

EQUINIX INC  
 Form 424B2  
 November 18, 2014  
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Filed Pursuant to Rule 424(b)(2)  
 Registration No. 333-200294

### CALCULATION OF REGISTRATION FEE

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Maximum Offering Price Per Unit</b>	<b>Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee<sup>(1)</sup></b>
5.375 % Senior Notes due 2022	\$750,000,000	100%	\$750,000,000	\$87,150.00
5.750 % Senior Notes due 2025	\$500,000,000	100%	\$500,000,000	\$58,100.00

- (1) Calculated in accordance with Rule 457(r) under the Securities Act of 1933, as amended (the Securities Act ). This Calculation of Registration Fee table shall be deemed to update the Calculation of Registration Fee table in Registration Statement No. 333-200294

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**Prospectus Supplement**

**Equinix, Inc.**

***\$750,000,000***

***5.375% Senior Notes due 2022***

***Issue Price 100%***

***\$500,000,000***

***5.750% Senior Notes due 2025***

***Issue Price 100%***

***Interest payable January 1 and July 1.***

We are offering \$750,000,000 aggregate principal amount of 5.375% Senior Notes due 2022 (the 2022 notes ) and \$500,000,000 aggregate principal amount of 5.750% Senior Notes due 2025 (the 2025 notes and together with the 2022 notes, the notes ). The 2022 notes will mature on January 1, 2022 and the 2025 notes will mature on January 1, 2025. Interest will accrue on the notes from November 20, 2014 and the first interest payment date will be July 1, 2015. We may redeem all or a part of the 2022 notes on or after January 1, 2018 and the 2025 notes on or after January 1, 2020 on any one or more occasions, at the redemption prices set forth under Description of Notes Redemption, plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date. In addition, at any time prior to January 1, 2018 we may on any one or more occasions redeem up to 35% of the aggregate principal amount of each of the 2022 notes and the 2025 notes outstanding under the respective supplemental indenture with the net cash proceeds of one or more equity offerings. At any time prior to January 1, 2018 with respect to the 2022 notes and January 1, 2020 with respect to the 2025 notes, we may also redeem all or a part of the notes at a redemption price equal to 100% of the principal amount of notes redeemed plus a make-whole premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption. We intend to use the net proceeds of the offering to redeem our outstanding 7.00% senior notes due 2021 pursuant to the optional redemption provisions of such notes and for general corporate purposes, which may include capital expenditures, distributions to our stockholders in connection with our proposed conversion to a real estate investment trust, working capital and potential acquisitions and strategic transactions.

The notes will be our general senior obligations and will rank equal in right of payment to all of our existing and future senior indebtedness. Upon a change in control, we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

The notes will not be guaranteed by any of our subsidiaries. The obligations to make payments of principal and interest on the notes are solely our obligations. Therefore, the notes will be structurally subordinated to any obligation of our subsidiaries that are not guarantors.

We have not applied, and do not intend to apply, for the listing of the notes on any exchange or automated dealer quotation system. Currently, there is no public market for the notes.

**Investing in the notes involves risks. See Risk Factors beginning on page S-13 of this prospectus supplement.**

	Per 2022 note	2022 notes total	Per 2025 note	2025 notes total
Public Offering Price(1)	100.00%	\$ 750,000,000	100.00%	\$ 500,000,000
Underwriting Discounts and Commissions	1.20%	\$ 9,000,000	1.20%	\$ 6,000,000
Proceeds to Equinix, Inc. (before expenses)(1)	98.80%	\$ 741,000,000	98.80%	\$ 494,000,000

(1) Plus accrued interest, if any, from November 20, 2014.

We expect to deliver the notes to purchasers on or about November 20, 2014, only in book-entry form through the facilities of The Depository Trust Company.

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

*Joint Book-Running Managers*

**J.P. Morgan**  
*Co-Managers*

**BofA Merrill Lynch**

**Barclays**

**Citigroup**

**Evercore ISI**  
**Deutsche Bank Securities**  
November 17, 2014

**Goldman, Sachs & Co.**

**RBC Capital Markets**  
**TD Securities**

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We and the underwriters have not authorized anyone to provide any information other than that contained or incorporated by reference in this prospectus supplement or the accompanying prospectus or any relevant free writing prospectus prepared by or on behalf of us or to which we have referred you. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not, and the underwriters are not, making an offer or sale of notes in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus is accurate only as of the date appearing on the front cover of this prospectus supplement or the date of the accompanying prospectus or the applicable incorporated document. Our business, financial condition, results of operations and prospects may have changed since that date.

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## **About the prospectus supplement**

This document consists of two parts. The first part is this prospectus supplement, which describes the specific terms of this offering of notes and also adds to and updates the information contained or incorporated by reference in the accompanying prospectus. The second part is the prospectus, which describes more general information regarding our securities, some of which does not apply to this offering. You should read both this prospectus supplement and the accompanying prospectus, together with additional information described under the heading **Incorporation by reference** and **Where you can find more information** in this prospectus supplement and the accompanying prospectus.

If the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus or the information contained in any document incorporated by reference therein, the information contained in the most recently dated document shall control.

This prospectus supplement and the accompanying prospectus incorporate important business and financial information about us and our subsidiaries that is not included in or delivered with this prospectus supplement or the accompanying prospectus. Information incorporated by reference is available without charge to prospective investors upon written request to us at One Lagoon Drive, Fourth Floor, Redwood City, CA 94065, Attention: Investor Relations, or by telephone at (650) 598-6000.

We have not taken any action to permit an offering of the notes outside the United States or to permit the possession or distribution of this prospectus supplement or the accompanying prospectus outside the United States. Persons outside the United States who come into possession of this prospectus supplement or the accompanying prospectus must inform themselves about and observe any restrictions relating to the offering of the notes and the distribution of this prospectus supplement and the accompanying prospectus outside of the United States.

You must comply with all applicable laws and regulations in force in any applicable jurisdiction and you must obtain any consent, approval or permission required by you for the purchase, offer or sale of the notes under the laws and regulations in force in the jurisdiction to which you are subject or in which you make your purchase, offer or sale, and neither we nor the underwriters will have any responsibility therefor.

We reserve the right to withdraw this offering of notes at any time. We and the underwriters also reserve the right to reject any offer to purchase, in whole or in part, for any reason, or to sell less than the amount of notes offered hereby.

Certain persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the notes. Such transactions may include stabilization and the purchase of notes to cover short positions. For a description of these activities, see **Underwriting** in this prospectus supplement.

References to **Equinix**, the **Company**, **we**, **our** and **us** and similar terms mean Equinix, Inc., a Delaware corporation, and its consolidated subsidiaries, unless the context otherwise requires.

References to the **notes** mean the Senior Notes due 2022 and the Senior Notes due 2025 offered hereby, unless the context otherwise requires.

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## **Forward-looking statements**

This prospectus supplement and the accompanying prospectus, including the documents incorporated by reference herein and therein, contain 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 Securities Exchange Act of 1934, as amended (the Exchange Act). Such statements contained in this prospectus supplement and the accompanying prospectus or incorporated by reference herein or therein are based upon current expectations that involve risks and uncertainties. Any statements contained in this prospectus supplement or the accompanying prospectus or incorporated by reference herein or therein that are not statements of historical fact may be deemed to be forward-looking statements. For example, the words believes, anticipates, plans, expects, intends and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a discrepancy include, but are not limited to, those discussed in the Risk Factors section, in addition to the other information set forth in this prospectus supplement and the accompanying prospectus and incorporated by reference herein and therein. We claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements. All forward-looking statements contained in this prospectus supplement and the accompanying prospectus or incorporated by reference herein or therein are based on information available to us as of the date of such statements and we assume no obligation to update any such forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth in this prospectus supplement under Risk Factors. You should carefully consider the risks described in the Risk Factors section, in addition to the other information set forth in this prospectus supplement and the accompanying prospectus and incorporated by reference herein and therein, before making an investment decision.

## **Where you can find more information**

We have filed with the U.S. Securities and Exchange Commission (the SEC) a registration statement on Form S-3 under the Securities Act relating to the notes offered by this prospectus supplement. This prospectus supplement and the accompanying prospectus are a part of that registration statement, which includes additional information not contained in this prospectus supplement or the accompanying prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC (including exhibits to such documents) at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings are also available to the public at the SEC's website at [www.sec.gov](http://www.sec.gov).

## **Incorporation by reference**

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus, and information that we file later with the SEC will

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automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 prior to the termination of the offering under this prospectus:

Current Reports on Form 8-K filed on March 4, 2014, March 10, 2014, March 31, 2014, April 24, 2014, May 2, 2014, May 7, 2014, May 13, 2014, May 19, 2014, June 10, 2014, July 24, 2014, October 15, 2014, October 16, 2014 and October 30, 2014;

Quarterly Reports on Form 10-Q for the quarters ended March 31, 2014, June 30, 2014 and September 30, 2014; and

Annual Report on Form 10-K for the year ended December 31, 2013, including portions of our Definitive Proxy Statement on Schedule 14A filed on April 28, 2014, to the extent specifically incorporated by reference in such Annual Report on Form 10-K.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the SEC, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K.

You may request, and we will provide you with, a copy of these filings, at no cost, by calling us at (650) 598-6000 or by writing to us at the following address:

Equinix, Inc.

One Lagoon Drive, Fourth Floor

Redwood City, CA 94065

Attn: Investor Relations

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## **Prospectus summary**

*This summary highlights information contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. Because this is only a summary, it does not contain all of the information that may be important to you. For a more complete understanding of our business and financial affairs, we encourage you to read this entire prospectus supplement, the accompanying prospectus, any related free writing prospectuses, Risk Factors, together with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and the related notes thereto in our Annual Report on Form 10-K for the year ended December 31, 2013 (the 2013 Annual Report), our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2014, June 30, 2014 and September 30, 2014, which are incorporated by reference in this prospectus supplement and the accompanying prospectus, and the other documents incorporated by reference in this prospectus supplement and the accompanying prospectus, before making a decision whether to invest in the notes.*

### **Overview**

Equinix, Inc. connects over 4,500 companies directly to their customers and partners inside the world's most networked data centers. Today, businesses leverage the Equinix interconnection platform in 32 strategic markets across the Americas, Europe, Middle East and Africa (EMEA) and Asia-Pacific. Platform Equinix combines a global footprint of advanced International Business Exchange® (IBX®) data centers, with a variety of interconnection opportunities and unique ecosystems. Equinix accelerates business growth for customers by safehousing their infrastructure and applications closer to users, enabling them to improve performance with cost effective and scalable interconnections, to deploy new technologies such as cloud computing and to collaborate with a wide variety of partners and customers. Enterprise, cloud, digital content and financial companies connect to over a 1,000 network service providers accessible at Equinix, and rely on Platform Equinix to grow their business, improve application performance and protect their vital digital assets.

Equinix generates revenue by providing colocation and related interconnection and managed IT infrastructure offerings on a global platform of 100+ IBX data centers. For the year ended December 31, 2013 and the nine months ended September 30, 2014, we had revenue of \$2,152.8 million and \$1,805.7 million, net income attributable to Equinix of \$94.7 million and \$95.6 million and adjusted EBITDA of \$1,000.9 million and \$819.5 million, respectively. For a discussion of our primary non-GAAP metric, adjusted EBITDA, including a reconciliation to GAAP financial measures, see our non-GAAP financial measures discussion in Management's Discussion and Analysis of Financial Condition and Results of Operations in the 2013 Annual Report and subsequent quarterly reports which are incorporated by reference in this prospectus supplement and the accompanying prospectus.

### **Recent Developments**

#### *REIT Conversion*

In September 2012, we announced that our Board of Directors approved a plan (the Conversion Plan) for Equinix to pursue conversion to a real estate investment trust (REIT), and in June 2014 our stockholders approved an amendment to our Amended and Restated Certificate of

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Incorporation to impose REIT-related ownership and transfer restrictions in connection with the Conversion Plan. We are implementing the Conversion Plan, and we plan to make a tax election for REIT status for the taxable year commencing January 1, 2015.

We believe that we can meet the operational and technical REIT requirements by reorganizing our operations to facilitate qualification as a REIT. The Conversion Plan currently includes seeking a private letter ruling ( PLR ) from the U.S. Internal Revenue Service (the IRS ). Our PLR request seeks favorable rulings from the IRS on numerous technical tax issues, including classification of our data center assets as qualified real estate assets. We currently expect to receive a favorable PLR from the IRS in 2014 and combined with Board of Directors approval and completion of other necessary conversion actions, we thereafter would commit to a final Conversion Plan. We can provide no assurance, however, if or when conversion to a REIT will be successful.

We expect to incur up to approximately \$85.0 million in costs to support the REIT conversion, of which \$75.5 million has been incurred to date, in addition to related tax liabilities associated with a REIT related change in our methods of depreciating and amortizing various data center assets for tax purposes. The total recapture of depreciation and amortization expenses across all relevant assets is expected to result in federal and state tax liability totaling approximately \$360.0 to \$380.0 million, of which \$281.1 million has been settled to date, with the remainder payable in 2015, even if we abandon the REIT conversion for any reason, including failure to obtain a favorable PLR. Further, as a result of the de-recognition of certain deferred tax assets and liabilities relating to the Conversion Plan, as well as the continuing recognition of deferred tax liabilities associated with the depreciation and amortization recapture to be taxed in 2015, we expect to record an income tax provision in the fourth quarter of 2014 ranging between \$330.0 and \$370.0 million.

If the Conversion Plan is successful, we expect to incur approximately \$10.0 million in REIT-related annual compliance costs in future years.

*Special Distributions*

In October 2014, our Board of Directors declared a special distribution of \$416.0 million on our shares of common stock (the 2014 Special Distribution ). Equinix expects to pay the 2014 Special Distribution on November 25, 2014 to the Company's common stockholders of record as of the close of business on October 27, 2014. Common stockholders could elect to receive payment of the 2014 Special Distribution in the form of common stock or cash, with the total cash payment to all stockholders limited to no more than approximately \$83.2 million, or 20% of the total distribution. In addition, we intend to declare one or more special distributions in 2015 (the 2015 Special Distributions ), which would encompass some extraordinary items of taxable income that we expect to recognize in 2015, such as Conversion Plan related depreciation recapture, as well as foreign earnings and profits recognized as dividend income.

We estimate the aggregate value of our 2014 Special Distribution and 2015 Special Distributions, together with the expected value of the deemed distributions associated with conversion rate adjustments relating to our outstanding 4.75% Convertible Subordinated Notes due June 15, 2016 (the 2016 Convertible Notes ), will equal approximately \$1.0 to \$1.1 billion.

We also intend to declare regular distributions to our stockholders in future periods if our Conversion Plan is successful.

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### *Credit Facility Refinancing*

On November 13, 2014, we entered into a commitment letter with Bank of America, N.A., an affiliate of one of the underwriters of this offering, as joint lead arranger, to refinance our existing \$750.0 million senior secured credit facility with a new \$1.5 billion senior secured credit facility, consisting of a five year, \$1.0 billion revolving line of credit and a five year, \$500.0 million term loan (the new credit facility ). We anticipate using the proceeds from the term loan portion of the new credit facility to repay the outstanding balance of our existing U.S. term loan of \$110.0 million as of September 30, 2014 and for general corporate purposes. We expect to enter into a credit agreement in connection with the new credit facility with terms generally similar to that of our existing credit facility in the fourth quarter of 2014. However, there can be no assurance that we will be successful in closing the new credit facility.

### **Company information**

Our principal executive offices are located at One Lagoon Drive, Fourth Floor, Redwood City, CA 94065 and our telephone number is (650) 598-6000. Our website is located at [www.equinix.com](http://www.equinix.com). Information contained on or accessible through our website is not part of this prospectus.

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## The offering

The following is a brief summary of certain terms of this offering. For a more complete description of the terms of the notes, see the section Description of Notes. In this Prospectus Summary The Offering section, we, us and Equinix refer to Equinix, Inc. and not to any of its subsidiaries.

Issuer	Equinix, Inc., a Delaware corporation.
Securities Offered	<p>\$750.0 million aggregate principal amount of 5.375% Senior Notes due 2022.</p> <p>\$500.0 million aggregate principal amount of 5.750% Senior Notes due 2025.</p>
Maturity Date	<p>The 2022 notes will mature on January 1, 2022.</p> <p>The 2025 notes will mature on January 1, 2025.</p>
Interest Payment Dates	Interest on each series of notes will accrue from November 20, 2014 and be payable semi annually in arrears on January 1 and July 1 of each year, commencing on July 1, 2015.
Redemption	<p>We may redeem all or a part of the 2022 notes on or after January 1, 2018 and the 2025 notes on or after January 1, 2020, on any one or more occasions, at the redemption prices set forth under Description of Notes Redemption, plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date.</p> <p>In addition, at any time prior to January 1, 2018, we may on any one or more occasions redeem up to 35% of the aggregate principal amount of each series of notes outstanding under the respective supplemental indenture, at a redemption price equal to 105.375% of the principal amount of the notes to be redeemed, in the case of the 2022 notes, or 105.750% of the principal amount of the notes to be redeemed, in the case of the 2025 notes, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more equity offerings, provided that at least 65% of the aggregate principal amount of each series of notes issued under the respective supplemental indenture remains outstanding immediately after the occurrence of such redemption. At any time prior to January 1, 2018 with respect to the 2022 notes and January 1, 2020 with respect to the 2025 notes, we may also redeem all or a part of the notes at a redemption price equal to 100% of the principal amount of notes to be redeemed plus a make whole premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption.</p>
Ranking	<p>The notes will be our general senior obligations. Your right to payment under these notes will be:</p> <p>effectively subordinated to all of our existing and future secured indebtedness, including our debt outstanding under any bank facility, to the extent of the assets securing such debt;</p>



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structurally subordinated to any existing and future indebtedness and other liabilities (including trade payables) of any of our subsidiaries;

equal in right of payment to all of our existing and future senior indebtedness; and

senior in right of payment to any of our existing and future subordinated indebtedness.

As of September 30, 2014, after giving effect to the sale of the notes and the application of the net proceeds therefrom to redeem our outstanding 7.00% Senior Notes due 2021 as described under Use of Proceeds, we would have had total consolidated indebtedness of approximately \$4.5 billion, approximately \$0.1 billion of which would have represented secured indebtedness of Equinix, and which excludes approximately \$1.2 billion of capital lease obligations. As of September 30, 2014, our subsidiaries had approximately \$2.0 billion of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on the balance sheets of our subsidiaries in accordance with generally accepted accounting principles), all of which would be structurally senior to the notes.

**Guarantees**

On the issue date, the notes will not be guaranteed by any of our subsidiaries. In the future, certain subsidiaries may be required to guarantee the notes. See Description of Notes Certain Covenants Subsidiary Guarantees.

**Covenants**

The indenture and the respective supplemental indentures governing the notes will contain covenants that limit our ability and the ability of our restricted subsidiaries to, among other things:

incur additional debt;

pay dividends or make other restricted payments;

purchase, redeem or retire capital stock or subordinated debt;

make asset sales;

enter into transactions with affiliates;

incur liens;

enter into sale leaseback transactions;

provide subsidiary guarantees;

make investments; and

merge or consolidate with any other person.

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Each of these restrictions have a number of important qualifications and exceptions. See Description of Notes. If the notes are rated investment grade at any time by both Standard & Poor's and Moody's, most of the restrictive covenants contained in the supplemental indenture governing each series of the notes will be suspended. See Description of Notes Certain Covenants Suspension of Covenants.

**Change of Control**

Upon the occurrence of a change of control (as defined in Description of Notes ), we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

**Form and Denomination**

The notes will be issued only in registered form. The notes will initially be issued in minimum denominations of \$2,000 and multiples of \$1,000 in excess thereof. The notes initially sold by the underwriters will be represented by one or more permanent global notes in fully registered form, deposited with a custodian for and registered in the name of a nominee of The Depository Trust Company ( DTC ).

Beneficial interests in the global notes will be shown on, and transfers thereof will be effected only through, records maintained by DTC and its participants. Except as described herein, notes in certificated form will not be issued in exchange for any global note or interests therein.

**Trading**

The notes are a new issue of securities, and there is currently no established trading market for the notes. An active or liquid market may not develop for the notes or, if developed, be maintained. We have not applied, and do not intend to apply, for the listing of the notes on any automated dealer quotation system.

**Governing Law**

The notes and the indenture and supplemental indentures under which they will be issued will be governed by New York law.

**Use of Proceeds**

We estimate that we will receive net proceeds of approximately \$1,233.1 million from the offering, after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us. We intend to use approximately \$846.0 million of such net proceeds to redeem our outstanding 7.00% Senior Notes due 2021 pursuant to the optional redemption provisions of such notes and the balance for general corporate purposes, which may include capital expenditures, distributions to our stockholders in connection with our proposed conversion to a REIT, working capital and potential acquisitions and strategic transactions. Certain of the underwriters may hold positions in our 7.00% Senior Notes due 2021 and may be repaid with a portion of the net proceeds of this offering. From time to time we evaluate potential strategic transactions and acquisitions of businesses, technologies or products. See Use of Proceeds.



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Risk Factors

Investing in the notes involves risk. See [Risk Factors](#) and the other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before deciding to invest in the notes.

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The following tables summarize our consolidated financial data for the periods presented. You should read this summary consolidated financial data in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes incorporated by reference in this prospectus supplement and the accompanying prospectus. The consolidated statements of operations and consolidated statements of cash flow data for the years ended December 31, 2011, 2012 and 2013 was derived from our audited consolidated financial statements incorporated by reference in this prospectus supplement and the accompanying prospectus. The consolidated statements of operations and consolidated statements of cash flow data for the nine months ended September 30, 2013 and 2014 and the consolidated balance sheet data as of September 30, 2014 was derived from our unaudited interim condensed consolidated financial statements incorporated by reference in this prospectus supplement and the accompanying prospectus. Our historical results are not necessarily indicative of the results to be expected in the future and our interim results are not necessarily indicative of the results to be expected for the full year period.

	Years ended December 31,			Nine months ended September 30,	
	2011 (as revised)	2012 (as revised)	2013	2013	2014
	(dollars in thousands, except per share data)				
<b>Consolidated Statement of Operations Data:</b>					
Revenues	\$ 1,565,625	\$ 1,887,376	\$ 2,152,766	\$ 1,588,089	\$ 1,805,655
Costs and operating expenses:					
Cost of revenues	829,024	944,617	1,064,403	794,660	884,436
Sales and marketing	158,347	202,914	246,623	179,373	214,867
General and administrative	265,554	328,266	374,790	276,324	324,332
Restructuring charges	3,841		(4,837)	(4,837)	
Impairment charges		9,861			
Acquisition costs	3,297	8,822	10,855	6,626	580
<b>Total costs and operating expenses</b>	<b>1,259,703</b>	<b>1,494,480</b>	<b>1,691,834</b>	<b>1,252,146</b>	<b>1,424,215</b>
Income from continuing operations	305,922	392,896	460,932	335,943	381,440
Interest income	2,280	3,466	3,387	2,593	2,534
Interest expense	(181,303)	(200,328)	(248,792)	(183,289)	(199,450)
Other income (expense)	2,821	(2,208)	5,253	3,294	3,170
Loss on debt extinguishment		(5,204)	(108,501)	(93,602)	(51,183)
Income from continuing operations before income taxes	129,720	188,622	112,279	64,939	136,511
Income tax expense	(37,347)	(58,564)	(16,156)	(14,189)	(42,134)
Net income from continuing operations	92,373	130,058	96,123	50,750	94,377
Net income from discontinued operations, net of tax	1,009	13,086			
<b>Net income</b>	<b>93,382</b>	<b>143,144</b>	<b>96,123</b>	<b>50,750</b>	<b>94,377</b>
Net (income) loss attributable to redeemable non-controlling interests	1,394	(3,116)	(1,438)	(1,252)	1,179
<b>Net income attributable to Equinix</b>	<b>\$ 94,776</b>	<b>\$ 140,028</b>	<b>\$ 94,685</b>	<b>\$ 49,498</b>	<b>\$ 95,556</b>

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**Other Financial Data:**

Net cash provided by operating activities	\$ 587,320	\$ 632,026	\$ 604,608	\$ 437,902	\$ 487,123
Net cash provided by (used in) investing activities	(1,499,155)	(442,873)	(1,169,313)	(935,951)	184,072
Net cash provided by (used in) financing activities	748,728	(222,721)	574,907	645,548	(572,449)
Adjusted EBITDA(1)	721,504	887,857	1,000,898	737,368	819,526

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**As of September 30,  
2014  
(in thousands)**

**Balance Sheet Data:**

Cash, cash equivalents and short-term and long-term investments	\$ 501,115
Accounts receivable, net	275,264
Property, plant and equipment, net	4,983,376
Total assets	7,462,000
Current portion of capital lease and other financing obligations	20,132
Current portion of mortgage and loans payable	57,767
Capital lease and other financing obligations, excluding current portion	1,172,356
Mortgage and loans payable, excluding current portion	160,643
Senior notes	2,250,000
Convertible debt, excluding current portion	322,757
Total debt	3,983,655
Total liabilities	4,864,320
Total stockholders' equity	2,597,680
<b>Selected Credit Statistics(2):</b>	
Senior debt to LTM Adjusted EBITDA ratio(3)	3.4x
Total debt to LTM Adjusted EBITDA ratio(4)	3.7x
Net debt to LTM Adjusted EBITDA ratio(5)	3.2x
LTM Adjusted EBITDA to LTM interest expense ratio(6)	4.1x
Pro forma total debt to LTM Adjusted EBITDA ratio(7)	4.2x

- (1) For a discussion of our primary non-GAAP metric, Adjusted EBITDA, and a reconciliation to income from continuing operations, see our non-GAAP financial measures discussion in Management's Discussion and Analysis of Financial Condition and Results of Operations incorporated by reference in this prospectus supplement and the accompany prospectus from the 2013 Annual Report on Form 10-K and from our Quarterly Report on Form 10-Q for the nine months ended September 30, 2014.
- (2) The following ratios are calculated in a manner consistent with our financial statements, which may not be consistent with the manner in which such ratios would be calculated under the applicable supplemental indenture governing the notes.
- (3) Senior debt to LTM Adjusted EBITDA ratio is presented as senior debt (which is total debt less convertible debt) divided by Adjusted EBITDA for the twelve months ended September 30, 2014.
- (4) Total debt to LTM Adjusted EBITDA ratio is presented as total debt, gross of discounts, divided by Adjusted EBITDA for the twelve months ended September 30, 2014.
- (5) Net debt to LTM Adjusted EBITDA ratio is presented as total debt, gross of discounts, less cash, cash equivalents and short-term and long-term investments divided by Adjusted EBITDA for the twelve months ended September 30, 2014.
- (6) LTM Adjusted EBITDA to LTM interest expense ratio is presented as Adjusted EBITDA divided by interest expense for the twelve months ended September 30, 2014.
- (7) Pro forma total debt to LTM Adjusted EBITDA ratio is presented as total debt, gross of discounts, divided by adjusted EBITDA for the twelve months ended September 30, 2014, giving effect to the issuance of \$1,250.0 million aggregate principal amount of notes offered hereby and the application of the net proceeds therefrom to redeem our outstanding 7.00% Senior Notes due 2021. This ratio excludes the impact of our anticipated refinancing of our credit facility discussed under Prospectus Summary Recent Developments Credit Facility Refinancing and the conversion and repayment of our 2014 Convertible

Notes discussed under Capitalization.

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## **Risk factors**

*An investment in the notes involves certain risks. You should carefully consider the risk factors described under **Risk Factors** in our most recent Quarterly Report on Form 10-Q and our most recent Annual Report on Form 10-K, as well as the other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus, before making an investment decision. Additional risks and uncertainties not now known to us or that we now deem immaterial may also adversely affect our business or financial performance. Our business, financial condition, results of operations or cash flows could be materially adversely affected by any of these risks. The market or trading price of the notes could decline due to any of these risks or other factors, and you may lose all or part of your investment.*

### **Risks relating to the notes**

*References to Equinix, the Company, we, our and us and similar terms in this section **Risk Factors** Risks relating to the notes mean Equinix, Inc. and not any of its subsidiaries.*

***Our subsidiaries will not guarantee the notes. We depend in large part on the cash flow from our subsidiaries to meet our obligations, and your claims will be subordinated to all of the creditors of these subsidiaries.***

Our subsidiaries will not guarantee the notes. Our subsidiaries are separate and distinct legal entities with no obligation to pay any amounts due pursuant to the notes or to provide us with funds for our payment obligations. Substantially all of our operations are conducted through our subsidiaries and we derive substantially all our revenues from our subsidiaries, and substantially all of our operating assets are owned by our subsidiaries. As a result, our cash flow and our ability to service our indebtedness, including the notes, depends in large part on the earnings of our subsidiaries and on the distribution of earnings, loans or other payments to us by these subsidiaries. Payments to us by our subsidiaries also will be contingent upon their earnings and their business considerations. In addition, the ability of our subsidiaries to make any dividend, distribution, loan or other payment to us could be subject to statutory or contractual restrictions. Because we depend in large part on the cash flow of our subsidiaries to meet our obligations, these types of restrictions may impair our ability to make scheduled interest and principal payments on the notes. Our subsidiaries held approximately 80% of our consolidated assets as of September 30, 2014.

***The notes will be unsecured and effectively subordinated to any of our existing or future secured indebtedness and structurally subordinated to all of the liabilities of our subsidiaries.***

The notes will be our general unsecured senior obligations, ranking equal in right of payment with our existing and any future unsubordinated indebtedness. However, because they are unsecured, the notes will be effectively junior to any of our existing or future secured indebtedness to the extent of the value of the assets securing such debt. As of September 30, 2014, after giving pro forma effect to the sale of the notes and the application of the net proceeds therefrom to redeem our outstanding 7.00% Senior Notes due 2021 as described under **Use of Proceeds**, we would have had total consolidated indebtedness of approximately \$4.5 billion, approximately \$0.1 billion of which would have represented secured indebtedness of Equinix, which excludes approximately \$1.2 billion of capital lease obligations. Further, on November 13, 2014, we entered into a commitment letter with Bank of America, N.A., as joint

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lead arranger, to refinance our existing \$750.0 million senior secured credit facility with a new \$1.5 billion senior secured credit facility, consisting of a five year, \$1.0 billion revolving line of credit and a five year, \$500.0 million term loan. We expect to enter into a credit agreement in connection with the new credit facility with terms generally similar to that of our existing credit facility in the fourth quarter of 2014. We currently anticipate that up to \$750.0 million of the new credit facility will be secured by the assets of Equinix. Accordingly, we expect that the notes will be effectively junior to amounts outstanding under such new credit facility to the extent of the value of the assets securing such debt, up to \$750.0 million. However, there can be no assurance that we will be successful in closing the new credit facility.

In addition, the notes will be structurally subordinated to all of the liabilities of our subsidiaries, which may include indebtedness, trade payables, guarantees, lease obligations and letter of credit obligations. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, holders of their indebtedness and their trade creditors will generally be entitled to payment of their claims from the assets of those subsidiaries before any assets of the subsidiaries are made available for distribution to us. As of September 30, 2014, our subsidiaries had \$2.0 billion of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries in accordance with GAAP), all of which would be structurally senior to the notes.

In addition, the respective supplemental indentures governing the notes will permit us and our subsidiaries to incur significant amounts of additional indebtedness, including secured indebtedness. In the event that we are declared bankrupt, become insolvent or liquidate or reorganize, our assets that serve as collateral under any such secured indebtedness would be made available to satisfy the obligations under the secured indebtedness before those assets may be used to satisfy our obligations with respect to the notes. Holders of the notes will participate ratably with all holders of our unsecured indebtedness that is deemed to be of the same class as the notes, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. In any of the foregoing events, we cannot assure you that there will be sufficient assets to pay amounts due on the notes. As a result, holders of the notes may receive less, ratably, than holders of secured indebtedness.

***Our debt agreements allow us and our subsidiaries to incur significantly more debt, and we expect to incur additional indebtedness in connection with our anticipated new credit facility, which could exacerbate the other risks described herein, as well as the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus.***

The terms of our debt instruments, including the respective supplemental indentures governing the notes offered hereby, permit us and our subsidiaries to incur additional indebtedness. Additional debt may be necessary for many reasons, including to adequately respond to competition, to comply with regulatory requirements related to our service obligations or for financial reasons alone. Incremental borrowings or borrowings at maturity on terms that impose additional financial risks to our various efforts to improve our operating results and financial condition could exacerbate the other risks described herein, as well as the risks described in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus.

Further, we anticipate incurring a significant amount of additional indebtedness upon our entry into the credit agreement relating to our anticipated new senior secured credit facility in the

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fourth quarter of 2014. While we anticipate using the proceeds from the term loan portion of the new credit facility to repay the outstanding balance of our existing U.S. term loan of \$110.0 million as of September 30, 2014, we expect to have approximately \$390 million in additional secured indebtedness outstanding following our entry into such new credit facility as compared to secured indebtedness as of September 30, 2014, and we will have the ability under such credit facility to draw down up to \$1.0 billion in additional revolving term loans from time to time, subject to our compliance with the financial covenants and other conditions precedent to be set forth in the credit agreement relating to such facility.

***Our credit facility and other debt instruments have restrictive covenants that could limit our financial flexibility, and we expect that our anticipated new credit facility will contain similar restrictions.***

The respective supplemental indentures related to the notes offered hereby, the indentures relating to our existing senior notes, our term loan facility and our revolving credit line contain financial and other restrictive covenants that limit our ability to engage in activities that may be in our long-term best interests. Our ability to borrow under our revolving credit line is subject to compliance with certain financial covenants, including leverage and interest coverage ratios. Our revolving credit line and term loan facility include other restrictions that, among other things: limit our ability to incur indebtedness; grant liens; engage in mergers, consolidations and liquidations; make asset dispositions, restricted payments and investments; enter into transactions with affiliates; and amend, modify or prepay certain indebtedness. We expect that our anticipated new credit facility will contain similar restrictions as those contained in our existing credit facility. The indentures related to our existing senior notes contain, and each supplemental indenture related to the notes offered hereby will contain, limitations on our ability to effect mergers and change of control events, as well as other limitations, including:

limitations on the declaration and payment of dividends or other restricted payments;

limitations on incurring additional indebtedness or issuing preferred stock;

limitations on the creation of certain liens;

limitations on incurring restrictions on the ability of certain of our subsidiaries to pay dividends or other payments;

limitations on transactions with affiliates; and

limitations on the sale of assets.

Our failure to comply with these covenants could result in an event of default that, if not cured or waived, could result in the acceleration of all of our debts. We do not have sufficient working capital to satisfy our debt obligations in the event of an acceleration of all or a significant portion of our outstanding indebtedness.

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

Upon the occurrence of a change of control (as defined in Description of Notes Change of Control ), we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of repurchase.

If we experience a change of control, we may not have sufficient financial resources available to satisfy our obligations to repurchase the notes. Our failure to repurchase the notes as required



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under the respective supplemental indentures governing the notes would result in a default under the indenture, which could result in defaults under our and our subsidiaries' other debt agreements and have material adverse consequences for us and the holders of the notes. See

Description of Notes Change of Control. Moreover, if holders of the notes elect to have their notes repurchased by us (or holders of our other existing and future debt securities, such as our existing senior notes that have a similar right to require us to repurchase their securities upon such a change on control, elect to have their debt securities repurchased by us) it could cause a default under our existing or future debt, even if the change of control itself does not result in a default under existing or future debt, due to the financial effect of such repurchase on us.

***The terms of the indenture and the notes provide only limited protection against significant corporate events that could affect adversely your investment in the notes.***

While the respective supplemental indentures and the notes offered hereby contain terms intended to provide protection to holders upon the occurrence of certain events involving significant corporate transactions or our creditworthiness, these terms are limited and may not be sufficient to protect your investment in the notes. As described under Description of the Notes Change of Control, upon the occurrence of a change of control, we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of repurchase. However, the change of control provisions may not protect you if we undergo a highly leveraged transaction, reorganization, restructuring, acquisition or similar transaction that may negatively affect the value of your notes unless the transaction is included within the definition of a change of control. If we were to enter into a significant corporate transaction that would negatively affect the value of the notes, but that would not constitute a change of control triggering event, you would not have any rights to require us to repurchase the notes prior to their maturity, which also would adversely affect your investment.

***An active trading market for the notes may not develop or be maintained; many factors affect the trading market and value of the notes.***

The notes are a new issue of securities with no trading history or established trading market. We cannot assure you that a trading market for the notes will ever develop or, if a trading market develops, that it will be maintained or provide adequate liquidity, that holders will be able to sell any of the notes at a particular time (if at all) or that the prices holders receive if or when they sell the notes will be above their initial offering price. We have not applied, and do not intend to apply, for the listing of the notes on any exchange or automated dealer quotation system.

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

A real or perceived economic downturn or higher interest rates could cause a decline in the value of the notes, and to high-yield bonds generally, and thereby negatively impact the market for high-yield bonds, and more specifically, the notes. Because the notes may be thinly traded, it may be more difficult to sell and accurately value the notes. In addition, the entire high-yield bond market can experience sudden and sharp price swings, which can be exacerbated by large or sustained sales by major investors in the notes, a high-profile default by another issuer, or simply a change in the market's psychology regarding high-yield notes. This risk is exacerbated by general market volatility, which has been characteristic of global financial markets in recent periods, and ongoing macroeconomic uncertainty.

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*Our credit ratings may not reflect all of the risks of an investment in the notes.*

The credit ratings on the notes may not reflect the potential impact of all of the risks related to structure and other factors on the value of the notes. In addition, actual or anticipated changes in our credit ratings will generally affect the market value of the notes.

*We may invest or spend the net proceeds of this offering in ways with which you may not agree and in ways that may not earn a profit.*

We intend to use the net proceeds of this offering to redeem our outstanding 7.00% Senior Notes due 2021 pursuant to the optional redemption provisions of such notes and for general corporate purposes, which may include capital expenditures, distributions to our stockholders in connection with our proposed conversion to a REIT, working capital and potential acquisitions and strategic transactions. From time to time we evaluate potential strategic transactions and acquisitions of businesses, technologies or products. However, we will retain broad discretion over the use of the net proceeds from this offering. You may not agree with the ways we decide to use these proceeds, and our use of the proceeds may not yield any profits.

*If the notes are rated investment grade at any time by both Standard & Poor's and Moody's, most of the restrictive covenants contained in the indenture governing the notes will be suspended.*

If, at any time, the credit rating on the notes, as determined by both Standard & Poor's and Moody's, equals or exceeds BBB- and Baa3, respectively, or any equivalent replacement ratings, we will not be subject to most of the restrictive covenants and certain events of default contained in the indentures governing the notes. As a result, you may have less credit protection than you will at the time the notes are issued. In the event that one or both of the ratings later drops below investment grade, we will thereafter again be subject to such restrictive covenants and events of default.

Table of Contents**Use of proceeds**

We estimate that we will receive net proceeds of approximately \$1,233.1 million from the offering of the notes, after deducting the underwriters discounts and commissions and estimated offering expenses payable by us. We intend to use approximately \$846.0 million of such net proceeds to redeem our outstanding 7.00% Senior Notes due 2021 pursuant to the optional redemption provisions of such notes and the balance for general corporate purposes, which may include capital expenditures, distributions to our stockholders in connection with our proposed conversion to a REIT, working capital and potential acquisitions and strategic transactions. The following table outlines the expected sources and uses for the net proceeds of this offering and excludes the expected sources and uses of our anticipated new credit facility discussed under Prospectus Summary Recent Developments Credit Facility Refinancing :

Sources	(In millions)		Uses
Senior notes due 2022 offered in this offering	\$ 750.0	Repay principal amount of 7.00% senior notes due 2021	\$ 750.0
Senior notes due 2025 offered in this offering	500.0	Redemption premium on repayment of 7.00% senior notes due 2021	96.0**
		Estimated fees and expenses, discounts and commissions from this offering	16.9
		Remaining proceeds available for general corporate purposes from this offering	387.1
<b>Total sources</b>	<b>\$ 1,250.0*</b>	<b>Total uses</b>	<b>\$ 1,250.0*</b>

\* The sources and uses in the table above exclude the impact of our anticipated refinancing of our credit facility. On November 13, 2014, we entered into a commitment letter with Bank of America, N.A., an affiliate of one of the underwriters of this offering, as joint lead arranger, to refinance our existing \$750.0 million senior secured credit facility with a new \$1.5 billion senior secured credit facility, consisting of a five year, \$1.0 billion revolving line of credit and a five year, \$500.0 million term loan. We anticipate using the proceeds from the term loan portion of the new credit facility to repay the outstanding balance of our existing U.S. term loan of \$110.0 million as of September 30, 2014 and for general corporate purposes. The existing U.S. term loan bears interest at variable rates determined by prevailing interest rates and our leverage ratio. The interest rate on amounts outstanding as of September 30, 2014 was 2.15%. We expect to enter into a credit agreement in connection with the new credit facility with terms generally similar to that of our existing credit facility in the fourth quarter of 2014. However, there can be no assurance that we will be successful in closing the new credit facility.

\*\* Represents an estimate of the redemption premium. The actual redemption premium will be determined in accordance with the indenture relating to the 2021 Notes on the date of redemption based on the prevailing treasury rate at such time.

Certain of the underwriters may hold positions in our 7.00% Senior Notes due 2021 and may be repaid with a portion of the net proceeds of this offering. This prospectus supplement does not constitute a redemption or a notice of redemption with respect to the 7.00% Senior Notes due 2021. Any redemption of the 7.00% Senior Notes due 2021 will be effected pursuant to the terms and conditions set forth in the indenture governing the 7.00% Senior Notes due 2021. As of September 30, 2014 the outstanding aggregate principal amount of the 7.00% Senior Notes due 2021 was \$750.0 million.

Table of Contents**Ratio of earnings to fixed charges**

The following table sets forth our consolidated ratio of earnings to fixed charges:

			Years ended December 31,			Nine months ended September 30,	Pro forma 2013(1)	Pro forma 2014(1)
	2009	2010	2011	2012	2013	2014	2013	2014
Ratio of earnings to fixed charges	1.9x	1.2x	1.5x	1.6x	1.4x	1.5x	0.9x	1.0x

(1) Pro forma ratio of earnings to fixed charges for the year ended December 31, 2013 and the nine months ended September 30, 2014 gives effect to the sale of the notes and the application of approximately \$846.0 million of net proceeds therefrom to redeem our outstanding 7.00% Senior Notes due 2021.

In calculating the ratio of earnings to fixed charges, earnings consist of net income (loss) from continuing operations before income tax expense and fixed charges. Fixed charges consist of interest expense, including such portion of rental expense that was attributed to interest, and amortization of capitalized interest. The portion of rent expense that was attributed to interest represents a reasonable approximation of the interest factor.

Table of Contents**Capitalization**

The following table sets forth our cash, cash equivalents and short-term and long-term investments and current portion of our indebtedness and our capitalization as of September 30, 2014:

on an actual basis; and

on an as adjusted basis to reflect (i) the sale of an aggregate of \$1.25 billion of notes offered hereby, after deducting the underwriters discounts and commissions and estimated offering expenses payable by us and (ii) the application of the estimated net proceeds therefrom to redeem all of our outstanding 7.00% senior notes due 2021, as described under Use of Proceeds.

This table excludes the impact of certain items discussed in the footnotes to the table that have occurred or are expected to occur after September 30, 2014, including the impact of our anticipated refinancing of our credit facility discussed under Prospectus Summary Recent Developments Credit Facility Refinancing and should be read in conjunction with the section Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes from our Quarterly Report on Form 10-Q for the nine months ended September 30, 2014 incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>As of September 30, 2014</b>	
	<b>Actual</b>	<b>As adjusted</b>
	<b>(dollars in thousands)</b>	
Cash, cash equivalents and short-term and long-term investments(1),(2),(3)	\$ 501,115	\$ 888,215(4)
Current portion of capital lease and other financing obligations	\$ 20,132	\$ 20,132
Current portion of mortgage and loans payable(3)	\$ 57,767	\$ 57,767
Long-term debt, net of current portion:		
Capital lease and other financing obligations	\$ 1,172,356	\$ 1,172,356
Mortgage and loans payable(3)	160,643	160,643
5.375% senior notes due 2022 offered hereby		750,000
5.750% senior notes due 2025 offered hereby		500,000
4.875% senior notes due 2020	500,000	500,000
5.375% senior notes due 2023	1,000,000	1,000,000
7.00% senior notes due 2021	750,000	(4)
Convertible debt(2),(5)	322,757	322,757
<b>Total long-term debt</b>	<b>3,905,756</b>	<b>4,405,756</b>
Total stockholders' equity(1),(2)	2,597,680	2,492,285
<b>Total capitalization</b>	<b>\$ 6,503,436</b>	<b>\$ 6,898,041</b>

(1) The actual and as adjusted amounts above exclude the impact of a special distribution of \$416.0 million declared by our Board of Directors on our common stock in October 2014, referred to in this prospectus supplement as the 2014 Special Distribution, in connection with our plan to convert to a REIT. The 2014 Special Distribution is payable on November 25, 2014 to the Company's common stockholders of record as of the close of business on October 27, 2014.

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Common stockholders could elect to receive payment of the 2014 Special Distribution in the form of stock or cash, with the total cash payment to all stockholders limited to no more than approximately \$83.2 million or 20% of the total distribution. The number of shares to be distributed will be determined based upon common stockholder elections and the average closing price of the Company's common stock on the three trading days commencing on November 18, 2014.

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- (2) The actual and as adjusted amounts of convertible debt and total stockholders' equity above exclude the impact of the conversion of approximately \$178.7 million in aggregate principal amount of our 3.00% convertible subordinated notes due 2014 (the 2014 Convertible Notes), plus accrued interest thereon, into 1,595,496 shares of our common stock, on October 15, 2014. The actual and as adjusted amounts of cash, cash equivalents and short-term and long-term investments above exclude the impact of our repayment of the remaining principal amount of the 2014 Convertible Notes in cash.
- (3) The actual and as adjusted amounts above exclude the impact of our anticipated refinancing of our credit facility. On November 13, 2014, we entered into a commitment letter to refinance our existing \$750.0 million senior secured credit facility with the new credit facility, consisting of a five year, \$1.0 billion revolving line of credit and a five year, \$500.0 million term loan. We anticipate using the proceeds from the term loan portion of the new credit facility to repay the outstanding balance of our existing U.S. term loan of \$110.0 million and for general corporate purposes. We expect to enter into a credit agreement in connection with the new credit facility with terms generally similar to that of our existing credit facility in the fourth quarter of 2014. However, there can be no assurance that we will be successful in closing the new credit facility.
- (4) The as adjusted amount reflects the receipt of \$1,233.1 million of estimated net proceeds from this offering, after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us, and the expected application of approximately \$846.0 million of such net proceeds to redeem our 2021 notes, of which \$750.0 million represents principal and \$96.0 million represents a redemption premium. See Use of Proceeds.
- (5) Convertible debt consists of \$178.8 million aggregate principal amount of our 2014 Convertible Notes and \$157.9 million aggregate principal amount of the 2016 Convertible Notes outstanding as of September 30, 2014, less the amount representing debt discount. See footnote (2) above.

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## **Description of notes**

This section describes the 5.375% senior notes due 2022 (the *2022 notes*) and the 5.750% senior notes due 2025 (the *2025 Notes*) and together with the 2022 notes, the *notes*) that will be issued by the Company. The Company will issue each series of notes under an indenture and one or more supplemental indentures (each an *Indenture*) between itself and U.S. Bank National Association, as Trustee (the *Trustee*). The following is a summary of the material provisions of the Indentures. The Indentures will comply with the Trust Indenture Act of 1939. The terms of the notes include those stated in the applicable Indenture and those made part of the applicable Indenture by reference to certain provisions of the Trust Indenture Act. You can find definitions of certain capitalized terms used in this description under *Certain Definitions*.

For purposes of this section, references to the *Company* include only Equinix, Inc. and not its subsidiaries. You are encouraged to read the Indenture because it, and not this description, defines your rights as a holder of the notes. Copies of the Indenture are available upon request to the Company at the address indicated under *Where You Can Find Additional Information* in this prospectus.

The Company will issue the notes in fully registered form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The Trustee will initially act as Paying Agent and Registrar for the notes. The notes may be presented for registration or transfer and exchange at the offices of the Registrar. The Company may change any Paying Agent and Registrar without notice to holders of the notes (the *Holder*). The Company will pay principal (and premium, if any) on the notes at the Trustee's corporate trust office. At the Company's option, interest may be paid at the Trustee's corporate trust office or by check mailed to the registered address of Holders.

### **Principal, maturity and interest**

The Company is issuing \$750 million aggregate principal amount of 2022 notes and \$500 million aggregate principal amount of 2025 notes in this offering and, subject to compliance with the limitations described under *Certain Covenants Limitation on Incurrence of Additional Indebtedness*, may issue an unlimited principal amount of additional 2022 notes or 2025 notes at later dates under the same Indenture as the 2022 notes and the 2025 notes, respectively (the *Additional Notes*). Any Additional Notes that the Company issues in the future will be identical in all respects to the 2022 notes or the 2025 notes, as applicable and will be treated as a single class for all purposes under the applicable Indenture with the applicable series of notes offered hereby, except that such Additional Notes will have different issuance dates and may have different issuance prices; provided that if any such Additional Notes are not fungible with the applicable series of notes offered hereby for U.S. federal income tax purposes, such Additional Notes will have one or more separate CUSIP numbers. Unless the context requires otherwise, references to *2022 notes*, *2025 notes* or *notes* for all purposes of the applicable Indenture and this *Description of Notes* include any Additional Notes that are actually issued.

The 2022 notes will mature on January 1, 2022 and the 2025 notes will mature on January 1, 2025.

Interest on the 2022 notes will accrue at a rate of 5.375% per annum. Interest on the 2025 notes will accrue at a rate of 5.750% per annum. Interest on the notes will be payable semiannually in



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arrears on January 1 and July 1, commencing on July 1, 2015. The Company will pay interest to those persons who were holders of record on the December 15 or June 15 immediately preceding each interest payment date. Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

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

## **Ranking**

The notes will be general senior obligations of the Company. The Holders' right to payment under these notes will be:

effectively subordinated to all of the existing and any future secured indebtedness of the Company, including debt outstanding under any Bank Facility or secured by any mortgage, to the extent of the assets securing such debt;

structurally subordinated to any existing and future indebtedness and other liabilities (including trade payables) of any Subsidiaries of the Company;

equal in right of payment to all existing and any future senior indebtedness of the Company; and

senior in right of payment to any existing and future subordinated indebtedness of the Company.  
At September 30, 2014, after giving *pro forma* effect to the offering,

the Company would have had total consolidated indebtedness of approximately \$4.5 billion, approximately \$0.1 billion of which would have represented secured indebtedness of Equinix, which excludes approximately \$1.2 billion of capital lease obligations;

if the Company borrowed all of the \$550.0 million available under its revolving line of credit, \$290.0 million of such borrowings would have been secured indebtedness; and

the Subsidiaries of the Company had approximately \$2.0 billion of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on a balance sheet of such Subsidiaries in accordance with GAAP), all of which would have been structurally senior to the notes.

## **Redemption**

Other than as set forth below, the notes are not redeemable prior to maturity.

### *2022 notes*

At any time prior to January 1, 2018, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of the 2022 notes (calculated giving effect to any issuance of Additional Notes of such series) outstanding under the 2022 notes Indenture, at a redemption price equal to 105.375% of the principal amount of the 2022 notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided that*

(1) at least 65% of the aggregate principal amount of the 2022 notes (calculated giving effect to any issuance of Additional Notes of such series) issued under the 2022 notes Indenture remains outstanding immediately after the occurrence of such redemption (excluding 2022 notes held by

the Company and its subsidiaries); and

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(2) the redemption must occur within 90 days of the date of the closing of such Equity Offering.

On or after January 1, 2018, the Company may redeem all or a part of the 2022 notes, on any one or more occasions, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date, if redeemed during the twelve-month period beginning on January 1 of the years indicated below:

	<b>Redemption price of the 2022 notes</b>
2018	104.031%
2019	102.688%
2020	101.344%
2021 and thereafter	100.000%

At any time prior to January 1, 2018, the Company may also redeem all or a part of the 2022 notes at a redemption price equal to 100% of the principal amount of 2022 notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption (the *Redemption Date*), subject to the rights of Holders of record of 2022 notes on the relevant record date to receive interest due on the relevant interest payment date.

*2025 notes*

At any time prior to January 1, 2018, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of the 2025 notes (calculated giving effect to any issuance of Additional Notes of such series) outstanding under the 2025 notes Indenture, at a redemption price equal to 105.750% of the principal amount of the 2025 notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided that*

(1) at least 65% of the aggregate principal amount of the 2025 notes (calculated giving effect to any issuance of Additional Notes of such series) issued under the Indenture remains outstanding immediately after the occurrence of such redemption (excluding 2025 notes held by the Company and its subsidiaries); and

(2) the redemption must occur within 90 days of the date of the closing of such Equity Offering.

On or after January 1, 2020, the Company may redeem all or a part of the 2025 notes, on any one or more occasions, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date, if redeemed during the twelve-month period beginning on January 1 of the years indicated below:

	<b>Redemption price of the 2025 notes</b>
2020	102.875%
2021	101.917%
2022	100.958%
2023 and thereafter	100.000%



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At any time prior to January 1, 2020, the Company may also redeem all or a part of the 2025 notes at a redemption price equal to 100% of the principal amount of 2025 notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the Redemption Date, subject to the rights of Holders of record of 2025 notes on the relevant record date to receive interest due on the relevant interest payment date.

## **Selection and notice of redemption**

In the event that the Company chooses to redeem less than all an applicable series of notes, selection of the notes for redemption will be made by the Trustee:

1. in compliance with the requirements of the principal national securities exchange, if any, on which the notes are listed; or
2. if the notes are not listed on a national securities exchange, on a *pro rata* basis, by lot or by such method as the Trustee shall deem fair and appropriate; subject in each case to DTC procedures.

No notes of a principal amount of \$2,000 or less shall be redeemed in part. Notice of redemption will be mailed by first-class mail at least 30 but not more than 60 days before the redemption date to each Holder of notes to be redeemed at its registered address, *provided* that, if the redemption notice is issued in connection with a defeasance of the notes or satisfaction and discharge of the Indenture governing the notes, the notice of redemption may be delivered more than 60 calendar days before the date of redemption. If any note is to be redeemed in part only, then the notice of redemption that relates to such note must state the portion of the principal amount thereof to be redeemed. A new note in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original note (or appropriate adjustments to the amount and beneficial interests in a global note will be made). On and after the redemption date, interest will cease to accrue on notes or portions thereof called for redemption as long as the Company has deposited with the Paying Agent funds in satisfaction of the applicable redemption price. Any redemption or notice of redemption may, at our discretion, be subject to one or more conditions precedent.

## **Mandatory redemption; offers to purchase; open market purchases**

We are not required to make any mandatory redemption or sinking fund payments with respect to the notes. However, under certain circumstances, we may be required to offer to purchase notes as described under **Change of Control** and **Certain Covenants Limitation on Asset Sales**. We may at any time and from time to time purchase notes in the open market or otherwise, subject to compliance with applicable securities laws.

## **Holding company structure**

The Company is a holding company for its Subsidiaries. Substantially all of the Company's operations are conducted through its Subsidiaries and the Company derives substantially all its revenues from its Subsidiaries, and substantially all of its operating assets are owned by its Subsidiaries. Accordingly, the Company is dependent upon the distribution of the earnings of its Subsidiaries, whether in the form of dividends, advances or payments on account of intercompany obligations, to service its debt obligations. In addition, the claims of the Holders are subject to the prior payment of all liabilities (whether or not for borrowed money) and to

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any preferred stock interest of such Restricted Subsidiaries. There can be no assurance that, after providing for all prior claims, there would be sufficient assets available from the Company and its Subsidiaries to satisfy the claims of the Holders of notes. See **Risk Factors** Our subsidiaries will not guarantee the notes. We depend in large part on the cash flow from our subsidiaries to meet our obligations, and your claims will be subordinated to all of the creditors of these subsidiaries.

## **Guarantees**

On the Issue Date, the notes will not be guaranteed by any of the Company's Subsidiaries. To the extent that, in the future, any Domestic Restricted Subsidiary of the Company becomes a Guarantor pursuant to the **Subsidiary Guarantees** covenant, such Guarantor will unconditionally, jointly and severally guarantee the Company's obligations under the applicable Indenture and the applicable series of notes on a senior unsecured basis. The obligations of each Guarantor under its Guarantee will be limited as necessary to prevent the Guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

## **Change of control**

Upon the occurrence of a Change of Control, unless the Company or a third party has previously or concurrently mailed a redemption notice with respect to all outstanding notes as described under **Redemption**, the Company will be required to make an offer to purchase each Holder's notes pursuant to the offer described below (the *Change of Control Offer*), at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

Within 30 days following the date upon which the Change of Control occurred, the Company must send, or cause the Trustee to send, by first class mail, a notice to each Holder, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. Such notice shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days after the date such notice is mailed, other than as may be required by law (the *Change of Control Payment Date*). Holders electing to have a note purchased pursuant to a Change of Control Offer will be required to surrender the note, with the form entitled **Option of Holder to Elect Purchase** on the reverse of the note completed and specifying the portion (equal to \$2,000 and integral multiples of \$1,000 in excess thereof) of such Holder's notes that it agrees to sell to the Company pursuant to the Change of Control Offer, to the Paying Agent at the address specified in the notice prior to the close of business on the third business day prior to the Change of Control Payment Date.

If a Change of Control Offer is made, there can be no assurance that the Company will have available funds sufficient to pay the purchase price for all the notes that might be delivered by Holders seeking to accept the Change of Control Offer. In the event the Company is required to purchase outstanding notes pursuant to a Change of Control Offer, the Company expects that it would seek third-party financing to the extent it does not have available funds to meet its purchase obligations. However, there can be no assurance that the Company would be able to obtain such financing. In addition, there can be no assurance that the Company would be able to obtain the consents necessary to consummate a Change of Control Offer from the lenders under agreements governing outstanding Indebtedness that may in the future prohibit the Change of Control Offer. The failure to consummate a Change of Control Offer would constitute an Event of Default under the Indenture. See **Risk Factors** We may not be able to repurchase the notes upon a change of control for more information.

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One of the events that constitutes a Change of Control under the Indentures is the disposition of all or substantially all of the Company's assets. This term has not been interpreted under New York law, which is the governing law of the Indentures, to represent a specific quantitative test. As a consequence, if Holders of the notes assert that the Company is required to make a Change of Control Offer and the Company elects to contest such assertion, there is uncertainty as to how a court interpreting New York law would interpret the term. Neither the Board of Directors of the Company nor the Trustee may waive the covenant of the Company to make a Change of Control Offer following a Change of Control. Restrictions in the Indentures described herein on the ability of the Company and its Subsidiaries to incur additional Indebtedness, to grant Liens on the property of the Company and the Restricted Subsidiaries and to make Restricted Payments may also make more difficult or discourage a takeover of the Company, whether favored or opposed by the management or stockholders of the Company. There can be no assurance that the Company or the acquiring party will have sufficient financial resources to effect a Change of Control Offer. Such restrictions may, in certain circumstances, make more difficult or discourage any leveraged buyout of the Company or any of its Subsidiaries by their respective management. However, the Indentures may not afford the Holders protection in all circumstances from the adverse aspects of a highly leveraged transaction, reorganization, amalgamation, restructuring, merger or similar transaction.

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

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Indentures, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control provisions of the Indentures by virtue thereof.

## **Certain covenants**

The Indentures will contain, among others, the following covenants:

### *Suspension of covenants.*

During any period of time that: (i) the notes have Investment Grade Ratings from two Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a *Covenant Suspension Event*), the Company and its Restricted Subsidiaries will not be subject to the following provisions of the applicable Indenture:

- (1) Limitation on Incurrence of Additional Indebtedness ;
- (2) Limitation on Restricted Payments ;
- (3) Limitation on Asset Sales ;

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- (4) Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries ;
- (5) Limitation on Preferred Stock of Domestic Restricted Subsidiaries ;
- (6) clause 2 of the first paragraph of Consolidation, Merger and Sale of Assets ;
- (7) Limitations on Transactions with Affiliates ; and
- (8) Subsidiary Guarantees

(collectively, the *Suspended Covenants* ). Upon the occurrence of a Covenant Suspension Event, the Guarantees, if any, of any Guarantors will also be suspended as of such date (the *Suspension Date* ). In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the foregoing, and on any subsequent date (the *Reversion Date* ) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the notes below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events and the Guarantees, if any, of any Guarantors will be reinstated if such Guarantees are then required by the terms of the applicable Indenture. The period of time between the Suspension Date and the Reversion Date is referred to in this description as the *Suspension Period*. Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or upon termination of the Suspension Period or after that time based solely on events that occurred during the Suspension Period).

On the Reversion Date, all Indebtedness incurred, or Disqualified Capital Stock or Preferred Stock issued, during the Suspension Period will be classified as having been incurred or issued pursuant to paragraph (a) of Limitation on Incurrence of Additional Indebtedness below or one of the clauses set forth in paragraph (b) of Limitation on Incurrence of Additional Indebtedness below (to the extent such Indebtedness or Disqualified Capital Stock or Preferred Stock would be permitted to be incurred or issued thereunder as of the Reversion Date and after giving effect to Indebtedness incurred or issued prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness or Disqualified Capital Stock or Preferred Stock would not be so permitted to be incurred or issued pursuant to paragraph (a) or (b) of Limitation on Incurrence of Additional Indebtedness, such Indebtedness or Disqualified Capital Stock or Preferred Stock will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (3) of paragraph (b) of Limitation on Incurrence of Additional Indebtedness. Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Limitation on Restricted Payments will be made as though the covenant 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. As described above, however, no Default or Event of Default will be deemed to have occurred on the Reversion Date as a result of any actions taken by the Company or its Restricted Subsidiaries during the Suspension Period.

***Limitation on incurrence of additional indebtedness.***

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise,



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with respect to, or otherwise become responsible for payment of (collectively, *incur* ) any Indebtedness (other than Permitted Indebtedness); *provided* that if no Default or Event of Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of any such Indebtedness, the Company or any of its Restricted Subsidiaries may incur Indebtedness if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof (or, in the case of Designated Revolving Commitments, on the date such Designated Revolving Commitments are designated as such (but only to the extent and so long as so designated) after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness designated thereunder, in which case such designated amount under such Designated Revolving Commitments may thereafter be borrowed, repaid and reborrowed, in whole or in part, from time to time, without further compliance with any limitation on the incurrence of additional indebtedness set forth in this section titled *Limitation on the incurrence of additional indebtedness* ), the Consolidated Fixed Charge Coverage Ratio of the Company would have been greater than 2.0 to 1.0; *provided* that the amount of Indebtedness that may be incurred and Disqualified Capital Stock or Preferred Stock that may be issued pursuant to the foregoing by any Restricted Subsidiaries that are not Guarantors (other than borrowings under a Bank Facility which is secured by Liens incurred pursuant to clause 2(a) of the *Limitation on Liens* covenant) shall not exceed \$100.0 million at any one time outstanding.

(b) The foregoing will not apply to (collectively, *Permitted Indebtedness* ):

1. Indebtedness under the notes (other than any Additional Notes) issued on the Issue Date;
2. Indebtedness incurred pursuant to any Bank Facility in an aggregate principal amount at any one time outstanding not to exceed \$2,000.0 million;
3. other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness under clauses 1, 2 or 18 of this paragraph (b)) reduced by the amount of any scheduled amortization payments, mandatory prepayments when actually paid, conversions or permanent reductions thereof;
4. Interest Swap Obligations of the Company or any Restricted Subsidiary of the Company covering Indebtedness of the Company or any of its Restricted Subsidiaries; *provided* that such Interest Swap Obligations are entered into to protect the Company and its Restricted Subsidiaries from fluctuations in interest rates on its outstanding Indebtedness incurred without violation of the Indenture to the extent the notional principal amount of such Interest Swap Obligation does not, at the time of the incurrence thereof, exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates;
5. Indebtedness under Currency Agreements; *provided* that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of the Company and its Restricted Subsidiaries outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;
6. Indebtedness of a Restricted Subsidiary of the Company owing to and held by the Company or a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture, in each case subject to no Lien held by a Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture; *provided* that if as of

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any date any Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture owns or holds any such Indebtedness or holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause (6) by the issuer of such Indebtedness;

7. Indebtedness of the Company owing to and held by a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture, in each case subject to no Lien other than a Lien permitted under the Indenture; *provided* that if as of any date any Person other than a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture owns or holds any such Indebtedness or any Person holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause 7 by the Company;

8. Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five business days of incurrence;

9. Indebtedness of the Company or any of its Restricted Subsidiaries in respect of performance bonds, bankers' acceptances, workers compensation claims, surety, bid, appeal or similar bonds, completion guarantees, payment obligations in connection with self-insurance or similar obligations, and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;

10. Indebtedness represented by Capitalized Lease Obligations, mortgage financings and Purchase Money Indebtedness of the Company and its Restricted Subsidiaries not to exceed (together with any Refinancing Indebtedness with respect thereto) 15.0% of Total Assets at any one time outstanding;

11. Refinancing Indebtedness;

12. Indebtedness of the Company or any Restricted Subsidiary consisting of earn-out obligations, guarantees, indemnities or obligations in respect of purchase price adjustments in connection with the acquisition or disposition of assets (including Capital Stock);

13. Indebtedness incurred by the Company or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees or similar instruments issued or created in the ordinary course of business, including in respect of health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; *provided* that any reimbursement obligations in respect thereof are reimbursed within 60 days following the incurrence thereof;

14. Indebtedness in respect of Sale and Leaseback Transactions in an aggregate amount not to exceed \$350.0 million at any one time outstanding;

15. Acquired Indebtedness, if on the date that such Indebtedness is incurred, after giving *pro forma* effect thereto, (A) the Company or such Restricted Subsidiary, as the case may be, shall be able to incur at least \$1.00 of additional Indebtedness (other than Permitted

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Indebtedness) pursuant to the first paragraph above under this covenant, or (B) the Consolidated Fixed Charge Coverage Ratio of the Company would be no less than the Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to the date such Indebtedness is incurred;

16. Additional Indebtedness of the Company and its Restricted Subsidiaries in an aggregate principal amount (or accreted value) not to exceed \$350.0 million at any one time outstanding (which amounts may, but need not, be incurred in whole or in part under the Bank Facility); *provided* that the amount of Indebtedness that may be incurred pursuant to this clause 16 by any Restricted Subsidiaries (other than borrowings under a Bank Facility which is secured by Liens incurred pursuant to clause 2(a) of the Limitation on Liens covenant) that are not Guarantors shall not exceed \$250.0 million at any one time outstanding;

17. Indebtedness represented by guarantees by the Company or its Restricted Subsidiaries of Indebtedness otherwise permitted to be incurred under the Indenture; *provided* that, in the case of a guarantee by a Restricted Subsidiary, such Restricted Subsidiary complies with the Subsidiaries Guarantees covenant to the extent applicable; and

18. Permitted Foreign Subsidiary Debt.

(c) For purposes of determining compliance with this Limitation on Incurrence of Additional Indebtedness covenant, in the event that all or a portion of an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses 1 through 18 of paragraph (b) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of such covenant, the Company shall, in its sole discretion, classify (or later reclassify) such item of Indebtedness, in whole or in part, in any manner that complies with this covenant; *provided* that all Indebtedness outstanding under the Bank Facility up to the maximum amount permitted under clause 2 of paragraph (b) above shall be deemed to have been incurred pursuant to clause 2 of paragraph (b). Accrual of interest, whether payable in cash or in kind, accretion or amortization of original issue discount, imputed interest, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock in the form of additional shares of the same class of Disqualified Capital Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Preferred Stock of a Restricted Subsidiary or Disqualified Capital Stock, as applicable, for purposes of this Limitation on Incurrence of Additional Indebtedness covenant.

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

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(e) 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 debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is Refinancing Indebtedness 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 may be incurred pursuant to this covenant will not be deemed to be exceeded with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies.

*Limitation on restricted payments.* The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

1. declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of the Company) on or in respect of shares of the Company's Capital Stock to holders of such Capital Stock;
2. purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company;
3. make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, earlier than one year prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness; or
4. make any Investment (other than Permitted Investments)

(each of the foregoing actions set forth in clauses 1, 2, 3 and 4 being referred to as a *Restricted Payment* ); if at the time of such Restricted Payment or immediately after giving effect thereto,

(i) a Default or an Event of Default shall have occurred and be continuing;

(ii) the Company is not able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with the first paragraph under the *Limitation on Incurrence of Additional Indebtedness* covenant; or

(iii) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to the Issue Date (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined in good faith by the Board of Directors of the Company) shall exceed the sum of:

(v) an amount equal to the Company's Consolidated EBITDA for the period from January 1, 2013 to the end of the Company's most recently ended fiscal quarter for which financial statements are available at the time of such Restricted Payment (the *Basket Period* ) less the product of 1.4 times the Company's Consolidated Interest Expense for the Basket Period; plus

(w) 100% of the aggregate net cash proceeds received by the Company from any Person (other than a Subsidiary of the Company) from the issuance and sale subsequent to

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January 1, 2013 and on or prior to the date the Restricted Payment occurs (the *Reference Date* ) of Qualified Capital Stock of the Company or warrants, options or other rights to acquire Qualified Capital Stock of the Company (but excluding any debt security that is convertible into, or exchangeable for, Qualified Capital Stock, until such debt security has been converted into, or exchanged for, Qualified Capital Stock); plus

(x) without duplication of any amounts included in clause (iii)(w) above, 100% of the aggregate net cash proceeds of any equity contribution received by the Company from a holder of the Company's Capital Stock subsequent to March 5, 2013 and on or prior to the Reference Date (excluding, in the case of clauses (iii)(w) and (y), any net cash proceeds from any equity offering to the extent used to redeem the notes in compliance with the provisions set forth under *Redemption* ); plus:

(y) without duplication, the sum of:

1. the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made subsequent to March 5, 2013 whether through interest payments, principal payments, dividends or other distributions or payments;

2. the net cash proceeds received by the Company or any of its Restricted Subsidiaries from the disposition of all or any portion of such Investments (other than to a Subsidiary of the Company);

3. upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary (except to the extent the Investment constituted a Permitted Investment), the fair market value of such Subsidiary as of the date of such redesignation; and

4. net cash dividends or other net cash distributions paid to the Company or any Restricted Subsidiary of the Company from any Unrestricted Subsidiaries of the Company; plus:

(z) \$225.0 million;

*provided* that the sum of clauses (1), (2), (3) and (4) above shall not exceed the aggregate amount of all such Investments made subsequent to March 5, 2013.

As of September 30, 2014, the Company could have made in excess of \$1.0 billion in Restricted Payments while remaining in compliance with the limitations on Restricted Payments set forth above, which amount does not include the availability of certain other exceptions and permitted payments that are available to the Company, particularly in some cases for dividends it expects to make as a REIT.

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

1. the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration;

2. the acquisition of any shares of Capital Stock of the Company, either (i) solely in exchange for shares of Qualified Capital Stock of the Company or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of shares of Qualified Capital Stock of the Company;

3. the acquisition of any Subordinated Indebtedness either (i) solely in exchange for shares of Qualified Capital Stock of the Company, or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of (a) shares of Qualified Capital Stock of the Company or (b) Refinancing Indebtedness;

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4. repurchases by the Company of Common Stock of the Company from officers, directors and employees of the Company or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment of such employees or termination of their seat on the board of the Company in an aggregate amount not to exceed \$10.0 million in any calendar year;
5. repurchases of Capital Stock deemed to occur upon the exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price and related statutory withholding taxes of such options or warrants;
6. payments of dividends on Disqualified Capital Stock or Preferred Stock of any Restricted Subsidiary, the incurrence or issuance of which was permitted by the applicable Indenture;
7. cash payments in lieu of the issuance of fractional shares in connection with (i) the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company or (ii) a merger, consolidation, amalgamation or other combination involving the Company or any of its Subsidiaries;
8. the retirement of any shares of Disqualified Capital Stock of the Company by conversion into, or by exchange for, shares of Disqualified Capital Stock of the Company or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) or other shares of Disqualified Capital Stock of the Company;
9. in the event of a Change of Control, and if no Default or Event of Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Company or any Guarantor, in each case at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness, plus accrued and unpaid interest thereon; *provided* that prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Company (or a third party to the extent permitted by the Indenture) has made a Change of Control Offer with respect to the notes offered hereby as a result of such Change of Control and has repurchased all notes validly tendered and not withdrawn in connection with such Change of Control Offer;
10. in the event of an Asset Sale that requires the Company to offer to repurchase notes pursuant to the covenant described under Limitation on Asset Sales, and if no Default or Event of Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Company or any Guarantor, in each case at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness, plus accrued and unpaid interest thereon; *provided* that (A) prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Company has made an offer with respect to the notes offered hereby pursuant to the provisions of the covenant described under Limitation on Asset Sales and has repurchased all notes validly tendered and not withdrawn in connection with such offer and (B) the aggregate amount of all such payments, purchases, redemptions, defeasances or other acquisitions or retirements of all such Subordinated Indebtedness may not exceed the amount of the Net Cash Proceeds Amount remaining after the Company has complied with clause (3) of the covenant described under Limitation on Asset Sales ;
11. the conversion, repayment, repurchase, redemption or other retirement (whether for cash or otherwise) of, or the payment of interest in respect of, the 2016 Convertible Notes; and

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12. other Restricted Payments in an aggregate amount not to exceed \$350.0 million after the Issue Date.

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date in accordance with clause (iii) of the immediately preceding paragraph, amounts expended pursuant to clauses (1) and (4) shall be included in such calculation.

Notwithstanding the foregoing, the Company may (i) declare or pay any dividend or make any distribution on or in respect of shares of the Company's Capital Stock to holders of such Capital Stock, so long as (A)(1) such dividend or distribution is intended to be part of a distribution of the Company's earnings and profits to satisfy Section 857(a)(2) of the Code, whether such dividend or distribution is made before, during or after the first taxable year the Company intends in good faith to be a REIT or (2) the Company believes in good faith that it qualifies as a real estate investment trust under Section 856 of the Code and that the declaration or payment of such dividend or making of such distribution is necessary either to maintain the Company's status as a REIT for any calendar year or, with respect to any calendar year in which the Company intends to qualify as a REIT, to enable the Company to avoid payment of any U.S. federal, state or local income tax for any calendar year that would otherwise be required and could be avoided by reason of paying such dividend or making such distribution by the Company to such holders, with such dividend to be paid or distribution to be made as and when determined by the Company, whether during or after the end of the relevant calendar year, and (B) no Default or Event of Default shall have occurred and be continuing, and (ii) make any cash payments on the Company's outstanding convertible notes to satisfy anti-dilution provisions in such notes as a result of any dividends or distributions made pursuant to (i) of this paragraph. In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date in accordance with clause (iii) of the first paragraph above under the caption "Limitation on restricted payments", amounts expended pursuant to clause (i)(A)(2) above shall be included in such calculation.

*Limitation on asset sales.* The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale unless:

1. the Company or such Restricted Subsidiary, as the case may be, receives consideration therefor at the time of such Asset Sale at least equal to the fair market value at the time of such Asset Sale of the property, assets or stock sold or otherwise disposed of (as determined in good faith by the Company's Board of Directors);

2. at least 75% of the consideration received by the Company or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of cash, Cash Equivalents and/or Replacement Assets (as defined) and is received at the time of such disposition; *provided* that, for purposes of this clause 2, (a) the amount of any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or any such Restricted Subsidiary (other than liabilities that are by their terms subordinated in right of payment to the notes or any Guarantee of a Guarantor) that are assumed by the transferee of any such assets, (b) the fair market value of any securities or other assets received by the Company or any such Restricted Subsidiary in exchange for any such assets that are converted into cash or Cash Equivalents within 360 days after such Asset Sale and (c) any Designated Non-cash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this subclause (c) that is at

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that time outstanding, not to exceed the greater of 1.0% of Total Assets and \$50.0 million at the time of the receipt of such Designated Non-cash Consideration (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value), in each case shall be deemed to be cash for purposes of this provision; and

3. upon the consummation of an Asset Sale, the Company shall apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 360 days of receipt thereof either:

(a) to permanently reduce Indebtedness under a Bank Facility or to permanently repay any secured Indebtedness (other than Subordinated Indebtedness) of the Company or any Restricted Subsidiary or any Indebtedness of any Restricted Subsidiary that is not a Guarantor;

(b) to make an investment in properties and assets (including Capital Stock) that replace the properties and assets that were the subject of such Asset Sale or in properties and assets that will be used in the business of the Company and its Restricted Subsidiaries as existing on the Issue Date or in businesses reasonably related thereto ( *Replacement Assets* );

(c) to repay other Pari Passu Indebtedness; *provided* that the Company shall also equally and ratably reduce Indebtedness under the notes by making an offer (in accordance with the procedures set forth below for a Net Proceeds Offer) to all Holders to purchase the *pro rata* principal amount of notes, in each case at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the repurchase date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); and/or

(d) a combination of prepayment and investment permitted by the foregoing clauses (a)-(c);

*provided* that in the case of an investment in Replacement Assets pursuant to clause (b) or (d) above, a binding commitment shall be treated as a permitted application of the Net Cash Proceeds from the date of such commitment and, in the event such binding commitment is later cancelled or terminated for any reason before such Net Cash Proceeds are so applied, the Company or such Restricted Subsidiary enters into another binding commitment within 180 days of such cancellation or termination of the prior binding commitment.

Pending the final application of such Net Cash Proceeds, the Company may temporarily reduce borrowings under the Bank Facility or any other revolving credit facility or otherwise invest the Net Cash Proceeds in any manner not prohibited by the applicable Indenture. On the 361st day after an Asset Sale or such earlier date, if any, as the Board of Directors of the Company or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clauses 3(a) (d) of the preceding paragraph (each, a *Net Proceeds Offer Trigger Date* ), such aggregate amount of Net Cash Proceeds (rounded down to the nearest \$1,000) that has not been applied on or before such Net Proceeds Offer Trigger Date as permitted in clauses 3(a) (d) of the preceding paragraph or the last provision of this paragraph (each a *Net Proceeds Offer Amount* ) shall be applied by the Company or such Restricted Subsidiary to make an offer to purchase (the *Net Proceeds Offer* ) to all Holders of the applicable series of notes and, to the extent required by the terms of any Pari Passu



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Indebtedness, to all holders of Pari Passu Indebtedness, on a date (the *Net Proceeds Offer Payment Date* ) not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, from all Holders of the applicable series of notes (and holders of any such Pari Passu Indebtedness) on a *pro rata* basis, the maximum amount of notes of the applicable series and Pari Passu Indebtedness equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the notes of the applicable series and Pari Passu Indebtedness to be purchased, plus accrued and unpaid interest thereon, if any, to the date of purchase; *provided* that if at any time any non-cash consideration received by the Company or any Restricted Subsidiary of the Company, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this covenant.

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

In the event of the transfer of substantially all (but not all) of the property and assets of the Company and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Merger, Consolidation and Sale of Assets, which transaction does not constitute a Change of Control, the successor corporation shall be deemed to have sold the properties and assets of the Company and its Restricted Subsidiaries not so transferred for purposes of this covenant, and shall comply with the provisions of this covenant with respect to such deemed sale as if it were an Asset Sale. In addition, the fair market value of such properties and assets of the Company or its Restricted Subsidiaries deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this covenant.

Each Net Proceeds Offer will be mailed to the record Holders of the applicable series of notes as shown on the register of Holders of the applicable series of notes within 25 days following the Net Proceeds Offer Trigger Date, with a copy to the Trustee, and shall comply with the procedures set forth in the Indenture. Upon receiving notice of the Net Proceeds Offer, Holders of the applicable series of notes may elect to tender their notes in whole or in part (in minimum amounts of \$2,000 and integral multiples of \$1,000 in excess thereof) in exchange for cash. To the extent such Holders properly tender notes and holders of Pari Passu Indebtedness properly tender such Pari Passu Indebtedness in an amount exceeding the Net Proceeds Offer Amount, the tendered notes and Pari Passu Indebtedness will be purchased on a *pro rata* basis based on the aggregate amount of notes and Pari Passu Indebtedness tendered (and the Trustee shall select the tendered notes of tendering Holders on a *pro rata* basis based on the amount of notes and Pari Passu Indebtedness tendered). A Net Proceeds Offer shall remain open for a period of 20 business days or such longer or shorter period as may be required or permitted, respectively, by law. If any Net Cash Proceeds remain after the consummation of any Net Proceeds Offer, the Company may use those Net Cash Proceeds for any purpose not otherwise prohibited by the Indenture. Upon completion of each Net Proceeds Offer, the amount of Net Cash Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale

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provisions of the applicable Indenture, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the Asset Sale provisions of the applicable Indenture by virtue thereof.

*Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries.* The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to:

1. pay dividends or make any other distributions on or in respect of its Capital Stock;
2. make loans or advances to the Company or any other Restricted Subsidiary or to pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary of the Company; or
3. transfer any of its property or assets to the Company or any other Restricted Subsidiary of the Company, except in each case for such encumbrances or restrictions existing under or by reason of:
  - (a) applicable law, rule, regulation or order;
  - (b) the Indenture, the notes and any Guarantees;
  - (c) customary non-assignment provisions of any contract or any lease, license or sublicense governing a leasehold interest of any Restricted Subsidiary of the Company;
  - (d) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;
  - (e) agreements existing on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date;
  - (f) the Bank Facility, an agreement governing other Pari Passu Indebtedness permitted to be incurred under the Indenture or, with respect to a Restricted Subsidiary, an agreement evidencing Indebtedness incurred not in violation of the Indenture; *provided* that, with respect to any agreement governing such other Pari Passu Indebtedness or other Indebtedness, as the case may be, the provisions relating to such encumbrance or restriction are no less favorable to the Company or Restricted Subsidiary, as the case may be, in any material respect as determined by the Board of Directors of the Company in its reasonable and good faith judgment than the provisions contained in the Bank Facility, in the case of such other Pari Passu Indebtedness, and the agreements of such Restricted Subsidiary, in the case of such other Indebtedness, in each case as in effect on the Issue Date;
  - (g) restrictions on the transfer of assets subject to any Lien permitted under the applicable Indenture imposed by the holder of such Lien;
  - (h) restrictions imposed by any agreement to sell assets or Capital Stock permitted under the applicable Indenture to any Person pending the closing of such sale;
  - (i) such encumbrances or restrictions being binding on a Restricted Subsidiary at such time as such Restricted Subsidiary first becomes a Restricted Subsidiary, *provided* that such encumbrances or restrictions are not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

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(j) customary provisions in joint venture agreements and other similar agreements (in each case relating solely to the respective joint venture or similar entity or the equity interests therein) entered into in the ordinary course of business;

(k) any amendment to or Refinancing of the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clauses (b), (d), (e) and (f) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such agreement, taken as a whole, are no less favorable to the Company in any material respect as determined by the Board of Directors of the Company in their reasonable and good faith judgment than the provisions relating to such encumbrance or restriction contained in agreements referred to in such clauses (b), (d), (e) and (f);

(l) customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby;

(m) restrictions imposed on cash or other deposits or net worth imposed by customers or required by insurance, surety or bonding companies, in each case, entered into in the ordinary course of business; and

(n) encumbrances and restrictions applicable only to Restricted Subsidiaries of the Company that are not Domestic Restricted Subsidiaries.

*Limitation on preferred stock of domestic restricted subsidiaries.* The Company will not permit any of its Domestic Restricted Subsidiaries that are not Guarantors to issue any Preferred Stock (other than to the Company or to a Wholly Owned Restricted Subsidiary of the Company) or permit any Person (other than the Company or a Wholly Owned Restricted Subsidiary of the Company) to own any Preferred Stock of any Domestic Restricted Subsidiary of the Company that is not a Guarantor.

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

1. in the case of Liens securing Subordinated Indebtedness, the notes or any Guarantee, as the case may be, are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; and

2. in all other cases, the notes or any Guarantee, as the case may be, are equally and ratably secured, except for:

(a) Liens securing borrowings under a Bank Facility in an amount not to exceed the greater of (x) the amount permitted to be incurred pursuant to and in compliance with clause (b)(2) of the covenant *Limitation on Incurrence of Additional Indebtedness* and (y) such amount that at the time of incurrence (or, in the case of Designated Revolving Commitments, on the date such Designated Revolving Commitments are designated as such (but only to the extent and so long as so designated) after giving *pro forma* effect to the incurrence of the entire amount of Indebtedness designated thereunder, in which case such designated amount under such Designated Revolving Commitments may thereafter be borrowed, repaid and reborrowed, in whole or in part, from time to time, without further compliance with any limitations on Liens set forth in

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this subsection titled "Limitation on liens") and after giving pro forma effect to any such Lien and obligations secured thereunder (including the use of proceeds thereof) the Company and its Restricted Subsidiaries shall have a Secured Leverage Ratio less than or equal to 2.0 to 1.0;

(b) Liens existing as of the Issue Date to the extent and in the manner such Liens are in effect on the Issue Date;

(c) Liens securing the Company's and its Restricted Subsidiaries' Obligations under any hedge facility permitted under the Indenture to be entered into by the Company and its Restricted Subsidiaries;

(d) Liens securing the notes and any Guarantees;

(e) Liens in favor of the Company or a Wholly Owned Restricted Subsidiary of the Company on assets of any Restricted Subsidiary of the Company;

(f) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness which has been secured by a Lien permitted under the applicable Indenture and which has been incurred in accordance with the provisions of the applicable Indenture; *provided* that such Liens:

(i) are no less favorable to the Holders in any material respect and are not more favorable to the lienholders in any material respect with respect to such Liens than the Liens in respect of the Indebtedness being Refinanced as determined by the Board of Directors of the Company in its reasonable and good faith judgment; and (ii) do not extend to or cover any property or assets of the Company or any of its Restricted Subsidiaries not securing the Indebtedness so Refinanced; and

(g) Permitted Liens.

*Consolidation, merger and sale of assets.* The Company will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of the Company to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all of the Company's assets (determined on a consolidated basis for the Company and the Company's Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

1. either:

(a) the Company shall be the surviving or continuing corporation; or

(b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and of the Company's Restricted Subsidiaries substantially as an entirety (the *Surviving Entity*);

(x) shall be an entity organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; *provided* that in the case where the Surviving Entity is not a corporation, a co-obligor of the notes is a corporation; and

(y) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and

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punctual payment of the principal of, and premium, if any, and interest on all of the notes and the performance of every covenant of the notes and the Indenture on the part of the Company to be performed or observed;

2. immediately after giving effect to such transaction and the assumption contemplated by clause 1(b)(y) above (including giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction), (A) the Company or such Surviving Entity, as the case may be, shall be able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to the first paragraph of the Limitation on Incurrence of Additional Indebtedness covenant or (B) the applicable Consolidated Fixed Charge Coverage Ratio of the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company) would be no less than the applicable Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to such transaction;

3. immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause 1(b)(y) above (including, without limitation, giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and

4. the Company or the Surviving Entity shall have delivered to the Trustee an officers certificate and an opinion of counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with the applicable provisions of the Indenture and that all conditions precedent in the Indenture relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Company, in a single or a series of related transactions, which properties and assets, if held by the Company instead of such Restricted 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.

Notwithstanding the foregoing clauses 1, 2 and 3, but subject to the proviso in subclause (x) of clause 1(b), the Company may merge with (a) any of its Wholly Owned Restricted Subsidiaries or (b) an Affiliate that is a Person that has no material assets or liabilities and which was organized solely for the purpose of reorganizing the Company in another jurisdiction.

For the avoidance of doubt, nothing in this covenant shall prevent the Company or any Restricted Subsidiary from consummating the Company Conversion.

The Indentures will provide that upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company in accordance with the foregoing in which the Company is not the continuing corporation, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture and the notes with the same effect as if such surviving

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entity had been named as such and all financial information and reports required by the Indenture shall be provided by and for such surviving entity.

To the extent that the notes are guaranteed by one or more Guarantors pursuant to the *Subsidiary Guarantees* covenant, such Guarantors will be subject to similar provisions relating to the consolidation, merger or sale of assets of such Guarantors.

*Limitations on transactions with affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an *Affiliate Transaction* ), having a value greater than \$10.0 million other than (x) Affiliate Transactions permitted under paragraph (b) below and (y) Affiliate Transactions on terms that are no less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company or such Restricted Subsidiary.

All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$50.0 million shall be approved by the Board of Directors of the Company or such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions. If the Company or any Restricted Subsidiary of the Company enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than \$50.0 million, the Company or such Restricted Subsidiary, as the case may be, shall, prior to the consummation thereof, obtain a favorable opinion as to the fairness of such transaction or series of related transactions to the Company or the relevant Restricted Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and file the same with the Trustee.

(b) The restrictions set forth in this covenant shall not apply to:

1. loans, advances and payments of reasonable fees and compensation paid (whether in cash or the issuance of Capital Stock of the Company) to and indemnity provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary of the Company in the ordinary course of business or as determined in good faith by the Company's Board of Directors or senior management;
2. transactions exclusively between or among the Company and any of its Restricted Subsidiaries or exclusively between or among such Restricted Subsidiaries, *provided* that such transactions are not otherwise prohibited by the applicable Indenture;
3. any agreement as in effect as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement, taken as a whole, is not materially more disadvantageous to the Holders than the original agreement as in effect on the Issue Date;
4. any transaction on arm's-length terms with any non-Affiliate that becomes an Affiliate as a result of such transaction;

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5. any employment, consulting and severance arrangements entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;
6. the issuance and sale of Qualified Capital Stock;
7. Permitted Investments and Restricted Payments permitted by the applicable Indenture; and
8. the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of the Company and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Company and the Restricted Subsidiaries.

*Subsidiary guarantees.* If any existing or future Domestic Restricted Subsidiary shall, after the Issue Date, guarantee any Public Debt Securities, then the Company shall cause such Domestic Restricted Subsidiary to:

1. execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Company's obligations under the applicable series of notes and the applicable Indenture on the terms set forth in the applicable Indenture; and
2. deliver to the Trustee an officers' certificate and an opinion of counsel that such supplemental indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Restricted Subsidiary.

Thereafter, such Domestic Restricted Subsidiary shall be a Guarantor for all purposes of the applicable Indenture until such Domestic Restricted Subsidiary is released from its Guarantee as provided in the applicable Indenture.

*Conduct of business.* The Company and its Restricted Subsidiaries will not engage in any businesses that are not the same, similar, ancillary, complementary or reasonably related to the businesses in which the Company and its Restricted Subsidiaries are engaged on the Issue Date, except to an extent that so doing would not be material to the Company and its Restricted Subsidiaries, taken as a whole.

*Payments for consent.* The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the notes unless such consideration is offered to be paid and 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 agreement.

*Reports to holders.* Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company must provide the Trustee and, upon request, to any Holder of the notes within fifteen (15) business days after filing, or in the event no such filing is required, within fifteen (15) business days after the end of the time periods specified in those sections with:

- (1) all quarterly and annual financial information that would be required to be contained in a filing with the United States Securities and Exchange Commission (the *Commission*) on

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Forms 10-Q and 10-K if the Company were required to file such forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations and, with respect to the annual financial statements only, a report thereon by the Company's certified independent accountants, and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports; *provided* that the foregoing delivery requirements shall be deemed satisfied if the foregoing materials are available on the Commission's EDGAR system or on the Company's website within the applicable time period.

In addition, whether or not required by the Commission, the Company will, if the Commission will accept the filing, file a copy of all of the information and reports referred to in clauses (1) and (2) with the Commission for public availability within the time periods specified in the Commission's rules and regulations. In addition, the Company will make the information and reports available to securities analysts and prospective investors upon request. If the Company had any Unrestricted Subsidiaries during the relevant period, the Company will also provide to the Trustee and, upon request, to any Holder of the notes, information sufficient to ascertain the financial condition and results of operations of the Company and its Restricted Subsidiaries, excluding in all respects the Unrestricted Subsidiaries.

Notwithstanding anything to the contrary herein, the Company will not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (3) under Events of Default until 90 days after the date any report hereunder is due to be delivered to the Trustee.

## **Events of default**

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

- (1) the failure to pay interest on any notes when the same becomes due and payable and the default continues for a period of 30 days;
- (2) the failure to pay the principal on any notes of the applicable series, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase notes tendered pursuant to a Change of Control Offer or a Net Proceeds Offer) on the date specified for such payment in the applicable offer to purchase;
- (3) a default in the observance or performance of any other covenant or agreement contained in the Indenture which default continues for a period of 60 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the notes of the applicable series (except in the case of a default with respect to the Merger, Consolidation and Sale of Assets covenant, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (4) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the stated principal amount of any Indebtedness of the Company or any Restricted Subsidiary of the Company, or the acceleration of the final stated maturity of any such Indebtedness (which acceleration is not rescinded, annulled or otherwise cured within 30 days of receipt by the Company or such Restricted Subsidiary of notice of any such



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acceleration) if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final stated maturity or which has been so accelerated (in each case with respect to which the 30-day period described above has passed), equals \$100.0 million or more at any time;

(5) one or more judgments in an aggregate amount in excess of \$100.0 million shall have been rendered against the Company or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and non-appealable;

(6) certain events of bankruptcy affecting the Company or any of its Material Subsidiaries; or

(7) any Guarantee of a Guarantor that is a Material Subsidiary (or group of Guarantors that would constitute a Material Subsidiary) or any material provision thereof ceases to be in full force and effect or any Guarantee of a Guarantor is declared to be null and void and unenforceable or any Guarantee of a Guarantor is found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of the Indenture).

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

If an Event of Default specified in clause (6) above with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding notes of an applicable series shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Indentures will provide that, at any time after a declaration of acceleration with respect to an applicable series of notes as described in the preceding paragraphs, the Holders of a majority in principal amount of such notes may rescind and cancel such declaration and its consequences:

1. if the rescission would not conflict with any judgment or decree;
2. if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;
3. to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;
4. if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and
5. in the event of the cure or waiver of an Event of Default of the type described in clause (6) of the description above of Events of Default, the Trustee shall have received an officers' certificate and an opinion of counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

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The Holders of a majority in principal amount of an applicable series of notes may waive any existing Default or Event of Default under the applicable Indenture, and its consequences, except a default in the payment of the principal of or interest on any notes of the applicable series.

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

Under the Indentures, the Company is required to provide an officers' certificate to the Trustee promptly upon any such officer obtaining knowledge of any Default or Event of Default (*provided* that such officers shall provide such certification at least annually whether or not they know of any Default or Event of Default) that has occurred and, if applicable, describe such Default or Event of Default and the status thereof.

## **No personal liability of directors, officers, employees and stockholders**

No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the notes or under the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of any of the Guarantors, as such, shall have any liability for any obligations of the Guarantors under any Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of notes by accepting a note waives and releases all such liabilities. The waiver and release are part of the consideration for the issuance of the notes and any Guarantees. Such waiver may not be effective to waive liabilities under federal securities law, and it is the view of the Commission that such a waiver is against public policy.

## **Legal defeasance and covenant defeasance**

The Company may, at its option and at any time, elect to have its obligations and the obligations of the Guarantors discharged with respect to the outstanding notes of an applicable series ( *Legal Defeasance* ). Such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the applicable outstanding notes, except for:

1. the rights of Holders to receive payments in respect of the principal of, premium, if any, and interest on the applicable notes when such payments are due;
2. the Company's obligations with respect to the applicable notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payments;
3. the rights, powers, trust, duties and immunities of the Trustee and the Company's obligations in connection therewith; and

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4. the Legal Defeasance provisions of the Indenture.

In addition, the Company may, at its option and at any time, elect to have the obligations of the Company released with respect to certain covenants that are described in the Indenture ( *Covenant Defeasance* ) and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the notes of an applicable series. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, reorganization and insolvency events) described under Events of Default will no longer constitute an Event of Default with respect to the applicable notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

1. the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. government obligations, rated AAA or better by S&P and Aaa by Moody's, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the applicable notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;

2. in the case of Legal Defeasance, the Company shall have delivered to the Trustee an opinion of counsel in the United States reasonably acceptable to the Trustee confirming that:

(a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(b) since the date of the Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel shall confirm that, beneficial owners of the notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

3. in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an opinion of counsel in the United States reasonably acceptable to the Trustee confirming that beneficial owners of the notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

4. no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings);

5. such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Indenture (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings) or any other material agreement or instrument to which the Company or any of its Restricted Subsidiaries is a party or by which the Company or any of its Restricted Subsidiaries is bound;

6. the Company shall have delivered to the Trustee an officers' certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others;

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7. the Company shall have delivered to the Trustee an officers' certificate and an opinion of counsel, which opinion may be subject to customary assumptions and exclusions, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with;

8. the Company shall have delivered to the Trustee an opinion of counsel to the effect that assuming no intervening bankruptcy of the Company between the date of deposit and the 124th day following the date of deposit and that no Holder is an insider of the Company, after the 124th day following the date of deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally; and

9. certain other customary conditions precedent are satisfied.

Notwithstanding the foregoing, the opinion of counsel required by clause 2 above with respect to a Legal Defeasance need not be delivered if all notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable or (2) will become due and payable on the maturity date or a redemption date within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

## **Satisfaction and discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights or registration of transfer or exchange of the notes of an applicable series, as expressly provided for in the Indenture) as to all outstanding notes when:

1. either:

(a) all the applicable notes theretofore authenticated and delivered (except lost, stolen or destroyed notes which have been replaced or paid and notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation; or

(b) all applicable notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable or (2) will become due and payable within one year, or are to be called for redemption within one year, under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the applicable notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the applicable notes to the date of maturity or redemption, as the case may be, together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

2. the Company has paid all other sums payable under the Indenture by the Company with respect to the applicable notes; and

3. the Company has delivered to the Trustee an officers' certificate and an opinion of counsel, which opinion may be subject to customary assumptions and exclusions, stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

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**Modification of the Indentures**

Except as provided in the next two succeeding paragraphs, the Company and the Trustee with the consent of the holders of at least a majority in aggregate principal amount of the notes of an applicable series then outstanding (including consents obtained in connection with a tender offer or exchange offer for the notes) may amend the applicable Indenture, the notes or any Guarantees and the holders of at least a majority in aggregate principal amount of the notes of an applicable series outstanding may waive any past default or compliance with any provisions of the Indenture, the notes or any Guarantees.

Without the consent of each holder of an outstanding note of an applicable series, no amendment or waiver may:

1. reduce the amount of notes of an applicable series whose Holders must consent to an amendment;
2. reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any notes of an applicable series;
3. reduce the principal of or change or have the effect of changing the fixed maturity of any notes of an applicable series, or change the