

EnergySolutions, Inc.  
Form S-4  
May 17, 2011  
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As filed with the Securities and Exchange Commission on May 17, 2011

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form S-4**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

***EnergySolutions, Inc.***

(Exact name of registrant as specified in its charter)

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

**4955**  
(Primary Standard Industrial  
Classification Code Number)

**51-0653027**  
(I.R.S. Employer  
Identification Number)

# ***EnergySolutions, LLC***

(Exact name of registrant as specified in its charter)

**Utah**  
(State or other jurisdiction of  
incorporation or organization)

**4955**  
(Primary Standard Industrial  
Classification Code Number)

**14-1921823**  
(I.R.S. Employer  
Identification Number)

SEE TABLE OF GUARANTOR REGISTRANTS LISTED ON THE FOLLOWING PAGE

**423 West 300 South, Suite 200**

**Salt Lake City, Utah 84101**

**(801) 649-2000**

(Address, including zip code, and telephone number, including area code, of each of the registrants principal executive offices)

**William R. Benz**

**Executive Vice President, Chief Financial Officer**

**EnergySolutions, Inc.**

**423 West 300 South, Suite 200**

**Salt Lake City, Utah 84101**

**(801) 649-2000**

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

*Copy to:*

**Boris Dolgonos**

**Jones Day**

**222 East 41st Street**

**New York, New York 10017-6702**

**(212) 326-3939**

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**Approximate date of commencement of proposed sale to the public: As soon as practicable on or after the effective date of this Registration Statement.**

If the securities being registered on this Form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit (1)	Proposed maximum aggregate offering price	Amount of registration fee (2)
10.75% Senior Notes due 2018	\$300,000,000	100%	\$300,000,000	\$34,830
Guarantees of 10.75% Senior Notes due 2018 (3)				(4)
Total	\$300,000,000	100%	\$300,000,000	\$34,830

- (1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(f) promulgated under the Securities Act.
- (2) The registration fee has been calculated in accordance with Rule 457(f)(2) under the Securities Act.
- (3) See the following page for a table of guarantor registrants.
- (4) Pursuant to Rule 457(n) under the Securities Act, no separate filing fee is required for the guarantees.

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

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<b>Exact name of guarantor as specified in its charter*</b>	<b>State or other jurisdiction of formation</b>	<b>I.R.S. employer identification number</b>
BNG America LLC	Delaware	03-0577302
BNG America Savannah River Corporation	Delaware	54-1813446
Chem-Nuclear Systems, L.L.C.	Delaware	36-4122772
EnergySolutions Services, Inc.	Tennessee	62-1234045
Duratek, Inc.	Delaware	22-2427618
EnergySolution Company, Inc.	Delaware	06-1782005
EnergySolutions Diversified Services, Inc.	Delaware	22-2654388
EnergySolutions Federal EPC, Inc.	Delaware	02-0804852
EnergySolutions Federal Services of Hanford, Inc.	Delaware	34-4066233
EnergySolutions Government Group, Inc.	Delaware	36-3797690
EnergySolutions Fuel Services, LLC	Delaware	41-2234541
EnergySolutions Water System, LLC	Utah	38-3782649
EnergySolutions, Spent Fuel Division, Inc.	Delaware	54-2182937
GTSD Sub IV, Inc.	Delaware	52-2250539
Hittman Transport Services, Inc.	Delaware	52-1129367
Manufacturing Sciences Corporation	Colorado	84-0887414
EnergySolutions Performance Strategies Inc.	Georgia	58-2010562
Property Value Restoration, LLC	Delaware	27-3188764
EnergySolutions of Ohio, LLC	Delaware	27-0758345
EnergySolutions Midwest, LLC	Delaware	27-0671245

\* The address for each of the additional registrants is c/o EnergySolutions, Inc., 423 West 300 South, Suite 200, Salt Lake City, Utah 84101, telephone: (801) 649-2000. The name and address, including zip code, of the agent for service for each additional registrant is William R. Benz, Executive Vice President, Chief Financial Officer, EnergySolutions, Inc., 423 West 300 South, Suite 200, Salt Lake City, Utah 84101, telephone: (801) 649-2000.

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

Subject to Completion. Dated May 17, 2011.

PROSPECTUS

***EnergySolutions, Inc.***

***EnergySolutions, LLC***

**Offer to Exchange**

**\$300,000,000 Outstanding 10.75% Senior Notes due 2018**

**for \$300,000,000 Registered 10.75% Senior Notes due 2018**

EnergySolutions, Inc. and EnergySolutions, LLC are offering, upon the terms and subject to the conditions set forth in this prospectus and the accompanying letter of transmittal, to exchange an aggregate principal amount of up to \$300,000,000 of our 10.75% senior notes due 2018 (which we refer to as the exchange notes ) for an equal principal amount of our outstanding 10.75% senior notes due 2018. When we refer to old notes, we are referring to the outstanding 10.75% senior notes due 2018. The exchange notes will represent the same debt as the old notes and we will issue the exchange notes under the same indenture as the old notes.

**The exchange offer expires at 5:00 p.m., New York City time, on \_\_\_\_\_, 2011, unless extended.**

**Terms of the Exchange Offer**

We will exchange notes for all old notes that are validly tendered and not withdrawn prior to the expiration of the exchange offer.

You may withdraw tendered old notes at any time prior to the expiration of the exchange offer.

The terms of the exchange notes are identical in all material respects (including principal amount, interest rate, maturity and redemption rights) to the old notes for which they may be exchanged, except that the exchange notes generally will not be subject to transfer restrictions or be entitled to registration rights and the exchange notes will not have the right to earn additional interest under circumstances relating to our registration obligations.

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Certain of our subsidiaries will guarantee our obligations under the exchange notes, including the payment of principal of, premium, if any, and interest on the notes. These guarantees of the exchange notes will be senior unsecured obligations of the subsidiary guarantors.

The exchange of old notes for exchange notes pursuant to the exchange offer will not be a taxable event for U.S. federal income tax purposes. See the discussion under the caption [Certain U.S. Federal Tax Considerations](#).

There is no existing market for the exchange notes to be issued, and we do not intend to apply for listing or quotation on any securities exchange or market.

**An investment in the exchange notes involves risks. You should carefully review the [risk factors](#) beginning on page 14 of this prospectus.**

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

Each broker-dealer that receives exchange notes for its own account pursuant to this exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of the exchange notes. The accompanying letter of transmittal relating to the exchange offer 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 of 1933, as amended (the [Securities Act](#) ). This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for old notes where such old notes were acquired by such broker-dealer 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 amend or supplement this prospectus in order to expedite or facilitate the disposition of any exchange notes by such broker-dealers. See [Plan of Distribution](#).

Prospectus dated \_\_\_\_\_, 2011.



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We have not authorized anyone to give you any information or to make any representations about the exchange offer we discuss in this prospectus other than those contained in this prospectus. If you are given any information or representation about this matter that is not discussed, you must not rely on that information. This prospectus is not an offer to sell or a solicitation of an offer to buy securities anywhere or to anyone where or to whom we are not permitted to offer to sell securities under applicable law.

In determining whether to participate in the exchange offer, investors must rely on their own examination of the issuer and the terms of the exchange notes and the exchange offer, including the merits and risks involved. The securities offered by this prospectus have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

**MARKET AND INDUSTRY DATA**

This prospectus includes estimates regarding market and industry data and forecasts based on market research, consultant surveys, publicly available information, industry publications, analyst reports and surveys and our own estimates based on our management's knowledge of and experience in the markets and industry in which we operate. We believe these estimates are reasonable as of the date of this prospectus. However, we have not independently verified any of the data from third-party sources and have not ascertained the underlying economic assumptions relied upon therein. This information may prove to be inaccurate because of the method by which we obtained some of the data for our estimates or because this information cannot always be verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in a survey of market size. In addition, consumption patterns, consumer preferences and the competitive landscape can and do change. As a result, you should be aware that the market and industry data included in this prospectus, and our estimates and beliefs based on such data, may not be reliable. We do not make any representations as to the accuracy of such market and industry data.



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**CERTAIN TERMS USED IN THIS PROSPECTUS**

In this prospectus, unless otherwise indicated or the context otherwise requires:

*EnergySolutions*, our company, we, our and us refer to *EnergySolutions, Inc.*, a Delaware corporation, and its consolidated subsidiaries.

The issuers refers to *EnergySolutions, Inc.*, a Delaware corporation, and *EnergySolutions, LLC*, a Utah limited liability company.

The old notes refers to the issuers currently outstanding 10.75% senior notes due 2018. The offering of old notes was made only to qualified institutional buyers under Rule 144A and to persons outside the United States under Regulation S and, accordingly, was exempt from registration under the Securities Act.

The exchange notes refers to the issuers new 10.75% senior notes due 2018 offered in the exchange offer. The terms of the exchange notes offered in the exchange offer are substantially identical to the terms of the old notes, except that the exchange notes will be registered under the Securities Act and will not be subject to restrictions on transfer or provisions relating to additional interest.

The notes refers collectively to the old notes and the exchange notes.

The initial purchasers refers to J.P. Morgan Securities LLC, Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc., collectively.

**WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the Securities and Exchange Commission (the SEC) a registration statement on Form S-4 under the Securities Act that registers the exchange notes that will be offered in exchange for the old notes. The registration statement, including the attached exhibits and schedules, contains additional relevant information about us and the notes. The rules and regulations of the SEC allow us to omit from this document certain information contained in the registration statement.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public from the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file at the SEC's public reference room in Washington, D.C. located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may also obtain copies of any document we file at prescribed rates by writing to the Public Reference Section of the Securities Exchange Commission at that address. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Information about us, including our SEC filings, is also available on our corporate website [www.energysolutions.com](http://www.energysolutions.com); however, unless incorporated by reference, neither that information nor any information contained on any of our websites, is a part of this prospectus or any accompanying prospectus supplement.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference in this prospectus the information in other documents that we file with it, which means that we can disclose important business and financial information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information in documents that we file later with the SEC will automatically update and supersede information contained in documents filed earlier with the SEC or contained in this prospectus or a prospectus supplement. We incorporate by reference in this prospectus the documents listed below and any future filings that we may make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the termination of the offering under this prospectus (other than any



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information furnished pursuant to Item 2.02 or Item 7.01 of any Current Report on Form 8-K unless we specifically state in such Current Report that such information is to be considered filed under the Exchange Act, or we incorporate it by reference into a filing under the Securities Act or the Exchange Act):

Annual Report on Form 10-K for the fiscal year ended December 31, 2010 (as amended by Amendment No. 1 on Form 10-K/A and including information specifically incorporated by reference into the Annual Report on Form 10-K from our definitive proxy statement filed on April 25, 2011);

Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2011; and

Current Report on Form 8-K filed on March 31, 2011.

Notwithstanding the foregoing, we are not incorporating any document or information deemed to have been furnished and not filed in accordance with SEC rules. You may obtain a copy of any or all of the documents referred to above which may have been or may be incorporated by reference into this prospectus (excluding certain exhibits to the documents) at no cost to you by writing or telephoning us at the following address:

EnergySolutions, Inc.

423 West 300 South, Suite 200

Salt Lake City, Utah 84101

Attention: Chief Financial Officer

Telephone: (801) 649-2000

**To obtain timely delivery of any of our filings, agreements or other documents, you must make your request to us no later than . In the event that we extend the exchange offer, you must submit your request at least five business days before the expiration date of the exchange offer, as extended. We may extend the exchange offer in our sole discretion. See Exchange Offer for more detailed information.**

**FORWARD-LOOKING STATEMENTS**

This prospectus contains forward looking statements that involve risks and uncertainties Forward-looking statements provide current expectations of future events based on certain assumptions and include any statement that does not directly relate to any historical or current fact. Forward-looking statements can also be identified by words such as anticipates, believes, estimates, expects, intends, plans and pre similar terms. Forward looking statements are not guarantees of future performance and our actual results may differ significantly from the results discussed in the forward looking statements. Factors that might cause such differences include, but are not limited to, those discussed in the subsection entitled Risk Factors. We undertake no obligation to revise or update any forward looking statements for any reason, except as required by law.

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### **SUMMARY**

*This summary does not contain all the information that may be important to you. You should carefully read this prospectus in its entirety before making an investment decision. In particular, you should read the section titled **Risk Factors** and our consolidated financial statements and the related notes thereto included elsewhere in this prospectus as well as in the documents incorporated by reference in this prospectus.*

### **Our Company**

We are a leading provider of a broad range of nuclear services to government and commercial customers who rely on our expertise to address their recurring needs throughout the lifecycle of their nuclear operations. Our broad range of nuclear services includes engineering, in-plant support services, spent nuclear fuel management, decontamination and decommissioning ( D&D ), operation of nuclear reactors, logistics, transportation, processing and low-level radioactive waste ( LLRW ) disposal. We also own and operate strategic processing and disposal facilities that complement our services and uniquely position us to provide a single source solution to our customers.

We derive almost 100% of our revenue from the provision of nuclear services, and we believe that virtually every company or organization in the United States that holds a nuclear license uses our services or facilities, directly or indirectly. Our government customers include the U.S. Department of Energy ( DOE ), U.S. Department of Defense ( DOD ) and U.K. Nuclear Decommissioning Authority ( NDA ). Our commercial customers include many of the largest owners and operators of nuclear power plants in the United States, including Constellation Energy Group, Inc., Duke Energy Corporation, Entergy Corporation, Exelon Corporation ( Exelon ) and Florida Power & Light Company. We have entered into long-term arrangements, which we refer to as life-of-plant contracts, with nuclear power and utility companies that own and/or operate 84 of the 104 operating nuclear reactors in the United States. Under these life-of-plant contracts, we have typically agreed to process and dispose of substantially all LLRW and mixed low-level waste ( MLLW ) generated by our customers' nuclear power plants, and ultimately the waste materials generated from the D&D of those plants. Our commercial customers also include hospitals, pharmaceutical companies, research laboratories, universities with research reactors, industrial facilities, and other commercial facilities.

We operate strategic facilities designed for the safe processing and disposal of radioactive materials, including a facility in Clive, Utah, four facilities in Tennessee and two facilities in Barnwell, South Carolina. According to the U.S. Government Accountability Office, our facility in Clive, Utah is the largest privately owned LLRW disposal site in the United States and currently handles over 95% of all commercial LLRW (which includes medical waste, activated metals, manufacturing materials and medical and technological research materials) disposal volume in the country. We estimate that LLRW accounts for more than 90% of the volume but less than 1% of the radioactivity of all radioactive by-products. We also manage ten sites in the United Kingdom with 22 reactors for the NDA, of which four are currently operating and producing electricity and 18 are in various stages of decommissioning. We have a comprehensive portfolio of nuclear processing technology and know-how, supported by approximately 280 patents that we own or are licensed to use. As of December 31, 2010, we had more than 5,000 employees, including more than 1,000 scientists and engineers and 250 radiation and safety professionals. Approximately 3,500 of our employees are located at the ten sites we manage in the United Kingdom. We also manage approximately 160 employees at various DOE sites. We have received multiple awards for our safety record.

We provide nuclear services to government and commercial customers in the United States and internationally primarily through four reporting segments: Federal Services; Commercial Services; Logistics, Processing and Disposal ( LP&D ); and International. When a project involves the provision of specialized on-site nuclear services, as well as processing and disposal services, our Federal Services or Commercial Services segment, depending on the type of customer, coordinates with our LP&D segment to provide those specialized services. We actively seek to minimize contract risk across segments and, in 2010, approximately 96% of our revenue was derived from cost-reimbursable or unit-rate contracts.

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### **Our Competitive Strengths**

We believe that the following strengths support our competitive position in the nuclear services industry:

***Unique, integrated capabilities.*** The specialized on-site management, engineering and technological expertise we provide to government and commercial customers is complemented by our unique processing and disposal facilities, enabling us to provide integrated customer solutions. Access to our own strategic processing and disposal facilities enables us to complete a broad range of projects efficiently and cost-effectively. For example, our license stewardship project to decommission Exelon's two shut-down nuclear reactors in Zion, Illinois involves both our on-site technical services and our off-site LP&D capabilities and facilities to achieve project efficiency and cost control. We believe that this ability to offer integrated services distinguishes us from competitors that must coordinate their efforts with third party contractors to offer a comparable range of services, thereby incurring significant costs and longer timeframes to replicate a similar range of services.

***Strategic processing and disposal facilities.*** According to the U.S. Government Accountability Office, we are the largest non-government owner and operator of facilities in the United States for the disposal of LLRW and MLLW. We estimate that LLRW accounts for more than 90% of the volume but less than 1% of the radioactivity of all radioactive by-products. Due to government regulations and political and siting issues, no new commercial LLRW disposal site has been able to obtain the necessary permits and licenses to operate since our Clive, Utah facility was licensed in 1988. We handle the majority of the DOE's off-site LLRW disposal business and over 95% of the LLRW generated in the United States that is disposed of in commercial sites. There are significant political and regulatory barriers to entry to provide comparable services.

***Consistent free cash flow generation.*** Our financial performance and consistent free cash flow generation is supported by our government and commercial customers' recurring expenditures for nuclear services, our use of cost-plus, long-term contracts and the modest capital expenditures required to deliver our services. Our focus on the back end of the nuclear fuel cycle positions us to capture recurring revenue associated with on-going site operations at commercial nuclear facilities and long-term spending for the remediation of legacy nuclear sites by agencies of the U.S. and U.K. governments. In 2010, approximately 96% of our revenues were derived from cost-reimbursable or unit-rate contracts, substantially reducing the impact to our margins from cost overruns or project delays. Additionally, we possess an existing asset base that requires only modest capital expenditures. We have historically applied free cash flow to reduce debt, including repayments of \$90.7 million of debt under our term loan facilities during the three years ended December 31, 2010.

***Long-term contracts with attractive customer base.*** We provide nuclear services to a broad range of customers, including the DOE, DOD and NDA, commercial power and utility companies, research laboratories, universities and other entities with nuclear related products or operations. We generate the majority of our revenues and cash flow from customers with whom we have long-term relationships. For example, our life-of-plant contracts with nuclear power and utility companies generally cover the operating life of a nuclear reactor through its decommissioning. Although a life-of-plant contract may be terminated before decommissioning is complete, we typically expect the initial term of these contracts to be in excess of 10 years. We currently possess life-of-plant contracts with nuclear power and utility companies that own and/or operate 84 of the 104 operating reactors in the United States and provide services to the remaining nuclear reactors through other contracts. Contracts with our government customers, such as the DOE, generally last five years with the possibility of an additional five-year extension. In the United Kingdom, NDA contracts generally are for five years with potentially up to two additional five-year extensions. We believe the longevity of our customer relationships combined with the credibility we have developed with our customers is a differentiator as we pursue new contracts.

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***Broad, specialized solutions offering.*** We possess a comprehensive portfolio of nuclear services focused on the back-end of the nuclear fuel cycle that we deliver to government and commercial customers. We believe our breadth of services, strategic assets, extensive experience and proven credentials position us to pursue a wide range of nuclear services contracts. This combination allows us to respond to specific, technical customer needs in an industry that often requires customized solutions. In addition, we believe the scale of our operations positions us to pursue large nuclear services contracts, including opportunities to serve as a lead prime contractor for major government projects with the DOE, DOD, NDA and other government agencies.

***Project management and technological expertise.*** The nuclear services industry faces a shortage of highly trained professionals, and we believe our human capital serves as a core competitive advantage and allows us to offer a broad range of services. We have considerable nuclear related project management capabilities for large, customized projects required by our customers. In addition, we have a substantial portfolio of nuclear processing technology and know-how, supported by approximately 280 patents that we own or are licensed to use that enable us to participate in a wide range of projects involving materials with varying levels of radioactivity. For example, we employ proprietary technologies to transport high-level radioactive materials safely to on-site independent spent fuel storage installations. In addition, we use specialized radioactive materials processing technologies, such as vitrification and metal melting, which are currently in demand by the DOE and are an important factor in procuring prime government contracts.

### **Our Strategy**

Our objective is to continue to be a leading global provider of nuclear services by leveraging our differentiated assets, technologies and human capital. We intend to pursue this objective through the following strategies:

***Disciplined growth of core business.*** We have intensified our focus in delivering solutions that meet the evolving and recurring needs of our government and commercial customers. Our broad set of services focused on the back-end of the nuclear fuel cycle combined with our strategic processing and disposal facilities puts us in a unique position to deliver customized solutions to our customers. We are actively working with our customers to identify incremental opportunities to leverage our capabilities for their benefit. By focusing on solutions, we believe we can deepen our customer relationships, increase our share of each customer's spending on services and compete for incremental contracts as they arise.

***Pursue government contracting opportunities.*** We pursue both Tier 1 and Tier 2 government contracting opportunities and have a substantial base of existing projects under contract that provide a consistent and recurring level of revenues at visible margins. These contracts typically last five years with the possibility of an additional five year extension, which, in our experience, is generally granted. In addition, we estimate that over \$30 billion of U.S. government nuclear services contracts will be awarded within the next five years, and we expect to bid on a significant portion of these contracts. We believe that we have the expertise and scale to be a leading member of consortia pursuing Tier 1 contract opportunities. For example, in May 2008, the consortium that we jointly lead with URS Corporation was selected by the DOE to store, retrieve and treat tank waste and close the tank farms at the DOE's Hanford site under a cost-reimbursable plus fee contract valued at approximately \$7.1 billion over 10 years, which includes a five-year base period with options to extend the contract for up to five additional years. We have a 40% interest in this consortium. We also have significant staff presence at the Oak Ridge and Savannah River DOE sites. In addition, in the United Kingdom, we are currently a prime contractor for the NDA. Moreover, much of the near-term prime contracting work for the DOE and the NDA will require expertise in complex D&D and handling radioactive materials, areas in which we have substantial technological capabilities and operational experience.



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***Expand existing commercial business.*** We believe that the breadth of our nuclear services, our technological expertise and our proprietary processing and disposal facilities will enable us to deepen our relationships with existing commercial customers and pursue new commercial customers. Many of the specialized nuclear services that we offer are not core competencies of nuclear power and utility companies. As we deepen our relationships with these companies and provide unique solutions to their nuclear and environmental needs, we believe that they will increasingly outsource these services to us.

***Focus on decommissioning of shut-down U.S. reactors.*** We are actively marketing our integrated D&D services for shut-down reactors to nuclear power and utility companies. Our unique license stewardship initiative for shut-down reactors allows us to potentially accelerate D&D activities by several years. Under our license stewardship model, we would obtain our own Nuclear Regulatory Commission ( NRC ) license for a reactor site and enter into a turn-key contract with a utility through which we would acquire the plant for nominal consideration. We would then be compensated for the work performed from the decommissioning trust funds transferred from the existing owner. After we have completed the D&D of the plant, we would return the restored site to its original owner. This novel approach offers our customers cost certainty and the advantage of near-term site restoration. We believe that we are well-positioned to compete for this D&D outsourcing work because our integrated service platform, together with our on-site D&D experience, enables us to efficiently and cost-effectively complete decommissioning and disposal of the radioactive materials at these shut-down sites. In December 2007, we entered into a license stewardship agreement with Exelon, under which we have become the licensee for Exelon 's two nuclear reactors in Zion, Illinois. Pursuant to this agreement, we have assumed full responsibility for the decommissioning and site restoration at the Zion plant and will be compensated from the decommissioning trust fund for our work at the Zion plant. For more information regarding the terms of our agreement with Exelon, see Management 's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Exelon Agreement in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, which is incorporated by reference in this prospectus.

***Expand international operations in selected markets.*** We intend to focus on the long-term strategic interests of our international customers by providing a wide range of engineering and technical services to facilitate in country disposition of internationally generated radioactive waste. We believe there are substantial near-term opportunities for us to market our nuclear services to international, commercial and government customers. For example, the NDA 's latest estimate for its long term decommissioning and clean up liability is £40.8 billion, after taking into account discount rates. The NDA has spent an average of £2.6 billion per annum on its decommissioning and clean up efforts since 2005/2006. Through our U.S. based, on-site decommissioning and nuclear services business, U.K. based LLRW handling and disposition services and reputation and experience, we are positioned to bid for prime contracts under the NDA 's program. In addition to performing work in the United Kingdom, we are also pursuing opportunities in other regions, such as Asia. For example, in January 2010, we were selected to design and supply a liquid waste processing system to serve two new reactors at Yangjiang in Guangdong Province, China. The contract includes an option to provide the same system for two additional reactors to be built at the same site. The new reactors are being constructed by China Nuclear Power Engineering Company and China Nuclear Power Design Company, which are subsidiaries of China Guangdong Nuclear Power Holding Corporation. These new CPR1000 reactors are being built as part of the extensive nuclear new build program in China. We expect this project to represent a significant technical milestone as it breaks new ground in China 's move towards ever cleaner energy production. We are actively pursuing other similar opportunities in China and other countries.

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**Refinancing Transactions**

In connection with the offering of the old notes and as a condition thereto, we entered into a new senior secured credit facility, which we refer to as our senior secured credit facility, consisting of \$105.0 million revolving credit facility (including a \$100.0 million sub-limit for letters of credit) and a \$560.0 million term loan. The net proceeds from that offering and \$250.0 million of borrowings from the term loan were used primarily to refinance our existing revolving credit facility and term loan facilities and pay transaction fees and expenses. The remaining \$310.0 million of proceeds from the term loan are held in a restricted cash account as collateral for our reimbursement obligations with respect to letters of credit, which replaced our existing \$100.0 million synthetic letter of credit facility and provides credit support for a \$200.0 million letter of credit that is required under our agreement with Exelon. We refer to the foregoing transactions as the Refinancing Transactions. For more information regarding the terms of our senior secured credit facility, see Description of Other Indebtedness. For more information regarding the terms of our agreement with Exelon, see Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Exelon Agreement in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, which is incorporated by reference in this prospectus.

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**Summary of the Terms of the Exchange Offer**

On August 13, 2010, we completed an offering of \$300,000,000 aggregate principal amount of old 10.75% senior notes due August 15, 2018. The offering of the old notes was made only to qualified institutional buyers under Rule 144A and to persons outside the United States under Regulation S and, accordingly, was exempt from registration under the Securities Act.

Notes offered Up to \$300,000,000 aggregate principal amount of new 10.75% senior notes due August 15, 2018, registered under the Securities Act.

The terms of the exchange notes offered in the exchange offer are substantially identical to the terms of the old notes, except that the exchange notes will be registered under the Securities Act and will not be subject to restrictions on transfer or provisions relating to additional interest. The exchange notes will bear a different CUSIP or ISIN number from the old notes and will not entitle their holders to registration rights.

The exchange offer You may exchange old notes for exchange notes.

Resale of the exchange notes We believe the exchange notes that will be issued in the exchange offer may be resold by most investors without compliance with the registration and prospectus delivery provisions of the Securities Act, subject to certain conditions. You should read the discussion under the heading **The Exchange Offer** for further information regarding the exchange offer and the ability to resell the exchange notes.

Consequences of failure to exchange the old notes You will continue to hold old notes that remain subject to their existing transfer restrictions if:

you do not tender your old notes; or

you tender your old notes and they are not accepted for exchange.

With some limited exceptions, we will have no obligation to register the old notes after we consummate the exchange offer. See **The Exchange Offer Terms of the Exchange Offer** and **The Exchange Offer Consequences of Failure to Exchange**.

Expiration date The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2011, or the expiration date, unless we extend it, in which case expiration date means the latest date and time to which the exchange offer is extended.

Interest on the exchange notes The exchange notes will accrue interest from the most recent date to which interest has been paid or provided for on the old notes or, if no interest has been paid on the old notes, from the date of original issue of the old notes.

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Conditions to the exchange offer

The exchange offer is subject to several customary conditions. We will not be required to accept for exchange, or to issue exchange notes

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in exchange for, any old notes and may terminate or amend the exchange offer if we determine in our reasonable judgment that the exchange offer violates applicable law, any applicable interpretation of the SEC or its staff or any order of any governmental agency or court of competent jurisdiction. The foregoing conditions are for our sole benefit and may be waived by us. In addition, we will not accept for exchange any old notes tendered, and no exchange notes will be issued in exchange for any such old notes if:

at any time any stop order is threatened or in effect with respect to the registration statement of which this prospectus constitutes a part; or

at any time any stop order is threatened or in effect with respect to the qualification of the indenture governing the notes under the Trust Indenture Act of 1939.

See The Exchange Offer Conditions. We reserve the right to terminate or amend the exchange offer at any time prior to the expiration date upon the occurrence of any of the foregoing events.

Procedures for tendering old notes

If you wish to accept the exchange offer, you must submit required documentation and effect a tender of old notes pursuant to the procedures for book-entry transfer (or other applicable procedures), all in accordance with the instructions described in this prospectus and in the relevant letter of transmittal. See The Exchange Offer Procedures for Tendering, The Exchange Offer Book Entry Transfer and The Exchange Offer Guaranteed Delivery Procedures.

Guaranteed delivery procedures

If you wish to tender your old notes, but cannot properly do so prior to the expiration date, you may tender your old notes according to the guaranteed delivery procedures set forth in The Exchange Offer Guaranteed Delivery Procedures.

Withdrawal rights

Tenders of old notes may be withdrawn at any time prior to 5:00 p.m., New York City time, on the expiration date. To withdraw a tender of old notes, a written or facsimile transmission notice of withdrawal must be received by the exchange agent at its address set forth in The Exchange Offer Exchange Agent prior to 5:00 p.m. on the expiration date.

Acceptance of old notes and delivery of exchange notes

Except in some circumstances, any and all old notes that are validly tendered in the exchange offer prior to 5:00 p.m., New York City time, on the expiration date will be accepted for exchange. The exchange notes issued pursuant to the exchange offer will be delivered promptly following the expiration date. See The Exchange Offer Terms of the Exchange Offer.

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Certain U.S. federal tax consequences

We believe that the exchange of the old notes for the exchange notes will not constitute a taxable exchange for U.S. federal income tax purposes. See Certain U.S. Federal Income Tax Considerations.

Exchange agent

Wells Fargo Bank, National Association is serving as the exchange agent.

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**The Exchange Notes**

The terms of the exchange notes offered in the exchange offer are identical in all material respects to the terms of the old notes, except that the exchange notes will:

be registered under the Securities Act and therefore will not be subject to restrictions on transfer;

not be subject to provisions relating to additional interest;

bear a different CUSIP or ISIN number from the old notes;

not entitle their holders to registration rights; and

be subject to terms relating to book-entry procedures and administrative terms relating to transfers that differ from those of the old notes.

Co-Issuers	EnergySolutions, Inc. and EnergySolutions, LLC. EnergySolutions, Inc. is a Delaware corporation and EnergySolutions, LLC is a Utah limited liability company. EnergySolutions, LLC is a direct subsidiary of EnergySolutions, Inc. and holds all of our operating subsidiaries. As a result, the consolidated financial statements of EnergySolutions, Inc. reflect the financial condition and results of operations of both EnergySolutions, Inc. and EnergySolutions, LLC.
Notes offered	\$300,000,000 aggregate principal amount of 10.75% senior notes due August 15, 2018.
Maturity	The exchange notes mature on August 15, 2018.
Interest	The exchange notes will bear interest at a rate of 10.75% per annum, payable semi-annually.
Interest payment dates	On February 15 and August 15 of each year, commencing August 15, 2011.
Guarantees	The exchange notes will be unconditionally guaranteed by certain of our domestic subsidiaries on a senior unsecured basis.
Ranking	The exchange notes will be senior unsecured obligations of the issuers and accordingly, they will:

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be effectively subordinated to all secured obligations of the issuers, including our senior secured credit facility, to the extent of the value of assets securing such debt;

be structurally subordinated to all liabilities of each of our subsidiaries that does not guarantee the notes;

rank pari passu in right of payment to all existing and future senior debt of the issuers; and

rank senior in right of payment to all future subordinated debt of the issuers.



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Similarly, the guarantees will be the guarantors' senior unsecured obligations and accordingly, they will:

be effectively subordinated to our and the guarantors' secured obligations, including our senior secured credit facility and related guarantees, to the extent of the value of assets securing such debt;

rank pari passu in right of payment to all of the guarantors' existing and future senior debt; and

rank senior in right of payment to all of the guarantors' future subordinated debt.

**Optional redemption**

We may redeem some or all of the exchange notes at any time on or after August 15, 2014 at the redemption prices specified in this prospectus under "Description of Notes - Optional Redemption." We may also redeem, at any time prior to August 15, 2014, some or all of the exchange notes pursuant to a make-whole provision as described in this prospectus under "Description of Notes - Optional Redemption."

In addition, at any time and from time to time prior to August 15, 2013, we may redeem up to 35% of the aggregate principal amount of the exchange notes using the proceeds of one or more qualified equity offerings at the redemption price set forth in this prospectus under "Description of Notes - Optional Redemption."

**Change of control**

Upon the occurrence of specific kinds of change of control events, we will be required to offer to repurchase all outstanding exchange notes at 101% of their principal amount plus accrued and unpaid interest to the purchase date. See "Description of Notes - Change of Control" and "Risk Factors - Risks Relating to the Notes." We may not be able to repurchase the notes upon a change of control.

**Certain covenants**

The issuers will issue the exchange notes under an indenture among the issuers, the guarantors and Wells Fargo Bank, National Association, as trustee. The indenture governing the exchange notes contains, among other things, certain covenants limiting our ability and the ability of our restricted subsidiaries to:

incur or guarantee additional indebtedness;

pay dividends or make other restricted payments;

make certain investments;

create or incur liens;

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sell assets and subsidiary stock;

transfer all or substantially all of our assets or enter into a merger or consolidation transactions; and

enter into certain transactions with our affiliates.

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However, these limitations are subject to a number of important qualifications and exceptions. For more details, see [Description of Notes](#) [Certain Covenants](#).

Risk factors

See [Risk Factors](#) and the other information included or incorporated in this prospectus for a discussion of factors you should carefully consider before deciding to exchange your old notes for exchange notes.

**Table of Contents****SUMMARY HISTORICAL CONSOLIDATED FINANCIAL AND OTHER DATA**

The following table presents summary historical consolidated financial and other data for our business as of the dates and for the periods indicated. The financial data as of December 31, 2009 and 2010 and for the years ended December 31, 2008, 2009 and 2010 have been derived from our audited consolidated financial statements that are incorporated by reference in this prospectus. The balance sheet data as of December 31, 2008 has been derived from our audited consolidated financial statements that are not incorporated by reference in this prospectus. The financial data as of March 31, 2011 and for the three month periods ended March 31, 2010 and 2011 have been derived from our unaudited condensed consolidated financial statements that are incorporated by reference in this prospectus. We have prepared our unaudited condensed consolidated financial statements on the same basis as our audited consolidated financial statements and have included all adjustments, consisting of only normal recurring adjustments, that we consider necessary for the fair presentation of our financial position and operating results for such periods. The interim results are not necessarily indicative of results for the year ending December 31, 2011 or for any other period.

You should read the following data together with our financial statements included elsewhere in this prospectus, as well as the information contained under Risk Factors, Capitalization and Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, which are included or incorporated by reference in this prospectus.

(in thousands of dollars)	December 31, 2008	Year ended December 31, 2009	December 31, 2010	Three months ended March 31, 2010	March 31, 2011
<b>Statement of Operations Data:</b>					
Revenues	\$ 1,791,631	\$ 1,623,893	\$ 1,752,042	\$ 485,890	\$ 522,267
Cost of revenues	(1,544,438)	(1,409,596)	(1,553,508)	(440,719)	(475,638)
Gross profit	247,193	214,297	198,534	45,171	46,629
Selling, general and administrative expenses	(129,430)	(123,955)	(132,542)	(30,779)	(33,407)
Impairment of goodwill			(35,000)		
Equity in income of unconsolidated joint ventures	3,167	7,573	13,120	2,363	1,400
Income from operations	120,930	97,915	44,112	16,755	14,622
Interest expense	(44,595)	(30,403)	(71,487)	(8,676)	(18,050)
Other income (expenses), net	(8,723)	(961)	36,659	(173)	15,428
Income before income taxes and noncontrolling interests	67,612	66,551	9,284	7,906	12,000
Income tax expense	(21,098)	(14,588)	(29,204)	(1,922)	(1,182)
Net income (loss)	46,514	51,963	(19,920)	5,984	10,818
Less: Net income attributable to noncontrolling interests	(1,333)	(1,131)	(2,081)	(151)	(909)
Net income (loss) attributable to EnergySolutions	\$ 45,181	\$ 50,832	\$ (22,001)	\$ 5,833	\$ 9,909
<b>Balance Sheet Data (end of period):</b>					
Working capital(1)	\$ 92,550	\$ 120,238	\$ 153,615	\$ 118,252	\$ 154,515
Cash and cash equivalents	48,448	15,913	60,192	44,883	69,574
Total assets	1,550,712	1,511,175	3,425,499	1,629,788	3,478,481
Total debt	566,757	524,111	840,160	525,111	839,344
<b>Statement of Cash Flows Data:</b>					
Net cash flows provided by (used in):					
Operating activities	\$ 103,109	\$ 52,183	\$ 111,320	\$ 39,202	\$ 15,855
Investing activities	(27,276)	(25,079)	(34,269)	(2,027)	(3,345)
Financing activities	(52,626)	(64,157)	(33,058)	(5,153)	(1,401)
<b>Other Data:</b>					
Amortization of intangible assets(2)	\$ 28,250	\$ 25,271	\$ 25,686	\$ 6,436	\$ 6,558
Capital expenditures	26,629	24,389	17,034	2,027	3,800



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- (1) Consists of current assets less current liabilities.
- (2) Represents the non-cash amortization of intangible assets such as permits, technology, customer relationships and non-compete agreements acquired through our acquisitions. Portions of this non-cash amortization expense are included in both cost of revenues and selling, general and administrative expenses.

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**RISK FACTORS**

*Any investment in the notes involves a high degree of risk. You should carefully consider the risks described below and all of the information contained or incorporated by reference in this prospectus before deciding whether to purchase the notes. The risks and uncertainties described below are not the only risks and uncertainties that we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations or affect your investment in the notes. If any of those risks actually occur, our business, financial condition and results of operations could suffer and the value of the notes could be adversely affected. The risks discussed below also include forward looking statements and our actual results may differ substantially from those discussed in these forward looking statements. See *Forward-Looking Statements* in this prospectus.*

**Risks Relating to the Notes**

***Our level of indebtedness following the offering may adversely affect our ability to operate our business, remain in compliance with debt covenants, react to changes in the economy or our industry and prevent us from making payments on our indebtedness, including the notes.***

As of March 31, 2011, we had total indebtedness of approximately \$839.3 million, and unused availability of approximately \$89.1 million under our new revolving credit facility (including unused letters of credit). This level of indebtedness will require us to devote a material portion of our cash flow to our debt service obligations.

Our level of indebtedness could have important consequences to you, as a holder of the notes, including the following:

a substantial portion of our cash flows from operations will be dedicated to the payment of principal and interest on our indebtedness and will not be available for other purposes, including investment in our operations, future business opportunities or strategic acquisitions, capital expenditures and other general corporate purposes;

it may limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;

we may be more highly leveraged than some of our competitors, which may place us at a competitive disadvantage;

it could make us more vulnerable to downturns in general economic or industry conditions or in our business;

it may limit, along with the financial and other restrictive covenants in the agreements governing our indebtedness, our ability to dispose of assets or borrow money for our working capital requirements, capital expenditures, acquisitions, debt service requirements and general corporate or other purposes; and

it may make it more difficult for us to satisfy our obligations with respect to our indebtedness, including the notes.

***Despite our existing indebtedness, we may still incur more debt, which could exacerbate the risks described above.***

We may be able to incur substantial additional indebtedness in the future. Although covenants under the indenture governing the notes and the credit agreement governing our senior secured credit facility will limit our ability to incur certain additional indebtedness, these restrictions are subject to a number of qualifications and exceptions, and the indebtedness incurred in compliance with these restrictions could be substantial. In addition to the \$105.0 million available under the revolving credit facility, which is part of our senior secured credit

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facility, we will have the option to increase the aggregate commitment under the term loan portion of our senior secured credit facility in an aggregate amount of up to \$150.0 million subject to certain conditions, including compliance with the covenants in the notes offered hereby. To the extent that we incur additional indebtedness, the risks associated with our leverage described above, including our possible inability to service our debt, including the notes, would increase.

***We may not be able to generate sufficient cash to service all of our indebtedness, including the notes, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.***

Our ability to make scheduled payments on or to refinance our debt obligations, including the notes, depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We may be unable to maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness, including the notes.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to dispose of material assets or operations, seek additional debt or equity capital or restructure or refinance our indebtedness, including the notes. We may not be able to effect any such alternative measures, if necessary, on commercially reasonable terms or at all and, even if successful, such alternative actions may not allow us to meet our scheduled debt service obligations. The credit agreement governing our senior secured credit facility and the indenture governing the notes will restrict our ability to dispose of assets and use the proceeds from any such dispositions. We may not be able to consummate those dispositions or to obtain proceeds in an amount sufficient to meet any debt service obligations then due. See [Description of Other Indebtedness](#) and [Description of Notes](#).

If we cannot make scheduled payments on our debt, we will be in default and, as a result, holders of the notes could declare all outstanding principal and interest to be due and payable, the lenders under our senior secured credit facility could terminate their commitments to loan money and foreclose against the assets securing the borrowings under such credit agreement and we could be forced into bankruptcy or liquidation, in each case, which could result in your losing your investment in the notes.

***Our ability to repay the notes depends on the performance of our subsidiaries, including our non-guarantor subsidiaries, and their ability to make payments or distributions.***

We conduct a significant portion of our operations through our subsidiaries. Accordingly, repayment of our indebtedness, including the notes, is dependent, to a significant extent, on the generation of cash flow by our subsidiaries and their ability to make such cash available to us, by dividend, debt repayment or otherwise. Unless they are guarantors of the notes, our subsidiaries do not have any obligation to pay amounts due on the notes or to make funds available for that purpose. Our subsidiaries may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness, including the notes. Each subsidiary is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries. While the indenture governing the notes will limit the ability of certain of our subsidiaries to incur consensual restrictions on their ability to pay dividends or make other intercompany payments to us, these limitations are subject to certain qualifications and exceptions. In the event that we do not receive distributions from our subsidiaries, we may be unable to make required principal and interest payments on our indebtedness, including the notes.

***Covenants in the agreement governing our senior secured credit facility and the indenture governing the notes may restrict our ability to pursue our business strategies.***

In connection with the offering of the old notes and as a condition thereto, we entered into a new senior secured credit facility that replaced our existing credit arrangements. The operating and financial restrictions and



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covenants in the agreement governing our senior secured credit facility and the indenture governing the notes will adversely affect our ability to finance future operations or capital needs or to engage in other business activities. The agreement governing our senior secured credit facility and/or the indenture governing the notes will limit our ability to, among other things:

incur or guarantee additional debt and issue preferred stock;

redeem and/or repay certain debt;

pay dividends or make distributions in respect of our common stock or make certain other restricted payments;

create or incur liens;

enter into sale-leaseback transactions;

make certain types of loans, investments or acquisitions;

enter into transactions with affiliates;

enter new lines of business;

enter into guarantees for, and investments into, certain subsidiaries and joint ventures;

make certain capital expenditures;

engage in certain asset sales; and

transfer all or substantially all of our assets or enter into merger or consolidation transactions.

In addition, our senior secured credit facility contains financial covenants requiring us to maintain specified maximum leverage and minimum cash interest coverage ratios.

These restrictions on our ability to operate our business could seriously harm our business by, among other things, limiting our ability to obtain financing and take advantage of merger and acquisition and other corporate opportunities.

Various risks, uncertainties and events beyond our control could affect our ability to comply with these covenants. Failure to comply with these covenants (or similar covenants contained in future financing agreements) could result in a default under the applicable indebtedness, which, if not cured or waived, could have a material adverse effect on our financial condition and liquidity.

In the event of any default under our senior secured credit facility, the lenders thereunder:

would not be required to lend any additional amounts to us;

could elect to declare all borrowings thereunder, together with accrued and unpaid interest and fees, to be due and payable;

could require us to apply all of our available cash to repay these borrowings; and/or

could foreclose against the assets securing these borrowings;  
any of which could ultimately result in an event of default under the notes.

If the indebtedness under our senior secured credit facility were to be accelerated, our assets may not be sufficient to repay such indebtedness in full. In such circumstances, we could be forced into bankruptcy or liquidation and, as a result, you could lose your investment in the notes. See Description of Other Indebtedness Senior Secured Credit Facility.

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***The notes will be structurally subordinated to all indebtedness of our existing or future subsidiaries that do not guarantee the notes, and under certain circumstances, the subsidiaries will be released from their guarantees.***

The notes will, subject to certain exceptions, be guaranteed by each of our existing and subsequently acquired or organized subsidiaries that guarantee our senior secured credit facility. Except for such subsidiary guarantors of the notes, our subsidiaries will have no obligation, contingent or otherwise, to pay amounts due under the notes or to make any funds available to pay those amounts, whether by dividend, distribution, loan or other payment. The notes will be structurally subordinated to all indebtedness and other obligations of any non-guarantor subsidiary such that, in the event of insolvency, liquidation, reorganization, dissolution or other winding up of any subsidiary that is not a guarantor, all of such subsidiary's creditors (including trade creditors and preferred stockholders, if any) would be entitled to payment in full out of such subsidiary's assets before we would be entitled to any payment.

Our non-guarantor subsidiaries accounted for \$1,205.9 million, or 68.8%, of our total revenue; \$36.0 million, or 81.7%, of our operating income; and \$14.8 million, or 27.2%, of our total depreciation, amortization and accretion expense for the year ended December 31, 2010. These subsidiaries accounted for \$404.0 million, or 77.4%, of our total revenue; \$18.8 million, or 128.5%, of our operating income; and \$9.6 million, or 47.5%, of our total depreciation, amortization and accretion expense for the three month period ended March 31, 2011. These subsidiaries had total assets of \$2,364.5 million, or 68.0%, of our total assets as of March 31, 2011.

In addition, our subsidiaries that provide, or will provide, guarantees of the notes will be automatically released from such guarantees upon the occurrence of certain events, including the following:

the designation of such subsidiary guarantor as an unrestricted subsidiary;

the release or discharge of any guarantee or indebtedness that resulted in the creation of the guarantee of the notes by such subsidiary guarantor; or

the sale or other disposition, including the sale of substantially all the assets, of such subsidiary guarantor.

If any such subsidiary guarantee is released, no holder of the notes will have a claim as a creditor against any such subsidiary and the indebtedness and other liabilities, including trade payables and preferred stock, if any, whether secured or unsecured, of such subsidiary will be effectively senior to the claim of any holders of the notes. See "Description of Notes - Subsidiary Guarantees."

***Your right to receive payments on the notes is effectively subordinated to the right of lenders who have security interests in our assets, to the extent of the value of those assets.***

Our obligations under the notes and the obligations of the guarantors of the notes under their guarantees are unsecured and, therefore, are effectively subordinated to our secured obligations and the secured obligations of our existing or future guarantors, to the extent of the value of the assets securing such obligations. Each of our existing and subsequently acquired or organized direct or indirect domestic subsidiaries will provide guarantees of our senior secured credit facility, subject to certain exceptions, which will be secured by a first-lien security interest in substantially all of our and such subsidiary guarantors' assets.

If we are declared bankrupt or insolvent, or if we default under our senior secured credit facility, the lenders could declare all of the funds borrowed thereunder, together with accrued interest, immediately due and payable. If we were unable to repay such indebtedness, the lenders under the credit agreement governing the senior secured credit facility could foreclose on the pledged assets to the exclusion of holders of the notes, even if an event of default exists under the indenture governing the notes at such time. In any such event, because the notes will not be secured by any of our assets or the equity interests in the guarantors, it is possible that there would be no assets remaining from which your claims could be satisfied or, if any assets remained, they might be insufficient to satisfy your claims fully. See "Description of Other Indebtedness."

As of March 31, 2011, we had \$543.1 million of secured indebtedness.



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***We may not be able to repurchase the notes upon a change of control.***

Upon the occurrence of certain kinds of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of their principal amount plus accrued and unpaid interest to the purchase date. The source of funds for any such purchase of the notes will be our available cash or cash generated from our subsidiaries' operations or other sources, including borrowings, sales of assets or sales of equity. We may not be able to repurchase the notes upon a change of control because we may not have sufficient financial resources to purchase all of the notes that are tendered upon a change of control. Further, our ability to repurchase the notes may be limited by law or by the agreements governing our other existing or future indebtedness. Specifically, we will be contractually restricted under the terms of the credit agreement governing our senior secured credit facility from repurchasing all of the notes tendered by holders upon a change of control. Accordingly, we may not be able to satisfy our obligations to purchase the notes, unless we are able to refinance or obtain a waiver under our senior secured credit facility. If we fail to repurchase the notes after we are required to do so, we will go into default under the indenture governing the notes and under the credit agreement governing our senior secured credit facility.

If a change of control were to occur, we cannot assure you that we would have sufficient funds to repay debt outstanding under the senior secured credit facility or any securities which we would be required to offer to purchase or that become immediately due and payable as a result. We may require additional financing from third parties to fund any such purchases, and we cannot assure you that we would be able to obtain financing on satisfactory terms, or at all.

***Federal and state fraudulent transfer laws may permit a court to void the guarantees, and, if that occurs, you may not receive any payments on the notes.***

Federal and state fraudulent transfer and conveyance statutes may apply to the incurrence of the guarantee of the notes. Under federal bankruptcy law and comparable provisions of state fraudulent transfer or conveyance laws, which may vary from state to state, the guarantee of the notes could be voided as a fraudulent transfer or conveyance if the guarantor (a) incurred the guarantees with the intent of hindering, delaying or defrauding creditors or (b) received less than reasonably equivalent value or fair consideration in return for incurring the guarantee and, in the case of (b) only, one of the following is also true at the time thereof:

the guarantor was insolvent or rendered insolvent by reason of the incurrence of the guarantee;

the notes or the incurrence of the guarantee left the guarantor with an unreasonably small amount of capital to carry on its business;

the guarantor intended to, or believed that it would, incur debts beyond such guarantor's ability to pay as they mature; or

the guarantor was engaged in a business or transaction or about to engage in such business or transaction for which its assets constituted unreasonably small capital to carry on its business.

As a general matter, value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. A court would likely find that a guarantor did not receive reasonably equivalent value or fair consideration for its guarantee if such guarantor did not substantially benefit directly or indirectly from the issuance of the notes.

We cannot be certain as to the standards a court would use to determine whether or not the guarantors were solvent at the relevant time or, regardless of the standard that a court uses, whether the guarantees would be subordinated to any of our guarantors' other debt. In general, however, a court would deem an entity insolvent if:

the sum of its debts, including contingent and unliquidated liabilities, was greater than the fair saleable value of all of its assets;

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the present fair saleable value of its assets was 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 mature; or

it could not pay its debts as they became due.

Each guarantee of the notes will contain a provision designed to limit the subsidiary 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. However, there is some doubt as to whether this provision is effective to protect such guarantee from being voided under fraudulent transfer law. In a recent Florida bankruptcy case, a similar provision was found to be ineffective to protect the guarantees.

If a court were to find that the incurrence of a guarantee was a fraudulent transfer or conveyance, the court could void the payment obligations under such guarantee or subordinate such guarantee to presently existing and future indebtedness of the related guarantor, or require the holders of the notes to repay any amounts received with respect to such guarantee. In the event of a finding that a fraudulent transfer or conveyance occurred, you may not receive any repayment on the notes. Further, the voidance of a subsidiary's guaranty could result in an event of default with respect to our and such subsidiary's other debt that could result in acceleration of such debt.

***Because each guarantor's liability under its guarantee may be reduced to zero, avoided or released under certain circumstances, you may not receive any payments from some or all of the guarantors.***

You will have the benefit of the guarantees by the guarantors. However, these guarantees are limited to the maximum amount that the guarantors are permitted to guarantee under applicable law. As a result, a guarantor's liability under its guarantee could be reduced to zero, depending upon the amount of other obligations of such guarantor. Further, under the circumstances discussed more fully above, a court under federal or state fraudulent conveyance and transfer statutes could avoid the obligations under a guarantee or further subordinate it to all other obligations of the subsidiary guarantor. In addition, you will lose the benefit of a particular guarantee if it is released under certain circumstances described under Description of Notes - Subsidiary Guarantees.

***A downgrade, suspension or withdrawal of the rating assigned by a rating agency to our company or the notes, if any, could cause the liquidity or market value of the notes to decline.***

The notes have been rated by nationally recognized statistical rating agencies and may in the future be rated by additional rating agencies. We also have corporate ratings assigned by rating agencies. We cannot assure you that any rating assigned will remain for any given period of time or that a rating will not be lowered or withdrawn entirely by a rating agency if, in that rating agency's judgment, circumstances relating to the basis of the rating, such as adverse changes in our business, so warrant. Any downgrade, suspension or withdrawal of a rating by a rating agency could reduce the liquidity or market value of the notes.

**Risks Relating to the Exchange Offer**

***Your ability to transfer the exchange notes may be limited by the absence of an active trading market, and there is no assurance that any active trading market will develop for the exchange notes.***

The exchange notes will constitute a new issue of securities for which there is no established trading market. We do not intend to have the exchange notes listed on a national securities exchange or to arrange for quotation on any automated dealer quotation systems. The initial purchasers of the old notes have advised us that they intend to make a market in the exchange notes, as permitted by applicable laws and regulations; however, the initial purchasers are not obligated to make a market in the exchange notes and they may discontinue their market-making activities at any time without notice. Therefore, we cannot assure you as to the development or liquidity of any trading market for the exchange notes. The liquidity of any market for the exchange notes will depend on a number of factors, including:

the number of holders of exchange notes;

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our operating performance and financial condition;

the market for similar securities;

the interest of securities dealers in making a market in the exchange notes; and

prevailing interest rates.

Historically, the market for debt securities similar to the exchange notes has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the exchange notes. We cannot assure you that the market, if any, for the exchange notes will be free from similar disruptions or that any such disruptions may not adversely affect the prices at which you may sell your exchange notes. Therefore, we cannot assure you that you will be able to sell your exchange notes at a particular time or that the price you receive when you sell will be favorable.

***You may not receive the exchange notes in the exchange offer if the exchange offer procedures are not properly followed.***

We will issue the exchange notes in exchange for your old notes only if you properly tender the old notes before expiration of the exchange offer. Neither we nor the exchange agent are under any duty to give notification of defects or irregularities with respect to the tenders of the old notes for exchange. If you are the beneficial holder of old notes that are held through your broker, dealer, commercial bank, trust company or other nominee, and you wish to tender such notes in the exchange offer, you should promptly contact the person through whom your old notes are held and instruct that person to tender on your behalf.

***Broker-dealers may become subject to the registration and prospectus delivery requirements of the Securities Act and any profit on the resale of the exchange notes may be deemed to be underwriting compensation under the Securities Act.***

Any broker-dealer that acquires exchange notes in the exchange offer for its own account in exchange for old notes which it acquired through market-making or other trading activities must acknowledge that it will comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction by that broker-dealer. Any profit on the resale of the exchange notes and any commission or concessions received by a broker-dealer may be deemed to be underwriting compensation under the Securities Act.

***If you do not exchange your old notes, they may be difficult to resell.***

It may be difficult for you to sell old notes that are not exchanged in the exchange offer, since any old notes not exchanged will continue to be subject to the restrictions on transfer described in the legend on the global security representing the outstanding old notes. These restrictions on transfer exist because we issued the old notes pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. Generally, the old notes that are not exchanged for exchange notes will remain restricted securities. Accordingly, those old notes may not be offered or sold, unless registered under the Securities Act and applicable state securities laws, except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws.

***The market price for the new notes may be volatile.***

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the new notes offered hereby. The market for the new notes, if any, may be subject to similar disruptions. Any such disruptions may adversely affect the value of your new notes.

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**THE EXCHANGE OFFER**

The following contains a summary of the material provisions of the exchange offer being made pursuant to the registration rights agreement, dated August 13, 2010, which we refer to as the registration rights agreement, with respect to the old notes, among us, the subsidiary guarantors and the initial purchasers of the old notes. It does not contain all of the information that may be important to an investor in the exchange notes.

**Terms of the Exchange Offer**

***General***

In connection with the issuance of the old notes, we entered into a registration rights agreement with the initial purchasers, which provides for the exchange offer.

Under the registration rights agreement, we have agreed:

to use our commercially reasonable efforts to file with the SEC the registration statement, of which this prospectus is a part, with respect to a registered offer to exchange the old notes for the exchange notes;

to commence the exchange offer promptly after the effectiveness of this registration statement and to use our commercially reasonable efforts to complete the exchange offer within 60 days of the effective date.

We will keep the exchange offer open for the period required by applicable law, but in any event for at least 20 business days.

Upon the terms and subject to the conditions set forth in this prospectus and in the letter of transmittal, all old notes validly tendered and not withdrawn prior to 5:00 p.m., New York City time, on the expiration date will be accepted for exchange. Exchange notes will be issued in exchange for an equal principal amount of outstanding old notes accepted in the exchange offer. Old notes may be tendered only in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. This prospectus, together with the letter of transmittal, is being sent to all registered holders as of \_\_\_\_\_, 2011. The exchange offer is not conditioned upon any minimum principal amount of old notes being tendered for exchange. However, the obligation to accept old notes for exchange pursuant to the exchange offer is subject to certain customary conditions as set forth herein under \_\_\_\_\_ Conditions.

Old notes shall be deemed to have been accepted as validly tendered when, as and if we have given oral or written notice of such acceptance to the exchange agent. The exchange agent will act as agent for the tendering holders of old notes for the purposes of receiving the exchange notes and delivering exchange notes to such holders.

Based on interpretations by the Staff of the SEC as set forth in no-action letters issued to third parties (including Exxon Capital Holdings Corporation (available May 13, 1988), Morgan Stanley & Co. Incorporated (available June 5, 1991), K-111 Communications Corporation (available May 14, 1993) and Shearman & Sterling (available July 2, 1993)), we believe that the exchange notes issued pursuant to the exchange offer may be offered for resale, resold and otherwise transferred by any holder of such exchange notes, other than any such holder that is a broker-dealer or an affiliate of us within the meaning of Rule 405 under the Securities Act, without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that:

such exchange notes are acquired in the ordinary course of business;

at the time of the commencement of the exchange offer such holder has no arrangement or understanding with any person to participate in a distribution of such exchange notes; and

such holder is not engaged in and does not intend to engage in a distribution of such exchange notes.





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We have not sought and do not intend to seek a no-action letter from the SEC, with respect to the effects of the exchange offer, and there can be no assurance that the Staff would make a similar determination with respect to the exchange notes as it has in previous no-action letters.

By tendering old notes in exchange for relevant exchange notes, and executing the letter of transmittal for such notes, each holder will represent to us that:

any exchange notes to be received by it will be acquired in the ordinary course of business;

it has no arrangements or understandings with any person to participate in the distribution of the old notes or exchange notes within the meaning of the Securities Act; and

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

If such holder is a broker-dealer, it will also be required to represent that it will receive the exchange notes for its own account in exchange for old notes acquired as a result of market-making activities or other trading activities and that it will deliver a prospectus in connection with any resale of exchange notes. See Plan of Distribution. If such holder is not a broker-dealer, it will be required to represent that it is not engaged in and does not intend to engage in the distribution of the exchange notes. Each holder, whether or not it is a broker-dealer, also will be required to represent that it is not acting on behalf of any person that could not truthfully make any of the foregoing representations contained in this paragraph. If a holder of old notes is unable to make the foregoing representations, such holder may not rely on the applicable interpretations of the Staff of the SEC and must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any secondary resale transaction unless such sale is made in compliance with the provisions of Rule 144 under the Securities Act or another available exemption from the registration requirements of the Securities Act.

Each broker-dealer that receives exchange notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes. Each letter of transmittal states that by so acknowledging 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. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for old notes, where such old notes were acquired by such broker-dealer as a result of market-making activities or other trading activities. We have agreed that, for a period of 90 days after the expiration date (as defined herein), we will make this prospectus available to any broker-dealer for use in connection with any such resale. See Plan of Distribution.

Upon consummation of the exchange offer, any old notes not tendered will remain outstanding and continue to accrue interest at the rate of 10.75%, but, with limited exceptions, holders of old notes who do not exchange their old notes for exchange notes pursuant to the exchange offer will no longer be entitled to registration rights and will not be able to offer or sell their old notes unless such old notes are subsequently registered under the Securities Act, except pursuant to an exemption from or in a transaction not subject to the Securities Act and applicable state securities laws. With limited exceptions, we will have no obligation to effect a subsequent registration of the old notes.

***Expiration Date; Extensions; Amendments; Termination***

The expiration date for the exchange offer shall be 5:00 p.m., New York City time, on , 2011, unless we, in our sole discretion, extend the exchange offer, in which case the expiration date for the exchange offer shall be the latest date to which the exchange offer is extended.

To extend the expiration date, we will notify the exchange agent of any extension by oral or written notice and will notify the holders of old notes by means of a press release or other public announcement prior to 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date for the exchange offer. Such an announcement will include disclosure of the approximate aggregate principal amount of old notes tendered to date and may state that we are extending the exchange offer for a specified period of time.

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In relation to the exchange offer, we reserve the right to:

delay acceptance of any old notes, to extend the exchange offer or to terminate the exchange offer and not permit acceptance of old notes not previously accepted if any of the conditions set forth under **Conditions** shall have occurred and shall not have been waived by us prior to the expiration date, by giving oral or written notice of such delay, extension or termination to the exchange agent; or

amend the terms of the exchange offer in any manner deemed by us to be advantageous to the holders of old notes.

Any such delay in acceptance, extension, termination or amendment will be followed as promptly as practicable by oral or written notice of such delay, extension or termination or amendment to the exchange agent. If the terms of the exchange offer are amended in a manner determined by us to constitute a material change, we will promptly disclose such amendment in a manner reasonably calculated to inform the holders of the old notes of such amendment.

Without limiting the manner in which we may choose to make public an announcement of any delay, extension or termination of the exchange offer, we shall have no obligations to publish, advertise or otherwise communicate any such public announcement, other than by making a timely release to an appropriate news agency.

### ***Interest on the Exchange Notes***

The exchange notes will accrue interest at the rate of 10.75% per annum, accruing interest from the last interest payment date on which interest was paid on the corresponding old note surrendered in exchange for such exchange note to the day before the consummation of the exchange offer, and thereafter, *provided*, that if an old note is surrendered for exchange on or after a record date for the notes for an interest payment date that will occur on or after the date of such exchange and as to which interest will be paid, interest on the exchange note received in exchange for such old note will accrue from the date of such interest payment date. Interest on the exchange notes is payable on February 15 and August 15 of each year, commencing August 15, 2011. No additional interest will be paid on old notes tendered and accepted for exchange except as provided in the registration rights agreement.

### ***Procedures for Tendering***

To tender in the exchange offer, a holder must complete, sign and date the letter of transmittal, or a facsimile of such letter of transmittal, have the signatures on such letter of transmittal guaranteed if required by such letter of transmittal, and mail or otherwise deliver such letter of transmittal or such facsimile, together with any other required documents, to the exchange agent prior to 5:00 p.m., New York City time, on the expiration date. In addition, either

a timely confirmation of a book-entry transfer of old notes into the exchange agent's account at DTC, pursuant to the procedure for book-entry transfer described below, must be received by the exchange agent prior to the expiration date with the letter of transmittal; or

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

We will issue exchange notes only in exchange for old notes that are timely and properly tendered. The method of delivery of the letter of transmittal and all other required documents is at the election and risk of the note holders. If such delivery is by mail, it is recommended that registered or certified mail, properly insured, with return receipt requested, be used. In all cases, sufficient time should be allowed to assure timely delivery and you should carefully follow the instructions on how to tender the old notes. No letters of transmittal or other required documents should be sent to us. Delivery of all letters of transmittal and other documents must be made to the exchange agent at its address set forth below. Holders may also request their respective brokers, dealers,

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commercial banks, trust companies or nominees to effect such tender for such holders. Neither we nor the exchange agent are required to tell you of any defects or irregularities with respect to your old notes or the tenders thereof.

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. Any beneficial owner whose old notes are registered in the name of a 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 his behalf.

Signatures on a letter of transmittal or a notice of withdrawal, as the case may be, must be guaranteed by any member firm of a registered national securities exchange or of the Financial Industry Regulatory Authority, 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, each of which we refer to as an Eligible Institution, unless the old notes tendered pursuant to such letter of transmittal or notice of withdrawal, as the case may be, are tendered (1) by a registered holder of old notes who has not completed the box entitled Special Issuance Instructions or Special Delivery Instructions on the letter of transmittal or (2) for the account of an Eligible Institution.

If a letter of transmittal is signed by trustees, executors, administrators, guardians, 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, submit with such letter of transmittal evidence satisfactory to us of their authority to so act.

All questions as to the validity, form, eligibility, time of receipt and withdrawal of the tendered old notes will be determined by us in our sole discretion, such determination being final and binding on all parties. We reserve the absolute right to reject any and all old notes not properly tendered or any old notes that, if accepted, would, in the opinion of counsel for us, be unlawful. We also reserve the absolute right to waive any irregularities or defects with respect to tender as to particular old notes. 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, any defects or irregularities in connection with tenders of old notes must be cured within such time as we shall determine. None of us, the exchange agent or any other person will be under any duty to give notification of defects or irregularities with respect to tenders of old notes, nor shall any of them incur any liability for failure to give such notification. Tendere of old notes will not be deemed to have been made until such irregularities have been cured or waived. Any old notes received by the exchange agent that are not properly tendered and as to which the defects or irregularities have not been cured or waived will be returned without cost to such holder by the exchange agent, unless otherwise provided in the letter of transmittal, promptly following the expiration date.

In addition, we reserve the right in our sole discretion, subject to the provisions of each indenture pursuant to which the notes are issued, to:

purchase or make offers for any old notes that remain outstanding subsequent to the expiration date or, as set forth under Conditions, to terminate the exchange offer;

redeem the old notes as a whole or in part at any time and from time to time, as set forth under Description of Notes Optional Redemption; and

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

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

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### ***Acceptance of Old Notes for Exchange; Delivery of Exchange Notes***

Upon satisfaction or waiver of all of the conditions to the exchange offer, all old notes properly tendered will be accepted promptly after the expiration date, and the exchange notes of the same series will be issued promptly after acceptance of such old notes. See Conditions. For purposes of the exchange offer, old notes shall be deemed to have been accepted as validly tendered for exchange when, as and if we have given oral or written notice thereof to the exchange agent. For each old note accepted for exchange, the holder of such series of old notes will receive an exchange note of the same series having a principal amount equal to that of the surrendered old note.

In all cases, issuance of exchange notes for old notes that are accepted for exchange pursuant to the exchange offer will be made only after timely receipt by the exchange agent of:

a timely book-entry confirmation of such old notes into the exchange agent's account at the book-entry transfer facility;

a properly completed and duly executed letter of transmittal; and

all other required documents.

If any tendered old notes are not accepted for any reason set forth in the terms and conditions of the exchange offer, such unaccepted or such non-exchanged old notes will be returned without cost to the tendering holder of such notes, if in certificated form, or credited to an account maintained with such book-entry transfer facility as promptly as practicable after the expiration or termination of the exchange offer.

### ***Book-Entry Transfer***

The exchange agent will make a request to establish an account with respect to the old notes at the book-entry transfer facility for purposes of the exchange offer within two business days after the date of this prospectus. Any financial institution that is a participant in the book-entry transfer facility's systems may make book-entry delivery of old notes by causing the book-entry transfer facility to transfer such old notes into the exchange agent's account for the relevant notes at the book-entry transfer facility in accordance with such book-entry transfer facility's procedures for transfer. However, although delivery of old notes may be effected through book-entry transfer at the book-entry transfer facility, the letter of transmittal or facsimile thereof with any required signature guarantees and any other required documents must, in any case, be transmitted to and received by the exchange agent at one of the addresses set forth below under Exchange Agent on or prior to the expiration date or the guaranteed delivery procedures described below must be complied with.

### ***Exchanging Book-Entry Notes***

The exchange agent and the book-entry transfer facility have confirmed that any financial institution that is a participant in the book-entry transfer facility may utilize the book-entry transfer facility Automated Tender Offer Program, or ATOP, procedures to tender old notes.

Any participant in the book-entry transfer facility may make book-entry delivery of old notes by causing the book-entry transfer facility to transfer such old notes into the exchange agent's account for the relevant notes in accordance with the book-entry transfer facility's ATOP procedures for transfer. However, the exchange for the old notes so tendered will only be made after a book-entry confirmation of the book-entry transfer of such old notes into the exchange agent's account for the relevant notes, and timely receipt by the exchange agent of an agent's message and any other documents required by the letter of transmittal. The term agent's message means a message, transmitted by the book-entry transfer facility and received by the exchange agent and forming part of a book-entry confirmation, that states that the book-entry transfer facility has received an express acknowledgement from a participant tendering old notes that are the subject of such book-entry confirmation that such participant has received and agrees to be bound by the terms of the letter of transmittal, and that we may enforce such agreement against such participant.

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### ***Guaranteed Delivery Procedures***

If the procedures for book-entry transfer cannot be completed on a timely basis, a tender may be effected if:

the tender is made through an Eligible Institution;

prior to the expiration date, the exchange agent receives by facsimile transmission, mail or hand delivery from such Eligible Institution a properly completed and duly executed letter of transmittal and notice of guaranteed delivery, substantially in the form provided by us, that:

- (1) sets forth the name and address of the holder of the old notes and the principal amount of old notes tendered,
- (2) states the tender is being made thereby, and
- (3) guarantees that within three New York Stock Exchange, or NYSE, trading days after the date of execution of the notice of guaranteed delivery, 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

a book-entry confirmation and all other documents required by the letter of transmittal are received by the exchange agent within three NYSE trading days after the date of execution of the notice of guaranteed delivery.

### ***Withdrawal of Tenders***

Tenders of old notes may be withdrawn at any time prior to 5:00 p.m., New York City time, on the expiration date.

For a withdrawal to be effective, a written notice of withdrawal must be received by the exchange agent prior to 5:00 p.m., New York City time, on the expiration date at the address set forth below under Exchange Agent. Any such notice of withdrawal must:

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

identify the old notes to be withdrawn, including the principal amount of such old notes;

specify the number of the account at the book-entry transfer facility from which the old notes were tendered and specify the name and number of the account at the book-entry transfer facility to be credited with the withdrawn old notes and otherwise comply with the procedures of such facility;

contain a statement that such holder is withdrawing its election to have such old notes exchanged;

be signed by the holder in the same manner as the original signature on the letter of transmittal by which such old notes were tendered, including any required signature guarantees, or be accompanied by documents of transfer to have the trustee with respect to

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the old notes register the transfer of such old notes in the name of the person withdrawing the tender; and

specify the name in which such old notes are registered, if different from the person who tendered such old notes.

All questions as to the validity, form, eligibility and time of receipt of such notice will be determined by us, in our sole discretion, such determination being final and binding on all parties. Any old notes so withdrawn will be deemed not to have been validly tendered for exchange for purposes of the exchange offer. Any old notes which have been tendered for exchange but which are not exchanged for any reason will be returned to the tendering holder of such notes without cost to such holder, in the case of physically tendered old notes, or credited to an account maintained with the book-entry transfer facility for the old notes promptly after withdrawal, rejection of tender or termination of the exchange offer. Properly withdrawn old notes may be retendered by following one of the procedures described under **Procedures for Tendering and Book-Entry Transfer** above at any time on or prior to 5:00 p.m., New York City time, on the expiration date.

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### ***Conditions***

Notwithstanding any other provision in the exchange offer, we shall not be required to accept for exchange, or to issue exchange notes in exchange for, any old notes and may terminate or amend the exchange offer if at any time prior to 5:00 p.m., New York City time, on the expiration date, we determine in our reasonable judgment that the exchange offer violates applicable law, any applicable interpretation of the Staff of the SEC or any order of any governmental agency or court of competent jurisdiction.

The foregoing conditions are for our sole benefit and may be asserted by us regardless of the circumstances giving rise to any such condition or may be waived by us in whole or in part at any time and from time to time, prior to the expiration date, in our reasonable discretion. Our failure at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

In addition, we will not accept for exchange any old notes tendered, and no exchange notes will be issued in exchange for any such old notes, if at any such time any stop order shall be threatened or in effect with respect to the registration statement of which this prospectus constitutes a part or the qualification of each of the indentures governing the notes under the Trust Indenture Act of 1939. We are required to use our commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of the registration statement at the earliest practicable date.

### ***Exchange Agent***

Wells Fargo Bank, National Association has been appointed as exchange agent for the exchange offer. Questions and requests for assistance and requests for additional copies of this prospectus or of the letter of transmittal should be directed to the exchange agent addressed as follows:

*By Mail, Hand or Overnight Delivery:*

Wells Fargo Bank, National Association

201 Main Street, Suite 301

Forth Worth, TX 76102

Attn: Mr. John C. Stohlmann

*By Facsimile:*

(817) 885-8650

*For Information or Confirmation by Telephone:*

(817) 334-7065

### ***Fees and Expenses***

The expenses of soliciting tenders pursuant to the exchange offer will be borne by us. The principal solicitation for tenders pursuant to the exchange offer is being made by mail; however, additional solicitations may be made by telegraph, telephone, teletype or in person by our officers and regular employees.

We will not make any payments to or extend any commissions or concessions to any broker or dealer. We will, however, pay the exchange agent reasonable and customary fees for its services and will reimburse the exchange agent for its reasonable out-of-pocket expenses in connection therewith. 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 the prospectus and related documents to the beneficial owners of the old notes and in handling or forwarding tenders for exchange.

The expenses to be incurred by us in connection with the exchange offer will be paid by us, including fees and expenses of the exchange agent and trustee and accounting, legal, printing and related fees and expenses.



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We will pay all transfer taxes, if any, applicable to the exchange of old notes pursuant to the exchange offer. If, however, exchange notes or old notes for principal amounts not tendered or accepted for exchange are to be

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registered or issued in the name of any person other than the registered holder of the old notes tendered, or if tendered old notes are registered in the name of any person other than the person signing the letter of transmittal, or if a transfer tax is imposed for any reason other than the exchange of old notes pursuant to the exchange offer, then the amount of any such transfer taxes imposed on the registered holder or any other persons will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed directly to such tendering holder.

**Accounting Treatment**

We will record the exchange notes at the same carrying value of the old notes reflected in our accounting records on the date the exchange offer is completed. Accordingly, we will not recognize any gain or loss for accounting purposes upon the exchange of exchange notes for old notes. We will amortize certain expenses incurred in connection with the issuance of the exchange notes over the respective terms of the exchange notes.

**Consequences of Failure to Exchange**

Holders of old notes who do not exchange their old notes for exchange notes pursuant to the exchange offer will continue to be subject to the restrictions on transfer of such old notes as set forth in the legend on such old notes as a consequence of the issuance of the old notes pursuant to exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable state securities laws. In general, the old notes may not be offered or sold, unless registered under the Securities Act, except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. We do not currently anticipate that we will register the old notes under the Securities Act. To the extent that old notes are tendered and accepted pursuant to the exchange offer, the trading market for untendered and tendered but unaccepted old notes could be adversely affected due to the liquidity of the market for the old notes being diminished. In addition, the restrictions on the ability to transfer the old notes may make the old notes less attractive to potential investors than the exchange notes.

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**USE OF PROCEEDS**

We will not receive cash proceeds from the issuance of the exchange notes under the exchange offer. In consideration for issuing the exchange notes in exchange for old notes as described in this prospectus, we will receive old notes of equal principal amount. The old notes surrendered in exchange for the exchange notes will be retired and canceled.

**Table of Contents****CAPITALIZATION**

The following table sets forth our cash and cash equivalents and restricted cash and our capitalization as of March 31, 2011. This information should be read in conjunction with Selected Historical Consolidated Financial and Other Data and Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements that are incorporated by reference in this prospectus.

(in thousands)

Cash and cash equivalents	\$ 69,574
Restricted cash	336,021
<b>Total cash and cash equivalents and restricted cash</b>	<b>\$ 405,595</b>
Debt:	
Term loan facility	\$ 543,073
Senior notes	296,271
<b>Total debt</b>	<b>839,344</b>
Stockholders' equity	
Preferred stock, \$0.01 par value, 100,000,000 shares authorized; no shares issued and outstanding	888
Common stock, \$0.01 par value, 1,000,000,000 shares authorized; 88,769,403 shares issued and outstanding	500,384
Additional paid-in capital	(21,800)
Accumulated other comprehensive loss	12,077
Retained earnings	491,549
<b>Total EnergySolutions stockholders' equity</b>	<b>3,811</b>
Noncontrolling interests	495,360
<b>Total stockholders' equity</b>	<b>\$ 1,334,704</b>
<b>Total capitalization</b>	<b>\$ 1,334,704</b>

**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL AND OTHER DATA**

The following table presents selected historical consolidated financial and other data for our business as of the dates and for the periods indicated. The financial data for periods prior to November 20, 2007, the date of the completion of our initial public offering, represents the results of EnergySolutions, LLC, which holds all of our operating subsidiaries and which became a direct subsidiary of EnergySolutions, Inc. upon the completion of our initial public offering. The financial data as of December 31, 2009 and 2010 and for the years ended December 31, 2008, 2009 and 2010 have been derived from the audited consolidated financial statements that are incorporated by reference in this prospectus. The financial data as of December 31, 2006, 2007 and 2008 and for the years ended December 31, 2006 and 2007 have been derived from our audited consolidated financial statements that are not incorporated by reference in this prospectus. The financial data as of March 31, 2011 and for the three month periods ended March 31, 2010 and 2011 have been derived from our unaudited condensed consolidated financial statements that are incorporated by reference in this prospectus. We have prepared our unaudited condensed consolidated financial statements on the same basis as our audited consolidated financial statements and have included all adjustments, consisting of only normal recurring adjustments, that we consider necessary for the fair presentation of our financial position and operating results for such periods. The interim results are not necessarily indicative of results for the year ending December 31, 2011 or for any other period.

You should read the following data together with the financial statements included elsewhere in this prospectus, as well as the information contained under Risk Factors, Capitalization and Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, which are included or incorporated by reference in this prospectus.

	<i>EnergySolutions</i>						
	Year ended December 31, 2006(1)	Year ended December 31, 2007(2)	Year ended December 31, 2008	Year ended December 31, 2009	Year ended December 31, 2010	Three months ended March 31, 2010	Three months ended March 31, 2011
<b>(in thousands of dollars)</b>							
<b>Statement of operations data:</b>							
Revenues	\$ 427,103	\$ 1,092,613	\$ 1,791,631	\$ 1,623,893	\$ 1,752,042	\$ 485,890	\$ 522,267
Cost of revenues	(235,867)	(896,086)	(1,544,438)	(1,409,596)	(1,553,508)	(440,719)	(475,638)
Gross profit	191,236	196,527	247,193	214,297	198,534	45,171	46,629
Selling, general and administrative expenses	(101,262)	(121,948)	(129,430)	(123,955)	(132,542)	(30,779)	(33,407)
Impairment of goodwill					(35,000)		
Equity in income of unconsolidated joint ventures		1,373	3,167	7,573	13,120	2,363	1,400
Income from operations	89,974	75,952	120,930	97,915	44,112	16,755	14,622
Interest expense	(68,566)	(75,432)	(44,595)	(30,403)	(71,487)	(8,676)	(18,050)
Other income (expense)	3,113	1,991	(8,723)	(961)	36,659	(173)	15,428
Income before income taxes and noncontrolling interests	24,521	2,511	67,612	66,551	9,284	7,906	12,000
Income tax (expense) benefit	2,342	(11,318)	(21,098)	(14,588)	(29,204)	(1,922)	(1,182)
Net income (loss)	26,863	(8,807)	46,514	51,963	(19,920)	5,984	10,818
Less: Net income attributable to noncontrolling interests		(92)	(1,333)	(1,131)	(2,081)	(151)	(909)
Net income (loss) attributable to EnergySolutions	\$ 26,863	\$ (8,899)	\$ 45,181	\$ 50,832	\$ (22,001)	\$ 5,833	\$ 9,909

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(in thousands of dollars)	EnergySolutions						
	Year ended December 31, 2006(1)	Year ended December 31, 2007(2)	Year ended December 31, 2008	Year ended December 31, 2009	Year ended December 31, 2010	Three months ended March 31, 2010	Three months ended March 31, 2011
<b>Balance sheet data (end of period):</b>							
Working capital(3)	\$ 32,136	\$ 69,739	\$ 92,550	\$ 120,238	\$ 153,615	\$ 118,252	\$ 154,515
Cash and cash equivalents	4,641	36,366	48,448	15,913	60,192	44,883	69,574
Total assets	1,157,205	1,624,950	1,550,712	1,511,175	3,425,499	1,629,788	3,478,481
Total debt	764,167	606,967	566,757	524,111	840,160	525,111	839,344
<b>Statement of Cash Flows Data:</b>							
Net cash flows provided by (used in):							
Operating activities	\$ 69,756	\$ 152,796	\$ 103,109	\$ 52,183	\$ 111,320	\$ 39,202	\$ 15,855
Investing activities	(471,764)	(211,838)	(27,276)	(25,079)	(34,269)	(2,027)	(3,345)
Financing activities	371,851	91,934	(52,626)	(64,157)	(33,058)	(5,153)	(1,401)
<b>Other data:</b>							
Ratio of earnings to fixed charges(4)	1.4x	1.0x	2.5x	3.0x	1.1x	1.6x	1.7x

- (1) Includes the results of operations of BNG America LLC ( BNGA ), Duratek, Inc. ( Duratek ) and Safeguard International Solutions, Ltd. (renamed ESEU Services Limited ( ESEU Services )) from the dates of their acquisitions in February 2006, June 2006 and December 2006, respectively.
- (2) Includes the results of operations of Parallax, RSMC, NUKEM and Monserco from the dates of their acquisitions in January 2007, June 2007, July 2007 and December 2007, respectively.
- (3) Consists of current assets, less current liabilities.
- (4) For purposes of calculating these ratios, earnings consists of earnings before income taxes and noncontrolling interests, less equity in income of unconsolidated joint ventures, less net income (loss) attributed to noncontrolling interests, plus dividends of unconsolidated joint ventures, plus fixed charges (excluding capitalized interest). The term fixed charges consists of interest expense, the amortization of debt issuance costs and an estimate of interest as a component of rental expense.

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**DESCRIPTION OF OTHER INDEBTEDNESS**

Concurrently with the completion of the offering of the old notes on August 13, 2010, we established a new senior secured credit facility, which consists of a senior secured term loan in an aggregate principal amount of \$560.0 million and a senior secured revolving credit facility in an aggregate principal amount of \$105.0 million. The borrower under our senior secured credit facility is EnergySolutions, LLC, and the borrower's obligations are guaranteed by EnergySolutions, Inc. and each of our direct or indirect domestic subsidiaries (other than (a) ZionSolutions, LLC, which was established for the purpose of our license stewardship project to decommission Exelon's two shut-down nuclear reactors in Zion, Illinois, as well as up to five other special purpose subsidiaries that may be established for similar license stewardship projects and (b) certain other non-operating or immaterial subsidiaries). The obligations under the senior secured credit facility are secured by a lien on substantially all of the assets of EnergySolutions, Inc., EnergySolutions, LLC and each of our domestic subsidiary guarantors, including a pledge over the equity interests of the Borrower and each of our domestic subsidiary guarantors (which pledge excludes the equity interests in ZionSolutions, LLC and other special purpose subsidiaries, as well as any other subsidiary whose organizational documentation prohibits such pledge, and is limited, in the case of voting equity interests of a foreign subsidiary, to 65% of such equity interests except to the extent such equity interests cannot be pledged under the laws of the jurisdiction of organization of such foreign subsidiary). In the event of default, the lenders have standard creditor remedies, including the right to foreclose on the pledged assets.

In addition to our senior secured credit facility, under certain circumstances, EnergySolutions, LLC may obtain incremental loan facilities and incremental revolving commitments of up to \$150.0 million. If the interest rate spread applicable to any incremental facility exceeds the interest rate spread applicable to an existing credit facility of comparable class by more than 25 basis points, then the interest rate spread for such existing credit facility will be automatically increased by such amount as would be necessary to eliminate such excess over 25 basis points. In addition, borrowings under any incremental facility are subject to restrictions in the notes.

Borrowings under the senior secured credit facility bear interest at a rate equal to:

- (1) in the case of the term loan, Adjusted LIBOR plus 4.50%, or ABR plus 3.50%;
- (2) in the case of the revolving credit facility, Adjusted LIBOR plus 4.50%, or ABR plus 3.50%; and
- (3) in the case of revolving letters of credit, a per annum fee equal to the spread over Adjusted LIBOR under the revolving credit facility, along with a fronting fee and issuance and administration fees.

Adjusted LIBOR is defined as, with respect to any interest period, the London interbank offered rate for such interest period, adjusted for any applicable statutory reserve requirements; provided that Adjusted LIBOR, when used in reference to the term loan, will at no time be less than 1.75% per annum.

ABR is defined as the highest of (a) the administrative agent's Prime Rate, (b) the Federal Funds Effective Rate plus 1/2 of 1.00% and (c) the Adjusted LIBOR from time to time for an interest period of one month, plus 1.00%; provided that ABR, when used in reference to the term loan, shall at no time be less than 2.75% per annum.

The term loan amortizes in equal quarterly installments on the last day of each March, June, September and December in aggregate annual amounts equal to 0.25% of the original principal amount of the term loan, with the balance being payable on August 13, 2016.

The borrower will be required to prepay borrowings under the senior secured credit facility with (1) 100% of the net cash proceeds received from non-ordinary course asset sales or other dispositions, or as a result of a casualty or condemnation, subject to reinvestment provisions and other customary carveouts, (2) 100% of the net proceeds received from the issuance of debt obligations other than certain permitted debt obligations, and (3) 50% of excess cash flow (as defined in the senior secured credit facility), reduced by the aggregate amount of

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term loans optionally prepaid during the applicable fiscal year if our leverage ratio is greater than or equal to 3.0 to 1.0, and 25% of excess cash flow if our leverage ratio is less than 3.0 to 1.00 and greater than or equal to 1.0 to 1.0. The borrower will not be required to prepay borrowings with excess cash flow if our leverage ratio is less than or equal to 1.0 to 1.0.

The senior secured credit facility requires us to maintain a leverage ratio (based upon the ratio of indebtedness for money borrowed to consolidated adjusted EBITDA, as defined in the senior secured credit facility) and an interest coverage ratio (based upon the ratio of consolidated adjusted EBITDA to consolidated cash interest expense), which are tested quarterly. Failure to comply with these financial ratio covenants would result in an event of default under the senior secured credit facility and, absent a waiver or an amendment from the lenders, preclude the borrower from making further borrowings under the senior secured credit facility and permit the lenders to accelerate all outstanding borrowings under the senior secured credit facility.

The senior secured credit facility also contains a number of affirmative and restrictive covenants, including limitations on mergers, consolidations and dissolutions; sales of assets; investments and acquisitions; indebtedness; liens; affiliate transactions; maximum capital expenditures; and dividends and restricted payments. The senior secured credit facility contains events of default for non-payment of principal and interest when due, cross default and cross acceleration provisions and an event of default that would be triggered by a change of control.

JPMorgan Chase Bank, N.A. is the administrative agent and collateral agent for our senior secured credit facility. J.P. Morgan Securities Inc., Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc. are acting as joint lead arrangers and joint bookrunners for the senior secured credit facility. Credit Suisse AG and Citibank, N.A., together with their affiliates, are acting as syndication agents for the senior secured credit facility.



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**DESCRIPTION OF NOTES**

**General**

The old 10.75% Senior Notes due August 15, 2018 (the **Old Notes** ) were issued, and the new 10.75% Senior Notes due August 15, 2018 (the **Exchange Notes** ) will be issued, under an indenture, dated as of August 13, 2010 (the **Indenture** ), among EnergySolutions, Inc., EnergySolutions, LLC, the guarantor parties thereto and Wells Fargo Bank, National Association, as trustee (the **Trustee** ).

The terms of the Exchange Notes are substantially identical to the terms of the Old Notes, except that the Exchange Notes are registered under the Securities Act and therefore will not contain restrictions on transfer or provisions relating to additional interest. The Exchange Notes will bear a different CUSIP and ISIN number from the Old Notes and will not entitle their holders to registration rights. Exchange Notes will otherwise be treated as Old Notes for purposes of the Indenture.

The Indenture contains provisions that define your rights and govern the obligations of the Company under the Notes. Copies of the forms of the Indenture and the Notes will be made available to prospective purchasers of the Notes upon request. See **Additional Information**.

The following is a summary of certain provisions of the Indenture and the Notes. It does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Indenture, including the definitions of certain terms therein and those terms to be made a part thereof by the Trust Indenture Act of 1939. The term **Company** and the other capitalized terms defined in **Certain Definitions** below are used in this **Description of Notes** as so defined. Any reference to a **Holder** or a **Noteholder** in this **Description of Notes** refers to the Holders of the Notes. Any reference to **Notes** or a **class** of Notes in this **Description of Notes** refers to the Notes as a class. The term **Notes** refers collectively to the Old Notes and the Exchange Notes.

**Brief Description of the Notes**

The Notes:

are general unsecured senior obligations of the Issuers;

rank pari passu in right of payment with all existing and future Senior Indebtedness of the Issuers (including the Credit Agreement);

are effectively subordinated to all secured Indebtedness of the Issuers (including the Credit Agreement) to the extent of the value of the assets securing such Indebtedness;

are structurally subordinated to all existing and future Indebtedness, claims of holders of Preferred Stock and other liabilities of the Company's Subsidiaries that are not guaranteeing the Notes; and

rank senior in right of payment to any future Subordinated Obligations of the Issuers.

**Brief Description of the Subsidiary Guarantees**

The Notes are guaranteed by each of the Subsidiary Guarantors. The Subsidiary Guarantee of each Subsidiary Guarantor:

is a general unsecured senior obligation of such Subsidiary Guarantor;

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ranks pari passu in right of payment with all existing and future Senior Indebtedness (including the Credit Agreement) of such Subsidiary Guarantor;

is effectively subordinated to all secured Indebtedness of such Subsidiary Guarantor (including the Credit Agreement) to the extent of the value of the assets securing such Indebtedness; and

ranks senior in right of payment to any future Subordinated Obligations of such Subsidiary Guarantor.

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As of March 31, 2011:

the Issuers and the Subsidiary Guarantors had \$839.3 million of outstanding Indebtedness;

the Issuers and the Subsidiary Guarantors had \$543.1 million of outstanding secured Indebtedness; and

Subsidiaries of the Company that are not Subsidiary Guarantors had no outstanding Indebtedness.

Substantially all of the operations of the Company are conducted through its Subsidiaries. Some of the Subsidiaries of the Company are not Guaranteeing the Notes, and, as described under [Subsidiary Guarantees](#), Subsidiary Guarantees may be released under certain circumstances. In addition, future Subsidiaries of the Company may not be required to guarantee the Notes. Claims of creditors of such non-guarantor Subsidiaries, including trade creditors and creditors holding Indebtedness or Guarantees issued by such non-guarantor Subsidiaries, and claims of preferred stockholders of such non-guarantor Subsidiaries, generally will have priority with respect to the assets and earnings of such non-guarantor Subsidiaries over the claims of the creditors of the Company, including Holders of Notes. Accordingly, the Notes will be effectively subordinated to creditors (including trade creditors) and preferred stockholders, if any, of such non-guarantor Subsidiaries.

Our non-guarantor Subsidiaries accounted for \$1,205.9 million, or 68.8%, of our total revenue; \$36.0 million, or 81.7%, of our operating income; and \$14.8 million, or 27.2%, of our total depreciation, amortization and accretion expense for the year ended December 31, 2010. These Subsidiaries accounted for \$404.0 million, or 77.4%, of our total revenue; \$18.8 million, or 128.5%, of our operating income; and \$9.6 million, or 47.5%, of our total depreciation, amortization and accretion expense for the three month period ended March 31, 2011. These Subsidiaries had total assets of \$2,364.5 million, or 68.0%, of our total assets as of March 31, 2011. Although the Indenture limits the incurrence of Indebtedness and the issuance of Preferred Stock by certain Subsidiaries of the Company, such limitation is subject to a number of significant qualifications. Moreover, the Indenture does not impose any limitation on the incurrence by such Subsidiaries of liabilities that are not considered Indebtedness under the Indenture. See [Certain Covenants](#) [Limitation on Indebtedness](#).

**Principal, Maturity and Interest**

The Issuers will issue the Notes initially with a maximum aggregate principal amount of \$300,000,000. The Issuers will issue the Notes in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The Notes will mature on August 15, 2018. Subject to compliance with the covenant described under [Certain Covenants](#) [Limitation on Indebtedness](#), the Issuers are permitted under the Indenture to issue more Notes from time to time (the [Additional Notes](#) ). The Notes and the Additional Notes, if any, will be treated as a single class for all purposes of the Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context otherwise requires, for all purposes of the Indenture and this [Description of notes](#), references to the Notes include any Additional Notes actually issued.

Interest on the Notes will accrue at the rate of 10.75% per annum and will be payable semiannually in arrears on February 15 and August 15, commencing on August 15, 2011. The Issuers will make each interest payment to the Holders of record on the immediately preceding February 1 and August 1.

Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including the Issue Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Additional interest may accrue on the Notes in certain circumstances pursuant to the Registration Rights Agreement. See [Exchange Offer](#); [Registration Rights](#). All references in the Indenture, in any context, to any interest payable on or with respect to the Notes shall be deemed to include additional interest pursuant to the Registration Rights Agreement.

**Table of Contents****Optional Redemption**

Except as set forth below, the Issuers will not be entitled to redeem the Notes.

On and after August 15, 2014, the Issuers will be entitled at their option to redeem all or a portion of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed in percentages of principal amount on the redemption date), plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on August 15 of the years set forth below:

<b>Period</b>	<b>Redemption Price</b>
2014	105.375%
2015	102.688%
2016 and thereafter	100.000%

In addition, any time prior to August 15, 2013, the Issuers will be entitled at their option on one or more occasions to redeem the Notes (which includes Additional Notes, if any) in an aggregate principal amount not to exceed 35% of the aggregate principal amount of the Notes (which includes Additional Notes, if any) originally issued at a redemption price (expressed as a percentage of principal amount) of 110.75%, plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), with the Net Cash Proceeds from one or more Equity Offerings; provided, however, that

- (1) at least 65% of such aggregate principal amount of Notes (which includes Additional Notes and Exchange Notes, if any) remains outstanding immediately after the occurrence of each such redemption (other than the Notes held, directly or indirectly, by the Issuers or Affiliates of the Issuers); and
- (2) each such redemption occurs within 90 days after the date of the related Equity Offering.

Prior to August 15, 2014, the Issuers will be entitled at their option to redeem all or a portion of the Notes at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest to, the redemption date (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date). Notice of such redemption must be mailed by first class mail to each Holder's registered address, not less than 30 nor more than 60 days prior to the redemption date.

**Applicable Premium** means, with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of (1) the redemption price of such Note on August 15, 2014 (such redemption price being described in the second paragraph in this Optional redemption section exclusive of any accrued interest) plus (2) all required remaining scheduled interest payments due on such Note through August 15, 2014 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate, over (B) the principal amount of such Note on such redemption date.

**Adjusted Treasury Rate** means, with respect to any redemption date, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated H.15(519) or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption Treasury Constant Maturities, for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after August 15, 2014, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal

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to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date, plus 0.50%.

**Comparable Treasury Issue** means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Notes from the redemption date to August 15, 2014, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a maturity most nearly equal to August 15, 2014.

**Comparable Treasury Price** means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three, or such lesser number as is obtained by the Trustee, Reference Treasury Dealer Quotations for such redemption date.

**Quotation Agent** means the Reference Treasury Dealer selected by the Trustee after consultation with the Company.

**Reference Treasury Dealer** means initially J.P. Morgan Securities Inc., Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc., and their successors and assigns; provided, however, if any such Person ceases to be a primary United States government securities dealer, the Company will select another nationally recognized investment banking firm that is a primary United States government securities dealer to replace such Person.

**Reference Treasury Dealer Quotations** means with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day immediately preceding such redemption date.

## **Selection and Notice of Redemption**

If the Issuers are redeeming less than all the Notes at any time, the Trustee will select Notes on a pro rata basis to the extent practicable, by lot or such other method as the Trustee in its sole discretion shall deem to be fair and appropriate, unless another method is required by law or applicable exchange or depository requirements.

The Issuers will redeem Notes of \$2,000 or less in whole and not in part. The Issuers will cause notices of redemption to 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, except that redemption notices may be mailed more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Any defect in the notice of redemption, including a failure to give notice, to any Holder selected for redemption will not impair or affect the validity of the redemption of any other Note redeemed in accordance with provisions of the Indenture.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note will state the portion of the principal amount thereof to be redeemed. The Issuers will issue an Exchange Note in a principal amount equal to the unredeemed portion of the original Note in the name of the Holder upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. Notes held in certificated form must be surrendered to the paying agent in order to collect the redemption price. Unless the Issuers default in payment of the redemption price, on and after the redemption date interest ceases to accrue on Notes or portions of them called for redemption.

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### **Mandatory Redemption; Offers to Purchase; Open-Market Purchases**

The Issuers are not required to make any mandatory redemption or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuers may be required to offer to purchase Notes as described under **Change of Control** and **Certain Covenants Limitation on Sales of Assets and Subsidiary Stock**. In addition, the Issuers may at any time and from time to time purchase Notes in the open market or otherwise.

### **Subsidiary Guarantees**

The Notes will be initially guaranteed by each of the Company's current and future Domestic Subsidiaries that are guarantors under the Credit Agreement. The Subsidiary Guarantors will jointly and severally guarantee, on a senior unsecured basis, all obligations of the Issuers under the Notes. The obligations of each Subsidiary Guarantor under its Subsidiary Guarantee will be limited to an amount designed to prevent that Subsidiary Guarantee from constituting a fraudulent conveyance under applicable law; however this limitation may not be effective to avoid such Subsidiary Guarantee from constituting a fraudulent conveyance. If a Subsidiary Guarantee were rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the applicable Subsidiary Guarantor, and, depending on the amount of such Indebtedness, a Subsidiary Guarantor's liability on its Subsidiary Guarantee could be reduced to zero. See **Risk Factors Risks Related to this Offering** Federal and state fraudulent transfer laws may permit a court to void the guarantees, and, if that occurs, you may not receive any payments on the notes.

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

Pursuant to the Indenture, (A) a Subsidiary Guarantor may consolidate with, merge with or into, or transfer all or substantially all its assets to any other Person to the extent described under **Certain Covenants Merger and Consolidation** and (B) the Equity Interests of a Subsidiary Guarantor may be sold or otherwise disposed of to another Person to the extent described below under **Certain Covenants Limitation on Sales of Assets and Subsidiary Stock**; provided, however, that in the case of the consolidation, merger or transfer of all or substantially all the assets of such Subsidiary Guarantor, if such other Person is not the Company, the Co-Issuer or a Subsidiary Guarantor, such Subsidiary Guarantor's obligations under its Subsidiary Guarantee must be expressly assumed by such other Person, except that such assumption will not be required in the case of:

(1) the sale or other disposition (including by way of consolidation or merger) of a Subsidiary Guarantor (including the sale or disposition of Equity Interests of a Subsidiary Guarantor) following which such Subsidiary Guarantor is no longer a Subsidiary; or

(2) the sale or disposition of all or substantially all the assets of a Subsidiary Guarantor; in each case other than to the Issuers or an Affiliate of either Issuer and as permitted by the Indenture and if in connection therewith the Issuers provide an Officers' Certificate to the Trustee to the effect that the Issuers will comply with their obligations under the covenant described under **Certain Covenants Limitation on Sales of Assets and Subsidiary Stock** in respect of such disposition. Upon any sale or disposition described in clause (1) or (2) above, the obligor on the related Subsidiary Guarantee will be released from its obligations thereunder.

The Subsidiary Guarantee of a Subsidiary Guarantor also will be released:

(1) upon the designation of such Subsidiary Guarantor as an Unrestricted Subsidiary to the extent permitted by the Indenture;

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- (2) at such time as such Subsidiary Guarantor does not have any Indebtedness outstanding that would have required such Subsidiary Guarantor to enter into a Guarantee Agreement pursuant to the covenant described under Certain Covenants Future Subsidiary Guarantors; or
- (3) if the Issuers exercise their legal defeasance option or their covenant defeasance option as described under Defeasance or if the Issuers obligations under the Indenture are discharged in accordance with the terms of the Indenture.

**Change of Control**

Upon the occurrence of any of the following events (each a Change of Control ), each Holder shall have the right to require that the Issuers repurchase such Holder s Notes at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date):

- (1) the Company becomes aware that any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company; provided, however, that for purposes of this clause (1) such other Person shall be deemed to have beneficial ownership of any Voting Stock of a Person held by any other Person (the parent entity ), if such other Person is the beneficial owner (as defined above in this clause (1)), directly or indirectly, of more than 50% of the voting power of the Voting Stock of such parent entity;
- (2) the adoption of a plan relating to the liquidation or dissolution of the Company; or
- (3) the sale of all or substantially all the assets of the Company (determined on a consolidated basis) to another Person other than a transaction following which each transferee becomes an obligor in respect of the Notes and a Subsidiary of the transferor of such assets.

Subject to compliance with the provisions of the succeeding paragraph, within 30 days following any Change of Control, the Issuers will mail a notice to each Holder with a copy to the Trustee (the Change of Control Offer ) stating:

- (1) that a Change of Control has occurred and that such Holder has the right to require the Issuers to purchase such Holder s Notes at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest on the relevant interest payment date);
- (2) the circumstances and relevant facts regarding such Change of Control;
- (3) the purchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and
- (4) the instructions, as determined by the Issuers, consistent with the covenant described hereunder, that a Holder must follow in order to have its Notes purchased.

The Issuers will not be required to make a Change of Control Offer following a Change of Control if (1) 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 made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer, (2) notice of redemption has been given pursuant to the Indenture as described above under the caption Optional redemption, unless and until there is a default in the payment of the applicable redemption price or (3) in





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connection with or in contemplation of any Change of Control for which a definitive agreement is in place we or a third party has made an offer to purchase (an Alternate Offer ) any and all Notes validly and properly tendered at a cash price equal to or higher than the Change of Control payment (as described above) and has purchased all Notes validly and properly tendered and not withdrawn in accordance with the terms of the Alternate Offer; provided, however, that the terms of such Alternate Offer shall not require the Holders to irrevocably tender the Notes and such Alternate Offer shall not close until the Change of Control is actually consummated.

The Issuers will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the covenant described hereunder, the Issuers will comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under the covenant described hereunder by virtue of their compliance with such securities laws or regulations.

The Change of Control purchase feature of the Notes may in certain circumstances make more difficult or discourage a sale or takeover of the Company. The Change of Control purchase feature is a result of negotiations between the Issuers and the Initial Purchasers. Subject to the limitations discussed below, the Issuers could, in the future, enter into certain transactions, including acquisitions, Refinancings or other recapitalizations, that would not constitute a Change of Control under the Indenture, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect the Company's capital structure or credit ratings. Restrictions on the Company's ability to Incur additional Indebtedness are contained in the covenants described under Certain Covenants Limitation on Indebtedness, Limitation on Liens and Limitation on Sale/Leaseback transactions. Such restrictions can only be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture will not contain any covenants or provisions that may afford Holders protection in the event of a highly leveraged transaction.

The Credit Agreement will provide that the occurrence of certain change of control events (including a Change of Control as defined under the Indenture for the Notes) with respect to the Company would constitute a default thereunder. In the event that at the time of a Change of Control the terms of any Senior Indebtedness (including the Credit Agreement) restrict or prohibit the purchase of Notes following such Change of Control, and the Issuers do not repay such Senior Indebtedness or obtain the requisite consents under the agreements governing such Indebtedness to permit the repurchase of the Notes, the Issuers will remain prohibited from purchasing Notes. In such case, our failure to comply with the foregoing undertaking, after appropriate notice and lapse of time, would constitute a Default under the Indenture, which would, in turn, constitute a default under the Credit Agreement.

Future Indebtedness that the Issuers may incur may contain prohibitions on the occurrence of certain events that would constitute a Change of Control or require the repurchase of such Indebtedness upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Issuers to repurchase their Notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect of such repurchase on the Issuers. Finally, the ability of the Issuers to pay cash to the Holders of Notes following the occurrence of a Change of Control may be limited by the Issuers' then existing financial resources. The Issuers cannot assure you that they will have sufficient funds available when necessary to make any required repurchases.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Company to any Person. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of all or substantially all of the assets of the Company. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder may require the Issuers to make an offer to repurchase the Notes as described above.

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The provisions under the Indenture relative to the Issuers' obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes.

### **Certain Covenants**

The Indenture contains covenants including, among others, the following:

#### ***Limitation on Indebtedness***

(a) The Company will not, and will not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness; provided, however, that the Company and the Subsidiary Guarantors will be entitled to Incur Indebtedness if the Consolidated Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is Incurred would have been at least 2.0 to 1.0, as if the additional Indebtedness had been Incurred at the beginning of such four-quarter period (any such Indebtedness Incurred pursuant to this paragraph (a) being herein referred to as *Coverage Indebtedness*).

(b) Notwithstanding the foregoing paragraph (a), the Company and the Restricted Subsidiaries will be entitled to Incur any or all of the following Indebtedness (any such Indebtedness Incurred pursuant to this paragraph (b) being herein referred to as *Permitted Indebtedness*):

- (1) Indebtedness Incurred pursuant to any Credit Facility, including the Credit Agreement, in an aggregate amount outstanding at any time not to exceed \$685.0 million less the sum of all principal payments with respect to such Indebtedness pursuant to paragraph (b)(1) of the covenant described under *Limitation on Sales of Assets and Subsidiary Stock* (any such Indebtedness Incurred pursuant to this clause (1) being herein referred to as *Credit Facility Indebtedness*);
- (2) Indebtedness owed to and held by the Company or a Restricted Subsidiary; provided, however, that (A) any subsequent issuance or transfer of any Equity Interests which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon and (B) if the Company is the obligor on any such Indebtedness owing to a Restricted Subsidiary that is not the Co-Issuer or a Subsidiary Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all its obligations with respect to the Notes and (C) if a Subsidiary Guarantor is the obligor on any such Indebtedness owing to a Restricted Subsidiary that is not the Co-Issuer or a Subsidiary Guarantor, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations of such Subsidiary Guarantor with respect to its Subsidiary Guarantee;
- (3) Indebtedness represented by the Notes to be issued on the Issue Date and the Subsidiary Guarantees thereof (and any Notes and Guarantees issued in exchange for the Notes and Subsidiary Guarantees pursuant to the Registration Rights Agreement);
- (4) Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness described in clause (1), (2) or (3) of this covenant);
- (5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on or prior to the date on which such Subsidiary was acquired by the Company or a Restricted Subsidiary (other than Indebtedness Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by the Company or a Restricted Subsidiary); provided, however, that on the date such Restricted Subsidiary was acquired by the Company or by a Restricted Subsidiary or

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otherwise became a Restricted Subsidiary and after giving effect to the Incurrence of such Indebtedness, either (x) the Company would have been able to Incur an additional \$1.00 of Coverage Indebtedness pursuant to clause (a) of this covenant or (y) the Consolidated Coverage Ratio after giving effect to such acquisition is no less than immediately prior to such acquisition;

- (6) Reserved;
- (7) Refinancing Indebtedness in respect of Coverage Indebtedness or of Permitted Indebtedness Incurred pursuant to clause (3), (4), (5) or this clause (7);
- (8) Hedging Obligations entered into in the normal course of business and so long as such obligations and transactions are not entered for speculative purposes;
- (9) obligations in respect of workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance or self-insurance obligations, insurance premium finance agreements, reclamation, statutory obligations, bankers' acceptances, performance, bid, surety or similar bonds and letters of credit or completion and performance guarantees or equipment leases or other similar obligations provided by the Company or any Restricted Subsidiary in the ordinary course of business;
- (10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five Business Days of its Incurrence;
- (11) Indebtedness consisting of the Subsidiary Guarantee of a Subsidiary Guarantor and any Guarantee by a Subsidiary Guarantor of Indebtedness Incurred pursuant to clause (7) to the extent the Refinancing Indebtedness Incurred thereunder directly or indirectly Refinances Indebtedness Incurred pursuant to clause (3) or (4); provided, however, that if the Indebtedness being Guaranteed is subordinated to or pari passu with the Notes, then the Guarantee thereof shall be subordinated or pari passu, as applicable, to the same extent as the Indebtedness being Guaranteed;
- (12) Purchase Money Indebtedness or Capital Lease Obligations Incurred to finance all or any part of the purchase price or cost of design, development, construction, installation or improvement (including at any point subsequent to the purchase) of property (real or personal and including acquisitions of Equity Interests), plant or equipment used in the business of the Company or any of its Restricted Subsidiaries (in each case, whether through the direct purchase of such assets or the Equity Interests of any Person owning such assets), or repairs, additions or improvements to such assets, and any Refinancing Indebtedness Incurred to Refinance such Indebtedness, in an aggregate principal amount which, when added together with the amount of Indebtedness Incurred pursuant to this clause (12) and then outstanding, does not exceed the greater of (x) \$40.0 million and (y) 2.0% of Total Assets at the time Incurred;
- (13) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn outs, Guarantees or similar obligations, in each case, Incurred or assumed in connection with the disposition or acquisition of any business, assets or a Subsidiary, other than Guarantees of Indebtedness Incurred or assumed by any Person acquiring all or any portion of such business, assets or Subsidiary;
- (14) Indebtedness Incurred by Foreign Subsidiaries in an aggregate amount at any time outstanding not to exceed the greater of (x) \$22.5 million or (y) 5.0% of the Total Assets of the Foreign Subsidiaries as of the date of such Incurrence;

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- (15) Indebtedness of any Special Purpose Subsidiary (other than *ZionSolutions*) not to exceed \$10.0 million per such Special Purpose Subsidiary or \$50.0 million in the aggregate outstanding at any one time;
  
- (16) unsecured Indebtedness of the Company or the Co-Issuer pursuant to any SPS Project Documentation, including any guarantee bond; provided, however, that the amount of such Obligations shall not exceed \$30.0 million per Special Purpose Subsidiary or \$90.0 million in the aggregate outstanding at any one time;

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- (17) Guarantees in respect of any Indebtedness Incurred pursuant to clause (15) or (16) above;
- (18) Indebtedness Incurred by a Foreign Subsidiary for working capital purposes in the United Kingdom in an aggregate amount at any time outstanding not to exceed \$30.0 million; and
- (19) Indebtedness of the Company or the Subsidiary Guarantors in an aggregate amount which, when taken together with all other Indebtedness of the Company and the Subsidiary Guarantors outstanding on the date of such Incurrence (other than Coverage Indebtedness and Permitted Indebtedness Incurred pursuant to clauses (1) through (18) above) does not exceed \$30.0 million.
- (c) Notwithstanding the foregoing, neither the Company, the Co-Issuer nor any Subsidiary Guarantor will Incur any Permitted Indebtedness if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company, the Co-Issuer or any Subsidiary Guarantor unless such Indebtedness shall be subordinated to the Notes or the applicable Subsidiary Guarantee to at least the same extent as such Subordinated Obligations.
- (d) For purposes of determining compliance with this covenant:
- (1) any Indebtedness outstanding under the Credit Agreement on the Issue Date will be treated as Credit Facility Indebtedness Incurred on the Issue Date under clause (1) of paragraph (b) above;
- (2) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the types of Indebtedness described above, the Company, in its sole discretion, will classify (and may later reclassify) such item of Indebtedness (or any portion thereof) at the time of Incurrence (and in the case of a reclassification, only to the extent the reclassified item could be Incurred pursuant to the criteria at the time of such reclassification) and will only be required to include the amount and type of such Indebtedness in one of the above clauses; provided, however, that any Credit Facility Indebtedness may not be reclassified;
- (3) any Indebtedness classified as Incurred pursuant to clause (12), (16) or (19) of paragraph (b) above will automatically be reclassified as having been Incurred pursuant to paragraph (a) of this covenant at any time that such Indebtedness could be Incurred pursuant to paragraph (a) of this covenant; and
- (4) the Company will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described above.
- (e) For purposes of determining compliance with any U.S. dollar restriction on the Incurrence of Indebtedness where the Indebtedness Incurred is denominated in a different currency, the amount of such Indebtedness will be the U.S. Dollar Equivalent, determined on the date of the Incurrence of such Indebtedness; provided, however, that if any such Indebtedness denominated in a different currency is subject to a Currency Agreement with respect to U.S. dollars, covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in U.S. dollars will be as provided in such Currency Agreement. The principal amount of any Refinancing Indebtedness Incurred in the same currency as the Indebtedness being Refinanced will be the U.S. Dollar Equivalent of the Indebtedness Refinanced, except to the extent that (1) such U.S. Dollar Equivalent was determined based on a Currency Agreement, in which case the Refinancing Indebtedness will be determined in accordance with the preceding sentence and (2) the principal amount of the Refinancing Indebtedness exceeds the principal amount of the Indebtedness being Refinanced, in which case the U.S. Dollar Equivalent of such excess will be determined on the date such Refinancing Indebtedness is Incurred.

***Limitation on Restricted Payments***

- (a) The Company will not, and will not permit any Restricted Subsidiary, directly or indirectly, to make a Restricted Payment if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default shall have occurred and be continuing (or would result therefrom);

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- (2) immediately after giving effect to such Restricted Payment on a pro forma basis, the Company would not be entitled to Incur an additional \$1.00 of Coverage Indebtedness pursuant to the covenant described under Limitation on Indebtedness; or
- (3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date (excluding Restricted Payments permitted by clauses (b)(1), (2), (4) (6), (8) and (10)) would exceed the sum of (without duplication):
- (A) 50% of the Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the fiscal quarter during which the Issue Date occurs to the end of the most recent fiscal quarter for which internal financial statements are available at the time of such Restricted Payment prior to the date of such Restricted Payment (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit); plus
- (B) 100% of the aggregate Net Cash Proceeds and the Fair Market Value of marketable securities, assets or other property received by the Company from the issuance or sale of its Qualified Equity Interests subsequent to the Issue Date and 100% of any cash (or the Fair Market Value of any Cash Equivalents) consisting of a capital contribution received by the Company from its stockholders subsequent to the Issue Date; plus
- (C) the amount by which Indebtedness of the Company is reduced upon the conversion or exchange subsequent to the Issue Date of any Indebtedness of the Company convertible or exchangeable for Qualified Equity Interests of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); provided, however, that the foregoing amount shall not exceed the Net Cash Proceeds received by the Company or any Restricted Subsidiary from the sale of such Indebtedness (excluding Net Cash Proceeds from sales to a Subsidiary of the Company or to an employee stock ownership plan or a trust established by the Company or any of its Subsidiaries for the benefit of their employees); plus
- (D) an amount equal to the sum of (x) the net reduction in the Investments (other than Permitted Investments) made by the Company or any Restricted Subsidiary in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions), in each case received by the Company or any Restricted Subsidiary, and (y) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary.
- (b) The preceding provisions will not prohibit:
- (1) any Restricted Payment made out of the Net Cash Proceeds of the substantially concurrent sale of, or made by exchange for, Qualified Equity Interests of the Company or a substantially concurrent cash capital contribution received by the Company from its stockholders; provided, however, that the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under clause (3)(B) of paragraph (a) above;
- (2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Issuers or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Indebtedness of such Person which is permitted to be Incurred pursuant to the covenant described under Limitation on Indebtedness ;
- (3) the payment of any dividend or redemption of any Capital Stock or Subordinated Indebtedness within 60 days after the date of declaration thereof or call for redemption, if at such date of declaration or call for redemption such payment or redemption was permitted by the provisions of paragraph (a) of this





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covenant (the declaration of such payment will be deemed a Restricted Payment under paragraph (a) of this covenant as of the date of declaration, and the payment itself will be deemed to have been paid on such date of declaration and will not also be deemed a Restricted Payment under paragraph (a) of this covenant) (it being understood that any Restricted Payment made in reliance on this clause (3) shall reduce the amount available for Restricted Payments pursuant to clause (a)(3) above only once);

- (4) the declaration and payments of dividends or distributions on Disqualified Stock issued pursuant to the covenant described under Limitation on Indebtedness; provided, however, that, at the time of payment of such dividend or distribution, no Default shall have occurred and be continuing (or result therefrom);
- (5) repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interests represents a portion of the exercise price of such options and repurchases of Equity Interests deemed to occur upon the withholding of a portion of the Equity Interests granted or awarded to an employee to pay for taxes payable by such employee upon such grant or award or vesting thereof;
- (6) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company; provided, however, that any such cash payment shall not be for the purpose of evading the limitation of the covenant described under this subheading (as determined in good faith by the Board of Directors of the Company);
- (7) in the event of a Change of Control, and if no Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Issuers or any Subsidiary Guarantor, in each case, at a purchase price not greater than 101% of the principal amount of such Subordinated Obligations, plus any accrued and unpaid interest thereon; provided, however, that prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Issuers (or a third party to the extent permitted by the Indenture) have made a Change of Control Offer with respect to the Notes as a result of such Change of Control and have repurchased all Notes validly tendered and not withdrawn in connection with such Change of Control Offer;
- (8) payments of intercompany subordinated Indebtedness, the Incurrence of which was permitted under clause (b)(2) of the covenant described under Limitation on Indebtedness; provided, however, that no Default has occurred and is continuing or would otherwise result therefrom;
- (9) the payment of any cash dividends on or in respect of Capital Stock of the Company in an aggregate amount not to exceed \$10.0 million in any calendar year; provided, however, that no Default has occurred and is continuing or would otherwise result therefrom; and
- (10) other Restricted Payments not to exceed \$25.0 million.

***Limitation on Restrictions on Distributions from Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a)(i) pay dividends or make any other distributions to the Company or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Company, (b) make any loans or advances to the Company or (c) sell, lease or transfer any of its properties or assets to the Company, except:

- (1) with respect to clauses (a), (b) and (c),

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- (A) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, including the Credit Agreement in effect on the Issue Date;
  
- (B) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Indebtedness Incurred by such Restricted Subsidiary on or prior to the date on

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which such Restricted Subsidiary was acquired by the Company (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company) and outstanding on such date;

- (C) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (A) or (B) of clause (1) of this covenant or this clause (C) or contained in any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing to an agreement referred to in clause (A) or (B) of clause (1) of this covenant or this clause (C); provided, however, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such refinancing agreement or amendment are not materially more restrictive taken as a whole, than those contained in the agreements governing the Indebtedness being Refinanced;
- (D) any encumbrance or restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Equity Interests or assets of such Restricted Subsidiary pending the closing of such sale or disposition;
- (E) provisions in joint venture agreements, asset sale agreements, stock sale agreements, sale/leaseback agreements, limited liability company organizational documents and other similar agreements entered into in the ordinary course of business;
- (F) restrictions on cash, cash equivalents, marketable securities, investment grade securities or other deposits or net worth imposed by customers or lessors (including governmental entities) under contracts or leases entered into in the ordinary course of business;
- (G) the Indenture, the Notes, any Exchange Notes and the Subsidiary Guarantees;
- (H) applicable laws, rules, regulations and orders;
- (I) any encumbrance or restriction pursuant to an agreement governing Indebtedness of a Foreign Subsidiary permitted to be Incurred pursuant to the covenant described under Limitation on Indebtedness that impose restrictions solely on such Foreign Subsidiary; provided, however, that (1) at the time such encumbrances and restrictions become effective the Company could Incur \$1.00 of additional Coverage Indebtedness under paragraph (a) of the covenant described under Limitation on Indebtedness and (2) in the good faith judgment of the Board of Directors of the Company, such encumbrances and restrictions will not materially affect the Company's or the Co-Issuer's ability to make required principal or interest payments on the Notes;
- (J) any encumbrance or restriction pursuant to an agreement governing Indebtedness of a Special Purpose Subsidiary permitted to be Incurred pursuant to the covenant described under Limitation on Indebtedness that impose restrictions solely on such Special Purpose Subsidiary; provided, however, that in the good faith judgment of the Board of Directors of the Company, such encumbrances and restrictions will not materially affect the Company's or the Co-Issuer's ability to make required principal or interest payments on the Notes; and

(2) with respect to clause (c),

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- (A) any encumbrance or restriction consisting of customary nonassignment provisions in leases, licenses and contracts entered into in the ordinary course of business;
  
- (B) any encumbrance or restriction contained in security agreements or mortgages securing Indebtedness of a Restricted Subsidiary to the extent such encumbrance or restriction restricts the transfer of the property subject to such security agreements or mortgages;
  
- (C) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased;

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- (D) customary provisions contained in leases or licenses of intellectual property and other agreements, in each case entered into in the ordinary course of business; and
- (E) any encumbrance or restriction on the Company's ability, or the ability of any Restricted Subsidiary, to transfer its interest in a joint venture in favor of the other parties to the joint venture.

***Limitation on Sales of Assets and Subsidiary Stock***

- (a) The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Disposition unless:
    - (1) the Company or such Restricted Subsidiary receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value (including as to the value of all non-cash consideration), of the shares and assets subject to such Asset Disposition; and
    - (2) at least 75% of the consideration thereof received by the Company or such Restricted Subsidiary is in the form of cash, Cash Equivalents or Replacement Assets.
  - (b) Within 365 days after the receipt of Net Available Cash, the Company or such Restricted Subsidiary may, at its option, apply such Net Available Cash:
    - (1) to repay (w) Credit Facility Indebtedness, (x) any Indebtedness secured by a Lien on the assets sold, (y) any Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor but only to the extent the aggregate amount of Net Available Cash so applied is received from Asset Dispositions by such Restricted Subsidiary or (z) any other Senior Indebtedness of the Company or a Subsidiary Guarantor; provided, however, that to the extent the Company or such Restricted Subsidiary repays any such other Senior Indebtedness, the Company shall equally and ratably reduce the principal amount of Notes outstanding, through open-market purchases or through redemption, or shall offer (in accordance with the procedures set forth below in clause (b) of this covenant) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus accrued but unpaid interest, if any, thereon up to a principal amount which, if the offer were accepted, would result in such reduction;
    - (2) to acquire all or substantially all of the assets of, or a majority of the Voting Stock of, another Related Business; or
    - (3) to acquire other long-term assets that are used or useful in a Related Business (and current assets incidental thereto) or to make capital expenditures with respect to long-term assets;
- provided, however, that in connection with any repayment of Indebtedness pursuant to clause (1) above, the Company or such Restricted Subsidiary shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so repaid.

In the case of clauses (2) and (3) of the immediately preceding paragraph (b), a binding commitment shall be treated as a permitted application of Net Available Cash from the date of such commitment; provided, however, that the Company or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Available Cash will be applied to satisfy such commitment within 180 days of such binding commitment and such Net Available Cash is actually so applied within such 180 day period.

Any Net Available Cash from Asset Dispositions that are not applied or invested as provided in clauses (b)(1) (b)(3) of this covenant will constitute Excess Proceeds. When the aggregate amount of Excess Proceeds exceeds \$15.0 million, the Company will make an offer to Holders (and all holders of other Senior Indebtedness of the Company, the Co-Issuer or of a Subsidiary Guarantor designated by the Company) containing provisions similar to those set forth in the Indenture with respect to offers to purchase with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such other pari passu Indebtedness that may be purchased out of the Excess Proceeds.



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Pending application of Net Available Cash pursuant to this covenant, such Net Available Cash shall be held in cash, invested in Cash Equivalents or applied to temporarily reduce revolving credit indebtedness.

For the purposes of this covenant, the following are deemed to be cash or Cash Equivalents:

- (1) the assumption or discharge of Indebtedness of the Company (other than obligations in respect of Disqualified Stock of the Company) or any Restricted Subsidiary (other than obligations in respect of Disqualified Stock or Preferred Stock of a Subsidiary Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;
  - (2) securities, notes, or other obligations received by the Company or any Restricted Subsidiary from the transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days of the consummation of the Asset Disposition, to the extent of the cash received in such conversion; and
  - (3) any Designated Non-cash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (3) that is at that time outstanding, not to exceed an amount equal to \$10.0 million at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value).
- (c) In the event of an Asset Disposition that requires the Company to make an offer to Holders of Notes pursuant to paragraph (b) above, the Company will purchase Notes tendered pursuant to an offer by the Company for the Notes (and such other Senior Indebtedness of the Company or of a Subsidiary Guarantor permitted to be included in such offer) at a purchase price of 100% of their principal amount (or, in the event such other Senior Indebtedness was issued with significant original issue discount, 100% of the accreted value thereof), without premium, plus accrued but unpaid interest (or, in respect of such other Senior Indebtedness, such lesser price, if any, as may be provided for by the terms of such other Senior Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth in the Indenture. If the aggregate purchase price of the securities tendered exceeds the Net Available Cash allotted to their purchase, the Company will select the securities to be purchased on a pro rata basis but in round denominations, which in the case of the Notes will be minimum denominations of \$2,000 principal amount or any greater integral multiple of \$1,000. The Company shall not be required to make such an offer to purchase Notes (and other Senior Indebtedness of the Company or of a Subsidiary Guarantor) pursuant to this covenant if the Net Available Cash available therefor is less than \$10.0 million (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with respect to the Net Available Cash from any subsequent Asset Disposition). Upon completion of such an offer to purchase, Net Available Cash will be deemed to be reduced by the aggregate amount of such offer.
- (d) The Company will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue of its compliance with such securities laws or regulations.

***Limitation on Affiliate Transactions***

- (a) The Company will not, and will not permit any Restricted Subsidiary to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, or the rendering of any service) with, or for the benefit of, any Affiliate of the Company (an Affiliate Transaction ) if such Affiliate Transaction or series of related Affiliate Transactions involves aggregate consideration in excess of \$2.5 million, unless:

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- (1) the terms of the Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary than those that could be obtained at the time of the Affiliate Transaction in arm's length dealings with a Person who is not an Affiliate;
  - (2) if such Affiliate Transaction involves an amount in excess of \$15.0 million, the Board of Directors of the Company has determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors of the Company; and
  - (3) if such Affiliate Transaction involves an amount in excess of \$50.0 million, the Board of Directors of the Company shall also have received a written opinion from an Independent Qualified Party to the effect that such Affiliate Transaction is fair, from a financial standpoint, to the Company and its Restricted Subsidiaries or is not less favorable to the Company and its Restricted Subsidiaries than could reasonably be expected to be obtained at the time in an arm's length transaction with a Person who was not an Affiliate.
- (b) The provisions of the preceding paragraph (a) will not prohibit:
- (1) any Investment (other than a Permitted Investment) or other Restricted Payment, in each case permitted to be made pursuant to the covenant described under Limitation on Restricted Payments;
  - (2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, severance agreements, indemnification agreements, employee benefit plans, stock options, stock ownership plans or any similar arrangement approved by the Board of Directors of the Company;
  - (3) loans or advances to employees made in the ordinary course of business for bona fide business purposes and consistent with past practices;
  - (4) the payment of reasonable fees and compensation to, and indemnities provided for the benefit of, former, current or future officers, directors or managers, employees or consultants of the Company or any of its Restricted Subsidiaries;
  - (5) any transaction with the Company, a Restricted Subsidiary or joint venture or similar entity which would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns an equity interest in or otherwise controls such Restricted Subsidiary, joint venture or similar entity;
  - (6) the issuance or sale of any Qualified Equity Interests of the Company;
  - (7) any agreement as in effect on the Issue Date and described in the Offering Memorandum or any amendments, renewals or extensions of any such agreement (so long as such renewals or extensions are not disadvantageous to the Company in any material respect when taken as a whole as compared to the applicable agreement as in effect on the Issue Date) and the transactions evidenced thereby; or
  - (8) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of the Indenture, which are fair to the Company and its Restricted Subsidiaries, in the reasonable determination of the Board of Directors of the Company or the senior management thereof, or are on terms at least as favorable as might be reasonably obtained at such time from an unaffiliated party.

***Limitation on Line of Business***

The Company will not, and will not permit any Restricted Subsidiary, to engage in any business other than a Related Business.



*Limitation on Liens*

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur or permit to exist any Lien (other than Permitted Liens) of any nature whatsoever on any of its property or assets (including Equity Interests of a Restricted Subsidiary), whether now owned or hereafter acquired, securing any

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Indebtedness (the Initial Lien ) without effectively providing that the Notes, or in the case of an Initial Lien on any property or assets of any Subsidiary Guarantor, the Subsidiary Guarantee of such Subsidiary Guarantor, shall be secured equally and ratably with (or prior to) the obligations so secured for so long as such obligations are so secured.

Any such Lien thereby created in favor of the Notes or any such Subsidiary Guarantee will be automatically and unconditionally released and discharged upon (i) the release and discharge of each Initial Lien to which it relates, (ii) in the case of any such Lien in favor of any such Subsidiary Guarantee, upon the termination and discharge of such Subsidiary Guarantee in accordance with the terms of the Indenture or (iii) any sale, exchange or transfer to any Person not an Affiliate of the Company of the property or assets secured by such Initial Lien.

***Limitation on Sale/Leaseback Transactions***

The Company will not, and will not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction with respect to any property unless:

- (1) the Company or such Restricted Subsidiary would be entitled to (A) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to the covenant described under Limitation on Indebtedness and (B) create a Lien on such property securing such Attributable Debt without equally and ratably securing the Notes pursuant to the covenant described under Limitation on Liens;
- (2) the Net Cash Proceeds received by the Company or any Restricted Subsidiary in connection with such Sale/Leaseback Transaction are at least equal to the Fair Market Value of such property; and
- (3) the Company applies the proceeds of such transaction in compliance with the covenant described under Limitation on Sales of Assets and Subsidiary Stock.

***Merger and Consolidation***

(a) The Company will not consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, directly or indirectly, all or substantially all its assets to, any Person, unless:

- (1) (x) the Company shall be the surviving corporation or (y) the resulting, surviving or transferee Person (the Successor Company ) shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by an indenture supplemental thereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Company under the Notes and the Indenture;
- (2) immediately after giving pro forma effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Subsidiary as a result of such transaction as having been Incurred by such Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;
- (3) immediately after giving pro forma effect to such transaction, either (a) the Successor Company would have been able to Incur an additional \$1.00 of Coverage Indebtedness pursuant to the covenant described under Limitation on Indebtedness or (b) the Consolidated Coverage Ratio after giving effect to such transaction is no less than immediately prior to such transaction; and
- (4) the Company shall have delivered to the Trustee an Officers Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture.

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provided, however, that clause (3) will not be applicable to (A) a Restricted Subsidiary consolidating with, merging into or transferring all or part of its properties and assets to the Company (so long as no Equity Interests of the Company are distributed to any Person) or (B) the Company merging with an Affiliate of the Company solely for the purpose and with the sole effect of reincorporating the Company in another jurisdiction.

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For purposes of this covenant, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company (if not the Company) will be the successor to the Company and shall succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture, and the predecessor Company, except in the case of a lease, shall be released from the obligation to pay the principal of and interest on the Notes.

(b) The Co-Issuer will not consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, directly or indirectly, all or substantially all its assets to, any Person, unless:

- (1) (x) the Co-Issuer shall be the surviving limited liability company, (y) the resulting, surviving or transferee Person (the Successor Co-Issuer) is the Company or a Subsidiary Guarantor or (z) the Successor Co-Issuer shall be a limited liability company or corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Co-Issuer (if not the Co-Issuer) shall expressly assume, by an indenture supplemental thereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Co-Issuer under the Notes and the Indenture;
- (2) immediately after giving pro forma effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Co-Issuer as a result of such transaction as having been Incurred by such Successor Co-Issuer at the time of such transaction), no Default shall have occurred and be continuing with respect to the Co-Issuer; and
- (3) the Company shall have delivered to the Trustee an Officers Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture.

The Successor Co-Issuer (if not the Co-Issuer) will be the successor to the Co-Issuer and shall succeed to, and be substituted for, and may exercise every right and power of, the Co-Issuer under the Indenture, and the Co-Issuer, except in the case of a lease, shall be released from the obligation to pay the principal of and interest on the Notes.

(c) The Company will not permit any Subsidiary Guarantor to consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all of its assets to any Person unless:

- (1) (x) the Subsidiary Guarantor shall be the surviving corporation or limited liability company, (y) another Subsidiary Guarantor or the Company is the resulting, surviving or transferee Person or (z) the resulting, surviving or transferee Person (if not such Subsidiary) shall be a Person organized and existing under the laws of the jurisdiction under which such Subsidiary was organized or under the laws of the United States of America, or any State thereof or the District of Columbia, and such Person shall expressly assume, by a Guarantee Agreement, in a form satisfactory to the Trustee, all the obligations of such Subsidiary, if any, under its Subsidiary Guarantee; provided, however, that the foregoing shall not apply in the case of a Subsidiary Guarantor (i) that has been disposed of in its entirety to another Person (other than to the Company or an Affiliate of the Company), whether through a merger, consolidation or sale of Equity Interests or assets or (ii) that, as a result of the disposition of all or a portion of its Equity Interests, ceases to be a Subsidiary, in both cases, if in connection therewith the Company provides an Officers Certificate to the Trustee substantially to the effect that the Company will comply with its obligations under the covenant described under Limitation on Sales of Assets and Subsidiary Stock in respect of such disposition;

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- (2) immediately after giving effect to such transaction or transactions on a pro forma basis (and treating any Indebtedness which becomes an obligation of the resulting, surviving or transferee Person as a result of such transaction as having been issued by such Person at the time of such transaction), no Default shall have occurred and be continuing; and
- (3) the Company delivers to the Trustee an Officers Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such Guarantee Agreement, if any, complies with the Indenture.

***Future Subsidiary Guarantors***

The Company will not cause or permit (a) any of its Restricted Subsidiaries (other than a Foreign Subsidiary), directly or indirectly, to Guarantee any Indebtedness of the Company or any other Restricted Subsidiary, (b) any Foreign Subsidiary, directly or indirectly, to Guarantee any Indebtedness of the Company or any Subsidiary Guarantor or (c) any of its Restricted Subsidiaries (other than a Foreign Subsidiary) to Incur any Coverage Indebtedness or Credit Facility Indebtedness unless such Restricted Subsidiary is a Subsidiary Guarantor or contemporaneously executes and delivers to the Trustee a Guarantee Agreement pursuant to which such Restricted Subsidiary will Guarantee payment of the Notes on the same terms and conditions as those set forth in the Indenture and applicable to the other Subsidiary Guarantors and delivers to the Trustee an opinion of counsel (which may contain customary exceptions) that such Guarantee Agreement has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Restricted Subsidiary.

***Reports***

Whether or not the Company continues to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will provide or cause to be provided to the Trustee and Holders (and file with the SEC for public availability) such annual and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such reports to be provided at the times specified for the filings of such reports under such Sections.

The availability of the foregoing reports on the SEC's EDGAR service (or successor thereto) shall be deemed to satisfy the Company's delivery obligations to the Trustee and the Holders. At any time during which the SEC will not accept filing of reports for inclusion in the EDGAR system, the posting of the reports referred to above on the Company's primary web site shall be deemed to satisfy the Company's delivery obligation; provided, however, that the Company shall use reasonable efforts to inform Holders of the availability of such reports, which may be satisfied by, among other things, a press release on any national business press release wire service. The Company agrees that it will not take any action for the purpose of causing the SEC not to accept such filings.

At any time that any of the Company's Subsidiaries are Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

In addition, at any time when the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will furnish to the Holders and to prospective investors, upon the requests of such Holders, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act.

***Defaults***

Each of the following is an Event of Default:

- (1) a default in the payment of interest on the Notes when due, continued for 30 days;

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- (2) a default in the payment of principal of any Note when due at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise;
- (3) the failure by the Company or the Co-Issuer to comply with their obligations under Certain Covenants Merger and Consolidation above;
- (4) the failure by the Company, the Co-Issuer or any Subsidiary Guarantor to comply with any of the other agreements in the Indenture;
- (5) Indebtedness of the Company or any Restricted Subsidiary is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$25.0 million (the cross acceleration provision );
- (6) certain events of bankruptcy, insolvency or reorganization of any Issuer or any Significant Subsidiary (the bankruptcy provisions );
- (7) failure by the Company or any of the Restricted Subsidiaries to pay any final non-appealable judgments entered by a court or courts of competent jurisdiction aggregating in excess of \$25.0 million, which judgments are not paid, discharged or stayed, for a period of 60 days (the judgment default provision ); or
- (8) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of the Indenture) or any Subsidiary Guarantor that is a Significant Subsidiary denies or disaffirms its obligations under its Subsidiary Guarantee.

However, a default under clauses (4) and (5) will not constitute an Event of Default until the Trustee or the Holders of 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within 60 days after receipt of such notice.

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes may declare the principal of and accrued but unpaid interest on all the Notes to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of an Issuer occurs and is continuing, the principal of and interest on all the Notes will ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. Under certain circumstances, the Holders of a majority in principal amount of the outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

Subject to the provisions of the Indenture relating to the duties of the Trustee, in case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Notes unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 25% in principal amount of the outstanding Notes have requested the Trustee to pursue the remedy;
- (3) such Holders have offered and, if requested, have provided the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

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- (5) Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Subject to certain restrictions, the Holders of a majority in principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability.

If a Default occurs, is continuing and is known to the Trustee, the Trustee must mail to each Holder of the Notes notice of the Default within 90 days after it occurs. Except in the case of a Default in the payment of principal of or interest on any Note, the Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is not opposed to the interest of the Holders. In addition, we are required to deliver to the Trustee, within 120 days after the end of each fiscal year, a statement regarding compliance with the Indenture. Within 30 days of becoming aware of any Default, we are required to deliver to the Trustee a written statement specifying such Default.

### **Amendments and Waivers**

Subject to certain exceptions, the Indenture may be amended with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange for the Notes) and any past default or compliance with any provisions may also be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding. However, without the consent of each Holder of an outstanding Note affected thereby, an amendment or waiver may not, among other things:

- (1) reduce the amount of Notes whose Holders must consent to an amendment;
- (2) reduce the rate of or extend the time for payment of interest on any Note;
- (3) reduce the principal of or change the Stated Maturity of any Note;
- (4) change the provisions applicable to the redemption of any Note as described under "Optional Redemption";
- (5) make any Note payable in money other than that stated in the Note;
- (6) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;
- (7) make any change in the amendment provisions that require each Holder's consent or in the waiver provision;
- (8) make any change in the ranking or priority of any Note that would adversely affect the Holders; or
- (9) make any change in any Subsidiary Guarantee that would adversely affect the Holders or release any Subsidiary Guarantee (other than in accordance with the terms of the Indenture).

Notwithstanding the preceding, without the consent of any Holder, the Issuers, the Subsidiary Guarantors and Trustee may amend the Indenture:



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- (1) to cure any ambiguity, omission, defect or inconsistency;
  
- (2) to provide for the assumption by a successor corporation of the obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Indenture or a Subsidiary Guarantee, as applicable;

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- (3) to provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);
- (4) to add Guarantees with respect to the Notes, including any Subsidiary Guarantees, or to secure the Notes;
- (5) to add to the covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuers or any Subsidiary Guarantor;
- (6) to make any change that would provide additional rights or benefits to the Holders or that does not adversely affect the rights under the Indenture of any Holder of the Notes;
- (7) to comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act;
- (8) to conform the text of the Indenture, the Notes and the Subsidiary Guarantees to any provision of this Description of notes to the extent that such provision in this Description of notes was intended to be a verbatim recitation of a provision of the Indenture, the Notes and the Subsidiary Guarantees;
- (9) to make any amendment to the provisions of the Indenture relating to the transfer and legending of Notes; provided, however, that (a) compliance with the Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;
- (10) to provide for a successor trustee in accordance with the terms of the Indenture or to otherwise comply with any requirement of the Indenture; or
- (11) to comply with the rules of any applicable securities depository.

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

After an amendment under the Indenture becomes effective, we are required to mail to Holders a notice briefly describing such amendment. However, the failure to give such notice to all Holders, or any defect therein, will not impair or affect the validity of the amendment.

Neither the Issuers nor any Affiliate of the Issuers may, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

### **Transfer**

The Notes will be issued in registered form and will be transferable only upon the surrender of the Notes being transferred for registration of transfer. We may require payment of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection with certain transfers and exchanges.

### **Satisfaction and Discharge**

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When (1) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Issuers, have been delivered to the Trustee for cancellation or (2) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year or are to be called for redemption within one year and the Issuers have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in

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amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not previously delivered to the Trustee for cancellation (including principal of, premium and interest, if any, on, the Notes to the date of maturity or redemption), then the Indenture shall, subject to certain exceptions, cease to be of further effect.

### **Defeasance**

At any time, the Issuers may terminate all of the Issuers' and each Subsidiary Guarantor's obligations under the Notes, the Subsidiary Guarantees and the Indenture ( legal defeasance ), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the Notes, to replace mutilated, destroyed, lost or stolen Notes and to maintain a registrar and paying agent in respect of the Notes.

In addition, at any time the Issuers may terminate their obligations under Change of Control and under the covenants described under Certain Covenants (other than the covenant described under Merger and Consolidation ), the operation of the cross acceleration provision, the bankruptcy provisions with respect to Significant Subsidiaries and Subsidiary Guarantors and the judgment default provision described under Defaults above and the limitation contained in clause (3) of the first paragraph under Certain Covenants Merger and Consolidation above ( covenant defeasance ).

The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of their covenant defeasance option. If the Issuers exercise their legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If the Issuers exercise their covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in clause (4), (5) or (6) (with respect only to Significant Subsidiaries), (7) or (8) under Defaults above or because of the failure of the Issuers to comply with clause (3) of the first paragraph under Certain Covenants Merger and Consolidation above. If the Issuers exercise their legal defeasance option or their covenant defeasance option, each Subsidiary Guarantor will be released from all of its obligations with respect to its Subsidiary Guarantee.

In order to exercise either of the Issuers' defeasance options, the Issuers must irrevocably deposit in trust (the defeasance trust ) with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Notes to redemption or maturity, as the case may be, and must comply with certain other conditions, including delivery to the Trustee of an Opinion of Counsel to the effect that Holders of the Notes will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and, in the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or other change in applicable Federal income tax law).

### **Concerning the Trustee**

Wells Fargo Bank, National Association, is the Trustee under the Indenture and has been appointed as Registrar and Paying Agent with regard to the Notes.

The Indenture contains certain limitations on the rights of the Trustee, should it become a creditor of the Issuers, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; provided, however, if it acquires any conflicting interest it must either eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign.

The Holders of a majority in principal amount of the outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. If an Event of Default occurs (and is not cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such

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provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense and then only to the extent required by the terms of the Indenture.

### **No Personal Liability of Directors, Officers, Managers, Employees, Incorporators and Stockholders**

No director, officer, manager, employee, incorporator, consultant or stockholder of the Issuers or any Subsidiary Guarantor will have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, any Subsidiary Guarantee or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver and release may not be effective to waive liabilities under the U.S. Federal securities laws, and it is the view of the SEC that such a waiver is against public policy.

### **Governing Law**

The Indenture is, and the Notes will be, governed by, and construed in accordance with, the laws of the State of New York.

### **Certain Definitions**

Additional Assets means:

- (1) any property, plant or equipment used in a Related Business;
- (2) the Equity Interests of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Equity Interests by the Company or another Restricted Subsidiary; or
- (3) Equity Interests constituting a minority interest in any Person that at such time is a Restricted Subsidiary; provided, however, that any such Restricted Subsidiary described in clause (2) or (3) above is primarily engaged in a Related Business.

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

Asset Disposition means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a disposition ), of:

- (1) any Equity Interests of a Restricted Subsidiary (other than directors (or similar persons) qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary); or
- (2) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary; or
- (3) any other assets of the Company or any Restricted Subsidiary outside of the ordinary course of business of the Company or such Restricted Subsidiary;



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other than, in the case of clauses (1), (2) and (3) above,

- (A) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary (other than to a Special Purpose Subsidiary);
- (B) for purposes of the covenant described under Certain Covenants Limitation on Sales of Assets and Subsidiary Stock only, (x) a disposition that constitutes a Restricted Payment (or would constitute a Restricted Payment but for the exclusions from the definition thereof) and that is not prohibited by the covenant described under Certain Covenants Limitation on Restricted Payments, and (y) a disposition of all or substantially all the assets of the Company in accordance with the covenant described under Certain Covenants Merger and Consolidation;
- (C) a disposition of assets with a Fair Market Value of less than \$5.0 million;
- (D) a disposition of cash or Cash Equivalents;
- (E) the disposition of equipment, inventory (including raw materials, work-in-progress and finished goods), accounts receivable or other assets or rights in the ordinary course of business, including any excess, obsolete, damaged, worn-out or surplus assets no longer used or useful in the conduct of business as then being conducted;
- (F) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);
- (G) the unwinding of any Hedging Obligations;
- (H) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Related Business;
- (I) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary; and
- (J) dispositions of assets of a Special Purpose Subsidiary pursuant to the Zion Agreements or other SPS Project Documentation with a Fair Market Value not exceeding the Fair Market Value of any assets required to be disposed of or transferred pursuant to the Zion Agreements or other SPS Project Documentation, as applicable.

Attributable Debt in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); provided, however, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction determined in accordance with GAAP (or, in the absence thereof, the original yield to maturity of the Notes issued on the Issue Date).

Average Life means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing:

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(1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness multiplied by the amount of such payment by

(2) the sum of all such payments.

**Board of Directors** means, as to any Person, the board of directors, board of managers or other similar body or Person performing a similar function or any duly authorized committee thereof.

**Business Day** means each day which is not a Legal Holiday.



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**Capital Lease Obligation** means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be 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 terminated by the lessee without payment of a penalty. For purposes of the covenant described under **Certain Covenants Limitation on Liens**, a Capital Lease Obligation will be deemed to be secured by a Lien on the property being leased.

**Capital Stock** means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuer thereof.

**Cash Equivalent** means any of the following:

- (1) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;
- (2) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within six months of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$500 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated **A** (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money market fund sponsored by a registered broker dealer or mutual fund distributor;
- (3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above;
- (4) investments in commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of **P-1** (or higher) according to Moody's Investors Service, Inc. or **A-1** (or higher) according to Standard & Poor's Ratings Group;
- (5) investments in securities with maturity of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least **A** by Standard & Poor's Ratings Group or **A** by Moody's Investors Service, Inc.;

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- (6) investments in money market funds that invest substantially all their assets in securities of the types described in clauses (1) through (5) above; and
  
  - (7) to the extent held by a Foreign Subsidiary, other short-term Investments utilized by such Foreign Subsidiary in accordance with normal investment practices for cash management in Investments of a type analogous to those described in clauses (1) through (6) above.
- Code means the Internal Revenue Code of 1986, as amended.

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Consolidated Coverage Ratio as of any date of determination for any period means the ratio of (x) the aggregate amount of EBITDA for such period to (y) Consolidated Interest Expense for such period; provided, however, that:

- (1) if the Company or any Restricted Subsidiary has Incurred any Indebtedness (other than ordinary working capital borrowings) subsequent to the commencement of the period for which the Consolidated Coverage Ratio is being calculated and on or prior to the date as of which the Consolidated Coverage Ratio is being determined (the Calculation Date ) that remains outstanding or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period;
- (2) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Company or such Restricted Subsidiary had not earned the interest income actually earned during such period in respect of cash or Cash Equivalents used to repay, repurchase, defease or otherwise discharge such Indebtedness;
- (3) if since the beginning of such period the Company or any Restricted Subsidiary shall have made any Asset Disposition, EBITDA for such period shall be reduced by an amount equal to EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to EBITDA (if negative), directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with such Asset Disposition for such period (or, if the Equity Interests of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);
- (4) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made hereunder, which constitutes all or substantially all of an operating unit of a business, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition had occurred on the first day of such period; and
- (5) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after givi