BERRY PETROLEUM CO
Form 424B5
October 28, 2010

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**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to be Registered | Amount to be Registered | Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Amount of Registration Fee(1) |
|---|---|---|---|---|
| 6$^{3}/_{4}$ Senior Notes Due 2020 | $300,000,000 | 100.000% | $300,000,000 | $21,390 |

(1) Calculated in accordance with Rule 457(r) of the Securities Act of 1933, as amended.

**Filed Pursuant to Rule 424(b)(5)**
**Registration No. 333-161243**

**PROSPECTUS SUPPLEMENT**
**(to Prospectus dated August 11, 2009)**

# $300,000,000

# Berry Petroleum Company

## 6$^{3}/_{4}$% Senior Notes due 2020

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We are offering $300,000,000 of our 6$^{3}/_{4}$% Senior Notes due 2020. Interest on the notes will accrue from November 1, 2010 and will be payable semiannually on May 1 and November 1 of each year, beginning on May 1, 2011. The notes will mature on November 1, 2020.

We may redeem all or part of the notes at any time on or after November 1, 2015 at the redemption prices set forth in this prospectus supplement. In addition, before November 1, 2013, we may redeem up to 35% of the aggregate principal amount of the notes with the net cash proceeds of certain equity offerings if certain conditions are met. At any time prior to November 1, 2015, we may also redeem all or a part of the notes at a price equal to 100% of the principal amount of the notes plus a "make-whole" premium. Redemption prices are set forth under "Description of Notes Optional Redemption" in this prospectus supplement. If we sell certain of our assets or experience specific kinds of change of control, we must offer to purchase the notes at prices set forth in this prospectus supplement plus accrued and unpaid interest.

The notes will be our senior unsecured obligations. The notes will rank effectively junior to all of our existing and any future secured debt, to the extent of the value of the collateral securing that debt, will rank equally in right of payment with our existing 10$^{1}/_{4}$% senior notes due 2014 and any future senior unsecured debt and will rank senior in right of payment to our existing $8^{1}/_{4}$% senior subordinated notes due 2016 and any of our other existing or future subordinated debt.

**Investing in our notes involves risks. Please read "Risk Factors" beginning on page S-17 of this prospectus supplement and page 5 of the accompanying base prospectus. You should read this prospectus supplement, the accompanying base prospectus and the documents incorporated by reference carefully before you make your investment decision.**

| | Per Note | Total |
|---|---|---|
| Price to Public(1) | 100.00% | $ 300,000,000 |
| Underwriting Discounts | 2.00% | $ 6,000,000 |
| Proceeds to Berry Petroleum Company, Before Expenses(1) | 98.00% | $ 294,000,000 |

(1) Plus accrued interest, if any, from November 1, 2010.

The notes will not be listed on any securities exchange. Currently, there is no public market for the notes. Delivery of the notes, in book-entry form, will be made on or about November 1, 2010 through The Depository Trust Company. See "Underwriting."

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

*Joint Book-Running Managers*

**Wells Fargo Securities**
**BNP PARIBAS**
**J.P. Morgan**
**RBS**
**SOCIETE GENERALE**

*Co-Managers*

**BBVA Securities** **BMO Capital Markets** **Citi** **Credit Agricole CIB**

**Credit Suisse** **KeyBanc Capital Markets** **Lloyds TSB Corporate Markets**
**Mitsubishi UFJ Securities** **Morgan Keegan** **Natixis Bleichroeder LLC**
**RBC Capital Markets** **Scotia Capital** **US Bancorp**

**The date of this prospectus supplement is October 27, 2010.**

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**You should rely only on the information contained in this prospectus or to which this prospectus refers or that is contained in any free writing prospectus relating to the notes. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer of the notes in any jurisdiction where their offer or sale is not permitted. The information in this prospectus supplement and the base prospectus and incorporated herein by reference may only be accurate as of the date of the applicable document. Our business, financial condition, results of operations and prospects may have changed since those dates.**

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## ABOUT THIS PROSPECTUS

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of the notes we are offering and certain other matters. The second part, the base prospectus dated August 11, 2009, provides more general information about the various securities that we may offer from time to time, some of which information may not apply to the notes we are offering hereby. Generally when we refer to this prospectus, we are referring to both this prospectus supplement and the base prospectus combined. If any of the information in this prospectus supplement is inconsistent with any of the information in the base prospectus, you should rely on the information in this prospectus supplement. Before you invest in our notes, you should carefully read this prospectus supplement, along with the base prospectus, in addition to the information contained in the documents we refer to under the heading "Incorporation by Reference" in this prospectus supplement.

## INCORPORATION BY REFERENCE

The Securities and Exchange Commission ("SEC") allows us to "incorporate by reference" information we file with it. This means that we can disclose important information to you by referring you to those documents. Any information we reference in this manner is considered part of this prospectus. Information we file with the SEC after the date of this prospectus will automatically update and, to the extent inconsistent, supersede the information contained in this prospectus.

We incorporate by reference the documents listed below and future filings we make with the SEC (in each case, excluding any portions of such documents that have been "furnished" but not "filed" for purposes of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement and before the termination of this offering.

- Our Annual Report on Form 10-K for the year ended December 31, 2009, as amended;
- Our Definitive Proxy Statement filed on Schedule 14A relating to our 2010 Annual Meeting of Shareholders;
- Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010, as amended;
- Our Current Reports on Form 8-K filed with the SEC on January 19, 2010, March 19, 2010, May 14, 2010, June 16, 2010, October 1, 2010 and October 8, 2010; and
- The description of our Class A Common Stock contained in our Registration Statement on Form 8-A which was declared effective by the SEC on or about October 20, 1987.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference in this prospectus contain statements that are, or may be deemed to be, "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Exchange Act. These statements relate to future events or our future financial performance. We have attempted to identify forward-looking statements by terminology such as "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "should," "would" or "will" or the negative of these terms or other comparable terminology. These statements are only predictions and involve known and unknown risks, uncertainties and other factors, including those discussed under "Risk Factors," which could cause our actual results to differ from those projected in any forward-looking statements we make.

We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are unable to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking

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statements. Forward-looking statements speak only as of the date of such statement. We do not plan to publicly update or revise any forward-looking statements after we distribute this prospectus, whether as a result of any new information, future events or otherwise. Potential investors should not place undue reliance on our forward-looking statements. Before you invest in the notes, you should be aware that the occurrence of any of the events described in the "Risk Factors" section and elsewhere in this prospectus and the information incorporated by reference into this prospectus could harm our business, prospects, operations and financial condition. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements.

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## PROSPECTUS SUPPLEMENT SUMMARY

*This summary highlights selected information contained elsewhere in this prospectus and in the documents we incorporate by reference. This summary is not complete and does not contain all of the information that you should consider before deciding whether or not to invest in the notes. For a more complete understanding of our company and this offering, we encourage you to read this entire document, including "Risk Factors," the financial and other information incorporated by reference in this prospectus and the other documents to which we have referred. Unless otherwise indicated or required by the context, as used in this prospectus, the terms "we," "our" and "us" refer to Berry Petroleum Company. Reserve estimates for our Permian basin assets acquired in the first half of 2010 are based on internal estimates. DeGolyer and MacNaughton ("D&M"), independent petroleum engineers, provided the estimates of our proved oil and natural gas reserves as of December 31, 2007, 2008 and 2009, included in this prospectus supplement.*

### Berry Petroleum Company

We are an independent energy company engaged in the production, development, exploitation and acquisition of crude oil and natural gas. We can trace our roots in California crude oil production back to 1909, and we have been a publicly traded company since 1987. Since 2002, we have expanded our portfolio of assets to include oil and natural gas properties in the Rocky Mountain region, the East Texas region ("E. Texas") and the Permian basin in West Texas (the "Permian basin").

Our selective acquisitions have been driven by a consistent focus on properties with proved reserves and significant growth potential through low-risk development. We focus on growing reserves and production by developing known undeveloped reserves rather than through exploration. We maintain a geographically diverse portfolio of assets that generally have long reserve lives, stable and predictable well production characteristics and significant inventories of relatively low-risk repeatable drilling opportunities.

As of December 31, 2009, our estimated proved reserves were approximately 235 MMBOE, of which 55% were crude oil, 45% were natural gas and 53% were proved developed. This represents a 5% increase compared to 225 MMBOE as of December 31, 2008, adjusted for divestitures. With 2009 capital investments of $135 million and acquisitions of $13.5 million, we replaced 200% of our 2009 production. We also achieved production of 29.2 MBOE/D in 2009, which implies a proved reserve to production index of approximately 21 years based on our year-end 2009 proved reserves. For the three months ended September 30, 2010, our average daily production was 33.9 MBOE/D, 64% of which was oil production.

In March 2010, we acquired interests in producing properties principally on 6,900 net acres in the Permian basin from a private seller for approximately $133 million, including normal post-closing adjustments. In April 2010 we closed on the acquisition of an additional 3,200 acres in the Permian basin for approximately $14 million, including normal post-closing adjustments. As of April 2010, we estimate that the Permian basin acquisitions included properties with total proved reserves of approximately 13 MMBOE, of which 83% were crude oil and 21% were proved developed, bringing our total proved reserves at December 31, 2009 to approximately 248 MMBOE on a pro forma basis for those acquisitions.

Approximately 64% of our sales volumes in the third quarter of 2010 were crude oil, with 77% of the crude oil being heavy oil produced in California. Our California reserves are characterized by long-lived predictable production with low base decline rates which, combined with our hedging program, provide us with strong margins and a steady source of cash flow. The cash flow from these properties funds our significant drilling inventory and the development of our substantial proved undeveloped reserves. Our consumption of natural gas to produce steam for our California oil production provides us with a natural hedge (34,561 MMBtu/D during the third quarter of 2010) on our natural gas production in E. Texas and Colorado. We have further protected our 2010 and 2011 cash flows through hedges on

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approximately 75% and 65% of our anticipated crude oil production for 2010 and 2011, respectively. Our strong hedge position, our ability to generate free cash flow and our operating control of over 95% of our assets further enhances our ability to perform in volatile environments.

**Operations Overview**

We currently have six asset teams as follows: South Midway-Sunset ("S. Midway"), North Midway-Sunset including diatomite ("N. Midway"), Uinta, E. Texas, Piceance and Permian. Our S. Midway asset team is primarily focused on production and generates significant cash flow to fund our planned drilling inventory in our N. Midway, Uinta, E. Texas, Piceance and Permian projects. The following table sets forth the estimated quantities of proved reserves, production and acreage attributable to our principal operating areas for the periods indicated:

| | Proved Reserves as of December 31, 2009 | | | | Average Daily Production | |
|---|---|---|---|---|---|---|
| Operating Areas | Total (MMBOE) | % Oil | % Proved Developed | Average % Working Interest | Year Ended December 31, 2009 (MBOE/D)(1) | Quarter Ended September 30, 2010 (MBOE/D) |
| S. Midway, CA | 59.6 | 100 | 83.1 | 98 | 11.3 | 11.9 |
| N. Midway, CA | 52.2 | 100 | 50.6 | 100 | 5.5 | 4.9 |
| Uinta, UT | 22.9 | 65 | 42.8 | 98 | 4.9 | 5.8 |
| E. Texas | 40.0 | 6 | 68.3 | 99 | 4.3 | 6.0 |
| Piceance, CO | 60.6 | 2 | 20.6 | 55 | 3.2 | 4.0 |
| Permian | | | | | | 1.3(2) |
| Total | 235.3 | 55 | 53.3 | | 29.2 | 33.9 |

(1) Does not include 0.8 MBOE/D attributable to natural gas assets in the Denver-Julesburg basin in Colorado ("DJ Basin"), which we sold in April 2009.

(2) Reflects actual production from the Permian basin assets acquired in the first half of 2010. As of April 2010, we estimate that the Permian basin assets acquired in the first half of 2010 included properties with total proved reserves of approximately 13 MMBOE, of which 83% were crude oil and 21% were proved developed.

***California***

*S. Midway.* We own and operate properties in the South Midway Sunset Field in the San Joaquin Valley. Production from our properties in the South Midway Sunset Field relies on thermal enhanced oil recovery ("EOR") methods, primarily cyclic steaming to place steam effectively into the remaining oil column. This is our most mature thermally enhanced asset with production from our Ethel D properties having commenced 100 years ago. We have planned a five-year, 150-well drilling program at Ethel D to develop the significant undeveloped reserves remaining on this asset. In 2009 we drilled 19 horizontal wells and 18 vertical producers at the South Midway Sunset Field. These wells have been placed deeper and closer to the oil-water contact. We also accelerated our continuous steam support for these horizontal wells by drilling six vertical steam injectors. In the first nine months of 2010, we drilled 70 wells, 17 of which were drilled in the third quarter of 2010. Of these 17 wells, nine were vertical producers at Poso Creek and four were horizontal producers at the Formax lease. The balance of the wells were drilled for water disposal and temperature monitoring purposes. The new producers are currently on production or undergoing their first steam cycle. Average daily production in the third quarter of 2010 from all S. Midway assets was approximately 11,855 BOE/D.

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In 2003, we acquired the Poso Creek properties in the San Joaquin Valley and have proceeded with a successful thermal EOR redevelopment. Average production from these properties increased from 50 BOE/D at acquisition in 2003 to 3,200 BOE/D in 2009. In 2009, we expanded the steam flood by drilling eight new injectors. To provide steam to these wells we also installed a fifth steam generator. In 2010, we have continued to expand the steam flood at Poso Creek, drilling three steam injection wells in the first nine months of 2010.

*N. Midway.* Our N. Midway asset team includes our Diatomite, Placerita and McKittrick assets and several N. Midway-Sunset leases. In 2009, total proved reserves from the N. Midway Diatomite asset were 35.3 MMBOE, representing a 15% increase from 2008. During 2009 we drilled 51 Diatomite wells and installed additional steam generation and water treating facilities. Average production in 2009 was 3,100 BOE/D. During the fourth quarter of 2009, we initiated a four-pattern steam flood pilot on our recently acquired McKittrick property. Our Diatomite production in the third quarter of 2010 averaged 2,290 BOE/D. Production was lower during the quarter as we completed field optimization activities in preparation of our 2010 drilling program. Our 2010 drilling program had been impacted by a suspension of drilling activity as we worked to secure permits from the California Division of Oil, Gas and Geothermal Resources ("DOGGR"). Steam injection, which had been averaging over 30,000 barrels of steam per day ("BSPD") earlier in the year decreased as a result of the facility and infrastructure modifications. In September 2010, we received approval from the DOGGR for the next phase of development of our Diatomite project. The first rig resumed drilling in early October 2010 and we plan to add a second drilling rig in the fourth quarter of 2010. Steam injection has steadily increased and we expect to exit 2010 at around 35,000 BSPD. Production from our Diatomite assets is expected to recover as we increase injection and bring new wells online. We expect approval for the balance of the project within the next six months. During the third quarter of 2010, we drilled 16 N. Midway wells, including 10 wells at Placerita to initiate a steam flood pilot in the Upper Kraft. We have evaluated the performance of the McKittrick steam flood pilot, determined that this project is economic and are planning an expanded development program for 2011. Average daily production in the third quarter of 2010 from all N. Midway assets was approximately 4,865 BOE/D.

***Rockies***

*Uinta.* In 2003, we established our initial acreage position in the Uinta basin, targeting the Green River formation that produces both light oil and natural gas. We acquired the Brundage Canyon leasehold in Duchesne County, northeastern Utah, which consists of working interests in approximately 55,000 gross acres which include federal, tribal and private leases. In 2004, we acquired working interests in approximately 163,000 gross acres in the Lake Canyon project, which is located immediately west of our Brundage Canyon producing properties. Total production in Uinta averaged 4,929 BOE/D in 2009. In 2009, capital was primarily directed at facility upgrades, pursuing the remaining three Lake Canyon completions, and the Ashley Forest Environmental Impact Study ("EIS"). The Ashley Forest Development EIS continues to progress with approval of the final EIS anticipated within the next six months. Implementation of a water flood pilot in Brundage Canyon had initial start up in the beginning of the fourth quarter of 2009. We drilled 14 wells during the third quarter of 2010, targeting higher oil potential areas of Brundage Canyon and the Ashley Forest. During the third quarter of 2010, we completed four Lake Canyon wells that were drilled earlier in the year. The wells were completed in both the Wasatch and Green River formations yielding encouraging early results. Our drilling inventory in the Uinta is approximately 350 locations distributed between Brundage Canyon, the Ashley Forest and Lake Canyon. In the third quarter of 2010, production from our Uinta basin assets averaged 5,785 BOE/D.

*Piceance.* We have two properties in the Piceance basin in Colorado targeting the Williams Fork section of the Mesaverde formation. We have a 62.5% working interest in 6,300 gross acres on our Garden Gulch property and a net operating working interest of 95% in 4,300 gross acres and a 5% non-operating working interest on 6,300 gross acres on our North Parachute Ranch property. Total

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production in Piceance averaged 19 MMcf/D during 2009 and 20.8 MMcf/D in 2008. During 2009, we began a 20 well completion program testing new completion designs and have seen encouraging results in line with our expectations. Also, during 2009, we added water handling infrastructure which reduced our operating costs in the Piceance basin. In the first nine months of 2010 we drilled 14 wells. In the third quarter of 2010, production from the Piceance basin averaged 23.9 MMcfe/D. We continued to operate a one rig drilling program in the third quarter focusing on remaining lease earning obligations. We drilled five wells in the third quarter and continued to utilize improved completion techniques with four new well completions online in the quarter. Results from these completions continue to meet our expectations.

***Texas***

*E. Texas.* In 2008, we acquired certain interests in natural gas producing properties in the E. Texas Cotton Valley on 4,500 net acres in Limestone and Harrison Counties. The E. Texas assets established a core area in a low risk repeatable area and provided an inventory of drilling and recompletion projects. In Limestone County, we are targeting seven productive sands including the Cotton Valley and Bossier sands at depths between 8,000 and 13,000 feet. In Harrison County, we are targeting five productive sands and Haynesville Shale with average depths between 6,500 and 13,000 feet. Production from our E. Texas Assets averaged 24 MMcf/D in 2009. During 2009 we drilled 11 vertical wells in E. Texas. We continue to operate a one rig program which is now drilling a horizontal Haynesville well in our Darco field located in Harrison County. In the third quarter we successfully drilled three horizontal wells and completed two horizontal wells. As of September 30, 2010, we had six Haynesville wells completed and online with results continuing to meet our expectations. In the third quarter of 2010, production from our E. Texas assets averaged 36.1 MMcfe/D.

*Permian.* In March 2010, we acquired interests in producing properties principally on 6,900 net acres in the Permian basin from a private seller for approximately $133 million, including normal post-closing adjustments. In April 2010, we closed on the acquisition of an additional 3,200 acres in the Permian basin for approximately $14 million, including normal post-closing adjustments. As of April 2010, we estimate that our Permian basin assets included properties with total proved reserves of approximately 13 MMBOE, of which 83% were crude oil and 21% were proved developed. We now have a drilling inventory of over 200 locations on these properties based on 40-acre spacing in the Wolfberry trend targeting the Spraberry Dean, Wolfcamp and Strawn formations. Our Permian asset team executed a three rig drilling program in the third quarter of 2010 and drilled nine gross new wells. Our Midland, Texas office is fully staffed. Average daily production in the third quarter of 2010 was approximately 1,341 BOE/D, a 30% increase compared to the second quarter of 2010. Upon completion of the Wolfberry Acquisitions, we expect to have an inventory of approximately 400 locations based on 40-acre spacing. See " Recent Developments Wolfberry Acquisitions."

**Business Strengths**

***Balanced High Quality Asset Portfolio***

Since 2002, we have grown our asset base and diversified our California heavy oil assets through acquisitions in the Permian basin, Rocky Mountain and E. Texas regions that have significant growth potential. Our diverse asset base provides us with the flexibility to reallocate capital among our assets depending on fluctuations in oil and natural gas prices as well as area economics.

***Long-Lived Proved Reserves with Stable Production Characteristics***

Our properties generally have long reserve lives and reasonably stable and predictable well production characteristics with a ratio of proved reserves to production index (based on the year ended December 31, 2009) of approximately 21 years.

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***Low-Risk Multi-Year Drilling Inventory in Established Resource Plays***

Most of our drilling locations are located in proven resource plays that possess low geologic risk, leading to predictable drilling results. Our California assets have an average depth of less than 2,000 feet and are located in areas where we are an established producer. Our historical drilling success rate for the three years ended December 31, 2009 averaged 99%. In the Permian basin we began drilling in the second quarter of 2010 and, upon completion of the Wolfberry Acquisitions, we will have a drilling inventory of 400 locations based on 40-acre spacing in the Wolfberry trend targeting the Spraberry Dean, Wolfcamp and Strawn formations.

***Operational Control and Financial Flexibility***

We exercise operating control over more than 95% of our assets. We generally prefer to retain operating control over our properties, allowing us to more effectively control operating costs, timing of development activities and technological enhancements, marketing of production, and allocation of our capital budget. In addition, the timing of most of our capital expenditures is discretionary which allows us a significant degree of flexibility to adjust the size of our capital budget. We finance our drilling budget primarily through our internally generated operating cash flows.

***Experienced Management and Operational Teams***

Our core team of technical staff and operating managers have broad industry experience, including experience in heavy oil thermal recovery operations and tight gas sands development and completion. We continue to utilize technologies and steam practices that we believe will allow us to improve the ultimate recoveries of crude oil on our California properties.

**Corporate Strategy**

Our objective is to increase the value of our business through consistent growth in our production and reserves, both through the drill-bit and acquisitions. We strive to operate our properties in an efficient manner to maximize the cash flow and earnings of our assets. The strategies to accomplish these goals include:

***Maximize Production from our Base Oil Assets***

We are focused on the timely and prudent development of our large oil resource base through developmental and step-out drilling, down-spacing, well completions, remedial work and by application of EOR methods, as applicable. At our mature South Midway-Sunset Field, we continue to add horizontal wells and targeted steam injection to maintain and increase production levels. In addition, since we acquired our Poso Creek assets in 2003, we have successfully completed the thermal EOR redevelopment of the field to increase production from under 50 BOE/D at acquisition to 3,200 BOE/D in 2009.

***Grow Oil Production from our Inventory of Organic Development Projects***

We have a proven track record of developing reserves through enhanced recovery projects, as well as entering into new hydrocarbon basins. For example, in our N. Midway Diatomite, production averaged 3,100 BOE/D in 2009 and we expect to reach 5,000 BOE/D in mid-2011 and to continue to grow the asset significantly over the next several years. We plan to continue our focus on low-risk development of our existing assets rather than exploration.

***Meet the Growing Demand for Steam Generation***

Our assets in the E. Texas and Piceance basins produce natural gas that offsets our consumption of natural gas utilized to generate steam used in our EOR activities. We intend to continue to develop these assets as commodity prices permit and as we focus on additional enhanced oil development projects that we expect will require increasing quantities of natural gas for steam generation.

***Invest our Capital in a Disciplined Manner and Maintain a Strong Financial Position***

We focus on utilizing our available capital on projects where we are likely to have success in increasing production and/or reserves at attractive returns. We believe that maintaining a strong financial position will allow us to capitalize on investment opportunities in all commodity cycles. Our capital programs are generally developed to be fully funded through internally generated cash flows, but we also may obtain alternative sources of capital to develop our assets through partnerships or other investment opportunities with third parties. We hedge a portion of our production and utilize long-term sales contracts whenever possible to maintain a strong financial position and provide the cash flow necessary for the development of our assets. We have hedged approximately 75% and 65% of our anticipated crude oil production for 2010 and 2011, respectively.

***Acquire Additional Resources with an Emphasis on Crude Oil***

We have been successful in expanding operations through targeted acquisitions that leverage our areas of expertise. This strategy allows us to utilize our operating and technical expertise and build on established core operations. We will continue to review asset acquisitions that meet our economic criteria with a primary focus on large repeatable oil development potential in these regions. For example, in March 2010 we entered the Permian basin, acquiring properties that provide us an opportunity to diversify our oil reserves while taking advantage of our operational strengths in oil development. We plan to expand our presence in the Permian basin through the Wolfberry Acquisitions. See " Recent Developments Wolfberry Acquisitions." We will also continue to evaluate and make opportunistic acquisitions of natural gas properties, primarily in our core areas of operation, which can be developed at reasonable costs.

**Recent Developments**

***Wolfberry Acquisitions***

On October 25, 2010, we announced that we entered into agreements with a group of private sellers to acquire interests in properties on approximately 9,300 net acres in the Wolfberry trend in the Permian basin for a combined purchase price of approximately $180 million in cash (the "Wolfberry Acquisitions"). Based on our preliminary internal estimates, the properties to be acquired included proved and probable reserves of approximately 35 MMBOE, of which approximately 76% were crude oil. See " Oil and Gas Reserves Reporting" for a discussion of proved and probable reserves. Upon completion of the acquisitions, the properties are expected to add approximately 2,200 BOE/D to our production during 2011. The Wolfberry Acquisitions provide us an opportunity to further diversify our oil reserves while taking advantage of our operational strengths in oil development. We believe that these assets represent a low operating cost, high margin, repeatable development opportunity. Since entering the Permian basin in March 2010, we have accumulated approximately 19,350 net acres in the Wolfberry trend. Our acquisitions in the Permian basin in 2010 are expected to provide a five-year drilling inventory of 400 locations based on 40-acre spacing with an additional 400 potential locations on 20-acre spacing. The Wolfberry Acquisitions, which we expect to close in December 2010, are subject to customary closing conditions, and there is no assurance that the acquisitions will be completed or that the anticipated benefits of the acquisitions or estimated reserves will be realized. We intend to finance $175 million of the purchase price of the Wolfberry Acquisitions using a portion of the net proceeds of this offering, with the remaining $5 million of the combined purchase price having been previously paid. This offering will not be conditioned on the closing of the Wolfberry Acquisitions. If the Wolfberry Acquisitions are not consummated or we only acquire a portion of the assets contemplated by the Wolfberry Acquisitions, we intend to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder for general corporate purposes.

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*California Diatomite*

In September 2010, we received approval from the DOGGR for the next phase of development of our Diatomite project. The first rig resumed drilling in early October 2010 and we plan to add a second drilling rig in the fourth quarter of 2010. Steam injection has steadily increased and we expect to exit 2010 at approximately 35,000 BSPD. Production from our Diatomite assets is expected to recover as we increase injection and begin drilling additional wells, with production approaching 3,500 BOE/D by year-end 2010 and 5,000 BOE/D by mid-2011. We expect approval for the balance of the project within the next six months.

*Senior Secured Revolving Credit Facility*

We are currently in negotiations to amend and restate our senior secured revolving credit facility. The terms of our amended and restated facility are expected to be substantially similar to the existing facility, except for decreases in our interest rate margins, changes to certain financial covenants and an increase in our borrowing base to $950 million, which will be reduced by $75 million as a result of this offering. The maturity date of the amended and restated facility is expected to be five years from the date of the closing of the facility. The closing of the amended and restated facility will not be contingent on the closing of this offering and there can be no assurance that we will enter into the amended and restated facility on the terms described in this prospectus supplement. See "Description of Other Indebtedness Senior Secured Revolving Credit Facility."

*Capital Budget Update*

We have increased our 2010 capital budget and now expect our capital expenditures for the year to range from $290 million to $310 million. Additional capital requirements are attributable to accelerated development of our Diatomite assets, an incremental 14 wells in the Uinta basin and increased costs in our E. Texas operations. Assuming completion of the Wolfberry Acquisitions in 2010, we plan to run four drilling rigs in the Permian basin during 2011 and spend approximately $130 million to drill approximately 75 wells. Our 2011 capital budget, based on $75 West Texas intermediate ("WTI") oil, is expected to range between $375 million and $425 million and should be fully funded from cash flow. Approximately 90% of our 2011 capital budget is expected to be directed towards our oil assets, targeting oil production growth of at least 20%. We expect average 2011 production to range between 37,000 and 39,000 BOE/D. Of the expected 2011 production growth of approximately 15%, we expect the assets to be acquired in the Wolfberry Acquisitions to contribute approximately 6% with organic growth comprising approximately 9%. Production volumes for 2011 are expected to consist of 70% oil and 30% natural gas.

**Executive Offices and Website**

We were incorporated in Delaware in 1985. Our corporate headquarters and principal executive offices are located at 1999 Broadway, Suite 3700, Denver, Colorado 80202, and our telephone number is (303) 999-4400. We maintain a web site at http://www.bry.com. The information on our website is not part of this prospectus, and you should rely only on the information contained in this prospectus and in the documents incorporated by reference when making a decision as to whether to invest in the notes.

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## The Offering

The following summary contains basic information about the notes and is not intended to be complete. For a more complete understanding of the notes, please refer to the section entitled "Description of Notes" beginning on page S-44 of this prospectus supplement.

| | |
|---|---|
| **Issuer** | Berry Petroleum Company |
| **Securities offered** | \$300,000,000 aggregate principal amount of $6^{3}/_{4}$% Senior Notes due 2020 |
| **Maturity** | November 1, 2020 |
| **Interest payment dates** | May 1 and November 1, commencing May 1, 2011. |
| **Optional redemption** | We may redeem all or part of the notes at any time on or after November 1, 2015 at the redemption prices set forth under "Description of Notes Optional Redemption," plus accrued and unpaid interest to the redemption date. In addition, before November 1, 2013, we may redeem up to 35% of the aggregate principal amount of the notes with the net cash proceeds of certain equity offerings, if certain conditions are met, at a price of 106.750% of the principal amount plus accrued and unpaid interest to the redemption date. At any time prior to November 1, 2015, we may also redeem all or part of the notes at a price equal to 100% of the principal amount of the notes plus a "make-whole" premium, plus accrued and unpaid interest to the redemption date. See "Description of Notes Optional Redemption." |
| **Mandatory offers to purchase** | If a specified change of control event occurs, we must make an offer to purchase the notes at a purchase price of 101% of the principal amount of the notes, plus accrued and unpaid interest, if any, to the date of the purchase. See "Description of Notes Change of Control."<br><br>Certain asset dispositions will be triggering events that may require us to use the net proceeds from those asset dispositions to make an offer to purchase the notes at 100% of their principal amount, together with accrued and unpaid interest, if any, to the date of purchase if such proceeds are not otherwise used within 330 days to repay certain types of indebtedness (with a corresponding permanent reduction in commitment, if applicable) or to invest in capital assets or capital expenditures related to our business. See "Description of Notes Certain Covenants Limitation on Sales of Assets and Subsidiary Stock." |
| **Ranking** | The notes will be our unsecured senior obligations. The notes will rank:<br>effectively junior to all of our existing and future senior secured indebtedness, including our senior secured revolving credit facility and our senior secured money market line of credit, to the extent of the value of the collateral securing that debt; |

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- equally in right of payment with our existing and any future senior unsecured indebtedness; and
- senior in right of payment to all of our existing and any future subordinated indebtedness and obligations.

As of September 30, 2010, after giving effect to this offering and the application of net proceeds of approximately $294 million to finance the purchase price of the Wolfberry Acquisitions and to reduce outstanding borrowings under our senior secured revolving credit facility, the notes would have ranked effectively junior to approximately $121 million of our senior secured indebtedness, equally in right of payment to approximately $438 million of our $10^1/_4$% senior notes due 2014 ("$10^1/_4$% senior notes") and senior in right of payment to $200 million of our $8^1/_4$% senior subordinated notes due 2016 ("$8^1/_4$% senior subordinated notes"). See "Description of Notes Ranking."

**Covenants**

We will issue the notes under an indenture with Wells Fargo Bank, National Association, as trustee, dated as of June 15, 2006, as supplemented by a supplemental indenture establishing the terms of the notes. The indenture, among other things, limits our ability and the ability of our future restricted subsidiaries to:

- incur, assume or guarantee additional indebtedness or issue redeemable stock;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt that is junior in right of payment to the notes;
- make loans and other types of investments;
- incur liens;
- restrict dividends, loans or asset transfers from our subsidiaries;
- sell or otherwise dispose of assets, including capital stock of subsidiaries;
- consolidate or merge with or into, or sell substantially all of our assets to, another person;
- enter into transactions with affiliates; and
- enter into new lines of business.

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| | |
|---|---|
| | These covenants are subject to important exceptions and qualifications, which are described under the caption "Description of Notes Certain Covenants." In addition, if and for as long as the notes have an investment grade rating from both Standard & Poor's Ratings Group, Inc. and Moody's Investors Service, Inc., and no default exists under the indenture, we will not be subject to certain of the covenants listed above. |
| **Use of proceeds** | We intend to use approximately $175 million of the net proceeds from this offering to finance the Wolfberry Acquisitions and to use the remainder to reduce outstanding borrowings under our senior secured revolving credit facility. If the Wolfberry Acquisitions are not consummated or we only acquire a portion of the assets contemplated by the Wolfberry Acquisitions, we intend to use the net proceeds from this offering to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder, if any, for general corporate purposes. Pending the application of the net proceeds to finance the Wolfberry Acquisitions, we intend to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder for general corporate purposes. See "Use of Proceeds." |
| **Conflicts of interest** | Affiliates of certain of the underwriters are lenders under our senior secured revolving credit facility, and accordingly, each will receive its proportionate share of the net proceeds of this offering used to reduce outstanding borrowings under such facility. See "Conflicts of Interest." |

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## SUMMARY HISTORICAL FINANCIAL DATA

The following table shows our summary historical financial data as of and for the periods indicated. Our summary historical financial data for the fiscal years ended December 31, 2007, 2008 and 2009 and balance sheet data as of December 31, 2007, 2008 and 2009 have been derived from our audited financial statements and related notes incorporated by reference into this prospectus. Our summary historical financial data as of and for the nine months ended September 30, 2009 and 2010 are derived from our unaudited financial statements incorporated by reference into this prospectus and, in our opinion, have been prepared on the same basis as the audited financial statements and include all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of this information. You should read the summary historical financial data below in conjunction with our historical financial statements and the accompanying notes, all of which are incorporated by reference into this prospectus. You should also read the sections entitled "Risk Factors" included elsewhere in this prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors" included in our Quarterly Reports on Form 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 and our Annual Report on Form 10-K for the year ended December 31, 2009, as amended.

| | Historical | | | | |
|---|---|---|---|---|---|
| | Year Ended December 31, | | | Nine Months Ended September 30, | |
| | 2007 | 2008 | 2009 | 2009 | 2010 |
| | ($ in thousands, except ratios and earnings per share) | | | | |
| **Statement of operations data:** | | | | | |
| **Revenue and other income items:** | | | | | |
| Sales of oil and natural gas | $ 433,208 | $ 649,248 | $ 506,691 | $ 374,117 | $ 451,003 |
| Sales of electricity | 55,619 | 63,525 | 36,065 | 26,032 | 27,313 |
| Gas marketing | | 35,750 | 22,806 | 17,646 | 18,194 |
| Realized and unrealized gain (loss) on derivatives, net | 13 | (213) | 6,514 | 6,565 | 30,482 |
| Gain (loss) on sales of assets | 54,173 | (1,297) | 826 | 828 | |
| Settlement of Flying J bankruptcy claim | | | | | 21,992 |
| Interest and other income, net | 4,414 | 3,504 | 1,810 | 1,375 | 2,320 |
| Total revenues | $ 547,427 | $ 750,517 | $ 574,712 | $ 426,563 | $ 551,304 |
| **Expenses:** | | | | | |
| Operating costs oil and natural gas production | $ 130,940 | $ 188,758 | $ 156,612 | $ 111,317 | $ 140,269 |
| Operating costs electricity generation | 45,980 | 54,891 | 31,400 | 22,071 | 24,729 |
| Production taxes | 14,651 | 26,876 | 18,144 | 14,411 | 16,484 |
| Depreciation, depletion and amortization oil and natural gas production | 82,861 | 125,595 | 139,919 | 104,271 | 128,976 |
| Depreciation, depletion and | 3,568 | 2,812 | 3,681 | 2,938 | 2,407 |

| | | | | | |
|---|---|---|---|---|---|
| amortization electricity generation | | | | | |
| Natural gas marketing | | 32,072 | 21,231 | 16,149 | 16,209 |
| General and administrative | 39,663 | 54,279 | 49,237 | 37,143 | 38,389 |
| Extinguishment of debt | | | 10,823 | 10,823 | |
| Transaction costs on acquisitions, net of gain | | | | | 2,635 |
| Dry hole, abandonment, impairment and exploration | 8,351 | 10,543 | 5,425 | 209 | 2,221 |
| Bad debt expense (recovery) | | 38,665 | | | (38,508) |
| Total expenses | $ 326,014 | $ 534,491 | $ 436,472 | $ 319,332 | $ 333,811 |

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| | Historical | | | | |
|---|---|---|---|---|---|
| | Year Ended December 31, | | | Nine Months Ended September 30, | |
| | 2007 | 2008 | 2009 | 2009 | 2010 |
| | ($ in thousands, except ratios and earnings per share) | | | | |
| Income from continuing operations before interest and income taxes | $ 221,413 | $ 216,026 | $ 138,240 | $ 107,231 | $ 217,493 |
| Interest expense | 15,069 | 23,942 | 49,923 | 35,201 | 49,373 |
| Income from continuing operations before provision for income taxes | $ 206,344 | $ 192,084 | $ 88,317 | $ 72,030 | $ 168,120 |
| Provision for income taxes | 79,060 | 70,308 | 28,349 | 24,681 | 64,450 |
| Income from continuing operations | $ 127,284 | $ 121,776 | $ 59,968 | $ 47,349 | $ 103,670 |
| Income (loss) from discontinued operations, net of taxes | 2,644 | 11,753 | (5,938) | (6,323) | |
| Net income | $ 129,928 | $ 133,529 | $ 54,030 | $ 41,026 | $ 103,670 |
| Basic net income from continuing operations per share | $ 2.85 | $ 2.70 | $ 1.31 | $ 1.04 | $ 1.94 |
| Basic net income (loss) from discontinued operations per share | 0.06 | 0.26 | (0.13) | (0.14) | |
| Basic net income per share | $ 2.91 | $ 2.96 | $ 1.18 | $ 0.90 | $ 1.94 |
| Diluted net income from continuing operations per share | $ 2.81 | $ 2.66 | $ 1.30 | $ 1.03 | $ 1.93 |
| Diluted net income (loss) | 0.06 | 0.26 | (0.13) | (0.14) | |

| | | | | | |
|---|---|---|---|---|---|
| from discontinued operations per share | | | | | |
| Diluted net income per share | $ 2.87 | $ 2.92 | $ 1.17 | $ 0.89 | $ 1.93 |
| Cash dividends declared per common share | $ 0.30 | $ 0.30 | $ 0.30 | $ 0.225 | $ 0.225 |
| **Balance sheet data (as of period end):** | | | | | |
| Cash and cash equivalents | $ 316 | $ 240 | $ 5,311 | $ 975 | $ 54 |
| Working capital | (110,350) | (71,545) | (48,661) | (39,640) | (97,130) |
| Oil and natural gas properties, buildings and equipment, net | 1,275,091 | 2,254,425 | 2,106,385 | 2,096,897 | 2,409,225 |
| Total assets | 1,452,106 | 2,542,383 | 2,240,135 | 2,240,545 | 2,553,882 |
| Bank debt | 259,300 | 957,100 | 372,000 | 377,500 | 240,000 |
| 10 1/4% senior notes | | | 436,544 | 435,925 | 438,334 |
| 8 1/4% subordinated notes | 200,000 | 200,000 | 200,000 | 200,000 | 200,000 |
| Shareholders' equity | 459,974 | 827,544 | 703,259 | 735,161 | 1,040,255 |
| **Cash flows data:** | | | | | |
| Net cash flow provided by (used in): | | | | | |
| Operating activities | $ 238,879 | $ 409,569 | $ 212,576 | $ 148,379 | $ 318,521 |
| Investing activities | (287,213) | (1,086,769) | (38,754) | 12,111 | (405,874) |
| Financing activities | 48,234 | 677,124 | (168,751) | (159,755) | 82,096 |
| **Other financial data:** | | | | | |
| EBITDAX(1) | $ 316,193 | $ 354,976 | $ 287,265 | $ 214,649 | $ 351,097 |
| Exploration and development of oil and natural gas properties | 285,267 | 397,601 | 134,946 | 94,636 | 230,955 |
| Property acquisitions | 56,247 | 667,996 | 13,497 | 11,904 | 154,517 |

(1) Before income (loss) from discontinued operations. See " Non-GAAP Financial Measures EBITDAX."

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## SUMMARY HISTORICAL RESERVE, PRODUCTION AND OPERATING DATA

Historical estimates of our oil and natural gas reserves and present values as of and for our fiscal years ended December 31, 2007, 2008 and 2009 are derived from reserve reports prepared by D&M. Estimates of reserves and their value are inherently imprecise and are subject to constant revision and change, and they should not be construed as representing the actual quantities of future production or cash flows to be realized from oil and natural gas properties or the fair market value of such properties.

The following table sets forth summary data with respect to estimated proved reserves on a historical basis for the periods presented:

| | Historical | | |
|---|---|---|---|
| | As of December 31, | | |
| | 2007 | 2008 | 2009 |
| **Proved reserves ($ in thousands):** | | | |
| Crude oil (MBbl) | 116,602 | 125,251 | 129,940 |
| Natural gas (MMcf) | 315,464 | 724,135 | 632,178 |
| Total (MBOE) | 169,179 | 245,940 | 235,303 |
| % oil | 69% | 51% | 55% |
| % proved developed | 61% | 55% | 53% |
| Reserve life (years)(1) | 17.2 | 21.0 | 21.4 |
| Undiscounted future net cash flows | $ 4,837,388 | $ 2,756,343 | $ 3,072,923 |
| Standardized measure of discounted future net cash flows(2) | $ 2,419,506 | $ 1,135,581 | $ 1,445,747 |
| **Pre-Tax PV10 ($ in millions):(3)** | | | |
| SEC Pricing(4) | $ 3,547 | $ 1,317 | $ 1,849 |
| Steam Injection Cost Alternative(5) | | | $ 2,106 |

(1) Reserve life is a measure of the productive life of oil and natural gas properties, expressed in years. Reserve life is calculated by dividing proved reserve volumes at year end by production for the year shown.

(2) Standardized measure is the present value of estimated future net revenue to be generated from the production of proved reserves, determined in accordance with the rules and regulations of the SEC (using prices and costs in effect as of the date of estimation), less future development, production and income tax expenses, and discounted at 10% per annum to reflect the timing of future net revenue. Standardized measure does not give effect to derivative transactions. For a description of our derivative transactions, please read "Quantitative and Qualitative Disclosures about Market Risk" in our Annual Report on Form 10-K for the year ended December 31, 2009 and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010.

(3) See " Non-GAAP Financial Measures Pre-Tax PV10"

(4) The SEC proved reserves were calculated in accordance with SEC rules using the pricing set forth under " Commodity Pricing" below.

(5) Based on using the un-weighted arithmetic average of the first-day-of-the-month price for each month during the calendar year for the basis of determining our steam injection costs, as compared to using the end of the year natural gas price to determine our steam injection costs. The 2009 un-weighted arithmetic average of the first-day-of-the-month natural gas price was $3.93/Mcfe compared to the 2009 year end natural gas price of $6.20/Mcfe. All other inputs and assumptions remain the same as those used in calculating the pre-tax PV10 in accordance with SEC rules relating to pricing and costs.

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***Commodity Pricing***

In accordance with SEC requirements, our estimated proved reserves, standardized measure, and PV10 for December 31, 2007 and 2008 were determined using end of the period prices for oil and natural gas that were realized at the date set forth below. Effective for 2009, SEC and FASB reserve reporting rules require the use of a 12-month average price for oil and natural gas calculated as the un-weighted arithmetic average of the first-day-of-the-month price for each month within the 12-month period prior to the end of the reporting period and year-end costs. Our estimated proved reserves, standardized measure of discounted future net cash flows and pre-tax PV10 utilized the following prices for the dates presented:

| | As of December 31, | | |
|---|---|---|---|
| | **2007** | **2008** | **2009** |
| Oil ($/Bbl) | $ 79.19 | $ 30.92 | $ 52.06 |
| Natural gas ($/Mcf) | 6.27 | 4.85 | 3.58 |
| BOE Price | 66.27 | 30.03 | 38.37 |

***Historical Production and Operating Data***

The following table sets forth summary data with respect to production data and effective unit prices on a historical basis for the periods presented:

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | **2007** | **2008** | **2009** | **2009** | **2010** |
| **Production data:** | | | | | |
| Crude oil (Bbl/D) | 19,753 | 20,330 | 19,688 | 19,583 | 21,387 |
| Natural gas (Mcf/D) | 42,895 | 69,834 | 62,074 | 64,493 | 64,002 |
| Total production (BOE/D) | 26,902 | 31,968 | 30,034 | 30,332 | 32,054 |
| DJ Basin Production (BOE/D)(1) | 3,123 | 3,295 | 765 | 1,020 | |
| Production Continuing operations (BOE/D) | 23,779 | 28,673 | 29,269 | 29,312 | 32,054 |
| **Effective unit prices before the impact of derivatives:** | | | | | |
| Crude oil (Bbl) | $ 57.85 | $ 86.90 | $ 50.73 | $ 46.74 | $ 65.81 |
| Natural gas (Mcf) | 4.17 | 6.91 | 3.61 | 3.40 | 4.57 |
| Average sales price before hedging (BOE) | 52.30 | 73.64 | 41.23 | 37.99 | 53.02 |
| **Effective unit prices including impact of derivatives:** | | | | | |
| Crude oil (Bbl) | $ 53.24 | $ 70.01 | $ 57.28 | $ 57.74 | $ 66.14 |
| Natural gas (Mcf) | 5.48 | 7.11 | 4.09 | 3.94 | 4.89 |
| Average sales price after hedging (BOE) | 49.80 | 62.03 | 46.59 | 46.43 | 53.87 |
| **Operating expenses per BOE:** | | | | | |
| Operating costs oil and natural gas production | $ 15.09 | $ 17.99 | $ 14.66 | $ 13.91 | $ 16.03 |
| Production taxes | 1.69 | 2.56 | 1.70 | 1.80 | 1.88 |
| DD&A oil and natural gas production | 9.55 | 11.97 | 13.10 | 13.03 | 14.74 |
| G&A | 4.57 | 5.17 | 4.61 | 4.64 | 4.39 |
| Interest expense | 1.74 | 2.28 | 4.67 | 4.40 | 5.64 |
| Total | $ 32.64 | $ 39.97 | $ 38.74 | $ 37.78 | $ 42.68 |

(1)

Sold April 2009.

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## Non-GAAP Financial Measures

### *EBITDAX*

We define EBITDAX as net income before interest expense, provision for income taxes and depreciation, depletion, amortization, dry hole, abandonment, impairment and exploration expense (from both continuing and discontinued operations) and income or loss from discontinued operations. EBITDAX is a financial measure commonly used in the oil and gas industry, but is not defined under accounting principles generally accepted in the United States of America ("GAAP"). EBITDAX should not be considered in isolation or as a substitute for net income, operating income, cash flows from operating activities or any other measure of financial performance presented in accordance with GAAP or as a measure of a company's profitability or liquidity. Because EBITDAX excludes some, but not all, items that affect net income, this measure may vary among companies. The EBITDAX data presented below may not be comparable to a similarly titled measure of other companies. Our management believes that EBITDAX is a useful comparative measure of operating performance. For example, debt levels, credit ratings and, therefore, the impact of interest expense on earnings vary significantly between companies. Similarly, the tax positions of individual companies can vary because of their differing abilities to take advantage of tax benefits, with the result that their effective tax rates and tax expense can vary considerably. Finally, companies differ in the age and method of acquisition of productive assets, and thus the relative costs of those assets, as well as in the depreciation or depletion (straight-line, accelerated, units of production) method, which can result in considerable variability in depletion, depreciation and amortization expense between companies. Thus, for comparison purposes, management believes that EBITDAX can be useful as an objective and comparable measure of operating profitability and the contribution of operations to liquidity because it excludes these elements.

The following table provides a reconciliation of net income to EBITDAX:

| | Historical | | | | |
|---|---|---|---|---|---|
| | Year Ended December 31, | | | Nine Months Ended September 30, | |
| | 2007 | 2008 | 2009 | 2009 | 2010 |
| | ($ in thousands) | | | | |
| Net income | $ 129,928 | $ 133,529 | $ 54,030 | $ 41,026 | $ 103,670 |
| Provision for income taxes | 79,060 | 70,308 | 28,349 | 24,681 | 64,450 |
| Interest expense | 15,069 | 23,942 | 49,923 | 35,201 | 49,373 |
| Depreciation, depletion and amortization | 86,429 | 128,407 | 143,600 | 107,209 | 131,383 |
| Dry hole, abandonment, impairment and exploration expense | 8,351 | 10,543 | 5,425 | 209 | 2,221 |
| Less: | | | | | |
| Income (loss) from discontinued operations | 2,644 | 11,753 | (5,938) | (6,323) | |
| EBITDAX | $ 316,193 | $ 354,976 | $ 287,265 | $ 214,649 | $ 351,097 |

### *Pre-Tax PV10*

Pre-tax PV10 may be considered a non-GAAP financial measure as defined by the SEC and is derived from the standardized measure of discounted future net cash flows ("SMOG"), which is the most directly comparable GAAP financial measure. Pre-tax PV10 is computed on the same basis as the SMOG but without deducting future income taxes. We believe pre-tax PV10 is a useful measure for investors for evaluating the relative monetary significance of our oil and natural gas properties. We further believe investors may utilize our pre-tax PV10 as a basis for comparison of the relative size and value of our reserves to other companies because many factors that are unique to each individual company impact the amount of future income taxes to be paid. Our management uses this measure when assessing the

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potential return on investment related to our oil and natural gas properties and acquisitions. However, pre-tax PV10 is not a substitute for the SMOG. Our pre-tax PV10 and the SMOG do not purport to present the fair value of our oil and natural gas reserves.

The following table shows the reconciliation of SMOG to the pre-tax PV10 value for the years ended December 31, 2007 and 2008.

| | SEC Proved Reserves ($ in millions) |
|---|---|
| **December 31, 2007:** | |
| SMOG | $ 2,420 |
| Discounted future cash flow from income taxes | 1,127 |
| Discounted future net cash flow before income taxes (PV10) | $ 3,547 |
| **December 31, 2008:** | |
| SMOG | $ 1,136 |
| Discounted future cash flow from income taxes | 181 |
| Discounted future net cash flow before income taxes (PV10) | $ 1,317 |

The following table shows the reconciliation of SMOG to the pre-tax PV10 value for the year ended December 31, 2009.

| | SEC Proved Reserves | Steam Injection Cost Alternative |
|---|---|---|
| | ($ in millions) | |
| **December 31, 2009:** | | |
| SMOG | $ 1,446 | $ 1,611 |
| Discounted future cash flow from income taxes | 403 | 495 |
| Discounted future net cash flow before income taxes (PV10) | $ 1,849 | $ 2,106 |

**Oil and Gas Reserves Reporting**

The SEC requires oil and gas companies, in filings made with the SEC, to disclose proved reserves, which are those quantities of oil and gas, which, by analysis of geoscience and engineering data, can be estimated with reasonable certainty to be economically producible from a given date forward, from known reservoirs, under existing economic conditions, operating methods, and governmental regulations. Beginning with year-end reserves for 2009, the SEC permits the optional disclosure of probable and possible reserves. The SEC defines "probable" reserves as "those additional reserves that are less certain to be recovered than proved reserves but which, together with proved reserves, are as likely as not to be recovered." We apply this definition in estimating probable reserves. Statements of reserves are only estimates and may not correspond to the ultimate quantities of oil and gas recovered. Estimates of probable reserves which may potentially be recoverable through additional drilling or recovery techniques are by nature more uncertain than estimates of proved reserves and accordingly are subject to substantially greater risk of not actually being realized.

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## RISK FACTORS

You should carefully consider the risks described below and in the documents incorporated by reference as provided under "Incorporation By Reference," including our Annual Report on Form 10-K for the year ended December 31, 2009, as well as other information included or incorporated by reference in this prospectus, before making an investment decision. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the risks included in the documents incorporated by reference in this prospectus supplement or discussed below actually were to occur, our business, financial condition or results of operations could be materially and adversely affected, which in turn could adversely affect our ability to pay interest and/or principal on the notes.

### Risks Related to Our Business

***Oil and natural gas prices fluctuate widely, and low prices for an extended period of time are likely to have a material adverse impact on our business, results of operations and financial condition.***

Our revenues, profitability and future growth and reserve calculations depend substantially on the price received for our oil and natural gas production. These prices also affect the amount of our cash flow available for capital expenditures, working capital and payments on our debt, payments on the notes and our ability to borrow and raise additional capital. Lower prices may also reduce the amount of oil and natural gas that we can produce economically. The oil and natural gas markets fluctuate widely, and we cannot predict future oil and natural gas prices. Prices for oil and natural gas may fluctuate widely in response to relatively minor changes in the supply of and demand for oil and natural gas, market uncertainty and a variety of additional factors that are beyond our control, such as:

- regional, domestic and foreign supply and perceptions of supply of and demand for oil and natural gas;
- level of consumer demand;
- weather conditions;
- overall domestic and global political and economic conditions;
- technological advances affecting energy consumption and supply;
- domestic and foreign governmental regulations and taxation;
- the impact of energy conservation efforts;
- the capacity, cost and availability of oil and natural gas pipelines and other transportation facilities; and
- the price and availability of alternative fuels.

Our revenue, profitability and cash flow depend upon the prices and demand for oil and natural gas, and a drop in prices can significantly affect our financial results and impede our growth. In particular, declines in commodity prices will:

- reduce the amount of cash flow available to make capital expenditures or make acquisitions;

reduce the number of our drilling locations;

increase the likelihood of refinery defaults;

negatively impact the value of our reserves, because declines in oil and natural gas prices would reduce the amount of oil and natural gas that we can produce economically; and

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limit our ability to borrow money or raise additional capital.

***Our heavy crude oil in California may be less economic than lighter crude oil and natural gas.***

As of December 31, 2009, approximately 48% of our proved reserves, or 112 million barrels, consisted of heavy oil. Light crude oil represented 8% and natural gas represented 44% of our oil and natural gas reserves. Heavy crude oil sells for a discount to light crude oil, as more complex refining equipment is required to convert heavy oil into high value products. Additionally, most of our crude oil in California is produced using the EOR process of steam injection. This process is generally more costly than primary and secondary recovery methods.

***Purchasers of our crude oil and natural gas may become insolvent.***

We have significant concentrations of credit risk with the purchasers of our crude oil and natural gas. For example, all of our crude oil in Utah is sold under a long-term contract to a single refiner. Under the standard credit terms with our refiners, we may not know that a refiner will be unable to make payment to us until 50 days of our production has been delivered to them. If our purchasers become insolvent, we may not be able to collect any of the amounts owed to us.

***We may be unable to meet our drilling obligations.***

We have contractual obligations on our Piceance assets in Colorado. We must spud an additional 87 wells of our original 120 well commitment by February 2011 to avoid penalties of $0.2 million per well not drilled. Satisfying this commitment and further developing these assets depends on Piceance infrastructure and access, drilling resources, including capital availability, and other factors, all of which will be further evaluated throughout the remainder of 2010. There is no assurance that our operating cash flow or alternative sources of capital investment from partnerships, joint ventures or other investment opportunities with third parties will be available to us in sufficient amount to develop these assets on the schedule required to avoid penalties or that there will be sufficient time remaining to drill all the wells by the required date to avoid penalties.

***Our financial counterparties may be unable to satisfy their obligations.***

We rely on financial institutions to fund their obligations under our senior secured revolving credit facility and make payments to us under our hedging agreements. If one or more of our financial counterparties becomes insolvent, they may not be able to meet their commitment to fund future borrowings under our credit facility which would reduce our liquidity. Additionally, at current commodity prices, a portion of our cash flow over the next three years will come from payments from our counterparties on our commodity hedging contracts. If our counterparties are not able to make these payments, our cash flow will be reduced. Recently adopted financial reform legislation may require the counterparties to our derivative instruments to spin off some of their derivatives activities to a separate entity, which may not be as creditworthy as the current counterparty.

***A widening of commodity differentials may adversely impact our revenues and our economics.***

Our crude oil and natural gas are priced in the local markets where the production occurs based on local or regional supply and demand factors. The prices that we receive for our crude oil and natural gas production are generally lower than the relevant benchmark prices, such as NYMEX, that are used for calculating commodity derivative positions. The difference between the benchmark price and the price we receive is called a differential. We may not be able to accurately predict natural gas and crude oil differentials.

Price differentials may widen in the future. Numerous factors may influence local pricing, such as refinery capacity, pipeline capacity and specifications, upsets in the mid-stream or downstream sectors of the industry, trade restrictions and governmental regulations. We may be adversely impacted by a widening differential on the products we sell. Our oil and natural gas hedges are based on WTI or natural gas index prices, so we may be subject to basis risk if the differential on the products we sell widens from those benchmarks and we do not have a contract tied to those benchmarks. Additionally, insufficient pipeline capacity or trucking capability and the lack of demand in any given operating area may cause the differential to widen in that area compared to other oil and natural gas producing areas. Increases in the differential between the benchmark price for oil and natural gas and the wellhead price we receive could adversely affect our financial condition.

***Market conditions or operational impediments may hinder our access to crude oil and natural gas markets or delay our production.***

Market conditions or the unavailability of satisfactory oil and natural gas transportation arrangements may hinder our access to oil and natural gas markets or delay our production. The availability of a ready market for our oil and natural gas production depends on a number of factors, including the demand for and supply of oil and natural gas and the proximity of reserves to pipelines and terminal facilities. Our ability to market our production depends in substantial part on the availability and capacity of gathering systems, pipelines, processing facilities, trucking capability and refineries owned and operated by third parties. Our failure to obtain such services on acceptable terms could materially harm our business. We may be required to shut in wells for a lack of a market or because of inadequacy or unavailability of natural gas pipelines, gathering system capacity, processing facilities or refineries. If that were to occur, then we would be unable to realize revenue from those wells until arrangements were made to deliver the production to market.

***We may not be able to deliver minimum crude oil volumes required by our sales contract.***

Production volumes from our Uinta properties over the next several years are uncertain and there is no assurance that we will be able to consistently meet the minimum required volume under our refining contract relating to our production from these properties. During the term of the contract, the minimum number of delivered barrels is 5,000 BOE/D. In the event that we cannot produce the necessary volume, we may need to purchase crude to meet our contract requirements. Gross oil production from our Uinta properties averaged approximately 3,040 BOE/D in the first nine months of 2010.

***We may be subject to the risk of adding additional steam generation equipment if the electrical market deteriorates significantly.***

We are dependent on several cogeneration facilities that, combined, provide approximately 28% of our steam capacity as of December 31, 2009. These facilities are dependent on reasonable contracts for the sale of electricity. If, for any reason, including if utilities that purchase electricity from us are no longer required by regulation to enter into electricity sales contracts with us, we were unable to enter into new or replacement contracts or were to lose any existing contract, we may not be able to supply 100% of the steam requirements necessary to maximize production from our heavy oil assets. An additional investment in various steam sources may be necessary to replace such steam, and there may be risks and delays in being able to install conventional steam equipment due to permitting requirements and availability of equipment. The financial cost and timing of such new investment may adversely affect our production, capital outlays and cash provided by operating activities. On October 7, 2010, we executed agreements with Pacific Gas and Electric Company ("PG&E"), which, if approved by the California Public Utilities Commission ("CPUC"), will extend the electricity sales contracts for our 18MW and 38MW facilities until June 30, 2011. Our electricity sales contracts with Southern California Edison Company ("Edison") for our Placerita facility will continue in effect until the CPUC approves and makes available replacement standard form contracts for qualifying facilities, which, under the pending settlement agreement described below, will likely be sometime in 2011; however, our current contracts could terminate earlier under certain limited circumstances or the CPUC may not approve the settlement agreement.

***The future of the electricity market in California is uncertain.***

We utilize cogeneration plants in California to generate lower cost steam compared to conventional steam generation methods. Electricity produced by our cogeneration plants is sold to utilities and the steam costs are allocated to our oil and natural gas operations. On October 7, 2010, we executed agreements with PG&E, which, if approved by the CPUC, will extend the electricity sales contracts for our 18MW and 38MW facilities until June 30, 2011. Our electricity sales contracts with Edison for our Placerita facility will continue in effect until the CPUC approves and makes available replacement standard form contracts for qualifying facilities, which, under the pending settlement agreement described below, will likely be sometime in 2011; however, our current contracts could terminate earlier under certain limited circumstances or the CPUC may not approve the settlement agreement. Additionally, legal and regulatory decisions (especially related to the pricing of electricity under the contracts such as the SRAC Decision (as defined in our Annual Report on Form 10-K for the year ended December 31, 2009) and the pending issues as to effective dates on retroactivity), can by reducing our electricity revenues adversely affect the economics of our cogeneration facilities and as a result the cost of steam for use in our oil and natural gas operations. In addition, any final determination by the CPUC to apply the new SRAC pricing formula retroactively, if applied so as to require payment on a one-time basis, could have a material adverse effect on our financial condition and results of operations. During the California energy crisis in 2000 and 2001, we had electricity sales contracts with various utilities and a portion of the electricity prices paid to us under such contracts from December 2000 to March 27, 2001 has been under a degree of legal challenge since that time. There are ongoing proceedings before the CPUC in which Edison and PG&E are seeking credit against future payments they are to make for electricity purchases based on retroactive adjustments to pricing under contracts with us. It is possible that we may have a liability pending the final outcome of the CPUC proceedings on the matter. Whether or not retroactive adjustments will be ordered, how such adjustments would be calculated and what period they would cover are too uncertain to estimate at this time. On October 8, 2010, a settlement agreement was filed at the CPUC by and between the three California utilities, two consumer representative groups and three parties that represent the interests of the majority of the cogeneration facilities in the state, including us, that if adopted by the CPUC, would extinguish all pending claims of retroactive payment liability. A ruling on this settlement is expected later this year or during the early part of 2011. However, it is possible that the CPUC may not approve such settlement. See "Item 1. Business Electricity" of our Annual Report on Form 10-K for the year ended December 31, 2009 for more information about our electricity sales contracts.

***A shortage of natural gas in California could adversely affect our business.***

We may be subject to the risks associated with a shortage of natural gas and/or the transportation of natural gas into and within California. We are highly dependent on sufficient volumes of natural gas necessary to use for fuel in generating steam in our heavy oil operations in California. If the required volume of natural gas for use in our operations were to be unavailable or too highly priced to produce heavy oil economically, our production could be adversely impacted. We have firm transportation to move 12,000 MMBtu/D on the Kern River Pipeline from the Rocky Mountains to Kern County, CA, which accounts for approximately one-quarter of our current requirement.

***Our use of oil and natural gas price and interest rate hedging contracts involves credit risk and may limit future revenues from price increases or reduced expenses from lower interest rates, as well as result in significant fluctuations in net income and shareholders' equity.***

We use hedging transactions with respect to a portion of our oil and natural gas production with the objective of achieving a more predictable cash flow, and reducing our exposure to a significant

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decline in the price of crude oil and natural gas. We also utilize interest rate hedges to fix the rate on a portion of our variable rate indebtedness, as only a portion of our total indebtedness has a fixed rate and we are therefore exposed to fluctuations in interest rates. While the use of hedging transactions limits the downside risk of price declines or rising interest rates, as applicable, their use may also limit future revenues from price increases or reduced expenses from lower interest rates, as applicable. Hedging transactions also involve the risk that the counterparty may be unable to satisfy its obligations.

***Our future success depends on our ability to find, develop and acquire oil and natural gas reserves.***

To maintain production levels, we must locate and develop or acquire new oil and natural gas reserves to replace those depleted by production. Without successful exploration, exploitation or acquisition activities, our reserves, production and revenues will decline. We may not be able to find, develop or acquire additional reserves at an acceptable cost. In addition, substantial capital is required to replace and grow reserves. If lower oil and natural gas prices or operating difficulties result in our cash flow from operations being less than expected or limit our ability to borrow under credit arrangements, we may be unable to expend the capital necessary to locate and to develop or acquire new oil and natural gas reserves.

***Actual quantities of recoverable oil and natural gas reserves and future cash flows from those reserves, future production, oil and natural gas prices, revenues, taxes, development expenditures and operating expenses most likely will vary from estimates.***

It is not possible to measure underground accumulations of oil or natural gas in an exact way. Estimating accumulations of oil and natural gas is a complex process that relies on interpretations of available geologic, geophysical, engineering and production data. The extent, quality and reliability of this data can vary. The process also requires certain economic assumptions, such as oil and natural gas prices, drilling and operating expenses, capital expenditures, taxes and availability of funds, some of which are mandated by the SEC. The accuracy of a reserve estimate is a function of:

- quality and quantity of available data;
- interpretation of that data; and
- accuracy of various mandated economic assumptions.

Any significant variance could materially affect the quantities and present value of our reserves. In addition, we may adjust estimates of proved reserves to reflect production history, results of development, changes in development schedule and exploration and prevailing oil and natural gas prices.

In accordance with SEC requirements, we base both our estimated quantities of reserves and our estimated discounted future net cash flows from our proved reserves on an un-weighted arithmetic average of the first-day-of-the month price for each month during the calendar year and on year-end costs. Actual future prices and costs may be materially higher or lower than the prices and costs used in the estimate.

***Future commodity price declines and/or increased capital costs may result in a write-down of our asset carrying values which could adversely affect our results of operations and limit our ability to borrow funds.***

Declines in oil and natural gas prices may result in our having to make substantial downward adjustments to our estimated proved reserves. If this occurs, or if our estimates of development costs increase, production data factors change, development of proved reserves is postponed or drilling results deteriorate, accounting rules may require us to write down, as a non-cash charge to earnings, the carrying value of our oil and natural gas properties for impairments.

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We capitalize costs to acquire, find and develop our oil and natural gas properties under the successful efforts accounting method. If net capitalized costs of our oil and natural gas properties exceed fair value, we must charge the amount of the excess to earnings. We review the carrying value of our properties annually and at any time when events or circumstances indicate a review is necessary, based on estimated prices as of the end of the reporting period. The carrying value of oil and natural gas properties is computed on a field-by-field basis. Once incurred, a write-down of oil and natural gas properties is not reversible at a later date even if oil or natural gas prices increase. While we did not incur any such impairment charges in 2009 or the first nine months of 2010, it is possible that declining commodity prices could prompt an impairment in the future, which could have a material adverse effect on our results of operations in the period incurred and on our ability to borrow funds under our senior secured revolving credit facility.

***Approximately 47% of our total estimated proved reserves at December 31, 2009 were proved undeveloped reserves and may be reclassified as unproved or may not ultimately be produced or developed.***

Recovery of proved undeveloped reserves requires significant capital expenditures and successful drilling operations. The reserve data included in the reserve engineer reports assumes that substantial capital expenditures are required to develop such reserves. Although cost and reserve estimates attributable to our crude oil and natural gas reserves have been prepared in accordance with industry standards, we cannot be sure that the estimated costs are accurate, that development will occur as scheduled or that the results of such development will be as estimated. The SEC generally requires that reserves classified as proved undeveloped be capable of conversion into proved developed within five years of classification unless specific circumstances justify a longer time. Proved undeveloped reserves that are not timely developed are subject to possible reclassification as non-proved reserves. Substantial downward adjustments to our estimated proved reserves could have a material adverse effect on our financial condition and results of operations. In addition, our undeveloped reserves may not ultimately be developed or produced during the time periods we have planned, at the costs we have budgeted, or at all, which in turn may have a material adverse effect on our results of operations.

***Competitive industry conditions may negatively affect our ability to conduct operations.***

Competition in the oil and gas industry is intense, particularly with respect to the acquisition of producing properties and of proved undeveloped acreage. Major and independent oil and natural gas companies actively bid for desirable oil and natural gas properties, as well as for the equipment, supplies, labor and services required to operate and develop their properties. Some of these resources may be limited and have higher prices due to current strong demand. Many of our competitors have financial resources that are substantially greater than ours, which may adversely affect our ability to compete within the industry.

Many of our larger competitors not only drill for and produce oil and natural gas but also carry on refining operations and market petroleum and other products on a regional, national or worldwide basis. These companies may be able to pay more for oil and natural gas properties and evaluate, bid for and purchase a greater number of properties than our financial or human resources permit. In addition, there is substantial competition for investment capital in the oil and natural gas industry. These larger companies may have a greater ability to continue drilling activities during periods of low oil and natural gas prices and to absorb the burden of present and future federal, state, local and other laws and regulations. Our inability to compete effectively with larger companies could have a material adverse impact on our business activities, financial condition and results of operations.

***Drilling is a high-risk activity.***

Our future success will partly depend on the success of our drilling program. In addition to the numerous operating risks described in more detail below, these drilling activities involve the risk that no commercially productive oil or natural gas reservoirs will be discovered. Also, we are often uncertain as to the future cost or timing of drilling, completing and producing wells. Furthermore, drilling operations may be curtailed, delayed or canceled as a result of a variety of factors, including:

- obtaining government and tribal required permits;
- unexpected drilling conditions;
- pressure or irregularities in formations;
- equipment failures or accidents;
- adverse weather conditions;
- changes in regulations;
- compliance with governmental or landowner requirements; and
- shortages or delays in the availability of drilling rigs and the delivery of equipment and/or services, including experienced labor.

As a result, there can be no assurance that our anticipated production levels will be realized or that our estimates of proved reserves will not be negatively impacted. For example, although we expect that our Diatomite production will increase to 3,500 BOE/D by year-end 2010 and 5,000 BOE/D by mid-2011, actual production from these assets could be significantly lower. During the first half of 2010, Diatomite production decreased primarily due to the inability to drill new wells pending the receipt of permits from the DOGGR. Although we have received such permits, the DOGGR is expected to issue new regulations for the development of Diatomite, the effect of which we are unable to determine until such regulations are issued.

***The oil and natural gas business involves many operating risks that can cause substantial losses.***

The oil and gas business involves many operating risks, and insurance we maintain may not protect us against all of these risks. These risks include:

- fires;
- explosions;
- blow-outs;
- uncontrollable flows of oil, natural gas, formation water or drilling fluids;

- natural disasters;
- pipe or cement failures;
- casing collapses;
- embedded oilfield drilling and service tools;
- abnormally pressured formations;
- major equipment failures, including cogeneration facilities; and
- environmental hazards such as oil spills, natural gas leaks, pipeline ruptures and discharges of toxic gases.

If any of these events occur, we could incur substantial losses as a result of:

- injury or loss of life;
- severe damage or destruction of property, natural resources and equipment;

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- pollution and other environmental damage;
- investigatory and clean-up responsibilities;
- regulatory investigation and penalties;
- more stringent regulations applicable to our operations;
- suspension of operations; and
- repairs to resume operations.

If we experience any of these problems, our ability to conduct operations could be adversely affected. If a significant accident or other event occurs and is not fully covered by insurance, it could adversely affect us. In accordance with customary industry practices, we maintain insurance coverage against some, but not all, potential losses in order to protect against the risks we face. For instance, we do not carry business interruption insurance. We may elect not to carry insurance if the cost of available insurance is excessive relative to the risks presented. In addition, we cannot insure fully against pollution and environmental risks. The occurrence of an event not fully covered by insurance could have a material adverse effect on our financial condition and results of operations. While we intend to obtain and maintain insurance coverage we deem appropriate for these risks, there can be no assurance that our operations will not expose us to liabilities exceeding such insurance coverage or to liabilities not covered by insurance.

***We are subject to comprehensive and stringent existing and pending laws and regulations that could give rise to substantial liabilities from environmental contamination or otherwise adversely affect our cost, manner or feasibility of doing business.***

Our operations are regulated extensively at the federal, state, regional and local levels by environmental laws and regulations that impose limitations on our discharge of pollutants into the environment, establish standards for our management, treatment, storage, transportation and disposal of hazardous materials and solid and hazardous wastes, and impose obligations requiring us to investigate and remediate contamination resulting from our operations. In certain circumstances, we also must satisfy federal and state requirements for providing environmental assessments, environmental impact studies and/or plans of development before we commence exploration and production activities. Environmental requirements applicable to our operations generally have become more stringent in recent years, and compliance with those requirements have become more expensive. Frequently changing environmental laws and regulations have increased our costs to plan, design, drill, install, operate and abandon oil and natural gas wells and other facilities, and may impose substantial liabilities if we fail to comply with such regulations or for any contamination resulting from our operations. Our business results from operations and financial condition may be adversely affected by any failure to comply with, or future changes to, these laws and regulations. In particular, failure to comply with these laws and regulations may result in the suspension or termination of our operations and subject us to administrative, civil and criminal sanctions, including the payment of monetary penalties and the performance of remedial obligations.

From time to time we have experienced accidental spills, leaks and other discharges of contaminants at our properties. We could be liable for the investigation or remediation of such contamination, as well as claims for personal injury, property damage or natural resource damage arising from the contamination. We have incurred expenses and penalties in connection with contamination arising from our operations in the past, and we may do so in the future. Such liabilities may arise at many locations, including properties in which we have an ownership interest but no operational control, properties we formerly owned or operated and sites where our wastes have been treated or disposed of, as well as at properties that we currently own or operate, and may arise because of our status as an owner or operator and not because of any noncompliance with applicable environmental laws. Under a number of environmental laws, including the Comprehensive Environmental Response, Compensation

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and Liability Act ("CERCLA"), such liabilities may be joint and several, meaning that we could be held responsible for more than our share of the liability involved, or even the entire share. Some of the properties that we have acquired, or in which we may hold an interest but not operational control, may have past or ongoing contamination for which we may be held responsible. Some of our operations are in environmentally sensitive areas that may provide habitat for endangered or threatened species, and other protected areas, and our operations in such areas must satisfy additional regulatory requirements. Moreover, public interest in environmental protection has increased in recent years, and environmental organizations have opposed certain drilling projects and/or access to prospective lands and have filed litigation in an attempt to overturn decisions granting the performance of such projects, including decisions made by the U.S. Bureau of Land Management regarding several leases in Utah that we have been awarded.

***Climate change legislation or regulatory initiatives may adversely affect our operations, our cost structure, and the demand for the oil and natural gas that we produce.***

On December 15, 2009, the U.S. Environmental Protection Agency ("EPA") published its findings that emissions of carbon dioxide, methane, and other greenhouse gases ("GHGs") present an endangerment to public heath and the environment because emissions of such gasses are, according to the EPA, contributing to the warming of the earth's atmosphere and other climate changes. These findings allow the EPA to adopt and implement regulations that would restrict emissions of GHGs under existing provisions of the federal Clean Air Act. The EPA has adopted two sets of regulations under the Clean Air Act. The first limits emissions of GHGs from motor vehicles beginning with the 2012 model year. The EPA has asserted that these final motor vehicle GHG emission standards trigger Clean Air Act construction and operating permit requirements for stationary sources, commencing when the motor vehicle standards take effect on January 2, 2011. On June 3, 2010, the EPA published its final rule to address the permitting of GHG emissions from stationary sources under the Prevention of Significant Deterioration ("PSD") and Title V permitting programs. This rule "tailors" these permitting programs to apply to certain stationary sources of GHG emissions in a multi-step process, with the largest sources first subject to permitting. It is widely expected that facilities required to obtain PSD permits for their GHG emissions also will be required to reduce those emissions according to "best available control technology" standards for GHG that have yet to be developed. More recently, on August 12, 2010, the EPA proposed additional regulatory actions to provide for implementation of these permitting requirements by state environmental agencies or by the EPA on their behalf. With regards to the monitoring and reporting of GHGs, on October 30, 2009, the EPA published a final rule requiring the reporting of GHG emissions from specified large GHG emission sources in the United States on an annual basis, beginning in 2011 for emissions occurring after January 1, 2010. In addition, on April 10, 2010, the EPA published a proposed rule that would expand its existing GHG reporting rule to include onshore petroleum and natural gas production, processing, transmission storage and distribution facilities. If the proposed rule is finalized as proposed, reporting of GHG emissions from such facilities would be required on an annual basis, with reporting beginning in 2012 for emission occurring in 2011.

Similarly, the House of Representatives and Senate have been considering adoption of "cap and trade" legislation that would establish an economy-wide cap on emissions of GHGs in the United States and would require most sources of GHG emissions to obtain GHG emission "allowances" corresponding to their annual emissions of GHGs. At the state level, almost one-half of the states, including California, have begun taking actions to control and/or reduce emissions of GHGs. The State of California has adopted legislation that caps California's GHG emissions at 1990 levels by 2020, and the California Air Resources Board ("CARB") has implemented mandatory reporting regulations and is proceeding with early action measures to reduce GHG emissions prior to January 1, 2012. CARB is also developing regulations to implement a cap and trade program in 2012 to reduce GHG emissions. The adoption of any legislation or regulations that requires reporting of GHGs or otherwise limits emissions of GHGs from our equipment and operations could require us to incur increased operating costs and could adversely affect demand for the oil and natural gas we produce.

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***Federal and state legislation and regulatory initiatives relating to hydraulic fracturing could result in increased costs and additional operating restrictions or delays.***

Congress is currently considering two companions bills for the "Fracturing Responsibility and Awareness of Chemicals Act" (the "FRAC Act"). The bills would repeal an exemption in the federal Safe Drinking Water Act ("SWDA") for the underground injection of hydraulic fracturing fluids near drinking water sources. Hydraulic fracturing involves the injection of water, sand and chemicals under pressure into rock formations to stimulate natural gas production. Sponsors of the FRAC Act have asserted that chemicals used in the fracturing process could adversely affect drinking water supplies, and the EPA has commenced a study of the potential environmental impacts of hydraulic fracturing activities. The proposed legislation would require the reporting and public disclosure of chemicals used in the fracturing process. The availability of this information could make it easier for third parties opposing the hydraulic fracturing process to initiate legal proceedings based on allegations that specific chemicals used in the fracturing process could adversely affect groundwater. Further, if enacted, the FRAC Act could result in additional regulatory burdens such as permitting, construction, financial assurance, monitoring, recordkeeping, and plugging and abandonment requirements. In addition, various state and local governments are considering increased regulatory oversight of hydraulic fracturing through additional permit requirements, operational restrictions, and temporary or permanent bans on hydraulic fracturing in certain environmentally sensitive areas such as watersheds. The adoption of any future federal or state laws or implementing regulation imposing reporting obligations on, or otherwise limiting, the hydraulic fracturing process could make it more difficult to perform hydraulic fracturing, complete natural gas wells in shale formations and increase our costs of compliance and doing business.

***Our operations are subject to numerous federal, state and tribal regulations and laws; compliance with existing and future laws may increase our costs and delay our operations.***

Our activities are also subject to regulation by the federal government, oil and natural gas-producing states and one Native American tribe. These regulations affect our operations and limit the quantity of oil and natural gas we may produce and sell. A major risk inherent in our drilling plans is the need to obtain drilling permits from federal, state, local and Native American tribal authorities. Delays in obtaining regulatory approvals or drilling permits, the failure to obtain a drilling permit for a well, or the receipt of a permit with unreasonable conditions that are more expensive than we have anticipated could have a negative effect on our ability to explore or develop our properties.

***Changes to current laws may affect our ability to take certain deductions.***

Substantive changes to the existing federal income tax laws have been proposed that, if adopted, would affect, among other things, our ability to take certain deductions related to our operations, including depletion deductions, deductions for intangible drilling and development costs and deductions for United States production activities. These changes, if enacted into law, could negatively affect our financial condition and results of operations.

***The recent adoption of derivatives legislation by Congress could have an adverse impact on our ability to use derivative instruments to reduce the effect of commodity price, interest rate and other risks associated with our business.***

Congress recently adopted comprehensive financial reform legislation that establishes federal oversight and regulation of the over-the-counter derivatives market and entities that participate in that market. The new legislation was signed into law by the President on July 21, 2010 and requires the Commodities Futures Trading Commission (the "CFTC") and the SEC to promulgate rules and regulations implementing the new legislation within 360 days from the date of enactment. The CFTC has also proposed regulations to set position limits for certain futures and option contracts in the major energy markets, although it is not possible at this time to predict whether or when the CFTC will adopt those rules or include comparable provisions in its rulemaking under the new legislation. The financial reform legislation may also require us to comply with margin requirements and with certain clearing and trade-execution requirements in connection with our derivative activities, although the application of those provisions to us is uncertain at this time. The financial reform legislation may also require the counterparties to our derivative instruments to spin off some of their derivatives activities to a separate entity, which may not be as creditworthy as the current counterparty. The new legislation and any new regulations could significantly increase the cost of derivative contracts (including through requirements to post collateral which could adversely affect our available liquidity), materially alter the terms of derivative contracts, reduce the availability of derivatives to protect against risks we encounter, reduce our ability to monetize or restructure our existing derivative contracts, and increase our exposure to less creditworthy counterparties. If we reduce our use of derivatives as a result of the legislation and regulations, our results of operations may become more volatile and our cash flows may be less predictable, which could adversely affect our ability to plan for and fund capital expenditures. Finally, the legislation was intended, in part, to reduce the volatility of oil and natural gas prices, which some legislators attributed to speculative trading in derivatives and commodity instruments related to oil and natural gas. Our revenues could therefore be adversely affected if a consequence of the legislation and regulations is to lower commodity prices. Any of these consequences could have a material, adverse effect on us, our financial condition, and our results of operations.

***Property acquisitions are a component of our growth strategy, and our failure to complete future acquisitions successfully could reduce our earnings and slow our growth.***

Our business strategy has emphasized growth through strategic acquisitions, but we may not be able to continue to identify properties for acquisition or we may not be able to make acquisitions on terms that we consider economically acceptable. There is intense competition for acquisition opportunities in our industry. Competition for acquisitions may increase the cost of, or cause us to refrain from, completing acquisitions. Our strategy of completing acquisitions is dependent upon, among other things, our ability to obtain debt and equity financing and, in some cases, regulatory approvals. If we are unable to achieve strategic acquisitions, our growth may be impaired, thus impacting earnings, cash from operations and reserves.

***Acquisitions are subject to the uncertainties of evaluating recoverable reserves and potential liabilities.***

Our recent growth is due in part to acquisitions of properties with additional development potential and properties with minimal production at acquisition but significant growth potential, and we expect acquisitions will continue to contribute to our future growth. Successful acquisitions require an assessment of a number of factors, many of which are beyond our control. These factors include: recoverable reserves, exploration potential, future oil and natural gas prices, operating costs, production taxes and potential environmental and other liabilities. Such assessments are inexact and their accuracy is inherently uncertain. In connection with our assessments, we perform a review of the acquired properties, which we believe is generally consistent with industry practices. However, such a review will not reveal all existing or potential problems. In addition, our review may not allow us to become sufficiently familiar with the properties, and we do not always discover structural, subsurface and environmental problems that may exist or arise. Our review prior to signing a definitive purchase agreement may be even more limited.

We generally are not entitled to contractual indemnification for pre-closing liabilities, including environmental liabilities, on acquisitions. Often, we acquire interests in properties on an "as is" basis with limited remedies for breaches of representations and warranties. If material breaches are discovered by us prior to closing, we could require adjustments to the purchase price or if the claims are significant, we or the seller may have a right to terminate the agreement. We could also fail to discover breaches or defects prior to closing and incur significant unknown liabilities, including environmental liabilities, or experience losses due to title defects, for which we would have limited or no contractual remedies or insurance coverage.

***There are risks in making acquisitions, including difficulties in integrating acquired properties into our business, additional liabilities and expenses associated with acquired properties, diversion of management attention, and costs of increased scope, geographic diversity and complexity of our operations.***

Increasing our reserve base through acquisitions is an important part of our business strategy. Any acquisition involves potential risks, including, among other things:

- the validity of our assumptions about reserves, future production, the future prices of oil and natural gas, revenues and costs, including synergies;
- an inability to integrate successfully the properties and businesses we acquire;
- a decrease in our liquidity to the extent we use a significant portion of our available cash or borrowing capacity to finance acquisitions;
- a significant increase in our interest expense or financial leverage if we incur debt to finance acquisitions;
- the assumption of unknown liabilities, losses or costs for which we are not indemnified or for which our indemnity is inadequate;
- the diversion of management's attention from other business concerns;
- an inability to hire, train or retain qualified personnel to manage and operate our growing business and assets;
- unforeseen difficulties encountered in operating in new geographic areas; and
- customer or key employee losses at the acquired businesses.

Our decision to acquire a property or business will depend in part on the evaluation of data obtained from production reports and engineering studies, geophysical and geological analyses and seismic and other information, the results of which are often inconclusive and subject to various interpretations.

***If third-party pipelines interconnected to our natural gas wells and gathering facilities become partially or fully unavailable to transport our natural gas, our results of operations and financial condition could be adversely affected.***

We depend upon third party pipelines that provide delivery options from our wells and gathering facilities. Since we do not own or operate these pipelines, their continuing operation in their current manner is not within our control. If any of these third-party pipelines become partially or fully unavailable to transport our natural gas, or if the natural gas quality specifications for their pipelines change so as to restrict our ability to deliver natural gas to those pipelines, our revenues and cash available for distribution could be adversely affected.

***A change in the jurisdictional characterization of some of our assets by federal, state or local regulatory agencies or a change in policy by those agencies may result in increased regulation of our assets, which may cause our revenues to decline and operating expenses to increase.***

Section 1(b) of the Natural Gas Act ("NGA") exempts natural gas gathering facilities from regulation by the Federal Energy Regulatory Commission ("FERC") as a natural gas company under the NGA. We believe that the natural gas pipelines in our gathering systems meet the traditional tests FERC has used to establish a pipeline's status as a gatherer not subject to regulation as a natural gas

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company, but the status of these lines has never been challenged before FERC. The distinction between FERC-regulated transmission services and federally unregulated gathering services is subject to change based on future determinations by FERC, the courts, or Congress, and application of existing FERC policies to individual factual circumstances. Accordingly the classification and regulation of some of our natural gas gathering facilities may be subject to challenge before FERC or subject to change based on future determinations by FERC, the courts, or Congress. In the event our gathering facilities are reclassified to FERC-regulated transmission services, we may be required to charge lower rates and our revenues could thereby be reduced.

***Should we fail to comply with all applicable FERC-administered statutes, rules, regulations and orders, we could be subject to substantial penalties and fines.***

FERC has issued an order requiring certain participants in the natural gas market, including natural gas gatherers and marketers, that engage in a minimum level of natural gas sales or purchases to submit annual reports regarding those transactions to FERC. In addition, FERC has issued an order requiring major non-interstate pipelines, defined as certain non-interstate pipelines delivering, on an annual basis, more than an average of 50 million MMBtu of gas over the previous three calendar years, to post daily certain information regarding the pipeline's capacity and scheduled flows for each receipt and delivery point that has design capacity equal to or greater than 15,000 MMBtu per day. Should we fail to comply with these requirements or any other applicable FERC-administered statute, rule, regulation or order, we could be subject to substantial penalties and fines. Under the Energy Policy Act of 2005, FERC has civil penalty authority under the NGA to impose penalties for current violations of up to $1 million per day for each violation and disgorgement of profits associated with any violation.

***The loss of key personnel could adversely affect our business.***

We depend to a large extent on the efforts and continued employment of our executive management team and other key personnel. The loss of the services of these or other key personnel could adversely affect our business, and we do not maintain key man insurance on the lives of any of these persons. Our drilling success and the success of other activities integral to our operations will depend, in part, on our ability to attract and retain experienced geologists, engineers, landmen and other professionals. Competition for many of these professionals is intense. If we cannot retain our technical personnel or attract additional experienced technical personnel and professionals, our ability to compete could be harmed.

***We may not adhere to our proposed drilling schedule.***

Our final determination of whether to drill any scheduled or budgeted wells will depend on a number of factors, including:

- results of our exploration efforts and the acquisition, review and analysis of our seismic data, if any;
- availability of sufficient capital resources to us and any other participants for the drilling of the prospects;
- approval of the prospects by other participants after additional data has been compiled;
- economic and industry conditions at the time of drilling, including prevailing and anticipated prices for oil and natural gas and the availability and prices of drilling rigs and crews; and
- availability of leases, license options, farm-outs, other rights to explore and permits on reasonable terms for the prospects.

Although we have identified or budgeted for numerous drilling prospects, we may not be able to lease or drill those prospects within our expected time frame, or at all. For instance, our drilling schedule may vary from our expectations because of future uncertainties and rig availability and access to our drilling locations utilizing available roads. In addition, we will not necessarily drill wells on all of our identified drilling locations on our acreage.

***We may incur losses as a result of title deficiencies.***

We acquire from third parties, or directly from the mineral fee owners, working and revenue interests in the oil and natural gas leaseholds and estates upon which we will perform our exploration activities. The existence of a material title deficiency can reduce the value or render a property worthless thus adversely affecting the results of our operations and financial condition. Title insurance covering mineral leaseholds is not always available and when available is not always obtained. As is customary in our industry, we rely upon the judgment of staff and independent landmen who perform the field work of examining records in the appropriate governmental offices and abstract facilities before attempting to acquire or place under lease a specific mineral interest and/or undertake drilling activities. We, in some cases, perform curative work to correct deficiencies in the marketability of the title to us. In cases involving title problems, the amount paid for affected oil and natural gas leases or estates can be generally lost, and a prospect can become undrillable.

***We have received a notice of proposed civil penalty of $69.6 million from the Bureau of Land Management that may result in our payment of a significant penalty.***

In July 2009, we received a notice of proposed civil penalty from the Bureau of Land Management (the "BLM") related to our alleged non-compliance during 2007 with regulations relating to the operation and position of certain valves in our Uinta basin operations. The regulations are intended to address production security on Federal and tribal lands managed by the BLM. The proposed civil penalty is $69.6 million and reflects the theoretical maximum penalty amount under applicable regulations, absent mitigating factors. We immediately remediated the instances of non-compliance in 2007, cooperated fully with the BLM's investigation and we believe no production was lost, all royalties were paid and there was no harm to the environment. Due to the above mitigating factors, among others, we believe this matter will be resolved by the payment of a penalty that will not exceed $2.1 million and have accrued such amount in the second quarter of 2009. However, there can be no assurance that any penalty would not be in excess of $2.1 million or have a material adverse affect on us.

**Risks Related to the Acquisitions**

***We may not complete the Wolfberry Acquisitions. If we do not complete the Wolfberry Acquisitions, the net proceeds we receive from this offering will not be used to finance the Wolfberry Acquisitions and may not be used in a manner as beneficial to us.***

The completion of the Wolfberry Acquisitions is subject to specified closing conditions. See "Prospectus Supplement Summary Recent Developments The Wolfberry Acquisitions" for more information on the Wolfberry Acquisitions.

If one or more of the conditions to closing are not satisfied, the Wolfberry Acquisitions may not be completed. Some of these conditions are beyond our control. Some of these conditions are in part within our control; other conditions are all or in part within the control of the sellers; and we or the sellers may elect not to take actions necessary to satisfy these conditions. If we breach our obligations under the purchase and sale agreements with the sellers or the sellers elect to terminate these agreements as a result, the sellers may be entitled to certain damages.

It is possible that we will not complete the Wolfberry Acquisitions on the terms described in this prospectus supplement, or at all, or that the Wolfberry Acquisitions will be delayed beyond the expected closing date in December 2010. If we do not complete the Wolfberry Acquisitions, we will not have the opportunity to develop the related assets or to attempt to realize the benefits we believe the acquisitions will afford us.

In addition, if the Wolfberry Acquisitions are not consummated or we only acquire a portion of the assets contemplated by the Wolfberry Acquisitions, we intend to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder for general corporate purposes. Such use of proceeds may not be as beneficial to us as the Wolfberry Acquisitions may have been.

**Risk Related to our Indebtedness and the Notes**

***We have a substantial amount of debt and the cost of servicing that debt could adversely affect our business and hinder our ability to make payments on the notes, and such risk could increase if we incur more debt.***

We have a substantial amount of indebtedness. At September 30, 2010, we had total long-term outstanding debt of approximately $880 million and no short-term debt. Our borrowing base under our senior secured revolving credit facility is currently approximately $938 million. As of September 30, 2010, outstanding borrowings under the facility were approximately $240 million (excluding $23 million of outstanding letters of credit), leaving $675 million in borrowing capacity available under the facility. The issuance of the senior notes will automatically reduce the borrowing base under our senior secured revolving credit facility by 25 cents per dollar of notes issued, or approximately $75 million. After giving effect to this offering, the application of net proceeds of this offering of approximately $294 million to finance the purchase price of the Wolfberry Acquisitions and reduce outstanding borrowings under our senior secured revolving credit facility, and the decrease in our borrowing base as a result of this offering, at September 30, 2010, we would have had a borrowing base of approximately $863 million, and approximately $121 million (excluding $23 million of outstanding letters of credit) outstanding under our senior secured revolving credit facility, with additional borrowing availability of approximately $719 million under the facility.

We have demands on our cash resources in addition to interest expense on the notes, including, among others, operating expenses and interest and principal payments under our senior secured revolving credit facility, our senior secured money market line of credit, our $10^1/_4$% senior notes and our $8^1/_4$% senior subordinated notes. Our level of indebtedness relative to our proved reserves and these significant demands on our cash resources could have important effects on our business and on your investment in the notes. For example, they could:

- make it more difficult for us to satisfy our obligations with respect to the notes and our other debt;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing the amount of our cash flow available for working capital, capital expenditures, acquisitions and other general corporate purposes;
- require us to make principal payments under our senior secured revolving credit facility if the quantity of proved reserves attributable to our natural gas and crude oil properties are insufficient to support our level of borrowings under that credit facility;
- limit our flexibility in planning for, or reacting to, changes in the oil and gas industry;
- place us at a competitive disadvantage compared to our competitors that have lower debt service obligations and significantly greater operating and financing flexibility than we do;
- limit our financial flexibility, including our ability to borrow additional funds, pay dividends, make certain investments and issue equity on favorable terms or at all;

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- increase our interest expense if interest rates increase, because borrowings under our senior secured revolving credit facility are at a variable rate of interest, and borrowings under our senior secured money market line of credit are generally at a variable rate of interest;

- increase our vulnerability to general adverse economic and industry conditions; and

- result in an event of default upon a failure to comply with financial covenants contained in our senior secured revolving credit facility or senior secured money market line of credit which, if not cured or waived, could have a material adverse effect on our business, financial condition or results of operations.

A higher level of indebtedness increases the risk that we may default on our obligations. Our ability to pay the principal and interest on our long-term debt, including the notes, and to satisfy our other liabilities will depend upon our future performance and our ability to refinance our debt as it becomes due. Our future operating performance and ability to refinance will be affected by economic and capital markets conditions, oil and natural gas prices, our financial condition, results of operations and prospects and other factors, many of which are beyond our control.

If we are unable to service our indebtedness and fund our operating costs, we will be forced to adopt alternative strategies that may include:

- reducing or delaying capital expenditures;

- seeking additional debt financing or equity capital;

- selling assets; or

- restructuring or refinancing debt.

There can be no assurance that any such strategies could be implemented on satisfactory terms, if at all.

***The borrowing base under our senior secured revolving credit facility may be reduced below the amount of our outstanding borrowings under that facility.***

The amount we are able to borrow under our senior secured revolving credit facility is determined based on the value of our proved oil and natural gas reserves and is based on oil and natural gas price assumptions which vary by individual lender. Our borrowing base is subject to redetermination twice each year in April and October with the option for one additional redetermination each year and additional redeterminations contemporaneously with any issuance of permitted second lien debt and after any issuance of permitted unsecured debt, including the issuance of the notes. Each dollar of permitted senior unsecured debt, including the notes, automatically reduces the borrowing base under our senior secured revolving credit facility by 25 cents. Should there be a deficiency in the amount of our borrowing base in comparison to our outstanding debt under the senior secured revolving credit facility, we would be required to repay any such deficiency in two equal installments, 90 and 180 days after the redetermination. If we were unable to make those repayments, we would be in default under our senior secured revolving credit facility, which could have a material adverse effect on our business and financial condition. See "Description of Other Indebtedness."

***Despite current indebtedness levels, we may still be able to incur substantially more debt. This could further exacerbate the risks described above.***

The terms of the indenture governing the notes permit us to incur substantial additional indebtedness, including significant additional secured debt, under our senior secured revolving credit facility or other facilities. Any secured debt we incur will effectively rank senior to the notes to the extent of the value of the collateral securing that debt. If we incur any additional indebtedness that ranks equally with the notes, the holders of that debt will be entitled to share ratably with you in any

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proceeds distributed in connection with any insolvency, liquidation, reorganization, dissolution or other winding-up of our business. This may have the effect of reducing the amount of proceeds paid to you. If new debt is added to our current debt levels, the related risks that we now face could intensify. See "Description of Notes" and "Description of Other Indebtedness."

***Covenants in agreements governing our debt restrict our ability to engage in certain activities.***

Agreements governing our outstanding debt and the indenture governing the notes restrict our ability to, among other things:

- incur, assume or guarantee additional indebtedness or issue redeemable stock;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt that is junior in right of payment to the notes;
- make loans and other types of investments;
- incur liens;
- restrict dividends, loans or asset transfers from our subsidiaries;
- sell or otherwise dispose of assets, including capital stock of subsidiaries;
- consolidate or merge with or into, or sell substantially all of our assets to, another person;
- make capital expenditures or acquire assets or businesses;
- enter into transactions with affiliates; and
- enter into new lines of business.

In addition, our senior secured revolving credit facility contains certain covenants, which, among other things, require the maintenance of a minimum current ratio and a minimum earnings (before interest, taxes, depreciation, depletion and amortization, non-cash income and expense) to debt ratio. Our ability to borrow under our senior secured revolving credit facility is dependent upon the quantity of proved reserves attributable to our natural gas and crude oil properties and the respective projected commodity prices as determined by the lenders under that credit facility. Our ability to meet these covenants or requirements may be affected by events beyond our control, and we cannot assure you that we will satisfy such covenants and requirements.

***If we default on our obligations to pay our indebtedness we may not be able to make payments on the notes.***

Any default under the agreements governing our indebtedness, including a default under our senior secured revolving credit facility, our senior secured money market line of credit, the $10^1/_4$% senior notes indenture or the $8^1/_4$% senior subordinated notes indenture, that is not waived by the required lenders, and the remedies sought by the holders of such indebtedness, could make us unable to pay 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 senior secured revolving credit facility, our senior secured money market line of credit, the $10^{1}/_{4}$% senior notes indenture, the $8^{1}/_{4}$% senior subordinated notes indenture and the indenture governing the notes offered hereby), we could be in default under the terms of the agreements governing such indebtedness. 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 could elect to terminate their commitments thereunder and cease making further loans and we could be forced into bankruptcy or

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liquidation. Moreover, our senior secured revolving credit facility, our senior secured money market line of credit, the $10^1/_4$% senior notes indenture, the $8^1/_4$% senior subordinated notes indenture and the indenture governing the notes offered hereby each contain cross-default or cross-acceleration provisions that would be triggered by the occurrence of a default or acceleration under other instruments governing our indebtedness. If the payment of our indebtedness is accelerated, there can be no assurance that our assets would be sufficient to repay in full that indebtedness and our other indebtedness that would become due as a result of any acceleration.

If our operating performance declines, we may in the future need to obtain waivers from the required lenders under our senior secured revolving credit facility to avoid being in default. If we breach our covenants under our senior secured 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 senior secured revolving credit facility, the lenders could exercise their rights and the lenders under our senior secured money market line of credit, the $10^1/_4$% senior notes indenture, the $8^1/_4$% senior subordinated notes indenture and the indenture governing the notes offered hereby could exercise their cross-default or cross-acceleration rights, as described above, and we could be forced into bankruptcy or liquidation. See "Description of Other Indebtedness" and "Description of Notes."

***The notes are not secured by our assets.***

The notes will be our general unsecured obligations and will be effectively junior in right of payment to all of our secured indebtedness, if any, to the extent of the value of the assets securing such indebtedness. If we become insolvent or are liquidated, our assets which serve as collateral under our secured indebtedness, if any, would be made available to satisfy our obligations under any secured debt before any payments are made on the notes.

***Variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.***

Our borrowings under our senior secured revolving credit facility (and generally under our senior secured money market line of credit) are, and are expected to continue to be, at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income would decrease. Borrowings under our senior secured revolving credit facility can either be base rate loans or Eurodollar rate loans. On all base rate loans we pay a varying rate per annum equal to the sum of (i) the higher of (a) the prime rate announced from time to time by Wells Fargo Bank, National Association, (b) the sum of the Federal Funds Rate most recently determined by the Federal Reserve Bank of New York plus one-half of one percent and (c) the LIBOR rate for deposits in U.S. dollars as of 11:00 a.m. London time on such day with a term equivalent to one month, plus (ii) a base rate margin of between 2.25% and 3.0% depending on the amount of utilization by us. On all Eurodollar rate loans, we pay a rate per interest period equal to the sum of (x) the quotient of (a) LIBOR rate for deposits in U.S. dollars as of 11:00 a.m. London time two business days prior to the first day of the interest period, divided by (b) one minus the reserve requirement applicable to such interest period, plus (y) a LIBOR margin of between 2.25% and 3.0% per annum depending on the amount of utilization by us. Borrowings under our senior secured money market line of credit bear interest at LIBOR plus a margin of approximately one percent. As of September 30, 2010, a one percent change in interest rates would result in no change to our interest expense, due to our interest rate hedges. We currently have $250 million of our borrowings hedged using interest rate swaps, with $100 million at a fixed rate of approximately 4.7% through June 30, 2012 and $100 million at a fixed rate of approximately 2.0% and $50 million at a fixed rate of approximately 2.3% through July 15, 2012. In the future we may enter into additional interest rate swaps involving the exchange of floating for fixed rate interest payments to reduce interest rate volatility.

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***The notes will be structurally subordinated to all indebtedness and other liabilities of our future subsidiaries that are not guarantors of the notes.***

You will not have any claim as a creditor against any of our future subsidiaries that are not or do not become guarantors of the notes. Indebtedness and other liabilities, including trade payables, whether secured or unsecured, of those subsidiaries will be effectively senior to your claims against those subsidiaries.

In addition, the indenture governing the notes, subject to some limitations, permits our present and future non-guarantor subsidiaries to incur additional indebtedness and does not contain any limitation on the amount of other liabilities, such as trade payables, that these subsidiaries may incur.

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

Upon the occurrence of specific kinds of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of their principal amount, plus accrued and unpaid interest. We may not be able to repurchase the notes upon a change of control because we may not have sufficient funds. In addition, restrictions under our credit facilities may not allow such repurchase. Our failure to repurchase the notes upon a change of control would cause a default under the indenture and a cross-default under the senior secured revolving credit facility, our senior secured money market line of credit, the $10^1/_4$% senior notes indenture and the $8^1/_4$% senior subordinated notes indenture. Our senior secured revolving credit facility also provides that a change of control, as defined in such agreement, will be a default that permits lenders to terminate their commitment to lend and to accelerate the maturity of borrowings thereunder, thereby limiting our ability to raise cash to purchase the notes, and reducing the practical benefit of the offer-to-purchase provisions to the holders of the notes. We may not be able to obtain waivers from the lenders under or refinance our senior secured revolving credit facility. Any of our future debt agreements may contain similar provisions.

In addition, the change of control provisions in the indenture governing the notes may not protect you from certain important corporate events, such as a leveraged recapitalization (which would increase the level of our indebtedness), reorganization, restructuring, merger, sale or other disposition of all or substantially all of our assets or other similar transaction. Such a transaction may not involve a change in voting power or beneficial ownership or, even if it does, may not involve a change that constitutes a "Change of Control" as defined in the indenture that would trigger our obligation to repurchase the notes. If an event occurs that does not constitute a "Change of Control" as defined in the indenture, we will not be required to make an offer to repurchase the notes and you may be required to continue to hold your notes despite the event. See "Description of Other Indebtedness" and "Description of Notes Change of Control."

***You cannot be sure that an active trading market will develop or be maintained for the notes.***

There is no active trading market for the notes of the series offered hereby, and we cannot assure you that an active trading market for the notes will develop or be maintained. We do not intend to list the notes on any national securities exchange. The underwriters are not obligated to make any market for the notes and may cease their market-making activities at any time. In addition, the liquidity of the trading market in the notes, and the market price quoted for the notes, will depend on a number of factors, including:

- the number of holders of notes;
- our operating performance, financial condition or prospects;
- the operating performance, financial condition or prospects of other companies in our industry;
- the overall market for high yield securities;

- the interest of securities dealers in making a market in the notes; and
- prevailing interest rates.

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

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## USE OF PROCEEDS

We estimate that the net proceeds from this offering, after deducting underwriting discounts and commissions and estimated offering expenses, will be approximately $294 million. We intend to use approximately $175 million of the net proceeds from this offering to finance the Wolfberry Acquisitions and to use the remainder to reduce outstanding borrowings under our senior secured revolving credit facility. If the Wolfberry Acquisitions are not consummated or we only acquire a portion of the assets contemplated by the Wolfberry Acquisitions, we intend to use the net proceeds from this offering to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder, if any, for general corporate purposes. Pending the application of the net proceeds to finance the Wolfberry Acquisitions, we intend to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder for general corporate purposes. The Wolfberry Acquisitions are subject to customary closing conditions, and there is no assurance that the acquisitions will be completed or that the anticipated benefits of the acquisitions will be realized. This offering will not be conditioned on the closing of the Wolfberry Acquisitions.

Borrowings under our senior secured revolving credit facility were incurred for general corporate purposes. As of October 22, 2010, the weighted average interest rate with respect to outstanding borrowings under our senior secured revolving credit facility was 7.6%. The indebtedness under our senior secured revolving credit facility matures on July 15, 2012.

Affiliates of certain of the underwriters are lenders under our senior secured revolving credit facility, and accordingly, will receive a substantial portion of the proceeds from this offering in the form of the repayment of borrowings under such facility. See "Conflicts of Interest."

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## CAPITALIZATION

The following table sets forth our unaudited capitalization as of September 30, 2010:

- on an actual basis; and

- on an as adjusted basis, to reflect this offering and the application of net proceeds of approximately $294 million from this offering, after deducting underwriting discounts and commissions and estimated offering expenses, to finance the purchase price of the Wolfberry Acquisitions and to reduce outstanding borrowings under our senior secured revolving credit facility, as if such transactions occurred on September 30, 2010. Pending the application of the net proceeds to finance the Wolfberry Acquisitions, we intend to repay the outstanding borrowings under our senior secured revolving credit facility. This temporary reduction is not reflected in the table below. The Wolfberry Acquisitions are expected to close in December 2010, subject to customary closing conditions, and there is no assurance that the acquisitions will be completed. If the Wolfberry Acquisitions are not consummated or we only acquire a portion of the assets contemplated by the Wolfberry Acquisitions, we intend to use the net proceeds from this offering to repay the outstanding borrowings under our senior secured revolving credit facility and use the remainder, if any, for general corporate purposes. This offering will not be conditioned on the closing of the Wolfberry Acquisitions. See "Use of Proceeds."

The following table is unaudited and should be read together with our financial statements and accompanying notes incorporated by reference into this prospectus.

| | As of September 30, 2010 | |
|---|---|---|
| | Actual | As Adjusted |
| | ($ in thousands) | |
| Cash and cash equivalents | $ 54 | $ 54 |
| **Short-term debt:** | | |
| Senior secured money market line of credit | $ | $ |
| **Long-term debt:** | | |
| Senior secured revolving credit facility(1) | 240,000 | 121,300 |
| 10 1/4% senior notes due 2014(2) | 438,334 | 438,334 |
| 6 3/4% senior notes due 2020 offered hereby | | 300,000 |
| 8 1/4% senior subordinated notes due 2016 | 200,000 | 200,000 |
| Total long-term debt | $ 878,334 | $ 1,059,634 |
| **Total debt** | 878,334 | 1,059,634 |
| Total shareholders' equity | 1,040,255 | 1,040,255 |
| **Total capitalization** | $ 1,918,589 | $ 2,099,889 |

(1) As of October 22, 2010, outstanding borrowings were approximately $260 million (excluding $23 million of outstanding letters of credit), including recent borrowings of $17.5 million used to pay a deposit relating to the Wolfberry Acquisitions.

(2) Net of unamortized discount of approximately $11.7 million.

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**RATIO OF EARNINGS TO FIXED CHARGES**

Our ratio of earnings to combined fixed charges is as follows:

| | Historical | | | | | | Pro Forma(1) | |
|---|---|---|---|---|---|---|---|---|
| | Years Ended December 31, | | | | | Nine Months Ended September 30, | Year Ended December 31, | Nine Months Ended September 30, |
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2009 | 2010 |
| **Ratio of earnings to fixed charges** | 25.8x | 8.7x | 6.3x | 4.4x | 1.7x | 3.1x | 1.4x | 2.6x |

(1) Gives effect to this offering and the application of net proceeds from this offering.

For purposes of this table, "earnings" consists of income from continuing operations before income taxes plus fixed charges and less capitalized interest. "Fixed charges" consists of interest expense and capitalized interest (for both continued and discontinued operations).

The calculation of ratio of earnings to fixed charges is different from the calculation of the Consolidated Coverage Ratio contemplated by the indenture. See "Description of Notes" for more information about the Consolidated Coverage Ratio.

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## DESCRIPTION OF OTHER INDEBTEDNESS

### *Senior Secured Revolving Credit Facility*

Our senior secured revolving credit facility, which matures on July 15, 2012, has a current borrowing base and lender commitments of $938 million. The LIBOR and prime rate margins under the facility are between 2.25% and 3.0% based on the ratio of credit outstanding to the borrowing base, and the annual commitment fee on the unused portion of the credit facility is 0.50%.

Covenants under the facility are as follows:

| Total funded debt to EBITDAX(1) ratio not greater than: | | Senior secured debt to EBITDAX ratio not greater than: | | |
|---|---|---|---|---|
| 2010 | Thereafter | Mar 2011 | Sep 2011 | Thereafter |
| 4.50 | 4.00 | 3.50 | 3.25 | 3.0 |

(1) Net income before interest expense, income tax expense, depreciation and amortization expense, exploration expense and non-cash items of income.

The facility also contains a current ratio covenant which, as defined, must be at least 1.0. As of September 30, 2010, outstanding borrowings under the facility were approximately $240 million (excluding $23 million of outstanding letters of credit), leaving $675 million in borrowing capacity available under the facility. The maximum amount available is subject to semi-annual redeterminations of the borrowing base, based on the value of the our proved oil and gas reserves, in April and October of each year in accordance with the lenders' customary procedures and practices. We and the banks have the bilateral right to one additional redetermination each year.

The issuance of the notes will automatically reduce the borrowing base under our senior secured revolving credit facility by 25 cents per dollar of notes issued, or approximately $75 million. After giving effect to this offering, the application of net proceeds of this offering of approximately $294 million to finance the purchase price of the Wolfberry Acquisitions and to reduce outstanding borrowings under our senior secured revolving credit facility, and the decrease in our borrowing base as a result of this offering, at September 30, 2010, we would have had a borrowing base of approximately $863 million, and approximately $121 million (excluding $23 million of outstanding letters of credit) outstanding under our senior secured revolving credit facility, with additional borrowing availability of approximately $719 million under the facility.

Subject to certain agreed limitations, we granted first priority security interests over substantially all of our assets in favor of the lenders under the senior secured revolving credit facility.

The senior secured revolving credit facility contains customary covenants, subject to certain agreed exceptions, including covenants restricting our ability to, among other things:

- owe or be liable for indebtedness;
- create, assume or permit to exist liens;
- be a party to or be liable on any hedging contract;
- engage in mergers or consolidations;

transfer, lease, exchange, alienate or dispose of our material assets or properties;

declare dividends on or redeem or repurchase our capital stock;

make any acquisitions of, capital contributions to or other investments in any entity or property;

extend credit or make advances or loans;

engage in transactions with affiliates; and

- enter into, create or allow to exist contractual obligations limiting our ability to grant liens on our assets to the lenders under the senior secured revolving credit facility.

We are currently in negotiations to amend and restate our senior secured revolving credit facility. The terms of our amended and restated facility are expected to be substantially similar to the existing facility, except for decreases in our interest rate margins, changes to certain financial covenants and an increase in our borrowing base to $950 million, which will be reduced by $75 million as a result of this offering. The maturity date of the amended and restated facility is expected to be five years from the date of the closing of the facility. The closing of the amended and restated facility will not be contingent on the closing of this offering and there can be no assurance that we will enter into the amended and restated facility on the terms described in this prospectus supplement.

***Senior Secured Money Market Line of Credit***

In 2005, we entered into an uncommitted money market line of credit. Borrowings under the line of credit may be up to $30 million for a maximum of 30 days. The line of credit may be terminated at any time upon written notice by either us or the lender. The line of credit is secured by substantially all of our assets. At October 22, 2010, there were no borrowings outstanding under our senior secured money market line of credit. Interest on amounts borrowed is charged at LIBOR plus a margin of approximately 1.4%.

***$10^{1}/_{4}$% Senior Notes Due 2014***

On May 27, 2009, we issued $325 million aggregate principal amount of our $10^{1}/_{4}$% senior notes due 2014. On August 14, 2009, we issued an additional $125 million aggregate principal amount of our $10^{1}/_{4}$% senior notes. The $10^{1}/_{4}$% senior notes rank equally in right of payment with our senior secured revolving credit facility and our senior secured money market line of credit, but effectively subordinated to such secured indebtedness to the extent of the value of the assets securing such indebtedness, equally in right of payment with all of our other existing and future senior indebtedness, including the notes, and senior in right of payment with our existing and any future subordinated indebtedness, including our $8^{1}/_{4}$% senior subordinated notes due 2016.

The $10^{1}/_{4}$% senior notes are redeemable at our option, in whole or in part, at any time at a price equal to 100% of the principal amount of the $10^{1}/_{4}$% senior notes plus accrued and unpaid interest, if any, plus a "make-whole" premium.

The indenture governing the $10^{1}/_{4}$% senior notes, among other things, limits our ability and the ability of our future restricted subsidiaries to:

- incur, assume or guarantee additional indebtedness;
- issue redeemable stock and preferred stock;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt that is junior in right of payment to the notes;
- make loans and other types of investments;
- incur liens;
- restrict dividends, loans or asset transfers from our subsidiaries;

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

consolidate or merge with or into, or sell substantially all of our assets to, another person;

enter into transactions with affiliates; and

enter into new lines of business.

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These covenants are subject to important exceptions and qualifications, which are described in the indenture governing the $10^{1}/_{4}\%$ senior notes. In addition, if and for as long as the $10^{1}/_{4}\%$ senior notes have an investment grade rating from both Standard & Poor's Ratings Group, Inc. and Moody's Investors Service, Inc., and no default exists under the indenture, we will not be subject to certain of the covenants listed above.

Subject to certain conditions, if a specified change of control event (as defined in the indenture governing the $10^{1}/_{4}\%$ senior notes) occurs, we must make an offer to purchase the $10^{1}/_{4}\%$ senior notes at a purchase price of 101% of the principal amount of the $10^{1}/_{4}\%$ senior notes, plus accrued and unpaid interest. Certain asset dispositions will be triggering events that may require us to use the net proceeds from those asset dispositions to make an offer to purchase the $10^{1}/_{4}\%$ senior notes at 100% of their principal amount, together with accrued and unpaid interest.

***$8^{1}/_{4}\%$ Senior Subordinated Notes Due 2016***

In October 2006, we issued $200 million aggregate principal amount of our $8^{1}/_{4}\%$ senior subordinated notes due 2016. The $8^{1}/_{4}\%$ senior subordinated notes rank junior in right of payment to all of our existing and future senior indebtedness, including our senior secured revolving credit facility, our senior secured money market line of credit, our $10^{1}/_{4}\%$ senior notes and the notes, and equally in right of payment with any future senior subordinated indebtedness.

The $8^{1}/_{4}\%$ senior subordinated notes are redeemable at our option, in whole or in part, at any time on and after November 1, 2011 at the redemption prices described in the indenture governing the $8^{1}/_{4}\%$ senior subordinated notes, together with accrued and unpaid interest, if any, to the date of redemption. At any time prior to November 1, 2011, we may redeem some or all of the $8^{1}/_{4}\%$ senior subordinated notes at a price equal to 100% of the principal amount of the $8^{1}/_{4}\%$ senior subordinated notes plus accrued and unpaid interest, if any, plus a "make-whole" premium.

The indenture governing the $8^{1}/_{4}\%$ senior subordinated notes, among other things, limits our ability and the ability of our future restricted subsidiaries to:

- incur, assume or guarantee additional indebtedness;
- issue redeemable stock and preferred stock;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt that is junior in right of payment to the notes;
- make loans and other types of investments;
- incur liens;
- restrict dividends, loans or asset transfers from our subsidiaries;
- sell or otherwise dispose of assets, including capital stock of subsidiaries;
- consolidate or merge with or into, or sell substantially all of our assets to, another person;
- enter into transactions with affiliates; and

enter into new lines of business.

These covenants are subject to important exceptions and qualifications, which are described in the indenture governing the $8^{1}/_{4}\%$ senior subordinated notes. In addition, if and for as long as the $8^{1}/_{4}\%$ senior subordinated notes have an investment grade rating from both Standard & Poor's Ratings Group, Inc. and Moody's Investors Service, Inc., and no default exists under the indenture, we will not be subject to certain of the covenants listed above.

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Subject to certain conditions, if a specified change of control event (as defined in the indenture governing the 8$^{1}/_{4}$% senior subordinated notes) occurs, we must make an offer to purchase the 8$^{1}/_{4}$% senior subordinated notes at a purchase price of 101% of the principal amount of the 8$^{1}/_{4}$% senior subordinated notes, plus accrued and unpaid interest. Certain asset dispositions will be triggering events that may require us to use the net proceeds from those asset dispositions to make an offer to purchase the 8$^{1}/_{4}$% senior subordinated notes at 100% of their principal amount, together with accrued and unpaid interest.

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## DESCRIPTION OF NOTES

The notes will be a series of senior debt securities described in the accompanying prospectus under the heading "Description of Debt Securities." The Company will issue the notes under an indenture dated June 15, 2006 (the "Base Indenture"), as supplemented by a supplemental indenture establishing the terms of the notes (together, as such may be amended, supplemented or otherwise modified from time to time, the "Indenture") between itself and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The terms of the notes include those expressly set forth in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"). The Indenture is unlimited in aggregate principal amount, although the issuance of notes in this offering will be limited to $300 million. We may from time to time issue additional notes under the Indenture having identical terms and conditions as the notes other than issue date, issue price and the first interest payment date (the "Additional Notes"). We may issue an unlimited principal amount of Additional Notes, subject to compliance with the covenants contained in the Indenture. Any Additional Notes will be part of the same issue as the notes that are currently offering and will vote on all matters with the holders of the notes. We may issue other series of debt securities under the Base Indenture. Currently, our outstanding $10^1/_4$% senior notes due 2014 are issued under the Base Indenture as a separate series of debt securities under the Base Indenture.

This description of notes is intended to be a useful overview of the material provisions of the notes and the Indenture. Since this description of notes is only a summary, you should refer to the Indenture for a complete description of the obligations of the Company and your rights. We have filed a copy of the Base Indenture as an exhibit to the registration statement which includes this Prospectus.

You will find the definitions of capitalized terms used in this description under the heading " Certain Definitions." For purposes of this description of notes, references to "the Company," "we," "our" and "us" refer only to Berry Petroleum Company and not to any future subsidiaries. Certain defined terms used in this description of notes but not defined herein have the meanings assigned to them in the Indenture.

### General

#### *The Notes*

The notes:

- are general unsecured, senior obligations of the Company;
- are limited to an aggregate principal amount of $300 million, subject to our ability to issue Additional Notes;
- will mature on November 1, 2020;
- will be issued in denominations of $2,000 and larger integral multiples of $1,000;
- will be represented by one or more registered notes in global form, but in certain circumstances may be represented by notes in definitive form. See " Book-Entry Delivery and Settlement;"
- will rank equally in right of payment to all existing and future senior indebtedness of the Company, including under our senior secured revolving credit facility, without giving effect to collateral arrangements, and our $10^1/_4$% senior notes; and
- will be senior in right of payment to our outstanding $8^1/_4$% senior subordinated notes due 2016 and any other future Subordinated Obligations.

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***Interest***

Interest on the notes will:

- accrue at the rate of $6^{3}/_{4}$% per annum;
- accrue from the date of original issuance or, if interest has already been paid, from the most recent interest payment date;
- be payable in cash semi-annually in arrears on May 1 and November 1 of each year, commencing on May 1 , 2011;
- be payable to the holders of record on the April 15 and October 15 immediately preceding the related interest payment dates; and
- be computed on the basis of a 360-day year comprised of twelve 30-day months.

**Payments on the Notes; Paying Agent and Registrar**

We will pay principal of, premium, if any, and interest on the notes at the office or agency designated by the Company, except that we may, at our option, pay interest on the notes by check mailed to holders of the notes at their registered address as it appears in the Registrar's books. We have initially designated the corporate trust office of the Trustee in Minneapolis, Minnesota to act as our Paying Agent and Registrar. We may, however, change the Paying Agent or Registrar without prior notice to the holders of the notes, and the Company or any of its Restricted Subsidiaries may act as Paying Agent or Registrar.

We will pay principal of, premium, if any, and interest on, notes in global form registered in the name of or held by The Depository Trust Company or its nominee in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global note.

**Transfer and Exchange**

A holder may transfer or exchange notes in accordance with the Indenture. The Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by the Company, the Trustee or the Registrar for any registration of transfer or exchange of notes, but the Company may require a holder to pay a sum sufficient to cover any transfer tax or other governmental taxes and fees required by law or permitted by the Indenture. The Company is not required to transfer or exchange any note selected for redemption. Also, 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.

**Optional Redemption**

Except as described below, the notes are not redeemable at the option of the Company prior to maturity.

On and after November 1, 2015, we may redeem all or, from time to time, a part of the notes upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount of notes to be redeemed), plus accrued and unpaid interest, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to

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receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on November 1 of the years indicated below:

| **Year** | **Percentage** |
|---|---|
| 2015 | 103.375% |
| 2016 | 102.250% |
| 2017 | 101.125% |
| 2018 and thereafter | 100.000% |

Prior to November 1, 2013, we may, at our option, on any one or more occasions redeem up to 35% of the aggregate principal amount of the notes (including Additional Notes) issued under the Indenture upon not less than 30 nor more than 60 days' notice with the Net Cash Proceeds of one or more Equity Offerings at a redemption price of 106.750% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that

(1) at least 65% of the aggregate principal amount of the notes (including Additional Notes) issued under the Indenture remains outstanding after each such redemption; and

(2) the redemption occurs within 90 days after the closing of the related Equity Offering.

Prior to November 1, 2015, the notes may be redeemed, in whole or in part, at any time at the option of the Company upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the principal amount of the notes redeemed plus the Applicable Premium plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

"*Applicable Premium*" means, with respect to a note on any date of redemption, the greater of (1) 1.0% of the principal amount of such note and (2) the excess of (a) the present value at such time of the redemption price of such notes as of November 1, 2015 plus all remaining scheduled payments of interest on such note to November 1, 2015 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (b) the then-outstanding principal amount of such note.

"*Treasury Rate*" means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to November 1, 2015; *provided, however*, that if the period from the redemption date to November 1, 2015 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to November 1, 2015 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

If any redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the note is registered at the close of business on such record date, and no additional interest will be payable to holders whose notes will be subject to redemption by the Company.

In the case of any partial redemption, selection of the notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the notes are listed or, if the notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no note of

$2,000 in original principal amount or less will be redeemed in part. If any note is to be redeemed in part only, the notice of redemption relating to such note will state the portion of the principal amount thereof to be redeemed. A new note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note.

The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the notes. However, under certain circumstances, the Company may be required to offer to purchase notes as described below under the captions "Change of Control" and "Certain Covenants Limitation on Sales of Assets and Subsidiary Stock."

The Company may acquire notes by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in accordance with applicable securities laws, so long as such acquisition does not otherwise violate the terms of the Indenture.

**Ranking**

The notes will be unsecured senior indebtedness of the Company, will rank equally in right of payment with all existing and future senior indebtedness of the Company, including the Company's $10^1/_4$% senior notes, and will be senior in right of payment to all existing and future subordinated indebtedness of the Company, including the Company's $8^1/_4$% senior subordinated notes. The notes will be effectively subordinated to all secured indebtedness of the Company to the extent of the value of the assets securing such indebtedness.

Although the Company does not currently have any Subsidiaries, the notes would be structurally subordinated to the liabilities of any future Subsidiaries of the Company that do not provide Subsidiary Guarantees. See " Future Subsidiary Guarantors."

Although the Indenture will limit the amount of indebtedness that the Company and any Restricted Subsidiaries may Incur, such indebtedness may be substantial, and a substantial portion of it may be secured and therefore structurally senior to the notes.

**Change of Control**

If a Change of Control occurs, unless the Company has exercised its right to redeem all of the notes as described under " Optional Redemption," each holder will have the right to require the Company to repurchase all or any part (equal to $2,000 or larger integral multiples of $1,000) of such holder's notes at a purchase price in cash equal to 101% of the principal amount of the notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

Within 30 days following any Change of Control, unless the Company has given irrevocable notice that it will exercise its right to redeem all of the notes as described under " Optional Redemption," the Company will mail a notice (the "*Change of Control Offer*") to each holder, with a copy to the Trustee, stating:

(1) that a Change of Control has occurred and that such holder has the right to require the Company to purchase such holder's notes at a purchase price in cash equal to 101% of the principal amount of such notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on a record date to receive interest on the relevant interest payment date) (the "*Change of Control Payment*");

(2) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "*Change of Control Payment Date*"); and

(3) the procedures determined by the Company, consistent with the Indenture, that a holder must follow in order to have its notes repurchased.

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On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all notes or portions of notes (of $2,000 or larger integral multiples of $1,000) properly tendered pursuant to the Change of Control Offer;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes so tendered; and

(3) deliver or cause to be delivered to the Trustee any definitive notes so accepted together with an Officers' Certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Company.

The paying agent will promptly mail (or cause to be transferred by book entry) to each holder of notes so tendered the Change of Control Payment for such notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; *provided* that each such new note will be in a principal amount of $2,000 or larger integral multiples of $1,000.

If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid on the relevant interest payment date to the Person in whose name a note is registered at the close of business on such record date, and no additional interest will be payable to holders who tender pursuant to the Change of Control Offer.

The Change of Control provisions described above will be applicable whether or not any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the holders to require that the Company repurchase or redeem the notes in the event of a takeover, recapitalization, sale of all or substantially all assets or similar transaction.

The Company will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all notes validly tendered and not withdrawn under such Change of Control Offer.

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 in connection with the repurchase of notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described in the Indenture by virtue of the conflict.

The Company's ability to repurchase notes pursuant to a Change of Control Offer may be limited by a number of factors. The occurrence of certain of the events that constitute a Change of Control would constitute a default under our senior secured revolving credit facility. In addition, certain events that may constitute a change of control under the senior secured revolving credit facility and cause a default under that agreement may not constitute a Change of Control under the Indenture. Future Indebtedness of the Company and its Subsidiaries may also contain prohibitions of certain events that would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. Moreover, the exercise by the holders of their right to require the Company to repurchase the notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect of such repurchase on the Company. Finally, the Company's ability to pay cash to the holders upon a repurchase may be prohibited or limited by the terms of the Company's credit facilities and the Company's then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make any required repurchases.

The Change of Control provisions described above may deter certain mergers, tender offers and other takeover attempts involving the Company by increasing the capital required to effectuate such transactions, but may have no impact on certain other proposed takeover transactions. The definition of "Change of Control" includes a disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any Person other than a Permitted Holder. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of "all or substantially all" of the property or assets of a Person. As a result, it may be unclear as to whether a Change of Control has occurred and whether a holder of notes may require the Company to make an offer to repurchase the notes as described above.

Certain provisions under the Indenture relative to the Company's obligation to make an offer to repurchase the notes as a result of a Change of Control may be waived or modified with the written consent of the holders of a majority in principal amount of the notes.

**Certain Covenants**

***Effectiveness of Covenants***

Following the first day:

(a) the notes have an Investment Grade Rating from both of the Ratings Agencies; and

(b) no Default has occurred and is continuing under the Indenture;

the Company and its Restricted Subsidiaries will not be subject to the provisions of the Indenture summarized under the subheadings below:

" Limitation on Indebtedness,"

" Limitation on Restricted Payments,"

" Limitation on Restrictions on Distributions from Restricted Subsidiaries,"

" Limitation on Sales of Assets and Subsidiary Stock,"

" Limitation on Affiliate Transactions,"

" Limitation on the Sale of Capital Stock of Restricted Subsidiaries,"

" Limitation on Lines of Business," and

Clause (3) of " Merger and Consolidation"

(collectively, the "*Suspended Covenants*"). If at any time the notes' credit rating is downgraded from an Investment Grade Rating by any Rating Agency or a Default or Event of Default occurs and is continuing, then the Suspended Covenants will thereafter be reinstated as if such covenants had never been suspended (the "*Reinstatement Date*") and thereafter be applicable pursuant to the terms of the Indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of the Indenture), unless and until the notes subsequently attain an Investment Grade Rating (in which event the Suspended Covenants shall no longer be in effect for such time that the notes maintain an Investment Grade Rating and no Default or Event of Default has occurred and is continuing); *provided, however*, that no Default, Event of Default or breach of any kind shall be deemed to exist under the Indenture, the notes or the Subsidiary Guarantees with respect to the Suspended Covenants based on, and none of the Company or any of its Subsidiaries shall bear any liability for, any actions taken or events occurring after the notes attain an Investment Grade Rating and before any reinstatement of such Suspended Covenants as provided above, or any actions taken at any time pursuant to any contractual obligation arising prior to such reinstatement, regardless of whether

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such actions or events would have been permitted if the applicable Suspended Covenants remained in effect during such period. The period of time between the date of suspension of the covenants and the Reinstatement Date is referred to as the "*Suspension Period*."

On the Reinstatement Date, all Indebtedness Incurred during the Suspension Period will be classified to have been Incurred pursuant to the first paragraph of "Limitation on Indebtedness" or one of the clauses set forth in the second paragraph of "Limitation on Indebtedness" (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reinstatement Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reinstatement Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to the first or second paragraph of "Limitation on Indebtedness," such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (4)(b) of the second paragraph of "Limitation on Indebtedness." Calculations made after the Reinstatement Date of the amount available to be made as Restricted Payments under " Limitation on Restricted Payments" will be made as though the covenants described under " Limitation on Restricted Payments" had been in effect since the Issue Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of " Limitation on Restricted Payments."

During any period when the Suspended Covenants are suspended, the Board of Directors of the Company may not designate any of the Company's Subsidiaries as Unrestricted Subsidiaries pursuant to the Indenture.

***Limitation on Indebtedness***

The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Company and any Subsidiary Guarantors may Incur Indebtedness if on the date thereof:

(1) the Consolidated Coverage Ratio for the Company and its Restricted Subsidiaries is at least 2.50 to 1.00; and

(2) no Default or Event of Default will have occurred or be continuing or would occur as a consequence of Incurring the Indebtedness or transactions relating to such Incurrence.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness:

(1) Indebtedness of the Company or any Subsidiary Guarantor Incurred pursuant to Credit Facilities in an aggregate amount outstanding at any time up to the greater of (a) $1.0 billion and (b) 30% of Adjusted Consolidated Net Tangible Assets determined as of the date of the Incurrence of such Indebtedness;

(2) Guarantees by (a) the Company or Subsidiary Guarantors of Indebtedness Incurred by the Company or a Subsidiary Guarantor in accordance with the provisions of the Indenture; *provided* that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the notes or the Subsidiary Guarantee, as the case may be, and (b) Non-Guarantor Restricted Subsidiaries of Indebtedness Incurred by Non-Guarantor Restricted Subsidiaries in accordance with the provisions of the Indenture;

(3) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any Restricted Subsidiary; *provided, however*,

(a) if the Company is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the notes;

(b) if a Subsidiary Guarantor is the obligor on such Indebtedness and the Company or a Subsidiary Guarantor is not the obligee, such Indebtedness is subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor; and

(c)

(i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(ii) any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary of the Company

shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Subsidiary, as the case may be;

(4) Indebtedness represented by (a) the notes issued on the Issue Date and any Subsidiary Guarantees, (b) any Indebtedness (other than the Indebtedness described in clauses (1), (2), (3), (6), (8), (9) and (10) of this paragraph) outstanding on the Issue Date and (c) any Refinancing Indebtedness Incurred in respect of any Indebtedness described in this clause (4) or clause (5) of this paragraph or Incurred pursuant to the first paragraph of this covenant;

(5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on the date on which such Restricted Subsidiary was acquired by, or merged into, the Company or any Restricted Subsidiary or such Restricted Subsidiary was designated as such (other than Indebtedness Incurred (a) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was otherwise acquired by the Company or (b) otherwise in connection with, or in contemplation of, such acquisition); *provided, however*, that at the time such Restricted Subsidiary is so acquired, merged or designated, the Company would have been able to Incur $1.00 of additional Indebtedness pursuant to the first paragraph of this covenant after giving effect to the Incurrence of such Indebtedness pursuant to this clause (5);

(6) Indebtedness under Hedging Obligations that are Incurred in the ordinary course of business (and not for speculative purposes) (a) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness permitted under the Indenture; (b) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (c) for the purpose of fixing or hedging commodity price risk with respect to any commodities;

(7) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings, purchase money obligations or other payments, in each case Incurred to finance all or any part of the purchase price or cost of construction or improvement of assets or property (other than Capital Stock or other Investments) acquired, constructed or improved by the Company or such Restricted Subsidiary and related financing costs, and Attributable Indebtedness, and all Refinancing Indebtedness Incurred to refund, defease, renew, extend, refinance or replace any Indebtedness Incurred pursuant to this clause (7), in an aggregate principal amount not to exceed $25.0 million at any time outstanding;

(8) Indebtedness Incurred in respect of workers' compensation claims, self-insurance obligations, performance, surety and similar bonds and completion guarantees provided by the Company or a Restricted Subsidiary in the ordinary course of business;

(9) Indebtedness arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, 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 any business or assets of the Company and Refinancing Indebtedness Incurred with the same counterparty in respect thereof, *provided* that the maximum

aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually paid or received by the Company and its Restricted Subsidiaries in connection with such acquisition or disposition;

(10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds or in respect of cash management services provided by a bank or other financial institution, each in the ordinary course of business, *provided, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;

(11) Indebtedness in respect of the financing of insurance premiums with the providers of such insurance or their Affiliates in the ordinary course of business;

(12) for the avoidance of doubt, in-kind obligations relating to net oil or natural gas balancing positions arising in the ordinary course of business; and

(13) in addition to the items referred to in clauses (1) through (12) above, Indebtedness of the Company and its Restricted Subsidiaries in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause (13) and then outstanding, will not exceed $20.0 million at any time outstanding.

The Company will not Incur any Indebtedness under the preceding paragraph if the proceeds thereof are used, directly or indirectly, to refinance any Subordinated Obligations of the Company unless such Indebtedness will be subordinated to the notes to at least the same extent as such Subordinated Obligations. No Subsidiary Guarantor will Incur any Indebtedness under the preceding paragraph if the proceeds thereof are used, directly or indirectly, to refinance any Guarantor Subordinated Obligations of such Subsidiary Guarantor unless such Indebtedness will be subordinated to the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee to at least the same extent as such Guarantor Subordinated Obligations. No Restricted Subsidiary (other than a Subsidiary Guarantor) may Incur any Indebtedness if the proceeds are used to refinance Indebtedness of the Company or a Subsidiary Guarantor.

For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this covenant:

(1) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in the first and second paragraphs of this covenant, the Company, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and may from time to time re-classify such item of Indebtedness in any manner that complies with this covenant and only be required to include the amount and type of such Indebtedness in one of such clauses; *provided* that all Indebtedness outstanding on the Issue Date under the Senior Credit Facility shall be deemed Incurred under clause (1) of the second paragraph of this covenant and not the first paragraph or clause (4) of the second paragraph of this covenant;

(2) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(3) if obligations in respect of letters of credit are Incurred pursuant to a Credit Facility and are being treated as Incurred pursuant to clause (1) of the second paragraph above and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included;

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(4) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(5) 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;

(6) the principal amount of any Indebtedness outstanding in connection with a securitization transaction or series of securitization transactions is the amount of obligations outstanding under the legal documents entered into as part of such transaction that would be characterized as principal if such transaction were structured as a secured lending transaction rather than as a purchase relating to such transaction; and

(7) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock and the incurrence of unrealized losses or charges in respect of Hedging Obligations (including those resulting from the application of FAS 133 and similar provisions), in each case will be deemed not to be Incurrences of Indebtedness for purposes of this covenant. The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (ii) the principal amount or liquidation preference thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

In addition, the Company will not permit any of its Unrestricted Subsidiaries to Incur any Indebtedness or issue any shares of Disqualified Stock, other than Non-Recourse Debt. If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be Incurred as of such date under this " Limitation on Indebtedness" covenant, the Company shall be in Default of this covenant).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company may Incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

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***Limitation on Restricted Payments***

The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(1) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:

(a) dividends or distributions payable in Capital Stock of the Company (other than Disqualified Stock); and

(b) dividends or distributions payable to the Company or another Restricted Subsidiary (and if such Restricted Subsidiary is not a Wholly Owned Subsidiary, to its other holders of common Capital Stock on a pro rata basis);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect parent of the Company held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Capital Stock of the Company (other than Disqualified Stock));

(3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Obligations or Guarantor Subordinated Obligations (other than (a) Indebtedness of the Company owing to and held by any Subsidiary Guarantor or Indebtedness of a Subsidiary Guarantor owing to and held by the Company or any other Subsidiary Guarantor permitted under clause (3) of the second paragraph of the covenant " Limitation on Indebtedness" or (b) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations or Guarantor Subordinated Obligations in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement); or

(4) make any Restricted Investment in any Person;

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) shall be referred to herein as a "*Restricted Payment*"), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

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

(b) the Company is not able to Incur $1.00 of additional Indebtedness pursuant to the first paragraph under the " Limitation on Indebtedness" covenant after giving effect, on a pro forma basis, to such Restricted Payment as if such Restricted Payment and the use of proceeds thereof had been made at the beginning of the applicable four-quarter period; or

(c) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made subsequent to the Start Date (except as excluded by other provisions of this covenant) would exceed the sum of (all such calculations being made as if this covenant had been in effect as of the Start Date and at all times thereafter):

(i) 50% of Consolidated Net Income for the period (treated as one accounting period) from the beginning of the fiscal quarter prior to the quarter in which the Start Date occurred to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which financial statements are in existence (or, in case such Consolidated Net Income is a deficit, minus 100% of such deficit); plus

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(ii) 100% of the aggregate fair market value of Qualified Proceeds received by the Company or any Subsidiary Guarantor from the issue or sale of its Capital Stock (other than Disqualified Stock) or other capital contributions subsequent to the Start Date (other than Qualified Proceeds received from an issuance or sale of such Capital Stock to a Subsidiary of the Company or an employee stock ownership plan, option plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) excluding in any event Qualified Proceeds to the extent used as consideration for Permitted Investments pursuant to clause (17) of the definition of "Permitted Investments"; plus

(iii) the amount by which Indebtedness of the Company or its Restricted Subsidiaries is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Start Date of any Indebtedness of the Company or its Restricted Subsidiaries convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair market value of any other property, distributed by the Company upon such conversion or exchange); plus

(iv) the amount equal to the net reduction in Restricted Investments made by the Company or any of its Restricted Subsidiaries in any Person resulting from:

(A) repurchases or redemptions of such Restricted Investments by such Person, proceeds realized upon the sale of such Restricted Investment to an unaffiliated purchaser, repayments of loans or advances or other transfers of assets (including by way of dividend or distribution) by such Person to the Company or any Restricted Subsidiary (other than for reimbursement of tax payments) and to the extent not otherwise already included releases or reductions of Guarantees; or

(B) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries or the merger or consolidation of an Unrestricted Subsidiary with and into the Company or any of its Restricted Subsidiaries (valued in each case as provided in the definition of "Investment") not to exceed the amount of Investments previously made by the Company or any Restricted Subsidiary in such Unrestricted Subsidiary,

which amount in each case under this clause (iv) was included in the calculation of the amount of Restricted Payments; *provided, however*, that no amount will be included under this clause (iv) to the extent it is already included in Consolidated Net Income.

The provisions of the preceding paragraph will not prohibit:

(1) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock or Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Subsidiary Guarantor made by conversion into or exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary or an employee stock ownership plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from or Guaranteed by the Company or any Restricted Subsidiary unless such loans have been repaid with cash on or prior to the date of determination); *provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments; *provided, further*, that the Qualified Proceeds from such sale of Capital Stock (to the extent so used) will be excluded from clause (c)(ii) of the preceding paragraph;

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(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company or Guarantor Subordinated Obligations of any Subsidiary Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale or Incurrence of, Subordinated Obligations of the Company or any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Guarantor Subordinated Obligations made by exchange for or out of the proceeds of the substantially concurrent sale or Incurrence of Guarantor Subordinated Obligations that, in each case, is permitted to be Incurred pursuant to the covenant described under " Limitation on Indebtedness" and that, if Incurred under the second paragraph thereof, in each case constitutes Refinancing Indebtedness; *provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Disqualified Stock of the Company or such Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to the covenant described under " Limitation on Indebtedness" and that in each case constitutes Refinancing Indebtedness*provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(4) dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this provision;

*provided, however*, that from and after the date of payment thereof the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments;

(5) so long as no Default or Event of Default has occurred and is continuing,

(a) the repurchase, redemption or other acquisition or retirement for value of Capital Stock of the Company or any direct or indirect parent of the Company held by any existing or former employees or directors of the Company or any Subsidiary of the Company or their assigns, estates or heirs, in each case in connection with the repurchase provisions under employee stock option or stock purchase agreements or other compensation-related agreements; *provided* that such Capital Stock was received for services related to, or for the benefit of, the Company and its Subsidiaries; and *provided further* that such repurchases, redemptions, acquisitions and retirements pursuant to this clause will not exceed $2.0 million in the aggregate during any calendar year and $5.0 million in the aggregate for all such redemptions and repurchases, plus in each case, to the extent not previously applied, the amount of any capital contributions to the Company as a result of sales of Capital Stock of the Company or any direct or indirect parent of the Company to such Persons (*provided, however*, that the Qualified Proceeds from such sale of Capital Stock (to the extent so used) will be excluded from clause (c)(ii) of the preceding paragraph), plus the amount of any "key man" insurance proceeds received by the Company or any Restricted Subsidiary to the extent not previously applied; and

(b) loans or advances to, and Guarantees of obligations of, employees, officers or directors of the Company or any Subsidiary of the Company the proceeds of which are used to purchase Capital Stock of the Company or any direct or indirect parent of the Company, in an aggregate amount not in excess of $2.0 million with respect to all loans or advances made since the Start Date (without giving effect to the forgiveness of any such loan); *provided, however*, that the Company and its Subsidiaries shall comply in all material respects with the provisions of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith relating to the provision of any such loans and advances as if the Company had filed a registration statement with the SEC;

*provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(6) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company issued in accordance with the terms of the Indenture to the extent such dividends are included in the definition of "Consolidated Interest Expense;" *provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(7) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise price thereof; *provided, however*, that the amount of such Restricted Payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(8) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Obligation or Guarantor Subordinated Obligation (a) at a purchase price not greater than 101% of the principal amount of such Subordinated Obligation or Guarantor Subordinated Obligation in the event of a Change of Control in accordance with provisions similar to the " Change of Control" covenant or (b) at a purchase price not greater than 100% of the principal amount thereof in accordance with provisions similar to the " Limitation on Sales of Assets and Subsidiary Stock" covenant*provided* that, prior to or simultaneously with such purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company (or a third party, in the case of a Change of Control Offer) has made the Change of Control Offer or Asset Disposition Offer, as applicable, as provided in such covenant with respect to the notes and has completed the repurchase of all notes validly tendered for payment in connection with such Change of Control Offer or Asset Disposition Offer; *provided, however*, that the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments;

(9) (a) so long as no Event of Default described under clauses (1) or (2) thereof has occurred and is continuing, the declaration of dividends to holders of Common Stock of the Company of up to $10.0 million in the aggregate for all such dividends and the subsequent payment of such dividends and (b) so long as no Default or Event of Default has occurred and is continuing, the declaration of dividends to holders of Common Stock of the Company of up to $0.36 per share per calendar year (but in no event in excess of $20.0 million in the aggregate during any calendar year pursuant to this clause (9)) and the subsequent payment of such dividends; *provided, however*, that in each case the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments;

(10) so long as no Default or Event of Default has occurred and is continuing, repurchases of Common Stock pursuant to a previously announced share repurchase program for up to an aggregate purchase price after the Issue Date of $25.0 million; *provided, however*, that the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments;

(11) for avoidance of doubt, payments pursuant to any customary tax sharing or tax indemnification arrangement; *provided, however*, that the amount of such payments will be excluded in subsequent calculations of the amount of Restricted Payments;

(12) the payment of cash in lieu of issuance of fractional shares of Capital Stock in connection with any transaction otherwise permitted under this covenant; *provided, however*, that the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments;

(13) payments to dissenting stockholders not to exceed $5.0 million (A) pursuant to applicable law or (B) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by the Indenture; *provided, however*, that such payments will be included in subsequent calculations of the amount of Restricted Payments; and

(14) so long as no Default or Event of Default has occurred and is continuing, Restricted Payments in an aggregate amount not to exceed $30.0 million; *provided, however*, that the amount of such Restricted Payments will be included in subsequent calculations of the amount of Restricted Payments.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount and any non-cash Restricted Payment (i) of less than $5.0 million shall be determined conclusively by an executive officer of the Company acting in good faith whose certification with respect thereto shall be delivered to the Trustee or (ii) of $5.0 million or more shall be determined conclusively by the Board of Directors of the Company acting in good faith whose resolution with respect thereto shall be delivered to the Trustee, such determination to be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if such fair market value is estimated in good faith by the Board of Directors of the Company to exceed $25.0 million. Not later than the date of making any Restricted Payment, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by the covenant " Restricted Payments" were computed, together with a copy of any fairness opinion or appraisal required by the Indenture.

***Limitation on Liens***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of Subsidiaries), whether owned on the Issue Date or acquired after that date, which Lien is securing any Indebtedness, unless contemporaneously with the Incurrence of such Liens effective provision is made to secure the Indebtedness due under the Indenture and the notes and, in respect of Liens on any Restricted Subsidiary's property or assets, any Subsidiary Guarantee of such Restricted Subsidiary, with Liens on such property or assets (1) in the case of unsubordinated Indebtedness, that rank equally and ratably with, or senior in priority to, the Liens securing such other Indebtedness, and (2) in the case of Subordinated Obligations or Guarantor Subordinated Obligations, that rank senior in priority to the Liens securing such other Indebtedness, in each case for so long as such other Indebtedness is so secured.

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

The Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) make any loans or advances to the Company or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Company or any Restricted

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Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

(3) transfer any of its property or assets to the Company or any Restricted Subsidiary (it being understood that such transfers shall not include any type of transfer described in clause (1) or (2) above).

The preceding provisions will not prohibit:

(a) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, including, without limitation, the Indenture, the notes and the Senior Credit Facility (and related documentation) in effect on such date;

(b) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to any Capital Stock or agreement (including an agreement relating to any Capital Stock or Indebtedness) Incurred by a Restricted Subsidiary on or before the date on which such Restricted Subsidiary became a Restricted Subsidiary or was merged with or into or consolidated with or was acquired by the Company or a Restricted Subsidiary (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company or in contemplation of the transaction) and outstanding on such date provided, that any such encumbrance or restriction shall not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property so acquired and all improvements, additions and accessions thereto and products and proceeds thereof, and that, in the case of Indebtedness, was permitted to be Incurred pursuant to the Indenture;

(c) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement effecting a refunding, replacement or refinancing, in whole or in part, of Indebtedness Incurred pursuant to an agreement referred to in clause (a) or (b) of this paragraph or this clause (c) or contained in any amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing of an agreement referred to in clause (a) or (b) of this paragraph or this clause (c); *provided, however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement are not materially less favorable, taken as a whole, to the holders of the notes than the encumbrances and restrictions contained in such agreements referred to in clauses (a) or (b) of this paragraph on the Issue Date or the date such Restricted Subsidiary became a Restricted Subsidiary or was merged into a Restricted Subsidiary, whichever is applicable;

(d) in the case of clause (3) of the first paragraph of this covenant, encumbrances and restrictions in agreements governing Liens permitted to be incurred under the provisions of the covenant described under " Limitation on Liens;"

(e) (i) purchase money obligations for property acquired in the ordinary course of business and (ii) Capitalized Lease Obligations permitted under the Indenture, in each case, that impose encumbrances or restrictions of the nature described in clause (3) of the first paragraph of this covenant on the property so acquired;

(f) any restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition of the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

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(g) any customary encumbrances or restrictions imposed pursuant to any agreement constituting a Permitted Business Investment;

(h) restrictions on cash or other deposits and net worth provisions in leases and other agreements entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(i) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order;

(j) encumbrances or restrictions contained in Credit Facilities, indentures, other debt agreements and Hedging Obligations Incurred by the Company or any Restricted Subsidiary or Preferred Stock issued by Restricted Subsidiaries subsequent to the Issue Date and permitted pursuant to the covenant described under " Limitations on Indebtedness;" *provided* that such encumbrances and restrictions contained in any such agreement or instrument will not materially affect the Company's ability to make anticipated principal or interest payments on the notes (as determined by the Board of Directors of the Company);

(k) customary supermajority voting provisions and other similar provisions contained in corporate charters, bylaws, stockholders' agreements, limited liability company agreements, partnership agreements, joint venture agreements and other similar agreements;

(l) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary or the ability of the Company or such Restricted Subsidiary to realize such value, or to make any distributions relating to such property or assets in each case in any material respect; and

(m) restrictions on the transfer of property or assets required by any regulatory authority having jurisdiction over the Company or any Restricted Subsidiary or any of their businesses.

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

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors (including as to the value of all non-cash consideration), of the shares and assets subject to such Asset Disposition;

(2) at least 75% of the consideration from such Asset Disposition received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company or such Restricted Subsidiary, as the case may be:

(a) to the extent the Company or any Restricted Subsidiary, as the case may be, elects or is required to do so, to prepay, repay, redeem, defease or purchase Indebtedness of the Company or a Restricted Subsidiary (other than Capital Stock, Disqualified Stock, Subordinated Obligations, Guarantor Subordinated Obligations or Indebtedness owed to the Company or an Affiliate of the Company) within 330 days from the later of the date of such Asset Disposition or the receipt of such Net Available Cash; *provided, however*, that, in connection with any prepayment, repayment, redemption, defeasance or purchase of

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Indebtedness pursuant to this clause (a), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid, redeemed, defeased or purchased; and

(b) to the extent the Company or such Restricted Subsidiary elects, to invest in Additional Assets within 330 days from the later of the date of such Asset Disposition or the receipt of such Net Available Cash;

*provided* that pending the final application of any such Net Available Cash in accordance with clause (a) or clause (b) above, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by the Indenture.

Any Net Available Cash from Asset Dispositions that is not applied or invested as provided in the preceding paragraph will be deemed to constitute "Excess Proceeds." On the 331st day after an Asset Disposition, if the aggregate amount of Excess Proceeds exceeds $20.0 million, the Company will be required to (and may, in satisfaction of such requirement, at any time prior to such day) make an offer (an "*Asset Disposition Offer*") to all holders of notes and to the extent required by the terms of other Pari Passu Indebtedness, to all holders of other Pari Passu Indebtedness outstanding with similar provisions requiring the Company to make an offer to purchase such Pari Passu Indebtedness with the proceeds from any Asset Disposition ("*Pari Passu Notes*"), to purchase the maximum principal amount of notes and any such Pari Passu Notes to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount of the notes and Pari Passu Notes plus accrued and unpaid interest to the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing the Pari Passu Notes, as applicable, in each case in denominations of $2,000 and larger integral multiples of $1,000. To the extent that the aggregate amount of notes and Pari Passu Notes so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of notes surrendered by holders thereof and other Pari Passu Notes surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Trustee shall select the notes and Pari Passu Notes to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered notes and Pari Passu Notes. Upon completion of such Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

The Asset Disposition Offer will remain open for a period of 20 Business Days following its commencement, except to the extent that a longer period is required by applicable law (the "*Asset Disposition Offer Period*"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "*Asset Disposition Purchase Date*"), the Company will purchase the principal amount of notes and Pari Passu Notes required to be purchased pursuant to this covenant (the "*Asset Disposition Offer Amount*") or, if less than the Asset Disposition Offer Amount has been so validly tendered, all notes and Pari Passu Notes validly tendered in response to the Asset Disposition Offer.

If the Asset Disposition Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a note is registered at the close of business on such record date, and no additional interest will be payable to holders who tender notes pursuant to the Asset Disposition Offer.

For the purposes of clause (2) of the first paragraph of this covenant only, the following will be deemed to be cash:

(1) the release of the Company and its Restricted Subsidiaries from all liability on Indebtedness (other than Subordinated Obligations or Disqualified Stock) of the Company or

Indebtedness of a Restricted Subsidiary (other than Guarantor Subordinated Obligations or Disqualified Stock of any Subsidiary Guarantor) in connection with such Asset Disposition, whether by assumption and release, satisfaction and discharge, or otherwise (in which case the Company will, without further action, be deemed to have applied such deemed cash to Indebtedness in accordance with clause (3)(a) above); and

(2) securities, notes or other obligations received by the Company or any Restricted Subsidiary from the transferee that are promptly converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents.

The Company will not, and will not permit any Restricted Subsidiary to, engage in any Asset Swaps, unless:

(1) at the time of entering into such Asset Swap and immediately after giving effect to such Asset Swap, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) in the event such Asset Swap involves the transfer by the Company or any Restricted Subsidiary of assets having an aggregate fair market value, as determined by the Board of Directors of the Company in good faith, in excess of $10.0 million, the terms of such Asset Swap have been approved by a majority of the members of the Board of Directors of the Company; and

(3) in the event such Asset Swap involves the transfer by the Company or any Restricted Subsidiary of assets having an aggregate fair market value, as determined by the Board of Directors of the Company in good faith, in excess of $25.0 million, the terms of such Asset Swap have been approved by a majority of the independent members of the Board of Directors of the Company.

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 in connection with the repurchase of notes pursuant to the Indenture. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Indenture by virtue of any conflict.

***Limitation on Affiliate Transactions***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (an "*Affiliate Transaction*") unless:

(1) the terms of such Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate;

(2) in the event such Affiliate Transaction involves an aggregate consideration in excess of $10.0 million, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company and by a majority of the members of such Board having no personal stake in such transaction, if any (and such majority or majorities, as the case may be, determines that such Affiliate Transaction satisfies the criteria in clause (1) above); and

(3) in the event such Affiliate Transaction involves an aggregate consideration in excess of $25.0 million, the Company has received a written opinion from an independent investment banking, accounting or appraisal firm of nationally recognized standing that such Affiliate Transaction is fair to the Company or not materially less favorable than those that might

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reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate.

The preceding paragraph will not apply to:

(1) any Restricted Payment (other than a Restricted Investment) and Permitted Investments (other than pursuant to clauses (1), (2), (11), (13) and (14)) permitted to be made pursuant to the Indenture;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements and other compensation arrangements, options to purchase Capital Stock of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans and/or indemnity provided on behalf of officers, directors and employees approved by the Board of Directors of the Company;

(3) the payment of customary fees paid to, and indemnity provided on behalf of, directors of the Company or any Restricted Subsidiary;

(4) loans or advances to employees, officers or directors of the Company or any Restricted Subsidiary in the ordinary course of business in an aggregate amount not in excess of $2.0 million with respect to all loans or advances made since the Issue Date (without giving effect to the forgiveness of any such loan); *provided, however*, that the Company and its Subsidiaries shall comply in all material respects with the provisions of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith relating to the provision of any such loans and advances as if the Company had filed a registration statement with the SEC;

(5) any transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries and Guarantees issued by the Company or a Restricted Subsidiary for the benefit of the Company or a Restricted Subsidiary, as the case may be, in accordance with " Limitations on Indebtedness;"

(6) the existence of, and the performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any agreement to which the Company or any of its Restricted Subsidiaries is a party as of or on the Issue Date and identified on a schedule to the Indenture on the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; *provided, however*, that any future amendment, modification, supplement, extension or renewal entered into after the Issue Date will be permitted to the extent that its terms, taken as a whole, are not materially more disadvantageous to the holders of the notes than the terms of the agreements in effect on the Issue Date;

(7) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, including Eagle Creek Mining & Drilling, Inc., in each case in the ordinary course of the business of the Company and its Restricted Subsidiaries and otherwise in compliance with the terms of the Indenture; *provided* that in the reasonable determination of the members of the Board of Directors or senior management of the Company, such transactions are on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(8) any issuance or sale of Capital Stock (other than Disqualified Stock) to Affiliates of the Company and the granting of registration and other customary rights in connection therewith.

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***Limitation on Sale of Capital Stock of Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary to, transfer, convey, sell, lease or otherwise dispose of any Voting Stock of any Restricted Subsidiary or, with respect to a Restricted Subsidiary, to issue any of the Voting Stock of a Restricted Subsidiary (other than, if necessary, shares of its Voting Stock constituting Foreign Required Minority Shares) to any Person except:

(1) to the Company or a Wholly Owned Subsidiary;

(2) the granting of Liens permitted under " Limitation on Liens"; and

(3) in compliance with the covenant described under " Limitation on Sales of Assets and Subsidiary Stock" and immediately after giving effect to such issuance or sale, such Restricted Subsidiary would continue to be a Restricted Subsidiary.

Notwithstanding the preceding paragraph, the Company and its Restricted Subsidiaries may sell all the Voting Stock of a Restricted Subsidiary as long as the Company or its Restricted Subsidiaries comply with the terms of the covenant described under " Limitation on Sales of Assets and Subsidiary Stock."

***SEC Reports***

Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, to the extent permitted by the Exchange Act, the Company will file with the SEC, and make available to the Trustee and the registered holders of the notes, the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that are specified in Sections 13 and 15(d) of the Exchange Act with respect to U.S. issuers, in each case not later than 60 days after the final due dates therefor specified therein or in the relevant forms (after giving effect to any cure period specified therein). For the avoidance of doubt, no Default shall be deemed to occur under the Indenture until the expiration of such 60-day period.

In the event that the Company is not permitted to file such reports, documents and information with the SEC pursuant to the Exchange Act, the Company will nevertheless make available such Exchange Act information to the Trustee and the holders of the notes as if the Company were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, in each case not later than 60 days after the final due dates therefor specified therein or in the relevant forms (after giving effect to any cure period specified therein). For the avoidance of doubt, no Default shall be deemed to occur under the Indenture until the expiration of such 60-day period.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes to the financial statements and in Management's Discussion and Analysis of Results of Operations and Financial Condition, of the financial condition and results of operations of the Company and its Restricted Subsidiaries.

In the event that any direct or indirect parent company of the Company becomes a guarantor of the notes, the Company may satisfy its obligations under this covenant by furnishing financial information relating to such parent; *provided* that (a) such financial statements are accompanied by consolidating financial information for such parent, the Company, the Subsidiary Guarantors and the Subsidiaries of the Company that are not Subsidiary Guarantors in the manner prescribed by the SEC and (b) such parent is not engaged in any business in any material respect other than incidental to its ownership, directly or indirectly, of the Capital Stock of the Company.

A Default under this covenant is subject to a 180-day cure period. During such cure period, the interest rate on the notes shall increase by 0.50% per annum.

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***Merger and Consolidation***

The Company will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "*Successor Company*") will be a corporation organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and the Successor Company (if not the Company) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the notes and the Indenture;

(2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, the Successor Company would be able to Incur at least $1.00 of additional Indebtedness pursuant to the first paragraph of the " Limitation on Indebtedness" covenant or the Consolidated Coverage Ratio for the Successor Company and its Restricted Subsidiaries would be greater than such ratio for the Company and its Restricted Subsidiaries immediately prior to such transaction;

(4) each Subsidiary Guarantor (unless it is the other party to the transactions above, in which case clause (1) shall apply or unless the Company is the Successor Company and such Subsidiary Guarantor was a Subsidiary Guarantor immediately prior to such transaction) shall have by supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations in respect of the Indenture and the notes; and

(5) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, together stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture.

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

The predecessor Company will be released from its obligations under the Indenture and the Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture, but, in the case of a lease of all or substantially all its assets, the predecessor Company will not be released from the obligation to pay the principal of and interest on the notes.

Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person.

Notwithstanding the preceding clause (3), (a) any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company or any Subsidiary Guarantor and (b) the Company may merge with an Affiliate incorporated solely for the purpose of reincorporating the Company in another jurisdiction to realize tax benefits; *provided* that, in the case of a Restricted Subsidiary that merges into the Company or any Subsidiary Guarantor, the Company will not be required to comply with the preceding clause (5).

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In addition, the Company will not permit any Subsidiary Guarantor to consolidate with, merge with or into any Person (other than the Company or another Subsidiary Guarantor) and will not permit the conveyance, transfer or lease of all or substantially all of the assets of any Subsidiary Guarantor (other than to the Company or another Subsidiary Guarantor) unless:

(1) (a) if such entity remains a Subsidiary Guarantor, the resulting, surviving or transferee Person will be a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia and shall have by supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations in respect of the Indenture and the notes; (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the resulting, surviving or transferee Person or any Restricted Subsidiary as a result of such transaction as having been Incurred by such Person or such Restricted Subsidiary at the time of such transaction), no Default of Event of Default shall have occurred and be continuing; and (c) the Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, together stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture; and

(2) the transaction is made in compliance with the covenant described under " Limitation on Sales of Assets and Subsidiary Stock" (it being understood that only such portion of the Net Available Cash as is required to be applied on the date of such transaction in accordance with the terms of the Indenture needs to be applied in accordance therewith at such time), " Limitation on Sale of Capital Stock of Restricted Subsidiaries" and this " Merger and Consolidation" covenant.

***Future Subsidiary Guarantors***

After the Issue Date, the Company will cause each Restricted Subsidiary (other than a Foreign Subsidiary) that Guarantees any Indebtedness of the Company or any Subsidiary Guarantor to execute and deliver to the Trustee a Subsidiary Guarantee pursuant to which such Subsidiary Guarantor will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any and interest on the notes on a senior basis.

The obligations of each Subsidiary Guarantor will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor (including, without limitation, any guarantees under the Senior Credit Facility) and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

In the event a Subsidiary Guarantor is sold or disposed of (whether by merger, consolidation, the sale of its Capital Stock or the sale of all or substantially all of its assets (other than by lease) and whether or not the Subsidiary Guarantor is the surviving corporation in such transaction) to a Person which is not the Company or a Restricted Subsidiary, such Subsidiary Guarantor will be released from its obligations under its Subsidiary Guarantee if:

(1) the sale or other disposition is in compliance with the Indenture, including the covenants " Limitation on Sales of Assets and Subsidiary Stock" (it being understood that only such portion of the Net Available Cash as is required to be applied on or before the date of such release in accordance with the terms of the Indenture needs to be applied in accordance therewith at such time), " Limitation on Sales of Capital Stock of Restricted Subsidiaries" and " Merger and Consolidation;" and

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(2) all the obligations of such Subsidiary Guarantor under all Indebtedness of the Company and all Subsidiary Guarantors terminate upon consummation of such transaction.

In addition, each Subsidiary Guarantor will be released from its obligations under the Indenture and its Subsidiary Guarantee if the Company designates such Subsidiary as an Unrestricted Subsidiary and such designation complies with the other applicable provisions of the Indenture or in connection with any legal defeasance of the notes or upon satisfaction and discharge of the Indenture, each in accordance with the provisions of the Indenture.

***Limitation on Lines of Business***

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

***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, fees or otherwise, to any holder of any 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 the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

**Events of Default**

Each of the following is an Event of Default:

(1) default in any payment of interest on any note when due, continued for 30 days;

(2) default in the payment of principal of or premium, if any, on any note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(3) failure by the Company or any Subsidiary Guarantor to comply with its obligations under " Certain Covenants Merger and Consolidation;"

(4) failure by the Company to comply for 30 days after notice as provided below with any of its obligations under the covenants described under " Change of Control" above or under the covenants described under " Certain Covenants" above (in each case, other than (a) a failure to purchase notes which constitutes an Event of Default under clause (2) above, (b) a failure to comply with " Certain Covenants Merger and Consolidation" which constitutes an Event of Default under clause (3) above or (c) a failure to comply with " Certain Covenants SEC Reports" which constitutes an Event of Default under clause (5)(a) below);

(5) (a) failure by the Company to comply with " Certain Covenants SEC Reports" for 180 days; or (b) failure by the Company to comply for 60 days after notice as provided below with its other agreements contained in the Indenture;

(6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a

Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness ("*payment default*"); or

(b) results in the acceleration of such Indebtedness prior to its maturity (the "*cross acceleration provision*");

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $25.0 million or more;

(7) certain events of bankruptcy, insolvency or reorganization of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the "*bankruptcy provisions*");

(8) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $25.0 million (net of any amounts covered by insurance with a reputable and creditworthy insurance company that has not disclaimed liability therefor in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "*judgment default provision*"); or

(9) (a) any Subsidiary Guarantee of a Significant Subsidiary or group of Restricted Subsidiaries that taken together as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries would constitute a Significant Subsidiary (i) ceases to be in full force and effect (except as contemplated by the terms of the Indenture) for 5 Business Days after notice as provided below or (ii) is declared null and void in a judicial proceeding or (b) any Subsidiary Guarantor that is a Significant Subsidiary or group of Subsidiary Guarantors that taken together as of the latest audited consolidated financial statements of the Company and its Restricted Subsidiaries would constitute a Significant Subsidiary denies or disaffirms its obligations under the Indenture or its Subsidiary Guarantee.

However, a default under clauses (4), (5)(b) and (9)(a)(i) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding notes notify the Company of the default and the Company does not cure such default within the time specified in clauses (4), (5)(b) and (9)(a)(i) of this paragraph after receipt of such notice.

During the continuance of a Default under clause (5)(a) above, the interest rate on the notes shall increase by 0.50% per annum.

If an Event of Default (other than an Event of Default described in clause (7) above) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the notes because an Event of Default described in clause (6) under " Events of Default" has occurred and is continuing, the declaration of acceleration of the notes shall be automatically annulled if the default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the notes

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would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the notes that became due solely because of the acceleration of the notes, have been cured or waived. If an Event of Default described in clause (7) above occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpa