

CONTINENTAL RESOURCES INC
Form 424B3
July 02, 2012
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SEC File No. 333-181002

PROSPECTUS

Offer to Exchange

Up To \$800,000,000 of

5% Senior Notes due 2022

That Have Not Been Registered Under

The Securities Act of 1933

For

Up To \$800,000,000 of

5% Senior Notes due 2022

That Have Been Registered Under

The Securities Act of 1933

Terms of the New 5% Senior Notes due 2022 Offered in the Exchange Offer:

The terms of the new notes (the *New Notes*) are identical to the terms of the old notes that were issued on March 8, 2012 (the *Old Notes*), except that the *New Notes* will be registered under the Securities Act of 1933 and will not contain restrictions on transfer, registration rights or provisions for additional interest.

Terms of the Exchange Offer:

We are offering to exchange up to \$800,000,000 of our *Old Notes* for *New Notes* with materially identical terms that have been registered under the Securities Act of 1933 and are freely tradable.

We will exchange all *Old Notes* that you validly tender and do not validly withdraw before the exchange offer expires for an equal principal amount of *New Notes*.

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The exchange offer expires at 5:00 p.m., New York City time, on July 31, 2012, unless extended.

Tenders of Old Notes may be withdrawn at any time prior to the expiration of the exchange offer.

The exchange of New Notes for Old Notes will not be a taxable event for U.S. federal income tax purposes.

Broker-dealers who receive New Notes pursuant to the exchange offer acknowledge that they will deliver a prospectus in connection with any resale of such New Notes.

Broker-dealers who acquired the Old Notes as a result of market-making or other trading activities may use the prospectus for the exchange offer, as supplemented or amended, in connection with resales of the New Notes.

You should carefully consider the risk factors beginning on page 8 of this prospectus before participating in the exchange offer.

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

The date of this prospectus is July 2, 2012

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This prospectus is part of a registration statement we filed with the Securities and Exchange Commission. In making your investment decision, you should rely only on the information contained or incorporated by reference in this prospectus and in the accompanying letter of transmittal. We have not authorized anyone to provide you with any other information. We are not making an offer to sell these securities or soliciting an offer to buy these securities in any jurisdiction where an offer or solicitation is not authorized or in which the person making that offer or solicitation is not qualified to do so or to anyone whom it is unlawful to make an offer or solicitation. You should not assume that the information contained in this prospectus, as well as the information we previously filed with the Securities and Exchange Commission that is incorporated by reference herein, is accurate as of any date other than its respective date.

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In this prospectus, we, us, our, the Company, and Continental refer to Continental Resources, Inc. and its consolidated subsidiaries, unless otherwise indicated or the context otherwise requires.

This prospectus incorporates important business and financial information about us that is not included or delivered with this prospectus. Such information is available without charge to holders of Old Notes upon written or oral request made to Continental Resources, Inc., 20 N. Broadway, Oklahoma City, Oklahoma 73102, Attention: Chief Financial Officer (Telephone (405) 234-9000). To obtain timely delivery of any requested information, holders of Old Notes must make any request no later than five business days prior to the expiration of the exchange offer.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

The information in this prospectus, including information in documents incorporated by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). All statements, other than statements of historical fact included or incorporated by reference in this prospectus, regarding our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives of management are forward-looking statements. When used in this prospectus, the words could, believe, anticipate, intend, estimate, expect, project and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on our current expectations and assumptions about future events and are based on currently available information.

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information as to the outcome and timing of future events. When considering forward-looking statements, you should keep in mind the risk factors and other cautionary statements described under the heading "Risk Factors" included in this prospectus, and the risk factors and other cautionary statements described under the headings "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference in this prospectus, and, to the extent applicable, in any subsequently filed reports.

These forward-looking statements are based on management's current belief, based on currently available information, as to the outcome and timing of future events. Without limiting the generality of the foregoing, certain statements incorporated by reference or included in this prospectus constitute forward-looking statements.

Forward-looking statements may include statements about:

our business strategy;

our future operations;

our reserves;

our technology;

our financial strategy;

crude oil and natural gas prices;

the timing and amount of future production of crude oil and natural gas;

the amount, nature and timing of capital expenditures;

estimated revenues and results of operations;

drilling of wells;

competition;

marketing of crude oil and natural gas;

transportation of crude oil and natural gas to markets;

exploitation or property acquisitions;

costs of exploiting and developing our properties and conducting other operations;

our financial position;

general economic conditions;

credit markets;

our liquidity and access to capital;

the impact of regulatory and legal proceedings involving us and of scheduled or potential regulatory changes;

our future operating results; and

plans, objectives, expectations and intentions contained in this prospectus or in the documents incorporated by reference in this prospectus that are not historical, including, without limitation, statements regarding our future growth plans.

We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control, incident to the exploration for and development, production, and sale of crude oil and natural gas. These risks include, but are not limited to, commodity price volatility, inflation, lack of availability of drilling and production equipment and services, environmental risks, drilling and other operating risks, regulatory changes, the uncertainty inherent in estimating crude oil and natural gas reserves and in projecting future rates of production, cash flows and access to capital, the timing of development expenditures, and the other risks described under **Risk Factors** in this prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2011 (which is incorporated by reference in this prospectus) and, to the extent applicable, in any subsequently filed reports.

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Reserve engineering is a process of estimating underground accumulations of crude oil and natural gas that cannot be measured in an exact way. The accuracy of any reserve estimate depends on the quality of available data, the interpretation of such data, and price and cost assumptions made by reservoir engineers. In addition, the results of drilling, testing, and production activities may justify revisions of estimates that were made previously. If significant, such revisions could change the schedule of any further production and development drilling. Accordingly, reserve estimates may differ significantly from the quantities of crude oil and natural gas that are ultimately recovered.

Should one or more of the risks or uncertainties described or incorporated by reference in this prospectus occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements.

All forward-looking statements, expressed or implied, included in this prospectus, or in the documents incorporated by reference in this prospectus, are expressly qualified in their entirety by this cautionary statement. This cautionary statement should also be considered in connection with any subsequent written or oral forward-looking statements that we or persons acting on our behalf may issue.

Except as otherwise required by applicable law, we disclaim any duty to update any forward-looking statements, all of which are expressly qualified by the statements in this section, to reflect events or circumstances after the date of this prospectus. See also [Where You Can Find More Information; Incorporation by Reference](#).

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PROSPECTUS SUMMARY

*This summary highlights some of the information contained in this prospectus and does not contain all of the information that may be important to you. You should read this entire prospectus and the documents incorporated by reference and to which we refer you before making an investment decision. You should carefully consider the information set forth under **Risk Factors** beginning on page 8 of this prospectus, the other cautionary statements described in this prospectus, and the risk factors and other cautionary statements, including those described under the heading **Risk Factors**, in our Annual Report on Form 10-K for the year ended December 31, 2011, which are incorporated by reference in this prospectus, and, to the extent applicable, any subsequently filed reports. In addition, certain statements include forward-looking information that involves risks and uncertainties. See **Cautionary Statement Regarding Forward-Looking Statements**.*

*In this prospectus we refer to the notes to be issued in the exchange offer as the **New Notes** and the notes issued on March 8, 2012 as the **Old Notes**. We refer to the **New Notes** and the **Old Notes** collectively as the **Notes**.*

Continental Resources, Inc.

We are an independent crude oil and natural gas exploration and production company with operations in the North, South and East regions of the United States. For additional information about our business, operations and financial results, see the documents listed under **Where You Can Find More Information; Incorporation By Reference**.

Our principal executive offices are located at 20 N. Broadway, Oklahoma City, Oklahoma 73102, and our telephone number at that address is (405) 234-9000.

Risk Factors

You should carefully consider all the information contained in this prospectus, including information in documents incorporated by reference, prior to participating in the exchange offer. In particular, we urge you to carefully consider the factors set forth under **Risk Factors** beginning on page 8 of this prospectus and those risk factors incorporated by reference from our Annual Report on Form 10-K for the year ended December 31, 2011, which are incorporated by reference in this prospectus, and, to the extent applicable, any subsequently filed reports.

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The Exchange Offer

On March 8, 2012, we completed a private offering of the Old Notes. We entered into a registration rights agreement with the initial purchasers in the private offering in which we agreed to deliver to you this prospectus and to use commercially reasonable efforts to complete the exchange offer within 400 days after the date we issued the Old Notes.

Exchange Offer	We are offering to exchange New Notes for Old Notes.
Expiration Date	The exchange offer will expire at 5:00 p.m., New York City time, on July 31, 2012, unless we decide to extend it.
Condition to the Exchange Offer	The registration rights agreement does not require us to accept Old Notes for exchange if the exchange offer, or the making of any exchange by a holder of the Old Notes, would violate any applicable law or interpretation of the staff of the Securities and Exchange Commission. The exchange offer is not conditioned on a minimum aggregate principal amount of Old Notes being tendered.
Procedures for Tendering Old Notes	<p>To participate in the exchange offer, you must follow the procedures established by The Depository Trust Company, which we call DTC, for tendering Old Notes held in book-entry form. These procedures, which we call ATOP, require that (i) the exchange agent receive, prior to the expiration date of the exchange offer, a computer generated message known as an agent's message that is transmitted through DTC's automated tender offer program, and (ii) DTC has received:</p> <p>your instructions to exchange your Old Notes, and</p> <p>your agreement to be bound by the terms of the letter of transmittal.</p> <p>For more information on tendering your Old Notes, please refer to the sections in this prospectus entitled Exchange Offer Terms of the Exchange Offer, Procedures for Tendering, and Description of Notes Book Entry; Delivery and Form.</p>
Guaranteed Delivery Procedures	None.
Withdrawal of Tenders	You may withdraw your tender of Old Notes at any time prior to the expiration date. To withdraw, you must submit a notice of withdrawal to the exchange agent using ATOP procedures before 5:00 p.m., New York City time, on the expiration date of the exchange offer. Please refer to the section in this prospectus entitled Exchange Offer Withdrawal of Tenders.
Acceptance of Old Notes and Delivery of New Notes	If you fulfill all conditions required for proper acceptance of Old Notes, we will accept any and all Old Notes that you properly tender in the exchange offer on or before 5:00 p.m. New York City time on the expiration date. We will return any Old Notes that we do

not accept for exchange to you without expense promptly after the expiration date and acceptance of the Old Notes for exchange. Please refer to the section in this prospectus entitled "Exchange Offer" Terms of the Exchange Offer.

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Fees and Expenses	We will bear expenses related to the exchange offer. Please refer to the section in this prospectus entitled "Exchange Offer - Fees and Expenses."
Use of Proceeds	The issuance of the New Notes will not provide us with any new proceeds. We are making this exchange offer solely to satisfy our obligations under our registration rights agreement.
Consequences of Failure to Exchange Old Notes	If you do not exchange your Old Notes in this exchange offer, you will no longer be able to require us to register the Old Notes under the Securities Act of 1933 except in limited circumstances provided under the registration rights agreement. In addition, you will not be able to resell, offer to resell or otherwise transfer the Old Notes unless we have registered the Old Notes under the Securities Act of 1933, or unless you resell, offer to resell or otherwise transfer them under an exemption from the registration requirements of, or in a transaction not subject to, the Securities Act of 1933.
U.S. Federal Income Tax Consequences	The exchange of New Notes for Old Notes in the exchange offer will not be a taxable event for U.S. federal income tax purposes. Please read "Material United States Federal Tax Consequences."
Exchange Agent	We have appointed Wilmington Trust, National Association as exchange agent for the exchange offer. You should direct questions and requests for assistance, requests for additional copies of this prospectus or the letter of transmittal to the exchange agent addressed as follows: Wilmington Trust, National Association, c/o Wilmington Trust Company, Corporate Capital Markets, Rodney Square North, 1100 N. Market Street, Wilmington, DE 19890-1626. Eligible institutions may make requests by facsimile at (302) 636-4139 and may confirm facsimile delivery by calling (302) 636-6181.

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Terms of the New Notes

The New Notes will be identical to the Old Notes except that the New Notes are registered under the Securities Act of 1933 and will not have restrictions on transfer, registration rights or provisions for additional interest. The New Notes will evidence the same debt as the Old Notes, and the same indenture dated March 8, 2012 among the Company, Banner Pipeline Company, L.L.C., and Wilmington Trust, National Association (a national banking association), as trustee (the Indenture), will govern the New Notes and the Old Notes.

The following summary contains basic information about the New Notes and is not intended to be complete. It does not contain all information that may be important to you. For a more complete understanding of the New Notes, please refer to the section entitled Description of Notes in this prospectus.

Issuer	Continental Resources, Inc.
Securities Offered	\$800 million aggregate principal amount of 5% Senior Notes due 2022.
Maturity	September 15, 2022.
Interest Payment Dates	Interest on the New Notes will be paid semi-annually in arrears on March 15 and September 15 of each year commencing on September 15, 2012.
Guarantees	The payment of the principal, premium, if any, and interest on the New Notes will be fully and unconditionally guaranteed on a senior unsecured basis by Banner Pipeline Company, L.L.C., which currently has no assets or operations, and by certain of our future restricted subsidiaries. Any guarantees will be unsecured senior indebtedness of our subsidiary guarantors and will have the same ranking with respect to the indebtedness of our subsidiary guarantors as the New Notes will have with respect to our indebtedness. For the purposes of the Indenture, 20 Broadway Associates LLC has been designated an unrestricted subsidiary and, as such, will not guarantee the New Notes. See Description of Notes Guarantees.
Ranking	<p>The New Notes will be our general unsecured senior obligations. The New Notes will:</p> <p style="margin-left: 40px;">rank equally in right of payment with all of our existing and future senior indebtedness, including our outstanding 8 1/4% Senior Notes due 2019, 7 3/8% Senior Notes due 2020 and 7 1/8% Senior Notes due 2021;</p> <p style="margin-left: 40px;">rank senior in right of payment to any of our future subordinated indebtedness;</p> <p style="margin-left: 40px;">be structurally subordinated to all obligations of each of our existing and future subsidiaries that do not guarantee the Notes; and</p>

effectively rank junior in right of payment to all of our and any guarantor's existing and future secured indebtedness and other obligations, including borrowings under our revolving credit facility, to the extent of the value of the assets securing such indebtedness and other obligations.

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As of February 29, 2012, after giving effect to the application of the net proceeds from the offering of the Old Notes, we had \$2.0 million of indebtedness outstanding under our revolving credit facility.

In addition, as of February 29, 2012, our non-guarantor subsidiary 20 Broadway Associates LLC had approximately \$22.0 million of liabilities (excluding intercompany obligations).

Optional Redemption

We will have the option to redeem the New Notes, in whole or in part, at any time on or after March 15, 2017, in each case at the redemption prices described in this prospectus under the heading **Description of Notes Optional Redemption**, together with any accrued and unpaid interest to the date of redemption.

Prior to March 15, 2017, we may redeem the New Notes, in whole or in part, at a **make-whole** redemption price described under **Description of Notes Optional Redemption**, together with any accrued and unpaid interest to the date of redemption.

In addition, prior to March 15, 2015, we may, at any time or from time to time, redeem up to 35% of the aggregate principal amount of the Notes with the net proceeds of certain equity offerings at a redemption price equal to 105.000% of the principal amount of the New Notes, plus any accrued and unpaid interest to the date of redemption, if (i) at least 65% of the aggregate principal amount of the Notes issued under the Indenture remains outstanding after such redemption; (ii) we mail notice of redemption no later than 60 days after the closing of the equity offering and (iii) the redemption occurs within 90 days of the closing of the equity offering.

Mandatory Offers to Purchase

Upon the occurrence of a change of control, holders of the New Notes will have the right to require us to purchase all or a portion of the New Notes at a price equal to 101% of the principal amount, together with any accrued and unpaid interest to the date of purchase. In connection with certain asset dispositions, we will be required to use the Available Cash Proceeds of the asset dispositions to make an offer to purchase the New Notes at 100% of the principal amount, together with any accrued and unpaid interest to the date of purchase.

Certain Covenants

We will issue the New Notes under an Indenture with Wilmington Trust, National Association, as trustee. The Indenture will, among other things, limit our ability and the ability of our restricted subsidiaries to:

incur, assume or guarantee additional indebtedness or issue redeemable stock;

pay dividends on stock, repurchase stock or redeem subordinated debt;

make certain investments;

enter into certain transactions with affiliates;

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create certain liens on our assets;

sell or otherwise dispose of certain assets, including capital stock of subsidiaries;

restrict dividends, loans or other asset transfers from our restricted subsidiaries;

enter into new lines of business; and

consolidate with or merge with or into, or sell all or substantially all of our properties to, another person.

However, many of these covenants will terminate if:

both Standard & Poor's Ratings Services and Moody's Investors Service, Inc. assign the Notes an investment grade rating;

our bank credit facility is no longer secured; and

no default under the Indenture exists.

These covenants are subject to important exceptions and qualifications, which are described under "Description of Notes - Certain Covenants."

Absence of a Public Market for the New Notes

The New Notes generally will be freely transferable, but will also be new securities for which there will not initially be a market. There can be no assurance as to the development or liquidity of any market for the New Notes. We do not intend to apply for a listing of the New Notes on any securities exchange or any automated dealer quotation system.

Risk Factors

The New Notes involve risks. See "Risk Factors" beginning on page 8 for a discussion of certain factors you should consider in evaluating an investment in the New Notes.

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The following table sets forth our ratio of earnings to fixed charges for the periods presented:

	Year Ended December 31,					
	Pro forma 2011	2011	2010	2009	2008	2007
Ratio of earnings to fixed charges	7.0x(1)	10.0x	5.9x	5.7x	43.5x	23.9x

- (1) Because the net proceeds of the offering of the Old Notes were used to repay indebtedness and because of the increase in interest related to the Old Notes, our ratio of earnings to fixed charges changed by 10% or more. Earnings for the year ended December 31, 2011 covered fixed charges by \$687.4 million. After giving effect to the application of the net proceeds, our pro forma ratio of earnings to fixed charges for the year ended December 31, 2011 would have been 7.0x.

For purposes of computing the ratio of earnings to fixed charges, earnings consists of pretax income from continuing operations plus fixed charges (excluding capitalized interest). Fixed charges represents interest incurred (whether expensed or capitalized), amortization of debt expense and that portion of rental expense on operating leases deemed to be the equivalent of interest.

We did not have any preferred stock outstanding and there were no preferred stock dividends paid or accrued during the periods presented above.

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RISK FACTORS

You should carefully consider the information included or incorporated by reference in this prospectus, including the matters addressed under Cautionary Statement Regarding Forward-Looking Statements, and the risks described below. In addition, you should read the risk factors in our Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference in this prospectus and, to the extent applicable, any subsequently filed reports.

We are subject to certain risks and hazards due to the nature of the business activities we conduct. The risks discussed below, any of which could materially and adversely affect our business, financial condition, cash flows and results of operations, are not the only risks we face. We may experience additional risks and uncertainties not currently known to us; or, as a result of developments occurring in the future, conditions that we currently deem to be immaterial may also materially and adversely affect our business, financial condition, cash flows, and results of operations.

Risks Relating to the Notes

If you do not properly tender your Old Notes, you will continue to hold unregistered Old Notes and your ability to transfer Old Notes will remain restricted and may be adversely affected.

We will only issue New Notes in exchange for Old Notes that you timely and properly tender. Therefore, you should allow sufficient time to ensure timely delivery of the Old Notes and you should carefully follow the instructions on how to tender your Old Notes. Neither we nor the exchange agent is required to tell you of any defects or irregularities with respect to your tender of Old Notes.

If you do not exchange your Old Notes for New Notes pursuant to the exchange offer, the Old Notes you hold will continue to be subject to the existing transfer restrictions. In general, you may not offer or sell the Old Notes except under an exemption from, or in a transaction not subject to, the Securities Act of 1933 and applicable state securities laws. We do not plan to register Old Notes under the Securities Act of 1933 unless our registration rights agreement with the initial purchasers of the Old Notes requires us to do so. Further, if you continue to hold any Old Notes after the exchange offer is consummated, you may have trouble selling them because there will be fewer of the Old Notes outstanding.

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 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 not be able 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 may be forced to reduce or delay investments and capital expenditures, or to sell assets, seek additional capital or restructure or refinance our indebtedness, including the Notes. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. The terms of existing or future debt instruments and the Indenture governing the Notes may restrict us from adopting some of these alternatives. In addition, any failure to make payments of interest and principal on our outstanding indebtedness on a timely basis would likely result in a reduction of our credit rating, which could harm our ability to incur additional indebtedness. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. Our revolving credit

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facility, the indentures governing our 8 1/4% Senior Notes due 2019, 7 3/8% Senior Notes due 2020 and 7 1/8% Senior Notes due 2021 and the Indenture governing the Notes restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate those dispositions or to obtain the proceeds that we could realize from them and these proceeds may not be adequate to meet any debt service obligations then due. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations.

If we are unable to comply with the restrictions and covenants in the agreements governing our Notes and other debt, there could be a default under the terms of these agreements, which could result in an acceleration of payment of funds that we have borrowed and would impact our ability to make principal and interest payments on the Notes.

If we are unable to comply with the restrictions and covenants in the agreements governing our Notes or in current or future debt financing agreements, there could be a default under the terms of these agreements. Our ability to comply with these restrictions and covenants, including meeting financial ratios and tests, may be affected by events beyond our control. As a result, we cannot assure you that we will be able to comply with these restrictions and covenants or meet these tests. Any default under the agreements governing our indebtedness, including a default under our revolving credit facility or under the indentures governing the Notes, our 8 1/4% Senior Notes due 2019, 7 3/8% Senior Notes due 2020 and 7 1/8% Senior Notes due 2021, that is not waived by the required lenders or holders, as the case may be, and the remedies sought by the holders of such indebtedness, could prevent us from paying principal, premium, if any, and interest on the Notes and substantially decrease the market value of the Notes. If we are unable to generate sufficient cash flow and are otherwise unable to obtain funds necessary to meet required payments of principal, premium, if any, and interest on our indebtedness, or if we otherwise fail to comply with the various covenants, including financial and operating covenants in the instruments governing our indebtedness (including covenants in our revolving credit facility and the Indenture governing the Notes), we could be in default under the terms of the agreements governing such indebtedness, including our revolving credit facility and the Indenture governing the Notes. In the event of such default:

the holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable, together with accrued and unpaid interest;

the lenders under our revolving credit facility could elect to terminate their commitments thereunder, cease making further loans and institute foreclosure proceedings against our assets; and

we could be forced into bankruptcy or liquidation.

If our operating performance declines, we may in the future need to obtain waivers from the required lenders under our revolving credit facility to avoid being in default. If we breach our covenants under our revolving credit facility and seek a waiver, we may not be able to obtain a waiver from the required lenders. If this occurs, we would be in default under our revolving credit facility, the lenders could exercise their rights, as described above, and we could be forced into bankruptcy or liquidation.

Your ability to transfer the 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 Notes.

The Old Notes have not been registered under the Securities Act of 1933, and may not be resold by holders thereof unless the Old Notes are subsequently registered or an exemption from the registration requirements of the Securities Act of 1933 is available. However, we cannot assure you that, even following registration or exchange of the Old Notes for New Notes, that an active trading market for the Old Notes or the New Notes will exist, and we will have no obligation to create such a market. At the time of the private placement of the Old Notes, the initial purchasers advised us that they intended to make a market in the Old Notes and, if issued, the New Notes. The initial purchasers are not obligated, however, to make a market in the Old Notes or the New Notes and any market making may be discontinued at any time at their sole discretion. No assurance can be given as to the liquidity of or trading market for the Old Notes or the New Notes.

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The liquidity of any trading market for the Notes and the market price quoted for the Notes will depend upon the number of holders of the Notes, the overall market for high yield securities, our financial performance or prospects or the prospects for companies in our industry generally, the interest of securities dealers in making a market in the Notes and other factors.

We may not be able to repurchase the Notes in certain circumstances.

Under the terms of the Indenture, you may require us to repurchase all or a portion of your Notes if we sell certain assets or in the event of a change of control. Also, in these circumstances holders of our outstanding 8 ¹/₄% Senior Notes due 2019, 7 ³/₈% Senior Notes due 2020 and 7 ¹/₈% Senior Notes due 2021 and lenders under our revolving credit facility may have the right to require us to repurchase those Notes or repay borrowings under our revolving credit facility. As a result, we may not have enough funds to pay the repurchase price of the Notes on a purchase date (in which case, we could be required to issue common stock to pay the repurchase price).

Our existing and any future credit agreements or other debt agreements to which we become a party may provide that our obligation to repurchase the Notes would be an event of default under such agreement. As a result, we may be restricted or prohibited from repurchasing the Notes. If we are prohibited from repurchasing the Notes, we could seek the consent of our then-existing lenders to repurchase the Notes or we could attempt to refinance the borrowings that contain such prohibition. If we are unable to obtain a consent or refinance the debt, we could not repurchase the Notes. Our failure to repurchase tendered Notes would constitute a default under the Indenture and might constitute a default under the terms of other indebtedness that we incur.

In a recent decision, the Chancery Court of Delaware raised the possibility that a change of control put right occurring as a result of a failure to have continuing directors comprising a majority of a board of directors may be unenforceable on public policy grounds.

The term change of control is limited to certain specified transactions and may not include other events that might adversely affect our financial condition. Our obligation to repurchase the Notes upon a change of control would not necessarily afford holders of Notes protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

The Notes will be effectively junior in right of payment to our existing and future secured debt and that of our guarantor.

The Notes, and the guarantee of the Notes, are unsecured and therefore will be effectively junior in right of payment to any of our existing and future secured debt and that of our subsidiary guarantor to the extent of the value of assets securing such debt. In the event of a bankruptcy or similar proceeding, the assets that serve as collateral for any secured debt will be available to satisfy the obligations under the secured debt before any payments are made on the Notes. As of February 29, 2012, after giving effect to the application of the net proceeds from the offering of the Old Notes, we had outstanding secured debt of approximately \$2.0 million under our revolving credit facility and \$22.0 million in connection with 20 Broadway Associates LLC.

In addition, as of February 29, 2012, after giving effect to the application of the net proceeds from the offering of the Old Notes, we had approximately \$1.24 billion of available borrowing capacity under our revolving credit facility and can increase the commitment level up to the lesser of the borrowing base (\$2.25 billion) and \$2.5 billion. Our borrowing base was increased in the fourth quarter of 2011 to \$2.25 billion, and our next semi-annual borrowing base redetermination will occur in the third quarter of 2012. The Notes will effectively be junior in right of payment to any borrowings under our revolving credit facility. See Description of Other Indebtedness.

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Claims of holders of the Notes will be structurally subordinate to claims of creditors of our non-guarantor subsidiaries

For the purposes of the Indenture, our subsidiary 20 Broadway Associates LLC has been designated an unrestricted subsidiary and, as such, will not guarantee the Notes. Claims of holders of the Notes will be structurally subordinated to all of the liabilities of 20 Broadway Associates LLC and any future subsidiaries that do not guarantee the Notes. As of February 29, 2012, 20 Broadway Associates LLC had approximately \$22.0 million of indebtedness. In the event of a bankruptcy, liquidation or dissolution of 20 Broadway Associates LLC or any future subsidiaries that do not guarantee the Notes, holders of their indebtedness will generally be entitled to payment on their claims from assets of those subsidiaries before any assets are made available for distribution to us.

Any guarantees of the Notes by our subsidiaries could be deemed fraudulent conveyances under certain circumstances, and a court may subordinate or void the subsidiary guarantees.

Banner Pipeline Company, L.L.C., is the sole initial subsidiary guarantor of the Notes. For the purposes of the Indenture, 20 Broadway Associates LLC has been designated an unrestricted subsidiary and, as such, will not guarantee the Notes. In certain circumstances, any of our future subsidiaries may be required to guarantee the Notes. A court could subordinate or void the subsidiary guarantees under various fraudulent conveyance or fraudulent transfer laws. Generally, to the extent that a U.S. court was to find that at the time one of our subsidiaries entered into a subsidiary guarantee and either:

the subsidiary incurred the guarantee with the intent to hinder, delay, or defraud any present or future creditor, or contemplated insolvency with a design to favor one or more creditors to the exclusion of others; or

the subsidiary did not receive fair consideration or reasonably equivalent value for issuing the subsidiary guarantee and, at the time it issued the subsidiary guarantee, the subsidiary:

was insolvent or became insolvent as a result of issuing the subsidiary guarantee,

was engaged or about to engage in a business or transaction for which the remaining assets of the subsidiary constituted unreasonably small capital, or

intended to incur, or believed that it would incur, debts beyond its ability to pay those debts as they matured, then the court could void or subordinate the subsidiary guarantee in favor of the subsidiary's other obligations.

A legal challenge of a subsidiary guarantee on fraudulent conveyance grounds may focus, among other things, on the benefits, if any, the subsidiary realized as a result of our issuing the Notes. To the extent a subsidiary guarantee is voided as a fraudulent conveyance or held unenforceable for any other reason, the holders of the Notes would not have any claim against that subsidiary and would be creditors solely of us and any other subsidiary guarantors whose guarantees are not held unenforceable.

Many of the covenants contained in the Indenture will terminate if the Notes are rated investment grade by both Standard & Poor's Ratings Services and Moody's Investors Service, Inc.

Many of the covenants in the Indenture governing the Notes will terminate if the Notes are rated investment grade by both Standard & Poor's Ratings Services and Moody's Investors Service, Inc., provided at such time our revolving credit facility is unsecured and no default under the Indenture has occurred and is continuing. These covenants restrict, among other things, our ability to pay dividends, to incur debt and to enter into certain other transactions. There can be no assurance that the Notes will ever be rated investment grade, or that if they are rated investment grade, that the Notes will maintain such ratings. However, termination of these covenants would allow us to engage in certain transactions that would not be permitted while these covenants were in force. Please read Description of Notes Certain Covenants Covenant Termination.

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EXCHANGE OFFER

Purpose and Effect of the Exchange Offer

At the closing of the offering of the Old Notes, we entered into a registration rights agreement with the initial purchasers pursuant to which we agreed, for the benefit of the holders of the Old Notes, at our cost, to do the following:

file an exchange offer registration statement with the Securities and Exchange Commission (SEC) with respect to the exchange offer for the New Notes, and

use commercially reasonable efforts to have the exchange offer completed by the 400th day following issuance of the Notes. Additionally, we agreed to offer the New Notes in exchange for surrender of the Old Notes upon the SEC 's declaring the exchange offer registration statement effective. We agreed to use commercially reasonable efforts to cause the exchange offer registration statement to be effective continuously, and to keep the exchange offer open for a period of not less than 20 business days.

For each Old Note surrendered to us pursuant to the exchange offer, the holder of such Old Note will receive a New Note having a principal amount equal to that of the surrendered Old Note. Interest payments on the Notes will be made semi-annually in cash, on March 15 and September 15 of each year, commencing on September 15, 2012. The registration rights agreement also provides an agreement to include in the prospectus for the exchange offer certain information necessary to allow a broker-dealer who holds Old Notes that were acquired for its own account as a result of market-making activities or other ordinary course trading activities (other than Old Notes acquired directly from us or one of our affiliates) to exchange such Old Notes pursuant to the exchange offer and to satisfy the prospectus delivery requirements in connection with resales of New Notes received by such broker-dealer in the exchange offer. We agreed to use commercially reasonable efforts to maintain the effectiveness of the exchange offer registration statement for these purposes for a period of 180 days after the completion of the exchange offer, which period may be extended under certain circumstances.

The preceding agreement is needed because any broker-dealer who acquires Old Notes for its own account as a result of market-making activities or other trading activities is required to deliver a prospectus meeting the requirements of the Securities Act of 1933. This prospectus covers the offer and sale of the New Notes pursuant to the exchange offer and the resale of New Notes received in the exchange offer by any broker-dealer who held Old Notes acquired for its own account as a result of market-making activities or other trading activities other than Old Notes acquired directly from us or one of our affiliates.

Holders that are broker-dealers may be deemed underwriters within the meaning of the Securities Act of 1933 in connection with any resale of New Notes acquired in the exchange offer. Holders that are broker-dealers must acknowledge that they acquired their Old Notes in market-making activities or other trading activities and must deliver a prospectus when they resell the New Notes they acquire in the exchange offer in order not to be deemed an underwriter.

Based on interpretations by the staff of the SEC set forth in no-action letters issued to third parties, we believe that the New Notes issued in exchange for Old Notes may be offered for resale, resold and otherwise transferred by any New Note holder without compliance with the registration and prospectus delivery provisions of the Securities Act of 1933, if:

such holder is not an affiliate of ours within the meaning of Rule 405 under the Securities Act of 1933;

such New Notes are acquired in the ordinary course of the holder 's business; and

the holder does not intend to participate in the distribution of such New Notes.

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Any holder who tenders in the exchange offer with the intention of participating in any manner in a distribution of the New Notes:

cannot rely on the position of the staff of the SEC set forth in Exxon Capital Holdings Corp., SEC No-Action Letter (April 13, 1988); Morgan Stanley & Co. Inc., SEC No-Action Letter (June 5, 1991); Shearman & Sterling, SEC No-Action Letter (July 2, 1993) or similar interpretive letters; and

must comply with the registration and prospectus delivery requirements of the Securities Act of 1933 in connection with a secondary resale transaction.

If, as stated above, a holder cannot rely on the position of the staff of the SEC set forth in Exxon Capital Holdings Corporation or similar interpretive letters, any effective registration statement used in connection with a secondary resale transaction must contain the selling security holder information required by Item 507 of Regulation S-K under the Securities Act of 1933.

Each holder of the Old Notes (other than certain specified holders) who desires to exchange Old Notes for the New Notes in the exchange offer will be required to make the representations described below under Procedures for Tendering Your Representations to Us.

We further agreed to file with the SEC a shelf registration statement to register for public resale of Old Notes held by any holder who provides us with certain information for inclusion in the shelf registration statement if:

the exchange offer is not permitted by applicable law or SEC policy, or

the exchange offer is not for any reason completed by the 400th day following the date of issuance of the Notes, or

upon completion of the exchange offer, any initial purchaser shall so request in connection with any offering or sale of Notes.

We have agreed to use commercially reasonable efforts to keep the shelf registration statement continuously effective until the earlier of one year following its effective date and such time as all Notes covered by the shelf registration statement have been sold. We refer to this period as the shelf effectiveness period.

The registration rights agreement provides that, in the event that either the exchange offer is not completed or the shelf registration statement, if required, is not declared effective (or does not automatically become effective) on or prior to the 400th calendar day following the date of issuance of the Notes, the interest rate on the Old Notes will be increased by 1.00% per annum until the exchange offer is completed or the shelf registration statement is declared effective (or automatically becomes effective) under the Securities Act of 1933, at which time the increased interest shall cease to accrue.

If the shelf registration statement has been declared effective (or automatically becomes effective) and thereafter either ceases to be effective or the prospectus contained therein ceases to be usable for resales of the Notes at any time during the shelf effectiveness period, and such failure to remain effective or usable for resales of the Notes exists for more than 30 calendar days (whether or not consecutive) in any 12-month period, then the interest rate on the Old Notes will be increased by 1.00% per annum commencing on the 31st day in such 12-month period and ending on such date that the shelf registration statement has again been declared (or automatically becomes) effective or the prospectus again becomes usable, at which time the increased interest shall cease to accrue.

Holders of the Old Notes will be required to make certain representations to us (as described in the registration rights agreement) in order to participate in the exchange offer and will be required to deliver

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information to be used in connection with the shelf registration statement and to provide comments on the shelf registration statement within the time periods set forth in the registration rights agreement in order to have their Old Notes included in the shelf registration statement.

If we effect the registered exchange offer, we will be entitled to close the registered exchange offer 20 business days after its commencement as long as we have accepted all Old Notes validly tendered in accordance with the terms of the exchange offer and no brokers or dealers continue to hold any Old Notes.

This summary of the material provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which is incorporated by reference into this prospectus.

Except as set forth above, after consummation of the exchange offer, holders of Old Notes which are the subject of the exchange offer have no registration or exchange rights under the registration rights agreement. See Consequences of Failure to Exchange.

Terms of the Exchange Offer

Subject to the terms and conditions described in this prospectus and in the letter of transmittal, we will accept for exchange any Old Notes properly tendered and not withdrawn prior to 5:00 p.m. New York City time on the expiration date. We will issue New Notes in principal amount equal to the principal amount of Old Notes surrendered in the exchange offer. Old Notes may be tendered only for New Notes and only in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

The exchange offer is not conditioned upon any minimum aggregate principal amount of Old Notes being tendered for exchange.

As of the date of this prospectus, \$800,000,000 in aggregate principal amount of the Old Notes is outstanding. This prospectus and the letter of transmittal are being sent to all registered holders of Old Notes. There will be no fixed record date for determining registered holders of Old Notes entitled to participate in the exchange offer.

We intend to conduct the exchange offer in accordance with the provisions of the registration rights agreement, the applicable requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 and the rules and regulations of the SEC. Old Notes that the holders thereof do not tender for exchange in the exchange offer will remain outstanding and continue to accrue interest. These Old Notes will continue to be entitled to the rights and benefits such holders have under the Indenture relating to the Notes.

We will be deemed to have accepted for exchange properly tendered Old Notes when we have given oral (promptly followed in writing) or written notice of the acceptance to the exchange agent and complied with the applicable provisions of the registration rights agreement. The exchange agent will act as agent for the tendering holders for the purposes of receiving the New Notes from us.

If you tender Old Notes in the exchange offer, you will not be required to pay brokerage commissions or fees or, subject to the letter of transmittal, transfer taxes with respect to the exchange of Old Notes. We will pay all charges and expenses, other than certain applicable taxes described below, in connection with the exchange offer. It is important that you read the section labeled Fees and Expenses for more details regarding fees and expenses incurred in the exchange offer.

We will return any Old Notes that we do not accept for exchange for any reason without expense to their tendering holder promptly after the expiration or termination of the exchange offer.

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Expiration Date

The exchange offer will expire at 5:00 p.m., New York City time, on July 31, 2012, unless, in our sole discretion, we extend it.

Extensions, Delays in Acceptance, Termination or Amendment

We expressly reserve the right, at any time or various times, to extend the period of time during which the exchange offer is open. We may delay acceptance of any Old Notes by giving oral (promptly followed in writing) or written notice of such extension to their holders. During any such extensions, all Old Notes previously tendered will remain subject to the exchange offer, and we may accept them for exchange.

In order to extend the exchange offer, we will notify the exchange agent orally (promptly followed in writing) or in writing of any extension. We will notify the registered holders of Old Notes of the extension no later than 9:00 a.m., New York City time, on the business day after the previously scheduled expiration date.

If any of the conditions described below under **Conditions to the Exchange Offer** have not been satisfied, we reserve the right, in our sole discretion:

to delay accepting for exchange any Old Notes,

to extend the exchange offer, or

to terminate the exchange offer,

by giving oral (promptly followed in writing) or written notice of such delay, extension or termination to the exchange agent. Subject to the terms of the registration rights agreement, we also reserve the right to amend the terms of the exchange offer in any manner.

Any such delay in acceptance, extension, termination or amendment will be followed promptly by oral (promptly followed in writing) or written notice thereof to the registered holders of Old Notes. If we amend the exchange offer in a manner that we determine to constitute a material change, we will promptly disclose such amendment by means of a prospectus supplement. The supplement will be distributed to the registered holders of the Old Notes. Depending upon the significance of the amendment and the manner of disclosure to the registered holders, we may extend the exchange offer. In the event of a material change in the exchange offer, including the waiver by us of a material condition, we will extend the exchange offer period if necessary so that at least five business days remain in the exchange offer following notice of the material change.

Conditions to the Exchange Offer

We will not be required to accept for exchange, or exchange any New Notes for, any Old Notes if the exchange offer, or the making of any exchange by a holder of Old Notes, would violate applicable law or any applicable interpretation of the staff of the SEC. Similarly, we may terminate the exchange offer as provided in this prospectus before accepting Old Notes for exchange in the event of such a potential violation.

In addition, we will not be obligated to accept for exchange the Old Notes of any holder that has not made to us the representations described under **Purpose and Effect of the Exchange Offer**, **Procedures for Tendering** and **Plan of Distribution** and such other representations as may be reasonably necessary under applicable SEC rules, regulations or interpretations to allow us to use an appropriate form to register the New Notes under the Securities Act of 1933.

We expressly reserve the right to amend or terminate the exchange offer, and to reject for exchange any Old Notes not previously accepted for exchange, upon the occurrence of any of the conditions to the exchange offer

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specified above. We will give prompt oral (promptly followed in writing) or written notice of any extension, amendment, non-acceptance or termination to the holders of the Old Notes as promptly as practicable.

These conditions are for our sole benefit, and we may assert them or waive them in whole or in part at any time or at various times in our sole discretion. If we fail at any time to exercise any of these rights, this failure will not mean that we have waived our rights. Each such right will be deemed an ongoing right that we may assert at any time or at various times.

In addition, we will not accept for exchange any Old Notes tendered, and will not issue New Notes in exchange for any such Old Notes, if at such time any stop order has been threatened or is in effect with respect to the registration statement of which this prospectus constitutes a part or the qualification of the Indenture relating to the Notes under the Trust Indenture Act of 1939.

Procedures for Tendering

In order to participate in the exchange offer, you must properly tender your Old Notes to the exchange agent as described below. It is your responsibility to properly tender your Old Notes. We have the right to waive any defects. However, we are not required to waive defects and are not required to notify you of defects in your tender.

If you have any questions or need help in exchanging your Old Notes, please call the exchange agent, whose address and phone number are set forth in *Prospectus Summary* *The Exchange Offer* *Exchange Agent*.

All of the Old Notes were issued in book-entry form, and all of the Old Notes are currently represented by global certificates held for the account of DTC. We have confirmed with DTC that the Old Notes may be tendered using the Automated Tender Offer Program (*ATOP*) instituted by DTC. The exchange agent will establish an account with DTC for purposes of the exchange offer promptly after the commencement of the exchange offer and DTC participants may electronically transmit their acceptance of the exchange offer by causing DTC to transfer their Old Notes to the exchange agent using the *ATOP* procedures. In connection with the transfer, DTC will send an *agent's message* to the exchange agent. The *agent's message* will be deemed to state that DTC has received instructions from the participant to tender Old Notes and that the participant agrees to be bound by the terms of the letter of transmittal.

By using the *ATOP* procedures to exchange Old Notes, you will not be required to deliver a letter of transmittal to the exchange agent. However, you will be bound by its terms just as if you had signed it.

There is no procedure for guaranteed late delivery of the Old Notes.

Determinations Under the Exchange Offer

We will determine in our sole discretion all questions as to the validity, form, eligibility, time of receipt, acceptance of tendered Old Notes and withdrawal of tendered Old Notes. Our determination will be final and binding. We reserve the absolute right to reject any Old Notes not properly tendered or any Old Notes our acceptance of which would, in the opinion of our counsel, be unlawful. We also reserve the right to waive any defect, irregularities or conditions of 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, all defects or irregularities in connection with tenders of Old Notes must be cured within such time as we shall determine. Although we intend to notify holders of defects or irregularities with respect to tenders of Old Notes, neither we, the exchange agent nor any other person will incur any liability for failure to give such notification. Tendere of Old Notes will not be deemed made until such defects or 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 to the tendering holder, unless otherwise provided in the letter of transmittal, promptly following the expiration date.

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When We Will Issue New Notes

In all cases, we will issue New Notes for Old Notes that we have accepted for exchange under the exchange offer only after the exchange agent timely receives:

a book-entry confirmation of such Old Notes into the exchange agent's account at DTC; and

a properly transmitted agent's message.

Return of Old Notes Not Accepted or Exchanged

If we do not accept any tendered Old Notes for exchange or if Old Notes are submitted for a greater principal amount than the holder desires to exchange, the unaccepted or non-exchanged Old Notes will be returned without expense to their tendering holder. Such non-exchanged Old Notes will be credited to an account maintained with DTC. These actions will occur promptly after the expiration or termination of the exchange offer.

Your Representations to Us

By agreeing to be bound by the letter of transmittal, you will represent to us that, among other things:

any New Notes that you receive will be acquired in the ordinary course of your business;

you have no arrangement or understanding with any person or entity to participate in the distribution of the New Notes;

you are not our affiliate, as defined in Rule 405 of the Securities Act of 1933; and

if you are a broker-dealer that will receive New Notes for your own account in exchange for Old Notes, you acquired those Notes as a result of market-making activities or other trading activities and you will deliver a prospectus (or to the extent permitted by law, make available a prospectus) in connection with any resale of such New Notes.

Withdrawal of Tenders

Except as otherwise provided in this prospectus, you may withdraw your tender at any time prior to 5:00 p.m. New York City time on the expiration date. For a withdrawal to be effective you must comply with the appropriate procedures of DTC's ATOP system. Any notice of withdrawal must specify the name and number of the account at DTC to be credited with withdrawn Old Notes and otherwise comply with the procedures of DTC.

We will determine all questions as to the validity, form, eligibility and time of receipt of notice of withdrawal. Our determination shall be final and binding on all parties. We will deem any Old Notes so withdrawn not to have been validly tendered for exchange for purposes of the exchange offer.

Any Old Notes that have been tendered for exchange but are not exchanged for any reason will be credited to an account maintained with DTC for the Old Notes. This crediting will take place as soon as practicable after withdrawal, rejection of tender or termination of the exchange offer. You may retender properly withdrawn Old Notes by following the procedures described under Procedures for Tendering above at any time prior to 5:00 p.m., New York City time, on the expiration date.

Fees and Expenses

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We will bear the expenses of soliciting tenders. The principal solicitation is being made by mail; however, we may make additional solicitation by facsimile, telephone, electronic mail or in person by our officers and regular employees and those of our affiliates.

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We have not retained any dealer-manager in connection with the exchange offer and will not make any payments to broker-dealers or others soliciting acceptances of the exchange offer. We will, however, pay the exchange agent reasonable and customary fees for its services and reimburse it for its related reasonable out-of-pocket expenses.

We will pay the cash expenses to be incurred in connection with the exchange offer. They include:

all registration and filing fees and expenses;

all fees and expenses of compliance with federal securities and state blue sky or securities laws;

accounting fees, legal fees incurred by us, disbursements and printing, messenger and delivery services, and telephone costs; and

related fees and expenses.

Transfer Taxes

We will pay all transfer taxes, if any, applicable to the exchange of Old Notes under the exchange offer. The tendering holder, however, will be required to pay any transfer taxes, whether imposed on the registered holder or any other person, if a transfer tax is imposed for any reason other than the exchange of Old Notes under the exchange offer.

Consequences of Failure to Exchange

If you do not exchange New Notes for your Old Notes under the exchange offer, you will remain subject to the existing restrictions on transfer of the Old Notes. In general, you may not offer or sell the Old Notes unless the offer or sale is either registered under the Securities Act of 1933 or exempt from the registration under the Securities Act of 1933 and applicable state securities laws. Except as required by the registration rights agreement, we do not intend to register resales of the Old Notes under the Securities Act of 1933.

Accounting Treatment

We will record the New Notes in our accounting records at the same carrying value as the Old Notes. This carrying value is the aggregate principal amount of the Old Notes less any bond discount, as reflected in our accounting records on the date of exchange. Accordingly, we will not recognize any gain or loss for accounting purposes in connection with the exchange offer.

Other

Participation in the exchange offer is voluntary, and you should carefully consider whether to accept. You are urged to consult your financial and tax advisors in making your own decision on what action to take.

We may in the future seek to acquire untendered Old Notes in open market or privately negotiated transactions, through subsequent exchange offers or otherwise. We have no present plans to acquire any Old Notes that are not tendered in the exchange offer or to file a registration statement to permit resales of any untendered Old Notes.

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The following table sets forth our ratio of earnings to fixed charges for the periods presented:

	Pro forma	Year Ended December 31,				
		2011	2011	2010	2009	2008
Ratio of earnings to fixed charges	7.0x(1)	10.0x	5.9x	5.7x	43.5x	23.9x

- (1) Because the net proceeds of the offering of the Old Notes were used to repay indebtedness and because of the increase in interest related to the Old Notes, our ratio of earnings to fixed charges changed by 10% or more. Earnings for the year ended December 31, 2011 covered fixed charges by \$687.4 million. After giving effect to the application of the net proceeds, our pro forma ratio of earnings to fixed charges for the year ended December 31, 2011 would have been 7.0x.

For purposes of computing the ratio of earnings to fixed charges, earnings consists of pretax income from continuing operations plus fixed charges (excluding capitalized interest). Fixed charges represents interest incurred (whether expensed or capitalized), amortization of debt expense and that portion of rental expense on operating leases deemed to be the equivalent of interest.

We did not have any preferred stock outstanding and there were no preferred stock dividends paid or accrued during the periods presented above.

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USE OF PROCEEDS

The exchange offer is intended to satisfy our obligations under the registration rights agreement. We will not receive any proceeds from the issuance of the New Notes in the exchange offer. In consideration for issuing the New Notes as contemplated by this prospectus, we will receive Old Notes in a like principal amount. The form and terms of the New Notes are identical in all respects to the form and terms of the Old Notes, except the New Notes will be registered under the Securities Act of 1933 and will not contain restrictions on transfer, registration rights or provisions for additional interest. Old Notes surrendered in exchange for the New Notes will be retired and cancelled and will not be reissued. Accordingly, the issuance of the New Notes will not result in any change in outstanding indebtedness.

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DESCRIPTION OF NOTES

You can find the definitions of certain terms used in this description under the caption *Certain Definitions*. In this description, references to the *Company* refer only to Continental Resources, Inc. and not to any of its subsidiaries and references to the *Notes* refer to the Old Notes and New Notes.

General

The Company issued the Old Notes and will issue the New Notes under an indenture dated March 8, 2012 among itself, the Guarantors (as defined below) and Wilmington Trust, National Association (a national banking association), as trustee (the *Trustee*). The New Notes are guaranteed by Banner Pipeline Company, L.L.C. and will be guaranteed by certain future Restricted Subsidiaries of the Company (the *Guarantors*). The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended.

The following is a summary of the material provisions of the Indenture. It does not restate the Indenture in its entirety. We urge you to read the Indenture because it, and not this description, defines your rights as holders of the New Notes. A copy of the Indenture is incorporated by reference into this prospectus.

The registered holder of a New Note will be treated as the owner of it for all purposes. Only registered holders of Notes will have rights under the Indenture, and all references to *holders* in this description are to registered holders of Notes.

If the exchange offer contemplated by this prospectus is consummated, holders of Old Notes who do not exchange those Notes for New Notes in the exchange offer will vote together with holders of New Notes for all relevant purposes under the Indenture. In that regard, the Indenture requires that certain actions by the holders thereunder must be taken, and certain rights must be exercised, by specified minimum percentages of the aggregate principal amount of the outstanding securities issued under the Indenture. In determining whether holders of the requisite percentage in principal amount have given any notice, consent or waiver or taken any other action permitted under the Indenture, any Old Notes that remain outstanding after the exchange offer will be aggregated with the New Notes, and the holders of such Old Notes and the New Notes will vote together as a single class for all such purposes. Accordingly, all references herein to specified percentages in aggregate principal amount of the Notes outstanding shall be deemed to mean, at any time after the exchange offer is consummated, such percentages in aggregate principal amount of the Old Notes and the New Notes then outstanding.

Brief Description of the New Notes and the Guarantees

The New Notes

The New Notes:

will be general unsecured senior obligations of the Company;

will rank equally in right of payment with all existing and future senior Indebtedness of the Company, including our outstanding 8 1/4% Senior Notes due 2019, 7 3/8% Senior Notes due 2020 and 7 1/8% Senior Notes due 2021;

will rank senior in right of payment to any future subordinated Indebtedness of the Company;

will be fully and unconditionally guaranteed by the Guarantors on a senior basis;

will effectively be junior in right of payment to all existing and future secured Indebtedness and obligations of the Company, including Indebtedness under the Senior Credit Agreement, to the extent of the value of the assets securing such Indebtedness and

obligations; and

will be effectively junior to all indebtedness and liabilities of our existing and future Subsidiaries that are not Guarantors, to the extent of the value of such indebtedness and liabilities.

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The Guarantees

Each guarantee of the New Notes:

will be a general unsecured senior obligation of the Guarantor;

will rank equally in right of payment with all existing and future senior Indebtedness of the Guarantor, including its guarantees of our outstanding 8 ¹/₄% Senior Notes due 2019, 7 ³/₈% Senior Notes due 2020 and 7 ¹/₈% Senior Notes due 2021;

will rank senior in right of payment to any future subordinated Indebtedness of the Guarantor; and

will effectively be junior in right of payment to all existing and future secured Indebtedness and obligations of the Guarantor, including Indebtedness under the Senior Credit Agreement, to the extent of the value of the assets securing such Indebtedness and obligations.

On an as adjusted basis, after giving effect to the offering of the Old Notes and the use of proceeds therefrom, the Company and the Guarantors would have approximately \$2.0 million of senior secured indebtedness outstanding as of February 29, 2012. The Indenture permits the Company and the Guarantors to incur additional secured Indebtedness.

Banner Pipeline Company, L.L.C., a Subsidiary of the Company, guarantees the Notes. However, the Company's Subsidiary 20 Broadway Associates LLC has been designated as an Unrestricted Subsidiary for purposes of the Indenture and, as such, will not guarantee the Notes, and one or more future Subsidiaries of the Company may not guarantee the Notes. The assets of any Subsidiary of the Company that does not guarantee the Notes will be subject to the prior claims of all creditors of that Subsidiary, including trade creditors. As of February 29, 2012, 20 Broadway Associates LLC had approximately \$22.0 million of liabilities (excluding intercompany obligations). In the event of a bankruptcy, administrative receivership, composition, insolvency, liquidation or reorganization of any of the non-guarantor Subsidiaries, such Subsidiaries will pay the holders of their liabilities, including trade payables, before they will be able to distribute any of their assets to the Company or a Guarantor.

Principal, Maturity and Interest

The Notes mature on September 15, 2022, will initially be limited in aggregate principal amount to \$800 million and are unsecured senior obligations of the Company. The Indenture provides for the issuance of an unlimited amount of additional Notes (the *Additional Notes*) having identical terms to the Notes (in all respects other than at the option of the Company as to the payment of interest accruing prior to the issue date of such Additional Notes or except for the first payment of interest following the issue date of such Additional Notes), subject to compliance with the covenants contained in the Indenture. The Old Notes, the New Notes and any Additional Notes will be treated as a single class of securities under the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. For purposes of this *Description of Notes*, reference to the Notes includes Additional Notes unless otherwise indicated; however, no offering of any such Additional Notes is being or shall in any manner be deemed to be made by this prospectus. In addition, there can be no assurance as to when or whether the Company will issue any such Additional Notes or as to the aggregate principal amount of any such Additional Notes.

Interest on the Notes accrues at the rate of 5.000% per annum and is payable semiannually in arrears on each March 15 and September 15, commencing September 15, 2012, to the holders of record on the immediately preceding March 1 and September 1. Interest on the Notes accrues from the most recent date to which interest has been paid or, if no interest has been paid, from and including the original date of issuance. Additional interest may accrue on the Notes as liquidated damages in certain circumstances described below under *Registration Rights Agreement*, and all references to interest in this description include any additional interest that may be payable on the Notes. Interest is computed on the basis of a 360-day year comprising twelve 30-day months.

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Payment and Transfer

The principal, premium, if any, and interest on the Notes is payable and the Notes are exchangeable and transferable, at the office or agency of the Company maintained for such purposes or, at the option of the Company, payment of interest may be paid through the paying agent by check mailed to the address of the person entitled thereto as such address appears in the security register. The Notes will be issued only in registered form without coupons and only in denominations of \$1,000 or whole multiples of \$1,000 in excess thereof. No service charge will be made for any registration of transfer or exchange or redemption of Notes, but the Company may require payment in certain circumstances of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

Guarantees

Payment of the principal, premium, if any, and interest on the Notes, when and as the same become due and payable, are fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis (the *Guarantees*) by the Guarantors. Banner Pipeline Company, L.L.C., a Subsidiary of the Company, is the sole initial Guarantor. However, in the circumstances described under *Certain Covenants Issuances of Guarantees by Restricted Subsidiaries*, the Company will cause certain future Restricted Subsidiaries to enter into a supplemental indenture pursuant to which each such Restricted Subsidiary shall agree to guarantee the Company's obligations under the Notes jointly and severally with any other Guarantors, fully and unconditionally, on a senior unsecured basis. Unrestricted Subsidiaries will not become Guarantors. For the purposes of the Indenture, the Company's Subsidiary, 20 Broadway Associates LLC has been designated an Unrestricted Subsidiary and, as such, will not guarantee the Notes.

The obligations of each Guarantor under its Guarantee will be limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Guarantor, and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under the Indenture, will result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under Federal or state law. See *Risk Factors Risks Relating to the Notes Any guarantees of the Notes by our subsidiaries could be deemed fraudulent conveyances under certain circumstances, and a court may subordinate or void the subsidiary guarantees*. Each Guarantor that makes a payment or distribution under its Guarantee will be entitled to a contribution from each other Guarantor in a pro rata amount based on the net assets of each Guarantor determined in accordance with GAAP.

The Guarantee of a Guarantor will be released automatically with respect to the Notes if:

- (1) in connection with any sale or other disposition of (i) all of the Capital Stock of such Guarantor or (ii) all or substantially all of the properties or assets of such Guarantor (including by way of merger or consolidation), in each case to one or more Persons that are not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary, if the sale or other disposition, as applicable, complies with the covenants described below under *Certain Covenants Asset Sales* and *Certain Covenants Transactions with Affiliates*;
- (2) if such Guarantor is a Restricted Subsidiary, the Company properly designates such Guarantor as an Unrestricted Subsidiary;
- (3) if the Guarantee was required pursuant to the terms of the Indenture described under *Certain Covenants Issuances of Guarantees by Restricted Subsidiaries*, the cessation of the circumstances requiring such Guarantee;
- (4) if the Notes are discharged in accordance with the procedures described below under *Defeasance or Covenant Defeasance of Indenture* or *Satisfaction and Discharge*; or
- (5) upon the liquidation or dissolution of such Guarantor;

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provided, that any such release and discharge pursuant to clauses (1), (2), (3) and (4) above shall occur only to the extent that all obligations of such Guarantor under all of its guarantees of, and under all of its pledges of assets or other security interests which secure any, Indebtedness of the Company shall also terminate at such time.

Optional Redemption

On or after March 15, 2017, the Company may redeem, at any time, all or, from time to time, a portion of the Notes, upon not less than 30 nor more than 60 days prior notice, in amounts of \$1,000 or whole multiples of \$1,000 in excess thereof at the following redemption prices (expressed as percentages of the principal amount), set forth below plus accrued and unpaid interest, if any, thereon, to the applicable redemption date (subject to the rights of holders of record on relevant record dates to receive interest due on an interest payment date), if redeemed during the twelve-month period beginning on March 15 of the years indicated below:

Year	Redemption Price
2017	102.500%
2018	101.667%
2019	100.833%
2020 and thereafter	100.000%

In addition, at any time and from time to time prior to March 15, 2015, the Company may use the net proceeds of one or more Equity Offerings to redeem up to an aggregate of 35% of the aggregate principal amount of Notes issued under the Indenture (including the principal amount of any Additional Notes issued under the Indenture) at a redemption price equal to 105.000% of the aggregate principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to the redemption date (subject to the rights of holders of record on relevant record dates to receive interest due on an interest payment date); *provided* that this redemption provision shall not be applicable with respect to any transaction that results in a Change of Control. At least 65% of the aggregate principal amount of Notes (including the principal amount of any Additional Notes issued under the Indenture) must remain outstanding immediately after the occurrence of such redemption. In order to effect this redemption, the Company must mail a notice of redemption no later than 60 days after the closing of the related Equity Offering and must complete such redemption within 90 days of the closing of the Equity Offering.

At any time prior to March 15, 2017, the Company may also redeem all or a part of the Notes, upon not less than 30 nor more than 60 days prior notice, at a redemption price equal to 100% of the principal amount of Notes redeemed *plus* the Applicable Premium as of, and accrued and unpaid interest, if any, to the date of redemption, subject to the rights of holders of record on relevant record dates to receive interest due on an interest payment date.

Selection

If less than all of the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed in compliance with the requirements of the principal national security exchange, if any, on which the Notes are listed (if such listing is known to the Trustee), or if the Notes are not listed, on a pro rata basis, by lot or by any other method the Trustee shall deem fair and reasonable (subject to the procedures of DTC or any other depository). Notes redeemed in part must be redeemed only in amounts of \$1,000 or whole multiples of \$1,000 in excess thereof. Redemption of the Notes pursuant to the provisions relating to an Equity Offering must be made on a pro rata basis or on as nearly a pro rata basis as practicable (subject to the procedures of DTC or any other depository and by maintaining the authorized denominations for the Notes).

Mandatory Redemption

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

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Change of Control

If a Change of Control occurs, each holder of Notes will have the right to require that the Company purchase all or any part (in amounts of \$1,000 or whole multiples of \$1,000 in excess thereof) of such holder's Notes pursuant to the offer described below (the *Change of Control Offer*). In the Change of Control Offer, the Company will offer to purchase all of the Notes, at a purchase price (the *Change of Control Purchase Price*) in cash in an amount equal to 101% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to the date of purchase (the *Change of Control Purchase Date*), subject to the rights of holders of record on relevant record dates to receive interest due on an interest payment date.

Within 30 days after any Change of Control or, at the Company's option, prior to such Change of Control but after it is publicly announced, the Company must notify the Trustee and give written notice of the Change of Control to each holder of Notes, by first-class mail, postage prepaid, at his address appearing in the security register. The notice must state, among other things,

that a Change of Control has occurred or will occur and the date of such event;

the circumstances and relevant facts regarding such Change of Control;

the Change of Control Purchase Price and the Change of Control Purchase Date, which shall be fixed by the Company on a business day no earlier than 30 days nor later than 60 days from the date the notice is mailed, or such later date as is necessary to comply with requirements under the Exchange Act; *provided* that the Change of Control Purchase Date may not occur prior to the Change of Control;

that any Note not tendered will continue to accrue interest;

that, unless the Company defaults in the payment of the Change of Control Purchase Price, any Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Purchase Date; and

other procedures that a holder of Notes must follow to accept a Change of Control Offer or to withdraw acceptance of the Change of Control Offer.

If a Change of Control Offer is made, the Company may not have available funds sufficient to pay the Change of Control Purchase Price for all of the Notes that might be delivered by holders of the Notes seeking to accept the Change of Control Offer. The failure of the Company to make or consummate the Change of Control Offer or pay the Change of Control Purchase Price when due will give the Trustee and the holders of the Notes the rights described under *Events of Default*.

The Senior Credit Agreement provides that the occurrence of certain change of control events with respect to the Company would constitute a default thereunder, which would permit the lenders under the Senior Credit Agreement to accelerate the maturity of such Indebtedness. If such acceleration occurred, then the Company would be obligated to repay amounts outstanding under such Indebtedness and a default would result under the Indenture. Any future credit agreements or agreements relating to other Indebtedness to which the Company becomes a party may contain similar restrictions and provisions. In the event a Change of Control occurs at a time when the Company is prohibited from purchasing Notes, the Company could seek the consent of the lenders under those agreements to the purchase of the Notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain so prohibited from purchasing Notes. In such case, the Company's failure to purchase tendered Notes would constitute an Event of Default under the Indenture which would, in turn, likely constitute a default under such other Indebtedness. See *Risk Factors Risks Relating to the Notes* *We may not be able to repurchase the Notes in certain circumstances*.

The definition of Change of Control includes a phrase relating to the sale, lease, transfer, conveyance or other disposition of all or substantially all of the assets of the Company. The term all or substantially all as used in the definition of *Change of Control* has not been interpreted under New York law (which is the

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governing law of the Indenture) to represent a specific quantitative test. Therefore, if holders of the Notes elected to exercise their rights under the Indenture and the Company elected to contest such election, it is not clear how a court interpreting New York law would interpret the phrase.

The existence of a holder's right to require the Company to repurchase such holder's Notes upon a Change of Control may deter a third party from acquiring the Company in a transaction which constitutes a Change of Control.

The provisions of the Indenture do not afford holders of the Notes the right to require the Company to repurchase the Notes in the event of a highly leveraged transaction or certain transactions with the Company's management or its affiliates, including a reorganization, restructuring, merger or similar transaction (including, in certain circumstances, an acquisition of the Company by management or its affiliates) involving the Company that may adversely affect holders of the Notes, if such transaction is not a transaction defined as a Change of Control. A transaction involving the Company's management or its affiliates, or a transaction involving a recapitalization of the Company, will result in a Change of Control if it is the type of transaction specified by such definition.

The Company will comply with the applicable tender offer rules, including Rule 14e-1 under the Exchange Act, and any other applicable securities laws or regulations in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions relating to a Change of Control Offer, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described above by virtue thereof.

The Company will not be required to make a Change of Control Offer (1) upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements described in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (2) if notice of redemption for 100% of the aggregate principal amount of the outstanding Notes has been given pursuant to the Indenture as described under the caption *Optional Redemption*, unless and until there is a default in payment of the applicable redemption price.

In the event that holders of not less than 90% of the aggregate principal amount of the outstanding Notes accept a Change of Control Offer and the Company purchases all of the Notes held by such holders, the Company will have the right, upon not less than 30 nor more than 60 days prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the Notes that remain outstanding following such purchase at a redemption price equal to 101% of the aggregate principal amount of Notes redeemed plus accrued and unpaid interest, if any, thereon to the date of redemption, subject to the right of the holders of record on relevant record dates to receive interest due on an interest payment date.

Certain Covenants

Covenant Termination

In the event that at any time (a) the rating assigned to the Notes by both S&P and Moody's is at least an Investment Grade Rating, (b) the obligations under the Senior Credit Agreement cease to be secured and (c) no Default has occurred and is continuing under the Indenture, the Company and its Restricted Subsidiaries will no longer be subject to the provisions of the Indenture described below under *Incurrence of Indebtedness and Issuance of Disqualified Stock*, *Restricted Payments*, *Transactions with Affiliates*, *Asset Sales*, *Dividend and Other Payments*, *Restrictions Affecting Restricted Subsidiaries* and *Lines of Business*. In addition, the Company will no longer be subject to the conditions in clauses (1) and (3) described below under *Sale Leaseback Transactions* and the financial test set forth in clause (3) of the provisions of the Indenture described below under *Consolidation, Merger and Sale of Assets*. However, the Company will remain subject to the provisions of the Indenture described below under *Issuances of Guarantees by Restricted*

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Subsidiaries, Liens, Sale Leaseback Transactions, except clauses (1) and (3) thereof, Unrestricted Subsidiaries and Consolidation, Mergers, Sale of Assets, except clause (3) thereof, and the provisions of the Indenture described above under Change of Control. The Company will provide prompt written notice to the Trustee of the Company's determination that such covenant termination has occurred.

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

Incurrence of Indebtedness and Issuance of Disqualified Stock

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, create, issue, incur, assume, guarantee or otherwise in any manner become directly or indirectly liable for the payment of or otherwise incur, contingently or otherwise (collectively, *incur*), any Indebtedness (including any Acquired Debt and the issuance of Disqualified Stock), unless such Indebtedness is incurred by the Company or any Guarantor and, in each case, the Company's Consolidated Fixed Charge Coverage Ratio for the most recently-ended four full fiscal quarters for which internal financial statements are available immediately preceding the incurrence of such Indebtedness taken as one period is at least equal to or greater than 2.25:1.

(b) Notwithstanding the foregoing, the Company and, to the extent specifically set forth below, the Restricted Subsidiaries may incur each and all of the following (collectively, the *Permitted Debt*):

(1) Indebtedness of the Company or any Guarantors (whether as borrowers or guarantors) under one or more Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) not to exceed the greater of (x) \$1,000.0 million and (y) the sum of \$650.0 million and 25.0% of Adjusted Consolidated Net Tangible Assets;

(2) Indebtedness of the Company or any Guarantor pursuant to the Notes (excluding any Additional Notes) and any Guarantee of the Notes;

(3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Issue Date, and not otherwise referred to in this definition of *Permitted Debt*;

(4) intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided, however*, that (i) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary thereof and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary thereof, shall be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (4);

(5) guarantees of any Indebtedness of the Company or any of its Restricted Subsidiaries which is permitted to be incurred under the Indenture;

(6) Indebtedness of the Company or any Restricted Subsidiary that constitutes: (a) obligations pursuant to Interest Rate Agreements, but only to the extent such obligations do not, on a net basis, exceed 105% of the aggregate principal amount of the Indebtedness covered by such Interest Rate Agreements; (b) obligations under currency exchange contracts and related hedging arrangements entered into in the ordinary course of business, and (c) obligations pursuant to hedging arrangements (including, without limitation, swaps, caps, floors, collars, options and similar agreements) entered into in the ordinary course of business for the purpose of mitigating against risks encountered in a Permitted Business;

(7) Indebtedness of the Company or any Restricted Subsidiary represented by Capital Lease Obligations (whether or not incurred pursuant to sale and leaseback transactions) or Purchase Money Obligations or other Indebtedness incurred or assumed in connection with the acquisition, construction, improvement or development of real or personal, movable or immovable, property in each case incurred for the purpose of financing, refinancing, renewing, defeasing or refunding all or any part of the purchase price or cost of acquisition, construction, improvement or development of property used in the business of the Company or its Subsidiaries; *provided* that the aggregate principal amount incurred by the Company or any

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Restricted Subsidiary pursuant to this clause (7) outstanding at any time shall not exceed the greater of (x) \$25.0 million and (y) 1.5% of Adjusted Consolidated Net Tangible Assets; *provided further* that the principal amount of any Indebtedness permitted under this clause (7) did not in each case at the time of incurrence exceed the Fair Market Value, as determined in accordance with the definition of such term, of the acquired or constructed asset or improvement so financed;

(8) Indebtedness of the Company or any Restricted Subsidiary under (a) one or more standby letters of credit issued by or for the account of the Company or a Restricted Subsidiary in the ordinary course of business and (b) other letters of credit, surety, bid, performance, appeal or similar bonds, bankers' acceptances, completion guarantees or similar instruments; *provided* that, in each case contemplated by this clause (8), upon the drawing of such letters of credit or other instrument, such obligations are reimbursed within 60 days following such drawing; *provided, further*, that with respect to clauses (a) and (b), such Indebtedness is not in connection with the borrowing of money or the obtaining of advances or credit;

(9) Indebtedness of the Company or any Restricted Subsidiary with respect to obligations relating to oil or gas balancing positions arising in the ordinary course of business;

(10) Indebtedness of the Company to the extent the net proceeds thereof are promptly deposited to defease or satisfy the Notes as described below under *Defeasance or Covenant Defeasance of Indenture* or *Satisfaction and Discharge*;

(11) Indebtedness of the Company or any Restricted Subsidiary arising from agreements for indemnification or purchase price adjustment obligations or similar obligations, earn-outs or other similar obligations or from guarantees or letters of credit, surety bonds or performance bonds securing any obligation of the Company or a Restricted Subsidiary pursuant to such an agreement, in each case incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary or a Person that, contemporaneously with such acquisition or disposition, becomes a Restricted Subsidiary;

(12) Permitted Refinancing Indebtedness of the Company or any Restricted Subsidiary issued in exchange for, or the net proceeds of which are used to renew, extend, substitute, defease, refund, refinance or replace any Indebtedness, including any Disqualified Stock, incurred pursuant to paragraph (a) of this covenant and clauses (2), (3), (12) and (13) of this paragraph (b) of this definition of *Permitted Debt*;

(13) if the Company could incur \$1.00 of additional Indebtedness pursuant to paragraph (a) above after giving effect to such incurrence, Acquired Debt; and

(14) Indebtedness of the Company or any Restricted Subsidiary in addition to that described in clauses (1) through (13) above, and any renewals, extensions, substitutions, refinancings or replacements of such Indebtedness, so long as the aggregate principal amount of all such Indebtedness outstanding at any one time in the aggregate shall not exceed the greater of (x) \$50.0 million and (y) 3.0% of Adjusted Consolidated Net Tangible Assets.

For purposes of determining compliance with this *Incurrence of Indebtedness and Issuance of Disqualified Stock* covenant, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness permitted by this covenant, the Company in its sole discretion may, at any time, classify or, from time to time, reclassify all or any portion of such item of Indebtedness and only be required to include the amount of such Indebtedness as one of such types (or to divide such Indebtedness between two or more of such types); *provided* that Indebtedness under a Credit Facility which was incurred on or prior to, and outstanding on (after giving effect to the application of proceeds of Notes), the Issue Date, and any renewals, extensions, substitutions, refundings, refinancings or replacements thereof, shall be deemed to have been incurred pursuant to clause (1) of paragraph (b) above rather than paragraph (a) above.

Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness.

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Accrual of interest, accretion or amortization of original issue discount and the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the accretion or payment of dividends on any Disqualified Stock or Preferred Stock in the form of additional shares of the same class of Disqualified Stock or Preferred Stock will not be deemed to be an incurrence of Indebtedness for purposes of this covenant; *provided*, in each such case, that the amount thereof as accrued shall be included as required in the calculation of the Consolidated Fixed Charge Coverage Ratio of the Company.

For purposes of determining compliance with any dollar-denominated restriction on the incurrence of Indebtedness denominated in a foreign currency, the dollar-equivalent principal amount of such Indebtedness incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Indebtedness was incurred.

If Indebtedness is secured by a letter of credit that serves only to secure such Indebtedness, then the total amount deemed incurred pursuant to such Indebtedness and such letter of credit shall be equal to the greater of (x) the principal of the Indebtedness so secured by such letter of credit and (y) the amount that may be drawn under such letter of credit.

The amount of Indebtedness issued at a price less than the amount of the liability thereof shall be determined in accordance with GAAP.

Restricted Payments

(a) The Company will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly:

(1) pay any dividend on, or make any distribution to holders of, any shares of the Company's Capital Stock (other than dividends or distributions payable solely in shares of the Company's Qualified Capital Stock);

(2) purchase, redeem, defease, retire or otherwise acquire for value the Company's Capital Stock (including any options, warrants or other rights to acquire such Capital Stock);

(3) make any principal payment on, or purchase, redeem, defease, retire or otherwise acquire for value, prior to any scheduled principal payment, sinking fund payment or maturity, any Subordinated Indebtedness, except a principal payment on, or a purchase, redemption, defeasance, retirement or other acquisition of such Subordinated Indebtedness within one year of final maturity thereof;

(4) pay any dividend or distribution on any Capital Stock of any Restricted Subsidiary to any Person (other than (a) to the Company or any of its Wholly Owned Restricted Subsidiaries or any Guarantor or (b) dividends or distributions made by a Restricted Subsidiary on a pro rata basis to all holders of such Capital Stock of such Restricted Subsidiary); or

(5) make any Investment in any Person (other than any Permitted Investments);

(any of the foregoing actions described in clauses (1) through (5) above, other than any such action that is a Permitted Payment (as defined below), collectively, *Restricted Payments*), unless

(1) immediately after giving effect to such proposed Restricted Payment on a pro forma basis, no Default or Event of Default shall have occurred and be continuing and such Restricted Payment shall not be an event which is, or after notice or lapse of time or both, would be, an event of default under the terms of the Senior Credit Agreement;

(2) immediately after giving effect to such Restricted Payment on a pro forma basis, the Company could incur \$1.00 of additional Indebtedness (other than Permitted Debt) under the provisions described under paragraph (a) of *Incurrence of Indebtedness and Issuance of Disqualified Stock*; and

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(3) after giving effect to the proposed Restricted Payment, the aggregate amount of all such Restricted Payments made after the Initial Issue Date (excluding Restricted Payments permitted by clauses (2), (3), (4), (5) and (7) of paragraph (b) next following) and all Designation Amounts does not exceed the sum of:

(A) 50% of the aggregate Consolidated Net Income of the Company accrued on a cumulative basis during the period beginning on July 1, 2009 and ending on the last day of the Company's last fiscal quarter ending prior to the date of the Restricted Payment (or, if such aggregate cumulative Consolidated Net Income shall be a loss, minus 100% of such loss);

(B) the aggregate Net Cash Proceeds, or the Fair Market Value of property other than cash, received after the Initial Issue Date by the Company either (1) as capital contributions in the form of common equity to the Company or (2) from the issuance or sale (other than to any of its Subsidiaries) of Qualified Capital Stock of the Company (except, in each case, to the extent such proceeds are used to purchase, redeem or otherwise acquire Capital Stock or Subordinated Indebtedness as set forth below in clause (2) or (3) of paragraph (b) below) (and excluding the Net Cash Proceeds from the issuance of Qualified Capital Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

(C) the aggregate Net Cash Proceeds received after the Initial Issue Date by the Company (other than from any of its Subsidiaries) upon the exercise of any options, warrants or rights to purchase Qualified Capital Stock of the Company (and excluding the Net Cash Proceeds from the exercise of any options, warrants or rights to purchase Qualified Capital Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

(D) the aggregate Net Cash Proceeds received after the Initial Issue Date by the Company from the conversion or exchange, if any, of debt securities or Disqualified Stock of the Company or its Restricted Subsidiaries into or for Qualified Capital Stock of the Company plus, to the extent such debt securities or Disqualified Stock were issued after the Issue Date, the aggregate of Net Cash Proceeds from their original issuance (and excluding the Net Cash Proceeds from the conversion or exchange of debt securities or Disqualified Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

(E)(a) in the case of the disposition of, or a reduction in, any Investment constituting a Restricted Payment (including any Investment in an Unrestricted Subsidiary) made after the Initial Issue Date, an amount (to the extent not included in Consolidated Net Income) equal to the amount received with respect to such Investment, less the cost of the disposition of such Investment and net of taxes, and

(b) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary after the Initial Issue Date (as long as the designation of such Subsidiary as an Unrestricted Subsidiary was deemed a Restricted Payment), the Fair Market Value of the Company's interest in such Subsidiary at the time of such redesignation; and

(F) any amount which previously qualified as a Restricted Payment on account of any guarantee entered into by the Company or any Restricted Subsidiary after the Initial Issue Date; *provided* that such guarantee has not been called upon and the obligation arising under such guarantee no longer exists.

(b) Notwithstanding the foregoing, and in the case of clauses (2) through (6) and (8) below, so long as no Default or Event of Default is then continuing or immediately after giving effect thereto would exist, the foregoing provisions shall not prohibit the following actions (each of clauses (1) through (8) being referred to as a *Permitted Payment*):

(1) (i) the payment of any dividend within 60 days after the date of declaration thereof, if at such date of declaration such payment was permitted by the provisions of paragraph (a) of this covenant and such payment shall have been deemed to have been paid on such date of declaration and shall not have been

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deemed a Permitted Payment for purposes of the calculation required by paragraph (a) of this covenant, and (ii) the payment of any dividends or distributions by the Company to the holders of its Disqualified Stock; *provided* that such Disqualified Stock is issued on or after the Issue Date in accordance with paragraph (a) of the covenant described below under the caption *Incurrence of Indebtedness and Issuance of Disqualified Stock*;

(2) the purchase, redemption, defeasance, retirement or other acquisition for value of any Capital Stock of the Company in exchange for (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares or scrip), or out of the Net Cash Proceeds of a substantially concurrent issuance and sale for cash (other than to a Subsidiary) of, any Qualified Capital Stock of the Company; *provided* that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock shall be excluded from clause (3)(B) of paragraph (a) of this covenant;

(3) the purchase, redemption, defeasance, retirement or other acquisition for value or payment of principal of any Subordinated Indebtedness in exchange for, or in an amount not in excess of the Net Cash Proceeds of, a substantially concurrent issuance and sale for cash (other than to any Subsidiary of the Company) of any Qualified Capital Stock of the Company; *provided* that the Net Cash Proceeds from the issuance of such Qualified Capital Stock shall be excluded from clause (3)(B) of paragraph (a) of this covenant;

(4) the purchase, redemption, defeasance, retirement or other acquisition for value or payment of principal of any Subordinated Indebtedness (other than Disqualified Stock) through the substantially concurrent issuance of Permitted Refinancing Indebtedness;

(5) any purchase, redemption, defeasance, retirement or other acquisition for value of any Subordinated Indebtedness pursuant to the provisions of such Subordinated Indebtedness upon a Change of Control or an Asset Sale after the Company shall have complied with the provisions of the Indenture described under the caption *Change of Control* or *Asset Sales*, as the case may be, and purchased all Notes validly tendered for payment in connection with the Change of Control Offer or Prepayment Offer, as the case may be;

(6)(i) the purchase, redemption, defeasance, retirement or other acquisition for value of any Capital Stock of the Company held by any current or former officers, directors, consultants or employees of the Company or any of its Subsidiaries (or permitted transferees of such current or former officers, directors, consultants or employees) pursuant to the terms of agreements (including employment agreements) or plans approved by the Company's Board of Directors, including any management equity plan, long-term incentive plan or stock option plan or other management or employee benefit plan, agreement or trust, (ii) repurchases of Capital Stock deemed to occur upon the cashless exercise of stock options or to satisfy applicable withholding tax obligations under any such agreements or plans and (iii) any other repurchases of Capital Stock of the Company pursuant to the terms of any such agreements or plans; *provided, however*, that the aggregate amount of Restricted Payments pursuant to subclauses (i) and (iii) above do not, in the aggregate, exceed \$2.5 million in any calendar year (with unused amounts to be carried over to succeeding calendar years);

(7) the purchase by the Company of fractional shares arising out of stock dividends, splits or combinations or business combinations or conversion of convertible or exchangeable securities of debt or equity issued by the Company; and

(8) Restricted Payments not exceeding \$40.0 million in the aggregate since the Initial Issue Date.

In determining whether any Restricted Payment is permitted by the foregoing covenant, the Company may allocate or reallocate all or any portion of such Restricted Payment among the clauses (1) through (8) of the

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preceding paragraph (b) or among such clauses and the paragraph (a) of this covenant including the second set of clauses (1), (2) and (3) thereof; *provided* that at the time of such allocation or reallocation, all such Restricted Payments, or allocated portions thereof, and all prior Restricted Payments would be permitted under the various provisions of the foregoing covenant. The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of the transfer, incurrence or issuance of such non-cash Restricted Payment.

Transactions with Affiliates

The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) with or for the benefit of any Affiliate of the Company (other than the Company or a Restricted Subsidiary of the Company) unless such transaction or series of related transactions is entered into in good faith, and

(1) such transaction or series of related transactions is on terms that are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that would be available in a comparable transaction in arm's-length dealings with a party who is not an Affiliate of the Company,

(2) with respect to any transaction or series of related transactions involving aggregate consideration in excess of \$25.0 million, such transaction or series of related transactions has been approved by a majority of the Disinterested Directors of the board of directors of the Company, or in the event there is only one Disinterested Director, by such Disinterested Director, or

(3) with respect to any transaction or series of related transactions involving aggregate consideration in excess of \$50.0 million, the Company delivers to the Trustee a written opinion of an investment banking firm of national standing or other recognized independent expert with experience appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required stating that the transaction or series of related transactions is fair to the Company or such Restricted Subsidiary from a financial point of view;

provided, however, that this provision shall not apply to:

(i) employment benefit, compensation and award arrangements, programs and plans with any employee, consultant, officer or director of the Company or any Restricted Subsidiary, including under any employment agreement, equity option or equity incentive plans or insurance, deferred compensation or retirement plans, and customary indemnification arrangements with employees, consultants, officers or directors of the Company or any Restricted Subsidiary, in each case entered into in the ordinary course of business,

(ii) the payment of reasonable and customary fees to directors and consultants of the Company or any of its Restricted Subsidiaries who are not employees of the Company or any of its Affiliates,

(iii) loans or advances to non-executive officers and employees of the Company or any Restricted Subsidiary made in the ordinary course of business in an aggregate amount not to exceed \$1.0 million outstanding at any one time,

(iv) any Restricted Payments or Permitted Payments made in compliance with *Restricted Payments* above or any Permitted Investment,

(v) any transactions undertaken pursuant to any contracts in existence on the Issue Date (as in effect on the Issue Date) and any renewals, replacements or modifications of such contracts (pursuant to new transactions or otherwise) on terms no less favorable to the holders of the Notes than those in effect on the Issue Date, and

(vi) sales of Capital Stock (other than Disqualified Stock) of the Company to Affiliates of the Company,

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(vii) in the case of (1) contracts for (A) drilling or other oil field services or supplies, (B) the sale, storage, gathering or transport of hydrocarbons or (C) the lease or rental of office or storage space or (2) other operational-type contracts, any such contracts are entered into in the ordinary course of business on terms substantially similar to those contained in similar contracts entered into by the Company or any Restricted Subsidiary and third parties, or if neither the Company nor any Restricted Subsidiary has entered into a similar contract with a third party, that the terms are no less favorable than those available from third parties on an arm's length basis, as determined by the Board of Directors of the Company, and

(viii) any transactions between the Company or any Restricted Subsidiary on the one hand and any Person deemed to be an Affiliate solely because a director of such Person is also a director of the Company or a Restricted Subsidiary, on the other hand; *provided* that such director abstains from voting as a director of the Company or the Restricted Subsidiary, as applicable, in connection with the approval of the transaction.

Liens

The Company will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, (i) create or incur, in order to secure any Indebtedness, any Lien of any kind, other than Permitted Liens, upon any property or assets (including any intercompany notes) of the Company or any Restricted Subsidiary owned on the Issue Date or acquired after the Issue Date, or (ii) assign or convey, in order to secure any Indebtedness, any right to receive any income or profits therefrom, other than Permitted Liens, in each case unless the Notes (or a Guarantee in the case of Liens of a Guarantor) is directly secured equally and ratably with (or, in the case of Subordinated Indebtedness, prior or senior thereto, with the same relative priority as the Notes shall have with respect to such Subordinated Indebtedness) the Indebtedness secured by such Lien.

Notwithstanding the foregoing, any Lien, assignment or conveyance securing the Notes or a Guarantee granted pursuant to the immediately preceding paragraph shall be automatically and unconditionally released and discharged upon: (i) any sale, exchange or transfer to any Person not an Affiliate of the Company of the property or assets secured by such Lien, (ii) any sale, exchange or transfer to any Person not an Affiliate of the Company of all of the Capital Stock held by the Company or any Restricted Subsidiary in, or all or substantially all the assets of, any Restricted Subsidiary creating such Lien, or (iii) with respect to any Lien, assignment or conveyance securing a Guarantee, the release of such Guarantee in accordance with the Indenture.

Asset Sales

(a) The Company will not, and will not permit any Restricted Subsidiary to, consummate any Asset Sale, unless (i) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets and property subject to such Asset Sale and (ii) at least 75% of the consideration paid to the Company or such Restricted Subsidiary in connection with such Asset Sale and all other Asset Sales since the Issue Date, on a cumulative basis, is in the form of cash, Cash Equivalents, Liquid Securities, Exchanged Properties (including pursuant to asset swaps) or the assumption by the purchaser of liabilities of the Company (other than liabilities of the Company that are by their terms subordinated to the Notes) or liabilities of any Guarantor that made such Asset Sale (other than liabilities of a Guarantor that are by their terms subordinated to such Guarantor's Guarantee), or any combination of the foregoing, in each case as a result of which the Company and its remaining Restricted Subsidiaries are no longer liable for such liabilities, or, solely in the case of any Asset Sale of Production Facility or Pipeline Assets, Permitted MLP Securities; *provided*, that any Asset Sale pursuant to a condemnation, appropriation or other similar taking, including by deed in lieu of condemnation, or pursuant to the foreclosure or other enforcement of a Lien incurred not in breach of the covenant described above under the caption *Liens* or exercise by the related lienholder of rights with respect thereto, including by deed or assignment in lieu of foreclosure shall not be required to satisfy the conditions set forth in clauses (i) and (ii) of this paragraph (a).

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(b) Within 365 days after the receipt by the Company or a Restricted Subsidiary of Net Available Cash from an Asset Sale, such Net Available Cash may be applied by the Company or such Restricted Subsidiary, to the extent the Company or such Restricted Subsidiary elects (or is required by the terms of any Pari Passu Indebtedness of the Company or a Restricted Subsidiary), to

(1) prepay or repay Indebtedness of the Company under any Credit Facility;

(2) reinvest in Additional Assets (including by means of an Investment in Additional Assets by a Restricted Subsidiary with Net Available Cash received by the Company or another Restricted Subsidiary) or make capital expenditures in a Permitted Business; or

(3) purchase Notes, or purchase or repay on a permanent basis other Indebtedness (excluding (i) any Subordinated Indebtedness and (ii) any Notes or other Indebtedness owned by the Company or an Affiliate of the Company);

provided, that the Company or the applicable Restricted Subsidiary will be deemed to have complied with clause (2) of this paragraph (b) if, within 365 days of such Asset Sale, the Company or such Restricted Subsidiary shall have commenced and not completed or abandoned an expenditure or Investment, or a binding agreement with respect to an expenditure or Investment, in compliance with such clause (2), and that expenditure or Investment is substantially completed within a date one year and six months after the date of such Asset Sale. Pending the final application of any such Net Available Cash, the Company may temporarily reduce Indebtedness under any Credit Facility or otherwise expend or invest such Net Available Cash in any manner that is not prohibited by the Indenture.

(c) Any Net Available Cash from an Asset Sale not applied in accordance paragraph (b) above within 365 days (or within one year and six months as the case may be) from the date of such Asset Sale shall constitute Excess Proceeds. When the aggregate amount of Excess Proceeds exceeds \$20.0 million, the Company will be required to make an offer to purchase Notes having an aggregate principal amount equal to the aggregate amount of Excess Proceeds (the *Prepayment Offer*) at a purchase price equal to 100% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the Asset Sale Purchase Date (as defined in paragraph (d) below) in accordance with the procedures (including prorating in the event of over subscription) set forth in the Indenture, but, if the terms of any Pari Passu Indebtedness require that a Pari Passu Offer be made contemporaneously with the Prepayment Offer, then the Excess Proceeds shall be prorated between the Prepayment Offer and such Pari Passu Offer in accordance with the aggregate outstanding principal amounts of the Notes and such Pari Passu Indebtedness, and the aggregate principal amount of Notes for which the Prepayment Offer is made shall be reduced accordingly. If the aggregate principal amount of Notes tendered by holders thereof exceeds the amount of available Excess Proceeds, then such Excess Proceeds will be allocated pro rata according to the principal amount of the Notes tendered and the Trustee will select the Notes to be purchased in accordance with the Indenture. To the extent that any portion of the amount of Excess Proceeds remains after compliance with the second sentence of this paragraph (c) and *provided* that all holders of Notes have been given the opportunity to tender their Notes for purchase as described in paragraph (d) below in accordance with the Indenture, the Company and its Restricted Subsidiaries may use such remaining amount for purposes not prohibited by the Indenture and the amount of Excess Proceeds will be reset to zero.

(d) Within 30 days after the 365th day following, or the date one year and six months following, the date of an Asset Sale (as the case may be), the Company shall, if it is obligated to make an offer to purchase the Notes pursuant to paragraph (c) above, send a written Prepayment Offer notice, by first-class mail, to the holders of the Notes and to the Trustee (the *Prepayment Offer Notice*), accompanied by such information regarding the Company and its Subsidiaries as the Company believes will enable such holders of the Notes to make an informed decision with respect to the Prepayment Offer. The Prepayment Offer Notice will state, among other things:

(1) that the Company is offering to purchase Notes pursuant to the provisions of the Indenture;

(2) that any Note (or any portion thereof) accepted for payment (and duly paid on the Asset Sale Purchase Date) pursuant to the Prepayment Offer shall cease to accrue interest on the Asset Sale Purchase Date;

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- (3) that any Notes (or portions thereof) not properly tendered will continue to accrue interest;
 - (4) the purchase price and purchase date, which shall be, subject to any contrary requirements of applicable law, no less than 30 days nor more than 60 days after the date the Prepayment Offer Notice is mailed (the *Asset Sale Purchase Date*);
 - (5) the aggregate principal amount of Notes to be purchased;
 - (6) a description of the procedure which holders of Notes must follow in order to tender their Notes and the procedures that holders of Notes must follow in order to withdraw an election to tender their Notes for payment; and
 - (7) all other instructions and materials necessary to enable holders of Notes to tender Notes pursuant to the Prepayment Offer.
- (e) The Company will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations thereunder to the extent such laws and regulations are applicable in connection with the purchase of Notes as described above. To the extent that the provisions of any securities laws or regulations conflict with the provisions relating to a Prepayment Offer, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described above by virtue thereof.

Issuances of Guarantees by Restricted Subsidiaries

The Company will provide to the Trustee, on or prior to the 90th day after the date that (i) any Person becomes a Wholly Owned Restricted Subsidiary after the Issue Date (excluding any Foreign Subsidiary and any Immaterial Subsidiary), (ii) any Unrestricted Subsidiary is redesignated as a Restricted Subsidiary (excluding any Foreign Subsidiary and any Immaterial Subsidiary), or (iii) any Restricted Subsidiary of the Company (which is not a Guarantor) becomes a guarantor or obligor in respect of any Indebtedness of the Company or any of the Guarantors, in each case, a supplemental indenture to the Indenture, executed by such Restricted Subsidiary, providing for a full and unconditional guarantee on a senior unsecured basis by such Restricted Subsidiary of the Company's obligations under the Notes and the Indenture to the same extent as that set forth in the Indenture.

Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

- (a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause to come into existence or become effective any consensual encumbrance or restriction on the ability of such Restricted Subsidiary to:
- (1) pay dividends or make any other distribution on its Capital Stock to the Company or any other Restricted Subsidiary;
 - (2) pay any Indebtedness owed to the Company or any other Restricted Subsidiary;
 - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
 - (4) transfer any of its properties or assets to the Company or any other Restricted Subsidiary.
- (b) However, paragraph (a) above will not prohibit any encumbrance or restriction created, existing or becoming effective under or by reason of:
- (1) any agreement (including the Senior Credit Agreement) in effect on the Issue Date;
 - (2) any agreement or instrument with respect to a Restricted Subsidiary that is not a Restricted Subsidiary of the Company on the Issue Date, in existence at the time such Person becomes a Restricted Subsidiary of the Company and not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary; *provided* that such encumbrances and restrictions are not applicable to the Company or any Restricted Subsidiary or the properties or assets of the Company or any Restricted Subsidiary other than such Subsidiary which is becoming a Restricted Subsidiary;

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- (3) any agreement or instrument governing any Acquired Debt or other agreement of any entity or related to assets acquired by or merged into or consolidated with the Company or any Restricted Subsidiaries, so long as such encumbrance or restriction (A) was not entered into in contemplation of the acquisition, merger or consolidation transaction, and (B) is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets or subsidiaries of the Person, so acquired, so long as the agreement containing such restriction does not violate any other provision of the Indenture;
- (4) any applicable law or any requirement of any regulatory body;
- (5) any agreement in relation to any Liens securing obligations or Indebtedness (*provided* such Liens are otherwise permitted to be incurred under the provisions of the covenant described above under the caption *Liens*) that limit the right of the debtor to dispose of or otherwise transfer the assets subject to such Liens;
- (6) provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any Restricted Subsidiary, or restrictions in licenses relating to the property covered thereby, or other encumbrances or restrictions in agreements or instruments relating to specific assets or property that restrict generally the transfers of such assets or property; *provided, however*, that such encumbrances or restrictions do not materially impair the ability of the Company to make scheduled payments on the Notes when due;
- (7) agreements with respect to asset or Capital Stock sales, which limit the transfer of such assets or Capital Stock pending the closing of such sale;
- (8) shareholders , partnership, joint venture and similar agreements entered into in the ordinary course of business; *provided, however*, that such encumbrances or restrictions do not apply to any Restricted Subsidiaries other than the applicable company, partnership, joint venture or other entity; and *provided, further, however*, that such encumbrances and restrictions do not materially impair the ability of the Company to make scheduled payments on the Notes when due;
- (9) cash or other deposits, or net worth requirements or similar requirements, imposed by suppliers or landlords under contracts entered into in the ordinary course of business;
- (10) any other Credit Facility governing debt of the Company or any of its Restricted Subsidiaries, permitted to be incurred under the provisions of the covenant described above under the caption *Incurrence of Indebtedness and Issuance of Disqualified Stock*; *provided, however*, that such encumbrances or restrictions (i) are not materially more restrictive, taken as a whole, than those contained in the Senior Credit Agreement or (ii) do not (except upon a default or event of default thereunder) restrict the payment of dividends in an amount sufficient to materially impair the ability of the Company to make scheduled payments on the Notes when due;
- (11) restrictions of the nature described in clause (4) of the preceding paragraph (a) by reason of customary non-assignment provisions in contracts, agreements, licenses and leases entered into in the ordinary course of business; and
- (12) any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any agreement, requirement, provision, instrument or document containing the encumbrances or restrictions in the foregoing clauses (1) through (11), or in this clause (12); *provided* that the terms and conditions of any such encumbrances or restrictions are no more restrictive in any material respect taken as a whole than those under or pursuant to such agreement, requirement, provision, instrument or document so affected.

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Sale Leaseback Transactions

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale Leaseback Transaction; *provided*, that the Company or any of its Restricted Subsidiaries may enter into a Sale Leaseback Transaction if:

(1) the Company or such Subsidiary could have incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale Leaseback Transaction pursuant to the Consolidated Fixed Charge Coverage Ratio test set forth in paragraph (a) of the covenant described above under the caption *Incurrence of Indebtedness and Issuance of Disqualified Stock*;

(2) the gross cash proceeds of such Sale Leaseback Transaction are at least equal to the Fair Market Value of the property that is the subject of such Sale Leaseback Transaction; and

(3) the transfer of assets in such Sale Leaseback Transaction is permitted by, and the Company applies the proceeds of such transaction in the same manner and to the same extent as Net Available Cash and Excess Proceeds from an Asset Sale in compliance with, the covenant described above under the caption *Asset Sales*.

Unrestricted Subsidiaries

The board of directors of the Company may after the Issue Date designate any Subsidiary as an *Unrestricted Subsidiary* under the Indenture (a *Designation*) only if:

(a) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation;

(b) (x) the Company would be permitted to make an Investment (other than a Permitted Investment) at the time of Designation (assuming the effectiveness of such Designation) pursuant to paragraph (a) of *Restricted Payments* above in an amount (the *Designation Amount*) equal to the greater of (1) the net book value of the Company's interest in such Subsidiary calculated in accordance with GAAP or (2) the Fair Market Value of the Company's interest in such Subsidiary as determined in good faith by the Company's board of directors, or (y) the Designation Amount is less than \$1,000;

(c) such Unrestricted Subsidiary does not own any Capital Stock in any Restricted Subsidiary of the Company which is not simultaneously being designated an Unrestricted Subsidiary;

(d) such Unrestricted Subsidiary is not liable, directly or indirectly, with respect to any Indebtedness other than Unrestricted Subsidiary Indebtedness, *provided* that an Unrestricted Subsidiary may provide a Guarantee for the Notes; and

(e) such Unrestricted Subsidiary is not a party to any agreement, contract, arrangement or understanding at such time with the Company or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company or, in the event such condition is not satisfied, the value of such agreement, contract, arrangement or understanding to such Unrestricted Subsidiary shall be deemed a Restricted Payment.

In the event of any such Designation, the Company shall be deemed, for all purposes of the Indenture, to have made an Investment equal to the Designation Amount that constitutes a Restricted Payment pursuant to the covenant *Restricted Payments*.

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The Company shall not and shall not cause or permit any Restricted Subsidiary to at any time:

(a) provide credit support for, guarantee or subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness); *provided, however*, that this covenant shall not be deemed to prevent Permitted Investments in Unrestricted Subsidiaries that are otherwise allowed under the Indenture, or

(b) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary.

For purposes of the foregoing, the Designation of a Subsidiary of the Company as an Unrestricted Subsidiary shall be deemed to be the Designation of all present and future Subsidiaries of such Subsidiary as Unrestricted Subsidiaries. Unless so designated as an Unrestricted Subsidiary, any Person that becomes a Subsidiary of the Company will be classified as a Restricted Subsidiary.

The Company may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a *Revocation*) if:

(a) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation;

(b) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation would, if incurred at such time, have been permitted to be incurred for all purposes of the Indenture; and

(c) unless such redesignated Subsidiary shall not have any Indebtedness outstanding (other than Indebtedness that would be Permitted Debt), immediately after giving effect to such proposed Revocation, and after giving pro forma effect to the incurrence of any such Indebtedness of such redesignated Subsidiary as if such Indebtedness was incurred on the date of the Revocation, the Company could incur \$1.00 of additional Indebtedness (other than Permitted Debt) pursuant to the covenant described under *Incurrence of Indebtedness and Issuance of Disqualified Stock*.

All Designations and Revocations must be evidenced by a resolution of the board of directors of the Company delivered to the Trustee certifying compliance with the foregoing provisions of this covenant.

Payments for Consent

Neither the Company nor any of its Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any holder of Notes 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 be paid or is paid to all holders of Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Lines of Business

Neither the Company nor any of its Restricted Subsidiaries will directly or indirectly engage in any material respect in any line or lines of business activity other than that which is a Permitted Business.

Reports

Whether or not required by the rules and regulations of the Commission, so long as any Notes are outstanding, the Company will file with the Commission and furnish to the holders of Notes and the Trustee all quarterly and annual financial information required to be contained in a filing with the Commission on Forms 10-Q and 10-K, including a *Management's Discussion and Analysis of Financial Condition and Results of Operations* and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors.

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The Company will be deemed to have furnished such reports to the Trustee and the holders of Notes if it has filed such reports with the Commission using the EDGAR filing system and such reports are publicly available.

For so long as any Notes remain outstanding and constitute restricted securities under Rule 144, the Company will furnish to the holders of the Notes and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Consolidation, Merger and Sale of Assets

The Indenture provides that the Company will not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other Person or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to any Person or group of Persons, or permit any of its Restricted Subsidiaries to enter into any such transaction or series of transactions, if such transaction or series of transactions, in the aggregate, would result in a sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries on a Consolidated basis to any other Person or group of Persons (other than the Company or a Guarantor), unless at the time and after giving effect thereto:

(1) either (a) the Company will be the continuing corporation or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, conveyance, transfer, lease or disposition all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries on a Consolidated basis (the *Surviving Entity*) will be a corporation, limited liability company or limited partnership (*provided* that in the event the *Surviving Entity* is a limited partnership, then a Subsidiary of the *Surviving Entity* that is a corporation or limited liability company shall execute a supplemental indenture pursuant to which it shall become a co-obligor of the *Surviving Entity*'s obligations under the Notes and the Indenture) duly organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and such Person expressly assumes, by a supplemental indenture, all the obligations of the Company under the Notes and the Indenture, and the Notes and the Indenture will remain in full force and effect as so supplemented (and any Guarantees will be confirmed as applying to such *Surviving Entity*'s obligations);

(2) immediately after giving effect to such transaction on a pro forma basis (and treating any Indebtedness not previously an obligation of the Company or any of its Restricted Subsidiaries which becomes the obligation of the Company or any of its Restricted Subsidiaries as a result of such transaction as having been incurred at the time of such transaction), no Default or Event of Default will have occurred and be continuing;

(3) except in the case of a merger of the Company with or into a Restricted Subsidiary or a Restricted Subsidiary with or into the Company or any other Restricted Subsidiary, or a sale, assignment, conveyance, transfer, lease or other disposition of properties or assets to the Company or one or more Restricted Subsidiaries, immediately after giving effect to such transaction on a pro forma basis (on the assumption that the transaction occurred on the first day of the four-quarter period for which financial statements are available ending immediately prior to the consummation of such transaction with the appropriate adjustments with respect to the transaction being included in such pro forma calculation), the Company (or the *Surviving Entity* if the Company is not the continuing obligor under the Indenture) could incur \$1.00 of additional Indebtedness (other than Permitted Debt) under the provisions of *Certain Covenants Incurrence of Indebtedness and Issuance of Disqualified Stock*;

(4) unless the Company is the continuing obligor under the Indenture, at the time of the transaction, each Guarantor, if any, unless it is the other party to the transactions described above, will have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under the Indenture and the Notes;

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(5) at the time of the transaction, if any of the property or assets of the Company or any of its Restricted Subsidiaries would thereupon become subject to any Lien, the provisions of *Certain Covenants Liens* are complied with; and

(6) at the time of the transaction, the Company or the Surviving Entity will have delivered, or caused to be delivered, to the Trustee an officers certificate and an opinion of counsel, each stating that such consolidation, merger, transfer, sale, assignment, conveyance, transfer, lease or other disposition and any supplemental indenture in respect thereof comply with the Indenture.

Except as provided under the third paragraph of *Guarantees*, each Guarantor will not, and the Company will not permit a Guarantor to, in a single transaction or through a series of related transactions, (x) consolidate with or merge with or into any other Person (other than the Company or any other Guarantor) or (y) sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to any Person or group of Persons (other than the Company or any other Guarantor) or permit any of its Restricted Subsidiaries to enter into any such transaction or series of transactions if such transaction or series of transactions, in the aggregate, in the case of clause (y) would result in a sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Guarantor and its Restricted Subsidiaries on a Consolidated basis to any other Person or group of Persons (other than the Company or any Guarantor), unless at the time and after giving effect thereto:

(1) either (a) the Guarantor or the Company or another Guarantor will be the continuing Person in the case of a merger involving the Guarantor or (b) the Person (if other than the Guarantor) formed by such consolidation or into which such Guarantor is merged or the Person which acquires by sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Guarantor and its Restricted Subsidiaries on a Consolidated basis (the *Surviving Guarantor Entity*) expressly assumes, by a supplemental indenture, all the obligations of such Guarantor under its Guarantee of the Notes and the Indenture, and such Guarantee and the Indenture will remain in full force and effect;

(2) immediately before and immediately after giving effect to such transaction on a pro forma basis, no Default or Event of Default will have occurred and be continuing; and

(3) at the time of the transaction such Guarantor or the Surviving Guarantor Entity will have delivered, or caused to be delivered, to the Trustee an officers certificate and an opinion of counsel, each stating that such consolidation, merger, transfer, sale, assignment, conveyance, lease or other disposition and any supplemental indenture in respect thereof comply with the Indenture;

provided, however, that this paragraph shall not apply to any Guarantor whose Guarantee of the Notes is unconditionally released and discharged in accordance with the Indenture.

In the event of any transaction (other than a lease) described in and complying with the conditions listed in the two immediately preceding paragraphs in which the Company or any Guarantor, as the case may be, is not the continuing Person, the successor Person formed or remaining or to which such disposition is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company or such Guarantor, as the case may be, and the Company or any Guarantor, as the case may be, shall be discharged (other than, in the case of the Company, in a transaction that results in the transfer of assets constituting or accounting for less than 95% of the Consolidated assets (as of the date of the latest internal balance sheet available to the Company) of the Company or the Consolidated revenue of the Company (as of the latest 12-month period for which internal financial statements are available to the Company)) from all obligations and covenants under the Indenture and the Notes or its Guarantee, as the case may be.

Notwithstanding the foregoing, the Company or any Guarantor may merge with an Affiliate of it incorporated or organized solely for the purpose of reincorporating or reorganizing the Company or Guarantor in another jurisdiction to realize tax or other benefits.

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Events of Default

The Indenture provides that an Event of Default will occur if:

- (1) there shall be a default in the payment of any interest on any Note when it becomes due and payable, and such default shall continue for a period of 30 days;
- (2) there shall be a default in the payment of the principal of (or premium, if any, on) any Note at its Maturity (upon acceleration, optional or mandatory redemption, if any, required repurchase or otherwise);
- (3) there shall be a default in the performance or breach of the provisions described under *Consolidation, Merger and Sale of Assets*, the Company shall have failed to make or consummate a Prepayment Offer in accordance with the provisions of *Certain Covenants Asset Sales*, or the Company shall have failed to make or consummate a Change of Control Offer in accordance with the provisions of *Change of Control*;
- (4) there shall be a default in the performance, or breach, of any covenant or agreement of the Company or any Guarantor under the Indenture or any Guarantee (other than a default in the performance, or breach, of a covenant or agreement which is specifically dealt with in clause (1), (2) or (3) above) and such default or breach shall continue for a period of 60 days (or 180 days in relation to the covenant described under *Certain Covenants Reports*) after written notice has been given, by certified mail, (i) to the Company by the Trustee or (ii) to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the outstanding Notes;
- (5)(a) any default in the payment of the principal, premium, if any, or interest on any Indebtedness shall have occurred under any of the agreements, indentures or instruments under which the Company, any Guarantor or any other Significant Subsidiary then has outstanding Indebtedness in excess of \$25.0 million when the same shall become due and payable in full and such default shall have continued after any applicable notice or grace period and shall not have been cured or waived or such amount repaid, and, if not already matured at its final maturity in accordance with its terms, the holder of such Indebtedness shall have the right to accelerate such Indebtedness or (b) an event of default as defined in any of the agreements, indentures or instruments described in clause (a) of this clause (5) shall have occurred and the Indebtedness thereunder, if not already matured at its final maturity in accordance with its terms, shall have been accelerated and such acceleration shall not have been rescinded or such Indebtedness repaid;
- (6) any Guarantee shall for any reason cease to be, or shall for any reason be asserted in writing by any Guarantor or the Company not to be, in full force and effect and enforceable in accordance with its terms, except to the extent contemplated by the Indenture and any such Guarantee;
- (7) one or more judgments, orders or decrees of any court or regulatory or administrative agency for the payment of money in excess of \$25.0 million (excluding amounts covered by enforceable insurance policies issued by solvent insurance carriers), either individually or in the aggregate, shall be rendered against the Company, any Guarantor or any other Significant Subsidiary or any of their respective properties and shall not be discharged and either (a) any creditor shall have commenced an enforcement proceeding upon such judgment, order or decree or (b) there shall have been a period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of an appeal or otherwise, shall not be in effect; or
- (8) the occurrence of certain events of bankruptcy, insolvency or reorganization with respect to the Company or any Significant Subsidiary.

If an Event of Default (other than as specified in clause (8) of the prior paragraph with respect to the Company) shall occur and be continuing with respect to the Indenture, the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of such holders shall, declare all unpaid principal of, premium, if any, and accrued interest on all Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the holders of the Notes), and upon any such declaration, such principal, premium, if any, and interest shall become due and

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payable immediately. If an Event of Default specified in clause (8) of the prior paragraph occurs and is continuing with respect to the Company, then all the Notes shall ipso facto become due and payable immediately in an amount equal to the principal amount of the Notes, together with accrued and unpaid interest, if any, to the date the Notes become due and payable, without any declaration or other act on the part of the Trustee or any holder of Notes. Thereupon, the Trustee may, at its discretion, proceed to protect and enforce the rights of the holders of Notes by appropriate judicial proceedings.

After a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the Trustee, the holders of a majority in aggregate principal amount of Notes outstanding by written notice to the Company and the Trustee, on behalf of the holders of Notes, may rescind and annul such declaration and its consequences if:

(a) the Company has paid or deposited with the Trustee a sum sufficient to pay (1) all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, (2) all overdue interest on all Notes then outstanding, (3) the principal of, and premium, if any, on any Notes then outstanding which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Notes and (4) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the Notes;

(b) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(c) all Events of Default, other than the non-payment of principal of, premium, if any, and interest on the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in the Indenture.

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

The holders of a majority in aggregate principal amount of the Notes outstanding, by written notice to the Trustee and the Company, may on behalf of the holders of all such outstanding Notes waive any existing Default or Event of Default under the Indenture and its consequences, except a continuing Default or Event of Default (1) in the payment of the principal of, premium, if any, or interest on any Note (which may only be waived with the consent of each holder of Notes affected) or (2) in respect of a covenant or provision which under the Indenture cannot be modified or amended without the consent of the holder of each Note affected by such modification or amendment.

No holder of any of the Notes has any right to institute any proceedings with respect to the Indenture or any remedy thereunder, unless (i) such holder has previously given the Trustee written notice that an Event of Default has occurred and is continuing, (ii) the holders of at least 25% in aggregate principal amount of the outstanding Notes have made written request to the Trustee to institute a proceeding or pursue a remedy, (iii) such holders have offered reasonable security or indemnity to the Trustee to institute such proceeding or pursue such remedy as Trustee under the Notes and the Indenture, (iv) the Trustee has failed to institute such proceeding or pursue such remedy within 30 days after receipt of such notice and such offer of security or indemnity, and (v) the Trustee, within such 30-day period, has not received inconsistent written directions by holders of a majority in aggregate principal amount of the outstanding Notes. Such limitations do not, however, apply to a suit instituted by a holder of a Note for the enforcement of the payment of the principal of, premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.

The Company is required to notify the Trustee on or before the thirtieth day after it has knowledge of the occurrence and continuance of any Default specifying such event and what action the Company proposes to take or is taking with respect thereto. The Company is required to deliver to the Trustee, on or before a date not more than 90 days after the end of each fiscal year, a written statement as to compliance with the Indenture, including whether or not any Default has occurred during the previous year and is then continuing. If an Event of Default has occurred and is continuing, the Trustee is under no obligation to exercise any of the rights or powers vested

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in it by the Indenture at the request or direction of any of the holders of the Notes unless such holders offer to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred thereby and complied with any other applicable provisions of the Indenture.

No Personal Liability of Directors, Officers, Employees and Stockholders

No director, officer, employee, manager, incorporator, member, partner or stockholder or other owner of Capital Stock of the Company or any Restricted Subsidiary, as such, will have any liability for any obligations of the Company, any Guarantor or any other Restricted Subsidiary under the Notes, the Indenture or the Guarantees to which they are a party, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of Notes by accepting such Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws, and it is the view of the Commission that such waiver is against public policy.

Defeasance or Covenant Defeasance of Indenture

The Indenture provides that the Company may, at its option and at any time, elect to have all obligations of the Company discharged with respect to the Indenture and the outstanding Notes and all obligations of the Guarantors discharged with respect to the Guarantees with respect to the Indenture and such Notes (*defeasance*). Such defeasance means that the Company, any such Guarantor and any other obligor under the Indenture, the Notes and the Guarantees shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes and the Guarantees, and all shall be discharged from the payment and performance of all other obligations under the Indenture and with respect the Notes and Guarantees, except for:

- (1) the rights of holders of such outstanding Notes to receive payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are scheduled to be due from Funds in Trust (as defined below),
- (2) the Company's obligations with respect to the holders of Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes, and the maintenance of an office or agency for payment and money for security payments held in trust,
- (3) the rights, powers, trusts, duties and immunities of the Trustee and the Company's obligations relating thereto and
- (4) the provisions of the Indenture with respect to defeasance.

In addition, the Indenture provides that the Company may, at its option and at any time, elect to have the obligations of the Company and any Guarantor released with respect to the covenants that are described under *Change of Control* and *Certain Covenants* and the limitations in clause (3) of the covenant described under *Consolidation, Merger and Sale of Assets* (*covenant defeasance*) and thereafter any omission to comply with such obligations shall not constitute a Default or an Event of Default. In the event covenant defeasance occurs, the Events of Default described in clauses (3) through (7) under *Events of Default* will no longer constitute an Event of Default with respect to the Notes.

In order to exercise either defeasance or covenant defeasance with respect to the Notes,

- (a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the holders of the Notes cash in United States dollars, U.S. Government Obligations or a combination thereof (*Funds in Trust*), in such amounts as, in the aggregate, will be sufficient, in the opinion of a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm, to pay and discharge the principal of, premium, if any, and interest on the outstanding Notes on the Stated Maturity (or the applicable redemption date, if at or prior to electing either defeasance or covenant defeasance, the Company has delivered to

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the Trustee an irrevocable notice to redeem all of the outstanding Notes on such redemption date, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date);

(b) in the case of defeasance, the Company shall have delivered to the Trustee an opinion of independent counsel in the United States stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel shall state that, the holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(c) in the case of covenant defeasance, the Company shall have delivered to the Trustee an opinion of independent counsel in the United States stating that the holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than an Event of Default or Default resulting from the incurrence of Indebtedness or Liens securing such Indebtedness, all or a portion of the proceeds of which will be applied to such deposit) or insofar as clause (8) under the first paragraph under *Events of Default* is concerned, at any time during the period ending on the 91st day after the date of deposit;

(e) such deposit shall not result in a breach of, or constitute a default under, any material agreement or instrument (other than the Indenture) to which the Company, any Guarantor or any Restricted Subsidiary is a party or by which it is bound or if such breach or default would occur, which is not waived as of, or for all purposes, on or after, the date of such deposit;

(f) such deposit shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust shall be registered under such Act or exempt from registration thereunder;

(g) the Company will have delivered to the Trustee an opinion of counsel in the United States stating that (assuming no holder of the Notes would be considered an insider of the Company or any Guarantor under any applicable bankruptcy or insolvency law and assuming no intervening bankruptcy or insolvency of the Company or any Guarantor between the date of deposit and the 91st day following the deposit) after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(h) the Company shall have delivered to the Trustee an officers' certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company, any Guarantor or others; and

(i) the Company will have delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent provided for relating to defeasance or the covenant defeasance, as the case may be, have been complied with.

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Satisfaction and Discharge

The Indenture provides that it will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes and as otherwise expressly provided for in the Indenture) as to all such outstanding Notes issued thereunder when

(a) either

(1) all such Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid or Notes whose payment has been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided for in the Indenture) have been delivered to the Trustee for cancellation or

(2) all such Notes not theretofore delivered to the Trustee for cancellation (a) have become due and payable by reason of making of a notice of redemption or otherwise, (b) will become due and payable at their Stated Maturity within one year, or (c) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

(b) the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust an amount in United States dollars, U.S. Government Obligations, or a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm, to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, including principal of, premium, if any, and accrued interest at such Maturity, Stated Maturity or redemption date;

(c) no Default or Event of Default shall have occurred and be continuing on the date of such deposit;

(d) the Company or any Guarantor has paid or caused to be paid all other sums due and payable under the Indenture by the Company and any Guarantor; and

(e) the Company has delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

Amendments and Waivers

Modifications and amendments of the Indenture may be made by the Company, each Guarantor, if any, any other obligor under the Notes, and the Trustee with the consent of the holders of a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes); *provided, however*, that no such modification or amendment may, without the consent of the holder of each outstanding Note affected thereby:

(1) change the Stated Maturity of the principal of, or any installment of interest on, or change to an earlier date any redemption date of, or waive a default in the payment of the principal of, premium, if any, or interest on, any such Note (except rescission of acceleration of Notes by the holders of a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration) or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change the coin or currency in which the principal of any such Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment after the Stated Maturity thereof (or, in the case of redemption, on or after the redemption date);

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(2) reduce the amounts required to be paid by the Company (or materially defer the times at which the Company is required to pay such amounts) pursuant to a Prepayment Offer in connection with any Asset Sale or Asset Sales in accordance with *Certain Covenants Asset Sales* or pursuant to a Change of Control Offer in the event of any Change of Control in accordance with *Change of Control*;

(3) reduce the percentage in principal amount of such outstanding Notes, the consent of whose holders is required for any such amendment or supplemental indenture, or the consent of whose holders is required for any waiver or compliance with certain provisions of the Indenture;

(4) modify any of the provisions relating to supplemental indentures requiring the consent of holders or relating to the waiver of past defaults, except to increase the percentage of such outstanding Notes required for such actions or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the holder of each such Note affected thereby;

(5) voluntarily release, other than in accordance with the Indenture, the Guarantee of any Guarantor; or

(6) amend or modify any of the provisions of the Indenture in any manner which subordinates the Notes issued thereunder in right of payment to any other Indebtedness of the Company or which subordinates any Guarantee in right of payment to any other Indebtedness of the Guarantor issuing any such Guarantee.

Notwithstanding the foregoing, without the consent of any holders of the Notes, the Company, any Guarantor, any other obligor under the Notes and the Trustee may modify, supplement or amend the Indenture:

(1) to evidence the succession of another Person to the Company, a Guarantor, or any other obligor under the Notes, and the assumption by any such successor of the covenants of the Company, such Guarantor or such obligor in the Indenture and in the Notes and in any Guarantee in accordance with *Consolidation, Merger and Sale of Assets* including the addition of any required co-issuer of Notes;

(2) to add to the covenants of the Company, any Guarantor or any other obligor under the Notes for the benefit of the holders of the Notes or to surrender any right or power conferred upon the Company or any Guarantor or any other obligor under the Notes, as applicable, in the Indenture, in the Notes or in any Guarantee;

(3) to cure any ambiguity, or to correct or supplement any provision in the Indenture, the Notes issued thereunder or any Guarantee which may be defective or inconsistent with any other provision in the Indenture, the Notes or any Guarantee;

(4) to make any provision with respect to matters or questions arising under the Indenture, the Notes or any Guarantee; *provided* that such provisions shall not adversely affect the interest of the holders of the Notes in any material respect;

(5) to add a Guarantor or additional obligor under the Indenture or permit any Person to guarantee the Notes and/or other obligations under the Indenture;

(6) to release a Guarantor as provided in the Indenture;

(7) to evidence and provide the acceptance of the appointment of a successor Trustee under the Indenture;

(8) to mortgage, pledge, hypothecate or grant a security interest in favor of the Trustee for the benefit of the holders of the Notes as additional security for the payment and performance of the Company's and any Guarantor's obligations under the Indenture, in any property or assets, including any of which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to or for the benefit of the Trustee pursuant to the Indenture or otherwise;

(9) to provide for the issuance of Additional Notes and related Guarantees under the Indenture in accordance with the limitations set forth in the Indenture;

(10) to comply with the rules of any applicable securities depositary;

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(11) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(12) to comply with requirements of the Commission in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act; or

(13) to conform the text of the Indenture, the Notes or the Guarantees to any provision of this *Description of Notes*.

The holders of a majority in aggregate principal amount of the Notes outstanding may waive compliance with certain covenants and provisions of the Indenture.

Transfer and Exchange

A holder of Notes may transfer or exchange Notes in accordance with the Indenture. The registrar and the Trustee may require a holder of Notes, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a holder of Notes to pay any taxes or other governmental charges required by law or permitted by the Indenture. The Company is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

The registered holder of a Note will be treated as the owner of it for all purposes.

Governing Law

The Indenture, the Notes and Guarantees are to be governed by, and construed in accordance with, the laws of the State of New York.

Concerning the Trustee

Wilmington Trust, National Association, the Trustee under the Indenture, is the initial paying agent and registrar for the Notes. Wilmington Trust, National Association (as successor by merger to Wilmington Trust FSB), also serves as trustee under the indentures for our 8 ¹/₄% Senior Notes due 2019, 7 ³/₈% Senior Notes due 2020 and 7 ¹/₈% Senior Notes due 2021.

The Indenture contains certain limitations on the rights of the Trustee, should it become a creditor of the Company, 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 is permitted to engage in other transactions; *provided, however*, that if it acquires any conflicting interest while any Default exists it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as Trustee with such conflict or resign as Trustee.

The holders of a majority in aggregate principal amount of the then 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 under the Indenture, subject to certain exceptions. The Indenture provides that if an Event of Default occurs (which has not been cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in the conduct of their own affairs. The Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any holder of Notes issued thereunder unless such holder shall have offered to the Trustee security or indemnity satisfactory to it against any loss, liability or expense.

Certain Definitions

Acquired Debt means Indebtedness of a Person (1) existing at the time such Person becomes a Restricted Subsidiary or (2) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or such acquisition, as the case may be. Acquired Debt shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Restricted Subsidiary, as the case may be.

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Additional Assets means (i) any assets or property (other than cash, Cash Equivalents or securities) used in a Permitted Business or any business ancillary thereto, (ii) Investments in any other Person engaged in a Permitted Business or any business ancillary thereto (including the acquisition from third parties of Capital Stock of such Person) as a result of which such other Person becomes a Restricted Subsidiary, (iii) the acquisition from third parties of Capital Stock of a Restricted Subsidiary or (iv) Permitted Business Investments.

Adjusted Consolidated Net Tangible Assets means (without duplication), as of the date of determination, the remainder of:

(i) the sum of:

(a) discounted future net revenues from proved oil and gas reserves of the Company and its Restricted Subsidiaries calculated in accordance with Commission guidelines before any state, federal or foreign income taxes, as estimated by the Company in a reserve report prepared as of the end of the Company's most recently completed fiscal year for which audited financial statements are then available, as increased by, as of the date of determination, the estimated discounted future net revenues from (1) estimated proved oil and gas reserves acquired since such year-end, which reserves were not reflected in such year-end reserve report, and (2) estimated increases in proved oil and gas reserves since such year-end due to exploration, development or exploitation activities or due to changes in geological conditions or other factors which would, in accordance with standard industry practice, cause such revisions, in each case calculated in accordance with Commission guidelines (utilizing the prices utilized in such year-end reserve report), and decreased by, as of the date of determination, the estimated discounted future net revenues from (3) estimated proved oil and gas reserves reflected in such year-end report produced or disposed of since such year-end and (4) estimated oil and gas reserves attributable to downward revisions of estimates of proved oil and gas reserves since such year-end due to changes in geological conditions or other factors which would, in accordance with standard industry practice, cause such revisions, in each case calculated in accordance with Commission guidelines (utilizing the prices utilized in such year-end reserve report); *provided* that, in the case of each of the determinations made pursuant to clauses (1) through (4), such increases and decreases shall be as estimated by the Company's petroleum engineers, plus

(b) the Net Working Capital on a date no earlier than the date of the Company's latest annual or quarterly financial statements, plus

(c) the greater of (1) the net book value on a date no earlier than the date of the Company's latest annual or quarterly financial statements and (2) the appraised value, as estimated by independent appraisers, of other tangible assets (including, without duplication, Investments in unconsolidated Restricted Subsidiaries) of the Company and its Restricted Subsidiaries, as of the date no earlier than the date of the Company's latest audited financial statements (*provided* that the Company shall not be required to obtain such appraisal of such assets if no such appraisal has been performed),

minus (ii) the sum of:

(a) minority interests, plus

(b) any net gas balancing liabilities of the Company and its Restricted Subsidiaries reflected in the Company's latest annual or quarterly financial statements (to the extent not deducted in calculating Net Working Capital in accordance with clause (i)(b) of this definition), plus

(c) to the extent included in (i)(a) above, the discounted future net revenues, calculated in accordance with Commission guidelines (utilizing the prices utilized in the Company's year-end reserve report), attributable to reserves which are required to be delivered to third parties to fully satisfy the obligations of the Company and its Restricted Subsidiaries with respect to Volumetric Production Payments (determined, if applicable, using the schedules specified with respect thereto), plus

(d) the discounted future net revenues, calculated in accordance with Commission guidelines, attributable to reserves subject to Dollar-Denominated Production Payments which, based on the estimates

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of production and price assumptions included in determining the discounted future net revenues specified in (i)(a) above, would be necessary to fully satisfy the payment obligations of the Company and its Restricted Subsidiaries with respect to Dollar-Denominated Production Payments (determined, if applicable, using the schedules specified with respect thereto).

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

Applicable Premium means, with respect to any Note on any redemption date as determined by the Company, the greater of:

(1) 1.0% of the principal amount of the Note; or

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at March 15, 2017 (such redemption price being set forth in the table appearing above under the caption *Optional Redemption*) plus (ii) all required interest payments due on such Note to March 15, 2017 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

(b) the principal amount of such Note.

Asset Sale means any sale, issuance, conveyance, transfer, lease or other disposition (including, without limitation, by way of merger or consolidation, Production Payments and Reserve Sales or a Sale Leaseback Transaction) (collectively, a *transfer*), directly or indirectly, in one or a series of related transactions, of:

(1) any Capital Stock of any Restricted Subsidiary (other than director's qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary);

(2) all or substantially all of the properties and assets of any division or line of business of the Company or any Restricted Subsidiary; or

(3) any other properties, assets or rights of the Company or any Restricted Subsidiary other than in the ordinary course of business.

For the purposes of this definition, the term *Asset Sale* shall not include:

(A) any transfer of properties and assets that is governed by the provisions described under *Consolidation, Merger and Sale of Assets* or *Change of Control*,

(B) any transfer of properties, assets and rights that is by the Company to any Restricted Subsidiary or Guarantor, or by any Restricted Subsidiary to the Company or any Restricted Subsidiary or Guarantor, which is not made in breach of the terms of the Indenture,

(C) any transfer of properties, assets and rights that would be within the definition of a (i) *Restricted Payment* and would be permitted to be made as a Restricted Payment (and shall be deemed a Restricted Payment) under the *Restricted Payments* covenant or (ii) *Permitted Investment*,

(D) the trade, sale or exchange of Cash Equivalents, or the trade, sale, exchange or other disposition of (i) obsolete assets or (ii) other obsolete property no longer suitable for use in any Permitted Business,

(E) the abandonment or relinquishment of assets or property in the ordinary course of business including, without limitation, the abandonment, relinquishment or farm-out of oil and gas properties, leases, concessions or drilling or exploration rights or interests therein,

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(F) the transfer of Property received in settlement of debts owing to such Person as a result of foreclosure, perfection or enforcement of any Lien or debt, which debts were owing to such Person in the ordinary course of its business,

(G) any Production Payments and Reserve Sales, *provided* that any such Production Payments and Reserve Sales (other than incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Company or a Restricted Subsidiary), shall have been created, incurred, issued, assumed or guaranteed in connection with the acquisition or financing of, and within 60 days after the acquisition of, the Property that is subject thereto,

(H) the licensing or sublicensing of intellectual property or other general intangibles to the extent that such license does not prohibit the licensor from using the intellectual property and licenses, leases or subleases of other property,

(I) the creation or incurrence of any Lien,

(J) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind,

(K) the Fair Market Value of which in the aggregate does not exceed \$10.0 million in any transaction or series of related transactions, or

(L) the sale or other disposition (whether or not in the ordinary course of business) of oil and gas properties, *provided* at the time of such sale or other disposition such properties do not have associated with them any proved reserves.

Attributable Indebtedness in respect of a Sale Leaseback Transaction means, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with GAAP) of the obligation of the lessee for net 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 or may, at the option of the lessor, be extended).

Bankruptcy Law means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law or foreign law relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

Capital Lease Obligation of any Person means any obligation of such Person and its Restricted Subsidiaries on a Consolidated basis under any capital lease of (or other agreement conveying the right to use) real or personal property which, in accordance with GAAP, is required to be recorded as a capitalized lease obligation.

Capital Stock of any Person means any and all shares, units, interests, participations, rights in or other equivalents (however designated) of such Person's capital stock, other equity interests whether now outstanding or issued after the Issue Date, partnership interests (whether general or limited), joint venture interests, limited liability company interests, 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 issuing Person, including any Preferred Stock, and any rights (other than debt securities convertible into Capital Stock), warrants or options exchangeable for or convertible into such Capital Stock.

Cash Equivalents means

(1) any evidence of Indebtedness issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof,

(2) deposits, time deposit accounts, certificates of deposit, money market deposits or acceptances of (i) any financial institution having capital and surplus in excess of \$500 million that is a member of the

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Federal Reserve System and whose senior unsecured debt is rated at least *A-1* by S&P, or at least *P-1* by Moody's or (ii) any financial institution that is a lender under the Senior Credit Agreement,

(3) commercial paper with a maturity of 365 days or less, from the date of acquisition, issued by a Person (other than an Affiliate or Subsidiary of the Company) organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and rated at least *A-1* by S&P and at least *P-1* by Moody's,

(4) repurchase agreements and reverse repurchase agreements relating to Indebtedness of a type described in clause (1) above that are entered into with a financial institution described in clause (2) above and mature within 365 days from the date of acquisition, and

(5) money market funds which invest substantially all of their assets in securities described in the preceding clauses (1) through (4).

Change of Control means the occurrence of any of the following events:

(1) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Hamm Group is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total outstanding Voting Stock of the Company or any Successor Parent (measured by voting power rather than the number of shares); *provided* that no Change of Control shall be deemed to occur by reason of the Company becoming a Subsidiary of a Successor Parent;

(2) during any period of two consecutive years, individuals who at the beginning of such period constituted the board of directors of the Company or any Successor Parent (together with any new directors whose election to such board or whose nomination for election by the stockholders of the Company or any Successor Parent, as the case may be, was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved), cease for any reason to constitute a majority of such board of directors then in office;

(3) the Company or any Successor Parent consolidates with or merges with or into any Person, or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any such Person, or any such Person consolidates with or merges into or with the Company or any Successor Parent, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Company or such Successor Parent, as the case may be, is converted into or exchanged for cash, securities or other property, other than any such transaction where

(A) in the case of any such merger or consolidation, the outstanding Voting Stock of the Company or such Successor Parent, as the case may be, is changed into or exchanged for (1) Voting Stock of the surviving Person which is not Disqualified Stock or (2) cash, securities and other property (other than Capital Stock of the surviving Person) in an amount which could be paid by the Company as a Restricted Payment as described under *Certain Covenants Restricted Payments* (and such amount shall be treated as a Restricted Payment subject to the provisions in the Indenture described under *Certain Covenants Restricted Payments*) and

(B) immediately after such transaction, no person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Hamm Group, is the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total outstanding Voting Stock (measured by voting power rather than the number of shares) of the surviving Person; or

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(4) the Company is liquidated or dissolved or adopts a plan of liquidation or dissolution other than in a transaction which complies with the provisions described under *Consolidation, Merger and Sale of Assets*.

For purposes of this definition, any transfer of an equity interest of an entity that was formed for the purpose of acquiring Voting Stock of the Company will be deemed to be a transfer of such portion of such Voting Stock as corresponds to the portion of the equity of such entity that has been so transferred. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur upon the consummation of any actions undertaken by the Company or any Restricted Subsidiary solely for the purpose of changing the legal structure of the Company or such Restricted Subsidiary.

Commission means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of the Indenture such Commission is not existing and performing the duties now assigned to it under the Securities Act and the Exchange Act then the body performing such duties at such time.

Company means Continental Resources, Inc., an Oklahoma corporation, until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter *Company* shall mean such successor Person.

Consolidated Current Liabilities as of the date of determination means the aggregate amount of liabilities of the Company and its consolidated Restricted Subsidiaries, which may properly be classified as current liabilities (including taxes accrued as estimated), on a consolidated basis, after eliminating (1) all intercompany items between the Company and such Restricted Subsidiaries and (2) all current maturities of long-term Indebtedness, all determined in accordance with GAAP consistently applied.

Consolidated EBITDAX of any Person means, without duplication, the sum of Consolidated Net Income (Loss), and in each case to the extent deducted in computing Consolidated Net Income (Loss) for such period, Consolidated Interest Expense, Consolidated Income Tax Expense, Consolidated exploration expenses, and Consolidated Non-cash Charges for such period, of such Person and its Restricted Subsidiaries on a Consolidated basis, all determined in accordance with GAAP, less all non-cash items increasing Consolidated Net Income for such period, less (to the extent included in determining Consolidated Net Income (Loss)) the sum of (a) the amount of deferred revenues that are amortized during the period and are attributable to reserves that are subject to Volumetric Production Payments and (b) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments, and less all cash payments during such period relating to non-cash charges that were added back to Consolidated Net Income (Loss) in determining Consolidated EBITDAX in any prior period.

Consolidated Fixed Charge Coverage Ratio of any Person means, for any period, the ratio of

(a) Consolidated EBITDAX for such period to

(b) the sum of Consolidated Interest Expense for such period,

in each case after giving pro forma effect (as calculated in accordance with Article 11 of Regulation S-X under the Securities Act or any successor provision) to, without duplication,

(1) the incurrence of the Indebtedness giving rise to the need to make such calculation and (if applicable) the application of the net proceeds therefrom, including to refinance other Indebtedness, as if such Indebtedness was incurred, and the application of such proceeds occurred, on the first day of such period;

(2) the incurrence, repayment or retirement of any other Indebtedness by such Person and its Restricted Subsidiaries since the first day of such period as if such Indebtedness was incurred, repaid or retired at the

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beginning of such period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance of such Indebtedness during such period);

(3) in the case of Acquired Debt or any acquisition occurring at the time of the incurrence of such Indebtedness, the related acquisition, assuming such acquisition had been consummated on the first day of such period; and

(4) any acquisition or disposition by such Person and its Restricted Subsidiaries of any company or any business or any assets out of the ordinary course of business, whether by merger, stock purchase or sale or asset purchase or sale, or any related repayment of Indebtedness, in each case since the first day of such period, assuming such acquisition or disposition had been consummated on the first day of such period;

provided that

(1) in making such computation, the Consolidated Interest Expense attributable to interest on any Indebtedness computed on a pro forma basis and (A) bearing a floating interest rate shall be computed as if the rate in effect on the date of computation had been the applicable rate for the entire period and (B) which was not outstanding for any part of the period for which the computation is being made but which bears, at the option of such Person, a fixed or floating rate of interest, shall be computed by applying at the option of such Person either the fixed or floating rate, and

(2) in making such computation, the Consolidated Interest Expense of such Person attributable to interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

Consolidated Income Tax Expense of any Person means, for any period, the provision for federal, state, local and foreign income taxes (including state franchise taxes accounted for as income taxes in accordance with GAAP) of such Person and its Consolidated Restricted Subsidiaries for such period as determined in accordance with GAAP.

Consolidated Interest Expense of any Person means, without duplication, for any period, the sum of

(a) the interest expense, less interest income, of such Person and its Restricted Subsidiaries for such period, on a Consolidated basis, excluding any interest attributable to Dollar-Denominated Production Payments but including, without limitation,

(1) amortization of debt discount (excluding amortization of capitalized debt issuance costs),

(2) the net cash costs associated with Interest Rate Agreements (including amortization of discounts),

(3) the interest portion of any deferred payment obligation,

(4) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing and

(5) accrued interest, *plus*

(b) (1) the interest component of the Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period and

(2) all capitalized interest of such Person and its Restricted Subsidiaries plus

(c) the interest expense under any Guaranteed Debt of such Person and any Restricted Subsidiary to the extent not included under any other clause hereof, whether or not paid by such Person or its Restricted Subsidiaries, plus

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(d) dividend payments by such Person with respect to Disqualified Stock and by any of its Restricted Subsidiaries with respect to Preferred Stock (except, in either case, dividends paid solely in Qualified Capital Stock of such Person or such Restricted Subsidiary, as the case may be).

Consolidated Net Income (Loss) of any Person means, for any period, the Consolidated net income (or loss) of such Person and its Restricted Subsidiaries for such period on a Consolidated basis as determined in accordance with GAAP, adjusted, to the extent included in calculating such net income (or loss), by excluding, without duplication,

(1) all extraordinary gains or losses net of taxes (less all fees and expenses relating thereto),

(2) the portion of net income (or loss) of such Person and its Restricted Subsidiaries on a Consolidated basis allocable to minority interests in unconsolidated Persons or Unrestricted Subsidiaries to the extent that cash dividends or distributions have not actually been received by such Person or one of its Consolidated Restricted Subsidiaries,

(3) any gain or loss, net of taxes, realized upon the termination of any employee pension benefit plan,

(4) gains or losses, net of taxes (less all fees and expenses relating thereto), in respect of dispositions of assets other than in the ordinary course of a Permitted Business (including, without limitation, dispositions pursuant to Sale Leaseback Transactions, but excluding transactions such as farmouts, sales of leasehold inventory, sales of working interests and proved properties, and sales of undivided interests in drilling prospects),

(5) the net