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KINDER MORGAN MANAGEMENT LLC

Form 425

August 11, 2014

Filed by Kinder Morgan, Inc. pursuant to Rule 425 under the Securities Act and deemed filed pursuant to Rule 14a-12 under the Securities Exchange Act of 1934.

Subject Company: Kinder Morgan Management, LLC

Commission File No.: 001-16459

Kinder Morgan, Inc. distributed the following four documents in connection with its proposed acquisition of Kinder Morgan Energy Partners, L.P., Kinder Morgan Management, LLC and El Paso Pipeline Partners, L.P.:

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**KINDER MORGAN, INC. TO PURCHASE KMP, KMR AND EPB;**

**2015 KMI DIVIDEND TO INCREASE TO \$2 PER SHARE**

- KMI expects 10% annual growth in dividend 2015-2020 with significant excess coverage
- Combination eliminates Incentive Distribution Rights
- Approximately \$70 billion total transaction value
- Investment grade rating expected
- Closing anticipated by year end

HOUSTON, Aug. 10, 2014 Kinder Morgan, Inc. (NYSE: KMI), Kinder Morgan Energy Partners, L.P. (NYSE: KMP), Kinder Morgan Management, LLC (NYSE: KMR) and El Paso Pipeline Partners, L.P. (NYSE: EPB) today announced that KMI will acquire all of the outstanding equity securities of KMP, KMR and EPB.

- KMP unitholders will receive 2.1931 KMI shares and \$10.77 in cash for each KMP unit. This results in a price of \$89.98 per unit, a 12 percent premium based on the Aug. 8, 2014, closing prices. This is a premium of 11.4 percent based on the July 16 closing price reference date used by the parties during the negotiation of the transaction.
- KMR shareholders will receive 2.4849 KMI shares for each share of KMR. This results in a price of \$89.75 per share, a 16.5 percent premium based on the Aug. 8, 2014, closing prices. This is a premium of 16 percent based on the July 16 reference date used by the parties in the negotiation. The parties negotiated consideration for KMR shares equal to the consideration for KMP units, using the July 16 reference date.
- EPB unitholders will receive .9451 KMI shares and \$4.65 in cash for each EPB unit. This results in a price of \$38.79 per unit, a 15.4 percent premium based on the Aug. 8, 2014, closing prices. This is a premium of 11.2 percent based on the July 16 reference date used by the parties in the negotiation.
- Both KMP and EPB unitholders will be able to elect cash or KMI stock consideration subject to proration.

KMI has secured committed financing for the cash portion of the transaction.

All shareholders and unitholders of the Kinder Morgan family of companies will benefit as a result of this combination, said Chairman and CEO Richard D. Kinder. Everyone will hold a single, publicly traded security KMI which will have a projected dividend of \$2.00 in 2015, a 16

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percent increase over the anticipated 2014 dividend of \$1.72. We expect to grow the dividend by approximately 10 percent each year from 2015 through 2020, with excess coverage

(more)

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anticipated to be greater than \$2 billion over that same period. This combined entity will be the largest energy infrastructure company in North America and the third largest energy company overall with an estimated enterprise value of approximately \$140 billion. Additionally, we will have a leading position in each of our business segments and operate in the rapidly growing North American energy infrastructure sector.

KMI has reviewed the proposed transaction with the rating agencies and expects the combined entity will be investment grade. The Kinder Morgan companies will put in place cross guarantees among and between the Kinder Morgan entities (with limited exceptions) to be effective on closing of the transaction in order to create a single creditor class and eliminate the structural subordination.

This transaction dramatically simplifies the Kinder Morgan story, by transitioning from four separately traded equity securities today to one security going forward, and by eliminating the incentive distribution rights and structural subordination of debt, Kinder said. Further, we believe that KMI will be a valuable acquisition currency and have a significantly lower hurdle for accretive investments in new energy infrastructure. In the opportunity-rich environment of today's energy infrastructure sector, we believe this transaction gives us the ability to grow KMI for years to come. The transaction also provides significant tax benefits for KMI shareholders from depreciation deductions associated with the upfront purchase and future capital expenditures.

KMP, KMR and EPB were represented in the negotiations by committees comprised exclusively of the independent members of the boards of the respective entities. The boards of all the Kinder Morgan companies have voted to recommend the transaction to their respective unitholders and shareholders. Each transaction is conditioned on the closing of the other transactions. Following unitholders and shareholder votes and standard regulatory notifications and approvals, the transaction is expected to close by the end of 2014. More information on the transaction, including the investor presentation, may be found in the Investor section of the Kinder Morgan website at [www.kindermorgan.com](http://www.kindermorgan.com).

Barclays and Citi acted as financial advisors to KMI, Barclays is providing committed financing for the transaction, and Weil Gotshal & Manges and Bracewell & Giuliani acted as

legal counsel to KMI. Jefferies acted as financial advisor to KMP and KMR and Baker Botts acted as legal counsel to KMP and KMR. Tudor, Pickering, Holt & Co. acted as financial advisor to EPB and Vinson & Elkins acted as legal counsel to EPB.

**Please join Kinder Morgan at 8:30 a.m. Eastern Time Monday, Aug. 11 at [www.kindermorgan.com](http://www.kindermorgan.com) for a LIVE webcast conference call to discuss this transaction.**

The combined Kinder Morgan entities own an interest in or operate approximately 80,000 miles of pipelines and 180 terminals. Kinder Morgan's pipelines transport natural gas, gasoline, crude oil, CO<sub>2</sub> and other products, and its terminals store petroleum products and chemicals and handle such products as ethanol, coal, petroleum coke and steel. Kinder Morgan, Inc. (NYSE: KMI) owns the general partner interests of Kinder Morgan Energy Partners, L.P. (NYSE: KMP) and El Paso Pipeline Partners, L.P. (NYSE: EPB), along with limited partner interests in KMP and EPB and shares in Kinder Morgan Management, LLC (NYSE: KMR).

Kinder Morgan Energy Partners is a leading pipeline transportation and energy storage company and one of the largest publicly traded pipeline limited partnerships in America. It owns an interest in or operates approximately 52,000 miles of pipelines and 180 terminals. The general partner of KMP is owned by Kinder Morgan, Inc.

El Paso Pipeline Partners is a publicly traded pipeline limited partnership. It owns an interest in or operates more than 13,000 miles of interstate natural gas transportation pipelines in the Rockies and the Southeast, natural gas storage facilities with a capacity of over 100 billion cubic feet and LNG assets in Georgia and Mississippi. The general partner of EPB is owned by Kinder Morgan, Inc.

#### **CONTACTS**

##### **Media Relations**

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***IMPORTANT ADDITIONAL INFORMATION WILL BE FILED WITH THE SEC***

*This communication may be deemed to be solicitation material in respect of the proposed acquisition by Kinder Morgan, Inc. ( KMI ) of each of Kinder Morgan Energy Partners, L.P. ( KMP ), Kinder Morgan Management, LLC ( KMR ) and El Paso Pipeline Partners, L.P. ( EPB ). KMI plans to file with the Securities and Exchange Commission ( SEC ) a*

registration statement on Form S-4 in connection with the mergers. Each of KMI, KMP, KMR and EPB plans to file with the SEC and mail to its security holders a proxy statement/prospectus in connection with the mergers. The registration statement and each proxy statement/prospectus will contain important information about KMI, KMP, KMR, EPB, the mergers and related matters. **INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE REGISTRATION STATEMENT AND EACH PROXY STATEMENT/PROSPECTUS CAREFULLY WHEN THEY ARE AVAILABLE.**

Investors and security holders will be able to obtain copies of each proxy statement/prospectus as well as other filings containing information about KMI, KMP, KMR and EPB, without charge, at the SEC's website, <http://www.sec.gov>. Copies of documents filed with the SEC by KMI, KMP, KMR and EPB will be made available free of charge on Kinder Morgan, Inc.'s website at <http://www.kindermorgan.com/investor/> or by written request by contacting the investor relations department of KMI, KMP, KMR or EPB at the following address: 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, Attention: Investor Relations or by phone at (713)-369-9490 or by email at [km\\_ir@kindermorgan.com](mailto:km_ir@kindermorgan.com).

#### **NO OFFER OR SOLICITATION**

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

#### **PARTICIPANTS IN THE SOLICITATION**

KMI, KMP, KMR and EPB, and their respective directors and executive officers, may be deemed to be participants in the solicitation of proxies in respect of the transactions contemplated by the Merger Agreement. Information regarding the directors and executive officers of KMI is contained in KMI's Form 10-K for the year ended December 31, 2013, and its proxy statement filed on April 9, 2014, each of which has been filed with the SEC. Information regarding the directors and executive officers of KMP's general partner and KMR, the delegate of the KMP's general partner, is contained in KMP's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC. Information regarding the directors and executive officers of KMR is contained in KMR's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC. Information regarding the directors and executive officers of the EPB's general partner is contained in EPB's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC.

#### **CAUTIONARY LANGUAGE CONCERNING FORWARD-LOOKING STATEMENTS**

Statements in this communication regarding the proposed transactions involving KMI, KMP, KMR and EPB, the expected timetable for completing the proposed transactions, future financial and operating results, benefits and synergies of the proposed transaction, future opportunities for the combined company and any other statements about KMI, the general partner of KMP,

*KMR or the general partner of EPB management's future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements that are not statements of historical fact (including statements containing the words believes, plans, anticipates, expects, estimates and similar expressions) should also be considered to be forward-looking statements. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward-looking statements, including: the ability to consummate the proposed transaction; the ability to obtain requisite regulatory and unitholder approval and the satisfaction of the other conditions to the consummation of the proposed transaction; the ability of KMI to realize anticipated synergies and cost savings; the potential impact of the announcement or consummation of the proposed transaction on relationships, including with employees, suppliers, customers and competitors; the ability to achieve revenue growth; price volatility and market demand for natural gas and natural gas liquids; higher construction costs or project delays due to inflation, limited availability of required resources or the effects of environmental, legal or other uncertainties; the ability of the combined company to continue to obtain new sources of natural gas supply; the impact on volumes and resulting cash flow of technological, economic and other uncertainties inherent in estimating future production, producers' ability to drill and successfully complete and attract new natural gas supplies and the availability of downstream transportation systems and other facilities for natural gas and NGLs; the effects of government regulations and policies and of the pace of deregulation of retail natural gas; national, international, regional and local economic or competitive conditions and developments; capital and credit markets conditions; interest rates; the political and economic stability of oil producing nations; energy markets, including changes in the price of certain commodities; weather, alternative energy sources, conservation and technological advances that may affect price trends and demand; business and regulatory or legal decisions; the timing and success of business development efforts; acts of nature, accidents, sabotage, terrorism or other similar acts causing damage greater than the insurance coverage limits of the combined company; and the other factors and financial, operational and legal risks or uncertainties described in KMI's, KMP's, KMR's and EPB's Annual Reports on Form 10-K for the year ended December 31, 2013, and other subsequent filings with the SEC. KMI, KMP, KMR and EPB disclaim any intention or obligation to update any forward-looking statements as a result of developments occurring after the date of this communication, other than as required by applicable law.*

*This news release includes forward-looking statements. These forward-looking statements are subject to risks and uncertainties and are based on the beliefs and assumptions of management, based on information currently available to them. Although Kinder Morgan believes that these forward-looking statements are based on reasonable assumptions, it can give no assurance that such assumptions will materialize. Important factors that could cause actual results to differ materially from those in the forward-looking statements herein include those enumerated in Kinder Morgan's reports filed with the Securities and Exchange Commission. Forward-looking statements speak only as of the date they were made, and except to the extent required by law, Kinder Morgan undertakes no obligation to update or review any forward-looking statement because of new information, future events or other factors. Because of these uncertainties, readers should not place undue reliance on these forward-looking statements.*

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Aug. 10, 2014

We are pleased to announce that Kinder Morgan, Inc. has entered into agreements to acquire all of the outstanding common units of KMP and EPB and all of the outstanding shares of KMR. The result will be a simplified ownership structure under one publicly traded security, KMI. We believe this transaction will be highly beneficial for our employees, all of the companies involved and our unitholders and shareholders.

As we have said many times, this is a very exciting time to be in the energy industry and we believe that we are still in the early stages of a tremendous infrastructure build out across North America. By combining the Kinder Morgan family of companies we will be even better positioned to take advantage of this growth. We are creating a company with world class assets housed under one roof with a lower cost of capital. This will generate more opportunities and greater value for employees and shareholders.

- KMI will have a projected dividend of \$2.00 per share in 2015, a 16 percent increase over the anticipated dividend of 2014. We also expect to grow the dividend by 10 percent each year from 2015 through 2020 with significant excess coverage.

We want to thank all of you for making this transaction possible. It is your dedication and hard work that have built the Kinder Morgan companies and made us a premier operator in the energy industry.

When the transaction is completed, likely by year end, KMI will continue to be the largest energy infrastructure company in North America and will be the third largest energy company overall with an enterprise value of approximately \$140 billion. The consolidation of KMI, KMP, KMR and EPB is expected to produce immediate value upon closing to all shareholders and unitholders. Because the transaction consideration is mostly equity, KMP, KMR and EPB holders will be able to share in KMI's substantial future growth opportunities.

The combined company will continue to be named Kinder Morgan, Inc. and corporate headquarters will remain in Houston. We will continue to own and operate all of the same assets we do today. We will be doing the same things we do today, but with the benefit of a simplified ownership structure. So as employees we will see very little change in our daily activities. We will continue to communicate with you in the coming months as we move through the transition process prior to closing.

As always, it is important for all of us to do everything we can to stay focused on performing our jobs to the best of our abilities to positively position the combined company for the future. Our priorities remain the same. We must focus on operating our assets safely and efficiently, striving for financial and operational excellence, assuring compliance with applicable laws and regulations, and meeting our customers' needs.



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For more information about the transaction, please see the home page of KMONLINE.

Rich Kinder and Steve Kean

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**NO OFFER OR SOLICITATION**

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**PARTICIPANTS IN THE SOLICITATION**

*KMI, KMP, KMR and EPB, and their respective directors and executive officers, may be deemed to be participants in the solicitation of proxies in respect of the transactions contemplated by the Merger Agreement. Information regarding the directors and executive officers of KMI is contained in KMI's Form 10-K for the year ended December 31, 2013 and its proxy statement filed on April 9, 2014, each of which has been filed with the SEC. Information regarding the directors and executive officers of KMP's general partner and KMR, the delegate of the KMP's general partner, is contained in KMP's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC. Information regarding the directors and executive officers of KMR is contained in KMR's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC. Information regarding the directors and executive officers of the EPB's general partner is contained in EPB's Form 10-K for the year ended December 31, 2013, which has been filed with the SEC.*

**CAUTIONARY LANGUAGE CONCERNING FORWARD-LOOKING STATEMENTS**

*Statementholders of first priority liens on the ABL Collateral the right to access and use the ABL Collateral that also secures the notes on a second lien basis to allow those holders to protect the ABL Collateral and to process, store and dispose of the ABL Collateral.*

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The ABL Collateral will also be subject to any and all exceptions, defects, encumbrances, liens and other imperfections as may be accepted by the lenders under our revolving credit facility from time to time, whether on or after the date the notes and guarantees are issued. The existence of any such exceptions, defects, encumbrances, liens and other imperfections could adversely affect the value of the ABL Collateral securing the notes as well as the ability of the notes collateral agent to realize or foreclose on the ABL Collateral. See "Description of the Notes Security Intercreditor Agreement."

*The value of the Collateral securing the notes may not be sufficient to satisfy our obligations under the notes.*

No appraisal of the value of the Collateral has been made in connection with this offering, and the fair market value of the Collateral will be subject to fluctuations based on factors that include, among others, general economic conditions and similar factors. The amount to be received upon a sale of the Collateral would be dependent on numerous factors including, but not limited to, the actual fair market value of the Collateral at such time, the timing and the manner of the sale and the availability of buyers. By its nature, portions of the Collateral may be illiquid and may have no readily ascertainable market value. In the event of a foreclosure, liquidation, bankruptcy or similar proceeding, the Collateral may not be sold in a timely or orderly manner and the proceeds from any sale or liquidation of this Collateral may not be sufficient to pay our obligations under the notes.

To the extent that pre-existing liens, liens permitted under the indenture and other rights, including liens on excluded assets, such as those securing purchase money obligations and capital lease obligations granted to other parties (in addition to the holders of obligations secured by first-priority liens), encumber any of the Collateral securing the notes and the guarantees, those parties have or may

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exercise rights and remedies with respect to the Collateral that could adversely affect the value of the Collateral and the ability of the notes collateral agent, the trustee under the indenture or the holders of the notes to realize or foreclose on the Collateral.

In addition, the indenture governing the notes permits us, subject to compliance with certain financial tests, to issue additional secured debt, including debt secured equally and ratably by the same assets pledged for the benefit of the holders of the notes. This would reduce amounts payable to holders of the notes from the proceeds of any sale of the Collateral. There may not be sufficient Collateral to pay off any additional amounts we may borrow under our revolving credit facility or any additional indebtedness we may issue that will be secured equally and ratably together with the notes. Consequently, liquidating the Collateral securing the notes and the guarantees may not result in proceeds in an amount sufficient to pay any amounts due under the notes after also satisfying the obligations to pay any creditors with prior liens. If the proceeds of any sale of Collateral were not sufficient to repay all amounts due on the notes, the holders of the notes (to the extent not repaid from the proceeds of the sale of the Collateral) would have only an unsecured, unsubordinated claim against our and the subsidiary guarantors' remaining assets.

***The Collateral securing the notes may be diluted under certain circumstances.***

The indenture governing the notes and our revolving credit agreement permit us to incur, and our domestic subsidiaries to guarantee, additional indebtedness subject to our compliance with the restrictive covenants in such documents. Any issuance of such additional indebtedness that is secured by the same security interests, and with the same priority, would dilute the value of the Collateral to the extent of the aggregate principal amount of such additional debt issued.

***We will in most cases have control over the Collateral, and the sale of particular assets by us could reduce the pool of assets securing the notes and the guarantees.***

The collateral documents will allow us to remain in possession of, retain exclusive control over, freely operate, and collect, invest and dispose of any income from, the Collateral securing the notes and the guarantees. In addition, we will not be required to comply with all or any portion of Section 314(d) of the Trust Indenture Act of 1939 if we determine, in good faith based on advice of counsel, that, under the terms of that Section and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including "no action" letters or exemptive orders, all or such portion of Section 314(d) of the Trust Indenture Act is inapplicable to the released Collateral. For example, so long as no default or event of default under the indenture would result therefrom and such transaction would not violate the Trust Indenture Act, we may, among other things, without any release or consent by the indenture trustee, conduct ordinary course activities with respect to the Collateral, such as selling, factoring, abandoning or otherwise disposing of Collateral and making ordinary course cash payments (including repayments of indebtedness). See "Description of the Notes Certain Covenants Limitation on Asset Sales."

***There are circumstances other than repayment or discharge of the notes under which the Collateral securing the notes and guarantees will be released automatically, without your consent or the consent of the trustee.***

Under various circumstances, Collateral may be released, including:

to enable the sale, transfer or other disposal of such Collateral in a transaction not prohibited under the indenture or the revolving credit facility, including the sale of any entity in its entirety that owns or holds such Collateral;

with respect to Collateral held by a guarantor, upon the release of such guarantor from its guarantee as permitted by the indenture; and

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with respect to any ABL Collateral, upon any release by the lenders under our revolving credit facility of their first-priority security interest in such ABL Collateral (other than any such release granted following the discharge of the obligations with respect to the revolving credit facility).

In addition, the guarantee of a subsidiary guarantor will be released in connection with a sale of such subsidiary guarantor in a transaction not prohibited by the indenture.

The indenture also permits us, under certain circumstances, to designate one or more of our restricted subsidiaries that is a guarantor of the notes as an unrestricted subsidiary. If we designate a subsidiary guarantor as an unrestricted subsidiary as permitted by the indenture, all of the liens on any Collateral owned by such subsidiary or any of its subsidiaries and any guarantees of the notes by such subsidiary or any of its subsidiaries will be released under the indenture but not under the revolving credit facility. Designation of an unrestricted subsidiary will reduce the aggregate value of the Collateral securing the notes to the extent that liens on the assets of the unrestricted subsidiary and its subsidiaries are released. In addition, the creditors of the unrestricted subsidiary and its subsidiaries will have a senior claim on the assets of such unrestricted subsidiary and its subsidiaries. See "Description of the Notes Security Release of Collateral."

***There are certain other categories of property that are also excluded from the Collateral.***

Certain categories of assets are excluded from the Collateral. Excluded assets include, among certain other assets, any interest in any owned real property if the greater of cost or book value thereof is less than \$2.5 million, leasehold interests with annual rents below \$2.5 million, assets and capital stock the pledge of which would violate applicable law or contract, certain letter of credit rights, assets held outside of the United States, assets of foreign subsidiaries, the assets of our non-guarantor subsidiaries and non-subsidiary equity investees, capital stock and other securities of our subsidiaries and equity investees and the proceeds from any of the foregoing. See "Description of the Notes Security." If an event of default occurs and the notes are accelerated, the notes and the guarantees will rank equally with the holders of other unsubordinated and unsecured indebtedness of the relevant entity with respect to such excluded property.

***Rights of holders of the notes in the Collateral may be adversely affected by the failure to perfect security interests in the Collateral.***

Applicable law requires that a security interest in certain tangible and intangible assets can only be properly perfected and its priority retained through certain actions undertaken by the secured party. The liens in the Collateral securing the notes may not be perfected with respect to the claims of the notes if the notes collateral agent does not take the actions necessary to perfect any of these liens. There can be no assurance that the notes collateral agent will have taken all actions necessary to create properly perfected security interests, which may result in the loss of the priority of the security interest in favor of the holders of the notes to which they would otherwise have been entitled. There can be no assurance as to when all such additional actions necessary to perfect the liens on or security interests in the Collateral securing the notes will be completed and, to the extent a lien on or security interest in certain Collateral is perfected following the date of issuance of the notes, it might be voidable by a trustee in bankruptcy.

In addition, applicable law requires that certain property and rights acquired after the grant of a general security interest, such as real property, equipment subject to a certificate of title and certain proceeds, can only be perfected at the time such property and rights are acquired and identified. There can be no assurance that the trustee or the notes collateral agent will monitor, or that we will inform the trustee or notes collateral agent of, the future acquisition of property and rights that constitute Collateral, and that the necessary action will be taken to properly perfect the security interest in such after-acquired Collateral. Neither the Trustee nor the notes collateral agent has an obligation to

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monitor the acquisition of additional property or rights that constitute Collateral or the perfection of any security interest. Any such failure might result in the loss of the security interest in the Collateral or the priority of the security interest in favor of the notes against third parties.

***Amendments to the existing mortgages and title insurance policies on our principal real properties intended to secure the notes and the guarantees were not in place at the time of the issuance of the old notes on March 24, 2011. Delivery of such mortgage amendments after the issuance of the old notes increases the risk that the liens granted by those mortgages could be avoided.***

Amendments to the existing mortgages on our principal real properties increasing the respective amounts thereof to reflect the issuance of the old notes, to the extent that such amendments were necessary to perfect such security in the notes, were not in place at the time of the issuance of the old notes on March 24, 2011. In addition, we did not have amendments to the title insurance policies on our principal real properties in place at the time of the issuance of the old notes to insure, among other things, (i) loss resulting from the entity represented by us to be the owner thereof not holding fee title or a valid leasehold interest in such properties and such interest being encumbered by unpermitted liens and (ii) the validity and first lien priority of the mortgages granted to the notes collateral agent for the benefit of the holders of the notes.

Within 30 days after the issuance of the old notes on March 24, 2011, we completed the filing of amendments to the mortgages and other similar actions required in connection with the perfection of security interests in each of our real properties having a cost or book value (whichever is greater) in excess of \$2.5 million, and we then provided to the notes collateral agent amendments to the existing mortgagee title insurance policies (or new mortgage title insurance policies) reflecting such mortgage amendments on such properties. However, if we or any guarantor were to become subject to a bankruptcy proceeding in the future, any mortgage amendment delivered after the issuance of the old notes would face a greater risk of being invalidated than if we had delivered it at such issue date.

***Any future pledge of Collateral might be avoidable in bankruptcy.***

Any future pledge of Collateral in favor of the notes collateral agent, including pursuant to security documents delivered after the date of the indenture governing the notes, might be avoidable by the pledgor (as debtor in possession) or by its trustee in bankruptcy if certain events or circumstances exist or occur, including if the pledgor were insolvent at the time of the pledge, the pledge permits the holders of the notes to receive a greater recovery than if the pledge had not been given and a bankruptcy proceeding in respect of the pledgor is commenced within 90 days following the pledge, or, in certain circumstances, a longer period. As more fully described above, certain of the assets securing the notes were not subject to a valid and perfected security interest on the issue date of the old notes, but we provided to the notes collateral agent a valid and perfected security interest on such assets to secure the notes after the issue date.

***The Collateral is subject to casualty risks.***

We have agreed to maintain insurance on the Collateral and otherwise insure against hazards in a manner appropriate and customary for our business. There are, however, certain losses that may be either uninsurable or not economically insurable, in whole or in part. Insurance proceeds may not compensate us fully for our losses. If there were a complete or partial loss of any of the Collateral, the insurance proceeds might not be sufficient to satisfy all of the secured obligations, including the notes and the guarantees. In the event of a total or partial loss to any of the mortgaged facilities, certain items of equipment, fixtures and other improvements, and inventory may not be easily replaced. Accordingly, even though there may be insurance coverage, the extended period needed to manufacture or construct replacement for such items could cause significant delays.

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***In the event of our bankruptcy, the ability of the holders of the notes to realize upon the Collateral will be subject to certain bankruptcy law limitations.***

The ability of holders of the notes to realize upon the Collateral will be subject to certain bankruptcy law limitations in the event of our bankruptcy. Under applicable U.S. federal bankruptcy laws, secured creditors are prohibited from, among other things, repossessing their security from a debtor in a bankruptcy case without bankruptcy court approval and may be prohibited from retaining security repossessed by such creditors without bankruptcy court approval. Moreover, applicable federal bankruptcy laws generally permit the debtor to continue to retain collateral, including cash collateral, even though the debtor is in default under the applicable debt instruments, provided that the secured creditor is given "adequate protection."

The secured creditor is entitled to "adequate protection" to protect the value of the secured creditor's interest in the Collateral as of the commencement of the bankruptcy case, but the adequate protection actually provided to a secured creditor may vary according to the circumstances. Adequate protection may include cash payments or the granting of additional security if and at such times as the court, in its discretion and at the request of such creditor, determines after notice and a hearing that the Collateral has diminished in value as a result of the imposition of the automatic stay of repossession of such Collateral or the debtor's use, sale or lease of such Collateral during the pendency of the bankruptcy case. In view of the lack of a precise definition of the term "adequate protection" and the broad discretionary powers of a U.S. bankruptcy court, it is uncertain whether or when the notes collateral agent could foreclose upon or sell the Collateral or whether or to what extent holders of notes would be compensated for any delay in payment or loss of value of the Collateral through the requirement of "adequate protection." Moreover, the notes collateral agent may need to evaluate the impact of the potential liabilities before determining to foreclose on Collateral consisting of real property, if any, because secured creditors that hold a security interest in real property may be held liable under environmental laws for the costs of remediating or preventing the release or threatened releases of hazardous substances at such real property. Consequently, the notes collateral agent may decline to foreclose on such Collateral or exercise remedies available in respect thereof if it does not receive indemnification to its satisfaction from the holders of the notes.

***The waiver in the intercreditor agreement of rights of marshaling may adversely affect the recovery rates of holders of the notes in a bankruptcy or foreclosure scenario.***

The notes and the guarantees are secured on a second-priority lien basis by the ABL Collateral. The intercreditor agreement provides that, at any time obligations having the benefit of the first-priority liens on the ABL Collateral are outstanding, the holders of the notes, the trustee under the indenture governing the notes and the notes collateral agent may not assert or enforce any right of marshaling accorded to a junior lienholder as against the holders of such indebtedness secured by first-priority liens in the ABL Collateral. Without this waiver of the right of marshaling, holders of such indebtedness secured by first-priority liens in the ABL Collateral would likely be required to liquidate collateral on which the notes did not have a lien, if any, prior to liquidating the ABL Collateral, thereby maximizing the proceeds of the ABL Collateral that would be available to repay our obligations under the notes. As a result of this waiver, the proceeds of sales of the ABL Collateral could be applied to repay any indebtedness secured by first-priority liens in the ABL Collateral before applying proceeds of other collateral securing indebtedness, and the holders of notes may recover less than they would have if such proceeds were applied in the order most favorable to the holders of the notes.

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***In the event of a bankruptcy of us or any of the guarantors, holders of the notes may be deemed to have an unsecured claim to the extent that our obligations in respect of the notes exceed the fair market value of the Collateral securing the notes.***

In any bankruptcy proceeding with respect to us or any of the Guarantors, it is possible that the bankruptcy trustee, the debtor-in-possession or competing creditors will assert that the fair market value of the Collateral with respect to the notes on the date of the bankruptcy filing was less than the then-current principal amount of the notes. Upon a finding by the bankruptcy court that the notes were under-collateralized, the claims in the bankruptcy proceeding with respect to the notes would be bifurcated between a secured claim in an amount equal to the value of the Collateral and an unsecured claim with respect to the remainder of its claim which would not be entitled to the benefits of security in the Collateral. Other consequences of a finding of under-collateralization would be, among other things, a lack of entitlement on the part of the notes to receive post-petition interest and a lack of entitlement on the part of the unsecured portion of the notes to receive "adequate protection" under federal bankruptcy laws. In addition, if any payments of post-petition interest had been made at any time prior to such a finding of under-collateralization, those payments would be recharacterized by the bankruptcy court as a reduction of the principal amount of the secured claim with respect to the notes.

***It may be difficult to realize the value of the Collateral pledged to secure the notes.***

Our and the Guarantors' obligations under the notes and the guarantees are secured only by the Collateral described in this prospectus. The notes collateral agent's ability to foreclose on the Collateral on your behalf may be subject to perfection, the consent of third parties, priority issues, state law requirements and practical problems associated with the realization of the notes collateral agent's security interest in the Collateral, including cure rights, foreclosing on the Collateral within the time periods permitted by third parties or prescribed by laws, statutory rights of redemption, and the effect of the order of foreclosure. The consents of any third parties and approvals by governmental entities may not be given when required to facilitate a foreclosure on such assets. Accordingly, the notes collateral agent may not have the ability to foreclose upon the facilities or assume or transfer the right to operate the facilities. Foreclosure on the Collateral may therefore not be sufficient to acquire all facility assets necessary for operations or to make all payments on the notes.

In addition, our business requires numerous federal, state and local permits. Continued operation of those facilities that are part of the Collateral depends on the maintenance of such permits. Our business is subject to substantial regulations and permitting requirements and may be adversely affected if we were unable to comply with existing regulations or requirements or changes in applicable regulations or requirements. In the event of foreclosure, the transfer of such permits may require us to incur significant cost and expense. Further, the applicable governmental authorities might not consent to the transfer of all such permits. If the regulatory approvals required for such transfers were not obtained or were delayed, the foreclosure might be delayed, a temporary shutdown of operations might result and the value of the Collateral might be significantly decreased.

***The value of the Collateral securing the notes may not be sufficient to secure post-petition interest.***

In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding against us or the Guarantors, holders of the notes will only be entitled to post-petition interest under the United States Bankruptcy Code to the extent that the value of their security interest in the Collateral is greater than their pre-bankruptcy claim. Holders of the notes that have a security interest in Collateral with a value equal or less than their pre-bankruptcy claim will not be entitled to post-petition interest under the United States Bankruptcy Code. No appraisal of the fair market value of the Collateral has been prepared in connection with the offering of the old notes or this exchange offer and therefore the value of the noteholders' interest in the Collateral may not equal or exceed the principal amount of the notes.



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***A court could subordinate or void the obligations under our subsidiaries' guarantees.***

Under the U.S. federal bankruptcy laws and comparable provisions of state fraudulent conveyance laws, a court could void obligations under the guarantees by our subsidiaries, subordinate those obligations to other obligations of the Guarantors or require you to repay any payments made pursuant to the guarantees, if:

- (1) fair consideration or reasonably equivalent value was not received in exchange for the obligation; and
- (2) at the time the obligation was incurred, the obligor:
  - was insolvent or rendered insolvent by reason of the obligation;
  - was engaged in a business or transaction for which its remaining assets constituted unreasonably small capital; or
  - intended to incur, or believed that it would incur, debts beyond its ability to pay them as the debts matured.

The measure of insolvency for these purposes will depend upon the law of the jurisdiction being applied. Generally, however, a company will be considered insolvent if:

- the sum of its debts, including contingent liabilities, is greater than the saleable value of all of its assets at a fair valuation;
- the present fair saleable value of its assets is less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and matured; or
- it could not pay its debts as they become due.

Moreover, regardless of solvency, a court might void the guarantees, or subordinate the guarantees, if it determined that the transaction was made with intent to hinder, delay or defraud creditors.

Each guarantee by our subsidiaries contains a provision intended to limit the Guarantor's liability to the maximum amount that it could incur without causing the incurrence of obligations under its guarantee to be a fraudulent transfer. This provision, however, may not be effective to protect the guarantees by our subsidiaries from attack under fraudulent transfer law or may reduce the Guarantor's obligations to an amount that effectively makes the subsidiary guarantee worthless. In a recent Florida bankruptcy case, this kind of provision was found ineffective to protect the guarantees. If one or more of the guarantees were voided or subordinated, after providing for all prior claims, there might not be sufficient assets remaining to satisfy the claims of the holders of the notes.

The indenture requires that substantially all of our future domestic subsidiaries also must guarantee the notes in the future. These considerations will also apply to any such guarantees.

***We may not have the ability to repurchase the notes upon a change of control as required by the indenture.***

Upon the occurrence of a change of control (as defined in the indenture), the indenture requires us to offer to purchase all of the then outstanding notes at 101% of their principal amount plus accrued and unpaid interest to the date of repurchase. However, upon such a change of control, we may not have sufficient funds available to repurchase all of the notes tendered pursuant to this requirement. In addition, our revolving credit facility limits, and our future credit facilities may limit, our ability to repurchase any of the notes unless certain requirements are satisfied or the lenders thereunder consent. Our failure to repurchase the notes would be a default under the indenture, which would, in turn, be a

default under our revolving credit facility and, potentially, other debt. If any debt

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were to be accelerated, we may be unable to repay these amounts and make the required repurchase of the notes. See "Description of the Notes Change of Control."

***The market valuation of the notes may be exposed to substantial volatility.***

A real or perceived economic downturn or higher interest rates could cause a decline in the market price of the notes and thereby negatively impact the market for the notes. Because the notes may be thinly traded, it may be more difficult to sell and accurately value the notes. In addition, as has recently been evident in the global financial markets, the economic slowdown and the uncertainty over its breadth, depth and duration, the entire high-yield bond market can experience sudden and sharp price swings, which can be exacerbated by large or sustained sales by major investors in the notes, a high-profile default by another issuer, or a change in the market's psychology regarding high-yield notes. Moreover, if one of the major rating corporations were to lower its credit rating of the notes, the market price of the notes would likely decline.

***There is no established trading market for the notes. If an actual trading market does not develop for the notes, you may not be able to resell them quickly for the price that you paid or at all.***

There is no established trading market for the notes and we do not intend to apply for the notes to be listed on any securities exchange or to arrange for any quotation on any automated dealer quotation systems. The initial purchasers have advised us that they intend to make a market in the notes, but they are not obligated to do so. Each initial purchaser may discontinue any market making in the notes and at any time, in its sole discretion. As a result, we cannot assure you as to the liquidity of any trading market for the notes. We also cannot assure you that you will be able to sell your notes at a particular time or at all, or that the prices that you receive when you sell them will be favorable. If no active trading market develops, you may not be able to resell your notes at their fair market value, or at all.

The liquidity of, and trading market for, the notes may also be adversely affected by, among other things:

prevailing interest rates;

our operating performance and financial condition;

the interest of securities dealers in making a market; and

the market for similar securities.

Historically, the market for non-investment grade debt has been subject to disruptions that have caused volatility in prices of securities similar to the notes. It is possible that the market for the notes will be subject to disruptions. Any disruptions may have a negative effect on noteholders, regardless of our prospects and financial performance.

***There is a possibility that the IRS may not treat the old notes issued on March 24, 2011 and exchanged for new notes pursuant to this exchange offer as fungible with the original 2016 notes issued under the indenture on August 14, 2009.***

We intend, for U.S. federal income tax purposes, to treat the issuance of the old notes on March 24, 2011 as a "qualified reopening" of the issuance under the indenture of the original 2016 notes on August 14, 2009. Accordingly, we intend to treat, for U.S. federal income tax purposes, the old notes and the new notes issued in exchange for old notes pursuant to this exchange offer as having the same issue date, issue price and adjusted issue price as the original 2016 notes, and therefore as having been issued with the same amount of original issue discount, or "O.I.D.," as the original 2016 notes. However, we can give no assurance that the IRS will not challenge this position. If the IRS were

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successful, the old notes issued on March 24, 2011 and exchanged for new notes pursuant to this exchange offer would not be treated as part of the same issuance as the original 2016 notes and therefore would not be fungible with such original 2016 notes. Nevertheless, a holder that purchased old notes on March 24, 2011 at the initial offering price of 104.5% of their stated principal amount (plus accrued interest), and which exchanges such old notes for new notes pursuant to this exchange offer, should still be deemed to have purchased its notes at a "premium" and should therefore not be required to include any O.I.D. in gross income. See "U.S. Federal Income and Estate Tax Considerations" elsewhere in this prospectus.

**Risks Affecting Both Our Environmental Services and Energy and Industrial Services Businesses**

*Our businesses are subject to operational and safety risks.*

Provision of both environmental services and energy and industrial services to our customers involves risks such as equipment defects, malfunctions and failures, and natural disasters, which could potentially result in releases of hazardous materials, injury or death of our employees, or a need to shut down or reduce operation of our facilities while remedial actions are undertaken. Our employees often work under potentially hazardous conditions. These risks expose us to potential liability for pollution and other environmental damages, personal injury, loss of life, business interruption, and property damage or destruction. We must also maintain a solid safety record in order to remain a preferred supplier to our major customers.

While we seek to minimize our exposure to such risks through comprehensive training programs, vehicle and equipment maintenance programs and insurance, such programs and insurance may not be adequate to cover all of our potential liabilities and such insurance may not in the future be available at commercially reasonable rates. If we were to incur substantial liabilities in excess of policy limits or at a time when we were not able to obtain adequate liability insurance on commercially reasonable terms, our business, results of operations and financial condition could be adversely affected to a material extent. Furthermore, should our safety record deteriorate, we could be subject to a potential reduction of revenues from our major customers.

*Our businesses are subject to significant competition.*

We compete with a large number of companies, which range from large public companies to small operators that provide most of the same or similar services to those we offer. The 2008-2010 downturn in economic conditions, particularly with respect to manufacturing and oil and gas exploration and production, caused increased competition for market share. This competition resulted and could further result in lower prices and reduced gross margins for our services and negatively affect our ability to grow or sustain our current revenue and profit levels in the future.

*Our businesses are subject to numerous statutory and regulatory requirements, which may increase in the future.*

Our businesses are subject to numerous statutory and regulatory requirements, and our ability to continue to hold licenses and permits required for our businesses is subject to maintaining satisfactory compliance with such requirements. These requirements may increase in the future as a result of statutory and regulatory changes. Although we are very committed to compliance and safety, we may not, either now or in the future, be in full compliance at all times with such statutory and regulatory requirements. Consequently, we could be required to incur significant costs to maintain or improve our compliance with such requirements.

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***Seasonality makes it harder for us to manage our businesses and for investors to evaluate our performance.***

Our business operations are affected by seasonal fluctuations due to weather and budgetary cycles influencing the timing of customers' spending for our services. Typically during the first quarter of each calendar year, there is less demand for environmental remediation due to weather-related reasons, particularly in northern and midwestern United States and in Canada, and an increased possibility of unplanned weather-related plant shutdowns. Conversely, because a large portion of our energy and industrial services business is carried out in Western Canada and involves moving heavy equipment, our ability to provide such services is dependent on weather conditions. Thawing in the spring renders many secondary roads incapable of supporting heavy equipment, and extremely cold weather in the winter season or wet weather during any season can limit our ability to provide timely services. As a result, the operating performance of our energy and industrial services business also tends to be seasonal (with higher revenues during the first quarter of each year and reduced revenues during the second quarter) and may be negatively impacted by adverse weather conditions during any quarter. This seasonality makes it harder for us to manage our businesses and for investors to evaluate our performance.

***Future conditions might require us to make substantial write-downs in our assets, which would adversely affect our balance sheet and results of operations.***

Periodically, we review our long-lived tangible and intangible assets other than goodwill for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. We also test our goodwill assets for impairment at least annually on December 31, or when events or changes in the business environment indicate that the carrying value of a reporting unit may exceed its fair value. At the end of each of 2010, 2009 and 2008, we determined that no asset write-downs were required; however, if conditions in either the environmental services or energy and industrial services businesses were to deteriorate significantly, we could determine that certain of our assets were impaired and we would then be required to write-off all or a portion of our costs for such assets. Any such significant write-offs would adversely affect our balance sheet and results of operations.

***Fluctuations in foreign currency exchange rates could affect our financial results.***

We earn revenues, pay expenses, own assets and incur liabilities in countries using currencies other than the U.S. dollar. For the three months ended March 31, 2011, we recorded 42% of our revenues outside of the United States, primarily in Canada. Because our consolidated financial statements are presented in U.S. dollars, we must translate revenues, income and expenses as well as assets and liabilities into U.S. dollars at exchange rates in effect during or at the end of each reporting period. Therefore, increases or decreases in the value of the U.S. dollar against other currencies in countries where we operate will affect our results of operations and the value of balance sheet items denominated in foreign currencies. These risks are non-cash exposures. We manage these risks through normal operating and financing activities. We cannot be certain, however, that we will be successful in reducing the risks inherent in exposures to foreign currency fluctuations.

***We may make further acquisitions in the future with the goal of expanding our business. However, we may be unable to complete such transactions and, if completed, such transactions may not improve our business or may pose significant risks and could have a negative effect on our operations.***

We have in the past significantly increased the size of our Company and the types of services we offer to our customers through acquisitions. Since December 31, 2005, we have acquired two public companies (Eveready Inc. in July 2009, and Peak Energy Services Ltd. in June 2011) and eight private companies from August 2006 through April 2010. We may in the future make additional acquisitions,

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including our proposed acquisition of an additional private company and substantially all of the assets of a division of a Canadian public company for which we signed, in May and June 2011, acquisition agreements providing for a total combined purchase price of approximately \$100.0 million. Each proposed acquisition is subject to customary closing conditions and no assurance can be given that either or both of the proposed acquisitions will be consummated. Except for those two proposed additional acquisitions, we may not be able to identify and negotiate the potential acquisition of suitable acquisition candidates on terms and conditions favorable to us.

Our ability to achieve the benefits from any potential future acquisitions, including cost savings and operating efficiencies, depends in part on our ability to successfully integrate the operations of such acquired businesses with our operations. The integration of acquired businesses and other assets may require significant management time and company resources that would otherwise be available for the ongoing management of our existing operations. While we have had success integrating our prior acquisitions described above, each acquisition presents unique objectives, circumstances and challenges.

Any properties or facilities that we acquire may also be subject to unknown liabilities, such as undisclosed environmental contamination, for which we may have no recourse, or only limited recourse, to the former owners of such properties. As a result, if a liability were asserted against us based upon ownership of an acquired property, we might be required to pay significant sums to settle it, which could adversely affect our financial results and cash flow.

***If we are unable to successfully integrate the respective businesses and operations of Peak Energy Services Ltd., or "Peak," and any additional companies we may hereafter acquire and realize synergies in the expected time frame, our future results would be adversely affected.***

Our integration of the respective businesses and operations of Peak and any additional companies we may hereafter acquire into our business and operations will require implementation of appropriate operations, management and financial reporting systems and controls. We may experience difficulties in effectively implementing these and other systems and operations, and the integration process may be costly and time-consuming. Such integration will require the focused attention of our and the acquired company's management teams, including a significant commitment of their time and resources. The need for our respective managements to focus on integration matters could have a material and adverse impact on the revenues and operating results of the combined company. The success of any such acquisition will depend, in part, on the combined company's ability to realize the anticipated benefits from combining the businesses of the acquired company and Clean Harbors through cost reductions in overhead, greater efficiencies, increased utilization of support facilities and the adoption of mutual best practices. To realize these anticipated benefits, however, the businesses of the acquired company and Clean Harbors must be successfully combined.

If the combined company is not able to achieve these objectives, the anticipated benefits to us of any such acquisition may not be realized fully or at all or may take longer to realize than expected. It is possible that the integration process could result in the loss of key employees, as well as the disruption of each company's ongoing businesses, failure to implement the business plan for the combined business, unanticipated issues in integrating manufacturing, logistics, information, communications and other systems, unanticipated changes in applicable laws and regulations, operating risks inherent in our business or inconsistencies in standards, controls, procedures and policies or other unanticipated issues, expenses and liabilities, any or all of which could adversely affect our ability to maintain relationships with our and the acquired companies customers and employees or to achieve the anticipated benefits of the acquisitions. These integration matters could have a material adverse effect on our business.

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**Risks Particularly Affecting Our Environmental Services Business**

*We assumed significant environmental liabilities as part of our past acquisitions and may assume additional such liabilities as part of future acquisitions. Our financial condition and results of operations would be adversely affected if we were required to pay such liabilities more rapidly or in greater amounts than we now estimate or may estimate in connection with future acquisitions.*

We have accrued environmental liabilities valued as of March 31, 2011, at \$172.6 million, substantially all of which we assumed in connection with our acquisitions of substantially all of the assets of the Chemical Services Division, or "CSD," of Safety-Kleen Corp. in 2002, Teris LLC in 2006, and one of two solvent recycling facilities we purchased from Safety-Kleen Systems, Inc. in 2008. We calculate our environmental liabilities on a present value basis in accordance with generally accepted accounting principles, which take into consideration both the amount of such liabilities and the timing when it is projected that we will be required to pay such liabilities. We anticipate our environmental liabilities will be payable over many years and that cash flows generated from our operations will generally be sufficient to fund the payment of such liabilities when required. However, events not now anticipated (such as future changes in environmental laws and regulations or their enforcement) could require that such payments be made earlier or in greater amounts than now estimated, which could adversely affect our financial condition and results of operations.

We may also assume additional environmental liabilities as part of further acquisitions. Although we will endeavor to accurately estimate and limit environmental liabilities presented by the businesses or facilities to be acquired, some liabilities, including ones that may exist only because of the past operations of an acquired business or facility, may prove to be more difficult or costly to address than we then estimate. It is also possible that government officials responsible for enforcing environmental laws may believe an environmental liability is more significant than we then estimate, or that we will fail to identify or fully appreciate an existing liability before we become legally responsible to address it.

*If we are unable to obtain at reasonable cost the insurance, surety bonds, letters of credit, and other forms of financial assurance required for our facilities and operations, our business and results of operations would be adversely affected.*

We are required to provide substantial amounts of financial assurance to governmental agencies for closure and post-closure care of our licensed hazardous waste treatment facilities should those facilities cease operation, and we are also occasionally required to post surety, bid and performance bonds in connection with certain projects. As of March 31, 2011, our total estimated closure and post-closure costs requiring financial assurance by regulators were \$321.3 million for our U.S. facilities and \$23.1 million for our Canadian facilities. We have obtained all of the required financial assurance for our facilities from a qualified insurance company, Zurich Insurance N.A., and its affiliated companies. The closure and post-closure obligations of our U.S. facilities are insured by an insurance policy written by Steadfast Insurance Company (a unit of Zurich Insurance N.A.), which will expire in 2013. Our Canadian facilities utilize surety bonds provided through Zurich Insurance Company (Canada), which expire at various dates throughout 2011. In connection with obtaining such insurance and surety bonds, we have provided to Steadfast Insurance Company \$73.5 million of letters of credit which we obtained from our lenders under our revolving credit agreement.

Our ability to continue operating our facilities and conducting our other operations would be adversely affected if we became unable to obtain sufficient insurance, surety bonds, letters of credit and other forms of financial assurance at reasonable cost to meet our regulatory and other business requirements. The availability of insurance, surety bonds, letters of credit and other forms of financial assurance is affected by our insurers', sureties' and lenders' assessment of our risk and by other factors outside of our control such as general conditions in the insurance and credit markets.

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***The environmental services industry in which we participate is subject to significant economic and business risks.***

Our future operating results of our environmental services business may be affected by such factors as our ability to utilize our facilities and workforce profitably in the face of intense price competition, maintain or increase market share in an industry which has experienced significant downsizing and consolidation, realize benefits from cost reduction programs, generate incremental volumes of waste to be handled through our facilities from existing and acquired sales offices and service centers, obtain sufficient volumes of waste at prices which produce revenue sufficient to offset the operating costs of the facilities, minimize downtime and disruptions of operations, and develop our field services business. In particular, economic downturns or recessionary conditions in North America, and increased outsourcing by North American manufacturers to plants located in countries with lower wage costs and less stringent environmental regulations, have adversely affected and may in the future adversely affect the demand for our services. Our hazardous and industrial waste management business is also cyclical to the extent that it is dependent upon a stream of waste from cyclical industries such as the chemical and petrochemical, primary metals, paper, furniture and aerospace industries. If those cyclical industries slow significantly, the business that we receive from those industries is likely to slow.

***A significant portion of our environmental services business depends upon the demand for cleanup of major spills and other remedial projects and regulatory developments over which we have no control.***

Our operations are significantly affected by the commencement and completion of cleanup of major spills and other events, customers' decisions to undertake remedial projects, seasonal fluctuations due to weather and budgetary cycles influencing the timing of customers' spending for remedial activities, the timing of regulatory decisions relating to hazardous waste management projects, changes in regulations governing the management of hazardous waste, secular changes in the waste processing industry towards waste minimization and the propensity for delays in the demand for remedial services, and changes in the myriad of governmental regulations governing our diverse operations. We do not control such factors and, as a result, our revenue and income can vary significantly from quarter to quarter, and past financial performance for certain quarters may not be a reliable indicator of future performance for comparable quarters in subsequent years. In particular, our participation in oil spill response efforts in both the Gulf of Mexico and Michigan generated third party revenues for the year ended December 31, 2010 of \$253.0 million, which accounted for approximately 15% of total revenues. We cannot expect such event revenue to reoccur in 2011.

***The extensive environmental regulations to which we are subject may increase our costs and potential liabilities and limit our ability to expand our facilities.***

Our operations and those of others in the environmental services industry are subject to extensive federal, state, provincial and local environmental requirements in both the United States and Canada, including those relating to emissions to air, discharged wastewater, storage, treatment, transport and disposal of regulated materials and cleanup of soil and groundwater contamination. For example, any failure to comply with governmental regulations governing the transport of hazardous materials could negatively impact our ability to collect, process and ultimately dispose of hazardous wastes generated by our customers. While increasing environmental regulation often presents new business opportunities for us, it often also results in increased operating and compliance costs. Efforts to conduct our operations in compliance with all applicable laws and regulations, including environmental rules and regulations, require programs to promote compliance, such as training employees and customers, purchasing health and safety equipment, and in some cases hiring outside consultants and lawyers. Even with these programs, we and other companies in the environmental services industry are routinely faced with governmental enforcement proceedings, which can result in fines or other sanctions and require expenditures for remedial work on waste management facilities and contaminated sites. Certain of



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these laws impose strict and, under certain circumstances, joint and several liability on current and former owners and operators of facilities that release regulated materials or that generate those materials and arrange for their disposal or treatment at contaminated sites. Such liabilities can relate to required cleanup of releases of regulated materials and related natural resource damages.

From time to time, we have paid fines or penalties in governmental environmental enforcement proceedings, usually involving our waste treatment, storage and disposal facilities. Although none of these fines or penalties that we have paid in the past has had a material adverse effect upon us, we might in the future be required to make substantial expenditures as a result of governmental proceedings which would have a negative impact on our earnings. Furthermore, regulators have the power to suspend or revoke permits or licenses needed for operation of our plants, equipment, and vehicles based on, among other factors, our compliance record, and customers may decide not to use a particular disposal facility or do business with us because of concerns about our compliance record. Suspension or revocation of permits or licenses would impact our operations and could have a material adverse impact on our financial results. Although we have never had any of our facilities' operating permits revoked, suspended or non-renewed involuntarily, it is possible that such an event could occur in the future.

Some environmental laws and regulations impose liability and responsibility on present and former owners, operators or users of facilities and sites for contamination at such facilities and sites without regard to causation or knowledge of contamination. In the past, practices have resulted in releases of regulated materials at and from certain of our facilities, or the disposal of regulated materials at third party sites, which may require investigation and remediation, and potentially result in claims of personal injury, property damage and damages to natural resources. In addition, we occasionally evaluate various alternatives with respect to our facilities, including possible dispositions or closures. Investigations undertaken in connection with these activities may lead to discoveries of contamination that must be remediated, and closures of facilities might trigger compliance requirements that are not applicable to operating facilities. We are currently conducting remedial activities at certain of our facilities and paying a portion of the remediation costs at certain sites owned by third parties. While, based on available information, we do not believe these remedial activities will result in a material adverse effect upon our operations or financial condition, these activities or the discovery of previously unknown conditions could result in material costs.

In addition to the costs of complying with environmental laws and regulations, we incur costs defending against environmental litigation brought by governmental agencies and private parties. We are now, and may in the future be, a defendant in lawsuits brought by parties alleging environmental damage, personal injury, and/or property damage, which may result in our payment of significant amounts of liabilities.

Environmental and land use laws also impact our ability to expand our facilities. In addition, we are required to obtain governmental permits to operate our facilities, including all of our landfills. Even if we were to comply with all applicable environmental laws, there is no guarantee that we would be able to obtain the requisite permits from the applicable governmental authorities, and, even if we could, that any permit (and any existing permits we currently hold) will be extended or modified as needed to fit out business needs.

We may make further acquisitions from time to time in the future, and we have tried and will continue to try to evaluate and limit environmental risks and liabilities presented by businesses or facilities to be acquired prior to the acquisition. It is possible that some liabilities, including ones that may exist only because of the past operations of an acquired business or facility, may prove to be more difficult or costly to address than we anticipate. It is also possible that government officials responsible for enforcing environmental laws may believe an issue is more serious than we expect, or that we will fail to identify or fully appreciate an existing liability before we become legally responsible to address it.

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Some of the legal sanctions to which we could become subject could cause the suspension or revocation of a needed permit, or prevent us from or delay us in obtaining or renewing permits to operate or expand our facilities or harm our reputation.

***Future changes in environmental regulations may require us to make significant capital expenditures.***

Changes in environmental regulations can require us to make significant capital expenditures for our facilities. For example, in 2002, the United States Environmental Protection Agency, or "EPA," promulgated Interim Standards of the Hazardous Waste Combustor Maximum Achievable Control Technology, or "MACT," under the Federal Clean Air Act Amendments. These standards established new emissions limits and operational controls on all new and existing incinerators, cement kilns and light-weight aggregate kilns that burn hazardous waste-derived fuels. We have spent approximately \$29.3 million since September 7, 2002 in order to bring our Deer Park, Texas and Aragonite, Utah incineration facilities, which we then acquired as part of the CSD assets, and our Kimball, Nebraska facility into compliance with the MACT regulations. Prior to our acquisition in August 2006 of our additional incineration facility in El Dorado, Arkansas, as part of our purchase of all the membership interests in Teris LLC, Teris had spent in excess of \$30.0 million in order to bring that facility into compliance with the MACT standards. Future environmental regulations could cause us to make significant additional capital expenditures and adversely affect our results of operations and cash flow.

***If our assumptions relating to expansion of our landfills should prove inaccurate, our results of operations and cash flow could be adversely affected.***

When we include expansion airspace in our calculation of available airspace, we adjust our landfill liabilities to the present value of projected costs for cell closure and landfill closure and post-closure. It is possible that any of our estimates or assumptions could ultimately turn out to be significantly different from actual results. In some cases we may be unsuccessful in obtaining an expansion permit or we may determine that an expansion permit that we previously thought was probable has become unlikely. To the extent that such estimates, or the assumptions used to make those estimates, prove to be significantly different than actual results, or our belief that we will receive an expansion permit changes adversely in a significant manner, the landfill assets, including the assets incurred in the pursuit of the expansion, may be subject to impairment testing and lower prospective profitability may result due to increased interest accretion and depreciation or asset impairments related to the removal of previously included expansion airspace. In addition, if our assumptions concerning the expansion airspace should prove inaccurate, certain of our cash expenditures for closure of landfills could be accelerated and adversely affect our results of operations and cash flow.

**Risks Particularly Affecting Our Energy and Industrial Services Business**

***A large portion of our energy and industrial services business is dependent on the oil and gas industry in Western Canada, and declines in oil and gas exploration and production in that region could adversely affect our business.***

Our energy and industrial services business generates well over 50% of its total revenues from customers in the oil and gas industry operating in Western Canada, although a majority of the services we provide to such customers relate to industrial maintenance and oil and gas production and refining which are less volatile than oil and gas exploration. We also provide significant services to customers in the oil and gas industry operating in the United States or internationally and to customers in other industries such as forestry, mining and manufacturing. However, a major portion of the total revenues of our energy and industrial services business remains dependent on customers in the oil and gas industry operating in Western Canada.

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Accordingly, declines in the general level of oil and gas exploration, production and refining in Western Canada could potentially have significant adverse effects on our total revenues and profitability. Such declines occurred in 2008-2009 and could potentially occur in the future if reductions in the commodity prices of oil and gas result in reduced oil and gas exploration, production and refining. Such future declines could also be triggered by technological and regulatory changes, such as those affecting the availability and cost of alternative energy sources, and other changes in industry and worldwide economic and political conditions.

***A significant part of our energy and industrial services business relates to the Alberta oil sands.***

Many of our major customers in the oil and gas industry conduct a significant portion of their operations in the Alberta oil sands. The Alberta oil sands contain large oil deposits, but extraction may involve significantly greater cost and environmental concerns than conventional drilling. While we believe our major involvement in the oil sands region will provide significant future growth opportunities, such involvement also increases the risk that our business will be adversely affected if future economic activity in the Alberta oil sands were to decline considerably. Major factors that could cause such a decline might include a prolonged reduction in the commodity price of oil, future changes in environmental restrictions and regulations, and technological and regulatory changes relating to production of oil from the oil sands. Due to the downturn in worldwide economic conditions and in the commodity price of oil and gas which occurred in 2008 - 2009, certain of our customers have delayed a number of large projects in the planning and early development phases within the oil sands region. In addition, customers are revisiting their operating budgets and challenging their suppliers to reduce costs and achieve better efficiencies in their work programs.

***Our energy and industrial services business is subject to workforce availability.***

Our ability to provide high quality services to our customers is dependent upon our ability to attract and retain well-trained, experienced employees. Prior to 2008, the oil and gas services industry in Western Canada experienced for several years high demand for, and a corresponding shortage of, quality employees resulting, in particular, in employment of a significant number of employees from Eastern Canada on a temporary basis. Although the 2008-2009 downturn in the oil and gas industry increased the pool of quality employees available to meet our customer commitments, the subsequent improvement during 2010 of conditions in the oil and gas industry has increased, and any such improvement which may occur in the future would likely increase, competition for experienced employees.

Table of Contents**USE OF PROCEEDS**

We will not receive any proceeds from the exchange offer. In consideration for issuing the new notes, we will receive old notes from you in like principal amount. The old notes surrendered in exchange for the new notes will be retired and canceled and cannot be reissued. Accordingly, issuance of the new notes will not result in any change in our indebtedness.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our consolidated ratios of earnings to fixed charges for the periods shown.

	<b>Three Months Ended March 31,</b>		<b>Year Ended December 31,</b>				
	<b>2011</b>	<b>2010</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
	(In thousands)						
Ratio of earnings to fixed charges(1)	4.2x	2.2x	6.2x	3.6x	6.0x	4.1x	3.6x

(1)

For purposes of calculating the earnings to fixed charges, earnings consist of income from operations before income tax plus fixed charges. Fixed charges consist of interest expense, including capitalized interest, amortization of debt issuance costs and a portion of the operating lease rental expense deemed to be representative of the interest factor.

Table of Contents**CAPITALIZATION**

The following table sets forth our consolidated cash and cash equivalents, long-term debt (including current portion), and stockholders' equity as of March 31, 2011. This table should be read in conjunction with "Use of Proceeds," "Selected Historical Consolidated Financial Information," and "Description of Revolving Credit Facility," included in this prospectus. The Company's historical financial statements and notes thereto are incorporated by reference in this prospectus.

	<b>March 31, 2011</b>
	<b>(in thousands)</b>
Cash and cash equivalents	\$ 531,763
Long-term debt, including current portion:	
Revolving credit facility(1)	
Capital lease obligations	13,430
Senior secured notes due 2016(2)	520,000
Total long-term debt, including current portion(3)	533,430
Stockholders' equity:	
Common stock, \$.01 par value;	
Authorized 40,000,000 shares; issued and outstanding 26,386,196 shares	264
Treasury stock	(4,251)
Shares held under employee participation plan	(777)
Additional paid-in capital	492,264
Accumulated other comprehensive income	67,240
Accumulated earnings	267,130
Total stockholders' equity	821,870
Total capitalization	\$ 1,355,300

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- (1) We have a revolving credit facility secured by a first lien on the ABL Collateral and a second lien on the Notes Collateral under which we and one of our Canadian subsidiaries have the right, after giving effect to the amendment and restatement of such facility which became effective on May 31, 2011, to borrow and obtain letters of credit for a combined maximum of up to \$250.0 million, with a sub-limit of up to \$205.0 million for letters of credit.
- (2) The notes include a proportionate amount of the original issue discount of approximately \$6.0 million relating to the issuance of the \$300.0 million of original 2016 notes on August 14, 2009 (of which \$30.0 million were redeemed on September 28, 2010).
- (3) Long-term debt excludes \$82.4 million of letters of credit which were outstanding on March 31, 2011 under our revolving credit facility.

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The following selected historical consolidated financial information has been derived from our audited balance sheets at December 31, 2010 and 2009 and statements of income for the five years ended December 31, 2010, and unaudited balance sheet at March 31, 2011 and statements of income for the three months ended March 31, 2011 and 2010. This information should be reviewed in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our historical financial statements and the notes thereto incorporated by reference in this prospectus. We have derived the December 31, 2008, 2007 and 2006 as well as the March 31, 2010 balance sheet information from our financial statements not incorporated or included herein.

	Three Months Ended March 31,		Year Ended December 31,				
	2011	2010	2010	2009	2008	2007	2006
<b>(In thousands)</b>							
<b>Income Statement Data:</b>							
Revenues	\$ 434,962	\$ 354,896	\$ 1,731,244	\$ 1,074,220	\$ 1,030,713	\$ 946,917	\$ 829,809
Cost of revenues (exclusive of items shown separately below)	312,577	260,418	1,210,740	753,483	707,820	664,440	584,835
Selling, general and administrative expenses	54,794	45,484	205,812	163,157	159,674	149,180	125,039
Accretion of environmental liabilities	2,389	2,702	10,307	10,617	10,776	10,447	10,220
Depreciation and amortization	25,460	22,674	92,473	64,898	44,471	37,590	35,339
Income from operations	39,742	23,619	211,912	82,065	107,972	85,260	74,376
Other income (expense)	2,899	446	2,795	259	(119)	135	(386)
Loss on early extinguishment of debt			(2,294)	(4,853)	(5,473)		(8,529)
Interest expense, net	(6,478)	(6,928)	(27,936)	(15,999)	(8,403)	(13,157)	(12,447)
Income from continuing operations before provision for income taxes	36,163	17,137	184,477	61,472	93,977	72,238	53,014
Provision for income taxes(1)	13,433	7,089	56,756	26,225	36,491	28,040	6,339
Income from continuing operations	22,730	10,048	127,721	35,247	57,486	44,198	46,675
Income from discontinued operations, net of tax		382	2,794	1,439			
Net income	\$ 22,730	\$ 10,430	\$ 130,515	\$ 36,686	\$ 57,486	\$ 44,198	\$ 46,675
<b>Cash Flow Data:</b>							
Net cash from operating activities	\$ 14,586	\$ (8,207)	\$ 224,108	\$ 93,270	\$ 109,590	\$ 79,995	\$ 61,382
Net cash from investing activities	(35,188)	(16,188)	(125,687)	(118,391)	(84,515)	(42,791)	(98,885)
Net cash from financing activities	248,586	(3,083)	(32,230)	3,584	116,795	2,724	(20,330)
<b>Other Financial Data:</b>							
Adjusted EBITDA(2)	\$ 67,591	\$ 48,995	\$ 314,692	\$ 157,580	\$ 163,219	\$ 133,297	\$ 119,935

	At March 31,		At December 31,				
	2011	2010	2010	2009	2008	2007	2006
<b>(In thousands)</b>							
<b>Balance Sheet Data:</b>							
Working capital	\$ 715,556	\$ 411,175	\$ 446,885	\$ 386,930	\$ 307,679	\$ 169,585	\$ 124,465
Goodwill	61,786	56,713	60,252	56,085	24,578	21,572	19,032
Total assets	1,880,644	1,417,191	1,602,475	1,401,068	898,336	769,888	670,808
Long-term obligations (including current portion)(3)	538,846	301,273	278,800	301,271	53,630	123,483	124,561
Stockholders' equity	821,870	642,107	780,827	613,825	429,045	202,897	173,186

(1)

For fiscal year 2006, the provision includes a reversal of \$14.1 million of the valuation allowance. For fiscal year 2010, the provision includes a reversal of \$14.3 million (net of benefit) resulting from the release of interest and penalties related to Canadian and United States tax reserves for which the statutes of limitation periods have expired.

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(2)

For all periods presented, "Adjusted EBITDA" consists of net income plus accretion of environmental liabilities, depreciation and amortization, net interest expense, and provision for income taxes. We also exclude loss on early extinguishment of debt, other expense (income), and income from discontinued operations, net of tax as these amounts are not considered part of usual business operations. See below for a reconciliation of Adjusted EBITDA to both net income and net cash from operating activities for the specified periods. Our management considers Adjusted EBITDA to be a measurement of performance which provides useful information to both management and investors. Adjusted EBITDA should not be considered an alternative to net income or other measurements under generally accepted accounting principles ("GAAP"). Because Adjusted EBITDA is not calculated identically by all companies, our measurements of Adjusted EBITDA may not be comparable to similarly titled measures reported by other companies.

We use Adjusted EBITDA to enhance our understanding of our operating performance, which represents our views concerning our performance in the ordinary, ongoing and customary course of our operations. We historically have found it helpful, and believe that investors have found it helpful, to consider an operating measure that excludes expenses such as debt extinguishment and related costs relating to transactions not reflective of our core operations.

The information about our operating performance provided by this financial measure is used by our management for a variety of purposes. We regularly communicate Adjusted EBITDA results to our board of directors and discuss with the board our interpretation of such results. We also compare our Adjusted EBITDA performance against internal targets as a key factor in determining cash bonus compensation for executives and other employees, largely because we believe that this measure is indicative of how the fundamental business is performing and is being managed.

We also provide information relating to our Adjusted EBITDA so that analysts, investors and other interested persons have the same data that we use to assess our core operating performance. We believe that Adjusted EBITDA should be viewed only as a supplement to the GAAP financial information. We also believe, however, that providing this information in addition to, and together with, GAAP financial information permits the foregoing persons to obtain a better understanding of our core operating performance and to evaluate the efficacy of the methodology and information used by management to evaluate and measure such performance on a standalone and a comparative basis.

The following is a reconciliation of net income to Adjusted EBITDA for the following periods (in thousands):

	Three Months Ended March 31,		For the Year Ended December 31,				
	2011	2010	2010	2009	2008	2007	2006
	(In thousands)						
Net income	\$ 22,730	\$ 10,430	\$ 130,515	\$ 36,686	\$ 57,486	\$ 44,198	\$ 46,675
Accretion of environmental liabilities	2,389	2,702	10,307	10,617	10,776	10,447	10,220
Depreciation and amortization	25,460	22,674	92,473	64,898	44,471	37,590	35,339
Other (income) expense	(2,899)	(446)	(2,795)	(259)	119	(135)	386
Loss on early extinguishment of debt			2,294	4,853	5,473		8,529
Interest expense, net	6,478	6,928	27,936	15,999	8,403	13,157	12,447
Provision for income taxes	13,433	7,089	56,756	26,225	36,491	28,040	6,339
Income from discontinued operations, net of tax		(382)	(2,794)	(1,439)			
<b>Adjusted EBITDA</b>	<b>\$ 67,591</b>	<b>\$ 48,995</b>	<b>\$ 314,692</b>	<b>\$ 157,580</b>	<b>\$ 163,219</b>	<b>\$ 133,297</b>	<b>\$ 119,935</b>



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The following reconciles Adjusted EBITDA to net cash from operating activities for the following periods (in thousands):

	Three Months Ended March 31,		For the Year Ended December 31,				
	2011	2010	2010	2009	2008	2007	2006
	(In thousands)						
Adjusted EBITDA	\$ 67,591	\$ 48,995	\$ 314,692	\$ 157,580	\$ 163,219	\$ 133,297	\$ 119,935
Interest expense, net	(6,478)	(6,928)	(27,936)	(15,999)	(8,403)	(13,157)	(12,447)
Provision for income taxes	(13,433)	(7,089)	(56,756)	(26,225)	(36,491)	(28,040)	(6,339)
Income from discontinued operations, net of tax		382	2,794	1,439			
Allowance for doubtful accounts	205	519	1,043	1,006	267	(418)	88
Amortization of deferred financing costs and debt discount	614	732	2,921	1,997	1,915	1,940	1,616
Change in environmental liability estimates	(260)	(772)	(8,328)	(4,657)	(2,047)	597	(9,582)
Deferred income taxes	486	(227)	4,919	4,830	3,197	(7,492)	(6,385)
Stock-based compensation	1,744	791	7,219	968	3,565	4,799	3,387
Excess tax benefit of stock-based compensation	(1,105)	(151)	(1,751)	(481)	(3,504)	(6,386)	(5,239)
Income tax benefits related to stock option exercises	1,105	151	1,739	474	3,534	6,427	5,399
Gain on sale of businesses			(2,678)				
Eminent domain compensation	3,354						
Prepayment penalty on early extinguishment of debt			(900)	(3,002)	(3,552)		(6,146)
Environmental expenditures	(2,340)	(2,162)	(10,236)	(8,617)	(14,268)	(6,511)	(7,605)
Changes in assets and liabilities, net of acquisition							
Accounts receivable	(10,341)	(20,158)	(49,411)	(11,429)	17,221	(19,142)	(5,000)
Other current assets	2,949	(5,811)	(10,550)	1,093	5,529	(2,693)	(11,092)
Accounts payable	(6,876)	(4,681)	38,553	5,050	(17,763)	(4,603)	(4,674)
Other current liabilities	(22,359)	(11,798)	18,774	(10,757)	(2,829)	21,377	5,466
Net cash from operating activities	\$ 14,856	\$ (8,207)	\$ 224,108	\$ 93,270	\$ 109,590	\$ 79,995	\$ 61,382

(3)

Long-term obligations (including current portion) include the principal amount of the notes (adjusted for unamortized bond premium and discount), borrowings under our current and former revolving credit facility and capital lease obligations.

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**DESCRIPTION OF REVOLVING CREDIT FACILITY**

We have a revolving credit facility under which Bank of America, N.A. ("BofA") is the administrative and collateral agent (the "Agent") for the lenders and the issuing bank for letters of credit issued under the facility. Under the facility, as amended and restated effective May 31, 2011, Clean Harbors, Inc. (the "Company") has the right to borrow and obtain letters of credit for a combined maximum of up to \$150.0 million (with a sub-limit of \$140.0 million for letters of credit) and one of the Company's Canadian subsidiaries (the "Canadian Borrower") has the right to obtain up to \$100.0 million of revolving loans and letters of credit (with a \$75.0 million sub-limit for letters of credit). Availability under the U.S. line is subject to a borrowing base comprised of 85% of the eligible accounts receivable of the Company and its U.S. subsidiaries plus 100% of cash deposited in a controlled account with the Agent, and availability under the Canadian line is subject to a borrowing base comprised of 85% of the eligible accounts receivable of the Canadian Borrower and the Company's other Canadian subsidiaries plus 100% of cash deposited in a controlled account with the Agent's Canadian affiliate. The facility will expire on the first to occur of (i) May 31, 2016 or (ii) 60 days prior to the maturity of the Company's outstanding senior secured notes on August 15, 2016 if the notes have not by then been refinanced, defeased or reserved against the borrowing base on terms reasonably acceptable to the Agent.

Borrowings under the revolving credit facility will bear interest at a rate of, at the Company's option, either (i) LIBOR plus an applicable margin ranging from 1.75% to 2.25% per annum based primarily on the level of the Company's consolidated fixed charge coverage ratio for the most recently completed four fiscal quarter measurement period or (ii) BofA's base rate plus an applicable margin ranging from 0.75% to 1.25% per annum based primarily on such consolidated fixed charge coverage ratio. There is also an unused line fee, calculated on the then unused portion of the lenders' \$250.0 million maximum commitments, ranging from 0.375% to 0.50% per annum of the unused commitment. For outstanding letters of credit, the Company will pay to the lenders a fee equal to the then applicable LIBOR margin described above, and to the issuing banks a standard fronting fee and customary fees and charges in connection with all amendments, extensions, draws and other actions with respect to letters of credit.

The Company's obligations under the revolving credit facility (including revolving loans and reimbursement obligations for outstanding letters of credit) are guaranteed by all of the Company's U.S. subsidiaries and secured by a first lien on substantially all of the Company's and its U.S. subsidiaries' accounts receivable and the proceeds thereof, as well as certain of the Company's and its U.S. subsidiaries' other assets which constitute "ABL Collateral" as defined in the indenture for the Company's outstanding senior secured notes. The Company's obligations under the revolving credit facility are also secured by a second lien on the assets of the Company and its U.S. subsidiaries which constitute "Notes Collateral" as defined in that indenture. The Canadian Borrower's obligations under the facility are guaranteed by substantially all of the Company's other Canadian subsidiaries and secured by a first lien on the accounts receivable of the Canadian Borrower and the other Canadian subsidiaries. The Company and its U.S. subsidiaries guarantee the obligations of the Canadian Borrower under the facility, but the Canadian Borrower and the other Canadian subsidiaries do not guarantee and are not otherwise responsible for the obligations of the Company and its U.S. subsidiaries.

Under the revolving credit facility, the Agent would have the right to exercise dominion over the Company's and its subsidiaries' cash (to the extent such cash represents the proceeds of accounts receivable) if the Company's "Liquidity" is less than the greater of (i) \$37.5 million and (ii) 15% of the aggregate commitments of the lenders under the facility. Liquidity is defined as the sum of (a) the Company's then availability under the facility and (b) the lesser of (i) the Canadian Borrower's then availability under the facility and (ii) 30% of the lenders' aggregate commitments to the Canadian Borrower. If Liquidity should be less than the greater of (i) \$31,250,000 and (ii) 12.5% of the aggregate

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commitments, the Company would be required to thereafter maintain a consolidated fixed charge coverage ratio of at least 1.00 to 1.00. In addition, the facility contains covenants which will restrict the Company's future ability to make certain types of acquisitions, debt prepayments, investments and distributions if Liquidity (on a pro forma basis after giving effect to such events) is less than between 35% and 15% (depending upon the type of restricted event) of the lenders' aggregate commitments or, if the Company's consolidated fixed charge coverage ratio for the most recently completed four fiscal quarters is at least 1.00 (or, in certain cases, 1.10) to 1.00, less than 17.5% or 15% (depending upon the type of restricted event) of the aggregate commitments.

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**THE EXCHANGE OFFER**

**Purpose and Effect of Exchange Offer; Registration Rights**

We sold the \$250.0 million principal amount of old notes on March 24, 2011 in an unregistered private placement to two investment banks that served as the initial purchasers. The initial purchasers then resold the old notes to investors under an offering circular dated March 21, 2011 in reliance on Rule 144A and Regulation S under the Securities Act.

As part of this private placement, we entered into a registration rights agreement with the initial purchasers on March 24, 2011. Under the registration rights agreement, we agreed to file the registration statement of which this prospectus is a part. We also agreed:

to use our commercially reasonable efforts to cause the registration statement to be declared effective under the Securities Act and to commence the exchange offer within 10 business days after such effective date;

to keep the exchange offer open for not less than 20 business days (or longer if required by applicable law) after the date notice of the registered exchange offer is mailed to the holders of the notes; and

to keep the registration statement continuously effective under the Securities Act for a period beginning after the date of completion of the exchange offer and ending on the earlier of the date 180 days after the date of completion of the exchange offer or such time as all broker-dealers no longer own any old notes.

Under the circumstances described below, we also agreed to use our commercially reasonable efforts to cause the SEC to declare effective a shelf registration statement with respect to the resale of the old notes. We agreed to keep the shelf registration statement effective until the earlier of the date two years after the shelf registration statement is declared effective under the Securities Act or the date on which there are no longer any old notes outstanding. These circumstances include:

if any change in law or applicable interpretations of those laws by the SEC do not permit us to effect the exchange offer as contemplated by the registration rights agreement;

if the exchange offer is not consummated within 180 days following the sale of the old notes on March 24, 2011; or

if any holder of the old notes is not eligible to participate in the exchange offer and notifies us in writing within 30 days following consummation of the exchange offer that it is prohibited by law or SEC policy from participating in the exchange offer, that the registration statement of which this prospectus is a part is not appropriate or available for the resale of the new notes acquired by it in the exchange offer and that the delivery of a prospectus is required, or that it is a broker-dealer and owns notes acquired directly from us or an affiliate of ours.

If we fail to comply with specified obligations under the registration rights agreement, we must pay certain additional interest to the holders of the notes until we have cured all of such failures.

By participating in the exchange offer, holders of the old notes will receive new notes that are freely tradeable and not subject to restrictions on transfer, subject to the exceptions described below under "Resale of New Notes."

**Resale of New Notes**

We believe that the new notes issued in exchange for the old notes may be offered for resale, resold and otherwise transferred by any new note holder without compliance with the registration and prospectus delivery provisions of the Securities Act if the conditions set forth below are met. We base



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this belief solely on interpretations of the federal securities laws by the SEC set forth in several no-action letters issued to third parties unrelated to us. A no-action letter is a letter from the SEC responding to a request for its views as to whether a particular matter complies with the federal securities laws or whether the SEC would refer the matter to the SEC's enforcement division for action. The relevant no-action letters include the Exxon Capital Holdings Corporation letter, which was made available by the SEC on May 13, 1988, the Morgan Stanley & Co. Incorporated letter which was made available by the SEC on June 5, 1991, the K-111 Communications Corporation letter, which was made available by the SEC on May 14, 1993, and the Shearman & Sterling letter, which was made available by the SEC on July 2, 1993. We have not obtained, and do not intend to obtain, our own no-action letter from the SEC regarding the resale of the new notes. Instead, holders will be relying on the no-action letters that the SEC has issued to third parties in circumstances that we believe are similar to ours. Based on these no-action letters, the following conditions must be met:

the holder must acquire the new notes in the ordinary course of its business for investment purposes;

the holder must have no arrangements or understanding with any person to participate in the distribution of the new notes within the meaning of the Securities Act; and

the holder must not be an "affiliate," as defined in Rule 405 under the Securities Act, of ours.

Each holder of old notes that wishes to exchange old notes for new notes in the exchange offer must represent to us that it satisfies all of the above listed conditions. Any holder who tenders in the exchange offer who does not satisfy all of the above listed conditions:

cannot rely on the position of the SEC set forth in the no-action letters referred to above; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a resale of the new notes.

The SEC considers broker-dealers that acquired old notes directly from us, but not as a result of market-making activities or other trading activities, to be making a distribution of the new notes if they participate in the exchange offer. Consequently, any such holders must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a resale of the new notes.

Each broker-dealer that receives new notes for its own account in exchange for old notes acquired by such broker-dealer as a result of market-making activities or other trading activities must deliver a prospectus in connection with a resale of the new notes and provide us in the letter of transmittal with a signed acknowledgement of this obligation. The letter of transmittal states that by so acknowledging and delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. A broker-dealer may use this prospectus, as amended or supplemented from time to time, in connection with resales of new notes received in exchange for old notes where the broker-dealer acquired the old notes as a result of market-making activities or other trading activities. We have agreed that for a period of 180 days after the expiration date of the exchange offer, we will make this prospectus available to broker-dealers for use in connection with any such resale of the new notes. See "Plan of Distribution."

Except as described in the prior paragraph, holders may not use this prospectus for an offer to resell, resale or other retransfer of new notes. We are not making the exchange offer to, nor will we accept tenders for exchange from, holders of old notes in any jurisdiction in which the exchange offer or the acceptance of it would not be in compliance with the securities or blue sky laws of that jurisdiction.

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**Terms of the Exchange**

Upon the terms and subject to the conditions set forth in this prospectus and the accompanying letter of transmittal, which we refer to together in this prospectus as the "exchange offer," we will accept any and all old notes validly tendered and not withdrawn prior to 5:00 p.m., New York City time, on the expiration date described below under "Expiration Date; Extensions; Amendments." The date of acceptance for exchange of the old notes, and completion of the exchange offer, is the exchange date, which will be the first business day following the expiration date, unless extended as described in this prospectus. We will issue, on or promptly after the exchange date, an aggregate principal amount of up to \$250.0 million of new notes for a like principal amount of outstanding old notes tendered and accepted in connection with the exchange offer. The new notes issued in connection with the exchange offer will be delivered promptly following the exchange date. Holders may tender some or all of their old notes in connection with the exchange offer, but only in integral multiples of \$1,000. The exchange offer is not conditioned upon any minimum amount of old notes being tendered for exchange.

The terms of the new notes are identical in all material respects to the terms of the old notes, except that:

we have registered the new notes under the Securities Act and therefore the new notes will not bear legends restricting their transfer;

the new notes will have a different CUSIP number than the old notes (with the CUSIP number for the new notes being the same as that of the \$270.0 million of original 2016 notes which are also now outstanding under the indenture); and

specified rights under the exchange and registration rights agreement, including the provisions providing for payment of additional interest in specified circumstances relating to the exchange offer, will be limited or eliminated.

The new notes will be newly issued securities for which there is currently no market, and we do not intend to list the new notes on any securities exchange. Although the initial purchasers of the old notes have informed us that they intend to make a market in the new notes, they are not obligated to do so and may discontinue market-making at any time without notice. Accordingly, a liquid market for the new notes may not develop or be maintained.

The new notes will evidence the same debt as the old notes. The new notes will be issued under the same indenture and entitled to the same benefits under that indenture as the old notes being exchanged. As of the date of this prospectus, \$250.0 million in aggregate principal amount of the old notes were outstanding. Old notes accepted for exchange will be retired and cancelled and not reissued.

In connection with the issuance of the old notes, we arranged for the old notes originally purchased by qualified institutional buyers and those sold in reliance on Regulation S under the Securities Act to be issued and transferable in book-entry form through the facilities of The Depository Trust Company, or "DTC," acting as depository. We will issue the new notes in the form of a global note registered in the name of DTC or its nominee and each beneficial owner's interest in such global note will be transferable in book-entry form through DTC.

Holders of old notes do not have any appraisal or dissenters' rights in connection with the exchange offer. We intend to conduct the exchange offer in accordance with the applicable requirements of the Exchange Act and the rules and regulations of the SEC.

We shall be considered to have accepted validly tendered old notes if and when we have given written notice to that effect to the exchange agent. The exchange agent will act as agent for the tendering holders for the purposes of receiving the new notes from us.

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If we do not accept any tendered old notes for exchange because of an invalid tender, the occurrence of the other events described in this prospectus or otherwise, we will return these old notes, without expense, to the tendering holder promptly after the expiration date of the exchange offer.

Holders who tender old notes will not be required to pay brokerage commissions or fees or, subject to the instructions in the letter of transmittal, transfer taxes on exchange of old notes in connection with the exchange offer. We will pay all charges and expenses, other than the applicable taxes described in the section "Fees and Expenses" below, in connection with the exchange offer.

If we successfully complete the exchange offer, any old notes which holders do not tender or which we do not accept in the exchange offer will remain outstanding and continue to accrue interest. The holders of old notes after the exchange offer in general will not have further rights under the registration rights agreement, including registration rights and any rights to additional interest. Holders of the old notes wishing to transfer their old notes would have to rely on exemptions from the registration requirements of the Securities Act.

**Expiration Date; Extensions; Amendments**

The expiration date for the exchange offer is 5:00 p.m., New York City time, on August 29, 2011. We may extend this expiration date in our sole discretion, but in no event to a date later than September 12, 2011. If we so extend the expiration date, the term "expiration date" shall mean the latest date and time to which we extend the exchange offer.

We reserve the right, in our sole discretion:

to delay accepting any old notes to the extent we extend the exchange offer;

to extend the exchange offer;

to terminate the exchange offer if, in our reasonable judgment, any of the conditions described below shall not have been satisfied; or

to amend the terms of the exchange offer in any manner, provided, however, that if we make a material change in the exchange offer (including a waiver of a material condition), we will extend the offering period if necessary so that at least five business days remain in the offering period following notice of the material change.

We will give oral or written notice of any delay, extension or termination to the exchange agent. In addition, we will promptly give oral or written notice regarding any delay in acceptance, extension or termination of the offer to the registered holders of old notes. If we amend the exchange offer in a manner that we determine to constitute a material change, or if we waive a material condition, we will promptly disclose the amendment or waiver in a manner reasonably calculated to inform the holders of old notes of the amendment, and extend the offer if required by law.

Without limiting the manner in which we may choose to make public announcements of any delay in acceptance, extension, termination, amendment or waiver regarding the exchange offer, we shall have no obligation to publish, advertise, or otherwise communicate any public announcement, other than by making a release to a financial news service not later than 9:00 a.m., Eastern time on the business day after the previously scheduled expiration date.

**Interest on the New Notes**

Interest on the new notes will accrue at the rate of  $7\frac{5}{8}\%$  per annum on the principal amount, payable semiannually in arrears on February 15 and August 15, commencing on August 15, 2011. In order to avoid duplicative payment of interest, all interest accrued on old notes that are accepted for



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exchange before February 15, 2012 will be superseded by the interest that is deemed to have accrued on the new notes from August 14, 2011 through the date of the exchange.

**Conditions to the Exchange Offer**

Despite any other term of the exchange offer, we will not be required to accept for exchange, or exchange new notes for, any old notes and we may terminate the exchange offer as provided in this prospectus before the exchange offer's termination if:

the exchange offer, or the making of any exchange by a holder, violates, in our good faith determination, any applicable law, rule or regulation or any applicable interpretation of the staff of the SEC;

any action or proceeding shall have been instituted with respect to the exchange offer which, in our judgment, would impair our ability to proceed with the exchange offer; or

we have not obtained any governmental approval which we, in our good faith determination, consider necessary for the completion of the exchange offer as contemplated by this prospectus.

The conditions listed above are for our sole benefit and we may assert them regardless of the circumstances giving rise to any of these conditions. We may waive these conditions in our sole discretion in whole or in part at any time. A failure on our part to exercise any of the above rights shall not constitute a waiver of that right, and that right shall be considered an ongoing right, which we may assert at any time and from time to time. However, all conditions other than those dependent upon receipt of any required governmental approval must be satisfied or waived prior to the expiration of the exchange offer (as extended, if applicable), in order for us to complete the exchange offer. Furthermore, if we elect to waive any condition, we must announce that decision in a manner reasonably calculated to inform noteholders of the waiver.

If we determine in our reasonable discretion that any of the events listed above has occurred, we may, subject to applicable law:

refuse to accept any old notes and return all tendered old notes to the tendering holders;

extend the exchange offer and retain all old notes tendered before the expiration of the exchange offer, subject, however, to the rights of holders to withdraw these old notes; or

waive unsatisfied conditions relating to the exchange offer and accept all properly tendered old notes which have not been withdrawn.

Any determination by us concerning the above events will be final and binding.

In addition, we reserve the right in our reasonable discretion to:

purchase or make offers for any old notes that remain outstanding subsequent to the expiration date; and

to the extent permitted by applicable law, purchase old notes in the open market, in privately negotiated transactions or otherwise.

The terms of any such purchases or offers may differ from the terms of the exchange offer.

**Procedures for Tendering**

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Except in limited circumstances, only a DTC participant listed on a DTC securities position listing with respect to the old notes may tender old notes in the exchange offer. To tender old notes in the exchange offer, holders of old notes that are DTC participants may follow the procedures for book-entry transfer as set forth below under "Book-Entry Transfer" and in the letter of transmittal.

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In addition, you must comply with one of the following:

the exchange agent must receive, before expiration of the exchange offer, a timely confirmation of book-entry transfer of old notes into the exchange agent's account at DTC according to DTC's standard operating procedures for electronic tenders and a properly transmitted agent's message as described below; or

the exchange agent must receive any corresponding certificate or certificates representing old notes along with the letter of transmittal; or

the holder must comply with the guaranteed delivery procedures described below.

The tender by a holder of old notes will constitute an agreement between such holder and us in accordance with the terms and subject to the conditions set forth in this prospectus and in the letter of transmittal. If less than all the old notes held by a holder are tendered, the tendering holder should fill in the amount of old notes being tendered in the specified box on the letter of transmittal. The entire amount of old notes delivered or transferred to the exchange agent will be deemed to have been tendered unless otherwise indicated.

The method of delivery of old notes, the letter of transmittal and all other required documents or transmission of an agent's message, as described under "Book-Entry Transfer," to the exchange agent is at the election and risk of the holder. Instead of delivery by mail, we recommend that holders use an overnight or hand delivery service. In all cases, sufficient time should be allowed to assure timely delivery to the exchange agent prior to the expiration of the exchange offer. No letter of transmittal or old notes should be sent to us or DTC. Delivery of documents to DTC in accordance with its procedures will not constitute delivery to the exchange agent.

Any beneficial holder whose old notes are registered in the name of his or its broker, dealer, commercial bank, trust company or other nominee and who wishes to tender should contact such registered holder promptly and instruct such registered holder to tender on its behalf. If such beneficial holder wishes to tender on its own behalf, such beneficial holder must, prior to completing and executing the letter of transmittal and delivering its old notes, either:

make appropriate arrangements to register ownership of the old notes in such holder's name; or

obtain a properly completed bond power from the registered holder.

The transfer of record ownership may take considerable time and may not be completed prior to the expiration date.

Signatures on a letter of transmittal or a notice of withdrawal, as described in "Withdrawal of Tenders" below, must be guaranteed by a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or an "eligible guarantor institution," within the meaning of Rule 17Ad-15 under the Exchange Act, which we refer to in this prospectus as an "eligible institution," unless the old notes are tendered:

by a registered holder who has not completed the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal; or

for the account of an eligible institution.

If the letter of transmittal is signed by a person other than the registered holder of any old notes listed therein, the old notes must be endorsed or accompanied by appropriate bond powers which authorize the person to tender the old notes on behalf of the registered holder, in either case signed as the name of the registered holder or holders appears on the old notes. If the letter of transmittal or any old notes or bond powers are signed by trustees, executors, administrators, guardians,



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attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and, unless waived by us, evidence satisfactory to us of their authority to so act must be submitted with the letter of transmittal.

We will determine in our sole discretion all questions as to the validity, form, eligibility, including time of receipt, and acceptance and withdrawal of tendered old notes. We reserve the absolute right to reject any and all old notes not properly tendered or any old notes whose acceptance by us would, in the opinion of our counsel, be unlawful. We also reserve the right to waive any defects, irregularities or conditions of tender as to any particular old notes either before or after the expiration date. However, all conditions other than those dependent upon receipt of any required governmental approval, must be satisfied or waived prior to the expiration of the exchange offer (as extended, if applicable) in order for us to complete the exchange offer. Furthermore, if we elect to waive any condition, we must announce that decision in a manner reasonably calculated to inform noteholders of the waiver. Our interpretation of the terms and conditions of the exchange offer, including the instructions in the letter of transmittal, will be final and binding on all parties. Unless waived, holders must cure any defects or irregularities in connection with tenders of old notes within a period we will determine. Although we intend to request the exchange agent to notify holders of defects or irregularities relating to tenders of old notes, neither we, the exchange agent nor any other person will have any duty or incur any liability for failure to give this notification. We will not consider tenders of old notes to have been made until these defects or irregularities have been cured or waived. The exchange agent will return any old notes that are not properly tendered and as to which the defects or irregularities have not been cured or waived to the tendering holders, unless otherwise provided in the letter of transmittal, promptly following the expiration date.

In addition, we reserve the right, as set forth above under the caption "Conditions to the Exchange Offer," to terminate the exchange offer.

By tendering, each holder represents to us, among other things, that:

the holder acquired new notes pursuant to the exchange offer in the ordinary course of its business;

the holder has no arrangement or understanding with any person to participate in the distribution of the new notes within the meaning of the Securities Act; and

the holder is not our "affiliate," as defined in Rule 405 under the Securities Act.

If the holder is a broker-dealer which will receive new notes for its own account in exchange for old notes acquired by such broker-dealer as a result of market-making activities or other trading activities, such holder must acknowledge that it will deliver a prospectus in connection with any resale of the new notes.

**Book-Entry Transfer**

We understand that the exchange agent will make a request promptly after the date of this prospectus to establish an account with respect to the old notes at DTC for the purpose of facilitating the exchange offer. Any financial institution that is a participant in DTC's system, including Euroclear and Clearstream, may make book-entry delivery of old notes by causing DTC to transfer such old notes into the exchange agent's DTC account in accordance with DTC's Automated Tender Offer Program procedures for such transfer. The exchange of new notes for tendered old notes will only be made after a timely confirmation of a book-entry transfer of the old notes into the exchange agent's account and timely receipt by the exchange agent of an agent's message.

The term "agent's message" means a message, transmitted by DTC and received by the exchange agent and forming part of the confirmation of a book-entry transfer, which states that DTC has

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received an express acknowledgment from a participant tendering old notes that such participant has received an appropriate letter of transmittal and agrees to be bound by the terms of the letter of transmittal, and that we may enforce such agreement against the participant. Delivery of an agent's message will also constitute an acknowledgment from the tendering DTC participant that the representations contained in the letter of transmittal and described under "Resale of New Notes" above are true and correct.

**Guaranteed Delivery Procedures**

The following guaranteed delivery procedures are intended for holders who wish to tender their old notes but:

their old notes are not immediately available;

the holders cannot deliver their old notes, the letter of transmittal, or any other required documents to the exchange agent prior to the expiration date; or

the holders cannot complete the procedure under DTC's standard operating procedures for electronic tenders before expiration of the exchange offer.

The conditions that must be met to tender old notes through the guaranteed delivery procedures are as follows:

the tender must be made through an eligible institution;

before expiration of the exchange offer, the exchange agent must receive from the eligible institution either a properly completed and duly executed notice of guaranteed delivery in the form accompanying this prospectus, by facsimile transmission, mail or hand delivery, or a properly transmitted agent's message in lieu of notice of guaranteed delivery:

setting forth the name and address of the holder, the certificate number or numbers of the old notes tendered and the principal amount of old notes tendered;

stating that the tender offer is being made by guaranteed delivery;

guaranteeing that, within three business days after expiration of the exchange offer, the letter of transmittal, or facsimile of the letter of transmittal, together with the old notes tendered or a book-entry confirmation, and any other documents required by the letter of transmittal will be deposited by the eligible institution with the exchange agent; and

the exchange agent must receive the properly completed and executed letter of transmittal, or facsimile of the letter of transmittal, as well as all tendered old notes in proper form for transfer or a book-entry confirmation, and any other documents required by the letter of transmittal, within three New York Stock Exchange trading days after expiration of the exchange offer.

Upon request to the exchange agent, a notice of guaranteed delivery will be sent to holders who wish to tender their old notes according to the guaranteed delivery procedures set forth above.

**Withdrawal of Tenders**

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Your tender of old notes pursuant to the exchange offer is irrevocable except as otherwise provided in this section. You may withdraw tenders of old notes at any time prior to 5:00 p.m., New York City time, on the expiration date.

For a withdrawal to be effective:

the exchange agent must receive a written notice, which may be by telegram, telex, facsimile transmission or letter, of withdrawal at the address set forth below under "Exchange Agent," or

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for DTC participants, holders must comply with DTC's standard operating procedures for electronic tenders and the exchange agent must receive an electronic notice of withdrawal from DTC.

Any notice of withdrawal must:

specify the name of the person who tendered the old notes to be withdrawn;

identify the old notes to be withdrawn, including the certificate number or numbers and principal amount of the old notes to be withdrawn;

be signed by the person who tendered the old notes in the same manner as the original signature on the letter of transmittal, including any required signature guarantees; and

specify the name in which the old notes are to be re-registered, if different from that of the withdrawing holder.

If old notes have been tendered pursuant to the procedure for book-entry transfer described above, any notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawn old notes and otherwise comply with the procedures of the applicable facility. We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, for such withdrawal notices, and our determination shall be final and binding on all parties. Any old notes so withdrawn will be deemed not to have been validly tendered for purposes of the exchange offer and no new notes will be issued with respect to them unless the old notes so withdrawn are validly re-tendered. Any old notes which have been tendered but which are not accepted for exchange will be returned to the holder without cost to such holder promptly after withdrawal, rejection of tender or termination of the exchange offer. Properly withdrawn old notes may be re-tendered by following the procedures described above under "Procedures for Tendering" at any time prior to the expiration date.

**Exchange Agent**

We have appointed U.S. Bank National Association as exchange agent in connection with the exchange offer. Holders should direct questions, requests for assistance and for additional copies of this prospectus, the letter of transmittal or notices of guaranteed delivery to the exchange agent addressed as follows:

*By Hand or Overnight Courier:*  
U.S. Bank National Association  
60 Livingston Avenue, 1<sup>st</sup> Floor Bond Drop Window  
St. Paul, Minnesota 55107  
Attention: Specialized Finance  
(800) 934-6802

*By Facsimile Transmission:*  
(651) 495-8158  
(For Eligible Institutions Only)  
U.S. Bank National Association  
Attention: Specialized Finance  
Confirm by Telephone:  
(800) 934-6802

Delivery of a letter of transmittal to any address or facsimile number other than the one set forth above will not constitute a valid delivery.

**Fees and Expenses**

We will not make any payments to brokers, dealers or other persons soliciting acceptances of the exchange offer. We will, however, pay the exchange agent reasonable and customary fees for its services and will pay the exchange agent for its related reasonable out-of-pocket expenses, including accounting and legal fees. We may also pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this prospectus, letters of



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transmittal and related documents to the beneficial owners of the old notes and in handling or forwarding tenders for exchange.

Holders who tender their old notes for exchange will not be obligated to pay any transfer taxes. If, however:

new notes are to be delivered to, or issued in the name of, any person other than the registered holder of the old notes tendered; or

tendered old notes are registered in the name of any person other than the person signing the letter of transmittal; or

a transfer tax is imposed for any reason other than the exchange of old notes in connection with the exchange offer;

then the tendering holder must pay the amount of any transfer taxes due, whether imposed on the registered holder or any other persons. If the tendering holder does not submit satisfactory evidence of payment of these taxes or exemption from them with the letter of transmittal, the amount of these transfer taxes will be billed directly to the tendering holder.

**Consequences of Failure to Properly Tender Old Notes in the Exchange**

We will issue the new notes in exchange for old notes under the exchange offer only after timely receipt by the exchange agent of the old notes, a properly completed and duly executed letter of transmittal and all other required documents. Therefore, holders of the old notes desiring to tender old notes in exchange for new notes should allow sufficient time to ensure timely delivery. We are under no duty to give notification of defects or irregularities of tenders of old notes for exchange. Old notes that are not tendered or that are tendered but not accepted by us will, following completion of the exchange offer, continue to be subject to the existing restrictions upon transfer under the Securities Act. Upon completion of the exchange offer, specified rights under the exchange and registration rights agreement, including registration rights and any right to additional interest, will be either limited or eliminated.

Participation in the exchange offer is voluntary. In the event the exchange offer is completed, we will not be required to register the remaining old notes. Remaining old notes will continue to be subject to the following restrictions on transfer:

holders may resell old notes only if we register the old notes under the Securities Act, if an exemption from registration is available, or if the transaction requires neither registration under nor an exemption from the requirements of the Securities Act; and

the remaining old notes will bear a legend restricting transfer in the absence of registration or an exemption.

We do not currently anticipate that we will register the remaining old notes under the Securities Act. To the extent that old notes are tendered and accepted in connection with the exchange offer, any trading market for remaining old notes could be adversely affected.

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**DESCRIPTION OF THE NOTES**

You can find the definitions of certain terms used in this "Description of the Notes" below under the subheading " Certain Definitions." In this description, the term "*Issuer*" refers to Clean Harbors, Inc. and not any of its Subsidiaries. The Issuer previously issued \$300.0 million aggregate principal amount of its 7<sup>5</sup>/<sub>8</sub>% Senior Secured Notes due 2016 (the "*original 2016 notes*") under an indenture dated as of August 14, 2009 (the "*indenture*") among itself, the Guarantors and U.S. Bank National Association, as trustee and notes collateral agent. The Issuer redeemed \$30.0 million of the original 2016 notes on September 28, 2010, leaving \$270.0 million of the original 2016 notes now outstanding. The Issuer also issued \$250.0 million aggregate principal amount of 7<sup>5</sup>/<sub>8</sub>% Senior Secured Notes due 2016 (the "*old notes*") on March 24, 2011 under the indenture in an unregistered private placement, and will issue up to \$250.0 million aggregate principal amount of 7<sup>5</sup>/<sub>8</sub>% Senior Secured Notes due 2016 (the "*new notes*") in exchange for the old notes under the indenture pursuant to this registered exchange offer. The original 2016 notes and the old notes constitute, and the new notes will constitute, "*Securities*" under the indenture. References to "*notes*" herein shall include the original 2016 notes, the old notes and the new notes, collectively.

The terms of the new notes are substantially identical to the terms of the old notes for which they may be exchanged pursuant to the exchange offer, except that the new notes are registered under the Securities Act and do not contain provisions requiring the payment of additional interest in connection with the failure to comply with the registration covenants in the registration rights agreement. The new notes will be *pari passu* with, and vote together with, the holders of the original 2016 notes and any old notes which are not exchanged for new notes on any matter submitted to the holders of notes under the indenture.

The following description is a summary of the material provisions of the indenture and certain provisions of the Security Documents. It does not restate the terms of those agreements in their entirety. We urge that you carefully read the indenture, the Security Documents and the Trust Indenture Act of 1939 (the "*TIA*"), because the indenture, the Security Documents and the TIA govern your rights as holders of the notes, not this description. A copy of the indenture and forms of the Security Documents may be obtained from us or the initial purchasers. The definitions of certain capitalized terms used in the following summary are set forth below under " Certain Definitions." In this description, "we," "us" or "our" refers only to the Issuer and not any of its Subsidiaries.

**General**

The notes are:

general senior obligations of the Issuer;

subject to the Lien priorities described below, *pari passu* in right of payment with any existing and future senior Indebtedness of the Issuer;

secured on a first-priority lien basis by the Notes Collateral and on a second-priority lien basis by the ABL Collateral, in each case, subject to certain Liens permitted under the indenture;

senior in right of payment to any existing or future subordinated debt of the Issuer;

effectively senior to the Issuer's obligations to the ABL Secured Parties to the extent of the value of the Notes Collateral;

structurally subordinated to all liabilities and preferred stock of Subsidiaries of the Issuer that are not Guarantors;

effectively subordinated to the Issuer's obligations to the ABL Secured Parties to the extent of the value of the ABL Collateral; and



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guaranteed on a senior secured basis (with the Lien priorities described below) by each Guarantor.

As of March 31, 2011, we and the Guarantors had no loans and \$82.4 million of letters of credit outstanding under the Credit Agreement. The notes and the guarantees rank effectively junior in right of payment to Indebtedness (including loans and reimbursement obligations in respect of outstanding letters of credit) under the Credit Agreement to the extent of the value of the ABL Collateral. Furthermore, our non-guarantor Subsidiaries had as of March 31, 2011, approximately \$134.6 million of total liabilities (excluding intercompany liabilities and debt). The notes and the guarantees rank structurally junior to those obligations of our non-guarantor Subsidiaries.

The notes are issued in fully registered form only, without coupons, in denominations of \$2,000 and integral multiples of \$1,000.

The trustee serves as paying agent and registrar for the notes. You may present your notes for registration of transfer and exchange at the offices of the registrar, which is the trustee's corporate trust office. The Issuer may change any paying agent and registrar without prior notice.

The Issuer pays principal (and premium, if any) on the notes at the trustee's corporate office in St. Paul, Minnesota. At the Issuer's option, interest may be paid at the trustee's corporate trust office or by check mailed to the registered address of holders.

**Principal, Maturity and Interest**

The Issuer will issue an aggregate principal amount of up to \$250.0 million of new notes in this offering. The notes will mature on August 15, 2016. Additional notes ("*Additional Notes*") may be issued under the indenture from time to time after the Issue Date (and the new notes shall be *Additional Notes*), subject to the limitations set forth under " Certain Covenants Limitation on Incurrence of Additional Indebtedness" and " Certain Covenants Limitation on Liens." The notes, the new notes, any old notes which are not exchanged pursuant to this exchange offer and any *Additional Notes* subsequently issued will be treated as a single class for all purposes under the indenture.

Interest on the notes is payable semiannually in cash on each February 15 and August 15 to the persons who are registered holders at the close of business on the February 1 and August 1 immediately preceding the applicable interest payment date. Interest on the new notes will accrue from August 14, 2011 and will be computed on the basis of a 360-day year of twelve 30-day months. The first interest payment date for the new notes will be February 15, 2012. In order to avoid duplicative payment of interest, all interest accrued on old notes that are accepted for exchange before February 15, 2012 will be superseded by the interest that is deemed to have accrued on the new notes from August 14, 2011 through the date of the exchange.

The notes will not be entitled to the benefit of any mandatory sinking fund.

**Redemption**

*Optional Redemption*

The Issuer may redeem all or any portion of the notes, on and after August 15, 2012, upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as percentages of the principal amount) if redeemed during the twelve-month period commencing on

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August 15 of the year set forth below, plus, in each case, accrued and unpaid interest, if any, to the date of redemption:

Year	Percentage
2012	103.813%
2013	101.906%
2014 and thereafter	100.000%

At any time prior to August 15, 2012, the Issuer may, on one or more occasions, redeem all or any portion of the notes, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the principal amount of the notes redeemed, plus the Applicable Premium as of the date of redemption, including accrued and unpaid interest to the redemption date.

In addition, at any one time after September 29, 2011 but prior to August 15, 2012, the Issuer may redeem up to 10% of the original aggregate principal amount of notes issued under the indenture at a redemption price of 103% of the principal amount thereof, plus accrued and unpaid interest to the applicable redemption date.

#### ***Optional Redemption upon Equity Offerings***

At any time, or from time to time, prior to August 15, 2012, the Issuer may, at its option, use the net cash proceeds of one or more Equity Offerings to redeem up to 35% in aggregate principal amount of the notes originally issued under the indenture at a redemption price equal to 107.625% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of redemption; *provided, however*, that after any such redemption the aggregate principal amount of the notes outstanding must equal at least 65% of the aggregate amount of the notes originally issued under the indenture. In order to effect the foregoing redemption with the net cash proceeds of any Equity Offering, the Issuer shall make such redemption not more than 90 days after the consummation of such Equity Offering.

#### ***Selection and Notice of Redemption***

If less than all of the notes are to be redeemed at any time, the trustee will select those notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the notes are listed or, if the notes are not then listed on a national securities exchange, on a *pro rata* basis, *provided* that:

- (1) notes with a principal amount of \$2,000 or less may only be redeemed in full; and
- (2) if a partial redemption is made with the Net Cash Proceeds of an Asset Sale, an Equity Offering, or any Taking or Destruction, the trustee will select the notes or portions of the notes for redemption on a *pro rata* basis or on as nearly a *pro rata* basis as is practicable, unless the method is otherwise prohibited.

Notice of redemption will be mailed by first-class mail at least 30 but not more than 60 days before the redemption date to each holder of notes to be redeemed at its registered address. If any note is to be redeemed in part only, the notice of redemption that relates to the note will state the portion of the principal amount to be redeemed. A replacement note in a principal amount equal to the unredeemed portion will be issued in the name of the holder upon cancellation of the original note. On and after the redemption date, interest will cease to accrue on those notes called for redemption if the Issuer has deposited with the paying agent the funds needed to pay the applicable redemption price.

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**Guarantees**

Each Guarantor fully and unconditionally guarantees, on a senior secured basis, jointly and severally, to each holder of notes and the trustee, the full and prompt performance of the Issuer's obligations under the indenture and the notes, including the payment of principal of and interest on the notes. Each Guarantee is:

a senior obligation of such Guarantor;

subject to the Lien priorities described below, *pari passu* in right of payment with any existing and future senior Indebtedness of such Guarantor;

secured on a first-priority basis by the Notes Collateral owned by such Guarantor and on a second-priority basis by the ABL Collateral owned by such Guarantor; in each case, subject to certain Liens permitted under the indenture;

senior in right of payment to any existing or future subordinated debt of such Guarantor;

effectively senior to such Guarantor's obligations to the ABL Secured Parties to the extent of the value of the Notes Collateral owned by such Guarantor;

structurally subordinated to all liabilities and preferred stock of any Subsidiaries of such Guarantor that are not Guarantors; and

effectively subordinated to such Guarantor's obligations to the ABL Secured Parties to the extent of the value of the ABL Collateral owned by such Guarantor.

The obligations of each Guarantor are limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under the indenture, will result in the obligations of such Guarantor under the Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Each Guarantor that makes a payment or distribution under a Guarantee shall be entitled to a contribution from each other Guarantor in an amount *pro rata*, based on the net assets of each Guarantor, determined in accordance with GAAP.

Each Guarantor may consolidate with or merge into or sell its assets to the Issuer or another Guarantor without limitation, or with other Persons upon the terms and conditions set forth in the indenture. See " Certain Covenants Merger, Consolidation and Sale of Assets." In the event all of the Capital Stock of a Guarantor is disposed of by the Issuer, whether by merger, consolidation, sale or otherwise, and the disposition is not in violation of the provisions set forth in " Certain Covenants Limitation on Asset Sales," the Guarantor's Guarantee will be released. In addition, upon the designation of a Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary, which designation is in compliance with the indenture, such Guarantor's Guarantee will be released.

**Security**

The notes and the Guarantees have the benefit of the "Collateral," which consists of (i) the Notes Collateral, as to which the holders of the notes and holders of any future Other Pari Passu Lien Obligations have a first-priority security interest and the Bank Lenders have a second-priority security interest (in each case subject to Permitted Liens) and (ii) the ABL Collateral, as to which the Bank Lenders have a first-priority security interest, the holders of the notes have a second-priority security interest and holders of any future Other Pari Passu Lien Obligations may have a second-priority security interest (in each case, subject to Permitted Liens).

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The Issuer and the Guarantors are able to incur additional Indebtedness in the future which could share in all or part of the Collateral. The amount of all such additional Indebtedness is limited by the covenants described under " Certain Covenants Limitation on Liens" and " Certain Covenants Limitation on Incurrence of Additional Indebtedness." Under certain circumstances the amount of such additional secured Indebtedness could be significant.

*Notes Collateral*

The Notes Collateral is pledged as collateral to the Notes Collateral Agent for the benefit of the trustee, the Notes Collateral Agent, the holders of the notes and any holders of Other Pari Passu Lien Obligations. The notes and Guarantees are secured by first-priority security interests in the Notes Collateral, subject to certain Permitted Liens. The "Notes Collateral" generally consists of the following assets of the Issuer and the Guarantors:

each real property owned by the Issuer and the Guarantors with a cost or book value (whichever is greater) in excess of \$2.5 million, and leasehold real properties acquired after the Issue Date with annual rents in excess of \$2.5 million, together with all fixtures relating thereto and all other improvements thereto and all leases, rents and other income derived therefrom or relating thereto; *provided* that, in the case of leaseholds only (but not with respect to owned real property), the Issuer and the Guarantors shall only be required to use commercially reasonable efforts to obtain leasehold mortgages or other security interests with respect thereto and shall in no event be required to obtain such leasehold mortgages or other security interests if prohibited by applicable law, regulation or contract;

equipment;

motor vehicles (but any actions to perfect the lien thereon shall only apply to those motor vehicles with a fair market value in excess of \$50,000);

inventory;

patents, trademarks and copyrights;

general intangibles, instruments, books and records and supporting obligations related to the foregoing and proceeds of the foregoing;

deposit accounts and securities accounts, to the extent containing identifiable proceeds of Notes Collateral (with certain exceptions for special purpose and de minimis accounts); and

substantially all of the other tangible and intangible assets of the Issuer and the Guarantors, other than (i) the ABL Collateral and (ii) Excluded Collateral.

Initially, subject to Permitted Liens, only the notes and Guarantees will have the benefit of the first-priority security interest in the Notes Collateral. In the future, holders of Other Pari Passu Lien Obligations (if any) will also have the benefit of a first-priority security interest in the Notes Collateral.

*ABL Collateral*

The notes and Guarantees are also secured by a second-priority Lien on and security interest in the ABL Collateral, subject to Permitted Liens. The "ABL Collateral" generally consists of all of the following assets of the Issuer and the Guarantors:

all accounts receivable;

all deposit accounts and securities accounts (and all assets and amounts contained therein but excluding (i) identifiable proceeds of the Notes Collateral and (ii) certain special purpose and *de minimis* deposit accounts); and



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all general intangibles, instruments, books and records and supporting obligations related to the foregoing and proceeds of the foregoing, in each case, held by the Issuer and the Guarantors.

The notes' second-priority Lien on and security interest in the ABL Collateral will be terminated and automatically released if the Lien on such ABL Collateral in favor of the ABL Secured Parties is released in connection with any sale or other disposition of such ABL Collateral in connection with an enforcement action by the Bank Collateral Agent or in connection with a sale of such ABL Collateral permitted by the Credit Agreement (whether or not such sale is permitted under the indenture), except in connection with a Discharge of ABL Obligations. Except as provided in the Intercreditor Agreement, holders of Liens on the ABL Collateral that are junior relative to the Bank Lenders will not be able to take any enforcement action with respect to the ABL Collateral so long as any ABL Obligations are outstanding.

***Excluded Property***

The Collateral does not include (A) assets of the Issuer and the Guarantors held outside of the United States; (B) assets of the Issuer's foreign Subsidiaries; (C) any capital stock, debt securities, instruments, other equity interests and other securities of any Subsidiary of the Issuer (other than any securities accounts); *provided* that (x) notwithstanding the foregoing, intercompany Indebtedness held by the Issuer or any Guarantor is deemed Collateral, but no securities evidencing the same are required to be delivered to the Notes Collateral Agent and any such securities (but not the Indebtedness underlying such securities) are not Collateral, (y) neither the Issuer nor any Guarantor or any of its Restricted Subsidiaries has or shall pledge or grant any security interest in any such security to any Person without the consent of the Notes Collateral Agent and (z) the intercompany loans (or any whole or partial replacements or refinancings thereof) made on July 31, 2009 and on or about the Issue Date to one or more Canadian Subsidiaries of the Issuer are not evidenced by a note or a security; and (D) proceeds and products from any and all of the foregoing excluded collateral described in clauses (A) through (C) above (collectively, the "Excluded Collateral").

No appraisals of any of the Collateral have been prepared by or on behalf of the Issuer in connection with the issuance and sale of the notes. In addition, the Issuer and the Guarantors do not know and have not attempted to determine the value of the Excluded Collateral. There can be no assurance that the proceeds from the sale of the Collateral in whole or in part pursuant to the Security Documents following an Event of Default would be sufficient to satisfy payments due on the notes. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral can be sold in a short period of time, or at all.

The collateral release provisions of the indenture and the Security Documents permit the release of Collateral without substitution of collateral of equal value under certain circumstances. See " Release of Collateral."

The Issuer and the Guarantors will use their commercially reasonable efforts to complete within 30 days after the issuance of the new notes all filings and other similar actions required in connection with the perfection of security interests in real property. If they are not able to complete such actions on or prior to such date, they will complete such actions as soon as reasonably practicable after such date.

To the extent that third parties hold Liens permitted by the Security Documents and the indenture, such third parties will have rights and remedies with respect to the assets subject to such Liens that, if exercised, could adversely affect the value of the Collateral or the ability of the trustee or the holders of notes to realize or foreclose on the Collateral. In addition, the ability of the holders of notes to realize on the Collateral may be subject to certain bankruptcy law limitations in the event of a bankruptcy. See " Certain Bankruptcy Limitations."

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***After-Acquired Property***

Promptly following the acquisition by the Issuer or any Guarantor of any After- Acquired Property (but subject to the limitations, if applicable, described under " Notes Collateral" and " ABL Collateral"), the Issuer or such Guarantor shall, if and to the extent required by the indenture, execute and deliver such mortgages, deeds of trust, security instruments, financing statements and certificates and opinions of counsel as shall be reasonably necessary to vest in the Notes Collateral Agent a perfected security interest in such After-Acquired Property and to have such After-Acquired Property added to the Notes Collateral or the ABL Collateral, as applicable, and thereupon all provisions of the indenture relating to the Notes Collateral or the ABL Collateral, as applicable, shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

***Information Regarding Collateral***

The Issuer will furnish to the Notes Collateral Agent, with respect to the Issuer or any Guarantor, prompt written notice of any change in the Issuer or such Guarantor's (i) legal name, (ii) jurisdiction of organization or formation, (iii) identity or corporate structure or (iv) Organizational Identification Number. The Issuer and the Guarantors have agreed not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Notes Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Issuer has also agreed promptly to notify the Notes Collateral Agent of any material change with respect to the Collateral or if any material portion of the Collateral is damaged, destroyed or condemned.

***Further Assurances***

The Issuer and the Guarantors shall execute any and all further documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or that the Notes Collateral Agent may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Security Documents on the Collateral. In addition, from time to time, the Issuer will reasonably promptly secure the obligations under the indenture, the Security Documents and the Intercreditor Agreement by pledging or creating, or causing to be pledged or created, perfected security interests and Liens with respect to the Collateral. Such security interests and Liens will be created under the Security Documents and other security agreements, mortgages, deeds of trust and other instruments as contemplated by the Security Documents.

***Security Documents and Certain Related Intercreditor Provisions***

The Issuer, the Guarantors, U.S. Bank National Association, as collateral agent for the trustee and the holders of the notes (the "*Notes Collateral Agent*"), and the trustee have entered into one or more Security Documents creating and establishing the terms of the security interests and Liens that secure the notes and the Guarantees. These security interests and Liens secure the payment and performance when due of all of the Note Obligations, any other Pari Passu Lien Obligations, the Intercreditor Agreement and the Security Documents, as provided in the Security Documents. The Bank Collateral Agent and Bank Lenders secured by ABL Collateral are referred to collectively as "*ABL Secured Parties*." The trustee, the Notes Collateral Agent, each note holder and each other holder of, or obligee in respect of, any Note Obligations outstanding at such time are referred to collectively as the "*Noteholder Secured Parties*."

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The indenture provides that the Security Documents may be amended from time to time without the consent of the holders of the notes or the Bank Lenders to add other parties holding Other Pari Passu Lien Obligations, in each case, to the extent permitted to be incurred under the indenture and other applicable agreements. See " Modification of the Indenture and Security Documents."

***Intercreditor Agreement***

On the Issue Date, the Issuer, the Guarantors, the Notes Collateral Agent and the Bank Collateral Agent entered into the Intercreditor Agreement. Although the holders of the notes and the Bank Lenders are not party to the Intercreditor Agreement, by their acceptance of the notes and ABL Obligations, respectively, they each agreed to be bound thereby.

The aggregate amount of the obligations secured by the ABL Collateral may, subject to the limitations set forth in the indenture, be increased. A portion of the obligations secured by the ABL Collateral consists or may consist of Indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed and such obligations may, subject to the limitations set forth in the indenture, be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, all without affecting the subordination of the Liens in favor of the Noteholder Secured Parties (relative to those of the ABL Secured Parties) or the provisions of the Intercreditor Agreement defining the relative rights of the parties thereto. The Lien priorities provided for in the Intercreditor Agreement shall not be altered or otherwise affected by any amendment, modification, supplement, extension, increase, replacement, renewal, restatement or refinancing of either the obligations secured by the ABL Collateral or the obligations secured by the Notes Collateral, by the release of any Collateral or of any guarantees securing any secured obligations or by any action that any representative or secured party may take or fail to take in respect of any Collateral.

The proceeds from the sale of any ABL Collateral remaining after the satisfaction of all ABL Obligations may not be sufficient to satisfy the Note Obligations.

The Intercreditor Agreement will have similar provisions regarding the Notes Collateral Agent's rights relative to those of the Bank Collateral Agent with respect to the Notes Collateral.

***Control of Enforcement with Respect to the ABL Collateral and Application of Proceeds of ABL Collateral***

Pursuant to the terms of the Intercreditor Agreement, prior to the Discharge of ABL Obligations, the Bank Collateral Agent will have the exclusive right to control the time and method by which the security interests in the ABL Collateral will be enforced, including, without limitation, following the occurrence of an Event of Default under the indenture. Prior to the Discharge of ABL Obligations, the Noteholder Secured Parties will not be permitted to enforce their security interests in the ABL Collateral even if any Event of Default under the indenture has occurred and the notes have been accelerated except (a) in any insolvency or liquidation proceeding, solely to the extent necessary to file a proof of claim or statement of interest with respect to the Note Obligations or (b) certain protective actions in order to prove, preserve, perfect or protect (but not enforce) their security interest and rights in, and the perfection and priority of their Lien on, the ABL Collateral.

Any proceeds from any ABL Collateral received in any insolvency or liquidation proceeding or pursuant to any enforcement of remedies against the ABL Collateral will be applied to repay the ABL Obligations in full (including any post-petition interest thereon whether or not allowed or allowable in any such insolvency or liquidation proceeding) until the Discharge of ABL Obligations has occurred prior to any proceeds of ABL Collateral being applied to the repayment of any Note Obligations owing to the Noteholder Secured Parties.

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*No Duties of Bank Collateral Agent*

The Intercreditor Agreement provides that no ABL Secured Party will generally have any duties or other obligations to any Noteholder Secured Party with respect to the ABL Collateral, other than serving as agent for perfection with respect to certain ABL Collateral. In addition, the Intercreditor Agreement further provides that, until the Discharge of ABL Obligations, the Bank Collateral Agent is entitled, for the benefit of the ABL Secured Parties, to sell, transfer or otherwise dispose of or deal with such ABL Collateral without regard to any security interests that are junior relative to those of the ABL Secured Parties therein or any rights to which any Noteholder Secured Party would otherwise be entitled as a result of such junior-priority security interest. Without limiting the foregoing, the trustee and the Notes Collateral Agent, as agents for the Noteholder Secured Parties, have agreed in the Intercreditor Agreement, that no ABL Secured Party will have any duty or obligation first to marshal or realize upon the ABL Collateral, or to sell, dispose of or otherwise liquidate all or any portion of the ABL Collateral, in any manner that would maximize the return to the Noteholder Secured Parties, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the Noteholder Secured Parties from such realization, sale, disposition or liquidation. The Intercreditor Agreement has similar provisions regarding the duties owed to the ABL Secured Parties by the Noteholder Secured Parties with respect to the Notes Collateral.

The Notes Collateral Agent, as agent for the Noteholder Secured Parties, has agreed in the Intercreditor Agreement that the Noteholder Secured Parties will waive any claim that may be had against any ABL Secured Party arising out of (i) any actions which any ABL Secured Party takes or omits to take (including actions with respect to the creation, perfection or continuation of Liens on any ABL Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the ABL Collateral and actions with respect to the collection of any claim for all or any part of the ABL Obligations from any account debtor, guarantor or any other party) or the valuation, use, protection or release of any security for such ABL Obligations, (ii) any election by any ABL Secured Party, in any proceeding instituted under Title 11 of the United States Code (the "*Bankruptcy Code*"), of the application of Section 1111(b) of the Bankruptcy Code or (iii) except to the extent set forth below under "Agreements with Respect to Bankruptcy or Insolvency Proceedings," any borrowing of, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code to, the Issuer or any of its Subsidiaries as debtor-in-possession. The ABL Secured Parties have agreed to waive similar claims with respect to the actions of any of the Noteholder Secured Parties pursuant to the Intercreditor Agreement.

*No Interference; Payment Over; Reinstatement*

The Notes Collateral Agent, as agent for the Noteholder Secured Parties, has agreed in the Intercreditor Agreement that prior to the Discharge of ABL Obligations:

it will not challenge or question in any proceeding the validity or enforceability of any first-priority security interest in the ABL Collateral, the validity, attachment, perfection or priority of any Lien held by any ABL Secured Party, or the validity or enforceability of the priorities, rights or duties established by or other provisions of the Intercreditor Agreement;

it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the ABL Collateral by any ABL Secured Party;

it will have no right to (A) direct any ABL Secured Party to exercise any right, remedy or power with respect to such ABL Collateral or (B) consent to the exercise by any ABL Secured Party of any right, remedy or power with respect to such ABL Collateral;

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it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any ABL Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and no ABL Secured Party will be liable for, any action taken or omitted to be taken by any ABL Secured Party with respect to the ABL Collateral;

it will not object to any waiver or forbearance by the Bank Collateral Agent from or in respect of bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the ABL Collateral;

it will not seek, and will waive any right, to have any ABL Collateral or any part thereof marshaled upon any foreclosure or other disposition of the ABL Collateral; and

it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of the Intercreditor Agreement.

If any ABL Secured Party is required in any insolvency or liquidation proceeding or otherwise to turn over or otherwise pay to the estate of the Issuer or any Guarantor (or any trustee, receiver or similar Person therefor), because the payment of such amount was declared to be fraudulent or preferential in any respect or for any other reason (any amount, a "*Recovery*"), whether received as proceeds of security, enforcement of any right of setoff or otherwise, then as among the parties to the Intercreditor Agreement, the ABL Obligations shall be deemed to be reinstated to the extent of such Recovery and to be outstanding as if such payment had not occurred, and such holder of ABL Obligations shall be entitled to a reinstatement of such ABL Obligations with respect to all such recovered amounts and shall have all rights under the Intercreditor Agreement. If the Intercreditor Agreement was terminated (in whole or in part) prior to such Recovery, the Intercreditor Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties thereto. Any ABL Collateral received by a Noteholder Secured Party prior to the time of such Recovery shall be deemed to have been received prior to the Discharge of ABL Obligations and subject to the provisions of the immediately preceding paragraph. The ABL Secured Parties have agreed to similar limitations with respect to their rights in the Notes Collateral and their ability to bring a suit against the Notes Collateral Agent or the holders of the notes pursuant to the Intercreditor Agreement.

The trustee and the Notes Collateral Agent, as agents for the Noteholder Secured Parties, have agreed in the Intercreditor Agreement that if any Noteholder Secured Party obtains possession of the ABL Collateral or realizes any proceeds or payment in respect of the ABL Collateral, pursuant to any Security Document or by the exercise of any rights available to it under applicable law or in any bankruptcy, insolvency or similar proceeding or through any other exercise of remedies, at any time prior to the Discharge of ABL Obligations, then such Noteholder Secured Party will hold such ABL Collateral, proceeds or payment in trust for the ABL Secured Parties and transfer such ABL Collateral, proceeds or payment, as the case may be, to the Bank Collateral Agent. The trustee and the Notes Collateral Agent, as agents for the Noteholder Secured Parties have agreed in the Intercreditor Agreement that if, at any time, all or part of any payment with respect to any ABL Obligations secured by any ABL Collateral previously made shall be rescinded for any reason whatsoever, they will, upon demand therefor, promptly pay over to the Bank Collateral Agent any payment received by them (and remaining in their possession) in respect of any such ABL Collateral and shall promptly turn any such ABL Collateral then held by them over to the Bank Collateral Agent, and the provisions set forth in the Intercreditor Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Obligations. The ABL Secured Parties are subject to similar limitations with respect to the Notes Collateral and any proceeds or payments in respect of any Notes Collateral pursuant to the Intercreditor Agreement.

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In addition, so long as the Discharge of ABL Obligations has not occurred, neither the Issuer nor any Guarantor shall grant to the Notes Collateral Agent a Lien on any assets securing any Note Obligations that are not also subject to the first-priority Lien (in the case of ABL Collateral) or second-priority Lien (in the case of Notes Collateral) in favor of the Bank Collateral Agent for the benefit of the holders of ABL Obligations. If the Notes Collateral Agent shall acquire or hold any Lien on any assets of the Issuer or a Guarantor that is not also subject to the Lien in favor of the Bank Collateral Agent for the benefit of the holders of ABL Obligations, then the Notes Collateral Agent shall, without the need for any further consent of any party and notwithstanding anything to the contrary in any other document, be deemed to also hold and have held such Lien for the benefit of the Bank Collateral Agent as security of the ABL Obligations (subject to the applicable Lien priority and other terms of the Intercreditor Agreement). The Bank Collateral Agent is subject to similar limitations and requirements in favor of the Notes Collateral Agent with respect to the Notes Collateral pursuant to the Intercreditor Agreement.

*Agreements with Respect to Bankruptcy or Insolvency Proceedings*

If the Bank Collateral Agent consents to financing ("*DIP Financing*") to be provided by one or more lenders (the "*DIP Lenders*") under Section 364 of the Bankruptcy Code which is to be secured by any ABL Collateral or the use of cash collateral representing proceeds of ABL Collateral under Section 363 of the Bankruptcy Code, the trustee, as agent for the Noteholder Secured Parties, has agreed in the Intercreditor Agreement that it will raise no objection to any such financing or to the Liens on the ABL Collateral securing the same ("*DIP Financing Liens*") or to any use of cash collateral that constitutes ABL Collateral, unless such DIP Financing, DIP Financing Liens or use of cash collateral is not permitted under the ABL Obligations so long as (among other things):

- (i) either (x) all DIP Financing Liens are senior to, or rank *pari passu* with, the Liens of the ABL Obligations on such ABL Collateral (in which case, the Notes Collateral Agent, as agent for the Noteholder Secured Parties has agreed to subordinate the Liens of the Noteholder Secured Parties on such ABL Collateral to the Liens of the ABL Obligations on such ABL Collateral and the DIP Financing Liens) or (y) the Liens of the Notes Collateral Agent are not subordinated to such DIP Financing Liens;
- (ii) the Noteholder Secured Parties retain liens on all the ABL Collateral, including proceeds thereof arising after the commencement of such proceeding, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code, subject to any super-priority ranking of liens in favor of the DIP Lenders as provided above and any "carveout" for administrative expenses agreed to by the Bank Collateral Agent; and
- (iii) no Noteholder Secured Party is required (without its consent) to lend or incur any monetary obligation in connection with such DIP Financing.

The ABL Secured Parties have agreed to similar provisions with respect to any DIP Financing and DIP Financing Liens related to the Notes Collateral.

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The trustee and the Notes Collateral Agent, as agents for each of the Noteholder Secured Parties, have agreed in the Intercreditor Agreement that they will:

- (i) not object to or oppose a sale or other disposition of any ABL Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the ABL Secured Parties shall have consented to such sale or disposition of such ABL Collateral and the proceeds of such sale or disposition are to be applied in accordance with the Intercreditor Agreement. Notwithstanding the foregoing, the Intercreditor Agreement shall not be construed to prohibit the Noteholder Secured Parties from exercising a credit bid in a sale or other disposition of ABL Collateral under Section 363 of the Bankruptcy Code;
- (ii) not object to, or otherwise contest (or support any other Person contesting), any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement in respect of the ABL Collateral made by the ABL Secured Parties;
- (iii) until the Discharge of ABL Obligations, not seek relief from the automatic stay or any other stay in any insolvency or liquidation proceeding in respect of the ABL Collateral, without the prior written consent of the Bank Collateral Agent;
- (iv) not object to, or otherwise contest (or support any Person contesting), (a) any request by the ABL Secured Parties for adequate protection on account of the ABL Collateral or (b) any objection by the ABL Secured Parties to any motion, relief, action or proceeding based on the Bank Collateral Agent's or such holder of ABL Obligations claiming a lack of adequate protection with respect to the ABL Collateral;
- (v) until the Discharge of ABL Obligations, not assert or enforce (or support any Person asserting or enforcing) any claim under Section 506(c) of the Bankruptcy Code *pari passu* with the Liens on the ABL Collateral securing the ABL Obligations for costs or expenses of preserving or disposing of any ABL Collateral; and
- (vi) not oppose or otherwise contest (or support any other Person contesting) any lawful exercise by the ABL Secured Parties of the right to credit bid at any sale of ABL Collateral.

In addition, the trustee and the Notes Collateral Agent, as agents for each of the Noteholders Secured Parties, have agreed in the Intercreditor Agreement that no Noteholder Secured Party will file or prosecute in any insolvency or liquidation proceeding any motion for adequate protection (or any comparable request for relief) based upon its respective security interests in the ABL Collateral, except that:

- (i) any of them may freely seek and obtain relief granting a junior Lien co-extensive in all respects with, but subordinated to, all Liens granted in the insolvency or liquidation proceeding to, or for the benefit of, the holders of ABL Obligations (and the Intercreditor Agreement provides that the ABL Secured Parties will not object to the granting of such junior Lien); and
- (ii) any of them may freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of ABL Obligations.

Without limiting the generality of any provisions of the Intercreditor Agreement, the trustee and the Notes Collateral Agent, as agents for each of the Noteholders Secured Parties, have agreed in the Intercreditor Agreement that any vote to accept, and any other act to support the confirmation or approval of, any Non-Conforming Plan of Reorganization shall be inconsistent with and, accordingly, a violation of the terms of the Intercreditor Agreement, and the Bank Collateral Agent shall be entitled to have any such vote to accept a Non-Conforming Plan of Reorganization dismissed and any such support of any Non-Conforming Plan of Reorganization withdrawn.

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The Notes Collateral Agent, as agent for the Noteholder Secured Parties, has agreed in the Intercreditor Agreement that (a) the Noteholder Secured Parties' claims against the Issuer and the Guarantors in respect of the ABL Collateral constitute claims secured by a Junior Lien Priority separate and apart (and of a different class) from the claims secured by a Junior Lien Priority of the holders of ABL Obligations against the Issuer and the Guarantors in respect of the ABL Collateral, (b) the ABL Obligations includes all interest that accrues after the commencement of any insolvency or liquidation proceeding of the Issuer or any Guarantor at the rate provided for in the Credit Agreement, regardless of whether a claim for post-petition interest is allowed or allowable in any such insolvency or liquidation proceeding, and (c) the Intercreditor Agreement constitutes a "subordination agreement" under Section 510 of the Bankruptcy Code. The ABL Secured Parties are subject to similar limitations in favor of the Noteholder Secured Parties pursuant to the Intercreditor Agreement.

*Insurance*

Until written notice by the Bank Collateral Agent to the trustee that the Discharge of ABL Obligations has occurred, as between the Bank Collateral Agent, on the one hand, and the Noteholder Secured Parties, on the other hand, only the Bank Collateral Agent will have the right (subject to the rights of the grantors under the documents related to the Credit Agreement) to adjust or settle any insurance policy or claim covering or constituting ABL Collateral in the event of any covered loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the ABL Collateral. Unless and until written notice by the trustee to the Bank Collateral Agent that the obligations under the indenture and the notes have been paid in full, as between the Bank Collateral Agent, on the one hand, and the trustee and the Notes Collateral Agent, as the case may be, on the other hand, only the Notes Collateral Agent will have the right (subject to the rights of the grantors under the documents related to the notes) to adjust or settle any insurance policy or claim covering or constituting Notes Collateral in the event of any covered loss thereunder and to approve any award granted in any condemnation or similar proceeding solely affecting the Notes Collateral. To the extent that an insured loss covers or constitutes both ABL Collateral and Notes Collateral, then the Bank Collateral Agent and the Notes Collateral Agent will work jointly and in good faith to collect, adjust or settle (subject to the rights of the grantors under the documents related to the Credit Agreement and the notes) under the relevant insurance policy.

*Refinancings of the Credit Agreement and the Notes*

The obligations under the Credit Agreement, and the obligations under the indenture and the notes, may be refinanced or replaced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the refinancing transaction under the Credit Agreement or any security document related thereto or the indenture and the Security Documents) of, the ABL Secured Parties or any Noteholder Secured Party, all without affecting the Lien priorities provided for in the Intercreditor Agreement; *provided, however*, that the holders of any such refinancing or replacement Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of the Intercreditor Agreement pursuant to such documents or agreements (including amendments or supplements to the Intercreditor Agreement) as the Bank Collateral Agent or Notes Collateral Agent, as the case may be, shall reasonably request and in form and substance reasonably acceptable to the Bank Collateral Agent or Notes Collateral Agent, as the case may be (subject, in the case of the Notes Collateral Agent, to the terms of the Security Documents and the Indenture).

In addition, if at any time in connection with or after the Discharge of ABL Obligations, the Issuer enters into any refinancing of the Credit Agreement secured by the ABL Collateral on a first-priority basis, then such Discharge of ABL Obligations shall automatically be deemed not to have occurred for all purposes of the Intercreditor Agreement, the Credit Agreement and the indenture, and the



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obligations under such refinancing shall automatically be treated as ABL Obligations for all purposes of the Intercreditor Agreement, including for purposes of the Lien priorities and rights in respect of ABL Collateral set forth therein.

In connection with any refinancing or replacement contemplated by the foregoing paragraph, the Intercreditor Agreement may be amended at the request and sole expense of the Issuer, and without the consent of any holder of notes, (a) to add parties (or any authorized agent or trustee therefor) provided any such refinancing or replacement Indebtedness is in compliance with the Credit Agreement and the indenture, (b) to establish that Liens on any Notes Collateral securing such refinancing or replacement Indebtedness shall have the same priority (or junior priority) as the Liens on any Notes Collateral securing the Indebtedness being refinanced or replaced and (c) to establish that the Liens on any ABL Collateral securing such refinancing or replacement Indebtedness shall have the same priority (or junior priority) as the Liens on any ABL Collateral securing the Indebtedness being refinanced or replaced, all on the terms provided for herein immediately prior to such refinancing or replacement.

Subject to the terms of the Security Documents, the Issuer and the Guarantors have the right to remain in possession and retain exclusive control of the Collateral securing the notes, to freely operate the Collateral and to collect, invest and dispose of any income therefrom. See "Risk Factors Risks Relating to Our Level of Debt and the Notes In the event of our bankruptcy, the ability of the holders of the notes to realize upon the Collateral will be subject to certain bankruptcy law limitations."

***Release of Collateral***

The Issuer and the Guarantors are entitled to the releases of property and other assets included in the Collateral from the Liens securing the notes under any one or more of the following circumstances:

to enable the disposition of such property or assets (other than any such disposition to the Issuer or a Restricted Subsidiary or a transaction undertaken pursuant to clause (2), (5), (7) or (8) of the definition of "Asset Sale") to the extent not prohibited under the covenant described under " Certain Covenants Limitation on Asset Sales";

in the case of a Guarantor that is released from its Guarantee, the release of the property and assets of such Guarantor; or

as described under " Modification of the Indenture and Security Documents" below.

The second-priority Lien on the ABL Collateral securing the notes will terminate and be released automatically if the first-priority Lien on the ABL Collateral is released by the Bank Collateral Agent in connection with a sale, transfer or disposition of ABL Collateral that occurs in connection with the foreclosure of, or other exercise of remedies with respect to, or any sale permitted by the Credit Agreement of, such ABL Collateral by the Bank Collateral Agent (except with respect to any proceeds of such sale, transfer or disposition that remain after the Discharge of ABL Obligations and except in connection with a Discharge of ABL Obligations).

The security interests in all Collateral securing the notes and Guarantees also will be released upon (i) payment in full of the principal of, together with accrued and unpaid interest on, the notes and all other Note Obligations that are due and payable at or prior to the time such principal, together with accrued and unpaid interest, is paid or (ii) a legal defeasance or covenant defeasance under the indenture as described below under " Legal Defeasance and Covenant Defeasance" or a discharge of the indenture as described under " Satisfaction and Discharge."

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**Certain Bankruptcy Limitations**

The right of the Notes Collateral Agent to repossess and dispose of, or otherwise exercise remedies in respect of, the Collateral upon the occurrence of an Event of Default is likely to be significantly impaired by applicable bankruptcy law if a bankruptcy proceeding were to be commenced by or against the Issuer or a Guarantor prior to the Notes Collateral Agent having repossessed and disposed of, or otherwise exercised remedies in respect of, the Collateral. Under the Bankruptcy Law, a secured creditor such as the Notes Collateral Agent is prohibited from repossessing its security from a debtor in a bankruptcy case, or from disposing of security repossessed from such debtor, without bankruptcy court approval. Moreover, the Bankruptcy Law permits the debtor to continue to retain and to use collateral even though the debtor is in default under the applicable debt instruments; *provided* that the secured creditor is given "adequate protection." The meaning of the term "adequate protection" may vary according to circumstances, but it is intended in general to protect the value of the secured creditor's interest in the collateral and may include cash payments or the granting of additional security, if and at such times as the court in its discretion determines, for any diminution in the value of the collateral as a result of the stay of repossession or disposition or any use of the collateral by the debtor during the pendency of the bankruptcy case. In view of the lack of a precise definition of the term "adequate protection" and the broad discretionary powers of a bankruptcy court, it is impossible to predict how long payment with respect to the notes could be delayed following commencement of a bankruptcy case, whether or when the Notes Collateral Agent could repossess or dispose of the Collateral or whether or to what extent holders of notes would be compensated for any delay in payment or loss of value of the Collateral.

Under the Bankruptcy Law, a claim is a secured claim up to the value of the collateral that secures it. In most cases, interest stops accruing on the date of bankruptcy, but if the collateral's value exceeds the amount of the claim, post bankruptcy petition interest will accrue up to the value of the collateral. If, on the other hand, the amount of the claim exceeds the collateral's value, the excess constitutes an unsecured claim.

**Change of Control**

The indenture provides that upon the occurrence of a Change of Control, each holder will have the right to require that the Issuer purchase all or a portion of such holder's notes pursuant to the offer described below (the "*Change of Control Offer*"), at a purchase price equal to 101% of the principal amount plus accrued interest to the date of purchase. Notwithstanding the occurrence of a Change of Control, the Issuer will not be obligated to repurchase the notes under this covenant if the Issuer has exercised its right to redeem all the notes under the terms of the section titled "Redemption Optional Redemption."

Within 30 days following the date upon which the Change of Control occurred, the Issuer will send, by first-class mail, a notice to each holder, with a copy to the trustee, which notice shall govern the terms of the Change of Control Offer. The notice will state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "*Change of Control Payment Date*"). Holders electing to have a note purchased pursuant to a Change of Control Offer must surrender the note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the note completed, to the paying agent at the address specified in the notice prior to the close of business on the third business day prior to the Change of Control Payment Date.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control Offer

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made by the Issuer and purchases all notes validly tendered and not withdrawn under such Change of Control Offer.

If the Issuer makes a Change of Control Offer, there can be no assurance that it will have available funds sufficient to pay the Change of Control purchase price for all the notes that might be delivered by holders seeking to accept the Change of Control Offer. In the event the Issuer is required to purchase outstanding notes pursuant to a Change of Control Offer, the Issuer expects that it would seek third party financing to the extent it lacks available funds to meet its purchase obligations. However, there can be no assurance that the Issuer would be able to obtain such financing.

The trustee may not waive the covenant relating to a holder's right to have such holder's note purchased upon a Change of Control. However, the covenant and other provisions contained in the indenture relating to the Issuer's obligation to make a Change of Control Offer may be waived or modified with the written consent of the holders of a majority in principal amount of the notes. Restrictions described in the indenture on the ability of the Issuer and its Restricted Subsidiaries to incur additional Indebtedness, to grant Liens on their property, to make Restricted Payments and to make Asset Sales may also make more difficult or discourage a takeover of the Issuer, whether favored or opposed by our management. Consummation of any such transaction may require redemption or repurchase of the notes, and there can be no assurance that the Issuer or the acquiring party will have sufficient financial resources to effect such redemption or repurchase. Such restrictions and the restrictions on transactions with Affiliates may make more difficult or discourage any leveraged buyout of the Issuer or any of its Restricted Subsidiaries by our management. While such restrictions cover a wide variety of arrangements which have traditionally been used to effect highly leveraged transactions, the indenture may not afford you protection in all circumstances from the adverse aspects of a highly leveraged transaction, reorganization, restructuring, merger or similar transaction.

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

The definition of "Change of Control" includes, among other transactions, a disposition of "all or substantially all" of the Issuer's property and assets. With respect to the disposition of property or assets, the phrase "all or substantially all" as used in the indenture varies according to the facts and circumstances of the subject transaction, has no clearly established meaning under relevant law and is subject to judicial interpretation. Accordingly, in certain circumstances, there may be a degree of uncertainty in ascertaining whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person, and therefore it may be unclear whether a Change of Control has occurred and whether the Issuer is required to make a Change of Control Offer.

**Certain Covenants**

The indenture contains, among others, the following covenants:

***Limitation on Incurrence of Additional Indebtedness***

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of (collectively, "*incur*"), any Indebtedness (other than Permitted Indebtedness); *provided, however*, that if no Default or Event of Default shall

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have occurred and be continuing at the time of or as a consequence of the incurrence of any such Indebtedness, the Issuer and any of its Restricted Subsidiaries that is, or upon such incurrence becomes, a Guarantor may incur Indebtedness (including, without limitation, Acquired Indebtedness) and any of its Restricted Subsidiaries that is not or will not become, upon such incurrence, a Guarantor may incur Acquired Indebtedness, in each case, if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof, the Issuer's Consolidated Fixed Charge Coverage Ratio is greater than 2.25 to 1.0.

(b) The Issuer will not, and will not permit any Guarantor to, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is expressly subordinated in right of payment to any other Indebtedness of the Issuer or such Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the notes or the applicable Guarantee, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Issuer or such Guarantor, as the case may be. For purposes of the foregoing, no Indebtedness will be deemed to be subordinated in right of payment to any other Indebtedness of the Issuer or any Guarantor solely by virtue of such Indebtedness being unsecured or by virtue of the fact that the holders of such Indebtedness have entered into one or more intercreditor agreements giving one or more of such holders priority over the other holders in the collateral held by them.

***Limitation on Restricted Payments***

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

- (1) declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of the Issuer) on or in respect of shares of Capital Stock of the Issuer to holders of that Capital Stock;
- (2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Issuer or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock;
- (3) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Indebtedness of the Issuer that is subordinate or junior in right of payment to the notes or any Guarantee (other than Indebtedness described in clause (7) of the definition of "Permitted Indebtedness"); or
- (4) make any Investment (other than Permitted Investments)

(each of the actions listed above being referred to as a "*Restricted Payment*"), if at the time of such Restricted Payment or immediately after giving effect thereto:

- (1) a Default or an Event of Default shall have occurred and be continuing; or
- (2) the Issuer is not able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with the "Limitation on Incurrence of Additional Indebtedness" covenant; or
- (3) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made on or after the Issue Date (the amount expended for such purposes, if other than in

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cash, being the fair market value of such property as determined reasonably and in good faith by the Issuer's Board of Directors) exceeds the sum of:

- (a) 50% of the Issuer's cumulative Consolidated Net Income (or if cumulative Consolidated Net Income shall be a loss, minus 100% of such loss) for the period (treating such period as a single accounting period) commencing on the first day of the first full fiscal quarter commencing after the Issue Date to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which consolidated financial statements are available; *plus*
- (b) 100% of the aggregate Net Cash Proceeds received by the Issuer from any Person (other than a Subsidiary of the Issuer) from the issuance and sale subsequent to the Issue Date of Qualified Capital Stock of the Issuer; *plus*
- (c) without duplication of any amounts included in clause (3)(b) above, 100% of the aggregate Net Cash Proceeds of any equity contribution received by the Issuer from a holder of its Capital Stock; *plus*
- (d) the amount by which the Issuer's Indebtedness or that of any of its Restricted Subsidiaries is reduced on the Issuer's balance sheet upon the conversion or exchange after the Issue Date of any of the Issuer's Indebtedness or any Indebtedness of its Restricted Subsidiaries incurred after the Issue Date into or for Qualified Capital Stock of the Issuer; *plus*
- (e) without duplication, the sum of:
  - (I) the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made after the Issue Date whether through interest payments, principal payments, dividends or other distributions or payments;
  - (II) the net cash proceeds received by the Issuer or any of its Restricted Subsidiaries from the disposition of all or any portion of such Investments (other than to a Subsidiary of the Issuer); and
  - (III) upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the fair market value of such Subsidiary (valued in each case as provided in the definition of "Investment");

*provided, however*, that the sum of clauses (I), (II) and (III) above will not exceed the aggregate amount of all such Investments made by the Issuer or any of its Restricted Subsidiaries in the relevant Person or Unrestricted Subsidiary after the Issue Date.

However, the provisions set forth in the immediately preceding paragraph do not prohibit:

- (1) the payment of any dividend or other distribution within 60 days after the date of declaration of that dividend or other distribution if the dividend or other distribution would have been permitted on the date of declaration;
- (2) the acquisition of any shares of the Issuer's Capital Stock, either (a) solely in exchange for shares of the Issuer's Qualified Capital Stock or (b) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Issuer) of shares of the Issuer's Qualified Capital Stock;
- (3) the acquisition of any Indebtedness of the Issuer that is subordinate or junior in right of payment to the notes or a Guarantee either:

- (a) solely in exchange for shares of Qualified Capital Stock of the Issuer, or

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- (b) through the application of the net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Issuer) of:
  - (i) shares of Qualified Capital Stock of the Issuer; or
  - (ii) Refinancing Indebtedness;
- (4) if no Default or Event of Default shall have occurred and be continuing, repurchases by the Issuer of Capital Stock of the Issuer from officers, directors and employees of the Issuer or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment of such employees or termination of their seat on the Board of Directors of the Issuer, in an aggregate amount not to exceed \$2.0 million in any calendar year with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$4.0 million in any calendar year;
- (5) if no Default or Event of Default shall have occurred and be continuing, other Restricted Payments in an aggregate amount not to exceed \$25.0 million; and
- (6) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities, to the extent such Capital Stock represents a portion of the consideration for such exercise.

In determining the aggregate amount of Restricted Payments made after the Issue Date in accordance with clause (3) of the immediately preceding paragraph, amounts expended pursuant to clauses (1), (2)(b), (3)(b)(i), (4) and (5) will be included in the calculation.

Not later than the date of making any Restricted Payment, the Issuer will deliver to the trustee an officers' certificate stating that such Restricted Payment complies with the indenture and setting forth in reasonable detail the basis upon which the required calculations were computed, which calculations may be based upon the Issuer's latest available internal quarterly financial statements.

***Limitation on Asset Sales***

- (a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale of any assets that do not constitute ABL Collateral unless:
  - (1) the Issuer or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of (as determined in good faith by the Issuer's senior management or, in the case of an Asset Sale in excess of \$25.0 million, the Issuer's Board of Directors);
  - (2) at least 75% of the consideration received by the Issuer or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of:
    - (a) cash or Cash Equivalents,
    - (b) properties and assets to be owned by the Issuer or any of its Restricted Subsidiaries and used in a Permitted Business; *provided* that if the assets to be disposed of in such Asset Sale constitute Notes Collateral, such properties or assets to be owned by the Issuer or such Restricted Subsidiary constitute Notes Collateral, or
    - (c) Capital Stock in one or more Persons engaged in a Permitted Business that are or thereby become Restricted Subsidiaries of the Issuer; *provided* that if the assets to be disposed of in such Asset Sale constitute Notes Collateral, such properties or assets held by such Persons the Capital Stock of which is to be owned by the Issuer

or such Restricted Subsidiary constitute Notes Collateral,



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and, in each case, such consideration is received at the time of such disposition; *provided* that the amount of

- (i) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet) of the Issuer or such Restricted Subsidiary (other than (A) liabilities that are unsecured or secured by Liens junior to the Lien on the Collateral securing the notes and (B) liabilities that are by their terms subordinated to the notes) that are assumed by the transferee of any such assets, and
  - (ii) any securities received by the Issuer or any such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents within 90 days after such Asset Sale (to the extent of the cash or Cash Equivalents actually so converted) shall be deemed to be cash for the purposes of this provision only;
- (3) upon the consummation of such Asset Sale, the Issuer will apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 365 days of receipt thereof to make an Investment (i) in properties and assets that replace the properties and assets that were the subject of such Asset Sale or (ii) in properties and assets that will be used by the Issuer or a Restricted Subsidiary in a Permitted Business (clauses (i) and (ii) collectively referred to as "*Replacement Assets*"); *provided* that if the assets disposed of constituted Notes Collateral, any Replacement Assets constitute Notes Collateral; and
- (4) the Net Cash Proceeds from any such Asset Sale of Notes Collateral is paid directly by the purchaser thereof to the Notes Collateral Agent to be held in trust in an Asset Sale Proceeds Account for application in accordance with this covenant and, if any property other than cash or Cash Equivalents is included in such Net Cash Proceeds, such property shall be made subject to the Liens under the Security Documents.

On the 366th day after such Asset Sale or such earlier date, if any, as the Issuer's Board of Directors or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clause (3) of the immediately preceding paragraph (each, a "*Net Proceeds Offer Trigger Date*"), such aggregate amount of Net Cash Proceeds which have not been applied on or before such Net Proceeds Offer Trigger Date (each a "*Net Proceeds Offer Amount*") shall be applied by the Issuer or such Restricted Subsidiary to make an offer to purchase from the holders of the notes, and, if required by the terms of any Other Pari Passu Lien Obligations, from the holders of such Other Pari Passu Lien Obligations (the "*Net Proceeds Offer*") on a date (the "*Net Proceeds Offer Payment Date*") not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, on a *pro rata* basis, an amount of notes and Other Pari Passu Lien Obligations equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the notes and Other Pari Passu Lien Obligations to be purchased, plus accrued and unpaid interest thereon, if any, to the date of purchase.

If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary of the Issuer, as the case may be, in connection with such Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder as of the date of such conversion or disposition and the Net Cash Proceeds thereof will be applied in accordance with this covenant.

The Issuer may defer the Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of \$25.0 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of \$25.0 million, shall be applied as required pursuant to the second preceding paragraph).

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Notice of each Net Proceeds Offer pursuant to paragraph (a) will be mailed to the record holders as shown on the register of holders within 25 days following the Net Proceeds Offer Trigger Date, with a copy to the trustee, and will comply with the procedures set forth in the indenture. Upon receiving notice of the Net Proceeds Offer, holders may elect to tender their notes or Other Pari Passu Lien Obligations in whole or in part in denominations of \$2,000 or integral multiples of \$1,000 in excess thereof in exchange for cash. To the extent holders properly tender notes and Other Pari Passu Lien Obligations in an amount exceeding the Net Proceeds Offer Amount, notes and Other Pari Passu Lien Obligations of tendering holders will be purchased on a *pro rata* basis (based on amounts tendered). To the extent that the aggregate amount of the notes and Other Pari Passu Lien Obligations tendered pursuant to a Net Proceeds Offer is less than the Net Proceeds Offer Amount, the Issuer may use such excess Net Proceeds Offer Amount for general corporate purposes or for any other purposes not prohibited by the indenture. Upon completion of any such Net Proceeds Offer, the Net Proceeds Offer Amount shall be reset at zero. A Net Proceeds Offer shall remain open for a period of 20 business days or such longer period as may be required by law.

(b) The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly consummate an Asset Sale of ABL Collateral unless:

- (1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of;
- (2) at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of:
  - (a) cash or Cash Equivalents,
  - (b) properties and assets to be owned by the Issuer or any of its Restricted Subsidiaries and used in a Permitted Business; *provided* that the assets to be owned by the Issuer or any of its Restricted Subsidiaries constitute Collateral; or
  - (c) Capital Stock in one or more Persons engaged in a Permitted Business that are or thereby become Restricted Subsidiaries of the Issuer; *provided* that the properties and assets of such Person constitute Collateral; and, in each case, such consideration is received at the time of such disposition; *provided* that the amount of
    - (i) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet) of the Issuer or such Restricted Subsidiary (other than (x) liabilities that are unsecured or secured by Liens junior to the Lien on the Collateral securing the notes and (y) liabilities that are by their terms subordinated to the notes) that are assumed by the transferee of any such assets, and
    - (ii) any notes or other securities received by the Issuer or any such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents within 90 days after such Asset Sale (to the extent of the cash received)shall be deemed to be cash for the purposes of this provision only; and
- (3) upon the consummation of such Asset Sale, the Issuer will apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 365 days of receipt thereof either:
  - (a) reduce (x) any Indebtedness under the Credit Agreement or any Indebtedness of the Issuer or a Guarantor that in each case is secured by a Lien on the ABL Collateral that



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is prior to the Lien on the ABL Collateral in favor of holders of notes or (y) any Indebtedness of a Restricted Subsidiary that is not a Guarantor (and, in the case of revolving obligations under clauses (x) or (y), to correspondingly reduce commitments with respect thereto), in each case other than Indebtedness owed to the Issuer or a Subsidiary of the Issuer;

- (b) make an investment in Replacement Assets; and/or
- (c) a combination of prepayment and investment permitted by the foregoing clauses (3)(a) and (3)(b).

On the 366th day after an Asset Sale of ABL Collateral or such earlier date, if any, as the Board of Directors of the Issuer or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clauses (3)(a), (3)(b) and (3)(c) of the preceding paragraph (each, an "*ABL Net Proceeds Offer Trigger Date*"), such aggregate amount of Net Cash Proceeds which have not been applied on or before such ABL Net Proceeds Offer Trigger Date (each an "*ABL Net Proceeds Offer Amount*") shall be applied by the Issuer or such Restricted Subsidiary to make an offer to purchase from all holders of the notes, and, if required by the terms of any Other Pari Passu Lien Obligations, from the holders of such Other Pari Passu Lien Obligations (an "*ABL Net Proceeds Offer*"), on a date (the "*ABL Net Proceeds Offer Payment Date*") not less than 30 nor more than 60 days following the applicable ABL Net Proceeds Offer Trigger Date, on a *pro rata* basis, an amount of notes and Other Pari Passu Lien Obligations equal to the ABL Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the notes and Other Pari Passu Lien Obligations to be purchased, plus accrued and unpaid interest thereon, if any, to the date of purchase.

If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary of the Issuer, as the case may be, in connection with any Asset Sale of ABL Collateral is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale of ABL Collateral as of the date of such conversion or disposition and the ABL Net Cash Proceeds thereof will be applied in accordance with this covenant.

The Issuer may defer the ABL Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of \$25.0 million resulting from one or more Asset Sales of ABL Collateral (at which time, the entire unutilized ABL Net Proceeds Offer Amount, and not just the amount in excess of \$25.0 million, shall be applied as required pursuant to the second preceding paragraph).

Notice of each ABL Net Proceeds Offer will be mailed to the record holders as shown on the register of holders within 25 days following the ABL Net Proceeds Offer Trigger Date, with a copy to the trustee, and will comply with the procedures set forth in the indenture. Upon receiving notice of the ABL Net Proceeds Offer, holders may elect to tender their notes in whole or in part in denominations of \$2,000 or integral multiples of \$1,000 in excess thereof in exchange for cash. To the extent holders of notes or Other Pari Passu Lien Obligations properly tender notes in an amount exceeding the ABL Net Proceeds Offer Amount, notes of tendering holders of notes and Other Pari Passu Lien Obligations will be purchased on a *pro rata* basis (based on amounts tendered). To the extent that the aggregate amount of the notes and Other Pari Passu Lien Obligations tendered pursuant to an ABL Net Proceeds Offer is less than the ABL Net Proceeds Offer Amount, the Issuer may use such excess ABL Net Proceeds Offer Amount for general corporate purposes or for any other purposes not prohibited by the indenture. Upon completion of any such ABL Net Proceeds Offer, the ABL Net Proceeds Offer Amount shall be reset at zero. An ABL Net Proceeds Offer shall remain open for a period of 20 business days or such longer period as may be required by law.

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Pending the final application of any Net Proceeds pursuant to clause (b) of this covenant, the Issuer or the applicable Restricted Subsidiary may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by the Indenture.

(c) For the purposes of this covenant, any sale by the Issuer or a Restricted Subsidiary of the Capital Stock of a Restricted Subsidiary that owns assets constituting Notes Collateral or ABL Collateral shall be deemed to be a sale of such Notes Collateral or ABL Collateral (or, in the event of a Restricted Subsidiary that owns assets that include any combination of Notes Collateral and ABL Collateral a separate sale of each of such Notes Collateral and ABL Collateral). In the event of any such sale (or a sale of assets that includes any combination of Notes Collateral and ABL Collateral), the proceeds received by the Issuer and the Restricted Subsidiaries in respect of such sale shall be allocated to the Notes Collateral and ABL Collateral in accordance with their respective fair market values, which shall be determined by the Board of Directors of the Issuer or, at the Issuer's election, an independent third party. In addition, for purposes of this covenant, any sale by the Issuer or any Restricted Subsidiary of the Capital Stock of any Person that owns only ABL Collateral will not be subject to paragraph (a) above, but rather will be subject to paragraph (b) above.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of notes pursuant to a Net Proceeds Offer or an ABL Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Asset Sale" provisions of the indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under the "Asset Sale" provisions of the indenture by virtue thereof. The covenant and other provisions contained in the indenture relating to the Issuer's obligation to make a Net Proceeds Offer or ABL Net Proceeds Offer may be waived or modified with the written consent of the holders of a majority in principal amount of the notes.

***Limitations on Dividend and Other Payment Restrictions Affecting Subsidiaries***

The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries (other than a Restricted Subsidiary that has executed a Guarantee) to, directly or indirectly, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Issuer to

- (a) pay dividends or make any other distribution on or in respect of its Capital Stock;
- (b) make loans or advances or pay any Indebtedness or other obligation owed to the Issuer or any other Restricted Subsidiary of the Issuer; or
- (c) transfer any of its property or assets to the Issuer or any other Restricted Subsidiary of the Issuer,

except for such encumbrances or restrictions existing under or by reason of:

- (1) applicable law, rule, regulation, order, grant or governmental permit;
- (2) the indenture and the Security Documents;
- (3) the Credit Agreement;
- (4) customary non-assignment provisions of any contract, license or lease of any of the Issuer's Restricted Subsidiaries;

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- (5) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;
- (6) agreements existing or entered into on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date;
- (7) purchase money obligations for property acquired in the ordinary course of business or Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (c) above on the property so acquired;
- (8) contracts for the sale of assets, including, without limitation, customary restrictions with respect to a Restricted Subsidiary of ours pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary;
- (9) secured Permitted Indebtedness or secured Indebtedness otherwise permitted to be incurred pursuant to the covenants described under " Limitation on Incurrence of Additional Indebtedness" and " Limitation on Liens" that limit the right of the debtor to dispose of the assets securing such Indebtedness;
- (10) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;
- (11) customary net worth and restrictions on transfer, assignment or subletting provisions contained in leases and other agreements entered into by the Issuer or any Restricted Subsidiary;
- (12) any restriction in any agreement or instrument of a Receivables Entity governing a Qualified Receivables Transaction; *provided* that such restrictions apply only to such Receivables Entity or Receivables and Related Assets;
- (13) any agreement governing Indebtedness incurred to Refinance the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clauses (1) through (12) above; *provided, however*, that the provisions relating to such encumbrance or restriction contained in any such Indebtedness, taken as a whole, are no less favorable to the Issuer in any material respect as determined by its Board of Directors in its reasonable and good faith judgment than the provisions relating to such encumbrance or restriction contained in the agreements referred to in such clauses; or
- (14) any agreement governing Permitted Indebtedness or Indebtedness otherwise permitted to be incurred pursuant to the "Limitation on Incurrence of Additional Indebtedness" covenant; *provided* that the provisions relating to such encumbrance or restriction contained in such Indebtedness, taken as a whole, are no less favorable to the Issuer in any material respect as determined by its Board of Directors in its reasonable and good faith judgment than the provisions contained in the Credit Agreement or in the indenture as in effect on the Issue Date.

***Limitation on the Issuance and Sale of Capital Stock of Restricted Subsidiaries***

The Issuer will not sell, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to issue or sell, any shares of Capital Stock of a Restricted Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:

- (1) to the Issuer or a Wholly Owned Restricted Subsidiary;
- (2)

issuance of directors' qualifying shares or sales to foreign nationals of shares of Capital Stock of the Issuer's Foreign Restricted Subsidiaries, to the extent required by applicable law;

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- (3) if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any Investment in such Person remaining after giving effect to such issuance or sale would have been permitted to be made under the "Limitation on Restricted Payments" covenant if made on the date of such issuance or sale; or
- (4) the sale or issuance of Common Stock that is Qualified Capital Stock of a Restricted Subsidiary of the Issuer, if the proceeds from such issuance and sale are applied in accordance with the "Limitation on Asset Sales" covenant.

***Limitation on Issuances of Guarantees by Restricted Subsidiaries***

The Issuer will not permit any of its Restricted Subsidiaries, directly or indirectly, to guarantee any of the Issuer's Indebtedness or any Indebtedness of the Issuer's Domestic Restricted Subsidiaries, unless (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the indenture providing for a senior secured Guarantee of payment of the notes by such Restricted Subsidiary, and (2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee so long as any notes remain outstanding.

Notwithstanding the foregoing or the covenant set forth below under "Future Guarantors," any Guarantee by a Restricted Subsidiary may provide by its terms that it shall be automatically and unconditionally released and discharged upon

- (1) any sale, exchange or transfer, to any Person not an Affiliate of the Issuer, of all of the Issuer's and each of its Restricted Subsidiary's Capital Stock in, or all or substantially all the assets of, such Restricted Subsidiary (which sale, exchange or transfer is not prohibited by the indenture),
- (2) the release or discharge of the guarantee, if any, which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee, or
- (3) the designation of such Restricted Subsidiary as an Unrestricted Subsidiary in accordance with the provisions of the indenture.

***Future Guarantors***

If the Issuer organizes or acquires any Domestic Restricted Subsidiary (each, a "*New Domestic Restricted Subsidiary*") having total assets with a book value in excess of \$1.0 million, the Issuer will cause such New Domestic Restricted Subsidiary to promptly execute and deliver to the trustee a Guarantee and the Security Documents or a joinder thereto.

Thereafter, such New Domestic Restricted Subsidiary shall be a Guarantor for all purposes of the indenture.

The following additional requirements shall apply:

- (1) the Issuer and the new Guarantor will cause to be filed and recorded such instruments (including any financing statements) in such jurisdictions as may be required by applicable law to perfect, preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to such new Guarantor;
- (2) any Collateral owned by or transferred to the new Guarantor shall: (a) continue to constitute Collateral under the indenture and the Security Documents; and (b) not be subject to any Lien other than Liens permitted by the indenture and the Security Documents; and
- (3) the Issuer shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such supplemental indenture and Security Documents comply with the applicable provisions of the indenture, that all conditions



precedent in the indenture relating to such transaction have been satisfied and that such supplemental indenture and Security Documents are enforceable, subject to customary qualifications.

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*Limitation on Liens*

The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or permit or suffer to exist any Lien of any kind against or upon any property or assets of the Issuer or any of its Restricted Subsidiaries whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, or assign or otherwise convey any right to receive income or profits therefrom unless:

- (1) in the case of Liens on any Collateral, such Lien expressly has Junior Lien Priority on the Collateral relative to the notes, and the terms of the Indebtedness secured by such Liens having Junior Lien Priority are substantially identical to those of the notes (other than as to issue price, interest rate, yield and redemption terms); *provided* that such Indebtedness may (a) contain terms and covenants that are, in the reasonable opinion of the Issuer, less restrictive to the Issuer and the Restricted Subsidiaries than the terms and covenants under the notes and (b) contain terms and covenants that are more restrictive to the Issuer and its Restricted Subsidiaries than the terms and covenants under the notes so long as prior to or substantially simultaneously with the issuance of any such Indebtedness, the notes and the Indenture are amended to contain any such more restrictive terms and covenants; *provided further*, that such Indebtedness shall have (i) a Weighted Average Life to Maturity that is greater than the Weighted Average Life to Maturity of the notes and (ii) a stated maturity date that is the later than that of the notes; and
- (2) in all other cases, the notes are equally and ratably secured (or secured on a senior basis to such Lien, if such Lien secures any subordinated Indebtedness),

except for the following Liens which are expressly permitted:

- (a) Liens existing as of the Issue Date (other than Liens referred to in clause (d) below);
- (b) Liens on Collateral securing Indebtedness under the Credit Agreement permitted to be incurred pursuant to clause (2) of the definition of "Permitted Indebtedness"; *provided* that the holders of such Liens agree to be bound by the provisions of the Intercreditor Agreement in their capacity as Bank Lenders;
- (c) Liens on Collateral securing Other Pari Passu Lien Obligations; *provided* that (i) on the date of the incurrence of such Indebtedness, and after giving pro forma effect thereto and to the application of the proceeds thereof, the Consolidated First Lien Leverage Ratio would be no greater than 2.0 to 1.0 and (ii) the holders of such Liens agree to be bound by the provisions of the Intercreditor Agreement in their capacity as holders of Other Pari Passu Lien Obligations;
- (d) Liens securing the initial notes issued on the Issue Date and the Exchange Notes with respect to such notes or any Guarantee thereof;
- (e) Liens in favor of the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer on assets of any Restricted Subsidiary of the Issuer; *provided* that such Liens are either junior in priority to the Liens securing the notes or are not secured by Collateral;
- (f) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness (including, without limitation, Acquired Indebtedness) which has been secured by a Lien permitted under the indenture and which has been incurred in accordance with the provisions of the indenture; *provided, however*, that such Liens:
  - (i) are no less favorable to holders of the notes and are not more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being Refinanced; and



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- (ii) do not extend to or cover any property or assets of ours or any of the Issuer's Restricted Subsidiaries not securing the Indebtedness so Refinanced;
- (g) Liens securing Indebtedness of the Issuer's Restricted Subsidiaries that are not Guarantors so long as such Indebtedness is otherwise permitted under the indenture; and
- (h) Permitted Liens.

***Merger, Consolidation and Sale of Assets***

The Issuer will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

- (1) either (a) the Issuer shall be the surviving or continuing corporation, partnership, trust or limited liability company or (b) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Issuer and of its Restricted Subsidiaries substantially as an entirety (the "*Surviving Entity*"):
  - (x) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; and
  - (y) shall expressly assume, (i) by supplemental indenture (in form and substance satisfactory to the trustee), executed and delivered to the trustee, the due and punctual payment of the principal of and premium, if any, and interest on all of the notes and the performance of every covenant of the notes and the indenture on the part of the Issuer to be performed or observed, and (ii) all the obligations under the Security Documents;
- (2) immediately after giving effect to such transaction on a pro forma basis and the assumption contemplated by clause (1)(b)(y) above (including giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction), the Issuer or such Surviving Entity, as the case may be, shall be able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to the " Limitation on Incurrence of Additional Indebtedness" covenant;
- (3) immediately before and immediately after giving effect to such transaction on a pro forma basis and the assumption contemplated by clause (1)(b)(y) above (including, without limitation, giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred or repaid and any Lien granted or to be released in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and
- (4) the Issuer or the Surviving Entity, as the case may be, shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the applicable provisions of the indenture and that all conditions precedent in the indenture relating to such transaction have been satisfied.

Notwithstanding the foregoing, (a) the merger of the Issuer with an Affiliate incorporated solely for the purpose of reincorporating the Issuer in another jurisdiction shall be permitted and (b) the merger of any Restricted Subsidiary of the Issuer into the Issuer or the transfer, lease, conveyance or other disposition of all or substantially all of the assets of a Restricted Subsidiary of the Issuer to the Issuer shall be permitted so long as the Issuer delivers to the trustee an officers' certificate stating that



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the purpose of such merger, transfer, lease, conveyance or other disposition is not to consummate a transaction that would otherwise be prohibited by clause (3) of this covenant.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Issuer the Capital Stock of which constitutes all or substantially all of the properties and assets of the Issuer shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The indenture provides that upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Issuer in accordance with the foregoing in which the Issuer is not the continuing corporation, the successor Person formed by such consolidation or into which the Issuer is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under the indenture and the notes with the same effect as if such Surviving Entity had been named as such.

The following additional conditions shall apply to each transaction described in the above paragraphs:

- (1) the Issuer or the relevant Surviving Entity, as applicable, will cause to be filed such amendments or other instruments, if any, and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to such Person, together with such financing statements as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states;
- (2) the Collateral owned by or transferred to the Issuer or the relevant Surviving Entity, as applicable, shall: (a) continue to constitute Collateral under the indenture and the Security Documents; and (b) not be subject to any Lien other than Liens permitted by the indenture and the Security Documents;
- (3) the assets of the Person which is merged or consolidated with or into the relevant Surviving Entity, to the extent that they are assets of the types which would constitute Collateral under the Security Documents and which would be required to be pledged thereunder, shall be treated as After-Acquired Property and such Surviving Entity shall take such action as may be reasonably necessary to cause such assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in the indenture; and
- (4) the Issuer shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such transaction and, if a supplemental indenture or supplemental Security Documents, are required in connection with such transaction, such supplemental indenture and Security Documents comply with the applicable provisions of the indenture, that all conditions precedent in the indenture relating to such transaction have been satisfied and that such supplemental indenture and Security Documents are enforceable, subject to customary qualifications.

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

- (1) the entity formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, lease, conveyance or other disposition shall have been made

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is a corporation organized and existing under the laws of the United States, any State thereof, the District of Columbia or the jurisdiction in which such Guarantor is organized;

- (2) such entity assumes (i) by supplemental indenture all of the obligations of the Guarantor on its Guarantee and (ii) the obligations of the Guarantor under the Security Documents;
- (3) immediately after giving effect to such transaction on a *pro forma* basis, no Default or Event of Default shall have occurred and be continuing; and
- (4) immediately after giving effect to such transaction and the use of any net proceeds therefrom on a *pro forma* basis, the Issuer could satisfy the provisions of clause (2) of the first paragraph of this covenant.

Any merger or consolidation of a Guarantor with and into the Issuer (with the Issuer being the surviving entity) or another Guarantor that is a Wholly Owned Restricted Subsidiary of the Issuer need only comply with clause (4) of the first paragraph of this covenant.

***Limitations on Transactions with Affiliates***

(1) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an "*Affiliate Transaction*"), other than

- (a) Affiliate Transactions permitted under paragraph (2) below and
- (b) Affiliate Transactions on terms that are no less favorable than those that could reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Issuer or such Restricted Subsidiary.

All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$10.0 million shall be approved by the Issuer's Board of Directors or the Board of Directors of such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions. If the Issuer or any of its Restricted Subsidiaries enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than \$25.0 million, the Issuer or such Restricted Subsidiary, as the case may be, shall, prior to the consummation thereof, obtain a favorable opinion as to the fairness of such transaction or series of related transactions to the Issuer or the relevant Restricted Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and file the same with the trustee.

(2) The restrictions set forth in clause (1) shall not apply to:

- (a) reasonable fees and compensation paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Issuer or any Restricted Subsidiary of the Issuer as determined in good faith by the Board of Directors of the Issuer;
- (b) transactions exclusively between the Issuer and any of its Restricted Subsidiaries or exclusively among such Restricted Subsidiaries, *provided* such transactions are not otherwise prohibited by the indenture;
- (c) any agreement as in effect or entered into as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) or in any replacement agreement thereto so long as any such amendment or replacement agreement





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is not more disadvantageous to the holders in any material respect than the original agreement as in effect on the Issue Date;

- (d) transactions effected as part of a Qualified Receivables Transaction;
- (e) Restricted Payments and Permitted Investments permitted by the indenture (other than transactions with a Person that is an Affiliate other than as a result of such Investment);
- (f) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Issuer in good faith; and
- (g) transactions with a Person (other than an Unrestricted Subsidiary) that is an Affiliate of the Issuer solely because the Issuer owns, directly or indirectly, any Capital Stock in such Person.

***Reports to Holders***

The indenture provides that, whether or not required by the rules and regulations of the Commission, so long as any notes are outstanding, the Issuer will file a copy of the following information and reports with the Commission for public availability (unless the Commission will not accept such a filing) and will furnish to the holders of notes and to securities analysts and prospective investors, upon their written request:

- (1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K under the Exchange Act if the Issuer were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" that describes the financial condition and results of operations of the Issuer and its consolidated Subsidiaries and, with respect to the annual information only, a report thereon by the Issuer's certified independent accountants; and
- (2) all current reports that would be required to be filed with the Commission on Form 8-K under the Exchange Act if the Issuer were required to file such reports, in each case within the time periods specified in the Commission's rules and regulations.

In addition, whether or not required by the rules and regulations of the Commission, the Issuer will file a copy of all such information and reports with the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon written request to the Issuer.

In addition, for so long as any notes remain outstanding, the Issuer shall furnish to the holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

***Impairment of Security Interest***

The Issuer will not, and the Issuer will not permit any of its Restricted Subsidiaries to, take, or knowingly omit to take, any action, which action or omission would have the effect of causing a Lien to be created in favor of the collateral agent for any Other Pari Passu Lien Obligations or the Bank Lenders (in their respective capacities as such) on any property or assets of the type that would constitute Collateral unless a Lien is created in favor of the Notes Collateral Agent for the benefit of the Noteholder Secured Parties with respect to such property or assets (which Lien in favor of the Noteholder Secured Parties shall have the priority set forth in the Security Documents). Such Lien in

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favor of the Notes Collateral Agent for the benefit of the Noteholder Secured Parties shall at all times be in accordance with the provisions of the indenture and the Security Documents.

**Events of Default**

The following events are defined in the indenture as "Events of Default":

- (1) the failure to pay interest on any note when the same becomes due and payable and the default continues for a period of 30 days;
- (2) the failure to pay the principal of any note when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase notes tendered pursuant to a Change of Control Offer, a Net Proceeds Offer or an ABL Net Proceeds Offer);
- (3) a default by the Issuer or any of its Restricted Subsidiaries in the observance or performance of any other covenant or agreement contained in the indenture, the Intercreditor Agreement or the Security Documents which default continues for a period of 45 days after the Issuer receives written notice specifying the default (and demanding that such default be remedied) from the trustee or the holders of at least 25% of the outstanding principal amount of the notes;
- (4) the failure to pay at final stated maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any of the Issuer's Indebtedness or the Indebtedness of any of the Issuer's Restricted Subsidiaries, or the acceleration of the final stated maturity of any such Indebtedness by the holders thereof, if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final stated maturity or which has been accelerated, exceeds \$25.0 million at any time;
- (5) one or more judgments in an aggregate amount in excess of \$25.0 million shall have been rendered against the Issuer or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 60 days after such judgments become final and non-appealable;
- (6) certain events of bankruptcy affecting the Issuer or any of its Significant Subsidiaries;
- (7) any Guarantee made by a Significant Subsidiary ceases to be in full force and effect or any Guarantee made by a Significant Subsidiary is declared to be null and void and unenforceable or any Guarantee made by a Significant Subsidiary is found to be invalid or any such Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of the indenture); or
- (8) so long as the Security Documents have not otherwise been terminated in accordance with their terms or the Collateral as a whole has not otherwise been released from the Lien of the Security Documents in accordance with the terms thereof, (a) a default by the Issuer or any Guarantor which is a Significant Subsidiary in the performance of the Security Documents which materially and adversely affects the enforceability, validity, perfection or priority of the Lien granted to the Notes Collateral Agent on the Collateral, in each case, taken as a whole, (b) a repudiation or disaffirmation by the Issuer or any Guarantor that is a Significant Subsidiary of the Issuer's or such Guarantor's material obligations under the Security Documents or (c) a Lien on any Collateral with a value in excess of \$25.0 million created under any the Security Documents shall become unenforceable or invalid against the Issuer or any Guarantor that is a Significant Subsidiary for any reason.

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If an Event of Default (other than an Event of Default specified in clause (6) above with respect to the Issuer) shall occur and be continuing, the trustee or the holders of at least 25% in principal amount of outstanding notes may declare the principal of and accrued interest on all the notes to be due and payable by notice in writing to the Issuer and the trustee specifying the respective Event of Default and that it is a "notice of acceleration" (the "*Acceleration Notice*"), and the same shall become immediately due and payable.

If an Event of Default specified in clause (6) above with respect to the Issuer occurs and is continuing, then all unpaid principal of and premium, if any, and accrued and unpaid interest on all of the outstanding notes shall automatically become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder.

The indenture provides that, at any time after a declaration of acceleration with respect to the notes as described in the preceding paragraph, the holders of a majority in principal amount of the notes may rescind and cancel such declaration and its consequences:

- (1) if the rescission would not conflict with any judgment or decree;
- (2) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;
- (3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;
- (4) if the Issuer has paid the trustee its reasonable compensation and reimbursed the trustee for its expenses, disbursements and advances; and
- (5) in the event of the cure or waiver of an Event of Default of the type described in clause (6) of the description above of Events of Default, the trustee shall have received an officers' certificate and an opinion of counsel that such Event of Default has been cured or waived.

No such rescission will affect any subsequent Default or Event of Default or impair any right consequent thereto.

The holders of a majority in principal amount of the notes may waive any existing Default or Event of Default under the indenture, and its consequences, except a Default in the payment of the principal of or interest on any notes.

Holders of the notes may not enforce the indenture or the notes except as provided in the indenture and under the TIA. Subject to the provisions of the indenture relating to the duties of the trustee, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request, order or direction of any of the holders, unless such holders have offered to the trustee reasonable indemnity. Subject to all provisions of the indenture and applicable law, the holders of a majority in aggregate principal amount of the then outstanding notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee.

Under the indenture, the Issuer is required to provide an officers' certificate to the trustee

promptly upon any such officer obtaining knowledge of any Default or Event of Default, describing such Default or Event of Default and the status thereof, and

annually, describing whether or not such officer knows of any Default or Event of Default.

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**No Personal Liability of Directors, Officers, Employees, Members and Stockholders**

No Affiliate, director, officer, employee, limited liability company member or stockholder of the Issuer or any Subsidiary, as such, shall have any liability for any obligations of the Issuer or any Guarantor under the notes or the indenture or any Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of notes by accepting a note waives and releases all such liability. The waiver and release were part of the consideration for issuance of the notes.

**Legal Defeasance and Covenant Defeasance**

The Issuer may at any time elect to have its obligations and the obligations of any Guarantor discharged with respect to the outstanding notes ("*Legal Defeasance*"). Such Legal Defeasance means that the Issuer will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding notes, except for:

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

In addition, the Issuer may at any time elect to have its obligations released with respect to certain covenants that are described in the indenture ("*Covenant Defeasance*"). Any omission to comply with such obligations would then not constitute a Default or Event of Default with respect to the notes. If Covenant Defeasance occurs, the Issuer's failure to perform these covenants will no longer constitute an Event of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (1) the Issuer must irrevocably deposit with the trustee, in trust, for the benefit of the holders cash in U.S. dollars, non-callable U.S. government obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;
- (2) in the case of Legal Defeasance, the Issuer must deliver to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that:
  - (a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or
  - (b) since August 14, 2009, there has been a change in the applicable Federal income tax law,

in either case to the effect that, and based thereon such opinion of counsel shall confirm that, the holders will not recognize income, gain or loss for Federal income tax purposes as a result of such Legal Defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

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- (3) in the case of Covenant Defeasance, the Issuer must deliver to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that the holders will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;
- (5) such Legal Defeasance or Covenant Defeasance must not result in a breach or violation of, or constitute a default under, the indenture, the Credit Agreement or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;
- (6) the Issuer must deliver to the trustee an officers' certificate stating that the deposit was not made by it with the intent of preferring the holders over any other of the Issuer's creditors or with the intent of defeating, hindering, delaying or defrauding any other of the Issuer's creditors or others;
- (7) the Issuer must deliver to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent to the Legal Defeasance or the Covenant Defeasance were complied with;
- (8) the Issuer must deliver to the trustee an opinion of counsel to the effect that if no intervening bankruptcy of the Issuer occurs between the date of deposit and the 91st day following the date of the deposit and no holder is an insider of the Issuer, then after the 91st day following the date of the deposit the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law; and
- (9) certain other customary conditions precedent are satisfied.

However, the opinion of counsel required by clause (2) above is not required if all notes not theretofore delivered to the trustee for cancellation have become due and payable, will become due and payable on the maturity date within one year or are to be called for redemption within one year under arrangements reasonably satisfactory to the trustee for the giving of notice of redemption by the trustee in the Issuer's name, and at the Issuer's expense.

**Satisfaction and Discharge**

The indenture will be discharged when:

- (1) either (a) all the notes theretofore authenticated and delivered (except lost, stolen or destroyed notes which have been replaced or paid and notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the trustee for cancellation or (b) all notes not theretofore delivered to the trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year, or are to be called for redemption within one year, under arrangements reasonably satisfactory to the trustee for the giving of notice of redemption by the trustee in the name, and at the expense, of the Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the trustee funds in an amount sufficient to pay and discharge the entire indebtedness on the notes not theretofore delivered to the trustee for cancellation, for principal of, premium, if any, and interest on the notes to the date of maturity or redemption,

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as the case may be, together with irrevocable instructions from the Issuer directing the trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

- (2) the Issuer has paid all other sums payable under the indenture by it; and
- (3) the Issuer has delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

When the indenture is discharged, it ceases to be of further effect except for surviving rights of registration or transfer or exchange of the notes.

**Modification of the Indenture and Security Documents**

From time to time, the Issuer, the Guarantors, the trustee and the Notes Collateral Agent, without the consent of the holders, may amend the indenture, the Intercreditor Agreement and the Security Documents to cure ambiguities, defects or inconsistencies, and to add Guarantees, to release the Noteholder Secured Parties' Lien with respect to Collateral in accordance with the terms and conditions of the indenture, the Intercreditor Agreement and the Security Documents or similar provisions, so long as such change does not, in the good faith determination of the Issuer's Board of Directors, adversely affect the rights of any of the holders of the notes in any material respect. In addition, without the consent of the holders, the Issuer, the Guarantors, the trustee and the Notes Collateral Agent may amend the indenture, the Security Documents and the Intercreditor Agreement to provide for the release of Collateral from the Lien of the indenture and the Security Documents when permitted or required by the Security Documents, the Intercreditor Agreement or the indenture, to secure any Other Pari Passu Lien Obligations under the Security Documents and to appropriately include the same in the Intercreditor Agreement, to modify the Intercreditor Agreement to allow for Liens on the Notes Priority Collateral which secure Indebtedness secured by Junior Priority Liens that are senior to the Liens on the Notes Priority Collateral which secure the ABL Obligations, so long as such Junior Priority Liens are junior to the Liens securing the notes to the extent set forth in the definition of Junior Priority Liens (or to include such Indebtedness secured by Junior Priority Liens in the Intercreditor Agreement) or to conform the indenture, any Security Document or the Intercreditor Agreement to this Description of the Notes. In making its determination, the Issuer's Board of Directors may rely on such evidence as it deems appropriate. Other modifications and amendments of the indenture may be made with the consent of the holders of a majority in principal amount of the then outstanding notes issued under the indenture, except that the consent of each holder affected thereby is required to:

- (1) reduce the amount of notes whose holders must consent to an amendment;
- (2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any notes;
- (3) reduce the principal of or change or have the effect of changing the fixed maturity of any notes, or change the date on which any notes may be subject to redemption or reduce the redemption price therefor as described under " Redemption";
- (4) make any notes payable in money other than that stated in the notes;
- (5) make any changes in provisions of the indenture protecting the right of each holder to receive payment of principal of and interest on such note on or after the due date thereof or to bring suit to enforce such payment, or permitting holders of a majority in principal amount of the notes to waive Defaults or Events of Default;
- (6) modify or change any provision of the indenture or the related definitions affecting the ranking of the notes or any Guarantee in a manner which adversely affects the holders;

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- (7) amend, change or modify in any material respect the obligation of the Issuer to make and consummate a Change of Control Offer in the event of a Change of Control which has occurred or modify any of the provisions or definitions with respect thereto after a Change of Control has occurred;
- (8) make any change in the foregoing amendment provisions which require each holder's consent or in the waiver provisions; or
- (9) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Guarantee or the indenture other than in accordance with the terms of the indenture.

In addition, without the consent of the holders of at least 75% in principal amount of the notes then outstanding, (a) no amendment may release from the Lien of the indenture or the notes and the Security Documents all or substantially all of the Collateral otherwise than in accordance with the terms of such Security Documents and (b) no amendment to, or waiver of, the provisions of the indenture or the Security Documents may alter the priority of the Lien securing the Collateral in any manner that adversely affects the rights of the holders of the notes.

**Taking and Destruction**

Upon any Taking or Destruction of any Collateral, all Net Insurance Proceeds received by the Issuer or any Guarantor shall be deemed Net Cash Proceeds and shall be applied in accordance with " Certain Covenants Limitation on Asset Sales."

**Use of Trust Monies**

To the extent received by the trustee pursuant to the provisions of the indenture, the Security Documents or otherwise, all Trust Monies shall be held by the trustee as a part of the Collateral securing the notes and, so long as no Event of Default has occurred and is continuing, shall, at the Issuer's direction, be (a) applied by the trustee from time to time to the payment of the principal of, premium, if any, and interest on any notes at maturity or upon redemption or retirement, or to the purchase of notes upon tender or in the open market or otherwise, in each case in compliance with the indenture or (b) released to the extent such cash would be considered Collateral under the Security Documents following such release.

The trustee shall be entitled to apply any Trust Monies to cure any payment Event of Default. Trust Monies deposited with the trustee shall be invested in Cash Equivalents pursuant to the direction of the Issuer and, so long as no Default or Event of Default has occurred and is continuing, the Issuer shall be entitled to any interest or dividends accrued, earned or paid on such Cash Equivalents.

**Governing Law**

The indenture, the notes and any Guarantee are governed by, and construed in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby.

**The Trustee**

U.S. Bank National Association is the trustee under the indenture and has been appointed to act as registrar and paying agent with respect to the notes. The indenture provides that, except during the continuance of an Event of Default, the trustee will perform only such duties as are specifically set forth in the indenture. During the existence of an Event of Default known to the trustee, the trustee will exercise such rights and powers vested in it by the indenture and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The trustee is under no obligation to exercise any of its rights or powers under the

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indenture at the request of any holder of the notes unless such holder shall have offered the trustee security and indemnity satisfactory to it against any loss, liability or expense which might be incurred by it as a result of complying with such request.

If the trustee becomes a creditor of ours, the indenture and the provisions of the TIA limit the rights of the trustee to obtain payments of its claims or to realize on certain property received in respect of its claims. Subject to the TIA, the trustee will be permitted to engage in other transactions; however, if the trustee acquires any conflicting interest as described in the TIA, it must eliminate such conflict or resign.

**Certain Definitions**

Set forth below is a summary of certain of the defined terms used in the indenture. You should read the indenture for the full definition of all such terms and any other terms used herein for which no definition is provided.

"*ABL Obligations*" means all advances to, and Indebtedness, liabilities, obligations, covenants and duties of the Issuer and the Guarantors (whether for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing such Indebtedness, liabilities, obligations, covenants and duties) arising under (i) the Credit Agreement or otherwise with respect to any loans or letters of credit issued or borrowed pursuant to the Credit Agreement, (ii) any Secured Cash Management Agreement or (iii) any Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Issuer or any Guarantor or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"*Acquired Indebtedness*" means Indebtedness of a Person or any of its Subsidiaries

- (1) existing at the time such Person becomes a Restricted Subsidiary of the Issuer or at the time it merges or consolidates with the Issuer or any of its Restricted Subsidiaries or
- (2) assumed in connection with the acquisition of assets from such Person,

in each case, not incurred by such Person in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary of the Issuer or such acquisition, merger or consolidation.

"*Affiliate*" of any specified Person means any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" and "controlled" shall have correlative meanings.

"*After-Acquired Property*" means any real or personal property of the Issuer or any Guarantor acquired after the Issue Date that is intended to secure the Note Obligations.

"*Applicable Premium*" means, with respect to any note on any redemption date, the greater of:

- (1) 1.0% of the principal amount of the note; or
- (2) the excess of:
  - (a) the present value at such redemption of (i) the redemption price of the note at August 15, 2012 (such redemption price being set forth in the table appearing above under the caption " Optional Redemption"), plus (ii) all required interest payments due on the note through August 15, 2012 (excluding accrued and unpaid interest due on the





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note to the redemption date), computed at a discount using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

- (b) the principal amount of such note.

"*Asset Acquisition*" means:

- (1) an Investment by the Issuer or any of its Restricted Subsidiaries in any other Person pursuant to which such Person shall become a Restricted Subsidiary of the Issuer or shall be merged with or into or consolidated with the Issuer or any Restricted Subsidiary of the Issuer; or
- (2) the acquisition by the Issuer or any of its Restricted Subsidiaries of the assets of any Person (other than a Restricted Subsidiary of the Issuer or any Restricted Subsidiary of the Issuer) which constitute all or substantially all of the assets of such Person or comprise any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

"*Asset Sale*" means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Issuer or any of the Issuer's Restricted Subsidiaries, including any Sale and Leaseback Transaction, to any Person other than the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer of:

- (a) any Capital Stock of any of the Issuer's Restricted Subsidiaries (other than directors' qualifying shares); or
- (b) any other property or assets of the Issuer or any of the Issuer's Restricted Subsidiaries other than in the ordinary course of business.

Notwithstanding the preceding, the following items shall not be deemed Asset Sales:

- (1) a transaction or series of related transactions for which the Issuer and its Restricted Subsidiaries receive aggregate consideration of less than \$7.5 million;
- (2) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the Issuer's assets that is permitted under " Merger, Consolidation and Sale of Assets";
- (3) disposals of equipment in connection with the reinvestment in or the replacement of its equipment and disposals of worn-out or obsolete equipment;
- (4) the sale or disposition of Receivables and Related Assets pursuant to a Qualified Receivables Transaction;
- (5) the grant in the ordinary course of business of licenses to use the Issuer's or any of the Issuer's Restricted Subsidiaries' patents, trademarks and similar intellectual property;
- (6) the disposition of any Capital Stock or other ownership interest in or assets or property of an Unrestricted Subsidiary;
- (7) the release, surrender or waiver of contract, tort or other claims of any kind as a result of settlement of any litigation or threatened litigation;

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- (8) the granting or existence of Liens (and foreclosure thereon) not prohibited by the indenture;
- (9) any Restricted Payment permitted by the covenant described under " Limitation on Restricted Payments" or the making of any Permitted Investment; and
- (10) the disposition of any property or assets acquired in any Asset Acquisition by the Issuer or any Restricted Subsidiary of the Issuer, which disposition is required by any governmental

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agency having jurisdiction over antitrust, competition or similar matters in connection with such Asset Acquisition.

"*Asset Sale Proceeds Account*" means one or more deposit accounts or securities accounts holding the proceeds of any sale or disposition of Notes Collateral.

"*Bankruptcy Law*" means Title 11, U.S. Code, or any similar federal, state or foreign law for the relief of debtors.

"*Bank Collateral Agent*" means the Initial Bank Collateral Agent and any successor or other agent under the Credit Agreement.

"*Bank Lenders*" means (i) the lenders or other holders of Indebtedness issued under the Credit Agreement and (ii) any Cash Management Banks under a Secured Cash Management Agreement and the Hedge Banks under Secured Hedge Agreements, in each case to the extent permitted to be incurred under the indenture.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as such term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition, regardless of when such right may be exercised.

"*Board of Directors*" of any Person means the board of directors or equivalent governing board of such Person or any duly authorized committee thereof.

"*Board Resolution*" means a copy of a resolution certified by the Secretary or an Assistant Secretary of any Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the trustee.

"*Capitalized Lease Obligation*" means, at the time any determination thereof is to be made, the amount of the liability of a Person under a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, with the stated maturity being the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"*Capital Stock*" means:

- (1) in the case of a corporation, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents (however designated and whether or not voting) of corporate stock; and
- (2) with respect to any other Person, any and all partnership, membership, limited liability company interests or other equity interests of such Person.

"*Cash Management Agreement*" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"*Cash Management Bank*" means any Person that, at the time it enters into a Cash Management Agreement, is a lender under the Credit Agreement or an Affiliate of a lender under the Credit Agreement, in such Person's capacity as a party to such Cash Management Agreement.

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"Cash Equivalents" means:

- (1) U.S. dollars, Canadian dollars and, in the case of any of the Issuer's Foreign Restricted Subsidiaries, such local currencies held by them from time to time in the ordinary course of business;
- (2) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency of those countries and backed by the full faith and credit of the respective country, in each case maturing within one year from the date of acquisition;
- (3) marketable direct obligations issued by any State of the United States of America or any political subdivision of any such State or any public instrumentality maturing within one year from the date of acquisition and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Ratings Services ("S&P") or Moody's Investors Service, Inc. ("Moody's") or, if Moody's and S&P cease to exist, any other nationally recognized statistical rating organization designated by the Issuer's Board of Directors;
- (4) commercial paper maturing no more than one year from the date it is created and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's or, if Moody's and S&P cease to exist, the equivalent from any other nationally recognized statistical rating organization designated by the Issuer's Board of Directors;
- (5) time deposits, certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition issued by any bank (which may include the trustee) organized under the laws of the United States of America or any State or the District of Columbia or any foreign jurisdiction having at the date of acquisition combined capital and surplus of at least \$250.0 million;
- (6) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clause (2) above entered into with any bank (which may include the trustee) meeting the qualifications specified in clause (5) above;
- (7) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency of those countries and backed by the full faith and credit of the respective country, in each case maturing within ninety days from the date of acquisition; *provided* that the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on February 11, 1998;
- (8) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (2) through (7) above; and
- (9) debt securities maturing within one year from the date of acquisition issued by any company organized under the laws of the United States of America and, at the time of acquisition, having a rating of at least A from S&P or at least A2 from Moody's or, if Moody's and S&P cease to exist, the equivalent from any other nationally recognized statistical rating organization designated by the Issuer's Board of Directors.

"Change of Control" means the occurrence of one or more of the following:

- (1) any sale, lease, exchange, conveyance, disposition or other transfer, in one or a series of related transactions, of all or substantially all of the Issuer's assets to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "Group"), together with any Affiliates of such Person, other than to the Permitted Holders;



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- (2) any approval, adoption or initiation of a plan or proposal for the Issuer's liquidation or dissolution;
- (3) any Person or Group, together with any Affiliates, other than the Permitted Holders, shall become the Beneficial Owner or owner of record, by way of merger, consolidation or other business combinations or by purchase in one transaction or a series of related transactions, of shares representing 50% or more of the aggregate ordinary voting power represented by the Issuer's issued and outstanding Capital Stock; or
- (4) any Person or Group, together with any Affiliates thereof, other than Permitted Holders, shall succeed in having a sufficient number of its nominees elected to the Issuer's Board of Directors such that such nominees, when added to any existing director remaining on the Issuer's Board of Directors after such election who was a nominee of or is an Affiliate of such Person or Group, will constitute a majority of the Issuer's Board of Directors.

A recent Delaware court case has implied that the provisions in clause (4) above may be unenforceable on public policy grounds. No assurances can be given that a court would enforce clause (4) as written for the benefit of holders of the notes.

"*Commission*" means the United States Securities and Exchange Commission.

"*Commodity Agreement*" means any commodity futures contract, commodity option or other similar agreement or arrangement entered into by the Issuer or any of its Restricted Subsidiaries designed to protect the Issuer or any of its Restricted Subsidiaries against fluctuations in the price of the commodities at the time used in the ordinary course of the Issuer's business or the business of any of the Issuer's Restricted Subsidiaries.

"*Common Stock*" means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of, such Person's common stock, whether outstanding on the Issue Date or issued after the Issue Date, including all series and classes of such common stock.

"*Consolidated EBITDA*" means, with respect to any Person, for any period, the sum (without duplication) of:

- (1) Consolidated Net Income; and
- (2) to the extent Consolidated Net Income has been reduced by the following,
  - (a) all income taxes of such Person and its Restricted Subsidiaries paid or accrued in accordance with GAAP for such period (other than income taxes attributable to extraordinary, unusual or nonrecurring gains or losses or taxes attributable to sales or dispositions outside the ordinary course of business),
  - (b) Consolidated Interest Expense, and
  - (c) Consolidated Non-cash Charges less any non-cash items increasing Consolidated Net Income for such period,

all as determined on a consolidated basis for such Person and its Restricted Subsidiaries in accordance with GAAP as applicable.

"*Consolidated First Lien Leverage Ratio*" means, as of the date of determination, the ratio of (a) the principal amount of the notes outstanding at such date plus, without duplication, the Consolidated Indebtedness of the Issuer and its Restricted Subsidiaries on such date that is secured by Liens on the Notes Collateral which are *pari passu* with or senior in priority to the Liens securing the notes and related Guarantees to (b) Consolidated EBITDA of the Issuer and its Restricted Subsidiaries during the four full fiscal quarters for which financial statements are available ending on or prior to the





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date of the transaction giving rise to the need to calculate the Consolidated First Lien Leverage Ratio, in each case with such pro forma adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"*Consolidated Fixed Charge Coverage Ratio*" means, with respect to any Person, the ratio of Consolidated EBITDA of such Person during the four full fiscal quarters for which financial statements are available (the "*Four Quarter Period*") ending on or prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the "*Transaction Date*") to Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, "Consolidated EBITDA" and "Consolidated Fixed Charges" shall be calculated after giving effect on a *pro forma* basis (consistent with the provisions below) for the period of such calculation to:

- (1) the incurrence or repayment of any Indebtedness of such Person or any of its Restricted Subsidiaries (and the application of the proceeds thereof) giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness (and the application of the proceeds thereof), other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to working capital facilities, occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and
- (2) any Asset Acquisition or Asset Sale (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of such Person or one of its Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness) and also including any Consolidated EBITDA (including any *pro forma* expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) attributable to the assets which are the subject of the Asset Acquisition or Asset Sale during the Four Quarter Period) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Acquisition or Asset Sale (including the incurrence, assumption or liability for any such Acquired Indebtedness) occurred on the first day of the Four Quarter Period. If such Person or any of its Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness as if such Person or any Restricted Subsidiary of such Person had directly incurred or otherwise assumed such guaranteed Indebtedness.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

- (1) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on the Transaction Date; and
- (2) notwithstanding clause (1) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Swap Obligations or Currency Agreements, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

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

- (1) Consolidated Interest Expense, plus
- (2) the product of (x) the amount of all dividend payments on any series of Preferred Stock of such Person or its Restricted Subsidiaries (other than dividends either to the Issuer or a Wholly-Owned Restricted Subsidiary of the Issuer or paid in Qualified Capital Stock of such Person) paid, accrued or scheduled to be paid or accrued during such period times (y) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local income tax rate of such Person, expressed as a decimal.

"*Consolidated Indebtedness*" means, as of any date of determination, the sum, without duplication, of (1) the total amount of Indebtedness of the Issuer and its Restricted Subsidiaries, plus (2) the greater of the aggregate liquidation value and maximum fixed repurchase price without regard to any change of control or redemption premiums of all Disqualified Capital Stock of the Issuer and its Restricted Subsidiaries and all Preferred Stock of its Restricted Subsidiaries that are not Guarantors, in each case determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, the sum of, without duplication:

- (1) the aggregate of the interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, including, without limitation,
  - (a) any amortization of debt discount and amortization or write-off of deferred financing costs (including the amortization of costs relating to interest rate caps or other similar agreements), but excluding (x) the write-off of deferred financing costs as a result of prepayment of Indebtedness on the Issue Date described in the offering circular dated August 11, 2009, related to the initial notes and (y) the amortization of deferred financing costs recorded on the Issue Date in connection with the notes and the Credit Agreement,
  - (b) the net costs under Interest Swap Obligations,
  - (c) all capitalized interest,
  - (d) the interest portion of any deferred payment obligation, and
  - (e) all fees payable in connection with the issuance of letters of credit or availability under a letter of credit facility; and
- (2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period as determined on a consolidated basis in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Restricted Subsidiaries for such period on a consolidated basis, determined in accordance with GAAP; *provided* that the following shall be excluded:

- (1) after-tax gains or losses from Asset Sales or abandonments or reserves relating thereto;
- (2) after-tax items classified as extraordinary or nonrecurring gains or losses;
- (3)

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the net income (but not loss) of any Restricted Subsidiary of the referent Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is prohibited by contract, operation of law or otherwise;

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- (4) the net income of any Person, other than a Restricted Subsidiary of the referent Person, except to the extent of cash dividends or distributions paid to the referent Person or to a Restricted Subsidiary of the referent Person by such Person;
- (5) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued);
- (6) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person's assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets;
- (7) gains or losses from the cumulative effect of any change in accounting principles occurring after the Issue Date; and
- (8) the write-off of deferred financing costs as a result of, and the cost of terminating interest rate swaps (if any) in connection with the prepayments of outstanding Indebtedness on the Issue Date.

"*Consolidated Non-cash Charges*" means, with respect to any Person for any period, the aggregate depreciation, amortization, accretion and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charges constituting an extraordinary item or loss or any such charge (other than non-cash accretion of environmental liabilities required by GAAP) which requires an accrual of or a reserve for cash charges for any future period).

"*Credit Agreement*" means, collectively, (i) one or more credit facilities, including, without limitation, the credit agreement dated as of July 31, 2009, among the Issuer, as borrower, the financial institutions party to such agreement in their capacities as lenders, Bank of America, N.A., as administrative agent, and certain other parties and (ii) the related documents (including, without limitation, any guarantee agreements, promissory notes, fee letters and security documents), in each case as such agreements, other agreements and security documents may be amended (including any amendment and restatement), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of available borrowings or availability of letters of credit thereunder or adding Restricted Subsidiaries of the Issuer as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreements, other agreements or any successor or replacement agreement or agreements and whether by the same or any other agent, lender or group of lenders, or issuers of letters of credit.

"*Currency Agreement*" means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect the Issuer or any Restricted Subsidiary of the Issuer against fluctuations in currency values.

"*Debtor Relief Laws*" means the Bankruptcy Law, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws or regulations of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"*Default*" means an event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Destruction*" means any damage to, loss or destruction of all or any portion of the Collateral.

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"*Discharge of ABL Obligations*" means the date on which the ABL Obligations have been paid in full, in cash, all commitments to extend credit thereunder shall have been terminated and the ABL Obligations is no longer secured by the ABL Collateral; *provided* that the Discharge of ABL Obligations shall not be deemed to have occurred in connection with a refinancing of such ABL Obligations with Indebtedness secured by the ABL Collateral on a first-priority basis under an agreement that has been designated in writing by the administrative agent under the Credit Facility so refinancing the Credit Agreement and the trustee in accordance with the terms of the Intercreditor Agreement.

"*Disqualified Capital Stock*" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control), matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control) on or prior to the final maturity date of the notes.

"*Domestic Restricted Subsidiary*" means any Restricted Subsidiary of the Issuer incorporated or otherwise organized or existing under the laws of the United States, any State or the District of Columbia, other than any Restricted Subsidiary that is a Subsidiary of a Foreign Restricted Subsidiary.

"*Equity Offering*" means a public or private sale of Qualified Capital Stock (other than on Form S-4 or S-8 or any successor Forms thereto) of the Issuer.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statutes.

"*fair market value*" means with respect to any asset or property, the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair market value shall be determined conclusively by the Issuer's Board of Directors acting reasonably and in good faith and, to the extent otherwise required by the indenture, shall be evidenced by a Board Resolution of the Issuer's Board of Directors delivered to the trustee.

"*Foreign Restricted Subsidiary*" means any of the Issuer's Restricted Subsidiaries incorporated or organized in any jurisdiction outside of the United States.

"*Foreign Subsidiary Total Assets*" means the total assets of Foreign Restricted Subsidiaries of the Issuer, determined on a consolidated basis in accordance with GAAP, as of the most recent balance sheet of the Issuer.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Issue Date.

"*guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any obligation, direct or indirect, contingent or otherwise, of such Person

(1)

to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services (unless such purchase arrangements are on arm's-length terms and are entered into in the ordinary course of business), to take-or-pay or to maintain financial statement conditions or otherwise), or

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- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part).

Notwithstanding the preceding, "guarantee" does not include endorsements for collection or deposit in the ordinary course of business. The term "guarantee" used as a verb has a corresponding meaning.

"*Guarantee*" means the guarantee by each Guarantor of the Issuer's obligations under the indenture.

"*Guarantor*" means:

- (1) each Domestic Restricted Subsidiary on the Issue Date;
- (2) each Restricted Subsidiary required to execute and deliver a Guarantee pursuant to the "Limitation on Issuances of Guarantees by Restricted Subsidiaries" and "Future Guarantors" covenants; and
- (3) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of the indenture as a Guarantor;

*provided* that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its Guarantee is released in accordance with the terms of the indenture.

"*Hedge Bank*" means any Person that, at the time it enters into a Swap Contract permitted under the indenture, is a lender under the Credit Agreement or an Affiliate of a lender under the Credit Agreement, in such Person's capacity as a party to such Swap Contract.

"*Indebtedness*" means with respect to any Person any indebtedness of such Person, without duplication, in respect of:

- (1) all Obligations for borrowed money;
- (2) all Obligations evidenced by bonds, debentures, notes or other similar instruments;
- (3) all Capitalized Lease Obligations;
- (4) the deferred and unpaid purchase price of property, all conditional sale obligations and all obligations under any title retention agreement, but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business that are not overdue by 120 days or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;
- (5) all Obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction;
- (6) guarantees and other contingent Obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (8) below;
- (7) all Obligations of any other Person of the type referred to in clauses (1) through (6) which are secured by any Lien on any property or asset of such Person, the amount of such Obligations being deemed to be the lesser of the fair market value of such property or asset or the amount of the Obligation so secured;
- (8)



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- (9) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

For purposes of this definition of Indebtedness, the "maximum fixed repurchase price" of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to the indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock. For purposes of the covenant described above under the caption "Limitation on Incurrence of Additional Indebtedness," in determining the principal amount of any Indebtedness to be incurred by the Issuer or any Restricted Subsidiary or which is outstanding at any date, the principal amount of any Indebtedness which provides that an amount less than the principal amount shall be due upon any declaration of acceleration shall be the accreted value of the Indebtedness at the date of determination.

"*Independent Financial Advisor*" means a firm:

- (1) which does not have a direct or indirect common equity interest in the Issuer; and
- (2) which, in the judgment of the Issuer's Board of Directors, is otherwise independent and qualified to perform the task for which it is to be engaged.

"*Initial ABL Agent*" means Bank of America, N.A., in its capacity as administrative agent under the Credit Agreement, including its successors and assigns from time to time.

"*Interest Swap Obligations*" means the obligations of any Person pursuant to any arrangement with any other Person, whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated notional amount in exchange for periodic payments made by such other Person calculated by applying a fixed or a floating rate of interest on the same notional amount and shall include, without limitation, interest rate swaps, caps, floors, collars and similar agreements.

"*Investment*" means, with respect to any Person, any direct or indirect loan or other extension of credit, including a guarantee, or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any Person. "Investment" does not include extensions of trade credit by, prepayment of expenses by, and receivables owing to, the Issuer and its Restricted Subsidiaries on commercially reasonable terms in accordance with the Issuer's normal trade practices or those of such Restricted Subsidiary, as the case may be. For purposes of the "Limitation on Restricted Payments" covenant:

- (1) "Investment" shall include and be valued at the fair market value of the net assets of any Restricted Subsidiary of the Issuer at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary of the Issuer and shall exclude the fair market value of the net assets of any Unrestricted Subsidiary of the Issuer at the time that such Unrestricted Subsidiary is designated a Restricted Subsidiary of ours; and
- (2) the amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments by the Issuer or any of its Restricted Subsidiaries, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, reduced by the payment of dividends or distributions in



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connection with such Investment or any other amounts received in respect of such Investment; *provided* that no such payment of dividends or distributions or receipt of any such other amounts shall reduce the amount of any Investment if such payment of dividends or distributions or receipt of any such amounts would be included in Consolidated Net Income.

If the Issuer or any of its Restricted Subsidiaries of the Issuer sells or otherwise disposes of any Common Stock of any direct or indirect Restricted Subsidiary of the Issuer such that, after giving effect to any such sale or disposition, such Person ceases to be a Restricted Subsidiary of the Issuer, the Issuer shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Common Stock of that Restricted Subsidiary not sold or disposed of.

"*Issue Date*" means August 14, 2009.

"*Junior Lien Priority*" means, relative to specified Indebtedness, having a Junior Lien Priority on specified Collateral and either subject to the Intercreditor Agreement in the capacity of "Junior Secured Notes" or subject to intercreditor agreements providing holders of Indebtedness with Junior Lien Priority with a priority no greater than that held by the holders of ABL Obligations with respect to the Notes Collateral pursuant to the Intercreditor Agreement as to the specified Collateral.

"*Lien*" means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest.

"*Net Cash Proceeds*" means (a) with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by the Issuer or any of its Restricted Subsidiaries from such Asset Sale net of:

- (1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);
- (2) taxes paid or payable after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;
- (3) any repayment of Indebtedness that is secured by the property or assets that are the subject of such Asset Sale;
- (4) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Issuer or such Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale; and
- (5) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or joint ventures as a result of such Asset Sale;

and (b) with respect to any issuance or sale of Capital Stock, the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' or initial purchasers' fees, discounts or commissions and brokerage, consultant and other fees and expenses actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

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"*Net Insurance Proceeds*" means the insurance proceeds (excluding liability insurance proceeds payable to the trustee for any loss, liability or expense incurred by it and excluding the proceeds of business interruption insurance) or condemnation awards actually received by the Issuer or any Restricted Subsidiary of the Issuer as a result of the Destruction or Taking of all or any portion of the Collateral, net of:

- (1) reasonable out-of-pocket expenses and fees relating to such Taking or Destruction (including, without limitation, expenses of attorneys and insurance adjusters); and
- (2) repayment of Indebtedness that is secured by the property or assets that are the subject of such Taking or Destruction; *provided* that, in the case of any Destruction or Taking involving Collateral, the Lien securing such Indebtedness constitutes a Lien permitted by the indenture to be prior to the Lien granted to the Notes Collateral Agent for the benefit of the Noteholder Secured Parties pursuant to the Security Documents.

"*New Domestic Restricted Subsidiary*" has the meaning set forth in the "Future Guarantors" covenant.

"*Non-Conforming Plan of Reorganization*" means any plan of reorganization that grants any Noteholder Secured Party any right or benefit, directly or indirectly, which right or benefit is prohibited at such time by the provisions of the Intercreditor Agreement.

"*Note Obligations*" means all advances to, and Indebtedness, liabilities, obligations, covenants and duties of, the Issuer and the Guarantors (whether for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing such Indebtedness, liabilities, obligations, covenants and duties) arising under (i) the notes, the Guarantees, the Security Documents, the indenture or otherwise, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Issuer or any Guarantor or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

"*Other Pari Passu Lien Obligations*" means any Additional Notes and any other Indebtedness having (i) Pari Passu Lien Priority relative to the notes with respect to the Notes Collateral, (ii) either Pari Passu Lien Priority, Junior Lien Priority or no Lien relative to the notes with respect to the ABL Collateral and (iii) substantially identical terms as the notes (other than issue price, interest rate, yield and redemption terms) and any Indebtedness that refinances or refunds (or successive refinancings and refundings) any notes or Additional Notes and all obligations with respect to such Indebtedness; *provided*, that such Indebtedness may (a) contain terms and covenants that are, in the reasonable opinion of the Issuer, less restrictive to the Issuer and the Restricted Subsidiaries than the terms and covenants under the notes; *provided* that such Indebtedness has Pari Passu Lien Priority relative to the notes; and (b) contain terms and covenants that are more restrictive to the Issuer and its Restricted Subsidiaries than the terms and covenants under the notes so long as prior to or substantially simultaneously with the issuance of any such Indebtedness, the notes and the Indenture are amended to contain any such more restrictive terms and covenants; *provided* further, that such Indebtedness shall have a stated maturity date that is the same as or later than that of the notes.

"*Pari Passu Lien Priority*" means, relative to specified Indebtedness, having equal Lien priority on specified Collateral and either subject to the Intercreditor Agreement on a substantially identical basis as the holders of such specified Indebtedness or subject to intercreditor agreements providing holders

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of the Indebtedness intended to have Pari Passu Lien Priority with substantially the same rights and obligations that the holders of such specified Indebtedness have pursuant to the Intercreditor Agreement as to the specified Collateral.

"*Permitted Business*" means the business of the Issuer and the Issuer's Restricted Subsidiaries as existing on the Issue Date and any other businesses that are the same, similar or reasonably related, ancillary or complementary thereto and reasonable extensions thereof.

"*Permitted Holders*" means (i) Alan S. McKim; (ii) the spouse and lineal descendants of Alan S. McKim; (iii) any controlled Affiliate of any of the foregoing; (iv) in the event of the incompetence or death of any of the Persons described in clause (i) or (ii), such Person's estate, executor, administrator, committee or other personal representative, in each case who at any particular date will beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Issuer owned by such Person; or (v) any trusts, general partnerships or limited partnerships created for the benefit of the Persons described in clause (i), (ii), or (iv) or any trust for the benefit of any such trust general partnership or limited partnership.

"*Permitted Indebtedness*" means, without duplication, each of the following:

- (1) Indebtedness under the initial notes issued on the Issue Date and the Exchange Notes with respect to such initial notes and any Guarantees thereof;
- (2) Indebtedness (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Issuer and its Restricted Subsidiaries thereunder) outstanding under the Credit Agreement by the Issuer and its Restricted Subsidiaries in an aggregate principal amount at any time outstanding not to exceed the greater of (a) \$150.0 million less the amount of all repayments (if such repayments are under a revolving credit agreement, to the extent accompanied by a permanent commitment reduction) under the Credit Agreement with Net Cash Proceeds of Asset Sales applied thereto as required by clause (3)(a)(x) of paragraph (b) of the "Limitation on Asset Sales" covenant and (b) 85% of the book value of the Issuer's and its Restricted Subsidiaries' accounts receivable; *provided* that the aggregate principal amount of Indebtedness permitted to be incurred from time to time under this clause (2)(b) shall be reduced dollar for dollar by the amount of Indebtedness then outstanding under clause (12) below; *provided* further that any Indebtedness incurred pursuant to the Credit Agreement on the Issue Date shall be deemed to be incurred under this clause (2);
- (3) Indebtedness of the Issuer and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness in respect of (w) the Credit Agreement, (x) any debt instrument of Eveready or any of its Subsidiaries to be repaid in connection with the acquisition thereof, (y) the Issuer's 11<sup>1</sup>/<sub>4</sub>% Senior Secured Notes due 2012 (which were discharged prior to the Issue Date) and (z) Indebtedness referred to in clause (1) of this definition) reduced by the amount of any scheduled amortization payments or mandatory prepayments when actually paid or permanent reductions therein;
- (4) Interest Swap Obligations of the Issuer covering Indebtedness of the Issuer or any of its Restricted Subsidiaries and Interest Swap Obligations of any Restricted Subsidiary of the Issuer covering Indebtedness of the Issuer or such Restricted Subsidiary; *provided, however*, that such Interest Swap Obligations are in a notional principal amount that does not exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates and are entered into for bona fide hedging purposes and not for speculation;
- (5) Indebtedness under Currency Agreements; *provided* that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of the Issuer and its Restricted Subsidiaries outstanding other than as a result of fluctuations in

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foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

- (6) Indebtedness of a Restricted Subsidiary of the Issuer to the Issuer or to a Wholly Owned Restricted Subsidiary of the Issuer for so long as such Indebtedness is held by the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer in each case subject to no Lien held by a Person other than the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer; *provided* that if as of any date any Person other than the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer owns or holds any such Indebtedness or holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause (6) by the issuer of such Indebtedness;
- (7) Indebtedness of the Issuer to a Wholly Owned Restricted Subsidiary of the Issuer for so long as such Indebtedness is held by a Wholly Owned Restricted Subsidiary of the Issuer; *provided* that (a) any Indebtedness of the Issuer to any Wholly Owned Restricted Subsidiary of the Issuer is unsecured and subordinated, pursuant to a written agreement, to the Issuer's obligations under the indenture and the notes and (b) if as of any date any Person other than a Wholly Owned Restricted Subsidiary of the Issuer owns or holds any such Indebtedness or any Person holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause (7) by the Issuer;
- (8) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within two business days of incurrence;
- (9) Indebtedness of the Issuer or any of its Restricted Subsidiaries in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;
- (10) Indebtedness represented by Capitalized Lease Obligations and Purchase Money Indebtedness of the Issuer and its Restricted Subsidiaries not to exceed \$50.0 million in the aggregate at any one time outstanding;
- (11) Indebtedness under Commodity Agreements;
- (12) the incurrence by a Receivables Entity of Indebtedness in a Qualified Receivables Transaction that is without recourse (other than pursuant to representations, warranties, covenants and indemnities entered into the ordinary course of business in connection with a Qualified Receivables Transaction) to the Issuer or to any Restricted Subsidiary of the Issuer or its assets (other than such Receivables Entity and its Receivables and Related Assets), and is not guaranteed by any such Person; *provided* that any outstanding Indebtedness incurred under this clause (12) shall reduce (for so long as, and to the extent that, the Indebtedness referred to in this clause (12) remains outstanding) the aggregate amount of Indebtedness permitted to be incurred under clause (2) above to the extent set forth therein;
- (13) Refinancing Indebtedness;
- (14) Indebtedness of Foreign Restricted Subsidiaries of the Issuer in an amount not to exceed at any one time outstanding, together with any other Indebtedness incurred under this clause (14), 15% of the Foreign Subsidiary Total Assets at such time; and
- (15) additional Indebtedness of the Issuer and its Restricted Subsidiaries in an aggregate principal amount not to exceed \$50.0 million at any one time outstanding.

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For purposes of determining compliance with the "Limitation on Incurrence of Additional Indebtedness" covenant,

- (a) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (15) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of such covenant, the Issuer shall, in its sole discretion, classify (or later reclassify) such item of Indebtedness in any manner that complies with such covenant,
- (b) accrual of interest, accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms or in the form of Capital Stock, the payment of dividends on Disqualified Capital Stock in the form of additional shares of the same class of Disqualified Capital Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock for purposes of the "Limitation on Incurrence of Additional Indebtedness" covenant,
- (c) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included,
- (d) if obligations in respect of letters of credit are incurred pursuant to the Credit Agreement and are being treated as incurred pursuant to clause (2) above and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included, and
- (e) if such Indebtedness is denominated in a currency other than U.S. dollars, the U.S. dollar equivalent principal amount thereof will be calculated based on the relevant currency exchange rates in effect on the date such Indebtedness was incurred.

"Permitted Investments" means:

- (1) Investments by the Issuer or any Restricted Subsidiary of the Issuer in any Person that is or will become immediately after such Investment a Restricted Subsidiary of the Issuer or that will merge or consolidate into the Issuer or a Restricted Subsidiary of the Issuer; *provided* that such Restricted Subsidiary of the Issuer is not restricted from making dividends or similar distributions by contract, operation of law or otherwise other than as permitted by the "Limitations on Dividend and Other Payment Restrictions Affecting Subsidiaries" covenant;
- (2) Investments in the Issuer by any Restricted Subsidiary of the Issuer; *provided* that any Indebtedness evidencing such Investment is unsecured and subordinated, pursuant to a written agreement, to the Issuer's obligations under the notes and the indenture;
- (3) Investments in cash and Cash Equivalents;
- (4) loans and advances to employees and officers of the Issuer and its Restricted Subsidiaries made (a) in the ordinary course of business for bona fide business purposes not to exceed \$2.0 million in the aggregate at any one time outstanding or (b) to fund purchases of the Issuer's Capital Stock under any stock option plan or similar employment arrangements so long as no cash is actually advanced by the Issuer or any of its Restricted Subsidiaries to such employees and officers to fund such purchases;
- (5) Currency Agreements, Commodity Agreements and Interest Swap Obligations entered into in the ordinary course of the Issuer's or its Restricted Subsidiaries' businesses and otherwise in compliance with the indenture;



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- (6) Investments in securities of trade creditors or customers received
  - (a) pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers; or
  - (b) in settlement of delinquent obligations of, and other disputes with, customers, suppliers and others, in each case arising in the ordinary course of business or otherwise in satisfaction of a judgment;
- (7) Investments made by the Issuer or its Restricted Subsidiaries consisting of consideration received in connection with an Asset Sale made in compliance with the "Limitation on Asset Sales" covenant;
- (8) Investments of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of the Issuer or at the time such Person merges or consolidates with the Issuer or any of its Restricted Subsidiaries, in either case in compliance with the indenture; *provided* that such Investments were not made by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Issuer or such merger or consolidation;
- (9) Investments in the notes;
- (10) Investments in existence on the Issue Date;
- (11) (a) an Investment in a trust, limited liability company, special purpose entity or other similar entity in connection with a Qualified Receivables Transaction; *provided* that (A) such Investment is made by a Receivables Entity and (B) the only assets transferred to such trust, limited liability company, special purpose entity or other similar entity consist of Receivables and Related Assets of such Receivables Entity, and (b) Investments of funds in any accounts permitted or required by the arrangements governing a Qualified Receivables Transaction;
- (12) guarantees of Indebtedness to the extent permitted pursuant to the "Limitation on Incurrence of Additional Indebtedness," "Limitation on Issuances of Guarantees by Restricted Subsidiaries" and "Future Guarantors" covenants; and
- (13) additional Investments (including Investments in joint ventures and Unrestricted Subsidiaries) not to exceed \$50.0 million at any one time outstanding.

"Permitted Liens" means the following types of Liens:

- (1) Liens for taxes, assessments or governmental charges or claims that are either (a) not delinquent or (b) being contested in good faith by appropriate proceedings (*provided* that such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Liens) and as to which the Issuer or its Restricted Subsidiaries shall have set aside on their books such reserves, if any, as shall be required in conformity with
  - (x) GAAP in the case of a Domestic Restricted Subsidiary (or any Subsidiary of a Foreign Restricted Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia), and
  - (y) generally accepted accounting principles in effect from time to time in the applicable jurisdiction, in the case of a Foreign Restricted Subsidiary;

(2)

statutory and common law Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen, customs and revenue authorities and other Liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith by appropriate proceedings (*provided* that such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Liens), if



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such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

- (3) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, financial assurance and other statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations, including any pledge or deposit securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith (exclusive of obligations for the payment of borrowed money);
- (4) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;
- (5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens, incidental to the conduct of the business of the Issuer and their Restricted Subsidiaries or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially and adversely affect the value of the properties affected thereby or materially impair such properties' use in the operation of the business of the Issuer and its Restricted Subsidiaries;
- (6) leases and subleases of real property granted to others in the ordinary course of business so long as such leases and subleases are subordinate in all respects to the Liens granted and evidenced by the Security Documents and which do not materially interfere with the ordinary conduct of the business of the Issuer and its Restricted Subsidiaries;
- (7) Liens securing Indebtedness permitted pursuant to clause (10) of the definition of "Permitted Indebtedness"; *provided, however*, that (i) in the case of Capitalized Lease Obligations, such Liens do not extend to any property or asset which is not leased property subject to such Capitalized Lease Obligation and (ii) in the case of Purchase Money Indebtedness (a) the Indebtedness shall not exceed the cost of such property or assets and shall not be secured by any property or assets of ours or any Restricted Subsidiary of ours other than the property and assets so acquired or constructed and any improvements thereon and (b) the Lien securing such Indebtedness shall be created within 90 days of such acquisition or construction or, in the case of a refinancing of any Purchase Money Indebtedness, within 90 days of such refinancing;
- (8) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or similar credit transactions issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (9) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other personal property relating to such letters of credit and products and proceeds thereof;
- (10) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Issuer or any of its Restricted Subsidiaries, including rights of offset and set-off;

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- (11) Liens securing Interest Swap Obligations so long as the Interest Swap Obligations relate to Indebtedness that is otherwise permitted under the indenture;
- (12) Liens in the ordinary course of business not exceeding \$5.0 million at any one time outstanding that (a) are not incurred in connection with borrowing money and (b) do not materially detract from the value of the property or materially impair its use;
- (13) Liens by reason of judgment or decree not otherwise resulting in a Default;
- (14) Liens securing Indebtedness under Currency Agreements and Commodity Agreements permitted under the indenture;
- (15) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with importation of goods;
- (16) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;
- (17) Liens securing Acquired Indebtedness incurred in accordance with the "Limitation on Incurrence of Additional Indebtedness" covenant; *provided* that:
- (a) such Liens secured such Acquired Indebtedness at the time of and prior to the incurrence of such Acquired Indebtedness by the Issuer or a Restricted Subsidiary of the Issuer and were not granted in connection with, or in anticipation of, the incurrence of such Acquired Indebtedness by the Issuer or a Restricted Subsidiary of the Issuer; and
- (b) such Liens do not extend to or cover any property or assets of the Issuer or of any of its Restricted Subsidiaries other than the property or assets that secured the Acquired Indebtedness prior to the time such Indebtedness became Acquired Indebtedness of the Issuer or a Restricted Subsidiary of the Issuer and are no more favorable to the lienholders than those securing the Acquired Indebtedness prior to the incurrence of such Acquired Indebtedness by the Issuer or a Restricted Subsidiary of the Issuer;
- (18) Liens securing insurance premium financing arrangements; *provided* that such Lien is limited to the applicable insurance contracts;
- (19) Liens on Receivables and Related Assets to reflect sales of receivables pursuant to a Qualified Receivables Transaction; and
- (20) Liens on assets of Foreign Restricted Subsidiaries securing Indebtedness of Foreign Restricted Subsidiaries incurred pursuant to clause (14) of the definition of "Permitted Indebtedness."

"*Person*" means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof or any other entity.

"*Preferred Stock*" of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

"*Purchase Money Indebtedness*" means Indebtedness of the Issuer and its Restricted Subsidiaries incurred in the normal course of business for the purpose of financing all or any part of the purchase price, or the cost of installation, construction or improvement, of property or

equipment or other related assets and any Refinancing thereof.

"*Qualified Capital Stock*" means any Capital Stock that is not Disqualified Capital Stock.

"*Qualified Receivables Transaction*" means any transaction or series of transactions that may be entered into by the Issuer or any of its Restricted Subsidiaries in which the Issuer or any of its

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Restricted Subsidiaries may sell, convey or otherwise transfer to (1) a Receivables Entity (in the case of a transfer by the issuer or any of its Restricted Subsidiaries) and (2) any other Person (in the case of a transfer by a Receivables Entity), or may grant a security interest in Receivables and Related Assets; *provided* that such transaction is on market terms at the time the Issuer or such Restricted Subsidiary or the Receivables Entity entered into the transaction.

"*Receivables and Related Assets*" means any accounts receivable (whether existing on the Issue Date or arising thereafter) of the Issuer or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable.

"*Receivables Entity*" means a Wholly Owned Restricted Subsidiary of the Issuer (or another Person in which the Issuer or any Subsidiary of the Issuer makes an Investment and to which the Issuer or any Subsidiary of the Issuer transfers Receivables and Related Assets) that engages in no activities other than in connection with the financing of accounts receivable and that is designated by the Board of Directors of the Issuer (as provided below) as a Receivables Entity:

- (1) no portion of the Indebtedness or any other Obligations (contingent or otherwise) of which
  - (a) is guaranteed by the Issuer or any Restricted Subsidiary of the Issuer (excluding guarantees of Obligations (other than the principal of, and interest on, Indebtedness) pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction),
  - (b) is recourse to or obligates the Issuer or any Restricted Subsidiary of the Issuer in any way other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction; or
  - (c) subjects any property or asset of the Issuer or of any Restricted Subsidiary of the Issuer (other than another Receivables Entity), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction;
- (2) with which neither the Issuer nor any Restricted Subsidiary of the Issuer has any material contract, agreement, arrangement or understanding other than on terms no less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer, other than fees payable in the ordinary course of business in connection with servicing accounts receivable; and
- (3) with which neither the Issuer nor any Restricted Subsidiary of the Issuer has any obligation to maintain or preserve such Restricted Subsidiary's financial condition or cause such Restricted Subsidiary to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Issuer shall be evidenced to the trustee by filing with the trustee a Board Resolution giving effect to such designation and an officers' certificate certifying that such designation complied with the preceding conditions.

"*Refinance*" means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. "Refinanced" and "Refinancing" shall have correlative meanings.

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"*Refinancing Indebtedness*" means any Refinancing by the Issuer or any Restricted Subsidiary of the Issuer of (A) for purposes of clause (13) of the definition of "Permitted Indebtedness," Indebtedness incurred or existing in accordance with the "Limitation on Incurrence of Additional Indebtedness" covenant (other than pursuant to clause (2), (4), (5), (6), (7), (8), (9), (10), (11), (12), (14) or (15) of the definition of "Permitted Indebtedness") or (B) for any other purpose, Indebtedness incurred in accordance with the "Limitation on Incurrence of Additional Indebtedness" covenant, in each case that does not:

- (1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of any premium, accrued interest and defeasance costs required to be paid under the terms of the instrument governing such Indebtedness and plus the amount of reasonable fees, expenses, discounts and commissions incurred by the Issuer in connection with such Refinancing); or
- (2) create Indebtedness with
  - (a) if the Indebtedness being Refinanced was incurred pursuant to clause (3) of the definition of "Permitted Indebtedness," a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced or a final maturity earlier than the final maturity of the Indebtedness being Refinanced; or
  - (b) if the Indebtedness being Refinanced was otherwise incurred in accordance with the definition of "Permitted Indebtedness" or with the "Limitation on Incurrence of Additional Indebtedness" covenant, a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the notes or a final maturity earlier than the final maturity of the notes;

*provided that*

- (1) if such Indebtedness being Refinanced is solely Indebtedness of the Issuer, then such Refinancing Indebtedness shall be solely Indebtedness of the Issuer; and
- (2) if such Indebtedness being Refinanced is subordinate or junior to the notes, then such Refinancing Indebtedness shall be subordinate to the notes at least to the same extent and in the same manner as the Indebtedness being Refinanced.

"*Restricted Payment*" has the meaning set forth in the "Limitation on Restricted Payments" covenant.

"*Restricted Subsidiary*" of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to the Issuer or a Restricted Subsidiary of the Issuer of any property, whether owned by the Issuer or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such property.

"*Secured Cash Management Agreement*" means any Cash Management Agreement that is entered into by and between the Issuer or any Guarantor and any Cash Management Bank.

"*Secured Hedge Agreement*" means any Swap Contract required or permitted under the indenture that is entered into by and between the Issuer or any Guarantor and any Hedge Bank.

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"*Security Documents*" means, collectively:

- (1) the Security Agreement dated as of the Issue Date (as amended, restated, modified, supplemented, extended or replaced from time to time), among the Issuer and its domestic subsidiaries, as Assignors, and the Notes Collateral Agent; and
- (2) all other security agreements, mortgages, deeds of trust, deeds to secure debt, pledges, collateral assignments and other agreements or instruments evidencing or creating any security interest or Lien in favor of the Notes Collateral Agent on any or all of the Collateral.

"*Significant Subsidiary*" means (1) any Restricted Subsidiary that would be a "significant subsidiary" as defined in Regulation S-X under the Securities Act as such Regulation is in effect on the Issue Date and (2) any Restricted Subsidiary that, when aggregated with all other Restricted Subsidiaries that are not otherwise Significant Subsidiaries and as to which any event described in clause (6), (7) or (8) under "Events of Default" has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

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

- (1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or a Subsidiary of such Person; or
- (2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person or a Subsidiary of such Person.

"*Swap Contract*" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "*Master Agreement*"), including any such obligations or liabilities under any Master Agreement.

"*Taking*" means any taking of all or any portion of the Collateral by condemnation or other eminent domain proceedings, pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of all or any portion of the Collateral by any governmental authority, civil or military, or any sale pursuant to the exercise by any such governmental authority of any right which it may then have to purchase or designate a purchaser or to order a sale of all or any portion of the Collateral.

"*Transactions*" means the acquisition by the Issuer of Eveready, the sale by the Issuer of the initial notes issued on the Issue Date, the Issuer's payment or discharge of substantially all of the outstanding Indebtedness of the Issuer and its Subsidiaries and Eveready and its Subsidiaries other than Capital Lease Obligations, the replacement of substantially all of the Issuer's previously outstanding letters of credit, and payment of related fees and expenses.

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"*Treasury Rate*" means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to August 15, 2012; *provided, however*, that if the period from the redemption date to August 15, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trust Monies*" means all cash and Cash Equivalents received by the trustee, net of reasonable out-of-pocket expenses and fees (including, without limitation, expenses of attorneys):

- (1) upon the release of Collateral, except pursuant to an Asset Sale; and
- (2) pursuant to the Security Documents.

"*Unrestricted Subsidiary*" means (1) any Subsidiary of any Person that is designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below and (2) any Subsidiary of an Unrestricted Subsidiary. The Board of Directors may designate any Subsidiary, including any newly acquired or newly formed Subsidiary, to be an Unrestricted Subsidiary only if:

- (a) such Subsidiary does not own any Capital Stock of, or own or hold any Lien on any property of, the Issuer or any other Subsidiary of the Issuer that is not a Subsidiary of the Subsidiary to be so designated;
- (b) either (1) the Issuer certifies to the trustee in an officers' certificate that such designation complies with the "Limitation on Restricted Payments" covenant or (2) the Subsidiary to be so designated at the time of designation has total consolidated assets of \$25,000 or less; and
- (c) each Subsidiary to be so designated and each of its Subsidiaries has not and does not after the time of designation, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the Issuer's assets or those of any of the Issuer's Restricted Subsidiaries (other than the assets of such Unrestricted Subsidiary).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if:

- (1) immediately after giving effect to such designation, the Issuer is able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with the "Limitation on Incurrence of Additional Indebtedness" covenant; and
- (2) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the trustee by promptly filing with the trustee a copy of the Board Resolution giving effect to such designation and an officers' certificate certifying that such designation complied with the foregoing provisions.

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

- (1) the then outstanding aggregate principal amount of such Indebtedness into
- (2) the sum of the total of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated





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to the nearest one-twelfth) which will elapse between such date and the making of such payment.

"*Wholly Owned Restricted Subsidiary*" of any Person means any Restricted Subsidiary of such Person of which all the outstanding voting securities (other than in the case of a Foreign Restricted Subsidiary, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) are owned by such Person or any Wholly Owned Restricted Subsidiary of such Person.

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**UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS**

**TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, INVESTORS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS PROSPECTUS IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; (B) ANY SUCH DISCUSSION IS INCLUDED HEREIN IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) A TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

The following is a summary of the material United States federal income and, in the case of non-U.S. holders (as defined below), estate tax considerations that may be relevant to the exchange, ownership and disposition of the notes. This summary is based on the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury regulations promulgated thereunder and administrative and judicial interpretations thereof, all as of the date hereof, and all of which are subject to change, possibly on a retroactive basis. We have not and will not seek a ruling from the Internal Revenue Service (the "IRS") regarding the matters discussed below, and we cannot assure you that the IRS will not challenge one or more of the tax considerations described herein.

Unless otherwise stated, this summary deals only with the new notes offered to be exchanged for old notes purchased for cash on original issue at their issue price (as defined below) and held as capital assets (generally, property held for investment) and does not address tax considerations applicable to investors that may be subject to special tax rules including banks, thrifts, real estate investment trusts, regulated investment companies, tax exempt organizations, insurance companies, dealers in securities or currencies, traders in securities that elect to use the mark-to-market method of accounting for their securities holdings, persons that will hold the notes as part of a hedging transaction, "straddle," "synthetic security" or "conversion transaction" for tax purposes, partnerships or other pass through entities for U.S. federal income tax purposes (or investors in such entities), U.S. expatriates, or U.S. holders (as defined below) that have a "functional currency" other than the U.S. dollar. If an entity treated as a partnership for United States federal income tax purposes holds the notes, the tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. If you are a partner of a partnership holding the notes, you should consult your own tax advisor. Further, this summary does not discuss alternative minimum tax consequences, if any, or any state, local or foreign tax consequences to holders of the notes.

**U.S. Holders of Notes**

For purposes of this summary, a "U.S. holder" means the beneficial owner of a note that is for United States federal income tax purposes:

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

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The discussion herein assumes that a U.S. holder will not make an election to treat stated interest on the notes as original issue discount (as discussed below).

*Stated Interest.* Payments of stated interest on a note generally will be taxable to a U.S. holder as ordinary interest income at the time such payments are accrued or are received in accordance with the holder's regular method of tax accounting.

*Qualified Reopening.* We intend to treat, for U.S. federal income tax purposes, the issuance of the old notes on March 24, 2011 as a "qualified reopening" of the issuance under the indenture on August 14, 2009 of the original 2016 notes. Accordingly, we intend to treat, for federal income tax purposes, the old notes, and the new notes issued in exchange for old notes pursuant to this exchange offer, as having the same issue date, issue price and adjusted issue price as the original 2016 notes and therefore as having been issued with the same amount of original issue discount ("O.I.D.") for U.S. federal income tax purposes as the original 2016 notes. The issue price of the original 2016 notes was \$973.69 per \$1,000 of stated principal amount.

O.I.D. generally must be included in gross income (as ordinary interest income) as it accrues (on a constant yield basis), prior to the receipt of the corresponding cash (and regardless of a U.S. holder's regular method of tax accounting). Nevertheless, a U.S. holder that purchased old notes at the initial offering price of 104.5% of their stated principal amount (plus accrued interest), and which exchanges such notes for new notes pursuant to this exchange offer, should be deemed to have purchased its notes at a "premium" and therefore should not be required to include any O.I.D. in gross income.

*Amortizable Bond Premium.* With some exceptions, a U.S. holder may elect to amortize any bond premium paid for the notes. For this purpose, a holder is deemed to have acquired the notes at a premium if the holder's basis in the notes (immediately after their acquisition by the holder) exceeds the sum of all amounts payable on the notes after the acquisition date, other than payments of qualified stated interest. However, because we may call the notes under certain circumstances at a price in excess of their principal amount, the deduction for amortizable bond premium may be reduced or eliminated. Holders should consult their own tax advisors regarding the availability of the deduction for amortizable bond premium.

*Sale, Exchange or Other Disposition of Notes.* Subject to the discussion below under "The Exchange Offer," upon the sale, exchange, redemption, retirement or other taxable disposition of a note, a U.S. holder will generally recognize taxable capital gain or loss equal to the difference between (A) the amount of cash proceeds and the fair market value of any property received (except to the extent that this amount is attributable to accrued but unpaid stated interest, which is taxable as ordinary income as discussed above) and (B) the holder's adjusted tax basis in the note. The U.S. holder's adjusted tax basis in a note generally will be such holder's original cost increased by the amount of OID previously included in such holder's gross income. The gain or loss will generally be long-term capital gain or loss provided that the holder's holding period for the note exceeds one year. In the case of a holder other than a corporation, the current maximum marginal United States federal income tax rate applicable to long term capital gain recognized on the sale of a note is 15% (currently scheduled to increase to 20% for dispositions occurring during taxable years beginning on or after January 1, 2013). The deductibility of capital losses is subject to certain limitations.

*The Exchange Offer.* The exchange of the old notes for new notes pursuant to the exchange offer will not constitute an exchange or other taxable disposition for United States federal income tax purposes. Therefore, a holder will have the same issue price, holding period and adjusted tax basis in the new note as in the note surrendered. In addition, each holder of notes will continue to be required to include interest on the notes in its gross income in accordance with its regular method of accounting for United States federal income tax purposes, and all other United States federal income tax

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consequences of holding and disposing of new notes will be the same as the United States federal income tax consequences of holding and disposing of old notes.

*Information Reporting and Backup Withholding Tax.* In general, information reporting requirements will apply to payments of interest (and accruals of OID) on the notes and the proceeds of a sale or other disposition (including a retirement or redemption) of the notes. A U.S. holder will generally be subject to backup withholding (currently at a rate of 28%) on such payments and proceeds unless the holder provides to us or our paying agent a correct taxpayer identification number and certain other information, certified under penalties of perjury, or the holder otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules from a payment to a U.S. holder will be allowed as a credit against the holder's United States federal income tax and may entitle the holder to a refund, provided that the required information is timely furnished to the IRS.

**Non-U.S. Holders of Notes**

Except as modified for estate tax purposes, for purposes of this summary, a "non-U.S. holder" means a beneficial owner of a note that is an individual, corporation, estate or trust and is not a U.S. holder (as defined above).

*Qualified Reopening.* As discussed in more detail in "U.S. Holders of Notes" above, we intend to treat the issuance of the old notes on March 24, 2011 for U.S. federal income tax purposes as a "qualified reopening" of the issuance on August 14, 2009 of the original 2016 notes. However, a non-U.S. holder that purchased old notes at the initial offering price of 104.5% of their stated principal amount (plus accrued interest), and which exchanges such old notes for new notes pursuant to this exchange offer, should be deemed to have purchased its notes at a "premium" should therefore not be required to include any OID in gross income.

*Interest Income.* Generally, interest income (which, for purposes of this discussion includes OID) of a non-U.S. holder will qualify for the "portfolio interest" exemption and therefore will not be subject to United States federal income tax or withholding tax, provided that:

- (1) the non-U.S. holder does not actually (or constructively) own 10% or more of the total combined voting power of all classes of our stock entitled to vote;
- (2) the non-U.S. holder is not a controlled foreign corporation that is related to us;
- (3) the non-U.S. holder is not a bank whose receipt of interest on the notes is described in section 881(c)(3)(A) of the Code;
- (4) such interest is not effectively connected with a U.S. trade or business of the non-U.S. holder; and
- (5) either (A) the non-U.S. holder provides to us or our paying agent a properly executed IRS Form W-8BEN (or successor form), and certifies, under penalties of perjury, that it is not a United States person, or (B) the non-U.S. holder holds notes through certain foreign intermediaries and satisfies the certification requirements of applicable Treasury regulations. Special certification rules apply to certain non-U.S. holders that are entities rather than individuals.

If the non-U.S. holder cannot satisfy the requirements described above, payments of interest made to such holder will be subject to the 30% United States federal withholding tax, unless the non-U.S. holder provides to us a properly executed (1) IRS Form W-8BEN (or successor form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty or (2) IRS Form W-8ECI (or successor form) stating that interest paid on a note is not subject to

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withholding tax because it is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States.

If any interest on the notes is effectively connected with a U.S. trade or business conducted by a non-U.S. holder, such non-U.S. holder will be subject to United States federal income tax generally in the same manner as a U.S. holder (unless an applicable income tax treaty provides otherwise). If a non-U.S. holder is eligible for the benefits of an income tax treaty between the United States and its country of residence, any "effectively connected" income will generally be subject to United States federal income tax only if it is also attributable to a permanent establishment maintained by such non-U.S. holder in the United States. If a non-U.S. holder is a corporation, that portion of its earnings and profits that is effectively connected with its U.S. trade or business also may be subject to a "branch profits tax" at a 30% rate, although an applicable income tax treaty may provide for a lower rate.

If interest received with respect to the notes is effectively connected income (whether or not a treaty applies), the 30% withholding tax described above will not apply (assuming an appropriate certification is provided).

*Sale, Exchange or Disposition of Notes.* Subject to the discussion of backup withholding below, a non-U.S. holder generally will not be subject to United States federal income tax or withholding tax on any gain realized on the sale, exchange, redemption, retirement, or other taxable disposition of the notes unless:

(1) the gain is effectively connected with the conduct of a United States trade or business of the non-U.S. holder (and where an income tax treaty applies, is attributable to a permanent establishment maintained by the non-U.S. holder in the United States), in which case such gain will be taxed as discussed above with respect to effectively connected interest; or

(2) in the case of a non-U.S. holder who is an individual, such holder is present in the United States for a period or periods aggregating 183 days or more during the taxable year of the disposition and certain other conditions are met, in which case (except as otherwise provided by an applicable income tax treaty) such holder will be subject to a 30% U.S. federal income tax on any gain recognized, which may be offset by certain U.S. source losses.

*Information Reporting and Backup Withholding.* Payments to a non-U.S. holder of interest (including OID) on a note, and amounts withheld from such payments, if any, generally will be required to be reported to the IRS and to the non-U.S. holder. Copies of the information returns reporting such interest payments and any withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

Backup withholding (currently at a rate of 28%) generally will not apply to interest payments (including OID) on the notes to a non-U.S. holder if such holder has complied with the applicable certification requirements described in subparagraph (5) in the "Interest Income" section above or otherwise establishes an exemption under the applicable Treasury regulations.

Payment of the proceeds of a sale or other disposition (including a retirement or redemption) of a note effected by the United States office of a United States or foreign broker will be subject to information reporting requirements and backup withholding unless the non-U.S. holder properly certifies under penalties of perjury as to its foreign status or the non-U.S. holder otherwise establishes an exemption. Information reporting requirements and backup withholding generally will not apply to any payment of the proceeds of a sale or other disposition of a note effected outside the United States by a foreign office of a broker. However, unless such a broker has documentary evidence in its records that the beneficial owner is a non-U.S. holder and certain other conditions are met, or a non-U.S. holder otherwise establishes an exemption, information reporting will apply to a payment of the

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proceeds of a sale or other disposition of a note effected outside the United States by such a broker if the broker:

- (1) is a United States person;
- (2) derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States;
- (3) is a controlled foreign corporation for United States federal income tax purposes; or
- (4) is a foreign partnership that, at any time during its taxable year, has more than 50% of its income or capital interests owned by United States persons or is engaged in the conduct of a United States trade or business.

Backup withholding is not an additional tax. Any amount withheld under the backup withholding rules may be credited against the holder's United States federal income tax liability and any excess may be refundable if the proper information is timely provided to the IRS.

*United States Federal Estate Tax.* The notes will not be included in the estate of a deceased non-U.S. holder (as specifically defined for United States federal estate tax purposes) if interest payments to such non-U.S. holder would be exempt from withholding of United States federal income tax under the portfolio interest exemption discussed above (without regard to the certification requirement).

**The United States federal income and estate tax discussion set forth above is included for general information only. Holders should consult their own tax advisors with respect to the tax consequences to them of the exchange, ownership and disposition of the notes, including the tax consequences under state, local, foreign and other tax laws and any proposed change in applicable laws.**

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**PLAN OF DISTRIBUTION**

Each broker-dealer that receives new notes for its own account in connection with the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of those new notes. A broker-dealer may use this prospectus, as amended or supplemented from time to time, in connection with resales of new notes received in exchange for old notes where such broker-dealer acquired old notes as a result of market-making activities or other trading activities. We have agreed that for a period of 180 days after the expiration date of the exchange offer, we will make available a prospectus, as amended or supplemented, meeting the requirements of the Securities Act to any broker-dealer for use in connection with those resales.

We will not receive any proceeds from any sale of new notes by broker-dealers. Broker-dealers may sell new notes received by them for their own account pursuant to the exchange offer from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the new notes or a combination of those methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any broker-dealer or the purchasers of any new notes. Any broker-dealer that resells new notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such new notes may be deemed to be an "underwriter" within the meaning of the Securities Act. A profit on any such resale of new notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

For a period of 180 days after the expiration date of the exchange offer, we will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests these documents in the letter of transmittal. We will indemnify the holders of the old notes, including any broker-dealers, against specified liabilities, including liabilities under the Securities Act.

**LEGAL MATTERS**

Davis, Malm & D'Agostine, P.C., Boston, Massachusetts, has passed upon the validity and enforceability of the new notes and the guarantees for Clean Harbors and the Guarantors.

**EXPERTS**

The financial statements and related financial statement schedule incorporated in this prospectus by reference from Clean Harbors, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 15, 2011 and the effectiveness of Clean Harbors, Inc.'s internal control over financial reporting incorporated by reference in this prospectus from Clean Harbors, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2010, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and financial statement schedule have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.