237	—
Other assets	9,416	—	3,867	—	13,283
Total assets	<u>\$ 421,215</u>	<u>\$ 18,005</u>	<u>\$ 71,023</u>	<u>\$ 22,237</u>	<u>\$ 532,480</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>					
Current liabilities:					
Current portion of long-term debt and debt in default	\$ 815,631	\$ 16,700	\$ 25,550	\$ —	\$ 857,881
Trade accounts payable	48,930	2,212	10,546	—	61,688
Accrued liabilities	52,981	(291)	3,047	—	55,737
Due to (from) affiliates	(47,344)	60,638	(13,294)	—	—
Total current liabilities	<u>870,198</u>	<u>79,259</u>	<u>25,849</u>	<u>—</u>	<u>975,306</u>
Long-term debt, net of current portion	—	—	—	—	—
Other liabilities	25,788	657	5,810	—	32,255
Deferred income taxes	38,943	14	(324)	—	38,633
Total liabilities	<u>934,929</u>	<u>79,930</u>	<u>31,335</u>	<u>—</u>	<u>1,046,194</u>
Stockholders' (deficit):					
Preferred Stock	302,424	—	—	—	302,424
Common stock	1	—	11,916	(11,916)	1
Paid in capital	155,341	14,020	78,144	(92,164)	155,341
Retained earnings (deficit)	(930,426)	(79,049)	(36,688)	115,737	(930,426)
Accumulated other comprehensive loss	(41,054)	3,104	(13,684)	10,580	(41,054)
Total stockholders' (deficit)	<u>(513,714)</u>	<u>(61,925)</u>	<u>39,688</u>	<u>22,237</u>	<u>(513,714)</u>
Total liabilities and stockholders' (deficit)	<u>\$ 421,215</u>	<u>\$ 18,005</u>	<u>\$ 71,023</u>	<u>\$ 22,237</u>	<u>\$ 532,480</u>

**Condensed Consolidating Statement of Operations**  
**For the Year Ended December 31, 2008 (In Thousands)**

	Pliant Corporation Parent Only	Combined Guarantors	Combined Non- Guarantors	Eliminations	Consolidated Pliant Corporation
Net sales	\$ 974,062	\$ 40,829	\$ 153,238	\$ (40,480)	\$1,127,649
Cost of sales	911,636	41,186	140,086	(40,480)	1,052,428
Gross profit	62,426	(357)	13,152	—	75,221
Total operating expenses	151,393	19,833	8,253	—	179,479
Operating income (loss)	(88,967)	(20,190)	4,899	—	(104,258)
Interest expense	(89,898)	(422)	(3,303)	—	(93,623)
Equity in earnings of subsidiaries	(20,358)	—	—	20,358	—
Other income (expense), net	4,959	(1,462)	(3,347)	—	150
Income (loss) from continuing operations before income taxes	(194,264)	(22,074)	(1,751)	20,358	(197,731)
Income tax (benefit) expense	22,930	(1,466)	(2,001)	—	19,463
Net income (loss)	\$ (217,194)	\$ (20,608)	\$ 250	\$ 20,358	\$ (217,194)

**Condensed Consolidating Statement of Cash Flows**  
**For the Year Ended December 31, 2008 (In Thousands)**

	Pliant Corporation Parent Only	Combined Guarantors	Combined Non- Guarantors	Eliminations	Consolidated Pliant Corporation
Cash flows from operating activities	\$ (15,381)	\$ (1,751)	\$ 746	\$ —	\$ (16,386)
Cash flows from investing activities:					
Capital expenditures for plant and equipment	(25,744)	(944)	(453)	—	(27,141)
Asset transfers	995	(27)	(968)	—	—
Proceeds from sale of assets	2,959	—	—	—	2,959
Net cash provided by (used in) investing activities	(21,790)	(971)	(1,421)	—	(24,182)
Cash flows from financing activities:					
Payment of capitalized fees	(1,431)	—	—	—	(1,431)
Borrowing under revolver	50,000	—	5,000	—	55,000
Loans (to)/from affiliates	5,000	—	(5,000)	—	—
Borrowings/(Payments) of capital lease obligations	9,863	—	(53)	—	9,810
Net cash provided by financing activities	63,432	—	(53)	—	63,379
Effect of exchange rate changes on cash and cash equivalents	(2,272)	37	651	—	(1,584)
Net (decrease)/increase in cash and cash equivalents	23,989	(2,685)	(77)	—	21,227
Cash and cash equivalents at beginning of the year	7	3,609	3,642	—	7,258
Cash and cash equivalents at end of the year	\$ 23,996	\$ 924	\$ 3,565	\$ —	\$ 28,485

**16. OTHER INCOME (EXPENSE)**

Other income for the year ended December 31, 2008 included \$0.1 million of interest income and other less significant items.

**17. REORGANIZATION**

On January 3, 2006, Pliant and ten subsidiaries filed voluntary petitions in the Bankruptcy Court seeking relief under the Bankruptcy Code. Three of the Company's subsidiaries with Canadian operations commenced ancillary proceedings in a Canadian court to recognize the Chapter 11 bankruptcy proceedings as "foreign proceedings." The Company's operations in Mexico, Germany, and Australia were not included in the Chapter 11 filing.

On June 19, 2006, the Company filed with the Bankruptcy Court the Plan which was approved by the Bankruptcy Court on June 23, 2006. On July 18, 2006, the Company consummated its reorganization through a series of transactions contemplated in the Plan and filed with the Bankruptcy Court a notice announcing the effectiveness of the Plan.

On July 18, 2006, pursuant to the Plan, the Company changed its state of incorporation from Utah to Delaware; issued (i) an aggregate principal amount of \$34.97 million of 2006 Notes, (ii) 335,592 shares of Series AA Preferred Stock, and (iii) 100,003 shares of Common Stock in exchange for (A) all of its 2000/2002 Notes, (B) all of its Series A Cumulative Exchangeable Redeemable Preferred Stock, no par value (the "Series A Preferred Stock"), (C) all of its Old Common Stock and (D) warrants to purchase its Old Common Stock; made cash payments to the applicable trustee of (A) \$3.2 million for further distribution to the holders of the 2000/2002 Notes and (B) \$18.53 million (\$4 million of which was a consent fee and the balance of which was the missed March 1, 2006 interest payment and the interest owed on that interest payment) for further distribution to the holders of its 2003 Notes and reinstated the 2003 Notes; reinstated its 2004 Notes and its Amended 2004 Notes and increased the interest rate on the 2004 Notes and the Amended 2004 Notes by .225%; entered into Revolving Credit Facilities to replace the Amended and Restated Credit Agreement and DIP Credit Facility; and entered into the Stockholders' Agreement with respect to the Common Stock and the Registration Rights Agreement with respect to the Series AA Preferred Stock.

As referenced above, the Company completed a debt for equity exchange whereby 100% of its outstanding \$320 million of 2000/2002 Notes and \$24.3 million in accrued interest were exchanged for 265,123 shares or 79% of its new Series AA Preferred Stock, approximately 30,000 shares or 30% of its Common Stock, \$3.2 million in cash consideration and approximately \$35 million in 2006 Notes. Pursuant to SFAS 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring, these \$35 million of 2006 Notes were recorded at aggregate principal plus interest to maturity of \$20.1 million or a total of \$55.1 million. In addition, 100% of the \$298.0 million of shares subject to mandatory redemption, including the Company's Series A Preferred Stock were also exchanged for shares of its new Series AA Preferred Stock and shares of its Common Stock. The fair market value of equity received in connection with these exchanges was approximately \$182.3 million. Taking into account the \$3.2 million of cash consideration bondholders received and collectability reserves of \$4.9 million established in connection with outstanding stockholders' notes receivable, this resulted in a gain on extinguishment of debt of \$393.7 million on a combined exchange of \$642.3 million of debt and accrued interest.

On July 18, 2006, the Company entered into the Stockholders Agreement that is binding on all parties receiving shares of Common Stock, pursuant to the terms of the Plan. The Stockholders' Agreement provides for certain restrictions on transfer of the Common Stock and requires that all transferees of Common Stock become a party to the Stockholders' Agreement. The Stockholders' Agreement also grants to certain holders of Common Stock the right to purchase their pro rata share of any new equity securities issued by the Company, subject to exceptions for acquisitions, management equity and certain other transactions. The Stockholders' Agreement contains "drag-along rights" that require all holders of Common Stock to participate in and vote in favor of certain sales of the Company approved by the Board of Directors and certain holders of Common Stock. It

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further provides that the 5 (out of a total of 7) members of the Board of Directors to be elected by the holders of Common Stock will consist of the Chief Executive Officer of the Company and 4 members appointed by the holders of a majority of the Common Stock held by persons defined as “permitted holders” under the indentures for the 2003 Notes, 2004 Notes and Amended 2004 Notes. Finally, the Stockholders’ Agreement provides that certain holders of Common Stock will have demand registration rights after July 18, 2009 and additional demand and piggyback registration rights following an initial public offering of the Common Stock.

On July 18, 2006, the Company also entered into the Registration Rights Agreement that is binding on all parties receiving shares of Series AA Preferred Stock, pursuant to the terms of the Plan. The Registration Rights Agreement requires the Company to take all actions reasonably required to permit the Series AA Preferred Stock to be quoted on the NASDAQ OTC Bulletin Board as soon as practicable.

The Company adopted the Stock Plan on July 18, 2006, which provides for the issuance to the Chief Executive Officer and other officers of the Company of Series M Preferred Stock that, when combined with awards under the Cash Plan, will entitle such officers to a maximum of 8% of the equity value of the Company, in the aggregate. Participants in the Stock Plan and Cash Plan will only receive distributions upon the occurrence of certain extraordinary corporate transactions, such as a sale of all or substantially all of the Company’s assets or a change in control of the Company. The Stock Plan and Cash Plan will be administered by the Company’s Board or a committee composed of non-employee directors.

On February 20, 2007, the Company issued 8,000 shares of Series M Preferred Stock to certain employees pursuant to the Stock Plan. Upon receiving their awards in February 2007, participants purchased their shares of Series M Preferred Stock for \$20 per share. The shares were issued for an aggregate purchase price of \$160,000. At that time, the fair market value of the shares of Series M Preferred Stock (as determined by an appraisal by an independent appraisal firm), was \$103 per share. Each participant made an election under Section 83(b) of the Internal Revenue Code to pay tax at that time on the \$83 difference between those amounts; and the Company paid a bonus of approximately \$138 per share (the tax-grossed-up amount of the \$83 difference) to each participant to enable the participant to pay such taxes.

In addition, the Company recognized the fair market of \$103 per share, less par value of \$.01 per share, as additional paid in capital of approximately \$824,000 and included the cost of the tax-gross-up of \$437,000 and the difference between fair market value and purchase price of \$664,000 in reorganization and other costs in the accompanying condensed consolidated statement of operations.

On April 17, 2007 we awarded certain participants rights to purchase an additional 220 shares of Series M Preferred Stock, also for \$20 per share, after re-purchasing those additional shares from a former named executive officer.

The Company incurred professional fees and other expenses directly associated with the bankruptcy proceedings. In addition, the Company has made certain adjustments to the carrying values of certain pre-petition assets and liabilities. Such costs and adjustments are classified as reorganization costs in the accompanying consolidated statements of operations and consist of the following (in thousands):

	<u>2008</u>
<b>Professional fees<sup>(1)</sup></b>	<b>\$3,358</b>
<b>Reorganization costs</b>	<b>\$3,358</b>

(1) The professional fees and other costs in 2008 include \$1,815 associated with our 2006 Chapter 11 filings and \$1,543 associated with our 2009 Chapter 11 filings discussed in further detail in footnote 18 Subsequent Events.

## 18. SUBSEQUENT EVENTS

### *Chapter 11 Bankruptcy Filings*

On February 10, 2009, in anticipation of the filing of the Chapter 11 Petitions, the Company entered into a Restructuring and Lockup Agreement (the “Lockup Agreement”) with the holders of more than 66 2/3% in principal amount of its Amended 2004 Notes and 2004 Notes, in the aggregate, pursuant to which such holders agreed, subject to the terms and conditions contained in the Lockup Agreement, to support the Company’s proposed financial restructuring described in the plan of reorganization (the “2009 Plan”). Under the terms of the 2009 Plan, the holders of the Company’s Amended 2004 Notes and 2004 Notes will exchange their Notes for 100% of the reorganized Company’s common stock (subject to dilution by equity issued upon the exercise of warrants and equity that may be granted pursuant to a management incentive plan). The Plan also provides that, to the extent classes containing the Company’s 2003 Notes, 2007 Notes and general unsecured claims vote to accept the Plan, the holders of claims in such classes will receive a pro rata distribution of new warrants to be issued pursuant to the Plan. Completion of the proposed financial restructuring described in the Plan is subject to a number of conditions, including Bankruptcy Court approval of the Plan.

On February 11, 2009, the Company and certain of its subsidiaries (collectively, the “Debtors”), filed Chapter 11 Petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and the Company’s Canadian subsidiaries and one U.S. subsidiary filed an application commencing the CCAA Proceedings. The Chapter 11 Petitions are being jointly administered under the caption “In re Pliant Corporation, et. al.” Case No. 09 10443. The CCAA Proceedings are being administered under the caption “In the matter of Pliant Corporation of Canada Ltd., and Uniplast Industries Co. (Ontario S.C.J. Court File No. 09-LL-8007).” The Debtors will continue to operate their businesses as “debtors-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. Pliant’s subsidiaries in Australia, Germany and Mexico were not included in the filings and will continue their business operations without supervision from the Bankruptcy Court and will not be subject to the chapter 11 requirements of the Bankruptcy Code.

The filing of the Chapter 11 Petitions constitutes or may constitute an event of default or otherwise triggers or may trigger repayment obligations under the express terms of certain instruments and agreements relating to direct financial obligations of the Debtors (the “Debt Documents”). In addition, various interest and/or principal payments may become due under the Debt Documents during the pendency of the proceedings in the Bankruptcy Court or the CCAA Proceedings, and payments under the Debt Documents will not be made unless otherwise ordered by the Bankruptcy Court or the Canadian Court. As a result of such events of default or triggering events, all obligations under the Debt Documents would, by the terms of the Debt Documents, have or may become due and payable. The Debtors believe that any efforts to enforce such payment obligations against the Debtors under the Debt Documents are stayed as a result of the filing of the Chapter 11 Petitions in the Bankruptcy Court. The material Debt Documents are as follows:

- The Amended and Restated Indenture, dated as of February 17, 2004 (as amended and restated as of May 6, 2005, and supplemented as of July 18, 2006) pursuant to which the Company issued (a) its Amended 2004 Notes and (b) 2004 Notes (collectively, the “First Lien Notes”). The aggregate principal amount of First Lien Notes outstanding at February 10, 2009 was approximately \$393.6 million.
- Indenture, dated as of May 30, 2003, pursuant to which the Company issued its 2003 Notes (the “Second Lien Notes”). The aggregate principal amount of Second Lien Notes outstanding at February 10, 2009 was approximately \$250.0 million.
- Indenture, dated as of June 14, 2007, pursuant to which the Company issued its 2007 Notes (the “Subordinated Notes”). The aggregate principal amount of Subordinated Notes outstanding as of February 10, 2009 was approximately \$24.0 million.

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- Working Capital Credit Agreement, dated as of January 18, 2006. The aggregate principal amount outstanding under the Working Capital Credit Agreement as of February 10, 2009 was approximately \$158.2 million exclusive of letters of credit, and approximately \$16.0 million of this amount is attributable to certain foreign subsidiaries of the Company that are not Debtors.
- Fixed Asset Credit Agreement, the aggregate principal amount outstanding under the Fixed Asset Credit Agreement as of February 10, 2009 was approximately \$3.1 million.

### **Debtor-In-Possession (“DIP”) Financing**

On February 13, 2009, the Bankruptcy Court entered an order (the “Interim Order”) granting interim approval of a Secured Super-Priority Debtor-In-Possession Multiple Draw Term Loan Agreement (the “DIP Credit Agreement”) with The Bank of New York Mellon, as administrative agent, and the Lenders from time to time party thereto, as well as other documents relating thereto. The Company’s Canadian subsidiaries received similar relief under the CCAA. Also on February 13, 2009 (the “Closing Date”), the Debtors entered into the DIP Credit Agreement. On March 20, 2009, the Bankruptcy Court granted final approval of the DIP Credit Agreement.

The DIP Credit Agreement provides for borrowings up to an aggregate committed amount of \$75,000,000, consisting of (i) an initial \$25,000,000 term loan borrowing on the Closing Date, (ii) up to three additional term loan borrowings after the Closing Date in an aggregate amount not to exceed \$25,000,000, and (iii) subject to the satisfaction of certain conditions, one additional \$25,000,000 term loan borrowing for the purpose of paying debt of foreign subsidiaries (the borrowing described in this clause (iii), the “Debt Repayment Borrowing”). The outstanding principal amount of the loans under the DIP Credit Agreement, plus interest accrued and unpaid thereon, will be due and payable in full at maturity, which is, subject to an earlier maturity date under certain circumstances, no later than the nine-month anniversary of the Closing Date (subject to a one-month extension if a plan of reorganization is confirmed by the Bankruptcy Court and recognized by the Canadian Court).

Borrowings under the DIP Credit Agreement are guaranteed by the Debtors, and are secured by (i) first priority liens in certain presently owned and hereafter acquired assets of the Debtors not subject to a lien in and security interest on the date of the Chapter 11 Petitions, (ii) junior liens in all property of the Debtors that is subject to a lien in or security interest on the date of the Chapter 11 Petitions (other than priming liens described in the next sentence) and (iii) first priority senior priming liens in all property of the Debtors that is subject to a lien in or security interest on the date of the Chapter 11 Petitions securing the Pre-Petition Secured Facilities and the Second Lien Notes (other than the liens of the Prepetition Working Capital Agent and Prepetition Working Capital Lenders in the Prepetition Working Capital First Priority Collateral, the Postpetition Working Capital First Priority Collateral, and the liens of the Fixed Asset Agent and the Fixed Asset Lenders under the Prepetition Fixed Asset Credit Agreement), in each case subject to certain permitted liens. Subject to certain exceptions, the DIP Credit Agreement requires certain mandatory prepayments of borrowings from the net proceeds of certain asset dispositions, casualty or condemnation payments and equity or debt issuances. In addition, the DIP Loan Agreement requires a mandatory prepayment of any proceeds of the Debt Repayment Borrowing not used to pay down pre-petition debt as set forth in the DIP Loan Agreement.

The DIP Credit Agreement includes affirmative, negative and financial covenants that impose substantial restrictions on the financial and business operations of the Company and certain of its subsidiaries, including their ability to incur or secure debt, make investments, sell assets, pay dividends or make acquisitions. The DIP Credit Agreement contains events of default customary for debtor-in-possession financings of this type.

### **Reorganization Process**

The Bankruptcy Courts have approved payment of certain of the Company’s pre-petition obligations, including employee wages, salaries and benefits, and the payment of certain vendors and other providers and other business-related payments necessary to maintain the operation of the Company’s business. The Bankruptcy

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Code authorizes the Company to pay vendors and other service providers in the ordinary course for goods and services received after the filing of the Chapter 11 Petitions and Canadian Petitions. The Company has retained legal and financial professionals to advise it on the bankruptcy proceedings. From time to time, the Company may seek the Bankruptcy Court's approval for the retention of additional professionals.

Immediately after filing the Chapter 11 Petition and Canadian Petition, the Company began notifying all known current or potential creditors of the bankruptcy filings. Subject to certain exceptions under the Bankruptcy Code and the CCAA, the Company's bankruptcy filings automatically enjoined, or stayed, the continuation of any judicial or administrative proceedings or other actions against the Company or our property to recover, collect or secure a claim arising prior to the filing of the Chapter 11 Petition and Canadian Petition. Thus, for example, most creditor actions to obtain possession of property from the Company, or to create, perfect or enforce any lien against its property, or to collect on monies owed or otherwise exercise rights or remedies with respect to a pre-petition claim are enjoined unless and until the Bankruptcy Court or the Canadian Court, as applicable, lifts the automatic stay.

As required by the Bankruptcy Code, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Creditors' Committee"). The Creditors' Committee and its legal representatives have a right to be heard on all matters that come before the Bankruptcy Court with respect to the Company. A monitor has been appointed by the Canadian Court with respect to proceedings before the Canadian Court.

Under Section 365 and other relevant sections of the Bankruptcy Code, the Company may assume, assume and assign, or reject certain executory contracts and unexpired leases, including leases of real property and equipment, subject to the approval of the Bankruptcy Court and certain other conditions. Any description of an executory contract or unexpired lease in this report, including where applicable our express termination rights or a quantification of our obligations, must be read in conjunction with, and is qualified by, any overriding rejection rights we have under Section 365 of the Bankruptcy Code.

In order to successfully exit chapter 11, the Company will need to propose and obtain confirmation by the Bankruptcy Court and the Canadian Court of a plan of reorganization that satisfies the requirements of the Bankruptcy Code and the CCAA. A plan of reorganization would resolve the Company's pre-petition obligations, set forth the revised capital structure of the newly reorganized entity and provide for corporate governance subsequent to the Company's exit from bankruptcy.

The Company has the exclusive right for 120 days after the filing of the Chapter 11 Petition to file a plan of reorganization. The Company will likely file one or more motions to request extensions of this exclusivity period, which are routinely granted up to 18 months in bankruptcy cases of this size and complexity. If the Company's exclusivity period lapsed, any party in interest would be able to file a plan of reorganization. In addition to being voted on by holders of impaired claims and equity interests, a plan of reorganization must satisfy certain requirements of the Bankruptcy Code and the CCAA and must be approved, or confirmed, by the Bankruptcy Courts in order to become effective.

The timing of filing a plan of reorganization by the Company will depend on the timing and outcome of numerous other ongoing matters in the Chapter 11 proceedings. There can be no assurance at this time that a plan of reorganization will be confirmed by the Bankruptcy Court and the Canadian Court or that any such plan will be implemented successfully.

Under the priority scheme established by the Bankruptcy Code and the CCAA, unless creditors agree otherwise, pre-petition liabilities and post-petition liabilities must be satisfied in full before stockholders are entitled to receive any distribution or retain any property under a plan of reorganization. The ultimate recovery to creditors and/or stockholders, if any, will not be determined until confirmation of a plan or plans of reorganization. No assurance can be given as to what values, if any, will be ascribed to each of these constituencies or what types or amounts of distributions, if any, they would receive. A plan of reorganization

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could result in holders of the Company's liabilities and/or securities, including its common stock, receiving no distribution on account of their interests and cancellation of their holdings. Because of such possibilities, the value of the Company's liabilities and securities, including its common stock, is highly speculative. Appropriate caution should be exercised with respect to existing and future investments in any of the Company's liabilities and/or securities. At this time there is no assurance the Company will be able to restructure as a going concern or successfully propose or implement a plan of reorganization.

For periods subsequent to the chapter 11 bankruptcy filings, the Company will apply the American Institute of Certified Public Accountants Statement of Position ("SOP") 90-7, "Financial Reporting by Entities in Reorganization under the Bankruptcy Code" ("SOP 90-7"), in preparing the consolidated financial statements. SOP 90-7 requires that the financial statements distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business. Accordingly, certain revenues, expenses (including professional fees), realized gains and losses and provisions for losses that are realized or incurred in the bankruptcy proceedings will be recorded in reorganization items on the consolidated statements of operations. In addition, pre-petition obligations that may be impacted by the bankruptcy reorganization process will be classified on the consolidated balance sheet in liabilities subject to compromise. These liabilities will be reported at the amounts expected to be allowed by the Courts, even if they may be settled for lesser amounts.

### **Going Concern Matters**

The consolidated financial statements and related notes have been prepared assuming that the Company will continue as a going concern, although its chapter 11 bankruptcy filings raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments related to the recoverability and classification of recorded assets or to the amounts and classification of liabilities or any other adjustments that might be necessary should the Company be unable to continue as a going concern. The Company's ability to continue as a going concern is dependent on many factors, including, but not limited to, market conditions and the Company's ability to improve profitability, obtain alternative financing to replace the DIP Credit Agreement and prepetition Credit Agreement and restructure its obligations in a manner that allows it to obtain confirmation of a plan of reorganization by the Bankruptcy Court and the Canadian Court.

In order to improve profitability, management is taking actions to further reduce corporate and operational expenses and is continuing to align manufacturing capacity to meet market demands and standardize manufacturing processes throughout all operations. These actions will result in the closure of manufacturing facilities, consolidation of production equipment and product manufacturing into existing facilities and reductions in headcount during 2009.



**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

As of September 30, 2009 (Unaudited) and December 31, 2008 (Dollars in Thousands)

	September 30, 2009	December 31, 2008
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 35,683	\$ 28,485
Receivables, net of allowances of \$4,032 and \$3,922, respectively	114,007	117,109
Inventories	89,756	79,923
Prepaid expenses and other	12,937	5,890
Income taxes receivable, net	268	722
Deferred income taxes	11,169	10,705
Total current assets	263,820	242,834
PLANT AND EQUIPMENT, net	252,390	270,072
GOODWILL	2,600	2,422
INTANGIBLE ASSETS, net	3,888	3,869
OTHER ASSETS	7,947	13,283
<b>TOTAL ASSETS</b>	<b>\$ 530,645</b>	<b>\$ 532,480</b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
<b>CURRENT LIABILITIES:</b>		
Debtor-In-Possession Financing	\$ 40,000	\$ —
Current portion of long-term debt and debt in default	23,653	857,881
Trade accounts payable	61,461	61,688
Accrued liabilities:		
Interest payable	1,618	11,944
Customer rebates	5,542	9,291
Other	39,761	34,502
Total current liabilities	172,035	975,306
OTHER LIABILITIES	38,603	32,255
DEFERRED INCOME TAXES	22,775	38,633
LIABILITIES SUBJECT TO COMPROMISE	868,700	—
Total Liabilities	1,102,113	1,046,194
<b>STOCKHOLDERS' DEFICIT:</b>		
Redeemable Preferred Stock—Series AA—335,650 shares authorized, par value \$.01 per share, with a redemption and liquidation value of \$1,000 per share plus accumulated dividends, 334,894 shares outstanding at September 30, 2009 and December 31, 2008	309,166	302,424
Redeemable Preferred Stock—Series M—8,000 shares authorized, par value \$.01 per share, 8,000 shares outstanding at September 30, 2009 and December 31, 2008	—	—
Common stock—par value \$.01 per share; 100,050,000 shares authorized, 97,348 shares outstanding at September 30, 2009 and December 31, 2008	1	1
Paid in capital	155,341	155,341
Accumulated deficit	(993,280)	(930,426)
Accumulated other comprehensive loss	(42,696)	(41,054)
Total stockholders' deficit	(571,468)	(513,714)
<b>TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	<b>\$ 530,645</b>	<b>\$ 532,480</b>

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**For The Nine Months Ended September 30, 2009 and 2008 (in Thousands) (Unaudited)**

	Nine Months Ended	
	September 30,	
	2009	2008
NET SALES	\$686,941	\$881,019
COST OF SALES	617,147	820,995
Gross Profit	69,794	60,024
OPERATING EXPENSES:		
Sales, General and Administrative	42,165	49,746
Research and Development	4,630	5,019
Restructuring and Other Costs	3,402	10,485
Reorganization Cost	28,163	159
Fixed Asset Impairments	5,623	112
Total operating expenses	83,983	65,521
OPERATING LOSS	(14,189)	(5,497)
INTEREST EXPENSE	(56,591)	(68,596)
OTHER INCOME (EXPENSE)—Net	585	283
LOSS BEFORE INCOME TAXES	(70,195)	(73,810)
INCOME TAX BENEFIT	(14,070)	(78)
NET LOSS	<u>\$ (56,125)</u>	<u>\$ (73,732)</u>

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW**  
**For The Nine Months Ended September 30, 2009 and 2008 (in Thousands) (Unaudited)**

	Nine Months Ended September 30,	
	2009	2008
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$(56,125)	\$(73,732)
Adjustments to reconcile net loss to net cash (used in)/provided by operating activities:		
Depreciation and amortization	32,374	33,179
Fixed asset impairment	8,214	5,953
Amortization of deferred financing costs and accretion of debt discount	5,301	4,427
Payment-in-kind interest on debt	34,455	30,710
Provision for losses on accounts receivable	(369)	—
Deferred income taxes	(16,276)	(85)
Loss on disposal of assets	—	75
Changes in assets and liabilities:		
Receivables	5,508	(25,537)
Inventories	(8,825)	1,053
Prepaid expenses and other	(1,389)	(745)
Income taxes payable/receivable	368	(727)
Other assets	4,677	(477)
Trade accounts payable	12,646	14,731
Accrued liabilities	7,260	(13,588)
Other liabilities	(126)	(4,701)
Net cash provided by/(used in) operating activities	27,693	(29,464)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures for plant and equipment	(20,168)	(21,981)
Proceeds from sale of assets	—	2,959
Net cash used in investing activities	(20,168)	(19,022)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under DIP facilities	40,000	—
Payment of financing fees	(6,713)	—
Borrowings under capital leases and other, net	1,787	10,533
Borrowings under (repayment of) revolving credit facility	(34,629)	55,000
Net cash provided by financing activities	445	65,533
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS	(772)	(87)
NET INCREASE IN CASH AND CASH EQUIVALENTS	7,198	16,960
CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD	28,485	7,258
CASH AND CASH EQUIVALENTS, END OF THE PERIOD	\$ 5,683	\$ 4,218
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the period for:		
Interest	11,618	41,923
Income taxes	1,073	1,083

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
**For The Nine Months Ended September 30, 2009 and 2008 (in Thousands) (Unaudited)**

	Total	Preferred Stock				Common Stock			Paid In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss
		Series AA	Series M	Series M	Series M	Shares	Amount	Amount			
	Shares	Amount	Shares	Amount	Shares	Amount	Amount				
BALANCE- December 31, 2008	335	\$302,424	8	\$ —	97	\$ 1	\$155,341	\$ (930,426)	\$ (41,054)		
Comprehensive loss:											
Net loss	—	—	—	—	—	—	—	(56,125)	—		
Change in unrecognized pension benefit costs	—	—	—	—	—	—	—	13	(5,655)		
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	4,013		
Comprehensive loss	—	—	—	—	—	—	—	—	—		
Preferred stock dividends	—	(6,742)	—	—	—	—	—	(6,742)	—		
	335	\$309,166	8	\$ —	97	\$ 1	\$155,341	\$ (993,280)	\$ (42,696)		

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

**1. Basis of Presentation**

The unaudited interim condensed consolidated financial statements of Pliant Corporation and its subsidiaries (collectively “Pliant”, the “Company” or “we”) were prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). The information reflects all normal recurring adjustments that, in the opinion of management, are necessary for a fair presentation of the financial position, results of operations and cash flows of Pliant as of the dates and for the periods presented.

These statements should be read in conjunction with the Company’s Consolidated Financial Statements for the year ended December 31, 2008.

In June 2009, the Financial Accounting Standards Board (the “FASB”) issued FASB Statement 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*—a replacement of FASB Statement No. 162, *The Hierarchy of Generally Accepted Accounting Principles*, which identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements that are presented in conformity with GAAP. This new standard requires that the FASB’s Accounting Standards Codification (“ASC”) become the sole source of GAAP principles recognized by the FASB for nongovernmental entities and is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The adoption of this standard has changed how we reference various elements of GAAP when preparing our financial statement disclosures, but did not have an impact on the Company’s financial position, results of operations or cash flows or its accounting policies.

Effective January 1, 2009, the Company adopted the provisions of the FASB’s changes to ASC 810 *Consolidation* (formerly, SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements: An Amendment of ARB No. 51*). ASC 810 changes the accounting for non-controlling (minority) interests in consolidated financial statements, requires non-controlling interests to be reported as part of equity and changes the income statement presentation of income or losses attributable to non-controlling interests. ASC 810 did not have a material impact on the Company’s consolidated financial statements.

Effective June 15, 2009, the Company adopted the provisions of the FASB’s changes to ASC 855, *Subsequent Events* (SFAS No. 165, *Subsequent Events*). ASC 855 requires entities to disclose the date through which subsequent events have been evaluated and the basis for such date. As of December 11, 2009, the date the financial statements were issued, the Company has determined that no material subsequent events have occurred, other than those discussed in Note 13.

**Reorganization Process**

On February 11, 2009, Pliant Corporation and certain of its subsidiaries (collectively, the “Debtors”), filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (the “Chapter 11 Cases”) seeking relief under the provisions of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered under the caption “In re: Pliant Corporation et al.,” Case No. 09-10443. In addition, certain of the Company’s Canadian subsidiaries filed an application commencing recognition proceedings (the “CCAA Proceedings”) under Section 18.6 of the Companies’ Creditors Arrangement Act (Canada) (the “CCAA”) with the Ontario Superior Court of Justice (the “Canadian Court”). The Debtors have continued to operate their businesses as “debtors-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. Pliant’s subsidiaries in Australia, Germany and Mexico were not included in the filings and have continued their business operations without supervision from the Bankruptcy Court and are not subject to the Chapter 11 requirements of the Bankruptcy Code. (See note 13 – Subsequent Events, for details on the Chapter 11 Cases.) On October 6,

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2009, the Bankruptcy Court entered an order confirming the “Joint Plan” as herein after defined. The plan of reorganization has not yet gone effective and its effectiveness remains subject to the satisfaction of certain conditions precedent.

ASC 852, *Reorganizations*, (formerly, American Institute of Certified Public Accountants Statement of Position 90-7, “Financial Reporting by Entities in Reorganization under the Bankruptcy Code” (“ASC 852”), applies to the Company’s financial statements for periods subsequent to February 11, 2009. ASC 852 generally does not change the manner in which financial statements are prepared. However, it does require that the financial statements for periods subsequent to the filing of the Chapter 11 petition distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business. Expenses, realized gains and losses, and provisions for losses that can be directly associated with the reorganization and restructuring of the business are reported separately as reorganization costs in the statements of operations. The balance sheet also distinguishes prepetition liabilities subject to compromise from those prepetition liabilities that are not subject to compromise and from post-petition liabilities. Liabilities that may be affected by a plan of reorganization are reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. In addition, cash provided by reorganization items is disclosed separately in the statement of cash flows.

### **Going Concern Matters**

The consolidated financial statements and related notes have been prepared assuming that the Company will continue as a going concern, although its Chapter 11 bankruptcy filings raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments related to the recoverability and classification of recorded assets or to the amounts and classification of liabilities or any other adjustments that might be necessary should the Company be unable to continue as a going concern. The Company’s ability to continue as a going concern is dependent on many factors, including, but not limited to, market conditions and the Company’s ability to improve profitability, obtain alternative financing to replace the DIP Credit Agreement and prepetition Credit Agreement and restructure its obligations in a manner that allows it to execute a plan of reorganization confirmed by the Bankruptcy Court and the Canadian Court.

In order to improve profitability, management has taken and will continue to take actions to further reduce corporate and operational expenses and its continuing to align manufacturing capacity to meet market demands and standardize manufacturing processes throughout all operations. These actions will result in the closure of manufacturing facilities, consolidation of production equipment and product manufacturing into existing facilities and reductions in headcount during 2009 and will continue into 2010.

### **2. Liabilities Subject to Compromise, Reorganization Items and Debtors’ Financial Statements**

Liabilities subject to compromise represent unsecured obligations that will be accounted for under a plan of reorganization. Generally, actions to enforce or otherwise effect payment of pre-Chapter 11 or CCAA liabilities are stayed. SOP 90-7 requires pre-petition liabilities that are subject to compromise to be reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. These liabilities represent the amounts expected to be allowed on known or potential claims to be resolved through the Chapter 11 and CCAA process, and remain subject to future adjustments arising from negotiated settlements, actions of the Bankruptcy Courts, rejection of executory contracts and unexpired leases, the determination as to the value of collateral securing the claims, proofs of claim, or other events. Liabilities subject to compromise also include certain items that may be assumed under the plan of reorganization, and as such, may be subsequently reclassified to liabilities not subject to compromise.

The Bankruptcy Courts have approved payment of certain pre-petition obligations, including employee wages, salaries and benefits, and the payment of vendors and other providers in the ordinary course for goods and services received after the filing of the Chapter 11 Petitions and the Canadian Petition and other business-related payments necessary to maintain the operation of the Company’s business. Obligations associated with these matters are not classified as liabilities subject to compromise.

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In accordance with ASC 852, debt issuance cost should be viewed as valuations of the related debt. Issuance costs associated with unsecured debt is included as a valuation adjustment within the liabilities subject to compromise.

The Company has rejected certain pre-petition executory contracts and unexpired leases with respect to the Company's operations with the approval of the Bankruptcy Courts. Damages resulting from rejection of executory contracts and unexpired leases are included in reorganization costs.

The filing of the Chapter 11 Petitions constitutes or may constitute an event of default or otherwise trigger or may trigger repayment obligations under the express terms of certain instruments and agreements relating to direct financial obligations of the Debtors (the "Debt Documents"). In addition, various interest and/or principal payments may become due under the Debt Documents during the pendency of the proceedings in the Bankruptcy Court or the CCAA Proceedings, and payments under the Debt Documents will not be made unless otherwise ordered by the Bankruptcy Court or the Canadian Court. As a result of such events of default or triggering events, all obligations under the Debt Documents would, by the terms of the Debt Documents, have or may become due and payable. The Debtors believe that any efforts to enforce such payment obligations against the Debtors under the Debt Documents are stayed as a result of the filing of the Chapter 11 Petitions in the Bankruptcy Court. The material Debt Documents are as follows:

- The Amended and Restated Indenture, dated as of February 17, 2004 (as amended and restated as of May 6, 2005, and supplemented as of July 18, 2006) pursuant to which the Company issued (a) its Amended 2004 Notes and (b) 2004 Notes (collectively, the "First Lien Notes"). The aggregate principal amount of First Lien Notes outstanding at February 10, 2009 was approximately \$393.6 million.
- Indenture, dated as of May 30, 2003, pursuant to which the Company issued its 2003 Notes (the "Second Lien Notes"). The aggregate principal amount of Second Lien Notes outstanding at February 10, 2009 was approximately \$250.0 million.
- Indenture, dated as of June 14, 2007, pursuant to which the Company issued its 2007 Notes (the "Subordinated Notes"). The aggregate principal amount of Subordinated Notes outstanding as of February 10, 2009 was approximately \$24.0 million.
- Working Capital Credit Agreement, dated as of July 18, 2006. The aggregate principal amount outstanding under the Working Capital Credit Agreement as of February 10, 2009 was approximately \$158.2 million exclusive of letters of credit, and approximately \$16.0 million of this amount is attributable to certain foreign subsidiaries of the Company that are not Debtors.
- Fixed Asset Credit Agreement dated as of July 18, 2006, the aggregate principal amount outstanding under the Fixed Asset Credit Agreement as of February 10, 2009 was approximately \$3.1 million.

In addition, the Company's pre-petition debt liabilities subject to compromise reflects the Debtors' other liabilities incurred prior to commencement of the bankruptcy proceedings. Those amounts represent the Company's best estimate of known or potential claims to be resolved in connection with the bankruptcy proceedings. Such claims remain subject to future adjustments, based on such things as (i) negotiations, (ii) actions taken by the Bankruptcy Court, (iii) further developments with respect to disputed claims, (iv) the determination of the value of collateral securing claims, (v) filing of proof of claims or (vi) other events.

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Liabilities subject to compromise as of September 30, 2009 consist of the following:

	(\$ Thousands)
<b>Debt</b>	
Revolver, variable interest, 5.4% as of September 30, 2009	\$ 144,097
Senior secured discount notes at 11.35% (formerly 11.125%) (2004 Notes)	7,856
Senior secured notes, interest at 11.125% (2003 Notes)	249,118
Senior secured notes, interest at 11.85% (formerly 11.625%) (Amended 2004 Notes)	414,029
Senior subordinated notes, interest at 18.0% (2007 Notes)	22,898
<b>Total Debt</b>	<b>837,998</b>
<b>Accrued interest on debt subject to compromise</b>	<b>14,954</b>
<b>Prepetition Accounts Payable subject to compromise</b>	<b>14,126</b>
<b>Other accrued liabilities subject to compromise</b>	<b>1,622</b>
<b>Total Liabilities Subject to Compromise</b>	<b>\$ 868,700</b>

The Debtors have incurred professional fees and other expenses directly associated with the bankruptcy proceedings. In addition, the Debtors have made certain adjustments to the carrying values of certain pre-petition assets and liabilities. Such costs and adjustments are classified as reorganization items in the accompanying condensed consolidated statement of operations for the nine months ended September 30, 2009 and consist primarily of professional fees of \$25.1 million and legal and other fees associated with unsuccessful financing activities of \$2.4 million.

The Company's bankruptcy filing included Pliant and eight subsidiaries, collectively referred to as the "Debtors." Presented below are the condensed combined financial statements of the Debtors. These financial statements reflect the financial position, results of operations and cash flows of the combined Debtors, including certain transactions and resulting asset and liabilities between the Debtor and non-Debtor subsidiaries of the Company, which are eliminated in the Company's consolidated financial statements. Net cash paid for reorganization items for the nine months ended September 30, 2009 totaled \$19.4 million related to professional fees.



[Table of Contents](#)**DEBTORS (FILING SUBSIDIARIES ONLY) CONDENSED COMBINED BALANCE SHEETS AS OF SEPTEMBER 30, 2009 (DOLLARS IN THOUSANDS) (UNAUDITED)**

	September 30, 2009
<b>ASSETS</b>	
<b>CURRENT ASSETS:</b>	
Cash and cash equivalents	\$ 30,611
Receivables, net of allowances	89,778
Inventories	80,258
Prepaid expenses and other	10,650
Deferred income taxes	10,552
Total current assets	221,849
PLANT AND EQUIPMENT, net	236,517
GOODWILL AND INTANGIBLE ASSETS	6,488
INVESTMENT IN SUBSIDIARIES	28,581
OTHER ASSETS	5,172
<b>TOTAL ASSETS</b>	<b>\$ 498,607</b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	
<b>CURRENT LIABILITIES:</b>	
Debtor-In-Possession Financing	\$ 40,000
Debt in default	20,492
Trade accounts payable	52,450
Accrued liabilities:	
Interest payable	1,618
Customer rebates	5,542
Other	36,740
Due to (from) affiliates	(12,502)
Total current liabilities	144,340
OTHER LIABILITIES	33,297
DEFERRED INCOME TAXES	23,644
LIABILITIES SUBJECT TO COMPROMISE	868,794
Total Liabilities	1,070,075
<b>STOCKHOLDERS' DEFICIT:</b>	
Preferred stock	309,166
Common stock	1
Paid in Capital	155,341
Accumulated deficit	(993,280)
Accumulated other compensation loss	(42,696)
Total stockholders' deficit	(571,468)
<b>TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	<b>\$ 498,607</b>

**DEBTORS (FILING SUBSIDIARIES ONLY)**  
**CONDENSED COMBINED STATEMENTS OF OPERATIONS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009**  
**(UNAUDITED)**

	September 30, 2009
NET SALES	\$ 638,460
COST OF SALES	576,492
Gross Profit	61,968
OPERATING EXPENSES:	
Selling, General and Administrative	37,120
Research and Development	4,594
Restructuring and Other Costs	3,402
Reorganization Costs	28,163
Fixed Asset Impairments	5,463
Total Operating Expenses	78,742
OPERATING INCOME (LOSS)	(16,774)
INTEREST EXPENSE—Current and Long-term debt	(55,881)
EQUITY IN EARNINGS OF SUBSIDIARIES	880
OTHER INCOME—Net	634
LOSS BEFORE INCOME TAXES	(71,141)
INCOME TAX BENEFIT	(15,016)
NET LOSS	\$ (56,125)

**DEBTORS (FILING SUBSIDIARIES ONLY)**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009**  
**(IN THOUSANDS) (UNAUDITED)**

	September 30, 2009
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>	
Net loss	\$ (56,125)
Adjustments to reconcile net loss to net cash (used in)/provided by operating activities:	
Depreciation and amortization	29,413
Fixed asset impairment	8,054
Amortization of deferred financing costs and accretion of debt discount	5,301
Payment-in-kind interest on debt	34,455
Provision for losses on accounts receivable	(271)
Deferred income taxes	(16,163)
Changes in assets and liabilities:	
Receivables	5,824
Inventories	(9,375)
Prepaid expenses and other	(1,965)
Income taxes payable/receivable	598
Other assets	4,439
Trade accounts payable	12,109
Accrued liabilities	6,771
Due to affiliates	(3,685)
Other liabilities	(261)
Net cash (used in)/provided by operating activities	19,119
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>	
Capital expenditures for plant and equipment	(19,212)
Net cash used in investing activities	(19,212)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>	
Borrowings under DIP facilities	40,000
Payment of financing fees	(6,713)
Borrowings under capital leases and other, net	1,875
Repayments of revolving credit facility	(18,629)
Loans to affiliates	(10,000)
Net cash provided by financing activities	6,533
<b>EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS</b>	<b>(785)</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>5,655</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD</b>	<b>25,168</b>
<b>CASH AND CASH EQUIVALENTS, END OF THE PERIOD</b>	<b>\$ 30,823</b>

See notes to condensed consolidated financial statements.

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### 3. Inventories

Inventories are valued at the lower of cost (using the first-in, first-out method) or market value. Inventories as of September 30, 2009 and December 31, 2008 consisted of the following (in thousands):

	September 30, 2009	December 31, 2008
Finished goods	\$ 46,884	\$ 42,176
Raw materials	33,787	28,032
Work-in-process	9,085	9,715
Total	\$ 89,756	\$ 79,923

### 4. Restructuring and Other Costs

Restructuring and other costs include plant closing costs (including costs related to relocation of manufacturing equipment), office closing costs and other costs related to workforce reductions.

The following table summarizes restructuring and other costs for the nine months ended September 30 (in thousands):

	Nine Months Ended September 30,	
	2009	2008
<b>Plant closing costs:</b>		
Severance	\$(1,038)	\$ 910
Other plant closure costs	1,695	2,081
<b>Office closing and workforce reduction costs:</b>		
Severance	48	686
Other	106	967
<b>Fixed asset impairments related to plant closing</b>	<b>2,591</b>	<b>5,841</b>
<b>Total Restructuring and other costs</b>	<b>\$ 3,402</b>	<b>\$10,485</b>

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The following table summarizes the roll-forward of the accruals from December 31, 2008 to September 30, 2009 (in thousands, except for employees):

	Accruals for the nine months ended September 30, 2009								
	12/31/2008		Additional Employees	Severance	Other Plant Closure Costs	Total	Payments/ Charges	9/30/2009	
	# Employees Terminated	Accrual Balance						# Employees Terminated	Accrual Balance
<b>Plant Closing Costs:</b>									
Leases	—	851	—	—	—	—	(851)	—	—
Langley	—	171	—	25	—	25	(196)	—	—
South Deerfield	74	1,598	(53)	(55)	1,104	1,049	(2,512)	21	135
Harrington	46	760	(6)	(61)	368	307	(375)	40	692
Dalton	79	1,118	(79)	(918)	30	(888)	(230)	—	—
Newport News	22	249	(8)	(30)	194	164	(203)	14	210
	221	\$4,747	(146)	(1,039)	1,696	\$ 657	\$ (4,367)	75	\$1,037
<b>Office Closing/Workforce Reduction Costs:</b>									
2007 Workforce Reduction	—	69	—	—	—	—	(69)	—	—
2008 Workforce Reduction	2	24	(2)	48	106	154	(176)	—	2
	2	\$ 93	(2)	\$ 48	106	\$ 154	\$ (245)	—	\$ 2
<b>Fixed Asset Impairments related to Plant Consolidation Activities:</b>									
Toronto	—	—	—	—	—	76	—	—	—
Harrington	—	—	—	—	—	2,515	—	—	—
Total Fixed Asset Impairments	—	—	—	—	—	2,591	—	—	—
<b>Total Plant &amp; Office closing</b>	<b>223</b>	<b>\$4,840</b>	<b>(148)</b>	<b>\$ (991)</b>	<b>\$ 1,802</b>	<b>\$3,402</b>	<b>\$ (4,612)</b>	<b>75</b>	<b>\$1,039</b>

**Plant Closing Costs**

**2009**—During the first nine months of 2009, the Company incurred \$3.4 million of plant closure costs of which \$3.1 million were associated with the four previously announced plant closures: \$2.8 million related to Harrington, including \$2.5 million of a fixed asset impairment, which is in our Specialty Films segment; \$1.0 million related to South Deerfield which is in our Engineered Films segment; and \$0.2 million is associated with our Newport News technology center which is part of the Corporate/Other segment. During this period, management decided not to proceed with the previously announced closure of our Dalton, Georgia plant, which is in our Engineered Films segment and for which the Company reversed severance reserves of \$0.9 million.

**2008**—During the second quarter of 2008, we announced the planned closures of four of the Company's facilities: South Deerfield, MA and Dalton, GA in our Engineered Films segment, and Harrington, DE and Newport News, VA in our Specialty Films segment. These closings will improve operating scale at the remaining plants and reduce fixed costs. Furthermore, these plant closures are anticipated to reduce annual operating costs by \$8.9 million following completion of all plant closures. During the nine months ended September 30, 2008, we incurred \$8.6 million in connection with the four plant closures: \$2.1 million in our Engineered segment, of which \$0.9 million related to severance, \$0.8 million related to relocation of equipment and \$0.4 million related to fixed asset impairments; and \$1.7 million in our Specialty Films segment, of which \$0.8 million related to equipment relocation and product line consolidation and \$0.9 million related to fixed asset impairments. Also during the second quarter of 2008, we announced a reduction in workforce at other facilities and corporate

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planned to reduce operating costs by an additional \$6.1 million on an annual basis. During the nine months ended September 30, 2008, the Company incurred \$6.1 million in connection with this program including \$0.6 million in severance, \$0.9 million related to relocation of equipment and \$4.5 million in fixed asset impairments, the cost of which are reflected in the corporate operating results.

### 5. Debt

Debt as of September 30, 2009 and December 31, 2008 consists of the following (in thousands):

	September 30, 2009	December 31, 2008
DIP Credit Agreement	\$ 40,000	\$ —
Revolving credit facilities	144,097	173,579
Senior Secured Notes, interest at 11.85% (Amended 2004 Notes)	414,029	380,671
Senior Secured Discount Notes, interest at 11.35% (2004 Notes)	7,856	7,843
Senior Secured Notes, interest at 11.125% (2003 Notes)	249,118	250,000
Senior Subordinated Notes, interest at 18% (2007 Notes)	22,898	24,000
Obligations under capital leases	23,653	21,788
Total	901,651	857,881
Less current portion and debt in default	(901,651)	(857,881)
Long-term portion	\$ —	\$ —

On February 11, 2009, the Company and certain of its subsidiaries (collectively, the “Debtors”), filed Chapter 11 Petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and certain of the Company’s Canadian subsidiaries filed an application commencing the CCAA Proceedings. The filing of the Chapter 11 Petitions and the Canadian Petition constituted an event of default under the Company’s debt obligations, and those debt obligations became automatically and immediately due and payable, although any actions to enforce such payment obligations are stayed as a result of the filing of the Chapter 11 Petitions and the Canadian Petition. As a result, the Company’s outstanding debt is classified as current in the accompanying consolidated balance sheets. As previously disclosed in the 2008 financial statements the consolidated balance sheet as of December 31, 2008 includes a reclassification of \$857.8 million to current maturities of long-term debt from long-term debt. Due to the filing of the bankruptcy petitions, the Company’s unsecured long-term debt of \$838.0 million is included in liabilities subject to compromise at September 30, 2009 (See Note 2). Contractual interest expense represents amounts due under the contractual terms of outstanding debt, including debt subject to compromise for which interest expense is not recognized in accordance with the provisions of SOP 90-7. The Company did not record contractual interest expense on certain unsecured prepetition debt during the nine months ended September 30, 2009. See Note 6 for further details.

#### *Debtor-In-Possession (“DIP”) Financing*

On February 13, 2009, the Bankruptcy Court entered an order (the “Interim Order”) granting interim approval of a Secured Super-Priority Debtor-In-Possession Multiple Draw Term Loan Agreement (the “DIP Credit Agreement”) with The Bank of New York Mellon, as administrative agent, and the Lenders from time to time party thereto, as well as other documents relating thereto. The Company’s Canadian subsidiaries received similar relief under the CCAA. Also on February 13, 2009 (the “Closing Date”), the Debtors entered into the DIP Credit Agreement. On March 20, 2009, the Bankruptcy Court granted final approval of the DIP Credit Agreement.

The DIP Credit Agreement provides for borrowings up to an aggregate committed amount of \$75,000,000, consisting of (i) an initial \$25,000,000 term loan borrowing on the Closing Date, (ii) up to three additional term loan borrowings after the Closing Date in an aggregate amount not to exceed \$25,000,000, and (iii) subject to the satisfaction of certain conditions, one additional \$25,000,000 term loan borrowing for the purpose of paying debt

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of foreign subsidiaries (the borrowing described in this clause (iii), the “Debt Repayment Borrowing”). The outstanding principal amount of the loans under the DIP Credit Agreement, plus interest accrued and unpaid thereon, will be due and payable in full at maturity, which is, subject to an earlier maturity date under certain circumstances, no later than the nine-month anniversary of the Closing Date (subject to a one-month extension if a plan of reorganization is confirmed by the Bankruptcy Court and recognized by the Canadian Court).

Borrowings under the DIP Credit Agreement are guaranteed by the Debtors, and are secured by (i) first priority liens in certain presently owned and hereafter acquired assets of the Debtors not subject to a lien in and security interest on the date of the Chapter 11 Petitions, (ii) junior liens in all property of the Debtors that is subject to a lien in or security interest on the date of the Chapter 11 Petitions (other than priming liens described in the next sentence) and (iii) first priority senior priming liens in all property of the Debtors that is subject to a lien in or security interest on the date of the Chapter 11 Petitions securing the Pre-Petition Secured Facilities and the Second Lien Notes (other than the liens of the Prepetition Working Capital Agent and Prepetition Working Capital Lenders in the Prepetition Working Capital First Priority Collateral, the Postpetition Working Capital First Priority Collateral, and the liens of the Fixed Asset Agent and the Fixed Asset Lenders under the Prepetition Fixed Asset Credit Agreement), in each case subject to certain permitted liens. Subject to certain exceptions, the DIP Credit Agreement requires certain mandatory prepayments of borrowings from the net proceeds of certain asset dispositions, casualty or condemnation payments and equity or debt issuances. In addition, the DIP Loan Agreement requires a mandatory prepayment of any proceeds of the Debt Repayment Borrowing not used to pay down pre-petition debt as set forth in the DIP Loan Agreement.

The DIP Credit Agreement includes affirmative, negative and financial covenants that impose substantial restrictions on the financial and business operations of the Company and certain of its subsidiaries, including their ability to incur or secure debt, make investments, sell assets, pay dividends or make acquisitions. The DIP Credit Agreement contains events of default customary for debtor-in-possession financings of this type. As of September 30, 2009, we had \$40.0 million of borrowings outstanding under the DIP Credit Agreement with remaining availability of \$35.0 million and were in compliance with the covenants of this agreement.

### *Current Credit Facilities*

On July 18, 2006, the Company and/or certain of its subsidiaries entered into (i) a Working Capital Credit Agreement, among the Company, certain of its subsidiaries, the lenders party thereto, Merrill Lynch Bank USA, as administrative agent, and Merrill Lynch Commercial Finance Corp., as sole lead arranger and book manager (the “Working Capital Credit Agreement”), and (ii) a Fixed Asset Credit Agreement, among Pliant Corporation Pty Ltd., Pliant Corporation of Canada Ltd., Pliant Film Products GmbH and Aspen Industrial, S.A. de C.V., as borrowers, the lenders party thereto, Merrill Lynch Bank USA, as administrative agent, and Merrill Lynch Commercial Finance Corp., as sole lead arranger and book manager (the “Fixed Asset Credit Agreement,” and together with the Working Capital Credit Agreement, the “Revolving Credit Facilities”). The Revolving Credit Facilities provide up to \$200 million of total commitments, subject to the previously disclosed borrowing base. The Working Capital Credit Agreement includes a \$20 million letter of credit sub-facility, with letters of credit reducing availability thereunder, and each of the Revolving Credit Facilities includes sub-limits for loans to certain of the foreign subsidiaries of the Company which are borrowers under the Revolving Credit Facilities.

The Revolving Credit Facilities matured one month prior to the respective maturity dates of the Company’s senior notes: May 15, 2009 with respect to the Company’s 2004 Notes and Amended 2004 Notes, and August 15, 2009 with respect to the Company’s 2003 Notes. The interest rates for all loans other than those made to the Company’s German subsidiary range from, in the case of alternate base rate loans, the alternate base rate (either prime rate or .50% over the Federal Funds Rate) plus 1.75% to the alternate base rate plus 2.00% and, in the case of Eurodollar loans, LIBOR plus 2.75% to LIBOR plus 3.00%, in each case depending on the amount of available credit. The interest rates for loans made in connection with the loans to the Company’s German subsidiary are, in the case of alternate base rate loans, the alternate base rate plus 5.00% and, in the case of Eurodollar loans, LIBOR plus 6.00%. The commitment fee for the unused portion of the Revolving Credit Facilities is 0.375% per annum.

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On February 6, 2009, Pliant Corporation (the “Company”) received a notice (the “WCCA Default Notice”) from Merrill Lynch Bank USA, as Administrative Agent under the Working Capital Credit Agreement, dated as of July 18, 2006, among the Company, certain subsidiaries of the Company, the Lenders party thereto, and Merrill Lynch Bank USA, as Administrative Agent (the “Working Capital Credit Agreement”) stating that the Company incorrectly calculated the Domestic Borrowing Base (as defined in the Working Capital Credit Agreement) in the Borrowing Base Certificate (as defined in the Working Capital Credit Agreement) that the Company delivered to the Administrative Agent on February 2, 2009. The WCCA Default Notice provided that an incorrect calculation of the Domestic Borrowing Base is an Event of Default pursuant to Section VII(o) of the Working Capital Credit Agreement. The WCCA Default Notice also stated that the Company failed to prepay a portion of the outstanding loans as required by Section 2.10(b)(i) of the Working Capital Credit Agreement, which constituted an Event of Default pursuant to Section VII(a) of the Working Capital Credit Agreement. The WCCA Default Notice indicated that, as a result of the occurrence of such Events of Default, the interest rate applicable to all outstanding loans under the Working Capital Credit Agreement would be increased by 2.50% and demanded that the Company deposit approximately \$6.3 million as additional cash collateral. Prior to the Company’s receipt of the WCCA Default Notice, the interest rate applicable to outstanding loans made to the Company and the Company’s U.S. subsidiaries under the Working Capital Credit Agreement was, in the case of alternate base rate loans, 5.00% and, in the case of Eurodollar loans, 3.13625%. Prior to the Company’s receipt of the WCCA Default Notice, the interest rate applicable to the other outstanding loans under the Working Capital Credit Agreement was, in the case of loans made to the Company’s Mexican subsidiary, 3.136250%, in the case of loans made to the Company’s Canadian subsidiaries, 3.38625% and, in the case of loans made to the Company’s German subsidiary, 6.38625%. The aggregate principal amount outstanding under the Working Capital Credit Agreement is approximately \$158.2 million exclusive of letters of credit.

Also on February 6, 2009, Pliant Corporation of Canada Ltd., a subsidiary of the Company, received a notice (the “FACA Default Notice”) from the Administrative Agent under the Fixed Asset Credit Agreement, dated as of July 18, 2006, among certain subsidiaries of the Company, the Lenders party thereto, and Merrill Lynch Bank USA, as Administrative Agent (the “Fixed Asset Credit Agreement”) stating that the occurrence of an Event of Default under the Working Capital Credit Agreement constituted an Event of Default pursuant to Section VII(p) of the FACA. The FACA Default Notice indicated that, as a result of the occurrence of such Event of Default, the interest rate applicable to all outstanding loans under the Fixed Asset Credit Agreement would be increased by 2.50%. Prior to the Company’s receipt of the FACA Default Notice, the interest rate applicable to all outstanding loans under the Fixed Asset Credit Agreement was 3.38625%. No aggregate principal amount is outstanding under the Fixed Asset Credit Agreement.

The Revolving Credit Facilities contain covenants that will limit the ability of Pliant and its subsidiaries, subject to certain exceptions, to, among other things, incur or guarantee additional indebtedness, issue preferred stock or become liable in respect of any obligation to purchase or redeem stock, create liens, merge or consolidate with other companies, change lines of business, make certain types of investments, sell assets, enter into certain sale and lease-back and swap transactions, pay dividends on or repurchase stock, make distributions with respect to certain debt obligations, enter into transactions with affiliates, restrict dividends or other payments from the Company’s subsidiaries, modify corporate and certain material debt documents, cancel certain debt, or change its fiscal year or accounting policies. The Revolving Credit Facilities also require the Company to comply with a fixed charge coverage ratio of 1.00 to 1.00 for the first year of the facility and of 1.10 to 1.00 thereafter; provided, that such coverage ratio shall only apply during periods in which the amount of availability is and remains less than \$20 million for a specified number of days. Once the amount of availability increases and remains above \$20 million for a specified number of days, such coverage ratio becomes inapplicable. In addition, the amount of availability under the Revolving Credit Facilities must not be less than \$10 million at any time. The loans will automatically become immediately due and payable without notice upon the occurrence of an event of default involving insolvency or bankruptcy of the Company or any of its subsidiaries. Upon the occurrence and during the continuation of any other event of default under the Revolving Credit Facilities, by notice given to the Company, the administrative agent of the Revolving Credit Facilities may, and if directed by the Required Lenders (as defined in the Revolving Credit Facilities) must, terminate the commitments and/or declare all outstanding loans to be immediately due and payable.



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The Working Capital Credit Agreement is secured by a first-priority security interest in substantially all our inventory, receivables and deposit accounts, capital stock of, or other equity interests in, our existing and future domestic subsidiaries and first-tier foreign subsidiaries, investment property and certain other assets of the Company and its subsidiaries and a second-priority security interest in fixed assets of the Company and its subsidiaries party to the Working Capital Credit Agreement. The Fixed Asset Credit Agreement is secured by a first-priority security interest in the fixed assets of certain foreign subsidiaries of the Company and a second-priority security interest in capital stock of the fixed asset borrowers and their subsidiaries.

As of September 30, 2009, the Company had borrowings of \$144.1 million under the Revolving Credit Facilities, along with \$35.7 million in cash and cash equivalents.

### *Amended 2004 Notes*

As of September 30, 2009, the Company had \$415.1 million aggregate principal amount of 11.85% (formerly 11 <sup>5</sup>/<sub>8</sub>%) Senior Secured Notes due 2009 (the "Amended 2004 Notes") outstanding. The Amended 2004 Notes accrued payment-in-kind interest at the rate of 11 <sup>5</sup>/<sub>8</sub>% from the date of issuance until July 18, 2006, on which date the interest rate was increased by .225% to 11.85% in accordance with the Plan. Such incremental interest rate increase of .225% also accrues as payment-in-kind interest. The Amended 2004 Notes matured on June 15, 2009 and interest is payable semi-annually on each June 15 and December 15.

The Amended 2004 Notes are secured on a first-priority basis by a security interest in our real property, fixtures, equipment, intellectual property and other assets other than the second-priority collateral and on a second-priority basis by a security interest in substantially all our inventory, receivables and deposit accounts, 100% of the capital stock of or other equity interests in existing and future domestic subsidiaries and foreign subsidiaries that are note guarantors, 65% of the capital stock of or other equity interests in existing and future first-tier foreign subsidiaries that are not note guarantors, investment property and certain other assets of the Company and the note guarantors. The Amended 2004 Notes are guaranteed by the Company's existing and future domestic restricted subsidiaries and certain foreign subsidiaries.

### *2004 Notes*

As of September 30, 2009, the Company had \$7.9 million of 11.35% (formerly 11 <sup>1</sup>/<sub>8</sub>%) Senior Secured Discount Notes due 2009 (the "2004 Notes") outstanding. The 2004 Notes accreted at the rate of 11 <sup>1</sup>/<sub>8</sub>% from the date of issuance until July 18, 2006, on which date the interest rate was increased by .225% to 11.35% in accordance with the Plan. The 2004 Notes accreted at the rate of 11.35% until December 15, 2006 to an aggregate principal amount of \$1,000.88 per \$1,000 stated principal amount. Commencing on December 15, 2006, interest on the 2004 Notes began accruing at the rate of 11.35% with such incremental interest rate increase of .225% accruing as payment-in-kind interest and the remaining 11 <sup>1</sup>/<sub>8</sub>% payable in cash semiannually on June 15 and December 15, commencing on June 15, 2007. The 2004 Notes were due on June 15, 2009.

The 2004 Notes are secured by a first-priority security interest in the first-priority note collateral and a second-priority security interest in the second-priority note collateral. The 2004 Notes are guaranteed by the Company's existing and future domestic restricted subsidiaries and certain foreign subsidiaries.

### *2003 Notes*

As of December 31, 2008, the Company had \$250 million of 11 <sup>1</sup>/<sub>8</sub>% Senior Secured Notes due 2009 (the "2003 Notes") outstanding. The 2003 Notes accrued interest from the date of issuance through September 30, 2006 at the rate of 11 <sup>1</sup>/<sub>8</sub>% and will continue to accrue interest at such rate through the date of maturity. The 2003 Notes matured on September 1, 2009 and interest is payable in cash semiannually on each March 1 and September 1.

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The 2003 Notes rank equally with the Company's existing and future senior debt and rank senior to its existing and future subordinated indebtedness, including the 2006 Notes. The 2003 Notes are secured by a second priority security interest in both the first priority note collateral and the second priority note collateral. The 2003 Notes are guaranteed by some of the Company's subsidiaries.

### 2007 Notes

On June 14, 2007, the Company entered into the 2007 Note Indenture among the Company and Pliant Corporation International, Pliant Solutions Corporation, Uniplast Holdings, Inc., Uniplast U.S., Inc. and Uniplast Industries Co., as guarantors (collectively, the "2007 Note Guarantors"), and the Bank of New York Trust Company, N.A., as trustee (the "2007 Note Trustee") with respect to the issuance on such date of the Company's 18% Senior Subordinated Notes due 2012 (the "2007 Notes") in an aggregate principal amount of \$24 million (the "2007 Notes Indenture"). The 2007 Note Indenture provides that interest will accrue on the 2007 Notes from the date of issuance at the rate of 18% per annum until maturity on July 15, 2012 and will be payable semi-annually on each January 15 and July 15, commencing July 15, 2007, to holders of record of the 2007 Notes on the immediately preceding January 1 or July 1. Pursuant to the 2007 Note Indenture, the Company may redeem the 2007 Notes in whole or in part at the applicable redemption price, which in each of the first four years is equal to a de-escalating premium over par, plus accrued and unpaid interest to the redemption date, as set forth in the 2007 Notes. The 2007 Note Indenture provides the holders of the 2007 Notes with the right to require the Company to repurchase the 2007 Notes at a repurchase price equal to the then applicable redemption price plus accrued and unpaid interest upon a change of control of the Company (as defined in the 2007 Note Indenture). The 2007 Note Indenture does not provide for a sinking fund with respect to the 2007 Notes. The 2007 Notes Indenture contains customary provisions that may result in an event of default, after notice and expiration of a cure period in certain circumstances, and acceleration of the indebtedness thereunder, including failure to timely pay principal and interest on the 2007 Notes or comply with the covenants set forth in the 2007 Note Indenture.

### 6. Interest Expense—Current and Long-term debt

Interest expense—current and long-term debt in the statements of operations for the nine months ended September 30, 2009 and 2008 is as follows (in thousands):

	Nine Months Ended September 30,	
	2009	2008
Interest expense, net		
Debtor-In-Possession Financing	\$ 3,704	\$ —
Revolving Credit Facilities	6,507	7,131
2007 Notes <sup>(a)</sup>	489	3,240
Amended 2004 Notes	34,442	30,696
2004 Notes	668	666
2003 Notes <sup>(a)</sup>	3,145	20,859
Other, net	2,335	1,577
Interest expense accrued, net	51,290	64,169
Recurring amortization of financing fees	5,301	4,427
TOTAL	\$56,591	\$68,596
Cash interest payments		
Debtor-In-Possession Financing	\$ 3,704	\$ —
Revolving Credit Facilities	6,418	7,200
2004 Notes	—	435
2003 Notes	—	27,813
2007 Notes	—	4,320
Other, net	1,496	2,155
TOTAL	\$11,618	\$41,923

- (a) Interest expenses for 2009 includes only interest through February 10, 2009 as the 2003 Notes and 2007 Notes are impaired for bankruptcy proceedings. Interest expense for these notes for the period of February 11, 2009 through September 30, 2009 would have been \$17,714 and \$2,751, respectively.

## 7. Income Taxes

The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction, and various state and foreign jurisdictions. With a few exceptions, the Company is no longer subject to U.S. federal, state and local, or Non-U.S. income tax examinations by tax authorities for the years prior to 2000. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits as income tax expense. Accrued interest and penalties are insignificant at September 30, 2009. The Company believes that it has appropriate support for income tax positions taken or to be taken on its tax returns and that its accruals for tax liabilities are adequate for all open years based on an assessment of many factors including past experience and interpretations of tax law applied to the facts of each matter.

There was a change in control for tax purposes in December 2008.

For the nine months ended September 30, 2009, income tax benefits of \$14.1 million were recorded on pretax losses from operations of \$70.2 million as compared to an income tax benefit of \$0.1 million on pretax loss from operations of \$73.8 million for the nine months ended September 30, 2008. Income tax benefits related to net operating losses in the United States for 2008 and prior years are offset by a valuation allowance as the realization of these tax benefits is not certain. Therefore, the income tax expense in the statements of operations for the nine months ended September 30, 2008 primarily reflects foreign income taxes. The income tax benefit for the nine months ended September 30, 2009 reflects the future tax benefit of the current year net operating loss in the United States.

## 8. Other Comprehensive Income (Loss)

Other comprehensive income (loss) for the nine months ended September 30, 2009 and 2008 was (\$57.8) million and (\$76.1) million, respectively. The components of other comprehensive loss are net income (loss), changes in unrecognized pension benefit costs, and foreign currency translation.

## 9. Operating Segments

Operating segments are components of our business for which separate financial information is available that is evaluated regularly by our chief operating decision maker in deciding how to allocate resources and in assessing performance. This information is reported on the basis that it is used internally for evaluating segment performance.

The Company has four operating segments: Specialty Films, which manufactures personal care, medical and agricultural films; Printed Products, which produces printed rollstock, bags and sheets used to package food and consumer goods; Industrial Films, which manufactures stretch film used to bundle, unitize and protect palletized loads during shipping and storage and PVC films used by supermarkets, delicatessens and restaurants to wrap meat, cheese and produce; and Engineered Films, which manufactures film for sale to converters of flexible packaging and a variety of barrier and custom films for smaller niche flexible packaging and industrial markets.

We evaluate the performance of our operating segments based on net sales (excluding inter-company sales) and segment profit. Sales and transfers between our segments are eliminated in consolidation. The segment profit reflects income before interest expense, income taxes, depreciation, amortization, restructuring costs and other non-cash charges and net adjustments for certain unusual items. Our reportable segments are managed separately with separate management teams, because each segment has differing products, customer requirements, technology and marketing strategies.

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Segment profit and segment assets as of and for the periods ended September 30, 2009 and September 30, 2008 are presented in the following table (in thousands):

	Engineered Films	Industrial Films	Specialty Films	Printed Products	Corporate /Other	Total
<b>Nine months ended Sept. 30, 2009</b>						
Net sales to customers	\$ 201,677	\$ 191,479	\$ 135,273	\$ 155,459	\$ 3,053	\$ 686,941
Intersegment sales	14,511	995	7,314	604	(23,424)	—
Total net sales	216,188	192,474	142,587	156,063	(20,371)	686,941
Depreciation and amortization	9,067	5,077	6,654	9,138	2,438	32,374
Interest expense	1,145	190	34	1,884	53,338	56,591
Segment profit	23,578	21,942	15,852	11,289	(10,317)	62,344
Capital expenditures	7,885	808	3,391	7,195	889	20,168
<b>As of Sept. 30, 2009</b>						
Segment assets	\$ 147,443	\$ 93,082	\$ 103,114	\$ 126,592	\$ 60,414	\$ 530,645
<b>Nine months ended Sept. 30, 2008</b>						
Net sales to customers	\$ 262,757	\$ 264,131	\$ 177,928	\$ 172,263	\$ 3,940	\$ 881,019
Intersegment sales	22,466	3,101	6,995	6	(32,568)	—
Total net sales	285,223	267,232	184,923	172,269	(28,628)	881,019
Depreciation and amortization	9,616	5,273	7,366	7,613	3,311	33,179
Interest expense	1,254	425	52	2,533	64,332	68,596
Segment profit	14,808	18,372	12,341	10,151	(16,951)	38,721
Capital expenditures	6,983	1,265	2,899	9,493	1,341	21,981
<b>As of December 31, 2008</b>						
Segment assets	\$ 144,359	\$ 92,317	\$ 108,264	\$ 128,548	\$ 58,992	\$ 532,480

A reconciliation of the totals reported for the operating segments to the totals reported in the consolidated financial statements for the nine months ended September 30, 2009 and September 30, 2008 and as of September 30, 2009 and December 31, 2008 is as follows (in thousands) (unaudited):

	Nine Months Ended September 30,	
	2009	2008
<b>Profit or Loss</b>		
Total segment profit	\$ 62,344	\$ 38,721
Depreciation and amortization	(32,374)	(33,179)
Restructuring and other costs	(3,402)	(10,485)
Plant consolidation costs in cost of sales	(6,386)	—
Reorganization costs	(28,163)	(159)
Fixed asset impairments	(5,623)	(112)
Interest expense	(56,591)	(68,596)
Loss before income taxes	\$ (70,195)	\$ (73,810)
<b>Assets</b>		
Total assets from reportable segments	\$ 470,230	\$ 473,488
Other unallocated assets	60,415	58,992
Total consolidated assets	\$ 530,645	\$ 532,480

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Net sales and long-lived assets of our U.S. and foreign operations are as follows:

	Nine Months Ended	
	September 30,	
	2009	2008
<b>Net Sales</b>		
United States	\$ 564,520	\$ 726,511
Foreign countries <sup>(a)</sup>	122,421	154,508
Total	\$ 686,941	\$ 881,019
	<b>September 30,</b>	<b>December 31,</b>
	<b>2009</b>	<b>2008</b>
<b>Long-lived assets</b>		
United States	\$ 223,728	\$ 240,541
Foreign countries	28,662	29,531
Total	\$ 252,390	\$ 270,072
<b>Total assets</b>		
United States	\$ 436,872	\$ 443,449
Foreign countries	93,773	89,031
Total	\$ 530,645	\$ 532,480

(a) Foreign countries include Australia, Canada, Germany and Mexico, none of which individually represents 10% of consolidated net sales or long-lived assets.

### 10. Defined Benefit Plans

The Company sponsors three noncontributory defined benefit pension plans in the United States covering domestic employees with 1,000 or more hours of service. The Company funds these in accordance with the funding requirements of the Employee Retirement Income Security Act of 1974. Contributions are intended to not only provide for benefits attributed to service to date but also for those expected to be earned in the future. We also sponsor two defined benefit plans in Canada and one defined benefit plan in Germany.

The consolidated net periodic pension expense (benefit) for the nine months ended September 30, 2009 and 2008 includes the following components (in thousands):

	Nine Months Ended	
	September 30,	
	2009	2008
Service cost-benefits earned during the period	\$ 76	\$ 443
Interest cost on projected benefit obligation	4,200	4,265
Expected return on assets	(4,247)	(5,265)
Other	449	96
Net periodic pension expense (benefit)	\$ 478	\$ (461)

### 11. Contingencies

*Litigation.* We are involved in various litigation matters from time to time in the ordinary course of our business, including matters described in previous filings. In our opinion, none of such litigation is material to our financial condition or results of operations.

## 12. Condensed Consolidating Financial Statements

The following condensed consolidating financial statements present, in separate columns, financial information for (i) Pliant (on a parent only basis) with its investment in its subsidiaries recorded under the equity method, (ii) guarantor subsidiaries (as specified in the Indenture dated as of May 30, 2003, as amended (the “2003 Indenture”) relating to the 2003 Notes, the First Supplemental Indenture with respect to the Amended and Restated Indenture relating to the 2004 Notes and the Amended 2004 Notes, and the 2007 Note Indenture (the 2003 Indenture, the Amended and Restated Indenture, as amended by the First Supplemental Indenture, and the 2007 Note Indenture, collectively, the “Indentures”) on a combined basis, with any investments in non-guarantor subsidiaries specified in the Indentures recorded under the equity method, (iii) direct and indirect non-guarantor subsidiaries on a combined basis, (iv) the eliminations necessary to arrive at the information for Pliant and its subsidiaries on a consolidated basis, and (v) Pliant on a consolidated basis, in each case as of September 30, 2009 and December 31, 2008 and for the three and nine months ended September 30, 2009 and September 30, 2008. The 2003 Notes, the 2004 Notes, the Amended 2004 Notes, and the 2007 Notes are fully and unconditionally guaranteed on a joint and several basis by each guarantor subsidiary and each guarantor subsidiary is 100% owned, directly or indirectly, by Pliant, except that the Amended 2004 Notes are not guaranteed by Pliant Solutions Corporation (“Pliant Solutions”). Substantially all of the assets of Pliant Solutions were sold on September 30, 2004, the remainder disposed prior to December 31, 2005 and Pliant Solutions dissolved as of December 27, 2007. There are no contractual restrictions limiting transfers of cash from guarantor and non-guarantor subsidiaries to Pliant. The condensed consolidated financial statements are presented herein, rather than separate financial statements for each of the guarantor subsidiaries, because management believes that separate financial statements relating to the guarantor subsidiaries are not material to investors.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF SEPTEMBER 30, 2009**  
**(DOLLARS IN THOUSANDS) (UNAUDITED)**

	<u>Pliant Corporation Parent Only</u>	<u>Combined Guarantors</u>	<u>Combined Non- Guarantor</u>	<u>Elimination</u>	<u>Consolidated Pliant Corporation</u>
<b>ASSETS</b>					
<b>CURRENT ASSETS:</b>					
Cash and cash equivalents	\$ 29,295	\$ 1,309	\$ 5,079	\$ —	\$ 35,683
Receivables, net of allowances	82,372	5,301	26,334	—	114,007
Inventories	75,779	2,404	11,573	—	89,756
Prepaid expenses and other	9,290	1,246	2,401	—	12,937
Income taxes receivable, net	(202)	362	108	—	268
Deferred income taxes	11,101	68	—	—	11,169
Total current assets	<u>207,635</u>	<u>10,690</u>	<u>45,495</u>	<u>—</u>	<u>263,820</u>
PLANT AND EQUIPMENT, net	223,728	6,413	22,249	—	252,390
GOODWILL	1,118	—	1,482	—	2,600
INTANGIBLE ASSETS, net	342	3,546	—	—	3,888
INVESTMENT IN SUBSIDIARIES	(18,490)	—	—	18,490	—
OTHER ASSETS	4,052	—	3,895	—	7,947
TOTAL ASSETS	<u>\$ 418,385</u>	<u>\$ 20,649</u>	<u>\$ 73,121</u>	<u>\$ 18,490</u>	<u>\$ 530,645</u>
<b>LIABILITIES AND STOCKHOLDERS' (DEFICIT)</b>					
<b>CURRENT LIABILITIES:</b>					
Debtor-In-Possession Financing	\$ 40,000	\$ —	\$ —	\$ —	\$ 40,000
Current portion of long-term debt	20,492	—	3,161	—	23,653
Trade accounts payable	47,201	2,690	11,570	—	61,461
Accrued liabilities	42,091	691	4,139	—	46,921
Due to (from) affiliates	(16,685)	3,457	13,228	—	—
Total current liabilities	<u>133,099</u>	<u>6,838</u>	<u>32,098</u>	<u>—</u>	<u>172,035</u>
LONG-TERM DEBT, net of current portion	—	—	—	—	—
OTHER LIABILITIES	30,998	773	6,832	—	38,603
DEFERRED INCOME TAXES	23,080	(37)	(268)	—	22,775
LIABILITIES SUBJECT TO COMPROMISE	802,676	77,199	(11,175)	—	868,700
Total liabilities	<u>989,853</u>	<u>84,773</u>	<u>27,487</u>	<u>—</u>	<u>1,102,113</u>
<b>STOCKHOLDERS' (DEFICIT):</b>					
Preferred Stock	309,166	—	—	—	309,166
Common stock	1	—	11,916	(11,916)	1
Paid-in capital	155,341	14,020	78,144	(92,164)	155,341
Retained earnings (deficit)	(993,280)	(80,341)	(33,906)	114,247	(993,280)
Accumulated other comprehensive loss	(42,696)	2,197	(10,520)	8,323	(42,696)
Total stockholders' (deficit)	<u>(571,468)</u>	<u>(64,124)</u>	<u>45,634</u>	<u>18,490</u>	<u>(571,468)</u>
TOTAL LIABILITIES AND STOCKHOLDERS' (DEFICIT)	<u>\$ 418,385</u>	<u>\$ 20,649</u>	<u>\$ 73,121</u>	<u>\$ 18,490</u>	<u>\$ 530,645</u>

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF DECEMBER 31, 2008**  
**(DOLLARS IN THOUSANDS) (UNAUDITED)**

	<u>Pliant Corporation Parent Only</u>	<u>Combined Guarantors</u>	<u>Combined Non- Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Pliant Corporation</u>
<b>ASSETS</b>					
<b>CURRENT ASSETS:</b>					
Cash and cash equivalents	\$ 23,996	\$ 924	\$ 3,565	\$ —	\$ 28,485
Receivables	88,428	4,130	24,551	—	117,109
Inventories	66,065	2,301	11,557	—	79,923
Prepaid expenses and other	2,951	378	2,561	—	5,890
Income taxes receivable	(228)	359	591	—	722
Deferred income taxes	10,690	14	1	—	10,705
Total current assets	<u>191,902</u>	<u>8,106</u>	<u>42,826</u>	<u>—</u>	<u>242,834</u>
PLANT AND EQUIPMENT, net	240,541	6,505	23,026	—	270,072
GOODWILL	1,118	—	1,304	—	2,422
INTANGIBLE ASSETS, net	475	3,394	—	—	3,869
INVESTMENT IN SUBSIDIARIES	(22,237)	—	—	22,237	—
OTHER ASSETS	9,416	—	3,867	—	13,283
TOTAL ASSETS	<u>\$ 421,215</u>	<u>\$ 18,005</u>	<u>\$ 71,023</u>	<u>\$ 22,237</u>	<u>\$ 532,480</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>					
<b>CURRENT LIABILITIES:</b>					
Current portion of long-term debt	\$ 815,631	\$ 16,700	\$ 25,550	\$ —	\$ 857,881
Trade accounts payable	48,930	2,212	10,546	—	61,688
Accrued liabilities	52,981	(291)	3,047	—	55,737
Due to (from) affiliates	(47,344)	60,638	(13,294)	—	—
Total current liabilities	<u>870,198</u>	<u>79,259</u>	<u>25,849</u>	<u>—</u>	<u>975,306</u>
LONG-TERM DEBT, net of current portion	—	—	—	—	—
OTHER LIABILITIES	25,788	657	5,810	—	32,255
DEFERRED INCOME TAXES	38,943	14	(324)	—	38,633
Total liabilities	<u>934,929</u>	<u>79,930</u>	<u>31,335</u>	<u>—</u>	<u>1,046,194</u>
<b>STOCKHOLDERS' (DEFICIT):</b>					
Preferred Stock	302,424	—	—	—	302,424
Common stock	1	—	11,916	(11,916)	1
Paid in capital	155,341	14,020	78,144	(92,164)	155,341
Retained earnings (deficit)	(930,426)	(79,049)	(36,688)	115,737	(930,426)
Accumulated other comprehensive loss	(41,054)	3,104	(13,684)	10,580	(41,054)
Total stockholders' (deficit)	<u>(513,714)</u>	<u>(61,925)</u>	<u>39,688</u>	<u>22,237</u>	<u>(513,714)</u>
TOTAL LIABILITIES AND STOCKHOLDERS' (DEFICIT)	<u>\$ 421,215</u>	<u>\$ 18,005</u>	<u>\$ 71,023</u>	<u>\$ 22,237</u>	<u>\$ 532,480</u>

See notes to condensed consolidated financial statements.



**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING INCOME STATEMENT**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009**  
**(IN THOUSANDS) (UNAUDITED)**

	<u>Pliant Corporation (Parent Only)</u>	<u>Combined Guarantor Subsidiaries</u>	<u>Combined Non- Guarantor Subsidiaries</u>	<u>Consolidated</u>	<u>Pliant Eliminations Corporation</u>
NET SALES	\$ 587,957	\$ 25,202	\$ 97,219	\$ (23,437)	\$ 686,941
COST OF SALES	532,103	23,691	84,790	(23,437)	617,147
GROSS PROFIT	55,854	1,511	12,429	—	69,794
OPERATING EXPENSES	76,171	1,695	6,117	—	83,983
OPERATING INCOME (LOSS)	(20,317)	(184)	6,312	—	(14,189)
INTEREST EXPENSE	(55,546)	(231)	(814)	—	(56,591)
EQUITY IN EARNINGS OF SUBSIDIARIES	1,489	—	—	(1,489)	—
OTHER INCOME (EXPENSE)—Net	2,310	(946)	(779)	—	585
INCOME (LOSS) BEFORE INCOME TAXES	(72,064)	(1,361)	4,719	(1,489)	(70,195)
INCOME TAX EXPENSE (BENEFIT)	(15,939)	(68)	1,937	—	(14,070)
NET INCOME (LOSS)	\$ (56,125)	\$ (1,293)	\$ 2,782	\$ (1,489)	\$ (56,125)

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING INCOME STATEMENT**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2008**  
**(IN THOUSANDS) (UNAUDITED)**

	<b>Pliant Corporation (Parent Only)</b>	<b>Combined Guarantor Subsidiaries</b>	<b>Combined Non- Guarantor Subsidiaries</b>	<b>Eliminations</b>	<b>Consolidated Pliant Corporation</b>
NET SALES	\$ 759,093	\$ 32,226	\$ 122,283	\$ (32,583)	\$ 881,019
COST OF SALES	709,861	32,560	111,157	(32,583)	820,995
GROSS PROFIT	49,232	(334)	11,126	—	60,024
OPERATING EXPENSES	58,155	1,461	5,905	—	65,521
OPERATING INCOME (LOSS)	(8,923)	(1,795)	5,221	—	(5,497)
INTEREST EXPENSE	(65,453)	(313)	(2,830)	—	(68,596)
EQUITY IN EARNINGS OF SUBSIDIARIES	(3,225)	—	—	3,225	—
OTHER INCOME (EXPENSE)—Net	3,720	(1,154)	(2,283)	—	283
INCOME (LOSS) BEFORE INCOME TAXES	(73,881)	(3,262)	108	3,225	(73,810)
INCOME TAX EXPENSE (BENEFIT)	(149)	(1,302)	1,373	—	(78)
NET INCOME (LOSS)	<u>\$ (73,732)</u>	<u>\$ (1,960)</u>	<u>\$ (1,265)</u>	<u>\$ 3,225</u>	<u>\$ (73,732)</u>

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009**  
**(IN THOUSANDS) (UNAUDITED)**

	<u>Pliant Corporation (Parent Only)</u>	<u>Combined Guarantor Subsidiaries</u>	<u>Combined Non- Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated Pliant Corporation</u>
CASH FLOW PROVIDED BY (USED IN) OPERATING ACTIVITIES	\$ 6,294	\$ 6,828	\$ 14,571	\$ —	\$ 27,693
CASH FLOWS FROM INVESTING ACTIVITIES:					
Asset transfers	230	—	(230)	—	—
Capital expenditures for plant and equipment	(18,362)	(776)	(1,030)	—	(20,168)
Net cash used in investing activities	(18,132)	(776)	(1,260)	—	(20,168)
CASH FLOWS FROM FINANCING ACTIVITIES:					
Debtor-In-Possession Financing	40,000	—	—	—	40,000
Borrowings under capital leases and other, net	1,876	—	(89)	—	1,787
Loans (to) from affiliates	(10,000)	—	10,000	—	—
Repayments of Revolving Credit Facilities	(9,950)	(2,300)	(22,379)	—	(34,629)
Payment of financing fees	(6,713)	—	—	—	(6,713)
Net cash provided by/(used in) financing activities	15,213	(2,300)	(12,468)	—	445
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS	1,924	(3,367)	671	—	(772)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	5,299	385	1,514	—	7,198
CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD	23,996	924	3,565	—	28,485
CASH AND CASH EQUIVALENTS, END OF THE PERIOD	29,295	1,309	5,079	—	35,683

See notes to condensed consolidated financial statements.

**PLIANT CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2008**  
**(IN THOUSANDS) (UNAUDITED)**

	<u>Pliant Corporation (Parent Only)</u>	<u>Combined Guarantor Subsidiaries</u>	<u>Combined Non-Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated Pliant Corporation</u>
<b>CASH FLOW PROVIDED BY (USED IN)</b>					
<b>OPERATING ACTIVITIES</b>	\$ (32,186)	\$ 818	\$ 1,904	\$ —	\$ (29,464)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>					
Proceeds from sale of assets	2,959	—	—	—	2,959
Asset transfers	995	(27)	(968)	—	—
Capital expenditures for plant and equipment	(20,881)	(747)	(353)	—	(21,981)
Net cash used in investing activities	(16,927)	(774)	(1,321)	—	(19,022)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>					
Borrowings under capital lease	11,369	—	—	—	11,369
Repayment of capital leases and other, net	(783)	—	(53)	—	(836)
Loans (to) from affiliates	5,000	—	(5,000)	—	—
Borrowings under Revolving Credit Facilities	50,000	—	5,000	—	55,000
Net cash provided by/(used in) financing activities	65,586	—	(53)	—	65,533
<b>EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS</b>	334	(88)	(333)	—	(87)
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	16,807	(44)	197	—	16,960
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD</b>	7	3,609	3,642	—	7,258
<b>CASH AND CASH EQUIVALENTS, END OF THE PERIOD</b>	16,814	3,565	3,839	—	24,218

See notes to condensed consolidated financial statements.

### 13. Subsequent Events

On the Petition Date, the Debtors filed a proposed Chapter 11 plan of reorganization (as subsequently amended, the “Debtors’ Plan”) accompanied by a Disclosure Statement for the Debtors’ Plan (as subsequently amended, the “Debtors’ Disclosure Statement”). On the Petition Date, the Debtors also filed a Restructuring & Lockup Agreement (the “Lockup Agreement”) between the Debtors and certain First Lien Noteholders (as defined in the Lockup Agreement) to support the Debtors’ Plan. Under the Debtors’ Plan, as originally proposed, the common equity in the Reorganized Debtors would be distributed to the First Lien Noteholders on account of their claims, and second lien noteholders and general unsecured creditors would receive warrants to purchase common stock of reorganized Pliant in certain circumstances.

The Debtors subsequently revised their plan to provide, among other things, that unsecured creditors, including second lien noteholders, would each receive a pro rata distribution of interests in a creditor trust that will hold: (a) 1.5% of the new common stock that would be issued under the Debtors’ Plan; (b) warrants for the purchase of 7.5% of the number of shares of new common stock that would be issued under the Debtors’ Plan at an exercise price per share that reflects an aggregate market value of equity of \$420 million with a term of eight years; and (c) warrants for the purchase of 12.5% of the number of shares of new common stock that would be issued under the Debtors’ Plan at an exercise price per share that reflects an aggregate market value of equity of \$500 million with a term of eight years.

On March 17, 2009, Apollo presented the Debtors and the Official Committee of Unsecured Creditors (the “Committee”) with a non-binding term sheet describing the structure of its proposal for a plan of reorganization and, in a term sheet dated April 3, 2009, Apollo furnished additional details concerning its proposal, which was subsequently revised in May 2009.

On May 6, 2009, the Committee filed a motion to terminate the Debtors’ exclusive periods to file a Chapter 11 plan of reorganization and to solicit acceptances thereof. Apollo joined in that motion (the “Exclusivity Termination Motion”). Both the Debtors and ad hoc committee of First Lien Noteholders objected to the Exclusivity Termination Motion.

On June 1, 2009, Apollo presented the Debtors and Committee with a further revised proposal, which included drafts of a disclosure statement, a plan, the indenture governing the new senior secured notes, and the intercompany services agreement. On June 4, 2009, Apollo filed these documents with the Court under seal.

On June 10, 2009, the Debtors filed a motion for an order extending the Debtors exclusive periods within which to file a Chapter 11 plan (the “Exclusivity Extension Motion”). Both Apollo and the Committee objected to the Exclusivity Extension Motion.

On June 29 and 30, 2009, the Bankruptcy Court held an evidentiary hearing on the Exclusivity Termination Motion and the Exclusivity Extension Motion. At the close of the hearing, the Bankruptcy Court ruled that the Debtors’ exclusive periods would be terminated. On July 2, 2009, the Bankruptcy Court entered orders granting the Exclusivity Termination Motion and denying the Exclusivity Extension Motion (the “Exclusivity Orders”). Apollo filed a disclosure statement and plan with the Bankruptcy Court on July 9, 2009. On July 17, 2009, the Debtors filed a motion for a stay pending appeal of the Exclusivity Orders and a request for certification of the Exclusivity Orders for direct appeal to the United States Court of Appeals for the Third Circuit.

On July 31, 2009, the Bankruptcy Court heard motions to approve the Apollo disclosure statement and the Debtors’ disclosure statement, Apollo and the ad hoc committee of First Lien Noteholders reached an agreement whereby the ad hoc committee of First Lien Noteholders would support Apollo’s plan with agreed modifications and withdraw their objections. Apollo agreed to modify its proposal so as to provide the First Lien Noteholders the treatment set forth in the Plan and described elsewhere in the Disclosure Statement.

On August 13, 2009, the Board of Directors of Pliant met and resolved to support Apollo’s proposal and join as co-proponents with Apollo of the Apollo plan (the “Joint Plan”).

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On August 17, 2009, the Bankruptcy Court entered an order approving the disclosure statement describing the Joint Plan, the procedures for soliciting and tabulating votes on the Joint Plan, and various dates and deadlines in connection with confirming the Joint Plan. The deadline for voting on the Joint Plan was September 25, 2009. All classes entitled to vote on the Joint Plan accepted the Joint Plan. On October 6, 2009, the Bankruptcy Court held a hearing to consider confirmation of the Joint Plan and entered an order confirming the Joint Plan.

On October 13, 2009, Berry Plastics Corporation (“Berry”), a leading manufacturer and marketer of plastic packaging products, announced that it intended to purchase substantially all of the capital stock of the Company (in excess of 99.99%) upon Pliant’s emergence from bankruptcy.

Berry has announced that it will not operate Pliant as a stand alone business unit. Berry will consolidate certain business units within an existing Berry business unit and will create a new division for the remaining Pliant business units. The majority of Pliant’s administrative functions will be consolidated and synergized with similar Berry functions. On December 3, 2009 Pliant emerged from bankruptcy and Berry purchased substantially all of the capital stock of the Company.

Through and including \_\_\_\_\_, 2012 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

**29,411,764 Shares**



## **Berry Plastics Group, Inc.**

**Common Stock**

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**PROSPECTUS**

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**BofA Merrill Lynch**  
**Citigroup**  
**Barclays**  
**Deutsche Bank Securities**  
**Credit Suisse**  
**Goldman, Sachs & Co.**  
**Baird**  
**Lazard Capital Markets**  
**Wells Fargo Securities**  
**SunTrust Robinson Humphrey**  
**Lebenthal & Co., LLC**  
**Apollo Global Securities**

, 2012

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**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by Berry Plastics Group, Inc. (the “Registrant”) in connection with the issuance and distribution of the securities being registered. All amounts are estimates, except the SEC registration, Financial Industry Regulatory Authority, Inc. and stock exchange filing and listing fees.

SEC registration fee	\$ 69,771
Stock exchange filing fee and listing fee	318,000
Transfer agent and registrar fees	7,000
Printing and engraving expenses	325,000
Legal and accounting fees and expenses	3,750,000
Financial Industry Regulatory Authority, Inc. filing fee	50,500
Miscellaneous	204,729
Total	<u>\$ 4,725,000</u>

**Item 14. Indemnification of Directors and Officers.**

The Registrant is a Delaware corporation.

Section 145(a) of the General Corporation Law of the State of Delaware (the “DGCL”) provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted under similar standards, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine that despite the adjudication of liability, such person is fairly and reasonably entitled to be indemnified for such expenses which the court shall deem proper.

Section 145 of the DGCL further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense of any claim, issue, or matter therein, he shall be indemnified against any expenses actually and reasonably incurred by him in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the corporation may purchase and maintain insurance on behalf of a director, officer, employee or agent of the corporation against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the corporation would have the power to indemnify him against such liabilities under Section 145.



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Article X of our amended and restated certificate of incorporation provides for the indemnification of directors, officers, employees or agents to the fullest extent permitted by the DGCL. Article X of our amended and restated certificate of incorporation also provides that, in any action initiated by a person seeking indemnification, we shall bear the burden of proof that the person is not entitled to indemnification.

Section 102(b)(7) of the DGCL provides that a Delaware corporation may, with certain limitations, set forth in its certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of a fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Article IX of our amended and restated certificate of incorporation includes such a provision.

Section 145(g) of the DGCL provides that a Delaware corporation has the power to purchase and maintain insurance on behalf of any director, officer, employee or other agent of the corporation or, if serving in such capacity at the request of the corporation, of another enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation has the power to indemnify such person against such liability under the DGCL. Article X of our Amended and Restated Certificate of Incorporation permits us to maintain insurance, at our expense, to protect us or any directors, officers, employees or agents of the company or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not we would have the power to indemnify such person against such expense, liability or loss under the DGCL.

### **Item 15. *Recent Sales of Unregistered Securities.***

Set forth below in chronological order is certain information regarding securities issued by the Registrant during the three years preceding the filing of this registration statement in transactions that were not registered under the Securities Act of 1933, as amended (the "*Securities Act*"), including the consideration, if any, received by the Registrant for such issuances. None of these transactions involved any underwriters or any public offerings. Each of these transactions was exempt from registration under the Securities Act pursuant to Section 4(2) of the Securities Act or Regulation D or Rule 701 promulgated thereunder, as transactions by an issuer not involving a public offering. With respect to each transaction listed below, no general solicitation was made by either the Registrant or any person acting on its behalf; the recipient of our securities agreed that the securities would be subject to the standard restrictions applicable to a private placement of securities under applicable state and federal securities laws; and appropriate legends were affixed to the certificates issued in such transactions. The numbers included in this Item 15 reflect the 12.25-for-1 stock split that will be effective upon the consummation of the offering contemplated by this registration statement.

On March 25, 2009, the Registrant issued 83,471 shares of its common stock to certain key employees at a purchase price of \$3.04 per share.

On May 25, 2009, the Registrant issued 992 shares of its common stock to a certain key employee at a purchase price of \$3.65 per share.

On January 1, 2010, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 63,871 shares of its common stock at an exercise price of \$6.18 per share.

On March 30, 2010, the Registrant issued 14,038 shares of its common stock to certain key employees at a purchase price of \$6.18 per share.

On July 1, 2010, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 23,667 shares of its common stock at an exercise price of \$6.12 per share.

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On October 4, 2010, the Registrant granted stock options to an executive officer pursuant to its 2006 Equity Incentive Plan to purchase 1,224 shares of its common stock at an exercise price of \$6.12 per share.

On December 20, 2010, the Registrant issued 408,329 shares of its common stock to a certain key employee at a purchase price of \$6.12 per share.

On January 1, 2011, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 1,484,553 shares of its common stock at an exercise price of \$6.12 per share.

On April 26, 2011, the Registrant issued 57,158 shares of its common stock to a certain key employee at a purchase price of \$6.12 per share.

On April 28, 2011, the Registrant issued 32,658 shares of its common stock to a certain key employee at a purchase price of \$6.12 per share.

On July 1, 2011, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 60,760 shares of its common stock at an exercise price of \$6.53 per share.

On October 1, 2011, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 190,218 shares of its common stock at an exercise price of \$7.22 per share.

On November 28, 2011, the Registrant issued 44,026 shares of its common stock to a certain key employee at a purchase price of \$7.22 per share.

On January 1, 2012, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 149,131 shares of its common stock at an exercise price of \$8.16 per share.

On March 1, 2012, the Registrant issued 49,000 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share.

On May 1, 2012, the Registrant issued 24,500 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share and 21,572 shares of its common stock to a certain key employee at a purchase price of \$6.18 per share.

On May 15, 2012, the Registrant issued 1,911 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share, 18,166 shares of its common stock to a certain key employee at a purchase price of \$8.48 per share, and 4,361 shares of its common stock to a certain key employee at a purchase price of \$9.21 per share.

On May 17, 2012, the Registrant issued 612 shares of its common stock to a certain key employee at a purchase price of \$4.37 per share and 1,457 shares of its common stock to a certain key employee at a purchase price of \$9.21 per share.

On June 1, 2012, the Registrant granted stock options to certain key employees pursuant to its 2006 Equity Incentive Plan to purchase 176,130 shares of its common stock at an exercise price of \$10.24 per share.

On July 9, 2012, the Registrant issued 21,572 shares of its common stock to a certain key employee at a purchase price of \$6.18 per share.

On August 8, 2012, the Registrant issued 10,265 shares of its common stock to a certain key employee at a purchase price of \$6.18 per share.

On August 15, 2012, the Registrant issued 1,898 shares of its common stock to a certain key employee at a purchase price of \$4.37 per share, 1,960 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share, 4,361 shares of its common stock to a certain key employee at a purchase price of \$9.21 per share, and 4,532 shares of its common stock to a certain key employee at a purchase price of \$9.21 per share.

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On August 22, 2012, the Registrant issued 12,462 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share.

On August 25, 2012, the Registrant issued 1,335 shares of its common stock to a certain key employee at a purchase price of \$8.48 per share and 1,335 shares of its common stock to a certain key employee at a purchase price of \$8.48 per share.

On August 31, 2012, the Registrant issued 11,760 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share.

On September 13, 2012, the Registrant issued 1,911 shares of its common stock to a certain key employee at a purchase price of \$8.16 per share and 4,189 shares of its common stock to a certain key employee at a purchase price of \$9.21 per share.

### **Item 16. Exhibits, Financial Statements and Financial Statement Schedules.**

#### **(a) Exhibits**

The list of exhibits is set forth under "Exhibit Index" at the end of this registration statement and is incorporated herein by reference.

#### **(b) Financial Statement Schedules**

See the Index to Financial Statements included on page F-1 for a list of the financial statements included in this registration statement. All schedules not identified above have been omitted because they are not required, are inapplicable, or the information is included in the consolidated financial statements or notes contained in this registration statement.

### **Item 17. Undertakings.**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(i) for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(ii) for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Evansville, State of Indiana, on the 19th day of September, 2012.

**BERRY PLASTICS GROUP, INC.**

By: /s/ Jonathan D. Rich  
Name: Jonathan D. Rich  
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jonathan D. Rich</u> <b>Jonathan D. Rich</b>	Chairman, Chief Executive Officer and Director (Principal Executive Officer)	September 19, 2012
<u>/s/ James M. Kratochvil</u> <b>James M. Kratochvil</b>	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 19, 2012
<u>*</u> <b>B. Evan Bayh</b>	Director	September 19, 2012
<u>*</u> <b>Anthony M. Civale</b>	Director	September 19, 2012
<u>*</u> <b>Donald C. Graham</b>	Director	September 19, 2012
<u>*</u> <b>Steven C. Graham</b>	Director	September 19, 2012
<u>*</u> <b>Joshua J. Harris</b>	Director	September 19, 2012
<u>*</u> <b>Robert V. Seminara</b>	Director	September 19, 2012
*By <u>/s/ James M. Kratochvil</u> <b>James M. Kratochvil</b>	Attorney-in-Fact	September 19, 2012

**INDEX TO EXHIBITS**

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
1.1	Form of Underwriting Agreement.
2.1	Agreement and Plan of Merger and Corporate Reorganization, dated as of March 9, 2007, between Covalence Specialty Materials Holding Corp. and Berry Plastics Group, Inc. (incorporated herein by reference to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-142602) filed on May 4, 2007).
2.2	Equity Purchase Agreement, dated June 19, 2011, by and among Rexam Inc., Rexam Closures and Containers Inc., Rexam Closure Systems Inc., Rexam Plastic Packaging Inc., Rexam Brazil Closure Inc., Rexam Beverage Can South America S.A. and Berry Plastics Corporation (incorporated herein by reference to Exhibit 2.1 to Berry Plastics Corporation's Current Report on Form 8-K filed on June 23, 2011).
2.3	Stock Purchase Agreement, by and between LINPAC USA Holdings, Inc. and Berry Plastics Corporation, dated as of August 19, 2011 (incorporated herein by reference to Exhibit 2.1 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on September 2, 2011).
3.1	Form of Amended and Restated Certificate of Berry Plastics Group, Inc.
3.2	Form of Bylaws, as amended, of Berry Plastics Group, Inc.
4.1	Supplemental Indenture, dated November 19, 2010, to the Indenture dated as of September 20, 2006, respecting the 8 7/8% Second Priority Senior Secured Fixed Rate Notes due 2014, among Berry Plastics Corporation, the guarantors party thereto and U.S. Bank National Association, as Trustee (incorporated herein by reference to Exhibit 4.01 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on November 19, 2010).
4.2	Supplemental Indenture, dated November 19, 2010, to the Indenture dated as of November 12, 2009, respecting the 8 7/8% Second Priority Senior Secured Notes due 2014, among Berry Plastics Corporation, the guarantors party thereto and U.S. Bank National Association, as Trustee (incorporated herein by reference to Exhibit 4.02 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on November 19, 2010).
4.3	Indenture, by and among Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation identified therein and U.S. Bank National Association, as Trustee, relating to 9.75% second priority senior secured notes due 2021, dated November 19, 2010 (incorporated herein by reference to Exhibit 4.03 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on November 19, 2010).
4.4	Additional Secured Creditor Consent, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation signatory thereto and U.S. Bank National Association, as Authorized Representative and Collateral Agent, relating to 9.75% second priority senior secured notes due 2021, dated November 19, 2010 (incorporated herein by reference to Exhibit 4.04 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on November 19, 2010).
4.5	Registration Rights Agreement, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation identified therein and Credit Suisse Securities (USA) LLC, as representatives of the Initial Purchasers, relating to 9.75% second priority senior secured notes due 2021, dated November 19, 2010 (incorporated herein by reference to Exhibit 4.05 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on November 19, 2010).
4.6	Indenture, by and among Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation identified therein and U.S. Bank National Association, as Trustee, relating to 9 1/2% second priority senior secured notes due 2018, dated April 30, 2010 (incorporated herein by reference to Exhibit 4.01 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on May 4, 2010).

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
4.7	Additional Secured Creditor Consent, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation signatory thereto and U.S. Bank National Association, as Authorized Representative and Collateral Agent, relating to 9 1/2% second priority senior secured notes due 2018, dated April 30, 2010 (incorporated herein by reference to Exhibit 4.02 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on May 4, 2010).
4.8	Indenture, by and between Berry Plastics Escrow Corporation and Berry Plastics Escrow LLC, as Issuers, and U.S. Bank National Association, as Trustee, relating to 8 1/4% first priority senior secured notes due 2015, dated November 12, 2009 (incorporated herein by reference to Exhibit 4.01 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.9	First Supplemental Indenture, dated as of December 3, 2009, by and between Berry Plastics Corporation, the subsidiaries of Berry Plastics Corporation party thereto, Berry Plastics Escrow LLC, Berry Plastics Escrow Corporation, and U.S. Bank National Association, as Trustee, relating to the Indenture, by and between Berry Plastics Escrow Corporation and Berry Plastics Escrow LLC, as Issuers, and U.S. Bank National Association, as Trustee, relating to 8 1/4% first priority senior secured notes due 2015, dated November 12, 2009 (incorporated herein by reference to Exhibit 4.02 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.10	Indenture, by and between Berry Plastics Escrow Corporation and Berry Plastics Escrow LLC, as Issuers, and U.S. Bank National Association, as Trustee, relating to 8 7/8% second priority senior secured notes due 2014, dated November 12, 2009 (incorporated herein by reference to Exhibit 4.03 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.11	First Supplemental Indenture, dated as of December 3, 2009, by and between Berry Plastics Corporation, the subsidiaries of Berry Plastics Corporation party thereto, Berry Plastics Escrow LLC, Berry Plastics Escrow Corporation, and U.S. Bank National Association, as Trustee, relating to the Indenture, by and between Berry Plastics Escrow Corporation and Berry Plastics Escrow LLC, as Issuers, and U.S. Bank National Association, as Trustee, relating to 8 7/8% second priority senior secured notes due 2014, dated November 12, 2009 (incorporated herein by reference to Exhibit 4.04 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.12	Collateral Agreement, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation identified therein and U.S. Bank National Association, as Collateral Agent, relating to 8 1/4% first priority senior secured notes due 2015, dated December 3, 2009 (incorporated herein by reference to Exhibit 4.05 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.13	Additional Secured Creditor Consent, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation signatory thereto and U.S. Bank National Association, as Authorized Representative and Collateral Agent, relating to 8 7/8% second priority senior secured notes due 2014, dated December 3, 2009 (incorporated herein by reference to Exhibit 4.06 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on December 8, 2009).
4.14	Indenture, by and between Berry Plastics Corporation, as Issuer, certain Guarantors and Wells Fargo Bank, National Association, as Trustee, relating to first priority floating rate senior secured notes due 2015, dated as of April 21, 2008 (incorporated herein by reference to Exhibit 4.1 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 22, 2008).
4.15	Collateral Agreement, by and between Berry Plastics Corporation, each Subsidiary of Berry Plastics Corporation identified therein and Wells Fargo Bank, National Association, as Collateral Agent, dated as of April 21, 2008 (incorporated herein by reference to Exhibit 4.2 to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 22, 2008).

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
4.16	Indenture, by and between BPC Acquisition Corp. (and following the merger of BPC Acquisition Corp. with and into BPC Holding Corporation, BPC Holding Corporation, as Issuer, and certain Guarantors) and Wells Fargo Bank, National Association, as Trustee, relating to 11% Senior Subordinated Notes due 2016, dated as of September 20, 2006 (incorporated herein by reference to Exhibit 10.4 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
4.17	First Supplemental Indenture, by and among BPC Holding Corporation, certain Guarantors, BPC Acquisition Corp., and Wells Fargo Bank, National Association, as Trustee, dated as of September 20, 2006 (incorporated herein by reference to Exhibit 10.5 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
4.18	Indenture, dated as of February 16, 2006, among Covalence Specialty Materials Corp., the Guarantors named therein and Wells Fargo Bank, National Association, as trustee (incorporated herein by reference to Exhibit 10.1(e) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.19	First Supplemental Indenture, dated as of April 3, 2007, among Covalence Specialty Materials Corp. (or its successor), the Guarantors identified on the signature pages thereto and Wells Fargo Bank, National Association, as trustee (incorporated herein by reference to Exhibit 10.1(f) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.20	Second Supplemental Indenture, dated as of April 3, 2007, among Covalence Specialty Materials Corp. (or its successor), Berry Plastics Holding Corporation, the Guarantors identified on the signature pages thereto and Wells Fargo Bank, National Association, as trustee (incorporated herein by reference to Exhibit 10.1(g) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.21	Second Supplemental Indenture, dated as of April 3, 2007, among Berry Plastics Holding Corporation (or its successor), the existing Guarantors identified on the signature pages thereto, the new Guarantors identified on the signature pages thereto and Wells Fargo Bank, National Association, as trustee (incorporated herein by reference to Exhibit 10.1(h) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.22	Second Supplemental Indenture dated as of April 3, 2007, among Berry Plastics Holding Corporation (or its successor), the existing Guarantors identified on the signature pages thereto, the new Guarantors identified on the signature pages thereto and Wells Fargo Bank, National Association, as trustee (incorporated herein by reference to Exhibit 10.1(i) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.23	Supplement No. 1, dated as of April 3, 2007, to the Collateral Agreement dated as of September 20, 2006 among Berry Plastics Holding Corporation, each subsidiary identified therein as a party and Wells Fargo Bank, National Association, as collateral agent (incorporated herein by reference to Exhibit 10.1(j) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
4.24	Indenture, by and between BPC Acquisition Corp. (and following the merger of BPC Acquisition Corp. with and into BPC Holding Corporation, BPC Holding Corporation, as Issuer, and certain Guarantors) and Wells Fargo Bank, National Association, as Trustee, relating to \$525,000,000 8 <sup>7</sup> / <sub>8</sub> % Second Priority Senior Secured Fixed Rate Notes due 2014 and \$225,000,000 Second Priority Senior Secured Floating Rate Notes due 2014, dated as of September 20, 2006 (incorporated herein by reference to Exhibit 4.1 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
4.25	First Supplemental Indenture, by and among BPC Holding Corporation, certain Guarantors, BPC Acquisition Corp., and Wells Fargo Bank, National Association, as Trustee, dated as of September 20, 2006 (incorporated herein by reference to Exhibit 4.2 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
4.26	Collateral Agreement, by and among BPC Acquisition Corp., as Borrower, each Subsidiary of the Borrower identified therein and Wells Fargo Bank, N.A., as Collateral Agent, dated as of September 20, 2006 (incorporated herein by reference to Exhibit 4.4 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
4.27	Form of common stock certificate of Berry Plastics Group, Inc.
5.1	Form of Opinion of Wachtell, Lipton, Rosen & Katz.**
10.1	U.S. \$400,000,000 Amended and Restated Credit Agreement, dated as of April 3, 2007, by and among Covalence Specialty Materials Corp., Berry Plastics Group, Inc., certain domestic subsidiaries party thereto from time to time, Bank of America, N.A., as collateral agent and administrative agent, the lenders party thereto from time to time, and the financial institutions party thereto (incorporated herein by reference to Exhibit 10.1(a) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
10.2	U.S. \$1,200,000,000 Second Amended and Restated Credit Agreement, dated as of April 3, 2007, by and among Covalence Specialty Materials Corp., Berry Plastics Group, Inc., Credit Suisse, Cayman Islands Branch, as collateral and administrative agent, the lenders party thereto from time to time, and the other financial institutions party thereto (incorporated herein by reference to Exhibit 10.1(b) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
10.3	Amended and Restated Intercreditor Agreement, by and among Berry Plastics Group, Inc., Covalence Specialty Materials Corp., certain subsidiaries identified as parties thereto, Bank of America, N.A. and Credit Suisse, Cayman Islands Branch as first lien agents, and Wells Fargo Bank, N.A., as trustee (incorporated herein by reference to Exhibit 10.1(d) to Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on April 10, 2007).
10.4	Management Agreement, among Berry Plastics Corporation, Berry Plastics Group, Inc., Apollo Management VI, L.P., and Graham Partners, Inc., dated as of September 20, 2006 (incorporated herein by reference to Exhibit 10.7 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.5	Termination Agreement, by and among Covalence Specialty Materials Holding Corp., Covalence Specialty Materials Corp., and Apollo Management V, L.P., dated as of April 3, 2007 (incorporated herein by reference to Exhibit 10.7 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-142602) filed on May 4, 2007).
10.6	2006 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.8 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.7	Form of Performance-Based Stock Option Agreement of Berry Plastics Group, Inc. (incorporated herein by reference to Exhibit 10.9 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.8	Form of Accreting Stock Option Agreement of Berry Plastics Group, Inc. (incorporated herein by reference to Exhibit 10.10 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.9	Form of Time-Based Stock Option Agreement of Berry Plastics Group, Inc. (incorporated herein by reference to Exhibit 10.11 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.10	Form of Performance-Based Stock Appreciation Rights Agreement of Berry Plastics Group, Inc. (incorporated herein by reference to Exhibit 10.12 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).



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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.11	Employment Agreement, dated September 20, 2006, between Berry Plastics Corporation and Ira G. Boots (incorporated herein by reference to Exhibit 10.13 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.12	Employment Agreement, dated September 20, 2006, between Berry Plastics Corporation and James M. Kratochvil (incorporated herein by reference to Exhibit 10.14 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.13	Employment Agreement, dated September 20, 2006, between Berry Plastics Corporation and R. Brent Beeler (incorporated herein by reference to Exhibit 10.15 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.14	Employment Agreement, dated November 22, 1999, between Berry Plastics Corporation and G. Adam Unfried (incorporated herein by reference to Exhibit 10.23 of Berry Plastics Corporation's (File No. 033-75706-01) Annual Report on Form 10-K filed with the SEC on March 22, 2006).
10.15	Amendment No. 1 to Employment Agreement, dated November 22, 1999, between Berry Plastics Corporation and G. Adam Unfried, dated November 23, 2004 (incorporated herein by reference to Exhibit 10.24 of Berry Plastics Corporation's (File No. 033-75706-01) Annual Report on Form 10-K filed with the SEC on March 22, 2006).
10.16	Amendment No. 2 to Employment Agreement, dated November 22, 1999, between Berry Plastics Corporation and G. Adam Unfried, dated March 10, 2006 (incorporated herein by reference to Exhibit 10.25 of Berry Plastics Corporation's (File No. 033-75706-01) Annual Report on Form 10-K filed with the SEC on March 22, 2006).
10.17	Amendment No. 3 to Employment Agreement, dated November 22, 1999, between Berry Plastics Corporation and G. Adam Unfried, dated September 20, 2006 (incorporated herein by reference to Exhibit 10.19 to Berry Plastics Corporation's Registration Statement Form S-4 (Reg. No. 333-138380) filed on November 2, 2006).
10.18	Employment Agreement, dated April 3, 2007, between Berry Plastics Corporation and Thomas E. Salmon (incorporated herein by reference to Exhibit 10.20 of Berry Plastics Corporation's (File No. 033-75706-01) Annual Report on Form 10-K filed with the SEC on December 16, 2008).
10.19	Letter Agreement, dated as of March 9, 2007, by and between Berry Plastics Group, Inc. and Ira Boots.**
10.20	Purchase and Sale Agreement, dated as of December 15, 2008, by and between BP Parallel Corporation, a Delaware corporation, and Apollo Management VI, L.P., a Delaware limited partnership (incorporated herein by reference to Exhibit 10.21 of Berry Plastics Corporation's (File No. 033-75706-01) Annual Report on Form 10-K filed with the SEC on December 16, 2008).
10.21	Employment Agreement, dated as of August 1, 2010, between Berry Plastics Corporation and Randall J. Becker.**
10.22	Letter Agreement, dated September 30, 2010, between Berry Plastics Corporation and Ira G. Boots (incorporated herein by reference to Exhibit 10.1 of Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on October 6, 2010).
10.23	Employment Agreement, dated October 1, 2010, between the Berry Plastics Corporation and Jonathan Rich (incorporated herein by reference to Exhibit 10.2 of Berry Plastics Corporation's (File No. 033-75706-01) Current Report on Form 8-K filed on October 6, 2010).
10.24	Amendment, dated as of June 28, 2011, to U.S. \$400,000,000 Amended and Restated Credit Agreement, dated as of April 3, 2007, by and among Covalence Specialty Materials Corp., Berry Plastics Group, Inc., certain domestic subsidiaries party thereto from time to time, Bank of America, N.A., as collateral agent and administrative agent, the lenders party thereto from time to time, and the financial institutions party thereto (incorporated herein by reference to Exhibit 10.1 to Berry Plastics Corporation's (File No. 033-75706-01) Amendment No. 1 to Current Report on Form 8-K filed on May 3, 2012).

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<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.25	Form of Tax Receivable Agreement.
10.26	Form of Berry Plastics Group, Inc. Executive Bonus Plan.**
10.27	Form of Berry Plastics Group, Inc. 2012 Long-Term Incentive Plan.**
10.28	Form of Amended and Restated Stockholders Agreement.
21.1	Subsidiaries of the Registrant.**
23.1	Consent of Wachtell, Lipton, Rosen & Katz (included in Exhibit 5.1).**
23.2	Consent of Ernst & Young LLP.
23.3	Consent of Ernst & Young LLP.
24.1	Power of Attorney (included in signature pages).**
99.1	Consent of David Heller to being named in the Registration Statement as about to become a director.

\*\* Previously filed.

FORM OF  
 BERRY PLASTICS GROUP, INC.  
 (a Delaware corporation)  
 [        ] Shares of Common Stock  
**UNDERWRITING AGREEMENT**

[    ], 2012

Merrill Lynch, Pierce, Fenner & Smith  
 Incorporated  
 Citigroup Global Markets Inc.  
 as Representatives of the several Underwriters  
 c/o Merrill Lynch, Pierce, Fenner & Smith  
 Incorporated  
 One Bryant Park  
 New York, New York 10036

Ladies and Gentlemen:

Berry Plastics Group, Inc., a Delaware corporation (the "Company"), confirms its agreement (the "Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and each of the other Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch and Citigroup Global Markets Inc. are acting as representatives (in such capacity, the "Representatives"), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of Common Stock, par value \$0.01 per share, of the Company ("Common Stock") set forth in Schedule A hereto and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of [        ] additional shares of Common Stock. The aforesaid [        ] shares of Common Stock (the "Initial Securities") to be purchased by the Underwriters and all or any part of the [        ] shares of Common Stock subject to the option described in Section 2(b) hereof (the "Option Securities") are herein called, collectively, the "Securities."

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company and the Underwriters agree that up to [        ] shares of the Initial Securities to be purchased by the Underwriters (the "Reserved Securities") shall be reserved for sale by the Underwriters to certain persons designated by the Company (the "Invitees"), as part of the distribution of the Securities by the Underwriters, subject to the terms of this Agreement, the

applicable rules, regulations and interpretations of the Financial Industry Regulatory Authority, Inc. (“FINRA”) and all other applicable laws, rules and regulations. The Company solely determined, without any direct or indirect participation by the Underwriters, the Invitees who will purchase Reserved Securities (including the amount to be purchased by such persons) sold by the Underwriters. To the extent that such Reserved Securities are not orally confirmed for purchase by Invitees by 9:00 A.M. (New York City time) on the first business day after the date of this Agreement, such Reserved Securities may be offered to the public as part of the public offering contemplated hereby.

The Company has filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-1 (No. 333-180294), including the related preliminary prospectus, covering the registration of the sale of the Securities under the Securities Act of 1933, as amended (the “1933 Act”). Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A (“Rule 430A”) of the rules and regulations of the Commission under the 1933 Act (the “1933 Act Regulations”) and Rule 424(b) (“Rule 424(b)”) of the 1933 Act Regulations. The information included in such prospectus that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective pursuant to Rule 430A(b) is herein called the “Rule 430A Information.” Such registration statement, including the amendments thereto, the exhibits thereto and any schedules thereto, at the time it became effective, and including the Rule 430A Information, is herein called the “Registration Statement.” Any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations is herein called the “Rule 462(b) Registration Statement” and, after such filing, the term “Registration Statement” shall include the Rule 462(b) Registration Statement. Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a “preliminary prospectus.” The final prospectus, in the form first furnished to the Underwriters for use in connection with the offering of the Securities, is herein called the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system (“EDGAR”).

As used in this Agreement:

“Applicable Time” means [ :00 P.M./A.M.], New York City time, on [ ], 2012 or such other time as agreed by the Company and Merrill Lynch.

“General Disclosure Package” means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time, the most recent preliminary prospectus that is distributed to investors prior to the Applicable Time and the information included on Schedule B-1 hereto, all considered together.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the 1933 Act

Regulations (“Rule 405”) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a “*bona fide* electronic road show,” as defined in Rule 433 (the “Bona Fide Electronic Road Show”)), as evidenced by its being specified in Schedule B-2 hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

#### SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), except for any representations and warranties that speak as of a specific date, in which case only as of such date, and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, threatened by the Commission.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus delivered to the Underwriters for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to

make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Merrill Lynch expressly for use therein. For purposes of this Agreement, the only information so furnished shall be [the information in the first paragraph under the heading “Underwriting–Commissions and Discounts,” the information in the second, third and fourth paragraphs under the heading “Underwriting–Price Stabilization, Short Positions and Penalty Bids” and the information under the heading “Underwriting–Electronic Distribution”]<sup>1</sup> in each case contained in the Prospectus (collectively, the “Underwriter Information”).

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus that has not been superseded or modified. The Company has made available a Bona Fide Electronic Road Show in compliance with Rule 433(d)(8)(ii) such that no filing of any “road show” (as defined in Rule 433(h)) is required in connection with the offering of the Securities.

(iv) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(v) Independent Accountants. Ernst & Young LLP, who have audited certain financial statements of the Company and its consolidated subsidiaries and Pliant Corporation (“Pliant”) and delivered their reports with respect to the audited consolidated financial statements of the Company and Pliant included in the Registration Statement, the General Disclosure Package and the Prospectus, is an independent auditor with respect to the Company and/or its subsidiaries within the meaning of the 1933 Act and the rules of the Public Company Accounting Oversight Board.

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<sup>1</sup> To be updated.

(vi) Financial Statements; Non-GAAP Financial Measures. The consolidated historical financial statements of the Company and its consolidated subsidiaries included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the consolidated financial position, results of operations and cash flows of the Company and its consolidated subsidiaries as of the dates and for the periods indicated and have been prepared in conformity with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved (except as otherwise noted therein). To the knowledge of the Company, the consolidated historical financial statements of Pliant and its consolidated subsidiaries included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the consolidated financial position, results of operations and cash flows of Pliant and its consolidated subsidiaries as of the dates and for the periods indicated and have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved (except as otherwise noted therein). The selected historical financial data set forth under the caption [“Summary—Summary Historical Consolidated Financial Data” and “Selected Historical Consolidated Financial Data”] in the Registration Statement, the General Disclosure Package and the Prospectus fairly present in all material respects, on the basis stated in the Registration Statement, the General Disclosure Package and the Prospectus, the information included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Securities Exchange Act of 1934, as amended (the “1934 Act”) and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(vii) No Material Adverse Change in Business. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, subsequent to the date of the most recent financial statements of the Company included in the Registration Statement, the General Disclosure Package and the Prospectus, (A) there has been no material adverse change, or any event or occurrence reasonably likely to result in a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity, and (B) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(viii) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware with full corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, and is duly qualified to do

business as a foreign corporation or other entity and is in good standing (where such concept is legally relevant) under the laws of each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification except where the failure to be so organized or qualified, have such power or authority or be in good standing would not reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business or results of operations of the Company and its subsidiaries, taken as a whole and after giving effect to the transactions contemplated hereby (a “Material Adverse Effect”).

(ix) Good Standing of Subsidiaries. Each “significant subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized and is validly existing in good standing (to the extent such concept is legally relevant) under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own or lease, as the case may be and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing (to the extent such concept is legally relevant) in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so organized or qualified, have such power or authority or be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. The only subsidiaries of the Company are (A) the subsidiaries listed on Exhibit 21 to the Registration Statement and (B) certain other subsidiaries which, considered in the aggregate as a single subsidiary, do not constitute a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X.

(x) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Registration Statement, the General Disclosure Package and the Prospectus under the caption “Capitalization” (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the Registration Statement, the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the Registration Statement, the General Disclosure Package and the Prospectus). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company were issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xi) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xii) Authorization and Description of Securities. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance



and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and non-assessable; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The Common Stock conforms in all material respects to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. No holder of Securities will be subject to personal liability solely by reason of being such a holder.

(xiii) Registration Rights. Other than as set forth in the Amended and Restated Stockholders Agreement, dated as of April 3, 2007, by and among the Company, and those stockholders of the Company named therein, there are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale or sold by the Company under the 1933 Act pursuant to this Agreement, other than those rights that have been disclosed in the Registration Statement, the General Disclosure Package and the Prospectus and have been waived.

(xiv) Absence of Violations and Defaults. Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its charter, bylaws or any equivalent organizational document; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject; or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any of its respective subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company, its subsidiaries or any of their respective properties, other than in the cases of clauses (ii) and (iii), such violations and defaults that would not reasonably be expected to have a Material Adverse Effect.

(xv) Absence of Conflicts. None of the execution and delivery of this Agreement, the issuance and sale of the Securities, or the consummation of any other of the transactions contemplated herein, or the fulfillment of the terms hereof will (i) conflict with, result in a breach or violation of, constitute a default under, or impose any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company is a party or bound or to which its or their property is subject, unless such breaches, violations, liens, charges, or encumbrances would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, (ii) conflict with, result in a breach or violation of, constitute a default under, or impose any lien, charge or encumbrance upon any property or assets of the Company pursuant to any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its or their properties, unless such breaches, violations, liens, charges, or encumbrances would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, or (iii) result in the violation of the charter, bylaws or any equivalent organizational document of the Company.

(xvi) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries that would reasonably be expected to have a Material Adverse Effect exists or, to the Company's knowledge, is threatened.

(xvii) ERISA. (i) The minimum funding standard under Section 302 of the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder ("ERISA"), has been satisfied by each "pension plan" (as defined in Section 3(2) of ERISA) that has been established or maintained by the Company and/or one or more of its subsidiaries; (ii) each of the Company and its subsidiaries has fulfilled in all material respects its obligations, if any, under Section 515 of ERISA; (iii) each pension plan and welfare plan established or maintained by the Company and/or one or more of its subsidiaries is in compliance in all material respects with the currently applicable provisions of ERISA; and (iv) none of the Company or any of its subsidiaries has incurred or, except as set forth or contemplated in the Prospectus, would reasonably be expected to incur any material withdrawal liability under Section 4201 of ERISA, any material liability under Section 4062, 4063, or 4064 of ERISA, or any other material liability under Title IV of ERISA; except, in each case, as would not reasonably be expected to have a Material Adverse Effect.

(xviii) Absence of Proceedings. No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries is pending or, to the knowledge of the Company, threatened that (i) would reasonably be expected to have a material adverse effect on the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder or (ii) would reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto that is not part of the Registration Statement, the General Disclosure Package and the Prospectus).

(xix) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described in all material respects or filed as required.

(xx) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except (A) such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the New York Stock Exchange, state securities laws or the rules of FINRA, (B) such as will have been obtained on or prior to the Closing Time, (C) such as have been obtained under the laws and regulations of

jurisdictions outside the United States in which the Reserved Securities were offered and (D) such filings with, or authorizations, approvals, consents, licenses, orders, registrations, qualifications or decrees which the failure to make or obtain would not reasonably be expected to have a Material Adverse Effect or prevent the Company from performing its obligations hereunder.

(xxi) Possession of Licenses and Permits. The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by the appropriate U.S. federal, state or non-U.S. regulatory authorities necessary to conduct their respective businesses as currently conducted, except where the failure to possess such licenses, certificates, permits and other authorizations would not reasonably be expected to have a Material Adverse Effect, and neither the Company nor any of its subsidiaries has received any notice of proceedings that are outstanding and unresolved relating to the revocation or modification of any such certificate, authorization or permit that, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto that is not part of the Registration Statement, the General Disclosure Package or Prospectus)

(xxii) Title to Property. Each of the Company and its subsidiaries owns or leases all such real properties as are reasonably necessary to the conduct of its respective operations as currently conducted, except as would not reasonably be expected to have a Material Adverse Effect.

(xxiii) Possession of Intellectual Property. The Company and its subsidiaries own, possess, license or have other rights to use all patents, trademarks and service marks, trade names, copyrights, domain names (in each case, including all registrations and applications to register the same), inventions, trade secrets, technology, know-how and other intellectual property (collectively, the "Intellectual Property") necessary for the conduct of their respective businesses as now conducted or as proposed in the Registration Statement, the General Disclosure Package and the Prospectus to be conducted, except where the failure to own, possess, license or otherwise have such rights would not reasonably be expected to have a Material Adverse Effect. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, and except as would not reasonably be expected to have a Material Adverse Effect, (i) the Company and its subsidiaries own, or have rights to use under license, all such Intellectual Property free and clear in all respects of all adverse claims, liens or other encumbrances; (ii) to the knowledge of the Company, there is no infringement by third parties of any such Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by any third party challenging the Company's or its subsidiaries rights in or to any such Intellectual Property; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by any third party challenging the validity, scope or enforceability of any such Intellectual Property; and (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by any third party that the Company or any of its subsidiaries infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of any third party.

(xxiv) Environmental Laws. The Company and its subsidiaries (i) are in compliance with any and all applicable non-U.S., U.S. federal, state and local laws and regulations relating to the protection of human health and safety (as such is affected by hazardous or toxic substances or wastes, pollutants or contaminants), the environment or hazardous or toxic substances or wastes, pollutants or contaminants (“Environmental Laws”); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; (iii) have not received written notice of any actual or potential liability under any Environmental Law; and (iv) have not been named as a “potentially responsible party” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; except in each case where such non-compliance with Environmental Laws, failure to receive or comply with required permits, licenses or other approvals, liability or status as a potentially responsible party would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect and except as set forth in or contemplated in the Registration Statement, General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto that is not part of the Registration Statement, the General Disclosure Package or the Prospectus).

(xxv) Accounting Controls and Disclosure Controls. The Company and each of its subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and its subsidiaries internal controls over financial reporting are effective and the Company and its subsidiaries are not aware of (1) any material weakness in their internal control over financial reporting or (2) any change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting, in each case except as set forth in or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto that is not part of the Registration Statement, the General Disclosure Package or the Prospectus).

The Company and each of its subsidiaries maintain a system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms, and is accumulated and communicated to the Company’s management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxvi) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act").

(xxvii) Payment of Taxes. The Company and its subsidiaries have (i) filed all non-U.S., U.S. federal, state and local tax returns that are required to be filed or have requested extensions thereof, except in any case in which the failure so to file or have requested an extension would not reasonably be expected to have a Material Adverse Effect and except as set forth in or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus, and (ii) paid all taxes required to be paid by them and any other tax assessment, fine or penalty levied against them, to the extent that any of the foregoing is due and payable, except for any such tax, tax assessment, fine or penalty that is currently being contested in good faith or as would not reasonably be expected to have a Material Adverse Effect and except as set forth in or contemplated in the Registration Statement, the General Disclosure Package and the Prospectus.

(xxviii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus, will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules and regulations promulgated thereunder.

(xxix) Absence of Manipulation. Neither the Company nor any affiliate of the Company has taken, nor will the Company or any affiliate take, directly or indirectly, any action which is designed, or would reasonably be expected, to cause or result in, or which constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the 1934 Act.

(xxx) Foreign Corrupt Practices Act. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company and its subsidiaries and, to the knowledge of the Company, its controlled

affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxii) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxxiii) OFAC. Neither the Company nor any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC<sup>2</sup>.

(xxxiv) Sales of Reserved Securities. In connection with any offer and sale of Reserved Securities outside the United States, the Prospectus, any prospectus wrapper and any amendment or supplement thereto, at the time it was filed, complied and will comply in all material respects with any applicable laws or regulations of foreign jurisdictions in which the same is distributed. The Company has not offered, or caused the Representatives to offer, Reserved Securities to any person with the specific intent to unlawfully influence (i) a customer or supplier of the Company or any of its affiliates to alter the customer’s or supplier’s level or type of business with any such entity or (ii) a trade journalist or publication to write or publish favorable information about the Company or any of its affiliates, or their respective businesses or products.

(xxxv) Statistical and Market-Related Data. Market-related or statistical data contained in the Registration Statement, the General Disclosure Package or the Prospectus are based upon or derived from sources that the Company in good faith believes are reliable and accurate in all material respects.

(b) Officer’s Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company (and not by such officer in his or her personal capacity) to each Underwriter as to the matters covered thereby.

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<sup>2</sup> Discuss.

(c) *Issuer Free Writing Prospectuses.* Each Underwriter represents and agrees that unless it obtains the prior written consent of the Company and the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) *Initial Securities.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price per share set forth in Schedule A, that number of Initial Securities set forth in Schedule A opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as Merrill Lynch in its sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional [        ] shares of Common Stock, at the price per share set forth in Schedule A, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted may be exercised for 30 days after the date hereof and may be exercised in whole or in part at any time from time to time upon written notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a “Date of Delivery”) shall be determined by the Representatives as set forth in the notice, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as Merrill Lynch in its sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of Cahill Gordon & Reindel LLP, 80 Pine Street, New York, NY 10005, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called “Closing Time”).

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from Merrill Lynch to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of certificates for the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Merrill Lynch, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) *Appointment of Qualified Independent Underwriter.* The Company hereby confirms their engagement of Merrill Lynch as, and Merrill Lynch hereby confirms its agreement with the Company to render services as, a “qualified independent underwriter” within the meaning of Rule 5121 of the Financial Industry Regulatory Authority, Inc. Conduct Rules (“Rule 5121”) with respect to the offering and sale of the Securities. Merrill Lynch, solely in its capacity as qualified independent underwriter and not otherwise, is referred to herein as the “QIU.”

SECTION 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) *Compliance with Securities Regulations and Commission Requests.* The Company, subject to Section 3(b), will comply with the requirements of Rule 430A, and will notify the Representatives promptly after receiving notice thereof, and confirm such notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without



reliance on Rule 424(b)(8)). The Company will make reasonable efforts to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof as soon as practicable.

(b) *Continued Compliance with Securities Laws.* The Company will comply with the 1933 Act and the 1933 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations (“Rule 172”), would be) required by the 1933 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representatives notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representatives with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representatives or counsel for the Underwriters shall reasonably object unless the Company reasonably believes that the failure to file or use such amendment or supplement would constitute a violation of law or subject it to liability. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(c) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith) and, if requested, signed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Delivery of Prospectuses.* The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period

when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) *Blue Sky Qualifications.* The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) *Rule 158.* The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under "Use of Proceeds."

(h) *Listing.* The Company will use reasonable best efforts to effect and maintain the listing of the Common Stock (including the Securities) on the New York Stock Exchange.

(i) *Restriction on Sale of Securities.* During a period of 180 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to generally in the Registration Statement, the General Disclosure Package and the Prospectus, including shares of Common Stock registered on any registration statement on Form S-8 under the 1933 Act with respect to the foregoing, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the Registration Statement, the General Disclosure Package and the Prospectus, including shares of Common Stock registered on any registration statement on Form S-8 under

the 1933 Act with respect to the foregoing, (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to generally in the Registration Statement, the General Disclosure Package and the Prospectus, including shares of Common Stock registered on any registration statement on Form S-8 under the 1933 Act with respect to the foregoing, or (E) any shares of Common Stock issued by the Company to owners of businesses which the Company may acquire in the future, whether by merger, acquisition of assets or capital stock or otherwise, as consideration for the acquisition of such businesses or to management employees of such businesses in connection with such acquisitions; provided that no more than an aggregate of 10% of the number of shares of Common Stock outstanding as of the Closing Time are issued as consideration in connection with all such acquisitions; provided further, that the Representatives receive a signed lock up agreement in substantially the form of Exhibit B hereto for the balance of the 180-day restricted period (including any 18-day extension thereof as provided for in this clause (i)) from the recipients receiving Common Stock in connection with such acquisitions, including such shares registered on Form S-4 under the 1933 Act. Notwithstanding the foregoing, if (1) during the last 17 days of the 180-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the 180-day restricted period, the Company announces that it will issue an earnings release or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions imposed in this clause (i) shall continue to apply until the expiration of the 18-day period beginning on the date of the issuance of the earnings release or the announcement of the material news or material event, unless the Representatives waive, in writing, such extension.

(j) *Release or Waiver on Restrictions on Sale of Securities.* If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a lock-up agreement described in Section 5(i) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two business days before the effective date of the release or waiver.

(k) *Reporting Requirements.* The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Shares as may be required under Rule 463 under the 1933 Act.

(l) *Issuer Free Writing Prospectuses.* The Company agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives. The Company represents that it has

treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representatives as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(m) *Compliance with FINRA Rules.* The Company hereby agrees that it will ensure that the Reserved Securities will be restricted as required by FINRA or the FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of this Agreement. The Underwriters will notify the Company as to which persons will need to be so restricted. At the request of the Underwriters, the Company will direct the transfer agent to place a stop transfer restriction upon such securities for such period of time. Should the Company release, or seek to release, from such restrictions any of the Reserved Securities, the Company agrees to reimburse the Underwriters for any reasonable expenses (including, without limitation, legal expenses) they incur in connection with such release

#### SECTION 4. Payment of Expenses.

(a) *Expenses.* The Company will pay or cause to be paid all expenses incident to the following matters: (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto, as may, in each case, be reasonably requested for use in connection with the offer and sale of the Securities and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the certificates for the Securities to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vi) the fees and expenses of any transfer agent or registrar for the Securities, (vii) the costs and expenses of the Company relating to investor presentations on any “road show” undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants (for the avoidance of doubt, the Underwriters will pay or cause to be

paid travel and lodging expenses of the representatives and officers of any Underwriter), and 50% of the cost of aircraft and other transportation chartered in connection with the road show (it being understood that the other 50% of the costs of such aircraft and other transportation chartered in connection with the road show shall be paid by the Underwriters), (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Securities and (ix) the fees and expenses incurred in connection with the listing of the Securities on the New York Stock Exchange, (x) all costs and expenses of the Underwriters, including the reasonable fees and disbursements of counsel for the Underwriters, in connection with matters related to the Reserved Securities which are designated by the Company for sale to Invitees; provided that the fees and disbursements of counsel to the Underwriters pursuant to clauses (v), (viii) and (x) of this Section 4(a), in the aggregate, shall not exceed \$45,000. It is understood that the Company shall not bear the cost of any other matters not directly relating to the sale and purchase of the Securities pursuant to this Agreement and, except as expressly provided in this Section 4 and Section 6, the Underwriters shall pay all their costs and expenses, including fees and disbursements of their counsel, and travel and other expenses of the Underwriters in connection with the sale and distribution of the Securities.

(b) *Termination of Agreement.* If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9(a)(i) or (iii) or Section 10 (except as set forth in the next sentence) hereof, the Company shall reimburse the Underwriters for their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters. In the case of termination by the Representatives in accordance with the provisions of Section 10, the Company shall have no obligation to reimburse any defaulting Underwriter pursuant to this Section 4(b).

**SECTION 5. Conditions of Underwriters' Obligations.** The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its subsidiaries delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement; Rule 430A Information.* The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and, at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, threatened by the Commission; and the Company has complied with each request (if any) from the Commission for additional information. A prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) without reliance on Rule 424(b)(8) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

(b) *Opinion of Counsel for Company.* At the Closing Time, the Representatives shall have received (i) an opinion and negative assurance letter, dated the Closing Time, of Wachtell,

Lipton, Rosen & Katz, special counsel for the Company, in the form set forth in Exhibits A-1(i) and A-1(ii) hereto, together with signed or reproduced copies of such opinion and letter for each of the other Underwriters and (ii) an opinion, dated the Closing Time, of the Chief Legal Officer of the Company in form set forth in Exhibit A-2 hereto, together with signed or reproduced copies of such letter for each of the other Underwriters.

(c) *Opinion of Counsel for Underwriters.* At the Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Cahill Gordon & Reindel LLP, counsel for the Underwriters together with signed or reproduced copies of such letter for each of the other Underwriters with respect to the matters set forth in Exhibit A, clauses (v), (vi) (solely as to preemptive or other similar rights arising by operation of law or under the charter or by-laws of the Company), (viii), (x), (xiv) (solely as to the information in the Prospectus under “Description of Capital Stock—Common Stock”), the penultimate paragraph of Exhibit A hereto, and other related matters as the Representatives may require. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York[, the General Corporation Law of the State of Delaware] and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(d) *Officers’ Certificate.* At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any Material Adverse Effect, and the Representatives shall have received a certificate of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company, dated the Closing Time, to the effect that (i) there has been no such Material Adverse Effect, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, except for such representations and warranties which are made as of a specific date, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, threatened by the Commission.

(e) *Accountant’s Comfort Letter.* At the time of the execution of this Agreement, the Representatives shall have received from Ernst & Young LLP letters, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants’ “comfort letters” to underwriters with respect to the financial statements and certain financial information of the Company and Pliant contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letter.* At the Closing Time, the Representatives shall have received from Ernst & Young LLP letters, dated as of the Closing Time, to the effect that they

reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) *Approval of Listing.* At the Closing Time, the Securities shall have been approved for listing on the New York Stock Exchange, subject only to official notice of issuance.

(h) *No Objection.* FINRA has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering of the Securities.

(i) *Lock-up Agreements.* At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit B hereto signed by the persons listed on Schedule C hereto.

(j) *Maintenance of Rating.* Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 436(g) under the 1933 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(k) *Conditions to Purchase of Option Securities.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company and any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Underwriters, (i) an opinion and negative assurance letter of Wachtell, Lipton, Rosen & Katz, special counsel for the Company, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise substantially to the same effect as the opinion required by Section 5(b) hereof and (ii) an opinion, dated the Closing Time, of the Chief Legal Officer of the Company, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise substantially to the same effect as the opinion required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. If requested by the Representatives, an opinion of Cahill Gordon & Reindel LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise substantially to the same effect as the opinion required by Section 5(c) hereof.

(v) Bring-down Comfort Letter. If requested by the Representatives, a letter from Ernst & Young LLP, in form and substance reasonably satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(e) hereof, except that the “specified date” in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(l) *Additional Documents*. At the Closing Time and at each Date of Delivery (if any) counsel for the Underwriters shall have been furnished with such customary closing documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained.

(m) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by written notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 14, 15 and 16 shall survive any such termination and remain in full force and effect.

#### SECTION 6. Indemnification.

(a) *Indemnification of Underwriters*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an “Affiliate”)), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against (i) any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto), or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Stock (“Marketing Materials”), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, Issuer Free Writing Prospectus or Prospectus of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) against any and all loss, liability, claim, damage and expense



whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company; and (iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel chosen by Merrill Lynch), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above; provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, the General Disclosure Package, any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

Insofar as this indemnity agreement may permit indemnification for liabilities under the 1933 Act of any person who is a partner of an Underwriter or who controls an underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and who, at the date of this Agreement, is a director or officer of the Company or controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, such indemnity agreement is subject to the undertaking of the Company in the Registration Statement under Item 17 thereof.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, the General Disclosure Package, any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by Merrill Lynch, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action;

provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided that, if indemnity is sought pursuant to Section 6(d), then, in addition to the fees and expenses of such counsel for the indemnified parties, the indemnifying party shall be liable for the reasonable fees and expenses of not more than one counsel (in addition to any local counsel) separate from its own counsel and that of the other indemnified parties for the QIU in its capacity as a “qualified independent underwriter” and all persons, if any, who control the QIU within the meaning of Section 15 of the 1933 Act or Section 20 of 1934 Act in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances if, in the reasonable judgment of the QIU, there may exist a conflict of interest between the QIU and the other indemnified parties. Any such separate counsel for the QIU and such control persons of the QIU shall be designated in writing by the QIU. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) or settlement of any claim in connection with any violation referred to in Section 6(f) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) *Indemnification of QIU.* In addition to and without limitation of the Company’s obligation to indemnify Merrill Lynch as an Underwriter, the Company also agrees to indemnify and hold harmless the QIU, its Affiliates and selling agents and each person, if any, who controls the QIU within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, from and against any and all loss, liability, claim, damage and expense whatsoever incurred as a result of the QIU’s participation as a “qualified independent underwriter” within the meaning of Rule 5121 in connection with the offering of the Securities.

(f) *Indemnification for Reserved Securities.* In connection with the offer and sale of the Reserved Securities, the Company agrees to indemnify and hold harmless the Underwriters,

their Affiliates and selling agents and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the 1933 Act or Section 20 of the 1934 Act, from and against any and all loss, liability, claim, damage and expense (including, without limitation, any legal or other expenses reasonably incurred in connection with defending, investigating or settling any such action or claim), as incurred, (i) arising out of the violation of any applicable laws or regulations of foreign jurisdictions where Reserved Securities have been offered, (ii) arising out of any untrue statement or alleged untrue statement of a material fact contained in any prospectus wrapper or other material prepared by or with the consent of the Company for distribution to Invitees in connection with the offering of the Reserved Securities or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) caused by the failure of any Invitee to pay for and accept delivery of Reserved Securities which have been orally confirmed for purchase by any Invitee by 9:00 A.M. (New York City time) on the first business day after the date of the Agreement or (iv) related to, or arising out of or in connection with, the offering of the Reserved Securities (except for any such loss, liability, claim, damage and expense resulting from the bad faith, willful misconduct or gross negligence of the Underwriters); provided that no indemnification shall be available under this section for any loss, liability, claim, damage or expense which shall have been finally judicially determined by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of Merrill Lynch or any of its affiliates.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions, or in connection with any violation of the nature referred to in Section 6(f) hereof, which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or any violation of the nature referred to in Section 6(f) hereof.

The Company and the Underwriters agree that Merrill Lynch will not receive any additional benefits hereunder for serving as the QIU in connection with the offering and sale of the Securities.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the shares of Common Stock underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

**SECTION 8. Representations, Warranties and Agreements to Survive.** All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.

**SECTION 9. Termination of Agreement.**

(a) *Termination.* The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the

Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any Material Adverse Effect, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange (other than due to the circumstances described in clause (iv) of this Section 9(a)), or (iv) if trading generally on the NYSE MKT LLC or the New York Stock Exchange or in the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 14, 15 and 16 shall survive such termination and remain in full force and effect.

**SECTION 10. Default by One or More of the Underwriters.** If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the “Defaulted Securities”), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery, shall terminate without liability on the part of any non-defaulting Underwriter. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except for the payment of expenses as expressly set forth in Section 4.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to Merrill Lynch at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730); notices to the Company shall be directed to it at Berry Plastics Group, Inc., 101 Oakley St., Evansville, IN 47710, to the attention of James M. Kratochvil, with a copy to Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019, to the attention of Andrew J. Nussbaum.

SECTION 12. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries or their respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

SECTION 13. Parties. This Agreement shall inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this

Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 14. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

SECTION 15. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

SECTION 16. Consent to Jurisdiction; Waiver of Immunity. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“Related Proceedings”) shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the “Specified Courts”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a “Related Judgment”), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 17. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 19. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

BERRY PLASTICS GROUP, INC.

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

CONFIRMED AND ACCEPTED,  
as of the date first above written:

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED  
CITIGROUP GLOBAL MARKETS INC.

By: MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

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

By: CITIGROUP GLOBAL MARKETS INC.

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

For themselves and as Representatives of the other Underwriters named in Schedule A hereto.



By: MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

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

As Qualified Independent Underwriter

SCHEDULE A

The initial public offering price per share for the Securities shall be \$[            ].

The purchase price per share for the Securities to be paid by the several Underwriters shall be \$[            ], being an amount equal to the initial public offering price set forth above less \$[            ] per share, subject to adjustment in accordance with Section 2(b) for dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

Name of Underwriter	<u>Number of Initial Securities</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Citigroup Global Markets Inc.	
Barclays Capital Inc.	
Deutsche Bank Securities Inc.	
Credit Suisse Securities (USA) LLC	
Goldman, Sachs & Co	
Robert W. Baird & Co. Incorporated	
Lazard Capital Markets LLC	
SunTrust Robinson Humphrey, Inc.	
Lebenthal & Co. LLC	
Apollo Global Securities, LLC	
Total	[            ]

SCHEDULE B-1

Pricing Terms

1. The Company is selling [ ] shares of Common Stock.
2. The Company has granted an option to the Underwriters, severally and not jointly, to purchase up to an additional [ ] shares of Common Stock.
3. The initial public offering price per share for the Securities shall be \$[ ].

SCHEDULE B-2

Free Writing Prospectuses

[ ]

Sch B-1

SCHEDULE C

List of Persons and Entities Subject to Lock-up

Sch C-1

FORM OF OPINION OF COMPANY'S COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(b)

FORM OF PRESS RELEASE  
TO BE ISSUED PURSUANT TO SECTION 3(j)

BERRY PLASTICS GROUP, INC.  
[Date]

Berry Plastics Group, Inc. (the “Company”) announced today that [ ], the lead book-running manager in the Company’s recent public sale of [ ] shares of common stock, is [waiving] [releasing] a lock-up restriction with respect to [ ] shares of the Company’s common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on [ ], 2012, and the shares may be sold on or after such date.

**This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.**

**FORM OF**  
**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**BERRY PLASTICS GROUP, INC.**

---

Berry Plastics Group, Inc. (the "Corporation"), a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

1. The name of the Corporation is BERRY PLASTICS GROUP, INC.
2. The Corporation was originally incorporated under the name TP&A Acquisition Corporation. The date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was November 18, 2005.
3. This Amended and Restated Certificate of Incorporation amends and restates the Certificate of Incorporation of the Corporation and has been duly adopted by the Board of Directors of the Corporation by unanimous written consent in lieu of a meeting in accordance with Sections 141(f), 242, and 245 of the General Corporation Law of the State of Delaware (the "DGCL") and by the stockholders of the Corporation by written consent in lieu of a meeting thereof in accordance with Sections 228, 242 and 245 of the DGCL.
4. The Certificate of Incorporation of the Corporation, as amended hereby, shall, upon the effectiveness hereof, read in its entirety, as follows:

**ARTICLE I**

The name of the Corporation (hereinafter called the "Corporation") is:

BERRY PLASTICS GROUP, INC.

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, State of Delaware 19904. The name of the Corporation's registered agent at such address is National Registered Agents, Inc.

### ARTICLE III

The purpose of the Corporation shall be to engage in any lawful act and activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

### ARTICLE IV

Section 1. Authorized Shares. The total number of shares of all classes of stock that the Corporation shall have authority to issue is 450,000,000 shares, of which 400,000,000 shares shall be common stock, \$0.01 par value ("Common Stock") and 50,000,000 shares shall be preferred stock, \$0.01 par value ("Preferred Stock").

Section 2. Common Stock. Except as otherwise required by applicable law, all shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights, subject to the same qualifications, limitations and restrictions. The terms of the Common Stock set forth below shall be subject to the express terms of any series of Preferred Stock.

(a) Voting Rights. Except as otherwise required by applicable law, the holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the Corporation's stockholders. No stockholder of the Corporation shall be entitled to exercise any right of cumulative voting.

(b) Dividends. The holders of Common Stock shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (the "Board") out of the funds of the Corporation legally available therefor, such dividends (payable in cash, stock or otherwise) as the Board may from time to time determine, payable to stockholders of record on such dates, not exceeding 60 days preceding the dividend payment dates, as shall be fixed for such purpose by the Board in advance of payment of each particular dividend.

(c) Liquidation. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after the distribution or payment of any liabilities and accrued but unpaid dividends and any liquidation preferences on any outstanding Preferred Stock, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among and paid to the holders of Common Stock ratably in proportion to the number of shares of Common Stock held by them respectively.

Section 3. Preferred Stock. The Board is authorized to provide for the issuance from time to time of shares of Preferred Stock in one or more series and, by filing a certificate (a "Preferred Stock Certificate of Designation") pursuant to the applicable provisions of the Delaware General Corporation Law (the "DGCL"), to establish from time to time the number of shares to be included in each such series, with such powers, designations, preferences and relative, participating, optional or other rights, if any, and qualifications, limitations or restrictions thereof, if any, as are stated and expressed in the resolution or resolutions providing for the issuance thereof adopted by the Board (as such resolutions may be amended by a resolution or resolutions subsequently adopted by the Board), and as are not stated and expressed in this Amended and Restated Certificate of Incorporation, including, but not limited to, determination of any of the following:



- (a) the distinctive designation of the series, whether by number, letter or title, and the number of shares which will constitute the series, which number may be increased or decreased (but not below the number of shares then outstanding and except to the extent otherwise provided in the applicable Preferred Stock Certificate of Designation) from time to time by action of the Board;
- (b) the dividend rate, if any, and the times of payment of dividends, if any, on the shares of the series, whether such dividends will be cumulative and, if so, from what date or dates, and the relation which such dividends, if any, shall bear to the dividends payable on any other class or classes of stock;
- (c) the price or prices at which, and the terms and conditions on which, the shares of the series may be redeemed at the option of the Corporation;
- (d) whether or not the shares of the series will be entitled to the benefit of a retirement or sinking fund to be applied to the purchase or redemption of such shares and, if so entitled, the amount of such fund and the terms and provisions relative to the operation thereof;
- (e) the amounts payable on, and the preferences, if any, of the shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (f) whether or not the shares of the series will be convertible into, or exchangeable for, any other shares of stock of the Corporation or other securities and, if so convertible or exchangeable, the conversion price or prices, or the rates of exchange, and any adjustments thereof, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange;
- (g) whether or not the shares of the series will have priority over or be on a parity with or be junior to the shares of any other series or class of stock in any respect, or will be entitled to the benefit of limitations restricting the issuance of shares of any other series or class of stock, restricting the payment of dividends on or the making of other distributions in respect of shares of any other series or class of stock ranking junior to the shares of the series as to dividends or assets, or restricting the purchase or redemption of the shares of any such junior series or class, and the terms of any such restriction;
- (h) whether or not the shares of the series will have voting rights in addition to any voting rights provided by law and, if so, the terms of such voting rights; and
- (i) any other terms of the shares of the series.

**ARTICLE V**

Section 1. General Powers. Except as otherwise provided by applicable law or this Amended and Restated Certificate of Incorporation, in each case as the same may be amended and supplemented, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

Section 2. Number of Directors. The number of directors that shall constitute the whole Board shall be as determined from time to time by a majority of the Board, subject to the Amended and Restated Stockholders Agreement, dated as of [—], as amended from time to time, by and among the Corporation and the stockholders that are parties thereto (the “Stockholders Agreement”); provided, that in no event shall the total number of directors constituting the entire Board be less than three (3) nor more than fifteen (15). Election of directors need not be by written ballot.

Section 3. Classes of Directors; Term of Office. The Board shall be and is divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III. In case of any increase or decrease, from time to time, in the number of directors, the number of directors in each class shall be apportioned as nearly equal as possible. No decrease in the number of directors shall shorten the term of any incumbent director.

Each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; provided, that each director initially appointed to Class I shall serve for a term expiring at the Corporation’s annual meeting of stockholders held in 2013; each director initially appointed to Class II shall serve for a term expiring at the Corporation’s annual meeting of stockholders held in 2014; and each director initially appointed to Class III shall serve for a term expiring at the Corporation’s annual meeting of stockholders held in 2015; provided, further, that the term of each director shall continue until the election and qualification of his successor and be subject to his earlier death, resignation or removal.

Section 4. Quorum. Except as otherwise provided by law, this Amended and Restated Certificate of Incorporation or the Bylaws, a majority of the total number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board, but in no event shall less than one-third of the directors constitute a quorum. A majority of the directors present (though less than such quorum) may adjourn the meeting from time to time without further notice.

Section 5. Manner of Acting. Every act or decision done or made by the majority of the directors present at a meeting at which a quorum is present shall be regarded as the act of the Board (a) unless the act of a greater number is required by law, this Amended and Restated Certificate of Incorporation or the Bylaws, in each case as the same may be amended and supplemented, and (b) except as provided in the Stockholders Agreement.

Section 6. Vacancies. Any vacancy or newly created directorships in the Board, however occurring, shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, except as otherwise provided by law and the Stockholders Agreement, and shall not be filled by the stockholders of the Corporation. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor and to such director’s earlier death, resignation or removal.

If any applicable provision of the DGCL expressly confers power on stockholders to fill such a directorship at a special meeting of stockholders, such a directorship may be filled at such meeting only by the affirmative vote of the holders of a majority of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

Section 7. Removal and Resignation of Directors. Except to the extent otherwise provided in the Stockholders Agreement, directors may be removed only for cause, and only by the affirmative vote of the holders of a majority of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors. A director may resign at any time by filing his written resignation with the secretary of the Corporation.

Section 8. Voting Rights of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article unless expressly provided by such terms.

## ARTICLE VI

In furtherance and not in limitation of the rights, powers, privileges and discretionary authority granted or conferred by statute, the Board is expressly authorized to:

(a) make, alter, amend or repeal the Bylaws, without any action on the part of the stockholders of the Corporation and subject to any limitations that may be contained in such Bylaws, but any Bylaws adopted by the Board may be amended, modified or repealed by the stockholders entitled to vote thereon; and

(b) from time to time to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection of stockholders; and, except as so determined or as expressly provided in this Amended and Restated Certificate of Incorporation or in any Preferred Stock Certificate of Designation, no stockholder shall have any right to inspect any account, book or document of the Corporation other than such rights as may be conferred by applicable law.

## ARTICLE VII

Any action required or permitted to be taken by the holders of the Common Stock of the Corporation must be effected at a duly called annual or special meeting of such holders and, subject to the next sentence, may not be effected by any consent or consents in writing by stockholders. Notwithstanding the foregoing, until such time as Apollo Management VI, L.P., Apollo Management V, L.P. and any of their Affiliates (as defined in Rule 12b-2 under the Securities

Exchange Act of 1934, as amended (the “Exchange Act”)) (collectively, “Apollo”) no longer beneficially own more than 50.1% of the total number of shares of Common Stock outstanding, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by or on behalf of the holders of outstanding Common Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Common Stock were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

#### **ARTICLE VIII**

Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Chairman of the Board or a majority of the members of the Board pursuant to a resolution approved by the Board, and special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

#### **ARTICLE IX**

To the extent permitted by the DGCL, a director of the Corporation will not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (or any successor provision thereto), or (iv) for any transaction from which the director derived any improper personal benefit. Any repeal or amendment or modification of this Article IX by the stockholders of the Corporation or by changes in applicable law, or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article IX, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide a broader limitation on a retroactive basis than permitted prior thereto), and will not adversely affect any limitation on the personal liability of any director of the Corporation at the time of such repeal or amendment or modification or adoption of such inconsistent provision. If any provision of the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

#### **ARTICLE X**

(a) Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was, at any time during which this Amended and Restated Certificate of Incorporation is in effect (whether or not such person continues to serve in such capacity at the time any indemnification or payment of expenses pursuant hereto is

sought or at the time any proceeding relating thereto exists or is brought), a director or officer of the Corporation or is or was at any such time serving at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation (hereinafter, an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, trustee, employee or agent or in any other capacity while serving as a director, officer, trustee, employee or agent, shall be (and shall be deemed to have a contractual right to be) indemnified and held harmless by the Corporation (and any successor of the Corporation by merger or otherwise) to the fullest extent authorized by the DGCL as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the Corporation to provide greater indemnification rights than said law permitted the Corporation to provide prior to such amendment or modification), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (c) of this Article X, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article X shall include the right, without the need for any action by the Board, to be paid by the Corporation (and any successor of the Corporation by merger or otherwise) the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the Corporation within twenty (20) days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the DGCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter, the "undertaking") by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal (a "final disposition") that such director or officer is not entitled to be indemnified for such expenses under this Article X or otherwise. The rights conferred upon indemnitees in this Article X shall be contract rights between the Corporation and each indemnitee to whom such rights are extended that vest at the commencement of such person's service to or at the request of the Corporation and all such rights shall continue as to an indemnitee who has ceased to be a director or officer of the Corporation or ceased to serve at the Corporation's request as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, as described herein, and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

(b) To obtain indemnification under this Article X, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this paragraph (b), a determination, if required

by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (i) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (ii) if no request is made by the claimant for a determination by Independent Counsel, (A) by the Board by a majority vote of a quorum consisting of Disinterested Directors (as hereinafter defined), (B) if a quorum of the Board consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the claimant, or (C) if a quorum of Disinterested Directors so directs, by a majority of the stockholders of the Corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel, the Independent Counsel shall be selected by the Board unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a "Change of Control" as defined in the Berry Plastics Group, Inc. 2012 Long-Term Incentive Plan in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within ten (10) days after such determination.

(c) If a claim under paragraph (a) of this Article X is not paid in full by the Corporation within thirty (30) days after a written claim pursuant to paragraph (b) of this Article X has been received by the Corporation (except in the case of a claim for advancement of expenses, for which the applicable period is twenty (20) days), the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standard of conduct which makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed or that the claimant is not entitled to the requested advancement of expenses, but (except where the required undertaking, if any, has not been tendered to the Corporation) the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(d) If a determination shall have been made pursuant to paragraph (b) of this Article X that the claimant is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to paragraph (c) of this Article X.

(e) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to paragraph (c) of this Article X that the procedures and presumptions of this Article X are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Article X.

(f) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article X: (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Amended and Restated Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the Corporation, the Board or the stockholders of the Corporation with respect to a person's service prior to the date of such termination. Any amendment, modification, alteration or repeal of this Article X that in any way diminishes, limits, restricts, adversely affects or eliminates any right of an indemnitee or his or her successors to indemnification, advancement of expenses or otherwise shall be prospective only and shall not, without the written consent of the indemnitee, in any way diminish, limit, restrict, adversely affect or eliminate any such right with respect to any actual or alleged state of facts, occurrence, action or omission then or previously existing, or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such actual or alleged state of facts, occurrence, action or omission.

(g) The Corporation may maintain insurance, at its expense, to protect itself and any current or former director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such current or former director or officer, and each such agent or employee to which rights to indemnification have been granted as provided in paragraph (h) of this Article X, shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such current or former director, officer, employee or agent.

(h) The Corporation may, to the extent authorized from time to time by the Board or the Chief Executive Officer, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in connection with any proceeding in advance of its final disposition, to any current or former employee or agent of the Corporation to the fullest extent of the provisions of this Article X with respect to the indemnification and advancement of expenses of current or former directors and officers of the Corporation.

(i) If any provision or provisions of this Article X shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article X (including, without limitation, each portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article X (including, without limitation, each such portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(j) For purposes of this Article X:

(i) "Disinterested Director" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(ii) "Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporate law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant's rights under this Article X.

(k) Any notice, request or other communication required or permitted to be given to the Corporation under this Article X shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

#### ARTICLE XI

Neither any contract or other transaction between the Corporation and any other corporation, partnership, limited liability company, joint venture, firm, association, or other entity (an "Entity"), nor any other acts of the Corporation with relation to any other Entity will, in the absence of fraud, in any way be invalidated or otherwise affected by the fact that any one or more of the directors or officers of the Corporation are pecuniarily or otherwise interested in, or are directors, officers, partners, or members of, such other Entity (such directors, officers, and Entities, each a "Related Person"). Any Related Person may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, provided, that the fact that such person is a Related Person is disclosed or is known to the Board or a majority of directors present at any meeting of the Board at which action upon any such contract or transaction is taken; and any director of the Corporation who is also a Related Person may be counted in determining the existence of a quorum at any meeting of the Board during which any such contract or transaction is authorized and may vote thereat to authorize any such contract or transaction, with like force and effect as if such person were not a Related Person. Any director of the Corporation may vote upon any contract or any other transaction between the Corporation and any subsidiary or affiliated corporation without regard to the fact that such person is also a director or officer of such subsidiary or affiliated corporation.

Any contract, transaction or act of the Corporation or of the directors that is ratified at any annual meeting of the stockholders of the Corporation, or at any special meeting of the stockholders of the Corporation called for such purpose, will, insofar as permitted by applicable law, be as valid and as binding as though ratified by every stockholder of the Corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, will not be deemed in any way to invalidate the same or deprive the Corporation, its directors, officers or employees, of its or their right to proceed with such contract, transaction or act.

Subject to any express agreement that may from time to time be in effect, (x) any director or officer of the Corporation who is also an officer, director, employee, managing director or other affiliate of Apollo or of Graham Partners II, L.P. and its Affiliates (as defined in Rule 12b-2 under the Exchange Act) (collectively, "Graham"), (y) Apollo and (z) Graham, may, and shall have no duty not to, in each case on behalf of Apollo or Graham, as applicable (the persons and entities in clauses (x), (y) and (z), each a "Covered Person"), (i) carry on and conduct, whether directly, or as a partner in any partnership, or as a joint venturer in any joint venture, or as an officer, director or stockholder of any corporation, or as a



participant in any syndicate, pool, trust or association, any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Corporation, (ii) do business with any client, customer, vendor or lessor of any of the Corporation or its affiliates, and (iii) make investments in any kind of property in which the Corporation may make investments. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation to participate in any business of Apollo and Graham, as applicable, and waives any claim against a Covered Person and shall indemnify a Covered Person against any claim that such Covered Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of such person's or entity's participation in any such business. The Corporation shall pay in advance any expenses incurred in defense of such claim as provided in Article X. In the event that a Covered Person acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Covered Person, in his or her Apollo-related or Graham-related capacity, as applicable, Apollo, or Graham, and (y) the Corporation, the Covered Person shall not have any duty to offer or communicate information regarding such corporate opportunity to the Corporation. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation in such corporate opportunity and waives any claim against each Covered Person and shall indemnify a Covered Person against any claim, that such Covered Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Covered Person (i) pursues or acquires any corporate opportunity for its own account or the account of any affiliate, (ii) directs, recommends, sells, assigns, or otherwise transfers such corporate opportunity to another person or (iii) does not communicate information regarding such corporate opportunity to the Corporation, provided, however, in each case, that any corporate opportunity which is expressly offered to a Covered Person in writing solely in his or her capacity as an officer or director of the Corporation shall belong to the Corporation. The Corporation shall pay in advance any expenses incurred in defense of such claim as provided in Article X.

Any person or entity purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XI.

This Article XI may not be amended, modified or repealed with respect to Apollo without the prior written consent of Apollo, or with respect to Graham without the prior written consent of Graham.

**ARTICLE XII**

The Corporation elects not to be governed by Section 203 of the DGCL.

**ARTICLE XIII**

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority in voting power of all the shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to modify, amend or repeal, this Amended and Restated Certificate of Incorporation; provided, however, that any modification, amendment or repeal to Article XI shall require the prior written approval of Apollo.

#### ARTICLE XIV

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

#### ARTICLE XV

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, or (d) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in any share of capital stock of the Corporation shall be deemed to have notice of and consent to the provisions of this Article XV.

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IN WITNESS WHEREOF, BERRY PLASTICS GROUP, INC. has caused this Amended and Restated Certificate of Incorporation to be signed by Jonathan D. Rich, Chairman and Chief Executive Officer, this [•] day of [•], 2012.

BERRY PLASTICS GROUP, INC.

By: \_\_\_\_\_  
Name: Jonathan D. Rich  
Title: Chairman and Chief Executive Officer

**FORM OF**  
**AMENDED AND RESTATED BYLAWS**  
**OF**  
**BERRY PLASTICS GROUP, INC.**

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**ARTICLE I**  
**OFFICES AND RECORDS**

SECTION 1.1 Delaware Office. The registered office of Berry Plastics Group, Inc. (the "Corporation") in the State of Delaware shall be located in the City of Dover, County of Kent, and the name and address of its registered agent is c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, in Dover, Delaware, 19904.

SECTION 1.2 Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors of the Corporation (the "Board of Directors") may designate or as the business of the Corporation may from time to time require.

SECTION 1.3 Books and Records. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

**ARTICLE II**  
**STOCKHOLDERS**

SECTION 2.1 Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held on such date and at such place and time as may be fixed by resolution of the Board of Directors.

SECTION 2.2 Special Meeting. Subject to the rights of the holders of any series of stock having a preference over the Common Stock of the Corporation as to dividends or upon liquidation ("Preferred Stock") with respect to such series of Preferred Stock, special meetings of the stockholders may be called only by the Chairman of the Board or by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

SECTION 2.3 Place of Meeting. The Board of Directors or the Chairman of the Board, as the case may be, may designate the place of meeting for any annual meeting or for any special meeting of the stockholders called by the Board of Directors or the Chairman of the Board. If no designation is so made, the place of meeting shall be the principal office of the Corporation.

SECTION 2.4 Notice of Meeting. Written or printed notice, stating the place, date and time of the meeting and the purpose or purposes for which the meeting is called, shall be delivered by the Corporation not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, by electronic transmission in the manner provided in Section 232 of the General Corporation Law of the State of Delaware (except to the extent prohibited by Section 232(e) of the General Corporation Law of the State of Delaware) or by mail, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his or her address as it appears on the stock transfer books of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the General Corporation Law of the State of Delaware. Such further notice shall be given as may be required by law. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting or otherwise by or at the direction of the Board of Directors. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 6.4 of these Bylaws. Any previously scheduled meeting of the stockholders may be postponed, and (unless otherwise provided in the Amended and Restated Certificate of Incorporation, as may be amended from time to time (the "Certificate of Incorporation")) any special meeting of the stockholders may be cancelled, by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such meeting of stockholders.

SECTION 2.5 Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The Chairman of the meeting, the Chief Executive Officer or a President may adjourn the meeting from time to time, whether or not there is such a quorum. No notice of the time and place of adjourned meetings need be given except as required by law. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 2.6 Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such manner prescribed by the General Corporation Law of the State of Delaware) by the stockholder, or by his or her duly authorized attorney in fact.

SECTION 2.7 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) At any annual meeting of the stockholders, only such nominations of persons for election to the Board of Directors and only other business shall be considered or conducted, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be: (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who (i) was a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in this By-Law as to such business or nomination; clause (c) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification or limitation, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to paragraph (A)(1)(c) of this By-Law, the stockholder must have given timely notice thereof in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120<sup>th</sup> day and not later than the close of business on the 90<sup>th</sup> day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120<sup>th</sup> day prior to the date of such annual meeting and not later than the close of business on the later of the 90<sup>th</sup> day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof. To be in proper form, a stockholder's notice (whether given pursuant to this paragraph (A)(2) or paragraph (B)) to the Secretary must: (a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they

appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner, and of their respective affiliates or associates or others acting in concert therewith, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, through the delivery of cash or other property, or otherwise, and without regard of whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (D) any contract, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such stockholder, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any security of the Corporation (any of the foregoing, a "Short Interest"), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household, (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such stockholder, and (I) any direct or indirect interest of such stockholder in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collec-

tive bargaining agreement or consulting agreement), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration) and (iii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; (c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (d) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Section 2.8 of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this By-Law to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this By-Law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10<sup>th</sup> day following the day on which such public announcement is first made by the Corporation.



(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting or otherwise by or at the direction of the Board of Directors. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (i) is a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the special meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in this By-Law as to such nomination. The immediately preceding sentence shall be the exclusive means for a stockholder to make nominations (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting) before a special meeting of stockholders. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this By-Law with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 2.8 of this By-Law) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120<sup>th</sup> day prior to the date of such special meeting and not later than the close of business on the later of the 90<sup>th</sup> day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10<sup>th</sup> day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this By-Law shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this By-Law. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this By-Law and, if any proposed nomination or business is not in compliance with this By-Law, to declare that such defective proposal or nomination shall be disregarded. Unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to make a nomination or present a proposal of other business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this By-Law, to be considered

a qualified representative of the stockholder, a person must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this By-Law, “public announcement” shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this By-Law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-Law; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to paragraph (A)(1)(c) or paragraph (B) of this By-Law. Nothing in this By-Law shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws. Subject to Rule 14a-8 under the Exchange Act, nothing in these Bylaws shall be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation’s proxy statement any nomination of director or directors or any other business proposal.

**SECTION 2.8 Submission of Questionnaire, Representation and Agreement.** To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.7 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein and (C) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

SECTION 2.9 Procedure for Election of Directors; Required Vote. Election of directors at all meetings of the stockholders at which directors are to be elected shall be by ballot, and, subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, a plurality of the votes cast at any meeting for the election of directors at which a quorum is present shall elect directors. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders.

SECTION 2.10 Inspectors of Elections; Opening and Closing the Polls. The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders, the Chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law.

The Chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

SECTION 2.11 Action Without Meeting. Only to the extent permitted under the Certificate of Incorporation, any action permitted or required to be taken at a meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by or on behalf of the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the state of incorporation, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed, and dated for the purposes of these Bylaws, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (A) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (B) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. Any consent by means of electronic transmission shall be deemed to have been signed on the date on which such electronic transmission was transmitted. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware,

its principal place of business or an officer or agent of the Corporation having custody of the book or books in which proceedings of meetings of stockholders are recorded. Delivery of a consent given by electronic transmission made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book or books in which proceedings of meetings of stockholders are recorded if, to the extent, and in the manner provided by resolution of the Board of Directors of the Corporation. Any copy, facsimile, or other reliable reproduction of a consent in writing (or reproduction in paper form of a consent by electronic transmission) may be substituted or used in lieu of the original writing (or original reproduction in paper form of a consent by electronic transmission) for any and all purposes for which the original consent could be used, provided that such copy, facsimile, or other reproduction shall be a complete reproduction of the entire original writing (or original reproduction in paper form of a consent by electronic transmission). Prompt notice of the taking of corporate action without a meeting by less than a unanimous written consent shall be given by the Secretary to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of the holders to take the action were delivered to the Corporation.

SECTION 2.12 Effectiveness of Written Consent. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated written consent received in accordance with Section 2.11, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner prescribed in Section 2.11.

SECTION 2.13 Remote Meetings. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(A) participate in a meeting of stockholders; and

(B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication; provided, that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

In the case of any annual meeting of stockholders or any special meeting of stockholders called upon order of the Board of Directors, the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communications as authorized by this Section 2.13.

### ARTICLE III

#### BOARD OF DIRECTORS

SECTION 3.1 General Powers. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

SECTION 3.2 Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director. Commencing with the date of these Bylaws, the directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided, with respect to the time for which they severally hold office, into three (3) classes, as nearly equal in number as is reasonably possible, with the term of office of the first class to expire at the 2013 annual meeting of stockholders, the term of office of the second class to expire at the 2014 annual meeting of stockholders and the term of office of the third class to expire at the 2015 annual meeting of stockholders, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, commencing with the 2013 annual meeting, (i) directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

SECTION 3.3 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the Annual Meeting of Stockholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution.

SECTION 3.4 Special Meetings. Subject to the notice requirements in Section 3.5, special meetings of the Board of Directors shall be called at the request of the Chairman of the Board or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

SECTION 3.5 Notice. Notice of any special meeting of directors shall be given to each director at his or her business or residence in writing by hand delivery, first-class or overnight mail or courier service, telegram, facsimile or electronic transmission, or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by telegram, overnight mail or courier service, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company or the notice is delivered to the overnight mail or courier service company at least twenty-four (24) hours before such meeting. If by facsimile or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least twelve (12) hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least twelve (12) hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws, as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 6.4 of these Bylaws.

SECTION 3.6 Action by Consent of Board of Directors. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 3.7 Conference Telephone Meetings. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 3.8 Quorum. A majority of the members of the Whole Board shall constitute a quorum for the transaction of business; provided, that if (i) there is at least one member of the Board of Directors who is an officer, director, employee, managing director, consultant or other affiliate of Apollo Management VI, L.P. or Apollo Management V, L.P. (together with Apollo Management VI, L.P., "Apollo"), or any person nominated therefor by Apollo (any such person, an "Apollo Representative"), and (ii) Apollo has the right to nominate directors for election to the Board pursuant to the Amended and Restated Stockholders Agreement, dated as of [—], as amended from time to time, by and among the Corporation and the stockholders that are parties thereto (the "Stockholders Agreement"), a quorum for the transaction of business shall include at least one Apollo Representative unless each Apollo Representative provides written or electronic notice to the remaining members of the Board of Directors prior to the meeting at which business is to be transacted waiving his or her right to be included in the quorum at such meeting. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting without further notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors (x) unless the Certificate of Incorporation or these By-

laws shall require the vote of a greater number and (y) except as provided in the Stockholders Agreement. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum. This By-Law may not be amended, modified or repealed without the approval of no less than two-thirds of the Whole Board, including at least one (1) Apollo Representative if there is at least one Apollo Representative on the Board of Directors, or the affirmative vote of no less than two-thirds of the stockholders entitled to vote thereon at an annual or special meeting of stockholders at which such action is proposed.

SECTION 3.9 Vacancies. Subject to applicable law, the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock and the Stockholders Agreement, and unless the Board of Directors otherwise determines, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires and until such director's successor shall have been duly elected and qualified.

SECTION 3.10 Executive and Other Committees. The Board of Directors may, by resolution adopted by a majority of the Whole Board, designate an Executive Committee to exercise, subject to applicable provisions of law, all the powers of the Board in the management of the business and affairs of the Corporation when the Board is not in session, including without limitation the power to declare dividends, to authorize the issuance of the Corporation's capital stock and to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of the State of Delaware, and may, by resolution similarly adopted, designate one or more other committees. The Executive Committee and each such other committee shall consist of two (2) or more directors of the Corporation. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, other than the Executive Committee (the powers of which are expressly provided for herein), may to the extent permitted by law exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep written minutes of its proceedings and shall report such proceedings to the Board when required.

A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Section 3.5 of these Bylaws. The Board shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. Nothing herein shall be deemed to prevent the Board from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board.

SECTION 3.11 Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

## ARTICLE IV

### OFFICERS

SECTION 4.1 Officers. The elected officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, one or more Presidents, a Chief Financial Officer, a Treasurer and a Secretary, all of whom shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified. The Chairman of the Board shall be chosen from among the directors. All officers elected by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this ARTICLE IV. Such officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof. In addition, the Board or any committee thereof may from time to time elect, or the Chief Executive Officer may appoint, such other officers (including one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and Assistant Controllers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Any number of offices may be held by the same person. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board or such committee or by the Chief Executive Officer, as the case may be.

SECTION 4.2 Election and Term of Office. The elected officers of the Corporation shall be elected by the Board of Directors and shall hold office until such officer's successor shall have been duly elected and qualified or until such officer's death, resignation or removal.

SECTION 4.3 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have and perform such other duties as may be assigned to him or her by the Board of Directors.

SECTION 4.4 Chief Executive Officer. The Chief Executive Officer of the Corporation shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. The Chief Executive Officer shall preside at all meetings of the stockholders and, in the absence of the Chairman of the Board, at all meetings of the Board of Directors. Unless there shall have been elected one or more Presidents of the Corporation, the Chief Executive Officer shall be the President of the Corporation.

SECTION 4.5 President. Each President shall have such general powers and duties of supervision and management as shall be assigned to him or her by the Board of Directors.



SECTION 4.6 Vice-Presidents. Each Vice President, if any, shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors.

SECTION 4.7 Chief Financial Officer. The Chief Financial Officer shall have the custody of the Corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chairman of the Board, or a President, taking proper vouchers for such disbursements. He or she shall render to the Chairman of the Board, each President and the Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation. If required by the Board of Directors, he or she shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe. The Chief Executive Officer may direct the Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and the Treasurer shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

SECTION 4.8 Secretary. The Secretary shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders; he or she shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; he or she shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal; and he or she shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, he or she shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board or a President.

SECTION 4.9 Removal. Any officer elected, or agent appointed, by the Board of Directors may be removed by the affirmative vote of a majority of the Whole Board whenever, in their judgment, the best interests of the Corporation would be served thereby. Any officer or agent appointed by the Chief Executive Officer may be removed by him or her whenever, in his or her judgment, the best interests of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his or her successor or his or her death, resignation or removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

SECTION 4.10 Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors. Any vacancy in an office appointed by the Chief Executive Officer because of death, resignation, or removal may be filled by the Chief Executive Officer.

ARTICLE V

STOCK CERTIFICATES AND TRANSFERS

SECTION 5.1 Certificated and Uncertificated Stock; Transfers. The interest of each stockholder of the Corporation may be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe or be uncertificated.

The shares of the stock of the Corporation shall be transferred on the books of the Corporation, in the case of certificated shares of stock, by the holder thereof in person or by his attorney duly authorized in writing, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require; and, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney duly authorized in writing, and upon compliance with appropriate procedures for transferring shares in uncertificated form. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Notwithstanding anything to the contrary in these Bylaws, at all times that the Corporation's stock is listed on a stock exchange, the shares of the stock of the Corporation shall comply with all direct registration system eligibility requirements established by such exchange, including any requirement that shares of the Corporation's stock be eligible for issue in book-entry form. All issuances and transfers of shares of the Corporation's stock shall be entered on the books of the Corporation with all information necessary to comply with such direct registration system eligibility requirements, including the name and address of the person to whom the shares of stock are issued, the number of shares of stock issued and the date of issue. The Board of Directors shall have the power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of shares of stock of the Corporation in both the certificated and uncertificated form.

SECTION 5.2 Lost, Stolen or Destroyed Certificates. No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors or any financial officer may in its or his or her discretion require.

SECTION 5.3 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

SECTION 5.4 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

SECTION 6.1 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 6.2 Dividends. The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and the Certificate of Incorporation.

SECTION 6.3 Seal. The corporate seal shall be in such form as shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.

SECTION 6.4 Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the General Corporation Law of the State of Delaware or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board of Directors or committee thereof need be specified in any waiver of notice of such meeting.

SECTION 6.5 Audits. The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be done annually.

SECTION 6.6 Resignations. Any director or any officer, whether elected or appointed, may resign at any time by giving written notice of such resignation to the Chairman of the Board, the Chief Executive Officer or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

## ARTICLE VII

### CONTRACTS, PROXIES, ETC.

SECTION 7.1 Contracts. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, each President, the Chief Financial Officer or any Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the Chief Executive Officer, each President, the Chief Financial Officer or any Vice President of the Corporation may delegate contractual powers to others under his or her jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

SECTION 7.2 Proxies. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, each President, the Chief Financial Officer or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

## ARTICLE VIII

### AMENDMENTS

SECTION 8.1 Amendments. Except as provided in the Stockholders Agreement, these Bylaws may be altered, amended, or repealed at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting and, in the case of a meeting of the Board of Directors, in a notice given not less than two (2) days prior to the meeting.

016570| 003590|27C|RESTRICTED|H|057-423



COMMON STOCK

PAR VALUE \$0.01

COMMON STOCK

THIS CERTIFICATE IS TRANSFERABLE IN  
CANTON, MA AND NEW YORK, NY

Certificate  
Number  
**ZQ 000000**

Shares  
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**BERRY PLASTICS GROUP, INC.**

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS CERTIFIES THAT

**MR. SAMPLE & MRS. SAMPLE &  
MR. SAMPLE & MRS. SAMPLE**

CUSIP XXXXXX XX X

SEE REVERSE FOR CERTAIN DEFINITIONS

is the owner of

**ZERO HUNDRED THOUSAND  
ZERO HUNDRED AND ZERO**

FULLY-PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF

**Berry Plastics Group, Inc.** (hereinafter called the "Company"), transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

DATED <<Month Day, Year>>

**FACSIMILE SIGNATURE TO COME**

President



COUNTERSIGNED AND REGISTERED:  
**COMPUTERSHARE TRUST COMPANY, N.A.**  
TRANSFER AGENT AND REGISTRAR,

**FACSIMILE SIGNATURE TO COME**

Secretary

By \_\_\_\_\_  
AUTHORIZED SIGNATURE

**Berry Plastics Group, Inc.**

PO BOX 48004, Providence, RI 02940-8094

MIR ASAMPLE  
DESIGNATION (if ANY)

ADD 1  
ADD 2  
ADD 3  
ADD 4



CUSIP	Holder ID	Insurance Value	Number of Shares	DTC	Certificate Numbers	Num/No.	Denom.	Total
XXXXXXXXXX X	XXXXXXXXXX	1,000,000.00	12345678	12345678	123456789012345	1	1	1
			2			2	2	2
			3			3	3	3
			4			4	4	4
			5			5	5	5
			6			6	6	6
			7			7	7	7
			<b>Total</b>					<b>7</b>

1234567

BERRY PLASTICS GROUP, INC.

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

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

TEN COM - as tenants in common	UNIF GIFT MIN ACT - _____ Custodian _____ (Cust) _____ (Minor) _____ under Uniform Gifts to Minors Act _____ (State) _____
TEN ENT -as tenants by the entireties	
JT TEN - as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT - _____ Custodian (until age _____) (Cust) _____ under Uniform Transfers to Minors Act _____ (Minor) _____ (State) _____

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

For value received, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

\_\_\_\_\_ Shares  
of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney

to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated: \_\_\_\_\_ 20 \_\_\_\_\_

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

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

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp  
**THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.**

SECURITY INSTRUCTIONS

THIS IS WATERMARKED PAPER. DO NOT ACCEPT WITHOUT NOTING WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.



The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first-in, first-out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis. If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

1534281

FORM OF  
INCOME TAX RECEIVABLE AGREEMENT

dated as of

[—]

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This INCOME TAX RECEIVABLE AGREEMENT (as amended from time to time, this “**Agreement**”), dated as of [—], is hereby entered into by and among Berry Plastics Group, Inc., a Delaware corporation (the “**Corporation**”) and [—], a [Apollo entity] (the “**Existing Stockholders Representative**”).

## RECITALS

WHEREAS, the Existing Stockholders (as defined below), in the aggregate, hold 100% of the capital stock of the Corporation, directly or indirectly;

WHEREAS, the Corporation will become a public company pursuant to the IPO (as defined below);

WHEREAS, after the IPO, the Corporation and its Subsidiaries (the “**Taxable Entities**” and each a “**Taxable Entity**”) will have net operating losses and AMT credit carryforwards (including AMT credits that arise after the IPO as a result of limitations on the use of NOLs under the AMT) (collectively, “**NOLs**”) that relate to periods (or portions thereof) ending on or prior to the date of the IPO (the “**Pre-IPO NOLs**”);

WHEREAS, the Pre-IPO NOLs may reduce the reported liability for Taxes (as defined below) that the Taxable Entities might otherwise be required to pay;

WHEREAS, the income, gain, loss expense and other Tax (as defined below) items of the Taxable Entities may be affected by Imputed Interest (as defined below), if any;

WHEREAS, the parties to this Agreement desire to make certain arrangements with respect to the effect of the Pre-IPO NOLs and Imputed Interest (as defined below) on the reported liability for Taxes of the Taxable Entities;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. **Definitions.** As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“**Advisory Firm**” means (i) Ernst & Young LLP or (ii) any other law or accounting firm that is (A) nationally recognized as being expert in Tax matters and (B) that is agreed to by the Corporation and the Existing Stockholders Representative.

“**Advisory Firm Report**” shall mean (a) an attestation report from the Advisory Firm expressing an opinion on management’s assertion as to whether the Tax Benefit Schedule and/or the Early Termination Schedule has been prepared, in all material respects, in accordance with the

Agreement, or (b) another type of report or letter from the Advisory Firm related to whether the information in the Tax Benefit Schedule and/or the Early Termination Schedule has been prepared in a manner consistent with the terms of the Agreement.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“**Agreed Rate**” means LIBOR plus 300 basis points.

“**Agreement**” is defined in the preamble of this Agreement.

“**Amended Schedule**” is defined in Section 2.03(b) of this Agreement.

“**Acquired NOLs**” means any NOL of any corporation or other entity acquired by the Corporation or any of its Subsidiaries by purchase, merger, or otherwise (in each case, from a Person or Persons other than the Corporation and its Subsidiaries and, in each case, whether or not such corporation or other entity survives) after the IPO that relate to periods (or portions thereof) ending on or prior to the date of such acquisition.

“**Award Holder**” means a holder of stock options or stock appreciation rights of the Corporation (each, a “**Stock Award**”) outstanding immediately prior to the IPO (excluding, for the avoidance of doubt, any stock options or stock appreciation rights granted on the date upon which the IPO is consummated).

A “**Beneficial Owner**” of a security is a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security. The terms “**Beneficially Own**” and “**Beneficial Ownership**” shall have correlative meanings.

“**Board**” means the board of directors of the Corporation.

“**Business Day**” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of New York shall not be regarded as a Business Day.

“**Change of Control**” means:

- (i) a merger, reorganization, consolidation or similar form of business transaction directly involving the Corporation or indirectly involving the Corporation through one or more intermediaries unless, immediately following such transaction, more than 50% of the voting power of the then outstanding voting stock or other equities of the Corporation resulting from consummation of such transaction (including, without limitation, any parent or ultimate parent corporation of such Person that as a result of such transaction owns directly or indirectly the Corporation and all or substantially all of the Corporation’s assets) is held by the existing Corporation equityholders or their Affiliates (determined immediately prior to such transaction and related transactions); or

(ii) a transaction in which the Corporation, directly or indirectly, sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to another Person other than an Affiliate; or

(iii) a transaction in which there is an acquisition of control of the Corporation by a Person or group of Persons (other than Existing Stockholders and their Affiliates). For purposes of this definition, the term “control” shall mean the possession, directly or indirectly, of the power to either (i) vote more than 50% of the securities having ordinary voting power for the election of directors (or comparable positions in the case of partnerships and limited liability companies), or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise (for the avoidance of doubt, consent rights do not constitute control for the purpose of this definition); or

(iv) a transaction in which individuals who constitute the Board of the Corporation (the “**Incumbent Directors**”) cease for any reason to constitute at least a majority of the Board of the Corporation, provided that any person becoming a director subsequent to the effective date of this Agreement, whose election or nomination for election is either (A) contemplated by a written agreement among equityholders of the Corporation on the effective date of this Agreement or (B) was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Corporation in which such person is named as a nominee for director, without written objection to such nomination) shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Corporation as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board shall be deemed to be an Incumbent Director; or

(v) the liquidation or dissolution of the Corporation.

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

“**Combined Taxation Group**” means any consolidated, combined or unitary group or any profit and/or loss sharing, affiliated group relief, group payment or similar group or fiscal unity for Tax purposes (by election or otherwise).

“**Compensatory Payment**” means any payment hereunder made to an Award Holder in respect of any Ownership Percentage attributable to a Stock Award.

“**Compensatory Payment Settlement Date**” means the fifth anniversary of the date of this Agreement.

“**Control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Corporation**” is defined in the preamble of this Agreement.

“**Default Rate**” means LIBOR plus 500 basis points.

“**Determination**” shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of state, local and foreign tax law, as applicable, or any other event (including the execution of a Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

“**Divestiture**” means the sale of any Taxable Entity, other than any such sale that is or is part of a Change of Control.

“**Early Termination Event**” means (i) a breach of this Agreement to which Section 4.01(b) applies and (ii) a Change of Control.

“**Early Termination Date**” means (i) in the event of a breach of this Agreement to which Section 4.01(b) applies, the date of such breach, (ii) in the event of a Change of Control, the effective date of such Change of Control and (iii) in the event of a Divestiture, the effective date of such Divestiture.

“**Early Termination Payment**” is defined in Section 4.03(b) of this Agreement.

“**Early Termination Rate**” means LIBOR plus 100 basis points.

“**Early Termination Schedule**” is defined in Section 4.02 of this Agreement.

“**Expert**” is defined in Section 7.09 of this Agreement.

“**Existing Stockholders**” means the stockholders of the Corporation immediately prior to the IPO (including, without limitation, the Existing Stockholders set forth on Exhibit — to this Agreement) and any Award Holders.

“**Existing Stockholders Representative**” is defined in the Preamble of this Agreement.

“**Imputed Interest**” shall mean any interest imputed under Section 1272, 1274 or 483 or other provision of the Code and any similar provision of state, local and foreign tax law with respect to the Corporation’s payment obligations under this Agreement.

“**Individual Stockholder**” means any Existing Stockholder that is an individual.

“**Interest Amount**” is defined in Section 3.01(a) of this Agreement.

“**IPO**” shall mean the initial public offering of Common Stock of the Corporation pursuant to the Registration Statement.

“**ITR Payment**” means any Annual Tax Payment, Early Termination Payment, Divestiture Acceleration Payment or Individual Termination Payment required to be made by the Corporation to the Existing Stockholders under this Agreement.

“**LIBOR**” means for each month (or portion thereof) during any period, an interest rate per annum equal to the rate per annum reported, on the date two days prior to the first day of such

month, on the Telerate Page 3750 (or if such screen shall cease to be publicly available, as reported on Reuters Screen page "LIBO" or by any other publicly available source of such market rate) for London interbank offered rates for U.S. dollar deposits for such month (or portion thereof).

"**Material Objection Notice**" has the meaning set forth in Section 4.02.

"**Net Tax Benefit**" is defined in Section 3.01(b) of this Agreement.

"**NOLs**" is defined in the preamble of this Agreement.

"**Objection Notice**" has the meaning set forth in Section 2.03(a).

"**Other NOLs**" means any Post-IPO NOLs and any Acquired NOLs.

"**Ownership Percentage**" means, in the case of any Existing Stockholder, a fraction where the numerator is the sum of (a) the number of shares in the Corporation owned by such Existing Stockholder as of immediately prior to the IPO, and (b) the aggregate number of shares subject (as of immediately prior to the IPO) to Stock Awards that were held by such Existing Stockholder as of immediately prior to the IPO (provided that if the applicable Existing Stockholder forfeits a Stock Award prior to the vesting date of the applicable Stock Award, the shares subject to such Stock Award shall thereafter be disregarded for purposes of this clause (b)), and the denominator is the sum of (x) the number of shares in the Corporation outstanding as of immediately prior to the IPO, and (y) the aggregate number of shares subject (as of immediately prior to the IPO) to the Stock Awards that were held by all Existing Stockholders as of immediately prior to the IPO (provided that if an Existing Stockholder forfeits a Stock Award prior to the vesting date of the applicable Stock Award, the shares subject to such Stock Award shall be disregarded for purposes of this clause (y)).

"**Payment Date**" means any date on which a payment is required to be made pursuant to this Agreement.

"**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

"**Post-IPO NOLs**" means any NOL arising in a Taxable Year or portion thereof beginning after the date of the IPO.

"**Pre-IPO NOLs**" is defined in the preamble of this Agreement; provided, however, that in order to determine whether an NOL is a Pre-IPO NOL or a Post-IPO NOL, the Taxable Year of the relevant Taxable Entity that includes the effective date of the IPO (the "**Straddle Year**") shall be deemed to end as of the close of such effective date, provided, further, however, that the Chief Executive Officer of the Corporation, the Board and the Existing Stockholders Representative shall, acting reasonably, together determine the amount of any NOL arising in the Straddle Year, or any portion thereof, that is included in the amount of Pre-IPO NOLs; provided further, however, that any Transferred NOLs taken into account in calculating a Divestiture Acceleration Payment shall not be considered Pre-IPO NOLs.

**“Realized Tax Benefit”** means, for a Taxable Year, the reduction in the liability for (i) federal income Taxes of the Corporation, and (ii) state and foreign income Taxes of each Taxable Entity, in each case, for such Taxable Year resulting from the Pre-IPO NOLs and the deduction attributable to Imputed Interest, if any, under the Agreement (giving effect to the principles of Section 3.02). If all or a portion of the liability for Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination. For the absence of doubt, for purposes of clause (i), state and foreign NOLs that are reflected in the Pre-IPO NOLs shall be disregarded such that the calculation of federal income Taxes before the reduction resulting from the Pre-IPO NOLs reflects any deduction (or other benefit) for state or foreign income Taxes that would be available in the absence of such state and foreign NOLs.

**“Reconciliation Dispute”** has the meaning set forth in Section 7.09(a) of this Agreement.

**“Reconciliation Procedures”** shall mean those procedures set forth in Section 7.09 of this Agreement.

**“Registration Statement”** means the registration statement on Form S-1 (File No. 333-[—]) of the Corporation.

**“Schedule”** means any Tax Benefit Schedule and any Early Termination Schedule.

**“Subsidiaries”** means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

**“Tax Benefit”** is defined in Section 3.01(b) of this Agreement.

**“Tax Benefit Schedule”** is defined in Section 2.02 of this Agreement.

**“Tax Return”** means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

**“Taxable Entity”** is defined in the Preamble to this Agreement.

**“Taxable Entity Return”** means the federal, state or foreign Tax Return, as applicable, of a Taxable Entity filed with respect to Taxes of any Taxable Year.

**“Taxable Year”** means a taxable year as defined in Section 441(b) of the Code or comparable section of state, local or foreign tax law, as applicable, (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made) ending on or after the date hereof.

**“Taxes”** means any and all U.S. federal, state, local and foreign taxes, assessments or similar charges measured with respect to net income or profits and any interest related to such Tax.

“**Taxing Authority**” shall mean any domestic, foreign, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“**Transferred NOLs**” means, in the event of a Divestiture, the Pre-IPO NOLs attributable to the Taxable Entity that is sold in such Divestiture to the extent such Pre-IPO NOLs are transferred with such Taxable Entity under applicable Tax law following the Divestiture (disregarding any limitation on the use of such Pre-IPO NOLs as a result of the Divestiture) and do not remain under applicable Tax law with the Corporation or any of its Subsidiaries (other than the Taxable Entity that is sold in such Divestiture).

“**Treasury Regulations**” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“**Valuation Assumptions**” shall mean, as of an Early Termination Date, the assumptions that (i) in each Taxable Year ending on or after such Early Termination Date, each Taxable Entity will generate an amount of taxable income in accordance with management’s preexisting projections (or, in the absence of such projections, as projected in good faith by management in a manner consistent with their projections for other purposes), (ii) the utilization of the Pre-IPO NOLs and the Imputed Interest for such Taxable Year or future Taxable Years, as applicable, will be determined based on the Tax laws in effect on the Early Termination Date and (iii) the federal income tax rates and state, local and foreign income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date (or, with respect to any Taxable Year for which such federal income tax rates or state, local and foreign income tax rates are not specified by the Code and other law as in effect on the Early Termination Date, such federal income tax rates or state, local and foreign income tax rates that are in effect on the Early Termination Date). For the purposes of clause (i) of this definition, the taxable income projections made by the management of the Corporation shall be subject to the Reconciliation Procedures. Such assumptions shall relate only to the projected income and loss of the Taxable Entities (extending the same beyond the years of projection, as applicable, at the same imputed growth rate), and shall include only the utilization of tax attributes subject to the Agreement and not any anticipated future attributes that might result from acquisitions, dispositions, recapitalizations or refinancings. For the avoidance of doubt, in the event of a Change of Control or Divestiture, such assumptions shall not take into account any changes in the relevant Taxable Entities’ stand alone tax position that might result from the transaction giving rise to the Change of Control or Divestiture.

## ARTICLE II

### DETERMINATION OF REALIZED TAX BENEFIT

Section 2.01. Pre-IPO NOL Utilization. The Corporation, on the one hand, and the Existing Stockholders, on the other hand, acknowledge that the Taxable Entities may utilize the Pre-IPO NOLs to reduce the amount of Taxes that the Taxable Entities would otherwise be required to pay in the future.



Section 2.02. **Tax Benefit Schedule.** Within ninety (90) calendar days after the filing of the U.S. federal income tax return of the Corporation for any federal Taxable Year (each such federal Taxable Year together with the state or foreign Taxable Years ending in the same calendar year as such federal Taxable Year, a “**Subject Taxable Year**,” and such ninetieth day the “**Schedule Delivery Date**”), the Corporation shall provide to the Existing Stockholders Representative a schedule showing, for the Corporation and for each Taxable Entity, in the case of any relevant Tax Return that has been filed after the IPO and prior to the Schedule Delivery Date and has not previously been the subject of this Section 2.02 (but in the case of any state or foreign Tax Return, only to the extent such Tax Return has been filed on or prior to the 60<sup>th</sup> day following the filing of the U.S. federal income tax return of the Corporation for the Subject Taxable Year (the “**Specified Filing Date**”), in reasonable detail, (i) the calculation of the Realized Tax Benefit for the Subject Taxable Year, (ii) the calculation of any payment to be made to the Existing Stockholders pursuant to Article III with respect to the Subject Taxable Year, (iii) the calculation of any Realized Tax Benefit for the Taxable Year immediately preceding the Subject Taxable Year (the “**Rollover Taxable Year**”), in the case of any relevant Tax Return that was filed following the Specified Filing Date relating to the Rollover Taxable Year, and (iv) the calculation of any payment to be made to the Existing Stockholders pursuant to Article III with respect to the Rollover Taxable Year (collectively a “**Tax Benefit Schedule**”). Concurrently the Corporation shall also deliver to the Existing Stockholders Representative all supporting information (including work papers and valuation reports) reasonably necessary to support the calculation of such payment. The Schedule will become final as provided in Section 2.03(a) and may be amended as provided in Section 2.03(b) (subject to the procedures set forth in Section 2.03(a)).

Section 2.03. **Procedures, Amendments.**

(a) **Procedure.** Whenever the Corporation delivers to the Existing Stockholders Representative an applicable Schedule under this Agreement, including any Amended Schedule delivered pursuant to Section 2.03(b), and including any Early Termination Schedule or amended Early Termination Schedule, the Corporation shall also (x) deliver to the Existing Stockholders Representative schedules, valuation reports, if any, and work papers providing reasonable detail regarding the preparation of the Schedule and an Advisory Firm Report related to such Schedule (the cost and expense of which shall be paid by the Corporation) and (y) allow the Existing Stockholders Representative reasonable access at no cost to the appropriate representatives at each of the Corporation and the Advisory Firm in connection with a review of such Schedule. The applicable Schedule shall become final and binding on all parties unless the Existing Stockholders Representative, within thirty calendar days after receiving any Schedule or amendment thereto, provides the Corporation with notice of a material objection to such Schedule (“**Objection Notice**”) made in good faith or such earlier date as the Stockholders Representative provides written notice to the Corporation that it has no material objection to such Schedule. If the parties, for any reason, are unable to successfully resolve the issues raised in any notice within thirty calendar days of receipt by the Corporation of such notice, the Corporation and the Existing Stockholders Representative shall employ the reconciliation procedures described in Section 7.09 of this Agreement (the “**Reconciliation Procedures**”).

(b) **Amended Schedule.** The applicable Schedule for any Taxable Year may be amended from time to time by the Corporation (i) in connection with a Determination affecting

such Schedule, (ii) to correct material inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to the Existing Stockholders Representative, (iii) to comply with the Expert's determination under the Reconciliation Procedures, or (iv) to reflect a material change (relative to the amounts in the original Schedule) in the Realized Tax Benefit for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year, in each case with respect to any Taxable Entity (such as amended Schedule, an "**Amended Schedule**"); provided, however, that such a change under clause (i) attributable to an audit of a Tax Return by an applicable Taxing Authority shall not be taken into account on an Amended Schedule unless and until there has been a Determination with respect to such change. The Corporation shall provide any Amended Schedule to the Existing Stockholders Representative within thirty calendar days of the occurrence of an event referred to in clauses (i) through (iv) of the preceding sentence, and any such Amended Schedule shall be subject to the approval procedures described in Section 2.03(a).

### ARTICLE III

#### TAX BENEFIT PAYMENTS

##### Section 3.01. Payments.

(a) Except as provided in Section 3.03 and Section 5.02, within thirty days after the end of any U.S. federal Subject Taxable Year, the Corporation (on its own behalf and on behalf of any other Taxable Entity) shall pay to each Existing Stockholder its share (based on such Existing Stockholder's Ownership Percentage) of the Interest Amount (as defined below) and of the Annual Tax Payment for the Subject Taxable Year provided that no payment shall be made pursuant to this Section 3.01 to any Individual Stockholder who received at any time prior to the date of such payment an Individual Termination Payment pursuant to Section 4.01(e). The "**Annual Tax Payment**" for a Subject Taxable Year means an amount, not less than zero, equal to (i) the Estimated Tax Benefit determined pursuant to Section 3.01(c) for such Subject Taxable Year, plus (ii) the excess, if any, of the Tax Benefit for a Subject Taxable Year prior to the Subject Taxable Year over the Estimated Tax Benefit for such prior Subject Taxable Year, to the extent any such excess amount was not previously taken into account pursuant to this Section 3.01(a)(ii) to increase the Annual Tax Payment for a Subject Taxable Year prior to the Subject Taxable Year, minus (iii) the excess, if any, of the Estimated Tax Benefit for a Subject Taxable Year prior to the Subject Taxable Year over the Tax Benefit for such prior Subject Taxable Year, to the extent any such excess amount was not previously taken into account pursuant to this Section 3.01(a)(iii) to reduce the Annual Tax Payment for a Subject Taxable Year prior to the Subject Taxable Year, plus (iv) the excess of the Realized Tax Benefit required to be reflected on an Amended Schedule for a Subject Taxable Year prior to the Subject Taxable Year over the Realized Tax Benefit required to be reflected on the Tax Benefit Schedule for such prior Subject Taxable Year, to the extent any such excess amount was not previously taken into account pursuant to this Section 3.01(a)(iv) to increase the Annual Tax Payment for a Subject Taxable Year prior to the Subject Taxable Year, minus (v) the excess of the Realized Tax Benefit required to be reflected on a Tax Benefit Schedule for a Subject Taxable Year prior to the Subject Taxable Year over the Realized Tax Benefit required to be reflected on an Amended Schedule for such prior Subject Taxable Year, to the extent any such excess amount was not previously taken into account pursuant to this Section 3.01(a)(v) to reduce the Annual Tax

Payment for a Subject Taxable Year prior to the Subject Taxable Year. For the avoidance of doubt, no Annual Tax Payment shall be made, nor Tax Benefit determined, in respect of estimated tax payments, including, without limitation, estimated federal income tax payments. For the further avoidance of doubt, the Existing Stockholders shall not be required to return any portion of any previously made Annual Tax Payment or other ITR Payment. The **“Interest Amount”** shall equal the interest on any excess amount described in Section 3.01(a)(ii) calculated at the Agreed Rate from the Payment Date for the Annual Tax Payment in which the relevant Estimated Tax Benefit is taken into account until the Payment Date for the Annual Tax Payment in which the relevant Tax Benefit is taken into account. Each payment pursuant to this Section 3.01(a) shall be made by wire transfer of immediately available funds to a bank account of the applicable Existing Stockholder previously designated by the Existing Stockholder to the Corporation or as otherwise agreed by the Corporation and the Existing Stockholder.

(b) A **“Tax Benefit”** for a Subject Taxable Year means an amount, not less than zero, equal to 85% of: (i) the Taxable Entities’ Realized Tax Benefit, if any, required to be reflected on the Tax Benefit Schedule for the Subject Taxable Year, plus (ii) the Taxable Entities’ Realized Tax Benefit, if any, for the Rollover Taxable Year, if any, to the extent required to be reflected on the Tax Benefit Schedule for the Subject Taxable Year (as set forth in Section 2.02(iii)).

(c) The **“Estimated Tax Benefit”** for a Subject Taxable Year means an amount, not less than zero, equal to 85% of the Company’s reasonable good faith estimate of the Taxable Entities’ Realized Tax Benefit, if any, for the Subject Taxable Year.

(d) With respect solely to the Subject Taxable Year ending on September 30, 2013 (the **“2013 Subject Taxable Year”**), and except as provided in Section 5.02, the Corporation (on its own behalf and on behalf of any other Taxable Entity) shall, on or prior to January [—] 2013, pay to each Existing Stockholder listed on Exhibit [—] (each a **“Specified Existing Stockholder”**), other than in respect of any Stock Award, such Existing Stockholder’s share (based on such Existing Stockholder’s Ownership Percentage) of the 2013 Preliminary Estimated Tax Benefit Payment, provided, however, that the aggregate 2013 Preliminary Estimated Tax Benefit Payment shall not exceed \$5,000,000 (and each Specified Existing Stockholder’s share of the 2013 Preliminary Estimated Tax Benefit Payment shall be reduced proportionally to the extent the aggregate 2013 Preliminary Estimated Tax Benefit Payment would otherwise exceed \$5,000,000), provided, further, however, that notwithstanding anything to the contrary in Section 3.01(a), (i) the Annual Tax Payment in respect of the 2013 Subject Taxable Year shall, in respect of any Specified Existing Stockholder, be reduced, but not below zero, by such Specified Existing Stockholder’s share of the 2013 Preliminary Estimated Tax Benefit Payment and (ii) the Annual Tax Payment for each subsequent Subject Taxable Year shall, in respect of any Specified Existing Stockholder, be reduced by the portion of such Specified Existing Stockholder’s share of the 2013 Preliminary Estimated Tax Benefit Payment not previously taken into account pursuant to this Section 3.01(d) to reduce the Annual Tax Payment for a prior Subject Taxable Year. The **“2013 Preliminary Estimated Tax Benefit Payment”** means an amount equal to 85% of the Company’s reasonable good faith estimate of the Taxable Entities’ Realized Tax Benefit, if any, for the 2013 Subject Taxable Year.

Section 3.02. No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. It is also intended that the provisions of this Agreement provide that 85% of the Taxable Entities' Realized Tax Benefit for all Taxable Years be paid to the Existing Stockholders pursuant to this Agreement. Carryovers or carrybacks of any NOL or other tax item shall be considered to be subject to the rules of the Code and the Treasury Regulations or the appropriate provisions of Tax law, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type; provided, however, that Pre-IPO NOLs treated as resulting in a Realized Tax Benefit for one Taxable Year shall not be treated as resulting in a Realized Tax Benefit for any other Taxable Year, and, for purposes of determining the Realized Tax Benefit for any Taxable Year, each Taxable Entity shall be assumed (a) to utilize any item of loss, deduction or credit arising in such Taxable Year (and permitted to be utilized in such Taxable Year) before carrying back or carrying forward to such Taxable Year any NOL that is permitted to be so carried back or carried forward, (b) to utilize any available Pre-IPO NOL that is permitted (or, for the absence of doubt, that would be so permitted but for such Other NOL) to be carried back or carried forward to such Taxable Year before utilizing any Other NOL, and (c) to utilize any Pre-IPO NOL in the first Taxable Year in which such Pre-IPO NOL is permitted to be utilized; provided, further, however, that, notwithstanding any other provision, the Chief Executive Officer of the Corporation, the Board and the Existing Stockholders Representative shall, acting reasonably, together determine the extent to which a Pre-IPO NOL can be carried back or carried forward to a Straddle Year or any portion thereof. If a carryover or carryback of any Tax item includes a portion that is attributable to the Pre-IPO NOLs and another portion that is not, the Corporation shall be assumed to utilize the portion attributable to the Pre-IPO NOLs before utilizing such other portion. The provisions of this Agreement shall be construed in the appropriate manner so that such intentions are realized.

Section 3.03. Special Rule for Compensatory Payments.

(a) General Rule. Notwithstanding any other provision of this Agreement, no Compensatory Payments shall, except as provided in Section 3.03(b) and Section 3.03(c), be made under this Agreement other than on the Compensatory Payment Settlement Date. On the Compensatory Payment Settlement Date, the Corporation shall pay to each Existing Stockholder an amount equal to the sum of (x) all Compensatory Payments that, but for this Section 3.03, would have been made to such Existing Stockholder prior to the Compensatory Payment Settlement Date, plus interest (at a rate of 120% of the applicable federal long-term rate (as prescribed under Section 1274(d) of the Code)) on each such Compensatory Payment from the date such payment would have been made (absent this Section 3.03) through the Compensatory Payment Settlement Date, (y) an amount equal to the Corporation's good faith estimate of the present value, discounted at the Early Termination Rate as of the Compensatory Payment Settlement Date, of all Compensatory Payments that would have been made hereunder (absent this Section 3.03) to the applicable Existing Stockholder subsequent to the Compensatory Payment Settlement Date, and (z) the amount set forth in Section 3.03(e). No Existing Stockholder shall have a right to receive any Compensatory Payments (other than the payment contemplated by the preceding sentence) with respect to any ITR Payments made subsequent to the Compensatory Payment Settlement Date.

(b) Change of Control. Notwithstanding any provision of Section 3.03(a), in the event of a Change of Control that constitutes a “change in control event” (within the meaning of Section 409A of the Code) prior to the Compensatory Payment Settlement Date, the Compensatory Payment Settlement Date shall be deemed to be the date on which such triggering event occurs.

(c) Limited Early Cashout. The Corporation, after obtaining the prior written consent of the Existing Shareholders Representative, may deem the Compensatory Payment Settlement Date to be a date prior to the fifth anniversary of the date of this Agreement, but only to the extent permitted by Treasury Regulation Section 1.409A-3(j)(4).

(d) Special Rules Affect Only Timing. For clarity, for purposes of determining amounts that would be payable pursuant to Article II, this Article III (other than this Section 3.03) and Article IV in respect of portions of Ownership Percentage attributable to Stock Awards, all determinations shall be made as if all Compensatory Payments that would, absent this Section 3.03, have been made prior to the date of the applicable determination had in fact been made on the dates they would have been made absent this Section 3.03.

(e) Special Forfeiture Rule. In the event that an Existing Stockholder forfeits a Stock Award prior to the vesting date of the applicable Stock Award but subsequent to the date that, but for this Section 3.03, a Compensatory Payment in respect of such Stock Award would have been made to such Existing Stockholder, such Compensatory Payment (and all interest thereon) shall be forfeited concurrently with the forfeiture of the underlying Stock Award and shall not be distributed pursuant to this Section 3.03; provided that a portion of such forfeited Compensatory Payment (and all interest thereon) shall be paid by the Corporation on the Compensatory Settlement Payment Date to each Existing Stockholder based on such Existing Stockholder’s Ownership Percentage.

## ARTICLE IV

### TERMINATION

#### Section 4.01. Termination, Breach of Agreement, Change of Control.

(a) This Agreement shall terminate at the time that all Annual Tax Payments have been made to the Existing Stockholders under this Agreement.

(b) Subject to Section 3.03, in the event that the Corporation breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due (as described below), failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, then all obligations hereunder shall be accelerated and the Corporation shall pay to the Existing Stockholders (1) the Early Termination Payment, (2) any Annual Tax Payment agreed to by the Corporation and the Existing Stockholders as due and payable but unpaid as of the Early Termination Date and (3) any Annual Tax Payment due for the Taxable Year ending prior to, with or including the date of a breach. Notwithstanding the foregoing, in the event that the Corporation breaches this Agreement, the Existing Stockholders

shall be entitled to elect to receive the amounts set forth in (1), (2) and (3) above or to seek specific performance of the terms hereof. In the event of a breach of a material obligation under this Agreement, the Early Termination Payment shall be calculated utilizing the Valuation Assumptions. The parties agree that the failure to make any payment due pursuant to this Agreement within three months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it will not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three months of the date such payment is due, provided that in the event that payment is not made within three months of the date such payment is due, the Existing Stockholders (through the Existing Stockholders Representative) shall be required to give written notice to the Corporation that the Corporation has breached its material obligations and so long as such payment is made within five Business Days of the delivery of such notice to the Corporation, the Corporation shall no longer be deemed to be in material breach of its obligations under this Agreement.

(c) Change of Control. Subject to Section 3.03, in the event of a Change of Control, then all obligations hereunder shall be accelerated and the Corporation shall pay to the Existing Stockholders (1) the Early Termination Payment, (2) any Annual Tax Payment agreed to by the Corporation and the Existing Stockholders as due and payable but unpaid as of the Early Termination Date and (3) any Annual Tax Payment due for any Taxable Year ending prior to, with or including the effective date of a Change of Control. In the event of a Change of Control, the Early Termination Payment shall be calculated utilizing the Valuation Assumptions.

(d) Divestiture Acceleration Payment. Subject to Section 3.03, in the event of a Divestiture, the Corporation shall pay to the Existing Stockholders the Divestiture Acceleration Payment in respect of such Divestiture, which shall be calculated utilizing the Valuation Assumptions.

(e) Elective Individual Termination. Subject to Section 3.03, except as provided in Section 5.02, the Corporation may, as determined by the Chief Executive Officer of the Corporation, elect to terminate the rights of any Individual Stockholder under this Agreement by paying to such Individual Stockholder a termination payment (the "**Individual Termination Payment**") as reasonably determined by the Chief Executive Officer of the Corporation, provided that such election and the amount of such Individual Termination Payment shall be subject to the consent of the Board and the Existing Stockholders Representative and shall, as reasonably practical, use the Valuation Assumptions (substituting references to the date of such Individual Termination Payment for references to the Early Termination Date in the definition of Valuation Assumptions).

(f) Adjustment for 2013 Preliminary Estimated Tax Benefit Payment. Any amount required to be paid by the Corporation to any Specified Existing Stockholder pursuant to Sections 4.01(b), (c), (d) or (e) shall be reduced by the portion of such Specified Existing Stockholder's share of the 2013 Preliminary Estimated Tax Benefit Payment not previously taken into account pursuant to Section 3.01(d) to reduce an Annual Tax Payment.

Section 4.02. Early Termination Schedule. In the event of a Change of Control or a Divestiture, the Corporation shall deliver to the Existing Stockholders Representative no

later than sixty calendar days prior to such Change of Control or Divestiture, as applicable a schedule (the “**Early Termination Schedule**”) showing in reasonable detail the information required pursuant to the penultimate sentence of Section 2.02 and the calculation of the Early Termination Payment or the Divestiture Acceleration Payment, respectively (including the projections of the Taxable Entities’ taxable income under clause (i) of the Valuation Assumptions). The Early Termination Schedule shall become final and binding on all parties unless the Existing Stockholders Representative, within fifteen calendar days after receiving the Early Termination Schedule provides the Corporation with notice of a material objection to such Schedule made in good faith (“**Material Objection Notice**”). If the parties for any reason are unable to successfully resolve the issues raised in such notice within fifteen calendar days after receipt by the Corporation of the Material Objection Notice, the Corporation and the Existing Stockholders Representative shall employ the Reconciliation Procedures as described in Section 7.09 of this Agreement.

Section 4.03. **Payment upon Early Termination.** (a) Subject to Section 3.03 and except as provided in Section 5.02, no later than the Early Termination Date, the Corporation shall pay to each Existing Stockholder its share (based on such Existing Stockholder’s Ownership Percentage) of an amount equal to the Early Termination Payment or Divestiture Acceleration Payment and any other payment required to be made pursuant to Sections 4.01(b) and (c). Such payment shall be made by wire transfer of immediately available funds to a bank account designated by the applicable Existing Stockholders or as otherwise agreed by the Corporation and the Existing Stockholder.

(b) The “**Early Termination Payment**” as of the Early Termination Date (other than an Early Termination Date arising under clause (iii) of the definition thereof) shall equal with respect to the Existing Stockholders the present value, discounted at the Early Termination Rate as of such date, of all Annual Tax Payments that would be required to be paid by the Corporation to the Existing Stockholders beginning from the Early Termination Date assuming the Valuation Assumptions are applied, provided that in the event of a Change of Control, the Early Termination Payment shall be calculated without giving effect to any limitation on the use of the Pre-IPO NOLs resulting from the Change of Control. For purposes of calculating the present value pursuant to this Section 4.03(b) of all Annual Tax Payments that would be required to be paid, it shall be assumed that absent the Early Termination Event all Annual Tax Payments would be paid on the due date (without extensions) for filing the relevant Taxable Entity Return with respect to Taxes for each Taxable Year. The computation of the Early Termination Payment is subject to the Reconciliation Procedures as described in Section 7.09(b) of this Agreement.

(c) The “**Divestiture Acceleration Payment**” as of the date of any Divestiture shall equal with respect to the Existing Stockholders the present value, discounted at the Early Termination Rate as of such date, of the Annual Tax Payments resulting solely from the Transferred NOLs that would be required to be paid by the Corporation to the Existing Stockholders beginning from the date of such Divestiture assuming the Valuation Assumptions are applied, provided that the Divestiture Acceleration Payment shall be calculated without giving effect to any limitation on the use of the Transferred NOLs resulting from the Divestiture. For purposes of calculating the present value pursuant to this Section 4.03(c) of all Annual Tax Payments that would be required to be paid, it shall be assumed that absent the Divestiture all

Annual Tax Payments would be paid on the due date (without extensions) for filing the relevant Taxable Entity Return with respect to Taxes for each Taxable Year. The computation of the Divestiture Acceleration Payment is subject to the Reconciliation Procedures as described in Section 7.09(b) of this Agreement.

(d) The Early Termination Payment and the Divestiture Acceleration Payment shall be calculated without giving effect to any reduction of any Annual Tax Payment pursuant to Section 3.01(d)(i) or (ii), provided that this Section 4.03(d) shall not prevent the reduction of any Early Termination Payment or Divestiture Acceleration Payment pursuant to Section 4.01(f).

## ARTICLE V

### LATE PAYMENTS, ETC.

Section 5.01. Late Payments by the Corporation. The amount of all or any portion of any ITR Payment not made to the Existing Stockholders when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate and commencing from the date on which such ITR Payment was due and payable.

Section 5.02. Compliance with Indebtedness. Notwithstanding anything to the contrary provided herein, if, at the time any amounts becomes due and payable hereunder, (a) the Corporation is not permitted, pursuant to the terms its outstanding indebtedness, to pay such amounts, or (b) (i) the Corporation does not have the cash on hand to pay such amounts, and (ii) no Subsidiary of the Corporation is permitted, pursuant to the terms of its outstanding indebtedness, to pay dividends to the Company to allow it to pay such amounts, then, in each case, the Corporation shall, by notice to the Existing Stockholders Representative, be permitted to defer the payment of such amounts until the condition described in clause (a) or (b) is no longer applicable, in which case such amounts (together with accrued and unpaid interest thereon as described in the immediately following sentence) shall become due and payable immediately. If the Corporation defers the payment of any such amounts pursuant to the foregoing sentence, such amounts shall accrue interest at the Agreed Rate per annum, from the date that such amounts originally became due and owing pursuant to the terms hereof to the date that such amounts were paid. To the extent the Corporation or its Subsidiaries incur, create, assume or permit to exist any indebtedness after the date hereof, the Corporation shall, and shall cause its Subsidiaries to, make commercially reasonable efforts to ensure that such indebtedness permits any amounts payable hereunder to be paid.

## ARTICLE VI

### CONSISTENCY; COOPERATION

Section 6.01. The Existing Stockholders Representative's Participation in Corporation Tax Matters. Except as otherwise provided herein, the Corporation shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporation and each Taxable Entity including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes, subject to a requirement that the Corporation act in good faith in connection with its control of any matter



which is reasonably expected to affect any Existing Stockholder's rights and obligations under this Agreement. Notwithstanding the foregoing, the Corporation shall notify the Existing Stockholders Representative of, and keep the Existing Stockholders Representative reasonably informed with respect to, the portion of any audit of the Corporation or any Taxable Entity by a Taxing Authority the outcome of which is reasonably expected to affect any Existing Stockholder's rights and obligations under this Agreement, and shall give the Existing Stockholders Representative reasonable opportunity to provide information and participate in the applicable portion of such audit.

Section 6.02. Consistency. Except upon the written advice of an Advisory Firm, the Corporation and the Existing Stockholders Representative agree to report and cause to be reported for all purposes, including federal, state, local and foreign Tax purposes and financial reporting purposes, all Tax-related items (including without limitation the Annual Tax Payment) in a manner consistent with that specified by the Corporation in any Schedule required to be provided by or on behalf of the Corporation or any Taxable Entity under this Agreement and agreed by the Existing Stockholders Representative. Any dispute concerning such advice shall be subject to the terms of Section 7.09. In the event that an Advisory Firm is replaced with another firm acceptable to the Corporation and the Existing Stockholders Representative pursuant to the definition of Advisory Firm, such replacement Advisory Firm shall be required to perform its services under this Agreement using procedures and methodologies consistent with those used by the previous Advisory Firm, unless otherwise required by law or the Corporation and the Existing Stockholders Representative agree to the use of other procedures and methodologies.

Section 6.03. Cooperation. Each of the Corporation and the Existing Stockholders (through the Existing Stockholders Representative) shall (a) furnish to the other party in a timely manner such information, documents and other materials as the other party may reasonably request for purposes of making or approving any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (b) make itself available to the other party and its representatives to provide explanations of documents and materials and such other information as the requesting party or its representatives may reasonably request in connection with any of the matters described in clause (a) above, and (c) reasonably cooperate in connection with any such matter, and the requesting party shall reimburse the other party for any reasonable third-party costs and expenses incurred pursuant to this Section.

**ARTICLE VII**  
**MISCELLANEOUS**

Section 7.01. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed duly given and received (a) on the date of delivery if delivered personally, or by facsimile upon confirmation of transmission by the sender's fax machine if sent on a Business Day (or otherwise on the next Business Day) or (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporation, to:

Berry Plastics Group Inc.  
101 Oakley Street  
Evansville, IN 47710  
Attention: Chief Financial Officer

with a copy to (which shall not constitute notice):

[•]  
Attention:

If to the Existing Stockholders Representative, to:

[•]  
Attention:  
with a copy to (which shall not constitute notice):

[•]  
Attention:

Any party may change its address or fax number by giving the other party written notice of its new address or fax number in the manner set forth above.

Section 7.02. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.03. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns. The parties to this Agreement agree that the Existing Stockholders are expressly made third party beneficiaries to this Agreement. Other than as provided in the preceding sentence, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.04. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

Section 7.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.06. Successors; Assignment; Amendments; Waivers. (a) The Existing Stockholders Representative may not assign its rights and obligations in its capacity as Existing Stockholders Representative under this Agreement to any person without the prior written consent of the Corporation; provided, however that the Existing Stockholders Representative may assign its rights and obligations in its capacity as Existing Stockholders Representative under this Agreement to any of its Affiliates, as long as such transferee has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporation agreeing to be bound by all provisions of this Agreement and acknowledging specifically the last sentence of the next paragraph.

(b) No Existing Stockholder may assign its rights under this Agreement without the prior written consent of the Existing Stockholders Representative. Any assignment of an Existing Stockholder's rights meeting the requirements of this paragraph shall be referred to herein to as a "Permitted Assignment".

(c) No provision of this Agreement may be amended unless such amendment is approved in writing by the Corporation and the Existing Stockholders (through the Existing Stockholders Representative). No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

(d) All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

Section 7.07. Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.08. Resolution of Disputes.

(a) Any and all disputes which cannot be settled amicably, including any ancillary claims of any party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this arbitration provision) shall be finally settled by arbitration conducted by a single arbitrator in New York in accordance with the then-existing Rules of Arbitration of the International Institute for Conflict Prevention and Resolution. If the parties to the dispute fail to agree on the selection of an arbitrator within thirty calendar days of the receipt of the request for arbitration, the International Institute for Conflict Prevention and Resolution shall make the appointment. The arbitrator shall be a lawyer and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings.

(b) Notwithstanding the provisions of paragraph (a), the Corporation may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this paragraph (b), each Existing Stockholder (through the Existing Stockholders Representative) (i) expressly consents to the application of paragraph (c) of this Section 7.08 to any such action or proceeding, (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate, and (iii) irrevocably appoints the Corporation as its agent for service of process in connection with any such action or proceeding and agrees that service of process upon such agent, who shall promptly advise the Existing Stockholders Representative of any such service of process, shall be deemed in every respect effective service of process upon such Existing Stockholder in any such action or proceeding.

(c) (i) EACH EXISTING STOCKHOLDER (THROUGH THE EXISTING STOCKHOLDERS REPRESENTATIVE) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF COURTS LOCATED IN NEW YORK, NEW YORK FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION 7.08, OR ANY JUDICIAL PROCEEDING ANCILLARY TO AN ARBITRATION OR CONTEMPLATED ARBITRATION ARISING OUT OF OR RELATING TO OR CONCERNING THIS AGREEMENT. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration, or to confirm an arbitration award. The parties acknowledge that the fora designated by this paragraph (c) have a reasonable relation to this Agreement, and to the parties' relationship with one another.

(ii) The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in paragraph (c) (i) of this Section 7.08 and such parties agree not to plead or claim the same.

Section 7.09. Reconciliation.

(a) In General. In the event that the Corporation and the Existing Stockholders Representative are unable to resolve a disagreement with respect to the matters governed by Sections 2.03, 4.02 and 6.02 within the relevant period designated in this Agreement (or the amount of an Early Termination Payment in the case of a breach to which Section 4.01(b) applies) ("**Reconciliation Dispute**"), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the "**Expert**") in the particular area of disagreement mutually acceptable to both parties. The Expert shall be a partner in a nationally recognized accounting firm or a law firm (other than the Advisory Firm), and the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation or any of the Existing Stockholders or other actual or potential conflict of interest. If the parties are unable to agree on an Expert within fifteen (15) days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the Expert shall be appointed by the International Institute for Conflict Prevention and Resolution. The Expert shall resolve any matter relating to the Early Termination Schedule or an amendment thereto within thirty calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement is due or any Tax Return reflecting the subject of a disagreement is due, such payment shall be made on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation or the relevant Taxable Entity, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporation, except as provided in the next sentence. Each of the Corporation and the Existing Stockholders shall bear their own costs and expenses of such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.09 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.09 shall be binding on the Corporation and the Existing Stockholders and may be entered and enforced in any court having jurisdiction.

(b) Income Projections for Early Termination Payments. Notwithstanding the provisions of Section 7.09(a), solely with respect to disagreements regarding the computation of an Early Termination Payment or Divestiture Acceleration Payment that relates to the taxable income projections described in clause (i) of the definition of "Valuation Assumptions," the Corporation and the Existing Stockholders (through the Existing Stockholders Representative) shall each submit the Reconciliation Dispute for determination to an Expert in the area of valuation services. Based on the income projections of such Experts, if the higher of the resulting Early Termination Payment or Divestiture Acceleration Payment computations does not exceed 110% of the lower, then the Early Termination Payment or Divestiture Acceleration Payment shall be the average of such two amounts. If the higher of the Early Termination Payment or Divestiture Acceleration Payment computations is more than 110% of the lower, then the two Experts shall, within 20 days from such determination, select a third Expert and shall notify the Corporation and the Existing Holders of such selection. If the Early Termination Payment or Divestiture Acceleration Payment computed by the third Expert is equal to the average of the first two Early Termination Payment or Divestiture Acceleration Payment

computations, then the Early Termination Payment or Divestiture Acceleration Payment shall be such average. If the third Early Termination Payment or Divestiture Acceleration Payment computation is higher than the average of the first two computations, then the Early Termination Payment or the Divestiture Acceleration Payment shall be the average of such third computation and the higher of the first two computations; provided that if such average exceeds 110% of the higher of the first two computations, then the Early Termination Payment or Divestiture Acceleration Payment shall be 110% of the higher of the first two computations. If the third Early Termination Payment or Divestiture Acceleration Payment computation is lower than the average of the first two computations, then the Early Termination Payment or Divestiture Acceleration Payment shall be the average of such third computation and the lower of the first two computations; provided that if such average is less than 90% of the lower of the first two computations, then the Early Termination Payment or Divestiture Acceleration Payment shall be 90% of the lower of the first two computations.

Section 7.10. Withholding. The Corporation shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporation is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Existing Stockholders. The Corporation shall provide evidence of such payment to the Existing Stockholders (through the Existing Stockholders Representative) to the extent that such evidence is available.

Section 7.11. Affiliated Corporations; Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporation is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income tax return pursuant to Sections 1501 et seq. of the Code (other than if the Corporation becomes a member of such a group as a result of a Change of Control, in which case the provisions of Article IV shall control), then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Annual Tax Payments shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any Taxable Entity is or becomes a member of a Combined Taxation Group for purposes of state or foreign income Taxes (other than if a Taxable Entity becomes a member of such a group as a result of a Change of Control or Divestiture, in which cases the provisions of Article IV shall control), then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Annual Tax Payments shall be computed with reference to the combined taxable income of the group as a whole.

(c) If any Person the income of which is included in the income of any Taxable Entity's Combined Taxation Group transfers one or more assets to a corporation or any Person treated as such for Tax purposes the income of which is not included in such Combined Taxation Group, for purposes of calculating the amount of any Annual Tax Payment (e.g., calculating the gross income of a Taxable Entity's Combined Taxation Group and determining the Realized Tax

Benefit) due hereunder, such Person shall be treated as having disposed of such asset in a fully taxable transaction on the date of such transfer. The consideration deemed to be received by such entity shall be equal to the fair market value of the transferred asset, plus (i) the amount of debt to which such asset is subject, in the case of a transfer of an encumbered asset or (ii) the amount of debt allocated to such asset, in the case of a transfer of a partnership interest.

Section 7.12. Confidentiality. (a) Each Existing Stockholder (through the Existing Stockholders Representative) and each of its assignees acknowledges and agrees that the information of the Corporation is confidential and, except in the course of performing any duties as necessary for the Corporation and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, shall keep and retain in the strictest confidence and not disclose to any Person all confidential matters of the Corporation or the Existing Stockholders acquired pursuant to this Agreement. This Section 7.12 shall not apply to (i) any information that has been made publicly available by the Corporation or any of its Affiliates, becomes public knowledge (except as a result of an act of any Existing Stockholder in violation of this Agreement) or is generally known to the business community; and (ii) the disclosure of information to the extent necessary for any Existing Stockholder to prepare and file its Tax returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any taxing authority with respect to such returns. Notwithstanding anything to the contrary herein, each Existing Stockholder (and each employee, representative or other agent of such Existing Stockholder) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of (x) the Corporation and (y) any of its transactions, and all materials of any kind (including opinions or other tax analyses) that are provided to such Existing Stockholder relating to such tax treatment and tax structure.

(b) If the Existing Stockholders Representative or any of its assignees commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, the Corporation shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporation or any of its Subsidiaries and the accounts and funds managed by the Corporation and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 7.13. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 7.14. Appointment of Existing Stockholders Representative.

(a) Appointment. Without further action of any of the Corporation, the Existing Stockholders Representative or any Existing Stockholder, and as partial consideration of the benefits conferred by this Agreement, the Existing Stockholders Representative is hereby irrevocably constituted and appointed, with full power of substitution, to act in the name, place and stead of each Existing Stockholder with respect to the taking by the Existing Stockholders Representative of any and all actions and the making of any decisions required or permitted to be

taken by the Existing Stockholders Representatives under this Agreement (and any potential agreement with the Corporation to terminate this Agreement earlier than such time as is provided in Section 4.01 provided that (for the absence of doubt, except in the case of a termination covered by Section 4.01(e)) any payment made by the Corporation upon such an early termination shall be paid to each Existing Stockholder based on such Existing Stockholder's Ownership Percentage). The power of attorney granted herein is coupled with an interest and is irrevocable and may be delegated by the Existing Stockholders Representatives. No bond shall be required of the Existing Stockholders Representatives, and the Existing Stockholders Representatives shall receive no compensation for its services.

(b) Expenses. If at any time the Existing Stockholders Representative shall incur out of pocket expenses in connection with the exercise of its duties hereunder, upon written notice to the Corporation from the Existing Stockholders Representative of documented costs and expenses (including fees and disbursements of counsel and accountants) incurred by the Existing Stockholders Representative in connection with the performance of its rights or obligations under this Agreement and the taking of any and all actions in connection therewith, the Corporation shall reduce any future payments (if any) due to the Existing Stockholders hereunder pro rata (based on their respective ownership percentages in the Corporation) by the amount of such expenses which it shall instead remit directly to the Existing Stockholders Representative. In connection with the performance of its rights and obligations under this Agreement and the taking of any and all actions in connection therewith, the Existing Stockholders Representative shall not be required to expend any of its own funds (though, for the avoidance of doubt, it may do so at any time and from time to time in its sole discretion).

(c) Limitation on Liability. The Existing Stockholders Representative shall not be liable to any Existing Stockholder for any act of the Existing Stockholders Representative arising out of or in connection with the acceptance or administration of its duties under this Agreement, except to the extent any liability, loss, damage, penalty, fine, cost or expense is actually incurred by such Existing Stockholder as a proximate result of the gross negligence, bad faith or willful misconduct of the Existing Stockholders Representative (it being understood that any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith and reasonable judgment). The Existing Stockholders Representative shall not be liable for, and shall be indemnified by the Existing Stockholders (on a several but not joint basis) for, any liability, loss, damage, penalty or fine incurred by the Existing Stockholders Representative (and any cost or expense incurred by the Existing Stockholders Representative in connection therewith and herewith and not previously reimbursed pursuant to subsection (b) above) arising out of or in connection with the acceptance or administration of its duties under this Agreement, except to the extent that any such liability, loss, damage, penalty, fine, cost or expense is the proximate result of the gross negligence, bad faith or willful misconduct of the Existing Stockholders Representative (it being understood that any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith and reasonable judgment); provided, however, in no event shall any Existing Stockholder be obligated to indemnify the Existing Stockholders Representative hereunder for any liability, loss, damage, penalty, fine, cost or expense to the extent (and only to the extent) that the aggregate amount of all liabilities, losses, damages, penalties, fines, costs and expenses indemnified by such Existing Stockholder hereunder is or would be in excess of the aggregate payments under this Agreement actually remitted to such Existing Stockholder. Each Existing Stockholder's receipt of any and



all benefits to which such Existing Stockholder is entitled under this Agreement, if any, is conditioned upon and subject to such Existing Stockholder's acceptance of all obligations, including the obligations of this Section 7.14(c), applicable to such Existing Stockholder under this Agreement.

(d) Actions of the Existing Stockholders Representative. Any decision, act, consent or instruction of the Existing Stockholders Representative shall constitute a decision of all Existing Stockholders and shall be final, binding and conclusive upon each Existing Stockholder, and the Corporation may rely upon any decision, act, consent or instruction of the Existing Stockholders Representative as being the decision, act, consent or instruction of each Existing Stockholder. The Corporation is hereby relieved from any liability to any person for any acts done by the Corporation in accordance with any such decision, act, consent or instruction of the Existing Stockholders Representative.

*[Signatures pages follow]*

IN WITNESS WHEREOF, the Corporation and the Existing Stockholders Representative have duly executed this Agreement as of the date first written above.

BERRY PLASTICS GROUP INC.

By: \_\_\_\_\_

Name:

Title:

[—], as Existing Stockholders Representative

By:

## FORM OF

**AMENDED AND RESTATED STOCKHOLDERS AGREEMENT** (this "Agreement"), dated as of [—], 2012, by and among BERRY PLASTICS GROUP, INC., a Delaware corporation (the "Corporation"), and those stockholders of the Corporation listed on Schedule A hereto.

WHEREAS, the Corporation and certain stockholders of the Corporation are party to that certain Amended and Restated Stockholders Agreement (the "Second Stockholders Agreement"), dated as of April 3, 2007, by and among the Corporation and the stockholders of the Corporation party thereto;

WHEREAS, the Second Stockholders Agreement amended and restated that certain stockholders agreement (the "First Stockholders Agreement"), dated as of September 20, 2006, by and among the Corporation and the stockholders of the Corporation party thereto;

WHEREAS, Section 19 of the Second Stockholders Agreement provides that the Second Stockholders Agreement may be amended, modified or supplemented by a written instrument duly executed by the Corporation, the Apollo Entities (as defined in the Second Stockholders Agreement) and the holder of the majority shares of Stock (as defined in the Second Stockholders Agreement) owned by the stockholders of the Corporation party thereto; and

WHEREAS, the Corporation, the Apollo Entities and the Apollo Stockholders, as the holders of the majority shares of Stock (as defined in the Second Stockholders Agreement) owned by the stockholders of the Corporation party to the Second Stockholders Agreement wish to amend and restate the Second Stockholders Agreement in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and of the mutual consents and obligations hereinafter set forth, the parties hereto hereby agree as follows:

Section 1. Definitions; Interpretation.

(a) Definitions. As used herein, the following terms shall have the following respective meanings:

"Adoption" has the meaning set forth in Exhibit A.

"Affiliate" means (a) as to any Person, other than an individual, any other Person or entity who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person and (b) as to any individual, in addition to any Person in clause (a), (i) any member of the immediate family of an individual Stockholder, including parents, siblings, spouse and children (including those by adoption), the parents, siblings, spouse, or children (including those by adoption) of such immediate family member, and, in any such case, any trust whose primary beneficiary is such individual Stockholder or one or more members of such immediate family and/or such Stockholder's lineal descendants, (ii) the legal representative or guardian of such individual Stockholder or of any such immediate family

member in the event such individual Stockholder or any such immediate family member becomes mentally incompetent and (iii) any Person controlling, controlled by or under common control with a Stockholder; provided that the term “Affiliate” shall not include at any time any portfolio companies of Apollo or portfolio companies of any Graham Entity. As used in this definition, the term “control,” including the correlative terms “controlling,” “controlled by” and “under common control with,” means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.

“Agreement” has the meaning set forth in the Preamble.

“Apollo” means, collectively, Apollo Investment Fund VI, L.P. and Apollo Investment Fund V, L.P.

“Apollo Entities” means Apollo, Apollo Overseas Partners VI, L.P., Apollo Overseas Partners (Delaware) VI, L.P., Apollo Overseas Partners (Delaware 892) VI, L.P., Apollo Overseas Partners (Germany) VI, L.P., BPC Co-Investment Holdings LLC, Apollo V Covalence Holdings LLC, Apollo V Covalence Holdings, L.P., Covalence Co-Investment Holdings LLC, AP Berry Holdings, L.P. and each of their respective Affiliates.

“Apollo Registration Demand” has the meaning set forth in Section 4(a).

“Apollo Repurchase Notice” has the meaning set forth in Section 8(c).

“Apollo Stockholder” means any Apollo Entity that owns any shares of Stock in the Corporation.

“Applicable Employee Stockholder” has the meaning set forth in Section 8(a).

“Bankruptcy Event” means, with respect to any Employee Stockholder, if: (a) such Employee Stockholder shall voluntarily be adjudicated as bankrupt or insolvent, (b) such Employee Stockholder shall consent to or not contest the appointment of a receiver or trustee for himself, herself or itself, or for all or any part of his, her or its property, (c) such Employee Stockholder shall file a petition seeking relief under the bankruptcy, rearrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) such holder shall make a general assignment for the benefit of his, her or its creditors, (e) a petition shall have been filed against such Employee Stockholder seeking relief under the bankruptcy, rearrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction or (f) a court of competent jurisdiction shall have entered an order, judgment or decree appointing a receiver or trustee for such Employee Stockholder, or for any part of his, her or its property, and such petition, order, judgment or decree shall not be and remain discharged or stayed within a period of sixty (60) days after its entry.

“Board” means the board of directors of the Corporation.

“Breach Date” means the date on which the Corporation or any of its Subsidiaries first becomes aware of the breach giving rise to the repurchase right in Section 8(a)(ii).

“Business Day” means a day that is not a Saturday, Sunday or day on which banking institutions in the city to which the notice or communication is to be sent are not required to be open.

“Cause” means:

(a) in the case of an Employee Stockholder whose employment with the Corporation or its Subsidiaries is subject to the terms of an employment agreement between such Employee Stockholder and the Corporation or any of its Subsidiaries, which employment agreement includes a definition of “Cause” or any similar term, the meaning set forth in such employment agreement during the period that such employment agreement remains in effect, which shall be deemed to be “Cause” under this Agreement; provided, however, that notwithstanding the foregoing, to the extent that such employment agreement defines “Cause” to include the commission of, indictment for, conviction of or plea of no contest to a felony or other crime, in no event shall such commission, indictment, conviction or plea constitute Cause hereunder unless the act constituted a crime that is (i) a serious felony (or equivalent classification) under applicable law or (ii) a crime against the Corporation or its Subsidiaries; and

(b) in all other cases, the Employee Stockholder’s (i) intentional failure or refusal to perform reasonably assigned duties, (ii) dishonesty, willful misconduct or gross negligence in the performance of the Employee Stockholder’s duties to the Corporation or its Subsidiaries, (iii) involvement in a transaction in connection with the performance of the Employee Stockholder’s duties to the Corporation or its Subsidiaries, which transaction is adverse to the interests of the Corporation or its Subsidiaries and which is engaged in for personal profit, (iv) willful violation of any law, rule or regulation in connection with the performance of the Employee Stockholder’s duties to the Corporation or its Subsidiaries (other than misdemeanor traffic violations or similar minor offenses), (v) indictment for, conviction of or plea of no contest to any crime that is (A) a serious felony (or equivalent classification) under applicable law or (B) a crime against the Corporation or its Subsidiaries or (vi) action or inaction materially adversely affecting the Corporation or its Subsidiaries.

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

“Common Stock” means the common stock, par value \$0.01 per share, of the Corporation and any stock into which such Stock may hereafter be changed or for which such Common Stock may be exchanged, and shall also include any Common Stock of the Corporation of any class hereafter authorized.

“Control Disposition” means a Disposition by the Apollo Entities that would have the effect of transferring to a Person or Group that is not an Affiliate of the Apollo Entities or a portfolio company of one or more Apollo Entities or Affiliates thereof a number of shares of Common Stock or common stock of Berry Plastics Corporation such that, following the consummation of such Disposition, such Person or Group possesses the voting power to elect a majority of the Board or a majority of the board of directors of Berry Plastics Corporation, as applicable (whether by merger, consolidation, sale or transfer of Common Stock or otherwise), or a majority of the board of directors (or similar body) of any successor entity.

“Corporation” has the meaning set forth in the Preamble.

“Corporation Registration” has the meaning set forth in Section 5(a).

“Corporation Repurchase Notice” has the meaning set forth in Section 8(b).

“Corporation Securities” has the meaning set forth in Section 5(c)(i).

“Demand Notice” has the meaning set forth in Section 4(a).

“Disposition” (including, with correlative meaning, the term “Dispose”) means (a) any direct or indirect transfer, assignment, sale, gift, pledge, hypothecation or other encumbrance, or any other disposition, of Common Stock (or any interest therein or right thereto) or of all or part of the voting power (other than the granting of a revocable proxy) associated with the Common Stock (or any interest therein) whatsoever, or any other transfer of beneficial ownership of Common Stock, whether voluntary or involuntary, including, without limitation, (i) as a part of any liquidation of a Selected Stockholder’s assets or (ii) as a part of any reorganization of a Selected Stockholder pursuant to the United States, state, foreign or other bankruptcy law or other similar debtor relief laws, and (b) the entry into any agreement to do any of the foregoing.

“Employee Stockholder” means each of the Stockholders who executed the First Stockholders Agreement or Second Stockholders Agreement or is executing this Agreement, who was or is at the time of such execution an employee of, or who served or serves at the time of such execution as a consultant to or director of, the Corporation or its Subsidiaries or Affiliates; provided, however, that the no Graham Entity shall be considered an Employee Stockholder.

“Equity Agreement” means any stock option agreement between the Corporation and a Selected Stockholder entered into pursuant to an Equity Plan.

“Equity Plans” means any plan providing for the grant to employees of equity compensation and awards by the Company, including the 2006 Incentive Plan, the 2012 Incentive Plan and any other equity plan approved by the Corporation.

“Fair Value Per Share” means (a) the fair value of each share of Common Stock of the Corporation held by the Stockholders, as determined by the Board in good faith (as required by Section 422(c)(1) of the Code, which may be based on the advice of an independent investment banker or appraiser recognized to be an expert in making such valuations, and will take into consideration the factors listed in 26 C.F.R. § 20.2031-2, but will not take into account any reduction in value of the Common Stock because the Common Stock (A) represents a minority position, (B) is subject to restrictions on transfer and resale or (C) lacks liquidity), (b) provided that (i) notwithstanding anything to the contrary in clause (a) or clause (b)(i), with respect to each share of Common Stock held by an Employee Stockholder that is party to any agreement with the Corporation that defines such term, the meaning given to such term in such

agreement shall apply, and (ii) notwithstanding anything to the contrary in clause (a) but subject to clause (b)(i), if any securities of the Corporation are publicly traded or quoted at the time of determination, then such term shall mean the most recent closing trading price, during regular trading hours, of such securities on the Business Day immediately prior to the date of determination as determined by the Board in good faith. At any time as of which the Board is permitted to determine the Fair Value Per Share of any security in accordance with clause (a) above, neither the Corporation nor any director, officer, employee or agent of the Corporation shall have any liability with respect to the valuation of such securities that are bought or sold at such Fair Value Per Share even though the Fair Value Per Share, as so determined, may be more or less than the actual fair market value. Each of the Corporation and its officers, directors, employees and agents shall be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any Person as to matters that the Corporation or such director, officer, employee or agent reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation in determining such Fair Value Per Share.

“First Stockholders Agreement” has the meaning set forth in the Recitals.

“Good Reason” means the voluntary resignation of an Employee Stockholder's employment: (a) if the Employee Stockholder is at the time of resignation a party to an employment agreement with the Corporation or any of its Subsidiaries that defines such term or a similar term, the meaning given to such term or similar term in the employment agreement, (b) otherwise if the Employee Stockholder is at the time of resignation a party to an award agreement pursuant to an Equity Plan that defines such term or similar term, the meaning given to such term or similar term in such award agreement, and (c) in all other cases, a resignation by the Employee Stockholder within thirty (30) days after (i) a reduction of greater than 10% in the Employee Stockholder's annual base salary or target bonus, unless such reduction is applied to all other similarly situated employees, directors or consultants of the Corporation or the applicable Subsidiary, or (ii) any material adverse change in the Employee Stockholder's title, authority, duties or responsibilities or the assignment to the Employee Stockholder of any duties or responsibilities inconsistent in any material respect with those customarily associated with the position of the Employee Stockholder.

“Graham Entity” means Graham Partners II, L.P., and Graham Berry Holdings, L.P., and each of their respective Affiliates, and Donald C. Graham and Steven C. Graham.

“Graham Registration Demand” has the meaning set forth in Section 4(b).

“Graham Stockholder” means any Graham Entity that owns any shares of Stock in the Corporation.

“Group” has the meaning set forth in Section 13(d)(3) of the Securities Exchange Act.

“Indebtedness” means, with respect to any Person: (a) all indebtedness of such Person for borrowed money, whether current or funded, or secured or unsecured, (b) all indebtedness of such Person for the deferred purchase price of property or services represented by a note, bond, debenture or similar instrument and any other obligation or liability represented by a note, bond, debenture or similar instrument, (c) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all indebtedness of such Person secured by a purchase money mortgage or other lien to secure all or part of the purchase price of the property subject to such mortgage or lien, (e) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under generally accepted accounting principles in the United States of America (“GAAP”) and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP, (f) all unpaid reimbursement obligations of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person, (g) all obligations of such Person under any forward contract, futures contract, swap, option or other financing agreement or arrangement (including caps, floors, collars and similar agreements), the value of which is dependent upon interest rates, currency exchange rates, commodities or other indices, (h) all interest, fees and other expenses owed with respect to the indebtedness referred to above (and any prepayment penalties or fees or similar breakage costs or other fees and costs required to be paid in order for such Indebtedness to be satisfied and discharged in full) and (i) all indebtedness referred to above that is directly or indirectly guaranteed by such Person or that such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss.

“Indemnified Party” has the meaning set forth in Section 6(c).

“Indemnifying Party” has the meaning set forth in Section 6(c).

“IPO” means an initial public offering of the shares of Common Stock in a firm commitment underwriting effected by the Corporation pursuant to a Registration Statement.

“Losses” has the meaning set forth in Section 6(a).

“Merger” means the merger of the Corporation with and into Covalence Specialty Materials Holding Corp. (“CSMHC”) pursuant to that certain Agreement and Plan of Merger and Corporate Reorganization, dated as of March 9, 2007 (the “Merger Agreement”), pursuant to which, at the Effective Time (as defined in the Merger Agreement) the separate existence of Corporation ceased and CSMHC continued its corporate existence under Delaware law as the Surviving Corporation (as defined in the Merger Agreement) and was renamed “Berry Plastics Group, Inc.”

“Options” means options to purchase shares of Common Stock granted pursuant to the Equity Agreements.



“Original Cost” means the price per share paid by such Employee Stockholder for such share of Stock (in the case of any Option, the per-share exercise price of such Option), subject to appropriate adjustment by the Board for stock splits, stock dividends or other distributions, combinations and similar transactions.

“Original Issue Date” means, with respect to any share of Stock issued to an Employee Stockholder, the date of issuance of such share of Stock to such Employee Stockholder.

“Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

“Purchase Price” means: (a) in the case where an Employee Stockholder (i) experiences a Bankruptcy Event, (ii) resigns as an employee of the Corporation or any of its Subsidiaries other than for Good Reason during the twelve (12) month period commencing on the Original Issue Date or (iii) is terminated for Cause, the lower of the Original Cost or the Fair Value Per Share, and (b) in all other cases, the Fair Value Per Share.

“Registrable Securities” means shares of Common Stock and any shares of Common Stock which were acquired by a Stockholder upon consummation of the Merger and, in the case of a Selected Stockholder, awarded pursuant to, or acquired upon exercise of, the Options granted under any Equity Plan, and any other securities issued or issuable with respect to such Stock by way of a share dividend or share split or in connection with a combination of shares, recapitalization, merger, consolidation or reorganization; provided that any Registrable Security will cease to be a Registrable Security when (a) a Registration Statement covering such Registrable Security has been declared effective by the SEC and such Registrable Security has been disposed of pursuant to such effective Registration Statement, (b) it is sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met or it is eligible for sale under such Rule 144, not taking into account any volume limitations or (c) it shall have been otherwise transferred and a new certificate for it not bearing a legend restricting further transfer under the Securities Act shall have been delivered by the Corporation; provided, further, that any security that has ceased to be a Registrable Security shall not thereafter become a Registrable Security and any security that is issued or distributed in respect of securities that have ceased to be Registrable Securities is not a Registrable Security.

“Registration Expenses” means all expenses incurred by the Corporation in complying with Section 5, including, without limitation, all registration and filing fees, printing expenses, road show expenses, fees and disbursements of counsel and independent public accountants for the Corporation, fees and expenses (including counsel fees) incurred in connection with complying with state securities or “blue sky” laws, fees of the Financial Industry Regulatory Authority, Inc., transfer taxes, fees of transfer agents and registrars, and the reasonable fees and disbursements of one counsel for the selling holders of Registrable Securities, but excluding any underwriting discounts and selling commissions only to the extent applicable on a per share basis to Registrable Securities of the selling holders.

“Registration Statement” means any registration statement of the Corporation filed or to be filed with the SEC under the rules and regulations promulgated under the Securities Act, including the related prospectus, amendments and supplements to such registration statement, and including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“Representative” has the meaning set forth in Section 11(a).

“Repurchase Notice” means an Apollo Repurchase Notice or a Corporation Repurchase Notice, as applicable.

“SEC” means the Securities and Exchange Commission or any successor governmental agency.

“Second Stockholders Agreement” has the meaning set forth in the Recitals.

“Section 5(c) Sale Number” has the meaning set forth in Section 5(c).

“Section 5(d) Sale Number” has the meaning set forth in Section 5(d).

“Securities Act” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time.

“Selected Stockholder” means any Employee Stockholder or any Graham Stockholder.

“Senior Management” has the meaning set forth in Section 12(a).

“Stock” means (i) the outstanding shares of Common Stock of the Corporation, (ii) any additional shares of Common Stock of the Corporation that may be issued in the future and (iii) any shares of capital stock of the Corporation into which such shares may be converted or for which they may be exchanged.

“Stockholder Registration” has the meaning set forth in Section 5(a).

“Stockholders” means those Persons identified on the signature pages hereto as the Stockholders and shall include any other Person who agrees in writing with the parties hereto to be bound by and to comply with all the provisions of this Agreement applicable to a Stockholder, including any Person who becomes a party to this Agreement by executing an Adoption Agreement substantially in the form of Exhibit A or in such other form as is reasonably satisfactory to the Corporation.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, joint venture or other legal entity of which such Person (either above or through or together with any other Subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

“Termination Date” means the effective date of any termination of employment or services of any Employee Stockholder.

“Underwritten Offering” means a sale of shares of Common Stock to an underwriter for reoffering to the public.

“2006 Incentive Plan” means the Berry Plastics Group, Inc. 2006 Equity Incentive Plan as amended, supplemented, restated or otherwise modified from time to time.

“2012 Incentive Plan” means the Berry Plastics Group, Inc. 2012 Long-Term Incentive Plan, as amended, supplemented, restated or otherwise modified from time to time.

Any capitalized term used in any Section of this Agreement that is not defined in this Section 1 shall have the meaning ascribed to it in such other Section.

(b) Rules of Construction. For all purposes of this Agreement, unless otherwise expressly provided:

(i) “own,” “ownership,” “held” and “holding” refer to ownership or holding as record holder or record owner;

(ii) the headings and captions of this Agreement are for convenience of reference only and shall not define, limit or otherwise affect any of the terms hereof; and

(iii) whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 2. Options. The parties agree that the Disposition of Options, and other terms and conditions with respect to the Options, shall be governed by the Equity Agreements and the Equity Plans. Upon exercise of Options for shares of Stock of the Corporation, such shares of Stock shall be governed by this Agreement and the Equity Agreements.

Section 3. Securities Restrictions; Apollo Transfers.

(a) Securities Restrictions.

(i) Notwithstanding any other provision of this Agreement, no shares of Common Stock covered by this Agreement shall be transferable except upon the conditions specified in this Section 3(a), which conditions are intended to insure compliance with the provisions of the Securities Act.

(ii) Each certificate or book-entry notation representing shares of Common Stock covered by this Agreement shall (unless otherwise permitted by the provisions of paragraph (iv) of this Section 3(a)) be stamped or otherwise imprinted with a legend in substantially the form provided in Section 14.

(iii) The holder of any shares of Common Stock covered by this Agreement agrees, prior to any transfer of any such shares, to give written notice to the Corporation of such holder's intention to effect such transfer and to comply in all other respects with the provisions of this Section 3(a). Each such notice shall describe the manner and circumstances of the proposed transfer. Upon request by the Corporation, the holder delivering such notice shall deliver a written opinion, addressed to the Corporation, of counsel for the holder of such shares, stating that in the opinion of such counsel (which opinion and counsel shall be reasonably satisfactory to the Corporation) such proposed transfer does not involve a transaction requiring registration or qualification of such shares under the Securities Act. Such holder of such shares shall be entitled to transfer such shares in accordance with the terms of the notice delivered to the Corporation, if the Corporation does not reasonably object to such transfer and request such opinion within fifteen (15) Business Days after delivery of such notice, or, if it requests such opinion, does not reasonably object to such transfer within fifteen (15) Business Days after delivery of such opinion. Subject to paragraph (iv) of this Section 3(a), each certificate or other instrument evidencing any such transferred shares of Common Stock shall bear the legend required by paragraph (ii) of this Section 3(a) unless (A) such opinion of counsel to the holder of such shares (which opinion and counsel shall be reasonably acceptable to the Corporation) states that registration of any future transfer is not required by the applicable provisions of the Securities Act or (B) the Corporation shall have waived the requirement of such legend, which waiver may or may not be given in the Corporation's absolute discretion.

(iv) Notwithstanding the foregoing provisions of this Section 3(a), the restrictions imposed by this Section 3(a) upon the transferability of any shares of Common Stock covered by this Agreement shall cease and terminate when (A) any such shares are sold or otherwise disposed of pursuant to an effective Registration Statement under the Securities Act or (B) the holder of such shares has met the requirements for transfer of such shares pursuant to Rule 144 under the Securities Act. Whenever the restrictions imposed by this Section 3(a) shall terminate, the holder of any shares as to which such restrictions have terminated shall be entitled to receive from the Corporation, without expense, a new certificate (or book-entry notation) not bearing the restrictive legend set forth in Section 14 and not containing any other reference to the restrictions imposed by this Section 3(a).

(b) Apollo and Graham Transfers. In the event that (i) any Person that is an Affiliate of the Apollo Entities acquires shares of Common Stock from the Apollo Stockholders or any other Affiliate of the Apollo Entities or (ii) any Person that is an Affiliate of the Graham Entities acquires shares of Common Stock from the Graham Stockholders or any other Affiliate of the Graham Entities, such Person shall be subject to and have the benefit of any and all rights, obligations and restrictions of the Apollo Entities or Graham Entities, as the case may be, hereunder, as if such Person were an Apollo Entity or Graham Entity, as the case may be.

#### Section 4. Demand Registration Rights.

(a) Apollo Registration Rights. Subject to the provisions of this Section 4, at any time and from time to time after the date of this Agreement, Apollo may make one or more written demands (each, an "Apollo Registration Demand") to the Corporation requiring the Corporation to register, under and in accordance with the provisions of the Securities Act, all or part of the Apollo Stockholders' shares of Common Stock. All Apollo Registration Demands made pursuant to this Section 4 will specify the aggregate amount of shares of Common Stock to be registered, the intended methods of disposition thereof (including whether the offering is to be an Underwritten Offering) and the registration procedures to be undertaken by the Corporation in connection therewith (a "Demand Notice"). Subject to Section 4(c), promptly upon receipt of any such Demand Notice, the Corporation will file the applicable Registration Statement as soon as reasonably practicable and will use its best efforts to, in accordance with the terms set forth in the Demand Notice, effect within one hundred eighty (180) days of the filing of such Registration Statement the registration under the Securities Act (including, without limitation, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with the applicable regulations promulgated under the Securities Act) of the shares of Common Stock that the Corporation has been so required to register.

(b) Graham Stockholder Registration Rights. Subject to the provisions of this Section 4, at any time and from time to time after the date of this Agreement, so long as the Graham Stockholders collectively own at least 1% of outstanding Stock of the Corporation, the Graham Stockholders may, collectively, make up to 3 written demands, but no more than one such demand in any one hundred eighty (180)-day period (each, a "Graham Registration Demand") to the Corporation requiring the Corporation to register, under and in accordance with the provisions of the Securities Act, all or part of the Graham Stockholders' shares of Common Stock. All Graham Registration Demands made pursuant to this Section 4 will be pursuant to a Demand Notice. Subject to Section 4(c), promptly upon receipt of any such Demand Notice, the Corporation will file the applicable Registration Statement as soon as reasonably practicable and will use its best efforts to, in accordance with the terms set forth in the Demand Notice, effect within one hundred eighty (180) days of the filing of such Registration Statement the registration under the Securities Act (including, without limitation, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with the applicable regulations promulgated under the Securities Act) of the shares of Common Stock that the Corporation has been so required to register. Notwithstanding the first sentence of this Section 4(b), in the event that the Graham Stockholders withdraw a Graham Registration Demand prior to (i) in the case of a registration on a Form S-3 Registration Statement or any similar short form registration statement available for use under the Securities Act, the filing of the preliminary prospectus in respect of such offering, or (ii) in the case of a registration on any other form available for use under the Securities Act, including a Form S-1 Registration Statement, prior to the filing of the initial registration statement in respect of such offering, then, in each case, upon such withdrawal, such request for registration shall not be considered a Graham Registration Demand and shall not reduce the number of Graham Registration Demands available to the Graham Stockholders. No request for inclusion in a Corporation Registration or a Stockholder Registration under Section 5(a) shall be considered a Graham Registration Demand.

(c) Registration Obligations and Procedures.

(i) If the Corporation receives an Apollo Registration Demand or Graham Registration Demand and the Corporation furnishes to Apollo or the Graham Stockholder making such demand, respectively, a copy of a resolution of the Board certified by the secretary of the Corporation stating that in the good faith judgment of the Board it would be materially adverse to the Corporation for a Registration Statement to be filed on or before the date such filing would otherwise be required hereunder, the Corporation shall have the right to defer such filing for a period of not more than sixty (60) days after receipt of the demand for such registration from Apollo or the Graham Stockholder, respectively. The Corporation shall not be permitted to provide such notice more than twice in any three hundred sixty (360) day period. If the Corporation shall so postpone the filing of a Registration Statement, Apollo or the Graham Stockholder may withdraw the Apollo Registration Demand or Graham Registration Demand, respectively, by so advising the Corporation in writing within thirty (30) days after receipt of the notice of postponement. In addition, if the Corporation receives an Apollo Registration Demand or Graham Registration Demand and the Corporation is then in the process of preparing to engage in a public offering, the Corporation shall inform Apollo or the Graham Stockholder, respectively, of the Corporation's intent to engage in a public offering and may require Apollo or the Graham Stockholder, respectively, to withdraw such Apollo Registration Demand or Graham Registration Demand, respectively, for a period of up to one hundred twenty (120) days so that the Corporation may complete its public offering. In the event that the Corporation ceases to pursue such public offering, it shall promptly inform Apollo or the Graham Stockholder, as applicable, and Apollo or the Graham Stockholder, respectively, shall be permitted to submit a new Apollo Registration Demand or Graham Registration Demand, respectively. For the avoidance of doubt, Apollo shall have the right to participate in the Corporation's public offering as provided in Section 5.

(ii) Registrations under this Section 4 shall be on such appropriate registration form of the SEC (A) as shall be selected by the Corporation and as shall be reasonably acceptable to Apollo or the Graham Stockholder, as applicable, and (B) as shall permit the disposition of such shares in accordance with the intended method or methods of disposition specified in the Demand Notice. If, in connection with any registration under this Section 4 that is proposed by the Corporation to be on Form S-3 or any successor form, the managing underwriter, if any, shall advise the Corporation in writing that in its opinion the use of another permitted form is of material importance to the success of the offering, then such registration shall be on such other permitted form.

(iii) The Corporation shall use its best efforts to keep any Registration Statement filed in response to an Apollo Registration Demand or Graham Registration Demand effective for as long as is necessary for the Apollo Stockholders or Graham Stockholders, respectively, to dispose of the covered securities.

(iv) In the case of an Underwritten Offering in connection with an Apollo Registration Demand, Apollo shall select the underwriters, provided that the managing underwriter shall be a nationally recognized investment banking firm. Apollo shall

determine the pricing of the Registrable Securities offered pursuant to any such Registration Statement in connection with an Apollo Registration Demand, the applicable underwriting discount and other financial terms (including the material terms of the applicable underwriting agreement) and determine the timing of any such registration and sale, subject to Section 4(c), and Apollo shall be solely responsible for all such discounts and fees payable to such underwriters in such Underwritten Offering.

(v) In the case of an Underwritten Offering in connection with a Graham Registration Demand, Graham shall select the underwriters, which shall be reasonably acceptable to Apollo and the Company, provided that the managing underwriter shall be a nationally recognized investment banking firm. Graham, with the reasonable approval of Apollo and the Company, shall determine the pricing of the Registrable Securities offered pursuant to any such Registration Statement in connection with a Graham Registration Demand, the applicable underwriting discount and other financial terms (including the material terms of the applicable underwriting agreement) and determine the timing of any such registration and sale, subject to Section 4(c), and Graham shall be solely responsible for all such discounts and fees payable to such underwriters in such Underwritten Offering.

(d) **No Inconsistent Agreements.** The Corporation represents and warrants that it has not granted and is not a party to any proxy, voting trust or other agreement that is inconsistent with or conflicts with this Section 4. The Corporation shall not hereafter enter into any agreement with respect to its securities that is inconsistent with or conflicts with the rights granted under this Section 4.

#### Section 5. Piggyback Registration Rights.

(a) **Piggyback Rights.** Subject to Section 5(c), and except in connection with the IPO (for which this Section 5(a) shall not apply), if the Corporation at any time proposes to register any Stock for its own account (a "Corporation Registration") or for the account of any Stockholder possessing demand rights (including, for the avoidance of doubt, in connection with an Apollo Registration Demand or Graham Registration Demand) (a "Stockholder Registration") under the Securities Act by registration on Form S-1 or Form S-3 or any successor or similar form(s) (except registrations on any such Form or similar form(s) solely for registration of securities in connection with an employee benefit plan, a dividend reinvestment plan or a merger or consolidation, or incidental to an issuance of securities under Rule 144A under the Securities Act), it will at such time give prompt written notice to the Stockholders of its intention to do so, including the anticipated filing date of the Registration Statement and, if known, the number of shares of Stock that are proposed to be included in such Registration Statement, and of the Stockholders' rights under this Section 5. Upon the written request of a Stockholder (which request shall specify the maximum number of Registrable Securities intended to be disposed of by such Stockholder and such other information as is reasonably required to effect the registration of such shares of Stock), made as promptly as practicable and in any event within fifteen (15) Business Days after the receipt of any such notice (five (5) Business Days if the Corporation states in such written notice or gives telephonic notice to such Stockholder, with written confirmation to follow promptly thereafter, stating that (i) such registration will be on Form S-3 and (ii) such shorter period of time is required because of a planned filing date), the

Corporation, subject to Section 5(c), shall use its commercially reasonable efforts to effect the registration under the Securities Act of all Registrable Securities which the Corporation has been so requested to register by the Stockholders; provided, however, that if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the Registration Statement filed in connection with such registration, the Corporation shall determine for any reason not to register or to delay registration of such securities, the Corporation shall give written notice of such determination to the Stockholders requesting registration under this Section 5 (which such Stockholders will hold in strict confidence) and (i) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from any obligation of the Corporation to pay the Registration Expenses in connection therewith), and (ii) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Securities, for the same period as the delay in registering such other securities.

(b) Stockholder Withdrawal. Each Stockholder shall have the right to withdraw its request for inclusion of its Registrable Securities in any Registration Statement pursuant to this Section 5 at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to the Corporation of its request to withdraw.

(c) Corporation Registration Underwriters' Cutback. In the case of a Corporation Registration, if the managing underwriter of any underwritten offering shall inform the Corporation by letter of its belief that the number of Registrable Securities requested to be included in such registration pursuant to this Section 5, when added to the number of other securities to be offered in such registration by the Corporation, would materially adversely affect such offering, then the Corporation shall include in such registration, to the extent of the total number of securities which the Corporation is so advised can be sold in (or during the time of) such offering without so materially adversely affecting such offering (the "Section 5(c) Sale Number"), securities in the following priority:

(i) First, all Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock that the Corporation proposes to register for its own account (the "Corporation Securities"); and

(ii) Second, to the extent that the number of Corporation Securities to be included is less than the Section 5(c) Sale Number, the Registrable Securities requested to be included by the Stockholders; the securities requested to be included pursuant to this Section 5(c)(ii) shall be included on a pro rata basis based on the number of Registrable Securities subject to registration rights owned by each holder requesting inclusion in relation to the number of Registrable Securities then owned by all holders requesting inclusion, provided that the number of Registrable Securities owned by such Stockholders shall not include shares underlying any unvested options that do not have exercise prices lower than the then Fair Value Per Share.

(d) Stockholder Registration Underwriters' Cutback. In the case of a Stockholder Registration, if the managing underwriter of any underwritten offering shall inform the Corporation by letter of its belief that the number of shares of Common Stock and Registrable Securities requested to be included in such registration would materially adversely



affect such offering, then the Corporation shall include in such registration, to the extent of the total number of securities which the Corporation is so advised can be sold in (or during the time of) such offering without so materially adversely affecting such offering (subject to the last paragraph of this Section 5(d), the “Section 5(d) Sale Number”), securities in the following priority:

(i) First, the Registrable Securities requested to be included by the Persons exercising demand rights in connection with such Stockholder Registration; and

(ii) Second, to the extent that the number of securities to be included in the registration pursuant to Section 5(d)(i) is less than the Section 5(d) Sale Number, the Registrable Securities requested to be included by the Stockholders exercising piggyback rights pursuant to this Section 5; the securities requested to be included pursuant to this Section 5(d)(ii) shall be included on a pro rata basis based on the number of Registrable Securities subject to registration rights owned by each holder requesting inclusion in relation to the number of Registrable Securities then owned by all holders requesting inclusion, provided that the number of Registrable Securities owned by such Stockholders shall not include any shares underlying options that do not have exercise prices lower than the then Fair Value Per Share.

Notwithstanding anything to the contrary set forth in this Section 5(d), in connection with a Stockholder Registration pursuant to an Apollo Registration Demand, Apollo shall be entitled to determine, in its sole discretion, the Section 5(d) Sale Number applicable to such registration.

(e) Participation in Underwritten Offerings.

(i) Any participation by the Stockholders in a registration by the Corporation shall be in accordance with the plan of distribution of the Corporation (subject, in the case of a Stockholder Registration pursuant to an Apollo Registration Demand or Graham Registration Demand, to the rights of Apollo or Graham, respectively, in Section 4(b)). Except as provided in Section 4(c), in all Underwritten Offerings, the Corporation shall have sole discretion to select the underwriters.

(ii) If the Corporation at any time shall register shares of Stock for its own account under the Securities Act for sale to the public, no Selected Stockholder shall sell publicly, make any short sale of, grant any option for the purchase of or otherwise dispose publicly of any capital stock of the Corporation without the prior written consent of the Corporation for the period of time in which the Apollo Stockholders have similarly agreed not to sell publicly, make any short sale of, grant any option for the purchase of or otherwise dispose publicly of any capital stock of the Corporation.

(iii) In connection with any proposed registered offering of securities of the Corporation in which any Stockholder has the right to include Registrable Securities pursuant to this Section 5, such Stockholder agrees (A) to supply any information reasonably requested by the Corporation in connection with the preparation of a Registration Statement and/or any other documents relating to such registered offering

and (B) to execute and deliver any agreements and instruments being executed by all holders on substantially the same terms reasonably requested by the Corporation to effectuate such registered offering, including, without limitation, underwriting agreements, custody agreements, lock-ups, “hold back” agreements pursuant to which such Stockholder agrees not to sell or purchase any securities of the Corporation for the same period of time following the registered offering as is agreed to by the other participating holders, powers of attorney and questionnaires.

(iv) If the Corporation requests that the Stockholders take any of the actions referred to in paragraph (iii) of this Section 5(e), the Stockholders shall take such action promptly but in any event within three (3) Business Days following the date of such request. Furthermore, the Corporation agrees that it shall use commercially reasonable efforts to obtain any waivers to the restrictive sale and purchase provisions of any “hold back” agreement that are reasonably requested by a Stockholder.

(f) Copies of Registration Statements. The Corporation will, if requested, prior to filing any Registration Statement pursuant to this Section 5 or any amendment or supplement thereto, furnish to the Stockholders, and thereafter furnish to the Stockholders, such number of copies of such Registration Statement, amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein) and the prospectus included in such Registration Statement (including each preliminary prospectus) as the Stockholders may reasonably request in order to facilitate the sale of the Registrable Securities by the Stockholders.

(g) Expenses. The Corporation shall pay all Registration Expenses in connection with a Corporation Registration or any Stockholder Registration, provided that each Stockholder shall pay all applicable underwriting fees, discounts and similar charges.

#### Section 6. Indemnification and Contribution.

(a) The Corporation agrees to indemnify and hold harmless, to the fullest extent permitted by law, each Stockholder, its officers, directors, employees, controlling persons, fiduciaries, stockholders, and general or limited partners (and the officers, directors, employees and stockholders or general or limited partners thereof) and representatives from and against any and all losses, claims, damages, liabilities, costs and expenses (including attorneys’ fees) (“Losses”) caused by, arising out of, resulting from or related to (i) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Corporation shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, provided, however, that such indemnity shall not apply to that portion of such Losses caused by, or arising out of, any untrue statement, or alleged untrue statement or any such omission or alleged omission, to the extent such statement or omission was made in reliance upon and in conformity with information furnished in writing to the Corporation by or on behalf of such Stockholder expressly for use therein, and (ii) any violation by the Corporation of any federal, state or common law rule, regulation or law applicable to the Corporation and relating to action required of or inaction by the Corporation in

connection with any registration or offering of securities. Notwithstanding the preceding sentence, the Corporation shall not be liable in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission (x) made in any preliminary prospectus if (A) such selling Stockholder failed to deliver or cause to be delivered a copy of the prospectus to the Person asserting such Loss after the Corporation has furnished such selling Stockholder with a sufficient number of copies of the same and (B) the prospectus completely corrected in a timely manner such untrue statement or omission, or (y) in the prospectus, if such untrue statement or alleged untrue statement or omission or alleged omission is completely corrected in an amendment or supplement to the prospectus and the selling Stockholder thereafter fails to deliver such prospectus as so amended or supplemented prior to or concurrently with the sale of the securities to the Person asserting such Loss after the Corporation had furnished such selling Stockholder with a sufficient number of copies of the same. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any Stockholder or representative of such Stockholder and shall survive the transfer of securities by such Stockholder.

(b) Each Stockholder agrees to indemnify and hold harmless the Corporation, its officers and directors and each Person (if any) that controls the Corporation within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act from and against any and all Losses caused by, arising out of, resulting from or related to any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or prospectus relating to Registrable Securities (as amended or supplemented if the Corporation shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, only to the extent such statement or omission (i) was made in reliance upon and in conformity with information furnished in writing by or on behalf of such Stockholder expressly for use in any Registration Statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus and (ii) has not been corrected in a subsequent writing prior to or concurrently with the sale of the securities to the Person asserting such Loss. The selling Stockholders also will indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Corporation, its officers and directors and each Person (if any) that controls the Corporation, if requested. The Corporation and the selling Stockholders shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, to the same extent as provided above with respect to information so furnished in writing by such Persons specifically for inclusion in any prospectus or Registration Statement.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to Section 6(a) or Section 6(b), such Person (the "Indemnified Party") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing (provided that the failure of the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 6, except to the extent the

Indemnifying Party is actually prejudiced by such failure to give notice), and the Indemnifying Party shall be entitled to participate in such proceeding and, unless in the reasonable opinion of outside counsel to the Indemnified Party a conflict of interest between the Indemnified Party and Indemnifying Party may exist in respect of such claim, to assume the defense thereof jointly with any other Indemnifying Party similarly notified, to the extent that it chooses, with counsel reasonably satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party that it so chooses, the Indemnifying Party shall not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that (i) if the Indemnifying Party fails to take reasonable steps necessary to defend diligently the action or proceeding within twenty (20) days after receiving notice from such Indemnified Party that the Indemnified Party believes it has failed to do so, (ii) if such Indemnified Party who is a defendant in any action or proceeding which is also brought against the Indemnifying Party reasonably shall have concluded that there may be one or more legal defenses available to such Indemnified Party which are not available to the Indemnifying Party or (iii) if representation of both parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct, then, in any such case, the Indemnified Party shall have the right to assume or continue its own defense as set forth above (but with no more than one firm of counsel for all Indemnified Parties in each jurisdiction, except to the extent any Indemnified Party or Parties reasonably shall have concluded that there may be legal defenses available to such party or parties which are not available to the other Indemnified Parties or to the extent representation of all Indemnified Parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct) and the Indemnifying Party shall be liable for any expenses therefor. No Indemnifying Party shall, without the written consent of the Indemnified Party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (A) includes an unconditional release of the Indemnified Party from all liability arising out of such action or claim and (B) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any Indemnified Party.

(d) If the indemnification provided for in this Section 6 is unavailable to an Indemnified Party in respect of any losses, claims, damages or liabilities in respect of which indemnity is to be provided hereunder, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall to the fullest extent permitted by law contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of such party in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Corporation (on the one hand) and a Stockholder (on the other hand) 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 such party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Corporation and each Stockholder agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 6(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in Section 6(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6, no Stockholder shall be liable for indemnification or contribution pursuant to this Section 6 for any amount in excess of the net proceeds of the offering received by such Stockholder, less the amount of any damages which such Stockholder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 7. Rule 144. The Corporation covenants that so long as the Common Stock is registered pursuant to Section 12(b), Section 12(g) or Section 15(d) of the Securities Exchange Act, it will file any and all reports required to be filed by it under the Securities Act and the Securities Exchange Act (or, if the Corporation is not required to file such reports, it will make publicly available such necessary information for so long as necessary to permit sales pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act) and that it will take such further action as the Stockholders may reasonably request, all to the extent required from time to time to enable the Stockholders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144, Rule 144A or Regulation S under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC. Upon the written request of any Stockholder, the Corporation will deliver to such Stockholder a written statement as to whether it has complied with such requirements.

Section 8. Right to Repurchase Stock of Employee Stockholders.

(a) Repurchase Right. In the event (i) of a termination of the employer-employee relationship between the Corporation and/or any of its Affiliates and any Employee Stockholder for any reason whatsoever, (ii) that an Employee Stockholder materially breaches the terms of this Agreement or, in the case of an Employee Stockholder that is an Employee Stockholder, any employment or similar agreement between the Employee Stockholder and the Corporation or any of its Subsidiaries, any Equity Agreement or any subscription agreement between the Employee Stockholder and the Corporation, or (iii) of a Bankruptcy Event with respect to any Employee Stockholder (such Employee Stockholder in clauses (i), (ii) or (iii), an "Applicable Employee Stockholder"), the Corporation or its designee shall have the right (but not the obligation) to repurchase from such Applicable Employee Stockholder all or part of any Stock owned by him, at such time, including any Stock that was acquired upon the exercise of any stock options granted pursuant to the Equity Plans (and any shares of Stock issued in respect thereof or in exchange therefor).

(b) Corporation Repurchase Notice. The repurchase right of the Corporation or its designee under this Section 8 may be exercised by written notice (a "Corporation

Repurchase Notice”) specifying the number of shares of Stock to be repurchased and given to the Applicable Employee Stockholder within ninety (90) days after the later of the Termination Date (in the case of a repurchase right pursuant to Section 8(a)(i)), the Breach Date (in the case of a repurchase right pursuant to Section 8(a)(ii) or the date of the Bankruptcy Event (in the case of a repurchase right pursuant to Section 8(a)(iii)) (or, if the Corporation shall be legally prevented from making such repurchase during such ninety (90) day period (other than through assignment of its rights under this Section 8), then such Repurchase Notice may be delivered by the Corporation within ninety (90) days after the date on which it shall be legally permitted or not so prevented to make such repurchase; provided, however, that such right to repurchase shall (i) expire upon the second anniversary of the later of the (A) Termination Date in the case of a repurchase right pursuant to Section 8(a)(i), (B) Breach Date in the case of a repurchase right pursuant to Section 8(a)(ii) or (C) the date of the Bankruptcy Event in the case of a repurchase right pursuant to Section 8(a)(iii)), a copy of which shall also be delivered to Apollo and (ii) in no way prohibit any Applicable Employee Stockholder from otherwise disposing of its shares of Stock in a manner otherwise permitted by this agreement prior to the delivery to such Applicable Employee Stockholder of a Corporation Repurchase Notice. If the Corporation or its designee determines not to exercise its repurchase right under this Section 8, it shall give written notice to Apollo stating that it shall not exercise such repurchase right within the earlier of five (5) days following such determination and the day upon which the Corporation would have been required to give a Corporation Repurchase Notice pursuant to the first sentence of this Section 8(b) if it had determined to exercise such repurchase right.

(c) Apollo Repurchase Notice. If the notice given to Apollo pursuant to Section 8(b) states that the Corporation or its designee will not exercise its repurchase right for all or part of the Stock then subject thereto, the Apollo Entities shall have the right (but not the obligation) to repurchase all or part of such shares of Stock not purchased by the Corporation or its designee on the same terms and conditions as the Corporation or its designee, which such right may be exercised by written notice (an “Apollo Repurchase Notice”) within thirty (30) days of the later of (i) receipt of the notice given to Apollo pursuant to Section 8(b) and (ii) the repurchase date, in the case of a repurchase pursuant to Section 8(a)(ii).

(d) Repurchase Price. Upon the delivery of a Repurchase Notice to the Applicable Employee Stockholder, the Applicable Employee Stockholder shall be obligated to sell to the Corporation or its designee the Stock specified in such Repurchase Notice. The price per share of Stock to be paid under this Section 8 shall be the Purchase Price. The determination date for purposes of determining the Fair Value Per Share, if applicable, shall be the closing date of the purchase of the applicable shares of Stock.

(e) Repurchase Procedure. Repurchases of Stock under the terms of this Section 8 shall be made at the offices of the Corporation or its designee on a mutually satisfactory Business Day within fifteen (15) days after delivery of the Repurchase Notice, provided that the closing will be deferred until such time as the Applicable Employee Stockholder has held the shares of Stock for a period of at least six (6) months and one (1) day. Delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer and free and clear of all liens, claims and other encumbrances (other than those encumbrances hereunder) shall be made on such date against payment of the purchase price therefor. The Corporation shall have the right to record such repurchases of Stock on its books and records without the consent of the Applicable Employee Stockholder, so long as such transactions are consistent with the terms of this Agreement.

(f) Section 409A. If any repurchase pursuant to the terms of this Section 8 would subject an Applicable Employee Stockholder to tax under Section 409A of the Code, the Corporation and/or the Apollo Entities, as applicable, shall, to the extent reasonably practicable, and subject to the provisions of this Section 8, modify the terms of any repurchase in the least restrictive manner necessary in order to comply with the provisions of Section 409A, other applicable provision(s) of the Code and/or any rules, regulations or other regulatory guidance issued under such statutory provisions and, in each case, without any material diminution in the value of the payments to the affected Applicable Employee Stockholder.

(g) Limitations. Notwithstanding anything to the contrary contained in this Agreement, all purchases of shares of Stock by the Corporation, its designee or the Apollo Entities shall be subject to applicable restrictions contained in federal, state and non-U.S. law. Notwithstanding anything to the contrary contained in this Agreement, if any such restrictions prohibit or otherwise delay any purchase of shares of Stock that the Corporation, its designee or the Apollo Entities are otherwise entitled or required to make pursuant to this Section 8, then the Corporation, its designee or the Apollo Entities, as applicable, shall have the option to make such purchases pursuant to this Section 8 within thirty (30) days of the date that it or they are first permitted to make such purchase under the laws and/or agreements containing such restrictions. Notwithstanding anything to the contrary contained in this Agreement, the Corporation and its Subsidiaries shall not be obligated to effectuate any transaction contemplated by this Section 8 if such transaction would violate the terms of any restrictions imposed by agreements evidencing the Corporation's or any of its Subsidiaries' Indebtedness. In the event that any shares of Stock are sold by a Employee Stockholder pursuant to this Section 8, the Employee Stockholder, and such Employee Stockholder's successors, assigns or representatives, will take all reasonable steps necessary and desirable to obtain all required third-party, governmental and regulatory consents and approvals with respect to such Employee Stockholder and take all other actions necessary and desirable to facilitate consummation of such sale in a timely manner.

(h) Withholding. The Corporation may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation, or may permit a Employee Stockholder to elect to pay the Corporation any such required withholding taxes. If such Employee Stockholder so elects, the payment by such Employee Stockholder of such taxes shall be a condition to the receipt of amounts payable to such Employee Stockholder under this Agreement. The Corporation shall, to the extent permitted or required by law, have the right to deduct any such taxes from any payment otherwise due to such Employee Stockholder.

#### Section 9. Board of Directors.

(a) Nomination of Directors. The Apollo Entities shall have the right to nominate for election to the Board:

(i) no fewer than that number of directors that would constitute a majority of the number of directors that the Corporation would have if there were no vacancies on the Board, so long as the Apollo Entities collectively beneficially own at least 50% of the outstanding Stock of the Corporation; provided that nothing in this paragraph (i) of this Section 9(a) shall be construed to limit the right of the Apollo Entities to nominate directors to a number of such directors that is less than the number directors the Apollo Entities would be entitled to nominate pursuant to applicable law and the Corporation's certificate of incorporation and bylaws;

(ii) up to five (5) directors, so long as the Apollo Entities collectively beneficially own at least 30% of the outstanding Stock of the Corporation but less than 50% of the outstanding Stock of the Corporation;

(iii) up to four (4) directors, so long as the Apollo Entities collectively beneficially own at least 20% of the outstanding Stock of the Corporation but less than 30% of the outstanding Stock of the Corporation; and

(iv) up to three (3) directors, so long as the Apollo Entities collectively beneficially own at least 10% of the outstanding Stock of the Corporation but less than 20% of the outstanding Stock of the Corporation.

In the event the size of the Board is increased or decreased at any time, the Apollo Entities' nomination rights under this Section 9(a) shall be proportionately increased or decreased, respectively, rounded up to the nearest whole number. Furthermore, in the event that within one hundred eighty (180) days of the date of this Agreement, the Board increases its size, the Apollo Entities shall have the right to nominate for election to the Board directors to fill such newly created directorships, and if the Apollo Entities exercise such right, the Corporation shall appoint such nominees to the Board.

(b) Election of Directors. The Corporation shall take all action within its power to cause all nominees nominated pursuant to Section 9(a) to be included in the slate of nominees recommended by the Board to the Corporation's stockholders for election as directors at each annual meeting of the stockholders of the Corporation (and/or in connection with any election by written consent) and the Corporation shall use all reasonable best efforts to cause the election of each such nominee, including soliciting proxies in favor of the election of such nominees.

(c) Replacement of Directors. In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal (with or without cause) of a director nominated pursuant to Section 9(a) or designated pursuant to this Section 9(c), or in the event of the failure of any such nominee to be elected, the Apollo Entities shall have the right to designate a replacement to fill such vacancy. The Corporation shall take all action within its power to cause such vacancy to be filled by the replacement so designated, and the Board shall promptly elect such designee to the Board. Upon the written request of the Apollo Entities, the Corporation shall take all actions necessary to remove, with or without cause, any director previously nominated pursuant to Section 9(a) or designated pursuant to this Section 9(c), and to elect any replacement director designated by the Apollo Entities as provided in the first sentence of this Section 9(c).



(d) Committees. So long as the Apollo Entities collectively beneficially own at least 15% of the outstanding Stock of the Corporation, the Corporation shall take all action within its power to cause any committee of the Board to include in its membership at least one of the Apollo Entities' nominees, except to the extent that such membership would violate applicable securities laws or stock exchange or stock market rules.

(e) No Limitation. The provisions of this Section 9 are intended to provide the Apollo Entities with the minimum Board representation rights set forth herein. Nothing in this Agreement shall prevent the Corporation from having a greater number of nominees or designees of the Apollo Entities on the Board than otherwise provided herein.

(f) Laws and Regulations. Nothing in this Section 9 shall be deemed to require that any party hereto, or any Affiliate thereof, act or be in violation of any applicable provision of law, regulation, legal duty or requirement or stock exchange or stock market rule.

Section 10. Directors' and Officers' Insurance. The Corporation shall maintain directors' and officers' liability insurance (including Side A coverage) covering the Corporation's and its Subsidiaries' directors and officers and issued by reputable insurers, with appropriate policy limits, terms and conditions (including "tail" insurance if necessary or appropriate). The provisions of this Section 10 are intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her representatives and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise.

Section 11. Information. For so long as the Apollo Entities collectively own 10% or greater of the outstanding Common Stock or any other equity securities of the Corporation, Apollo will be entitled to the following contractual management rights with respect to the Corporation and its Subsidiaries:

(a) Apollo shall be entitled to routinely consult with and advise senior management of the Corporation (defined as the Corporation's Executive Vice Presidents and above and, collectively, "Senior Management") with respect to the Corporation's business and financial matters, including management's proposed annual operating plans, and, upon request, members of Senior Management will meet regularly (on a quarterly basis) during each year with representatives of Apollo (each such representative, a "Representative") at the Corporation's and/or its Subsidiaries' facilities (or such other locations as the Corporation may designate) at mutually agreeable times for such consultation and advice, including to review progress in achieving said plans. The Corporation agrees to give due consideration to the advice given and any proposals made by Apollo;

(b) Apollo may inspect all books and records and facilities and properties of the Corporation at reasonable times and intervals. The Corporation shall furnish Apollo with such available financial and operating data and other information with respect to the business and properties of the Corporation and its Subsidiaries as Apollo may reasonably request and at

Apollo's expense. The Corporation shall permit the Representatives to discuss the affairs, finances and accounts of the Corporation and its Subsidiaries with, and to make proposals and furnish advice to, Senior Management; and

(c) The Corporation shall, after receiving notice from Apollo as to the identity of any Representative: (i) permit such Representative to attend all meetings of the Board as an observer, (ii) provide such Representative advance notice of each such meeting, including such meeting's time and place, at the same time and in the same manner as such notice is provided to the members of the Board, (iii) provide, with Apollo's consent, the Representative with copies of all materials, including notices, minutes, consents and regularly compiled financial and operating data distributed to the members of the Board at the same time as such materials are distributed to such Board, and shall permit the Representative to have the same access to information concerning the business and operations of the Corporation, and (iv) permit the Representative to discuss the affairs, finances and accounts of the Corporation with, and to make proposals and furnish advice with respect thereto to, the Board, without voting, and the Board and the Corporation's officers shall give due consideration thereto (recognizing that the ultimate discretion with respect to all such matters shall be retained by the Board).

The Corporation agrees to consider, in good faith, the recommendations of Apollo in connection with the matters on which it is consulted as described above, recognizing that the ultimate discretion with respect to all such matters shall be retained by the Corporation.

Section 12. Certain Actions.

(a) Subject to the provisions of Section 12(b), without the approval of a majority the Board as provided for in the bylaws of the Company, which must include the approval of a majority of the directors nominated by Apollo Stockholders voting on such matter, the Corporation shall not, and (to the extent applicable) shall not permit any subsidiary of the Corporation to:

(i) amend, modify or repeal any provision of the certificate of incorporation and bylaws or similar organizational documents of the Corporation in a manner that adversely affects the Apollo Entities;

(ii) issue additional shares of any class of capital stock of the Corporation (other than any award under any stockholder approved equity compensation plan or any intra-company issuance among the Corporation and subsidiaries of the Corporation);

(iii) merge or consolidate with or into any other entity, or transfer (by lease, assignment, sale or otherwise) all or substantially all of the Corporation's and its subsidiaries' assets, taken as a whole, to another entity, or enter into or agree to undertake any transaction that would constitute a "Change of Control" as defined in the Corporation's or its subsidiaries' principal credit facilities or note indentures;

(iv) consummate any acquisition of the stock or assets of any other entity (other than a subsidiary of the Corporation), in a single transaction or a series of related transactions, involving consideration in excess of \$75.0 million in the aggregate, or enter into any joint venture requiring a capital contribution in excess of \$75.0 million;

(v) incur indebtedness, in a single transaction or a series of related transactions, aggregating to more than \$75.0 million, except for borrowings under a revolving credit facility that has previously been approved or is in existence (with no increase in maximum availability) on the date of closing of the Corporation's IPO;

(vi) make a single or series of related capital expenditures in excess of \$25.0 million in any fiscal year;

(vii) declare any dividends or other distributions (other than intra-company dividends or distributions of any subsidiary of the Corporation);

(viii) terminate the Chief Executive Officer or designate a new Chief Executive Officer of the Corporation;

(ix) change the size of the Board; or

(x) create any non-wholly owned subsidiary of the Corporation or any of its subsidiaries.

(b) The approval rights set forth in Section 12(a) shall terminate at such time as the Apollo Stockholders no longer collectively beneficially own at least 25% of the total number of shares of Common Stock outstanding at any time.

Section 13. Limitations. Anything contained herein to the contrary notwithstanding, the Corporation's obligations hereunder shall in all respects be subject to the terms and provisions of any lending or financing agreements to which the Corporation is a party with third persons who are not Affiliates of the Corporation or the Apollo Entities, provided that such terms and provisions apply ratably to all Stockholders.

Section 14. Legend on Stock Certificates. Each certificate or book-entry notation representing shares of Stock owned by the Stockholders shall bear the following legend as and to the extent required under Section 3:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT OR LAWS. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO A STOCKHOLDERS AGREEMENT DATED AS OF SEPTEMBER 20, 2006, AS AMENDED AND RESTATED ON APRIL 3, 2007 AND FURTHER AMENDED AND RESTATED

ON [—], 2012, AMONG THE ISSUER OF SUCH SECURITIES AND THE OTHER PARTIES NAMED THEREIN. THE TERMS OF SUCH STOCKHOLDERS AGREEMENT INCLUDE, AMONG OTHER THINGS, RESTRICTIONS ON TRANSFER. A COPY OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF BERRY PLASTICS GROUP, INC.

Section 15. Duration of Agreement. This Agreement shall terminate automatically upon: (i) the dissolution of the Corporation (unless the Corporation continues to exist after such dissolution as a limited liability company or in another form, whether incorporated in Delaware or another jurisdiction) or (ii) the consummation of a Control Disposition; provided, however, that (A) for so long as the Apollo Stockholders collectively own any Registrable Securities, Sections 4 and 5 may not be terminated without the prior written consent of Apollo, (B) for so long as the Apollo Stockholders collectively own at least 10% of the outstanding Common Stock, Section 9 may not be terminated without the prior written consent of Apollo, (C) the indemnification provisions of Section 6 and the covenants in Section 11 shall survive any termination, (D) for so long as the Apollo Stockholders collectively own at least 10% of the outstanding Common Stock, Section 11 shall survive any termination and (E) for so long as the Apollo Stockholders collectively own at least 25% of the outstanding Common Stock, Section 12 may not be terminated without the prior written consent of Apollo. Any Stockholder who disposes of all of his, her or its Common Stock in conformity with the terms of this Agreement shall cease to be a party to this Agreement and shall have no further rights hereunder.

Section 16. Severability. If any provision of this Agreement shall be determined to be illegal and unenforceable by any court of law, the remaining provisions shall be severable and enforceable in accordance with their terms.

Section 17. Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to its choice or conflict of law provisions or rules.

(b) The parties to this Agreement agree that jurisdiction and venue in any action brought by any party hereto pursuant to this Agreement shall exclusively and properly lie in the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan, or the courts of the State of New York located in the City and County of New York, Borough of Manhattan. By execution and delivery of this Agreement each party hereto irrevocably submits to the jurisdiction of such courts for himself and in respect of his property with respect to such action. The parties hereto irrevocably agree that venue for such action would be proper in such court and hereby waive any objection that such court is an improper or inconvenient forum for the resolution of such action. The parties further agree that

the mailing by certified or registered mail, return receipt requested, of any process required by any such court shall constitute valid and lawful service of process against them, without necessity for service by any other means provided by statute or rule of court.

Section 18. JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND/OR ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHT OR REMEDIES UNDER THIS AGREEMENT OR ANY DOCUMENTS ENTERED INTO IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN.

Section 19. Stock Dividends, Etc. The provisions of this Agreement shall apply to any and all shares of capital stock of the Corporation or any successor or assignee of the Corporation (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution for the shares of Stock, by reason of any stock dividend, split, reverse split, combination, recapitalization, reclassification, merger, consolidation or otherwise in such a manner and with such appropriate adjustments as to reflect the intent and meaning of the provisions hereof and so that the rights, privileges, duties and obligations hereunder shall continue with respect to the capital stock of the Corporation as so changed.

Section 20. Benefits of Agreement. This Agreement shall be binding upon and inure to the benefit of the Corporation and its successors and assigns and each Stockholder and any spouse of each individual Selected Stockholder and their permitted assigns, legal representatives, heirs and beneficiaries. Notwithstanding anything to the contrary contained herein, but subject to Section 3(b), the Apollo Entities may assign their rights or obligations, in whole or in part, under this Agreement to one or more of their Affiliates and may assign their registration rights and obligations under Sections 4 and 5, in whole or in part, to any party to whom they transfer any shares of Stock and Graham Entities may assign their rights or obligations, in whole or in part, under this Agreement to one or more of their Affiliates. Except as otherwise expressly provided herein, no Person not a party to this Agreement, as a third-party beneficiary or otherwise, shall be entitled to enforce any rights or remedies under this Agreement.

Section 21. Notices. All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been given if (a) personally delivered or sent by telecopier, (b) sent by nationally recognized overnight courier or (c) sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(i) If to the Corporation, to:

Berry Plastics Group, Inc.  
101 Oakley Street  
Evansville, Indiana 47710  
Attention: Jeff Thompson  
Telecopier: (812) 434-9472

with copies to:

Berry Plastics Group, Inc.  
c/o Apollo Management VI, L.P.  
9 West 57th Street  
New York, New York 10019  
Attn: Robert V. Seminara  
Fax: (212) 515-3251

and:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attn: Andrew J. Nussbaum, Esq.  
Fax: (212) 403-2000

(i) If to Apollo, to:

Apollo Management VI, L.P. &  
Apollo Management V, L.P.  
9 West 57th Street  
New York, New York 10019  
Attn: Robert V. Seminara  
Fax: (212) 515-3251

with copies to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attn: Andrew J. Nussbaum, Esq.  
Fax: (212) 403-2000

(ii) If to the Stockholders, to their respective addresses set forth on Schedule A or to such other address as the party to whom notice is to be given may have furnished to such other party in writing in accordance herewith. Any such communication shall be deemed to have been received (a) when delivered, if personally delivered or sent by telecopier, (b) the next Business Day after delivery, if sent by nationally recognized, overnight courier and (c) on the third (3rd) Business Day following the date on which the piece of mail containing such communication is posted, if sent by first-class mail.

Section 22. Modification; Waiver. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by (a) the Corporation and (b) (i) for so long as the Apollo Entities collectively own at least 10% of the Stock, the vote of the shares of Stock owned by the Apollo Entities, and (ii) only for matters that adversely affect the rights or obligations of the Selected Stockholders under this Agreement, a majority of the shares of Stock owned by the Selected Stockholders as of the date the vote is taken; provided that (A) for so long as the Apollo Stockholders own any Registrable Securities, Sections 4, 5 and 23 may not be amended without the prior written consent of Apollo, (B) Section 10 may not be amended without the prior written consent of Apollo, (iii) for so long as the Apollo Stockholders collectively own at least 10% of the outstanding Common Stock, Sections 9 and 11 may not be amended without the prior written consent of Apollo, and (iv) for so long as the Apollo Stockholders own at least 25% of the outstanding Common Stock, Section 12 may not be amended without the prior written consent of Apollo. No amendment that materially adversely affects the obligations of the Graham Stockholders, and so long as the Graham Stockholders collectively own at least 33 1/3% of the shares of Stock they own immediately following the IPO, no amendment that reduces or eliminates in any material respect the rights of Graham Stockholders, may be effected without the consent of Graham Stockholders holding a majority of the Stock owned by Graham Stockholders as of the date the vote is taken; provided, however, that with respect to an amendment that reduces or eliminates in any material respect the rights of Graham Stockholders to Graham Registration Demands pursuant to Section 4(b), no minimum ownership threshold shall apply to such required consent. No course of dealing between the Corporation or its Subsidiaries and the Stockholders (or any of them) or any delay in exercising any rights hereunder will operate as a waiver of any rights of any party to this Agreement. The failure of any party to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 23. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith, including, without limitation, the First Stockholders Agreement and the Second Stockholders Agreement, from and after the completion of the IPO. Unless otherwise provided herein, any consent required by the Corporation may be withheld by the Corporation in its sole discretion.

Section 24. Inconsistent Arrangements and Dispositions. No Stockholder shall enter into any stockholder agreements or arrangements of any kind with any Person with respect to any Stock on terms inconsistent with the provisions of this Agreement (whether or not such agreements or arrangements are with other Stockholders or with Persons that are not parties to this Agreement), including agreements or arrangements with respect to the acquisition or disposition of any Stock in a manner inconsistent with this Agreement. Any Disposition or attempted Disposition in breach of this Agreement shall be void ab initio and of no effect. In connection with any attempted Disposition in breach of this Agreement, the Corporation may hold and refuse to transfer any Stock or any certificate therefor, in addition to and without prejudice to any and all other rights or remedies which may be available to it or the Stockholders. Each party to this Agreement acknowledges that a remedy at law for any breach or attempted breach of this Agreement will be inadequate, agrees that each other party to this Agreement shall be entitled to specific performance and injunctive and other equitable relief in case of any such breach or attempted breach, and further agrees to waive (to the extent legally permissible) any legal conditions required to be met for the obtaining of any such injunctive or other equitable relief (including posting any bond in order to obtain equitable relief).

Section 25. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts taken together shall constitute but one agreement. The failure of any Stockholder to execute this Agreement does not make it invalid as against any other Stockholder.

Section 26. Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and other documents as any other party hereto reasonably may request in order to carry out the provisions of this Agreement and the consummation of the transactions contemplated hereby.

Section 27. Director and Officer Actions. No director or officer of the Corporation shall be personally liable to the Corporation or any Stockholder as a result of any acts or omissions taken under this Agreement in good faith.

Section 28. Certain Certificates. Each Stockholder that is an entity that was formed for the sole purpose of acquiring shares of Stock or that has no substantial assets other than shares of Stock or interests in shares of Stock agrees that (i) certificates of shares of its common stock or other instruments reflecting equity interests in such entity (and the certificates for shares of common stock or other equity interests in any similar entities controlling such entity) will note the restrictions contained in this Agreement on the transfer of Stock as if such common stock or other equity interests were shares of Stock and (ii) no such shares of common stock or other equity interests may be transferred to any Person other than in accordance with the terms and provisions of this Agreement as if such shares or equity interests were shares of Stock.

Section 29. Apollo Stockholder Parties. In the event that any Apollo Entity that is not an Apollo Stockholder as of the time this Agreement becomes effective thereafter becomes an Apollo Stockholder, such Apollo Entity shall automatically become party to this Agreement and this Agreement shall be amended and restated to provide that the Apollo Entities or a designee of the Apollo Entities shall have all of the rights and obligations of the Apollo Entities hereunder.

Section 30. Certain Other Persons. Each individual Selected Stockholder represents and warrants to each and every other party to this Agreement that his or her spouse, if any, is fully aware of, understands and fully consents to the provisions of this Agreement, its binding effect upon any community property interests or similar marital property interests in the Stock that such spouse may now or hereafter own, and that the termination of such spouse's marital relationship with such Selected Stockholder for any reason shall not have the effect of removing any Stock of the Corporation otherwise subject to this Agreement from the coverage of this Agreement. Furthermore, each individual Selected Stockholder agrees to cause his or her spouse (and any subsequent spouse) to execute and deliver, upon the request of the Corporation, a counterpart of this Agreement or an Adoption Agreement substantially in the form of Exhibit A or in such other form as is reasonably satisfactory to the Corporation.

\* \* \* \*



**EXHIBIT A**

**ADOPTION AGREEMENT**

This Adoption Agreement (“Adoption”) is executed pursuant to the terms of the Amended and Restated Stockholders Rights Agreement, dated as of [—], 2012 (as amended from time to time, the “Stockholders Agreement”), by the transferee (“Transferee”) executing this Adoption. By the execution of this Adoption, the Transferee agrees as follows (terms used but not defined in this Adoption have the meanings set forth in the Stockholders Agreement):

1. Acknowledgement. Transferee acknowledges that Transferee is acquiring certain shares of Common Stock of the Corporation, subject to the terms and conditions of Stockholders Agreement, among the Corporation and the Stockholders party thereto.
2. Agreement. Transferee (i) agrees that the shares of Common Stock acquired by Transferee, and certain other shares of Common Stock that may be acquired by Transferee in the future, shall be bound by and subject to the terms of the Stockholders Agreement, pursuant to the terms thereof, and (ii) hereby adopts the Stockholders Agreement with the same force and effect as if he, she or it were originally a party thereto.
3. Notice. Any notice required as permitted by the Stockholders Agreement shall be given to Transferee at the address listed beside Transferee’s signature below.
4. Joinder. The spouse of the undersigned Transferee, if applicable, executes this Adoption to acknowledge its fairness and that it is in such spouse’s best interest, and to bind such spouse’s community interest, if any, in the shares of Common Stock and other securities referred to above and in the Stockholders Agreement, to the terms of the Stockholders Agreement.

Signature:

\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

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**SCHEDULE A  
STOCKHOLDERS  
[TO BE UPDATED]**

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated March 23, 2012 (except for the “Stock Split” section of Note 1, as to which the date is \_\_\_\_\_, 2012), with respect to the consolidated financial statements of Berry Plastics Group, Inc. as of October 1, 2011 and October 2, 2010, and for the three years in the period ended October 1, 2011, in Amendment No. 5 to the Registration Statement (Form S-1 No. 333-180294) and related Prospectus of Berry Plastics Group, Inc. for the registration of shares of its common stock.

The foregoing consent is in the form in which it will be signed upon completion of the “Stock Split” as described in Note 1 to the consolidated financial statements.

/s/ Ernst & Young LLP

Indianapolis, Indiana

September 17, 2012

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated April 27, 2009, with respect to the consolidated financial statements of Pliant Corporation in Amendment No. 5 to the Registration Statement (Form S-1 No. 333-180294) and related Prospectus of Berry Plastics Group, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Chicago, Illinois

September 17, 2012

**CONSENT OF DAVID HELLER**

Pursuant to Rule 438 under the Securities Act of 1933, as amended (the "Securities Act"), the undersigned hereby consents to be named as a person about to become a director of Berry Plastics Group, Inc. (the "Registrant") in the Registration Statement on Form S-1 of the Registrant (including any and all amendments or supplements thereto) to be filed with the U.S. Securities and Exchange Commission under the Securities Act.

By /s/ David Heller  
Name: David Heller

Dated: September 18, 2012