

Burger King Holdings Inc
Form S-4/A
December 17, 2010

Table of Contents

As filed with the Securities and Exchange Commission on December 17, 2010

Registration No. 333-170614

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**Amendment No. 1 to
FORM S-4
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

**BURGER KING HOLDINGS, INC.
BURGER KING CORPORATION**
See Table of Additional Registrants Below
(Exact Name of Registrant as Specified in Its Charter)

Delaware / Florida (State or other jurisdiction of incorporation or organization)	4899/ 4899 (Primary Standard Industrial Classification Code Number)	75-3095469 / 59-0787929 (I.R.S. Employer Identification No.)
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**5505 Blue Lagoon Drive
Miami, Florida 33126
(305) 378-3000**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Anne Chwat, Esq.
General Counsel
Burger King Corporation
5505 Blue Lagoon Drive
Miami, Florida 33126
(305) 378-3000**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:
**Kara L. MacCullough, Esq.
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131
Phone: (305) 374-8500/Fax: (305) 789-7799**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effective date of this registration statement.

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

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

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

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

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

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

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

Table of Contents**TABLE OF ADDITIONAL REGISTRANTS**

Exact Name of Registrant as Specified in Charter ⁽¹⁾	State or Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification Number	Primary Standard Industrial Classification Code Number
BK Acquisition, Inc.	Delaware	65-0226098	4899
BK CDE, Inc.	Delaware	26-4370885	4899
Burger King Interamerica, LLC	Florida	58-1299022	4899
Burger King Sweden Inc.	Florida	65-0409063	4899
Distron Transportation Systems, Inc.	Florida	41-1430261	4899
Moxie s, Inc.	Louisiana	72-0994099	4899
The Melodie Corporation	New Mexico	85-0310475	4899
TPC Number Four, Inc.	Delaware	41-1536315	4899
TQW Company	Texas	74-2086374	4899

⁽¹⁾ The address and telephone number of each of the additional registrant guarantor s principal executive offices is 5505 Blue Lagoon Drive, Miami, Florida 33126, (305) 378-3000.

Table of Contents

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

Subject to Completion, Dated December 17, 2010

PROSPECTUS

BURGER KING CORPORATION

Offer to Exchange

**\$800,000,000 97/8% Senior Notes due 2018
for**

\$800,000,000 97/8% Senior Notes due 2018, that have been registered under the Securities Act of 1933

Burger King Corporation (**BKC**), a wholly-owned subsidiary of Burger King Holdings, Inc. (**Holdings**), is offering to exchange all of your outstanding unregistered \$800,000,000 97/8% Senior Notes due 2018, which we refer to as the Original Notes, for registered \$800,000,000 97/8% Senior Notes due 2018, which we refer to as the Exchange Notes.

Material Terms of the Exchange Offer:

The exchange offer will expire at 12:00 midnight, New York City time, on [20 business days after commencement], 2010, unless extended.

Upon expiration of the exchange offer, all Original Notes that are validly tendered and not withdrawn will be exchanged for an equal principal amount of the Exchange Notes.

You may withdraw tendered Original Notes at any time prior to the expiration of the exchange offer.

The exchange offer is not subject to any minimum tender condition, but is subject to customary conditions.

The exchange of the Exchange Notes for the Original Notes will not be a taxable exchange for U.S. Federal income tax purposes.

We are offering the exchange pursuant to a registration rights agreement that we entered into in connection with the issuance of the Original Notes.

Material Terms of the Exchange Notes:

The terms of the Exchange Notes and the guarantees thereof are substantially identical to the terms of the Original Notes and the guarantees thereof, except that the transfer restrictions, registration rights and additional interest provisions relating to the Original Notes will not apply to the Exchange Notes.

The Exchange Notes will be guaranteed, jointly and severally, on a senior unsecured basis by Holdings and BK Acquisition, Inc., BK CDE, Inc., Burger King Interamerica, LLC, Burger King Sweden Inc., Distron Transportation Systems, Inc., Moxie s, Inc., The Melodie Corporation, TPC Number Four, Inc. and TQW

Company. In addition, the Exchange Notes will be guaranteed by all of our future direct and indirect subsidiaries that borrow under or guarantee any obligation under the New Credit Facilities (as defined below) or that guarantee our indebtedness or indebtedness of another guarantor.

There is no existing public market for the Original Notes or the Exchange Notes. We do not intend to list the Exchange Notes on any securities exchange or quotation system.

See the Section entitled Risk Factors that begins on page 10 for a discussion of the risks that you should consider prior to tendering your Original Notes in the exchange offer.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Exchange Notes to be distributed in the exchange offer or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2010.

TABLE OF CONTENTS

	Page
<u>Prospectus Summary</u>	1
<u>Risk Factors</u>	10
<u>Special Note Regarding Forward-Looking Statements</u>	18
<u>Use of Proceeds</u>	21
<u>Selected Financial Data</u>	22
<u>Pro-Forma Financial Information</u>	24
<u>The Exchange Offer</u>	34
<u>Description of Notes</u>	45
<u>Book-Entry Settlement and Clearance</u>	115
<u>Registration Rights</u>	119
<u>Material United States Federal Income Tax Consequences</u>	121
<u>Plan of Distribution</u>	122
<u>Legal Matters</u>	123
<u>Experts</u>	123
<u>Where You Can Find More Information; Incorporation By Reference</u>	123
<u>EX-5.1</u>	
<u>EX-23.1</u>	

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with any information or represent anything about us, our financial results or this offering that is not contained in this prospectus. If given or made, any such other information or representation should not be relied upon as having been authorized by us. We are not making an offer to exchange Original Notes in any state where the offer is not permitted.

The information in this prospectus is current only as of the date on its cover, and may change after that date. The information in any document incorporated by reference in this prospectus is current only as of the date of any such document. For any time after the cover date of this prospectus, we do not represent that our affairs are the same as described or that the information in this prospectus is correct nor do we imply those things by delivering this prospectus or issuing Exchange Notes to you.

Each broker-dealer that receives Exchange Notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. The letter of transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act of 1933, as amended (the Securities Act). This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Notes received in exchange for the Original Notes where such Original Notes were acquired by such broker-dealer as a result of market-making activities or other trading activities. The Company has agreed that, starting on the expiration date of the exchange offer and ending on the close of business one year after the expiration date, it will make this prospectus available to any broker-dealer for use in connection with any such resale. See Plan of Distribution.

This prospectus incorporates important business and financial information about us that is not included in or delivered with this document. This information is available without charge to holders upon written or oral request to Burger King Holdings, Inc., 5505 Blue Lagoon Drive, Miami, Florida 33126, Attention: Investor

Relations Department, Telephone: (305) 378-3000. In order to obtain timely delivery of such documents, holders of Original Notes must request this information no later than five business days prior to the expiration date of the exchange offer for the Original Notes.

Unless otherwise indicated or the context otherwise requires, when used in this prospectus, the terms "Company," "us," "we" and "our" refer to Burger King Corporation and its consolidated subsidiaries and "Holdings" refers to our parent, Burger King Holdings, Inc.

Table of Contents

Prospectus Summary

This prospectus summary should be read in conjunction with, and is qualified in its entirety by, the more detailed information appearing elsewhere in, and incorporated by reference in, this prospectus.

Overview

We are the world's second largest fast food hamburger restaurant (FFHR) chain as measured by the total number of restaurants and system-wide sales. We operate in the FFHR category of the quick service restaurant segment, the largest segment of the United States restaurant industry. As of September 30, 2010, we owned or franchised a total of 12,206 restaurants in 76 countries and U.S. territories, of which 1,348 restaurants were Company restaurants and 10,858 restaurants were owned by our franchisees. Of these restaurants, 7,264 or 60% were located in the United States and 4,942 or 40% were located in our international markets, where we believe there is a significant opportunity to open new restaurants. For the fiscal quarter ended September 30, 2010, our revenues and EBITDA were \$600.0 million and \$116.4 million, respectively. See Selected Financial Data for a reconciliation of net income to EBITDA.

We believe that the *Burger King*[®] and *Whopper*[®] brands are two of the world's most recognized consumer brands and we were recognized in Interbrand's top 100 Best Global Brands in 2009. These brands, together with our signature flame-broiled products, the iconic *Have it Your Way*[®] brand promise, and more recently-introduced marketing campaigns, such as those involving The King, are strategic assets.

Our business operates in three reportable segments: (1) the U.S. and Canada; (2) Europe, the Middle East, Africa and Asia Pacific, or EMEA/APAC; and (3) Latin America. We generate revenues from three sources: (1) retail sales at Company restaurants; (2) franchise revenues, consisting of royalties based on a percentage of sales reported by franchise restaurants and franchise fees paid by franchisees; and (3) property income from restaurants that we lease or sublease to franchisees.

Approximately 90% of our current restaurants are franchised, but we expect the percentage of franchise restaurants to increase significantly as we implement our portfolio management strategy of refranchising up to half of our Company restaurants within the next three to five years. The current 90/10 ratio of franchise restaurants to Company restaurants applies on a worldwide basis, but may not reflect the ratio of franchise restaurants to Company restaurants in any specific market or region. We believe that a restaurant ownership mix that is heavily weighted to franchise restaurants is beneficial to us because the capital required to grow and maintain our system is funded primarily by franchisees while giving us a base of Company restaurants to demonstrate credibility with franchisees in launching new initiatives. However, our franchise dominated business model also presents a number of drawbacks and risks, such as our limited control over franchisees and limited ability to facilitate changes in restaurant ownership. In addition, our operating results are closely tied to the success of our franchisees, and we are dependent on franchisees to open new restaurants as part of our growth strategy.

Table of Contents

The Merger

On October 19, 2010, pursuant to the terms of the Agreement and Plan of Merger dated as of September 2, 2010, Holdings merged with and into Blue Acquisition Sub, Inc. (Merger Sub), a wholly owned subsidiary of Burger King Worldwide Holdings, Inc. (formerly known as Blue Acquisition Holding Corporation), with Holdings continuing as the surviving corporation (the Merger). In connection with the Merger, on October 19, 2010, BKC, as borrower, entered into a Credit Agreement dated as of October 19, 2010 with JPMorgan Chase Bank, N.A., as administrative agent, Barclays Capital, as syndication agent, and the lenders party thereto from time to time (the New Credit Agreement). The New Credit Agreement provides for (i) two term loans in an aggregate principal amount of \$1,510.0 million and 250.0 million under a new term loan facility (the New Term Loan Facility) and (ii) a new senior revolving credit facility for up to \$150 million of revolving extensions of credit outstanding at any time (including revolving loans, swingline loans and letters of credit) (the New Revolving Credit Facility, and together with the New Term Loan Facility, the New Credit Facilities). The Merger, the issuance of the Original Notes and the entering into the New Credit Facilities are collectively referred to as the Transactions. As a result of the Transactions, Holdings became a wholly-owned subsidiary of Burger King Worldwide Holdings, Inc. (Parent), a Delaware corporation and a wholly-owned subsidiary of 3G Special Situations Fund II, L.P. (3G).

Principal Executive Offices

The principal executive office of BKC is located at 5505 Blue Lagoon Drive, Miami, Florida 33126 and the telephone number is (305) 378-3000. BKC is a Florida corporation formed in 1954. Our corporate website is www.bk.com. The information contained on our website is not part of this prospectus.

Table of Contents

Summary of the Exchange Offer

This summary is not a complete description of the Exchange Offer. For a more detailed description of the Exchange Offer, see "The Exchange Offer" in this prospectus.

Offering of the Original Notes	On October 19, 2010, BKC issued in a private placement \$800.0 million of unsecured 97/8% Senior Notes due 2018, which we refer to as the Original Notes. The Original Notes are guaranteed, jointly and severally, on a senior unsecured basis by Holdings and BK Acquisition, Inc., BK CDE, Inc., Burger King Interamerica, LLC, Burger King Sweden Inc., Distron Transportation Systems, Inc., Moxie's, Inc., The Melodie Corporation, TPC Number Four, Inc. and TQW Company (collectively with Holdings, the Guarantors). In addition, the Original Notes will be guaranteed by all of our future direct and indirect subsidiaries that borrow under or guarantee any obligation under the New Credit Facilities or that guarantee our indebtedness or indebtedness of another guarantor.
Registration Rights Agreement	Pursuant to the registration rights agreement among BKC, the Guarantors and the several initial purchasers, entered into in connection with the issuance of the Original Notes, BKC agreed to offer to exchange the Original Notes for up to \$800.0 million in aggregate principal amount of 97/8% Senior Notes due 2018 that have been registered under the Securities Act, which we refer to as the Exchange Notes.
The Exchange Offer	<p>BKC is offering to exchange the Exchange Notes for the same aggregate principal amount of the Original Notes (the Exchange Offer).</p> <p>The Original Notes may be tendered only in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000. We will exchange the Exchange Notes for all of the Original Notes that are validly tendered and not withdrawn prior to the expiration of the Exchange Offer.</p> <p>The Exchange Notes will evidence the same debt as the Original Notes and will be issued under and entitled to the benefits of the same Indenture that governs the Original Notes (the Indenture). Because we have registered the Exchange Notes, the Exchange Notes will not be subject to transfer restrictions, and holders of Original Notes that have tendered and had their Original Notes accepted in the Exchange Offer will not have any further registration rights nor the related special interest provisions.</p>
Conditions to the Exchange Offer	The Exchange Offer is subject to customary conditions. The Exchange Offer is not conditioned upon any minimum principal amount of the Original Notes being tendered.
Procedures For Tendering Original Notes	If your Original Notes are held in book-entry form and are registered in the name of a broker, dealer, commercial bank, trust company or other nominee, we urge you to contact that person promptly if you wish to tender your Original Notes pursuant to the Exchange Offer. In such case, you must request the participant of The Depository Trust Company, or DTC, to electronically

transmit, on your behalf, an acceptance through DTC's Automated Tender Offer Program.

Table of Contents

If you wish to tender your Original Notes for Exchange Notes and you hold your Original Notes in certificated form, you must:

complete and sign the enclosed letter of transmittal by following the related instructions, and

send the letter of transmittal, as directed in the instructions, together with any other required documents, to the exchange agent either (1) with the Original Notes to be tendered, or (2) in compliance with the specified procedures for guaranteed delivery of the Original Notes.

Please do not send your letter of transmittal or certificates representing your Original Notes to us. Those documents should be sent only to the exchange agent. Questions regarding how to tender and requests for information should be directed to the exchange agent. See **The Exchange Offer** **Exchange Agent**.

If You Fail to Exchange Your Original Notes

If you do not exchange your Original Notes for the Exchange Notes in the Exchange Offer, you will continue to be subject to the restrictions on transfer provided in the Original Notes and Indenture governing those notes. In general, you may not offer or sell your Original Notes unless such offer or sale is registered under the federal securities laws or are sold in a transaction exempt from or not subject to the registration requirements of the federal securities laws and applicable state securities laws.

Withdrawal Rights

You may withdraw the tender of your Original Notes at any time before 12:00 midnight, New York City time, on the expiration date of the Exchange Offer. You must follow the withdrawal procedures as described under the heading **The Exchange Offer** **Withdrawal of Tenders**.

Expiration Date

The Exchange Offer will expire at 12:00 midnight, New York City time, on [20 business days after commencement], 2010, unless we decide to extend the expiration date.

Issuance of Exchange Notes

We will issue Exchange Notes in exchange for the Original Notes tendered and accepted in the Exchange Offer promptly following the expiration date (unless amended as described in this prospectus).

Resale of Exchange Notes

Except as provided below, we believe that the Exchange Notes may be offered for resale, resold and otherwise transferred by you without compliance with the registration and prospectus delivery provisions of the Securities Act provided that:

the Exchange Notes are being acquired in the ordinary course of business,

you are not participating, do not intend to participate, and have no arrangement or understanding with any person to participate in the distribution of the Exchange Notes issued to you in the Exchange Offer,

you are not an affiliate of BKC or any of the Guarantors,

you are not a broker-dealer tendering Original Notes acquired directly from us for your account, and

Table of Contents

you are not prohibited by law or any policy of the Securities and Exchange Commission, or the SEC, from participating in the Exchange Offer.

Our belief is based on interpretations by the staff of the SEC, as set forth in no-action letters issued to third parties that are not related to us. The SEC has not considered the Exchange Offer in the context of a no-action letter. We cannot assure you that the SEC would make similar determinations with respect to the Exchange Offer. If any of these conditions are not satisfied, or if our belief is not accurate, and you transfer any Exchange Notes issued to you in the Exchange Offer without delivering a resale prospectus meeting the requirements of the Securities Act or without an exemption from registration of your Exchange Notes from those requirements, you may incur liability under the Securities Act. We will not assume, nor will we indemnify you against, any such liability.

Each broker-dealer that receives Exchange Notes for its own account in exchange for Original Notes, where the Original Notes were acquired by such broker-dealer as a result of market-making or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. See Plan of Distribution.

U.S. Federal Income Tax
Consequences

The exchange of Original Notes for the Exchange Notes pursuant to the Exchange Offer will not be a taxable event for U.S. federal income tax purposes.

Use of Proceeds

We will not receive any proceeds from the issuance of the Exchange Notes for the Original Notes pursuant to the Exchange Offer. We will pay all of our expenses incident to the Exchange Offer.

Accounting Treatment

The Exchange Notes will be recorded at the same carrying value as the Original Notes, and we will not recognize any gain or loss from the Exchange Offer for accounting purposes.

Appraisal Rights

Holders of the Original Notes do not have any appraisal or dissenters' rights in connection with the Exchange Offer.

Exchange Agent

Wilmington Trust FSB is serving as exchange agent in connection with the Exchange Offer (the Exchange Agent).

Table of Contents

Summary of the Exchange Notes

This summary is not a complete description of the Exchange Notes. For a more detailed description of the Exchange Notes, see [Description of Notes](#) in this prospectus.

Issuer	Burger King Corporation, a Florida corporation.
Securities	\$800.0 million in aggregate principal amount of 97/8% Senior Notes due 2018.
Maturity	October 15, 2018.
Interest	97/8% per year. Interest will accrue from October 19, 2010.
Interest payment dates	Each October 15 and April 15, commencing April 15, 2011.
Optional redemption	<p>The Exchange Notes will be redeemable at our option, in whole or in part, at any time on or after October 15, 2014, at the redemption prices set forth in this prospectus, together with accrued and unpaid interest, if any, to the date of redemption.</p> <p>At any time prior to October 15, 2013, we may redeem up to 35% of the original principal amount of the Exchange Notes with the proceeds of certain equity offerings at a redemption price of 100% of the principal amount of the Exchange Notes, together with accrued and unpaid interest, if any, to the date of redemption.</p> <p>At any time prior to October 15, 2014, we may also redeem some or all of the Exchange Notes at a price equal to 100% of the principal amount of the Exchange Notes, plus accrued and unpaid interest, plus a make-whole premium.</p>
Mandatory offers to purchase	<p>The occurrence of a change of control will require us to offer to purchase from you all or a portion of your Exchange Notes at a price equal to 101% of their principal amount, together with accrued and unpaid interest, if any, to the date of purchase.</p> <p>Certain asset dispositions will also require us to use the proceeds from those asset dispositions to make an offer to purchase the Exchange Notes at 100% of their principal amount, together with accrued and unpaid interest, if any, to the date of purchase if such proceeds are not otherwise used within a specified period to repay indebtedness (with a corresponding reduction in commitment, if applicable) or to invest in capital assets related to our business or capital stock of a restricted subsidiary (as defined under the heading Description of Notes).</p>
Guarantees	The Exchange Notes will be guaranteed, jointly and severally, on a senior unsecured basis by the Guarantors. In addition, the Exchange Notes will be guaranteed by all of our future direct and indirect subsidiaries that borrow

under or guarantee any obligation under the New Credit Facilities or that guarantee our indebtedness or indebtedness of another guarantor. Under certain circumstances, subsidiary guarantors may be released from their guarantees without the consent of the holders of notes. See Description of Notes Guarantees.

Table of Contents

For the quarter ended September 30, 2010, our non-guarantor subsidiaries:

represented approximately 35% of our net revenues;

represented approximately 21% of operating income, excluding unallocated corporate general and administrative expenses of approximately \$39.3 million and net intercompany revenue of \$0.3 million; and

represented approximately 23% of our Adjusted EBITDA, excluding unallocated corporate general and administrative expenses of approximately \$39.3 million and net intercompany revenue of \$0.3 million.

As of September 30, 2010, our non-guarantor subsidiaries:

represented 28% of our total assets; and

had \$198.9 million of total liabilities, including debt and trade payables but excluding intercompany liabilities.

Ranking

The Exchange Notes and the subsidiary guarantees will be our and the Guarantors' senior unsecured obligations and:

will rank equally in right of payment with all of our and the Guarantors' existing and future senior indebtedness;

will rank senior in right of payment to all of our and the Guarantors' existing and future subordinated indebtedness;

will be effectively subordinated to any of our and the Guarantors' existing and future secured debt, to the extent of the value of the assets securing such debt; and

will be structurally subordinated to all of the existing and future liabilities (including trade payables) of each of our subsidiaries that do not guarantee the Exchange Notes.

As of September 30, 2010, on a pro forma basis after giving effect to the Transactions, we and the Guarantors would have had approximately \$1,850.8 million of senior secured indebtedness, consisting of secured indebtedness under our New Term Loan Facility and approximately \$70.2 million of indebtedness under capital leases to which the Exchange Notes would have been effectively subordinated. As of September 30, 2010, on a pro forma basis after giving effect to the Transactions:

we would have had an additional \$150.0 million of borrowing capacity under our New Revolving Credit Facility (less \$38.0 million of our available commitments to support letters of credit) to which the Exchange Notes would have been effectively subordinated if borrowed;

we would have had the option to raise incremental term loans or increase the revolving credit facility commitments up to an additional \$450.0 million, under certain circumstances, to which the Exchange Notes would be effectively subordinated if borrowed; and

Table of Contents

our non-guarantor subsidiaries would have had \$198.9 million of total liabilities (including trade payables), all of which would have been structurally senior to the Exchange Notes.

Covenants

We will issue the Exchange Notes under the Indenture with Wilmington Trust FSB, as trustee. The Indenture, among other things, limits our ability and the ability of our restricted subsidiaries to:

incur additional indebtedness and guarantee indebtedness;

pay dividends or make other distributions in respect of, or repurchase or redeem, capital stock;

prepay, redeem or repurchase certain debt;

make loans and investments;

sell or otherwise dispose of assets;

incur liens;

enter into transactions with affiliates;

alter the businesses we conduct;

enter into agreements restricting our subsidiaries' ability to pay dividends; and

consolidate, merge or sell all or substantially all of our assets.

These covenants are subject to a number of important exceptions and qualifications. For more details, see Description of Notes.

Certain of these covenants will cease to apply to the Exchange Notes at all times when the Exchange Notes have investment grade ratings from both Moody's Investor Service, Inc. and Standard & Poor's. For more details, see Description of Notes.

Activities of Holdings

The Indenture requires the activities of Holdings to be restricted. See Description of Notes Certain covenants Limitation on activities of Holdings.

Listing

We do not intend to list the Exchange Notes on any securities exchange.

Book Entry Depository

The Depository Trust Company.

Trustee, Registrar and Transfer Agent

Wilmington Trust FSB.

Governing Law

State of New York.

Table of Contents

Risk Factors

Investing in the Exchange Notes involves risks. Potential investors are urged to read and consider the risk factors relating to an investment in the Exchange Notes as set forth under **Risk Factors** in this prospectus and those described in the Annual Report on Form 10-K of Holdings for the fiscal year ended June 30, 2010 and the Quarterly Report on Form 10-Q of Holdings for the quarter ended September 30, 2010

Table of Contents

filed with the SEC and incorporated by reference in this prospectus as well as other information we include or incorporate by reference in this prospectus.

Ratio of Earnings To Fixed Charges

Holdings had earnings to fixed charges of \$3.3 million for the fiscal year ended June 30, 2010, \$3.2 million for the fiscal year ended June 30, 2009, \$3.3 million for the fiscal year ended June 30, 2008, \$2.7 million for the fiscal year ended June 30, 2007, \$1.6 million for the fiscal year ended June 30, 2006 and \$3.5 million for the three months ended September 30, 2010. There were no preferred shares outstanding, and therefore no preference dividends paid, for the fiscal years ended June 30, 2010, 2009, 2008, 2007 and 2006.

Table of Contents

Risk Factors

You should carefully consider the following risks relating to the Exchange Offer and the Exchange Notes, together with the risks and uncertainties discussed under **Forward-Looking Statements** and the other information included or incorporated by reference in this prospectus, including the information under the heading **Risk Factors** in the Annual Report on Form 10-K for the fiscal year ended June 30, 2010 of Holdings and the Quarterly Report on Form 10-Q for the quarter ended September 30, 2010 of Holdings, before deciding whether to participate in the Exchange Offer. Additional risks and uncertainties not currently known to us, or that we currently do not deem material also may materially impair our financial condition, results of operations or liquidity. In this **Risk Factors** section, the term **notes** refers to both the Original Notes and the Exchange Notes.

Risks Related to the Exchange Offer

If you fail to follow the procedures of the Exchange Offer, your Original Notes will not be accepted for exchange.

We will not accept your Original Notes for exchange if you do not follow the procedures of the Exchange Offer. We will issue the Exchange Notes as part of the Exchange Offer only after timely receipt of your Original Notes, a properly completed and duly executed letter of transmittal and all other required documents or if you comply with the guaranteed delivery procedures for tendering your Original Notes. Therefore, if you want to tender your Original Notes, please allow sufficient time to ensure timely delivery. If we do not receive your Original Notes, letter of transmittal and all other required documents by the expiration date of the Exchange Offer, or you do not otherwise comply with the guaranteed delivery procedures for tendering your Original Notes, we will not accept your Original Notes for exchange. We are under no duty to give notification of defects or irregularities with respect to the tenders of Original Notes for exchange. If there are defects or irregularities with respect to your tender of Original Notes, we will not accept your Original Notes for exchange unless we decide in our sole discretion to waive such defects or irregularities.

If you fail to exchange your Original Notes, they will continue to be restricted securities and may become more illiquid.

Original Notes that you do not tender or we do not accept will, following the Exchange Offer, continue to be restricted securities, and you may not offer to sell them except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities law. We will issue Exchange Notes in exchange for the Original Notes pursuant to the Exchange Offer only following the satisfaction of the procedures and conditions set forth in **The Exchange Offer Procedures for Tendering**. These procedures and conditions include timely receipt by the Exchange Agent of such Original Notes (or a confirmation of book-entry transfer) and of a properly completed and duly executed letter of transmittal (or an agent's message from DTC).

Because we anticipate that most holders of Original Notes will elect to exchange their Original Notes, we expect that the liquidity of the market for any Original Notes remaining after the completion of the Exchange Offer will be substantially limited. Any Original Notes tendered and exchanged in the Exchange Offer will reduce the aggregate principal amount of the Original Notes outstanding. Following the Exchange Offer, if you do not tender your Original Notes you will generally not have any further registration rights, subject to limited exceptions, and your Original Notes will continue to be subject to certain transfer restrictions. Accordingly, the liquidity of the market for the Original Notes could be adversely affected.

Table of Contents

Your ability to transfer the Exchange Notes may be limited by the absence of an active trading market and an active trading market may not develop for the Exchange Notes.

The Exchange Notes will be a new issue of securities for which there is no established trading market. We expect the Exchange Notes to be eligible for trading by qualified institutional buyers, as defined under Rule 144A, but we do not intend to list the Exchange Notes on any national securities exchange or include the Exchange Notes in any automated quotation system. The initial purchasers of the Original Notes have advised us that they intend to make a market in the Exchange Notes as permitted by applicable laws and regulations. However, the initial purchasers are not obligated to make a market in the Exchange Notes, and, if commenced, they may discontinue their market-making activities at any time without notice.

Therefore, an active market for the Exchange Notes may not develop or be maintained, which would adversely affect the market price and liquidity of the Exchange Notes. In that case, the holders of the Exchange Notes may not be able to sell their Exchange Notes at a particular time or at a favorable price.

Even if an active trading market for the Exchange Notes does develop, there is no guarantee that it will continue. Historically, the market for non-investment grade debt has been subject to severe disruptions that have caused substantial volatility in the prices of securities similar to the Exchange Notes. The market, if any, for the Exchange Notes may experience similar disruptions, and any such disruptions may adversely affect the liquidity in that market or the prices at which you may sell your Exchange Notes.

Risks Related to the Notes

Our substantial indebtedness could adversely affect our financial condition and prevent us from fulfilling our obligations under the notes.

We have and will continue to have, a significant amount of indebtedness. As of September 30, 2010, after giving effect to the Transactions, we would have had total indebtedness of \$2,722.4 million (excluding \$20.8 million of original issue discount on the New Credit Facilities), including the Original Notes, and we would have had commitments under the New Revolving Credit Facility available to us of \$150.0 million (not giving effect to approximately \$38.0 million of letters of credit which we utilized upon consummation of the Transactions).

Subject to the limits contained in the New Credit Agreement, the Indenture and our other debt instruments, we may be able to incur substantial additional debt from time to time to finance working capital, capital expenditures, investments or acquisitions, or for other purposes. If we do so, the risks related to our high level of debt could intensify. Specifically, our high level of debt could have important consequences to the holders of the notes, including:

making it more difficult for us to satisfy our obligations with respect to the notes and our other debt;

limiting our ability to obtain additional financing to fund future working capital, capital expenditures, acquisitions or other general corporate requirements;

requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of other purposes, thereby reducing the amount of cash flows available for working capital, capital expenditures, acquisitions and other general corporate purposes;

increasing our vulnerability to adverse changes in general economic, industry and competitive conditions;

exposing us to the risk of increased interest rates as certain of our borrowings, including borrowings under the New Credit Facilities, are at variable rates of interest;

Table of Contents

limiting our flexibility in planning for and reacting to changes in the industry in which we compete;
placing us at a disadvantage compared to other, less leveraged competitors; and
increasing our cost of borrowing.

In addition, the Indenture and the New Credit Agreement contain restrictive covenants that will limit our ability to engage in activities that may be in our long-term best interest. Our failure to comply with those covenants could result in an event of default which, if not cured or waived, could result in the acceleration of substantially all of our debt.

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

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

If our cash flows and capital resources are insufficient to fund our debt service obligations, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to dispose of material assets or operations, seek additional debt or equity capital or restructure or refinance our indebtedness, including the notes. We may not be able to effect any such alternative measures on commercially reasonable terms or at all and, even if successful, those alternative actions may not allow us to meet our scheduled debt service obligations. The New Credit Agreement and the Indenture restrict our ability to dispose of assets and use the proceeds from those dispositions and may also restrict our ability to raise debt or equity capital to be used to repay other indebtedness when it becomes due. We may not be able to consummate those dispositions or to obtain proceeds in an amount sufficient to meet any debt service obligations then due.

In addition, we conduct a substantial portion of our operations through our subsidiaries, certain of which are not guarantors of the notes or our other indebtedness. Accordingly, repayment of our indebtedness, including the notes, is dependent on the generation of cash flow by our subsidiaries and their ability to make such cash available to us, by dividend, debt repayment or otherwise. Unless they are guarantors of the notes or our other indebtedness, our subsidiaries do not have any obligation to pay amounts due on the notes or our other indebtedness or to make funds available for that purpose. Our subsidiaries may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness, including the notes. Each subsidiary is a distinct legal entity, and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries.

While the Indenture and the agreements governing certain of our other existing indebtedness limit the ability of our subsidiaries to incur consensual restrictions on their ability to pay dividends or make other intercompany payments to us, these limitations are subject to qualifications and exceptions. In the event that we do not receive distributions from our subsidiaries, we may be unable to make required principal and interest payments on our indebtedness, including the notes.

Our inability to generate sufficient cash flows to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, would materially and adversely affect our financial position and results of operations and our ability to satisfy our obligations under the notes.

If we cannot make scheduled payments on our debt, we will be in default and holders of the notes could declare all outstanding principal and interest to be due and payable, the lenders under the New Credit

Table of Contents

Facilities could terminate their commitments to loan money, our secured lenders could foreclose against the assets securing their borrowings and we could be forced into bankruptcy or liquidation. All of these events could result in your losing your entire investment in the notes.

Despite our current level of indebtedness, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks to our financial condition described above and prevent us from fulfilling our obligations under the notes.

We and our subsidiaries may be able to incur significant additional indebtedness in the future. Although the Indenture and the New Credit Agreement contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of qualifications and exceptions, and the additional indebtedness incurred in compliance with these restrictions could be substantial. If we incur any additional indebtedness that ranks equally with the notes, subject to collateral arrangements, the holders of that debt will be entitled to share ratably with you in any proceeds distributed in connection with any insolvency, liquidation, reorganization, dissolution or other winding up of our company. This may have the effect of reducing the amount of proceeds paid to you. These restrictions also will not prevent us from incurring obligations that do not constitute indebtedness. In addition, as of September 30, 2010, on a pro forma basis after giving effect to the Transactions, our New Revolving Credit Facility would have provided for unused commitments of \$150.0 million (not giving effect to approximately \$38.0 million of outstanding letters of credit), which could increase by \$450.0 million, subject to certain conditions. All of those borrowings would be secured indebtedness. If new debt is added to our current debt levels, the related risks that we and the guarantors now face could intensify. See Description of certain indebtedness and Description of Notes.

The terms of the New Credit Agreement and the Indenture restrict our current and future operations, particularly our ability to respond to changes or to take certain actions.

The Indenture governing the notes and the New Credit Agreement contain a number of restrictive covenants that impose significant operating and financial restrictions on us and may limit our ability to engage in acts that may be in our best interest, including restrictions on our ability to:

- incur additional indebtedness and guarantee indebtedness;
- pay dividends or make other distributions in respect of, or repurchase or redeem, capital stock;
- prepay, redeem or repurchase certain debt;
- make loans and investments;
- sell or otherwise dispose of assets;
- incur liens;
- enter into transactions with affiliates;
- alter the businesses we conduct;
- enter into agreements restricting our subsidiaries' ability to pay dividends; and
- consolidate, merge or sell all or substantially all of our assets.

The covenants in the Indenture are subject to important exceptions and qualifications, which are described under Description of Notes. Certain of these covenants will cease to apply to the notes at all times when the notes have investment grade ratings from both Moody's Investor Service, Inc. and Standard & Poor's.

Table of Contents

In addition, the restrictive covenants in the New Credit Agreement require us to maintain specified financial ratios. Our ability to meet those financial ratios can be affected by events beyond our control.

A breach of the covenants under the Indenture or under the New Credit Agreement could result in an event of default under the applicable indebtedness. Such a default may allow the creditors to accelerate the related debt and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In addition, an event of default under the New Credit Agreement would permit the lenders under our New Credit Facilities to terminate all commitments to extend further credit under the facilities. Furthermore, if we were unable to repay the amounts due and payable under our New Credit Facilities, those lenders could proceed against the collateral granted to them to secure that indebtedness. In the event our lenders or noteholders accelerate the repayment of our borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness.

The restrictions contained in the Indenture could adversely affect our ability to:

- finance our operations;
- make needed capital expenditures;
- make strategic acquisitions or investments or enter into joint ventures;
- withstand a future downturn in our business, the industry or the economy in general;
- engage in business activities, including future opportunities, that may be in our interest; and
- plan for or react to market conditions or otherwise execute our business strategies.

These restrictions may affect our ability to grow in accordance with our plans.

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

Borrowings under our New Credit Facilities are at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness will increase even though the amount borrowed remained the same, and our net income and cash flows, including cash available for servicing our indebtedness, will correspondingly decrease. Assuming all revolving loans are fully drawn, each quarter point change in interest rates would result in a \$5.0 million change in annual interest expense on our indebtedness under our New Credit Facilities. Following the Transactions, we entered into two deferred premium interest rate caps to hedge interest rate risk under the New Credit Facilities. However, we may not be able to fully mitigate our interest rate risk.

The notes are effectively subordinated to our and our guarantors' indebtedness under the New Credit Facilities and any other future secured indebtedness of us and the guarantors to the extent of the value of the assets securing that indebtedness.

The notes are not secured by any of our or our guarantors' assets. As a result, the notes and the guarantees are effectively subordinated to our and our guarantors' indebtedness under the New Credit Facilities with respect to the assets that secure that indebtedness. As of September 30, 2010, on a pro forma basis after giving effect to the Transactions, our New Revolving Credit Facility could have provided for unused commitments of \$150.0 million (not giving effect to \$38.0 million of outstanding letters of credit). In addition, we may incur additional secured debt in the future. The effect of this subordination is that upon a default in payment on, or the acceleration of, any of our secured

indebtedness, or in the event of bankruptcy, insolvency, liquidation, dissolution or reorganization of our company or the guarantors of the New Credit Facilities or of that other secured debt, the proceeds from the

Table of Contents

sale of assets securing our secured indebtedness will be available to pay obligations on the notes only after all indebtedness under the New Credit Facilities and that other secured debt has been paid in full. As a result, the holders of the notes may receive less, ratably, than the holders of secured debt in the event of our or our guarantors bankruptcy, insolvency, liquidation, dissolution or reorganization.

The notes are structurally subordinated to all obligations of our existing and future subsidiaries that are not and do not become guarantors of the notes.

The notes are guaranteed by Holdings and by each of our existing and subsequently acquired or organized subsidiaries that borrow under or guarantee the New Credit Facilities or that, in the future, guarantee our indebtedness or indebtedness of another guarantor. Our subsidiaries that do not guarantee the notes, including all of our non-domestic subsidiaries, will have no obligation, contingent or otherwise, to pay amounts due under the notes or to make any funds available to pay those amounts, whether by dividend, distribution, loan or other payment. The notes are structurally subordinated to all indebtedness and other obligations of any non-guarantor subsidiary such that in the event of insolvency, liquidation, reorganization, dissolution or other winding up of any subsidiary that is not a guarantor, all of that subsidiary's creditors (including trade creditors and preferred stockholders, if any) would be entitled to payment in full out of that subsidiary's assets before we would be entitled to any payment.

In addition, the Indenture, subject to some limitations, permits these subsidiaries to incur additional indebtedness and does not contain any limitation on the amount of other liabilities, such as trade payables, that may be incurred by these subsidiaries.

For the quarter ended September 30, 2010, our non-guarantor subsidiaries represented 35% of our net revenues, and 21% and 23% of our operating income and our Adjusted EBITDA, respectively, in each case excluding unallocated general and administrative expenses of \$39.3 million and net intercompany revenue of \$0.3 million. As of September 30, 2010, our non-guarantor subsidiaries represented 28% of our total assets and had \$198.9 million of total liabilities, including debt and trade payables but excluding intercompany liabilities.

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

the designation of that subsidiary guarantor as an unrestricted subsidiary;

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

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

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

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

Upon the occurrence of specific kinds of change of control events, we are required to offer to repurchase all outstanding notes at 101% of their principal amount, plus accrued and unpaid interest to the purchase date. Additionally, under the New Credit Facilities, a change of control (as defined therein) constitutes an event of default that permits the lenders to accelerate the maturity of borrowings under the respective agreements and terminate their

commitments to lend. The source of funds for any purchase of the notes and repayment of borrowings under our New Credit Facilities would be our available cash or cash generated from our subsidiaries' operations or other sources, including borrowings, sales of assets or sales of

Table of Contents

equity. We may not be able to repurchase the notes upon a change of control because we may not have sufficient financial resources to purchase all of the debt securities that are tendered upon a change of control and repay our other indebtedness that will become due. We may require additional financing from third parties to fund any such purchases, and we may be unable to obtain financing on satisfactory terms or at all. Further, our ability to repurchase the notes may be limited by law. In order to avoid the obligations to repurchase the notes and events of default and potential breaches of the New Credit Agreement, we may have to avoid certain change of control transactions that would otherwise be beneficial to us.

In addition, some important corporate events, such as leveraged recapitalizations, may not, under the Indenture, constitute a change of control that would require us to repurchase the notes, even though those corporate events could increase the level of our indebtedness or otherwise adversely affect our capital structure, credit ratings, financial condition or the value of the notes. See Description of Notes Change of control.

Holders of the notes may not be able to determine when a change of control giving rise to their right to have the notes repurchased has occurred following a sale of substantially all of our assets.

The definition of change of control in the Indenture includes a phrase relating to the sale of all or substantially all of our assets. There is no precise established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of notes to require us to repurchase its notes as a result of a sale of less than all our assets to another person may be uncertain.

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

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

we or any of the guarantors, as applicable, were insolvent or rendered insolvent by reason of the issuance of the notes or the incurrence of the guarantees;

the issuance of the notes or the incurrence of the guarantees left us or any of the guarantors, as applicable, with an unreasonably small amount of capital or assets to carry on the business;

we or any of the guarantors intended to, or believed that we or such guarantor would, incur debts beyond our or the guarantor's ability to pay as they mature; or

we or any of the guarantors were a defendant in an action for money damages, or had a judgment for money damages docketed against us or the guarantor if, in either case, the judgment is unsatisfied after final judgment.

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

We cannot be certain as to the standards a court would use to determine whether or not we or the guarantors were insolvent at the relevant time or, regardless of the standard that a court uses, whether the

Table of Contents

notes or the guarantees would be subordinated to our or any of our guarantors' other debt. In general, however, a court would deem an entity insolvent if:

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

the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or

it could not pay its debts as they became due.

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

Finally, as a court of equity, the bankruptcy court may subordinate the claims in respect of the notes to other claims against us under the principle of equitable subordination if the court determines that (1) the holder of notes engaged in some type of inequitable conduct, (2) the inequitable conduct resulted in injury to our other creditors or conferred an unfair advantage upon the holders of notes and (3) equitable subordination is not inconsistent with the provisions of the Bankruptcy Code.

A lowering or withdrawal of the ratings assigned to our debt securities by rating agencies may increase our future borrowing costs and reduce our access to capital.

The Original Notes have, and the Exchange Notes will have, a non-investment grade rating, and any rating assigned could be lowered or withdrawn entirely by a rating agency if, in that rating agency's judgment, future circumstances relating to the basis of the rating, such as adverse changes, so warrant. Consequently, real or anticipated changes in our credit ratings will generally affect the market value of the notes. Credit ratings are not recommendations to purchase, hold or sell the notes. Additionally, credit ratings may not reflect the potential effect of risks relating to the structure or marketing of the notes. Any downgrade by either Standard & Poor's or Moody's would increase the interest rate on our New Credit Facilities, decrease our earnings and may result in higher borrowing costs.

Any future lowering of our ratings likely would make it more difficult or more expensive for us to obtain additional debt financing. If any credit rating initially assigned to the notes is subsequently lowered or withdrawn for any reason, you may not be able to resell your notes at a favorable price or at all.

Many of the covenants in the Indenture will not apply during any period in which the notes are rated investment grade by both Moody's and Standard & Poor's.

Many of the covenants in the Indenture will not apply to us during any period in which the notes are rated investment grade by both Moody's and Standard & Poor's, provided at such time no default or event of default has occurred and is continuing. These covenants will restrict, among other things, our ability to pay distributions, incur debt and to enter into certain other transactions. There can be no assurance that the notes will ever be rated investment grade, or that if they are rated investment grade, that the notes will maintain these ratings. However, suspension of these covenants would allow us to engage in certain transactions that would not be permitted while these covenants were in force. To

the extent the covenants are subsequently reinstated, any such actions taken while the covenants were suspended would not result in an event of default under the Indenture. See Description of Notes Certain covenants Effectiveness of covenants.

Table of Contents

Special Note Regarding Forward-Looking Statements

This prospectus and the documents that are incorporated by reference into this prospectus contain forward-looking statements. These statements concern expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. Specifically, this prospectus and the documents incorporated by reference into this prospectus contain forward-looking statements regarding:

- our expectation that our percentage of franchise restaurants will increase significantly as we implement our portfolio management strategy of refranchising up to half of our Company restaurants within the next three to five years;
- our intent to focus on sales growth and profitability;
- our ability to drive sales growth by enhancing the guest experience and expanding competitive hours of operation;
- our intent to expand our international platform and accelerate new restaurant development;
- our expectation that there is a significant opportunity to open new restaurants in international markets;
- our beliefs and expectations regarding system-wide average restaurant sales;
- our expectations about our financial fundamentals and the benefits of our highly-franchised business model;
- our beliefs and expectations regarding our newly developed restaurant designs, including their ability to convey our vision of the *Burger King* brand and reinforce the message that *Burger King* delivers superior products and a positive guest experience;
- our beliefs and expectations regarding our ability to develop innovative products that support both ends of our barbell menu strategy and our expectation that our barbell menu strategy will grow our market share and improve our operating margins;
- our expectations regarding opportunities to enhance restaurant profitability and effectively manage margin pressures;
- our intention to continue to employ innovative and creative marketing strategies to increase our restaurant traffic and comparable sales;
- our intention to focus on our restaurant reimagining program;
- our ability to use proactive portfolio management to drive growth and optimize our restaurant portfolio;
- our belief and expectation regarding our ability to fund our U.S. and Canada restaurant reimagining program and to conclude the program within the next two to three years, our exploration of initiatives to reduce the initial investment expense, time and uncertainty of new builds;
- our ability to manage fluctuations in foreign currency exchange and interest rates;

Table of Contents

our estimates regarding our liquidity, capital expenditures and sources of both, and our ability to fund future operations and obligations;

our expectations regarding increasing net restaurant count;

our estimates regarding the fulfillment of certain volume purchase commitments;

our expectations regarding the impact of accounting pronouncements;

our intention to renew hedging contracts;

our expectation regarding the Original Notes, the Exchange Notes and the Exchange Offer; and

our expectations regarding unrecognized tax benefits.

These forward-looking statements reflect our current views about future events and are subject to risks, uncertainties and assumptions. We wish to caution readers that certain important factors may have affected and could in the future affect our actual results and could cause actual results to differ significantly from those expressed in any forward-looking statement. The most important factors that could prevent us from achieving our goals, and cause the assumptions underlying forward-looking statements and the actual results to differ materially from those expressed in or implied by those forward-looking statements include, but are not limited to, the following:

global economic or other business conditions that may affect the desire or ability of our customers to purchase our products such as inflationary pressures, high unemployment levels, increases in gas prices, declines in median income growth, consumer confidence and consumer discretionary spending and changes in consumer perceptions of dietary health and food safety, and the impact of negative sales and traffic on our business, including the risk that we will be required to incur non-cash impairment or other charges that reduce our earnings;

risks related to our substantial indebtedness, which could adversely affect our financial condition and prevent us from fulfilling our obligations under our New Credit Facilities and Notes;

risks arising from the significant and rapid fluctuations in interest rates and in the currency exchange markets and the decisions and positions that we take to hedge such volatility;

risks related to adverse weather conditions and other uncontrollable events, and the impact of such events on our operating results;

our ability to compete domestically and internationally in an intensely competitive industry;

our ability to successfully implement our domestic and international growth strategy and risks related to our international operations;

risk related to the concentration of our restaurants in limited geographic areas, such as Germany, where we have experienced and may continue to experience declining sales and operating profits;

our ability to manage changing labor conditions and costs in the U.S. and internationally, including future mandated health care costs, if we or our franchisees choose not to pass, or cannot pass, these increased costs on to our guests;

our ability and the ability of our franchisees to manage cost increases;

Table of Contents

our relationship with, and the success of, our franchisees and risks related to our restaurant ownership mix;

the effectiveness of our marketing and advertising programs and franchisee support of these programs;

risks related to the financial strength of our franchisees, which could result in, among other things, restaurant closures, delayed or reduced payments to us of royalties and rents, and an inability to obtain financing to fund development, restaurant remodels or equipment initiatives on acceptable terms or at all;

risks related to food safety, including food borne illness and food tampering, and the safety of toys and other promotional items available in our restaurants;

risks arising from the interruption or delay in the availability of our food or other supplies, including those that would arise from the loss of any of our major distributors, particularly in those international markets where we have a single distributor;

our ability to successfully execute our reimagining program in the U.S. and Canada and our portfolio management strategy to increase sales and profitability;

our ability to implement our growth strategy and strategic initiatives given restrictions imposed by our New Credit Facilities;

risks related to the ability of counterparties to our New Credit Facilities, interest rate caps and foreign currency forward contracts to fulfill their commitments and/or obligations;

risks related to interruptions or security breaches of our computer systems and risks related to the lack of integration of our worldwide technology systems;

our ability to continue to extend our hours of operation to capture a larger share of both the breakfast and late night dayparts;

risks related to changes in the mix of earnings in countries with different statutory tax rates, changes in the valuation of deferred tax assets and liabilities and continued losses in certain international Company restaurant markets that could trigger a valuation allowance or negatively impact our ability to utilize foreign tax credits to offset our U.S. income taxes;

risks related to the reasonableness of our tax estimates, including sales, excise, GST, VAT and other taxes;

adverse legal judgments, settlements or pressure tactics; and

adverse legislation or regulation.

Table of Contents

Use of Proceeds

The Exchange Offer is intended to satisfy our obligations under the registration rights agreement entered into in connection with the issuance of the Original Notes. We will not receive any cash proceeds from the issuance of the Exchange Notes in the Exchange Offer.

In consideration for issuing the Exchange Notes as contemplated by this prospectus, we will receive the Original Notes in like principal amount. The Original Notes surrendered and exchanged for the Exchange Notes will be retired and canceled and cannot be reissued.

Table of Contents**Selected Financial Data**

The selected historical consolidated financial and other data of Holdings for the fiscal years ended June 30, 2010, 2009 and 2008 and as of June 30, 2010 and 2009, have been derived from Holdings' audited financial statements incorporated by reference in this prospectus. The historical consolidated financial and other data of Holdings for the fiscal years ended June 30, 2007 and 2006 and as of June 30, 2008, 2007 and 2006 have been derived from Holdings' audited financial statements that are not incorporated by reference in this prospectus. The selected historical consolidated financial information of Holdings for the three months ended September 30, 2010 and 2009 and as of September 30, 2010 and 2009 are derived from Holdings' unaudited consolidated financial statements incorporated by reference in this prospectus. The information set forth below is not necessarily indicative or predictive of results of future operations and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the consolidated financial statements and related notes thereto contained in Holdings' Annual Report on Form 10-K for the fiscal year ended June 30, 2010, Holdings' Quarterly Report on Form 10-Q for the quarter ended September 30, 2010 and Holdings' Current Reports on Form 8-K filed with the SEC on November 12, 2010, which are incorporated by reference in this prospectus.

	For the Fiscal Years Ended June 30,					For the three months ended September 30,	
	2010	2009	2008	2007	2006	2010	2009
	(audited)					(unaudited)	
	(In millions, except per share data)						
Income Statement Data:							
Revenues							
Company restaurant revenues	\$ 1,839.3	\$ 1,880.5	\$ 1,795.9	\$ 1,658.0	\$ 1,515.6	\$ 429.8	\$ 469.1
Franchise revenues	549.2	543.4	537.2	459.5	419.8	141.6	138.7
Property revenues	113.7	113.5	121.6	116.2	112.4	28.6	29.1
Total revenues	2,502.2	2,537.4	2,454.7	2,233.7	2,047.8	600.0	636.9
Company restaurant expenses:							
Food, paper and product costs	585.0	603.7	564.3	499.3	469.5	135.8	148.8
Payroll and employee benefits	568.7	582.2	534.7	492.1	446.3	128.9	144.8
Occupancy and other operating costs	461.1	457.8	439.0	418.0	380.1	106.6	114.7
Total Company restaurant expenses	1,614.8	1,643.7	1,538.0	1,409.4	1,295.9	371.3	408.3
	495.8	494.3	501.0	473.5	487.9	127.8	129.9

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Selling, general and administrative expenses								
Property expenses	59.4	58.1	62.1	60.6	57.4	15.5	14.7	
Fees paid to affiliates					38.9			
Other operating (income) expenses, net	(0.7)	1.9	(0.6)	(4.4)	(3.6)	(5.4)	1.0	
Total operating costs and expenses	2,169.3	2,198.0	2,100.5	1,939.1	1,876.5	509.2	553.9	
Income from operations	332.9	339.4	354.2	294.6	171.3	90.8	83.0	
Interest expense, net	48.6	54.6	61.2	67.0	72.0	12.3	12.5	
Loss on early extinguishment of debt				0.8	17.8			
Income before income taxes	284.3	284.8	293.0	226.8	81.5	78.5	70.5	
Income tax expense	97.5	84.7	103.4	78.7	54.4	15.1	23.9	
Net income	\$ 186.8	\$ 200.1	\$ 189.6	\$ 148.1	\$ 27.1	\$ 63.4	\$ 46.6	
Earnings per share basic	\$ 1.38	\$ 1.48	\$ 1.40	\$ 1.11	\$ 0.24	\$ 0.47	\$ 0.35	
Earnings per share diluted	\$ 1.36	\$ 1.46	\$ 1.38	\$ 1.08	\$ 0.24	\$ 0.46	\$ 0.34	
Weighted average shares outstanding- basic	135.4	134.8	135.1	133.9	110.3	136.1	135.0	
Weighted average shares outstanding- diluted	137.2	136.8	137.6	136.8	114.7	137.9	136.8	
Cash dividends per common share	\$ 0.25	\$ 0.25	\$ 0.25	\$ 0.13	\$ 3.42	\$ 0.06	\$ 0.06	

Table of Contents

	2010	For the Fiscal Years Ended June 30,				2006	For the three months ended	
		2009	2008 (audited)	2007	2006		September 30, 2010 (unaudited)	2009 (unaudited)
						(In millions)		
Other Financial Data:								
Net cash provided by operating activities	\$ 310.4	\$ 310.8	\$ 243.4	\$ 110.4	\$ 67.0	\$ 82.1	\$ 48.0	
Net cash used for investing activities	(134.9)	(242.0)	(199.3)	(77.4)	(66.7)	(1.2)	(28.8)	
Net cash used for financing activities	(96.9)	(105.5)	(62.0)	(126.9)	(172.6)	(29.4)	(11.9)	
Capital expenditures	150.3	204.0	178.2	87.3	85.1	14.0	31.2	
EBITDA ⁽¹⁾	\$ 444.6	\$ 437.5	\$ 449.8	\$ 383.4	\$ 259.2	\$ 116.4	\$ 108.1	

	2010	As of June 30,				2006	As of September 30,	
		2009	2008	2007	2010		2009	
								(In millions)
Balance Sheet Data:								
Cash and cash equivalents	\$ 187.6	\$ 121.7	\$ 166.0	\$ 169.5	\$ 258.8	\$ 247.9	\$ 132.5	
Total assets	\$ 2,747.2	\$ 2,707.1	\$ 2,686.5	\$ 2,516.8	\$ 2,551.5	\$ 2,825.4	\$ 2,727.6	
Total debt and capital lease obligations	\$ 826.3	\$ 888.9	\$ 947.4	\$ 942.5	\$ 1,064.5	\$ 803.4	\$ 889.8	
Total liabilities	\$ 1,618.8	\$ 1,732.3	\$ 1,842.0	\$ 1,800.9	\$ 1,984.7	\$ 1,627.2	\$ 1,708.7	
Total stockholders equity	\$ 1,128.4	\$ 974.8	\$ 844.5	\$ 715.9	\$ 566.8	\$ 1,198.2	\$ 1,018.9	

⁽¹⁾ EBITDA is defined as earnings (net income) before interest, taxes, depreciation and amortization, and is used by management to measure operating performance of the business. We also use EBITDA as a measure to calculate certain incentive based compensation and certain financial covenants related to our credit facility and as a factor in our tangible and intangible asset impairment test. Management believes EBITDA is a useful measure of operating performance. The following table is a reconciliation of our net income to EBITDA:

	2010	For the Fiscal Years Ended June 30,				2006	For the three months Ended	
		2009	2008	2007	2006		September 30, 2010	2009

(In
millions)**Other Financial Data:**

Net income	\$ 186.8	\$ 200.1	\$ 189.6	\$ 148.1	\$ 27.1	\$ 63.4	\$ 46.6
Interest expense, net	48.6	54.6	61.2	67.0	72.0	12.3	12.5
Loss on early extinguishment of debt				0.8	17.8		
Income tax expense	97.5	84.7	103.4	78.7	54.4	15.1	23.9
Depreciation and amortization	111.7	98.1	95.6	88.8	87.9	25.6	25.1
EBITDA	\$ 444.6	\$ 437.5	\$ 449.8	\$ 383.4	\$ 259.2	\$ 116.4	\$ 108.1

23

Table of Contents

Pro-Forma Financial Information

Unaudited pro forma condensed consolidated financial information

The following unaudited pro forma condensed consolidated financial information has been derived by the application of pro forma adjustments related to the Transactions to our historical consolidated financial statements incorporated by reference in this prospectus. The unaudited pro forma condensed consolidated balance sheet data as of September 30, 2010 gives effect to the Transactions as if they had occurred on that date. The unaudited pro forma condensed consolidated statements of income for the three months ended September 30, 2010 and fiscal year ended June 30, 2010 give effect to the Transactions as if they had occurred on July 1, 2009.

The unaudited pro forma adjustments are based upon available information and certain assumptions that we believe are reasonable under the circumstances. The unaudited pro forma condensed consolidated financial information is presented for information purposes only and does not purport to represent what our actual consolidated results of operations or consolidated financial condition would have been had the Transactions actually occurred on the dates indicated, nor do they purport to project our future consolidated results of operations or consolidated financial condition for any future period or as of any future date. The unaudited pro forma condensed consolidated financial information should be read in conjunction with the information included under the headings Prospectus Summary, Selected Financial Data, and our historical consolidated financial statements and related notes incorporated by reference in this prospectus. All pro forma adjustments and their underlying assumptions are described more fully in the notes to our unaudited pro forma condensed consolidated financial information.

The Merger is being accounted for as a business combination using the acquisition method of accounting and, accordingly, will result in the recognition of assets acquired and liabilities assumed at fair value. However, as of the date of this prospectus, we have not performed the valuation studies necessary to estimate the fair values of the assets we acquired and the liabilities we assumed necessary to reflect the allocation of purchase price to the fair value of such amounts. For the purpose of computing the pro forma adjustments, we have assumed the write-off of our existing finite-lived intangible assets and liabilities associated with prior acquisitions as the fair value of these assets and liabilities will be re-estimated as part of the Merger. The excess of the consideration transferred over the net assets acquired has been presented as an adjustment of indefinite-lived intangible assets (the *Burger King* brand and goodwill). We have not estimated the fair value of assets acquired and liabilities assumed, including, but not limited to: property and equipment, net investment in property leased to franchisees, capital leases, other miscellaneous liabilities, deferred gift card revenue, and favorable and unfavorable leases and other finite-lived intangible assets and liabilities, except with respect to the *Burger King* brand for which we performed a valuation in connection with our impairment review during the fourth quarter of fiscal year 2010. A final determination of these fair values will reflect appraisals prepared by independent third parties and will be based on the actual tangible and identifiable intangible assets and liabilities that existed as of the Merger date. The actual allocation of the consideration transferred will differ from the allocation assumed in these unaudited pro forma condensed consolidated financial statements and will also result in material adjustments to the unaudited pro forma condensed consolidated financial information, including but not limited to: property revenue; occupancy and other operating costs; selling, general and administrative expenses; property expenses; and income tax expense. The pro forma condensed consolidated statements of income do not reflect such expenses and such expenses may be significant.

Table of Contents**BURGER KING HOLDINGS, INC. AND SUBSIDIARIES**

Unaudited Pro Forma Condensed Consolidated Balance Sheet
As of September 30, 2010
(In millions)

	Historical	Financing Adjustments	Acquisition Accounting Adjustments	Pro Forma
<u>ASSETS</u>				
Current assets:				
Cash and cash equivalents	\$ 247.9	\$ (63.4) ⁽¹⁾	\$ -	\$ 184.5
Trade and notes receivable, net	142.0	-	-	142.0
Prepays and other current assets, net	60.7	23.6 ⁽³⁾	-	84.3
Deferred income taxes, net	43.1	-	-	43.1
Total current assets	493.7	(39.8)	-	453.9
Property and equipment, net	995.7	-	-	\$ 995.7
Intangible assets, net	1,048.0	-	1,331.0 ⁽²⁾	2,379.0
Goodwill	31.3	-	1,086.9 ⁽²⁾	1,118.2
Net investment in property leased to franchisees	140.6	-	-	140.6
Other assets, net	116.1	53.4 ⁽⁴⁾	(6.7) ⁽²⁾	162.8
Total assets	\$ 2,825.4	\$ 13.6	\$ 2,411.2	\$ 5,250.2
<u>LIABILITIES AND STOCKHOLDERS</u>				
<u>EQUITY</u>				
Current liabilities:				
Accounts and drafts payable	\$ 94.7	\$ -	\$ -	\$ 94.7
Accrued advertising	79.6	-	-	79.6
Other accrued liabilities	230.4	(46.0) ⁽⁵⁾	(23.6) ⁽²⁾	160.8
Current portion of long term debt and capital leases	71.6	(50.6) ⁽⁶⁾	-	21.0
Total current liabilities	476.3	(96.6)	(23.6)	356.1
Term debt, net of current portion	667.4	1,948.8 ⁽⁶⁾	-	2,616.2
Capital leases, net of current portion	64.4	-	-	64.4
Other liabilities, net	325.1	(10.3) ⁽⁷⁾	(123.5) ⁽²⁾	191.3
Deferred income taxes, net	94.0	3.7 ⁽⁸⁾	434.0 ⁽²⁾	531.7
Total liabilities	1,627.2	1,845.6	286.9	3,759.7
Total stockholders equity	1,198.2	292.3 ⁽⁹⁾	-	1,490.5
Total liabilities and stockholders equity	\$ 2,825.4	\$ 2,137.9	\$ 286.9	\$ 5,250.2

See accompanying notes to unaudited pro forma condensed balance sheet.

Table of Contents**Notes to unaudited pro forma condensed consolidated balance sheet**

- (1) The unaudited pro forma condensed consolidated balance sheet gives effect to the following pro forma adjustments related to the Merger and reflects the related issuance of debt, payment of merger consideration and the repayment of certain debt. The following table summarizes sources and uses of funds for the Merger assuming the closing occurred as of September 30, 2010. Actual amounts may differ (in millions):

Sources	Amount	Uses	Amount
Cash and cash equivalents ^(a)	\$ 63.4	Purchase of equity ^(e)	\$ 3,366.3
New Credit Facilities ^(b) :		Repayment of existing credit facility ^(f)	732.0
New Term Loan Facility	1,850.8	Fees and expenses ^(g)	155.3
New Revolving Credit Facility ^(c)	-	Settlement of interest rate swaps ^(h)	23.7
Original Notes	800.0		
Equity investment ^(d)	1,563.1		
Total sources	\$ 4,277.3	Total uses	\$ 4,277.3

- (a) Cash and cash equivalents used to fund the Transactions as of September 30, 2010.
- (b) The New Credit Facilities consists of (i) the \$1,510.0 million tranche and the 250.0 million tranche of a New Term Loan Facility with a six-year maturity and (ii) the \$150.0 million New Revolving Credit Facility with a five-year maturity.
- (c) No amounts were drawn under the New Revolving Credit Facility although we did utilize approximately \$38.0 million of our available commitments to support letters of credit immediately following the consummation of the Transactions.
- (d) Represents cash invested by Parent in the common stock of Merger Sub, from amounts invested in the common stock of Parent by 3G in connection with the closing of the Transactions.
- (e) Represents cash paid, based on a \$24.00 tender offer price, for 136,505,958 outstanding shares, totaling \$3,276.1 million, settlement of outstanding stock options, restricted shares and performance-based restricted shares totaling \$89.7 million, and payment accrued dividend equivalents totaling \$0.5 million.
- (f) Repayment of the existing credit facility assumes use of the Company's cash and cash equivalents in the amount of \$63.4 million. Total repayment of existing credit facility also includes accrued letters of credit fees and commitment fees of \$0.2 million.
- (g) Represents estimated fees and expenses associated with the Transactions, including financial advisory fees, commissions, commitment fees and discounts related to the New Credit Facilities, the initial purchasers' discounts related to the notes, compensation arrangements with certain key executives and other transactional fees and expenses, including legal, accounting and other professional fees.
- (h) Represents the settlement of interest rate swap liability as of September 30, 2010.

- (2) The Merger is being accounted for as a business combination in accordance with Financial Accounting Standards Board Accounting Standards Codification (ASC) 805, *Business Combinations*, (formerly SFAS 141(R)).

We have not estimated the fair value of assets acquired and liabilities assumed, including, but not limited to: property and equipment, net investment in property leased to franchisees, capital leases, other miscellaneous liabilities, deferred gift card revenue, and favorable and unfavorable leases and other finite-lived intangible assets and liabilities,

except with respect to the *Burger King* brand. For purposes of computing the pro forma adjustments, we have assumed the write-off of our existing finite-lived intangible asset and liabilities associated with prior acquisitions as the fair value of these assets and liabilities will be re-estimated as part of the Merger. In conjunction with our annual impairment testing of indefinite-lived intangible assets as of April 1, 2010, the fair value of the *Burger King* brand was estimated at approximately \$2,379.0 million and such fair value is being used as an estimate of fair value as of September 30, 2010 for purposes of preparing these unaudited pro forma condensed consolidated financial statements. We have assumed the historical amount as of September 30, 2010 of our pension and post-retirement liabilities of \$109.8 million approximates fair value for purposes of preparing these pro forma condensed consolidated financial statements.

A final determination of these fair values will reflect appraisals prepared by independent third-parties and will be based on the actual tangible and identifiable intangible assets and liabilities that existed as of the Merger date. The actual allocation of the consideration transferred will differ from the

Table of Contents

allocation assumed in these unaudited pro forma condensed consolidated financial statements and may be materially different.

The following table sets forth the preliminary allocation of consideration (in millions):

Cash paid ^(a)	\$	3,322.5
Less: Book value of net assets acquired		(1,198.2)
Excess of cash paid over book value of net assets acquired	\$	2,124.3
Acquisition accounting adjustment to:		
Intangible assets:	\$	1,331.0
Write-off of franchise agreements & reacquired franchise rights ^(b)	(115.7)	
Write-off of favorable leases ^(c)	(34.1)	
Fair value of Burger King brand ^(d)	1,480.8	
Other assets ^(e)		(6.7)
Other accrued liabilities ^(f)		23.6
Other liabilities, net ^(c)		123.5
Deferred tax assets and liabilities ^(g)		(434.0)
Allocation to goodwill ^(h)		1,086.9
Total allocation	\$	2,124.3

- (a) Represents cash paid, based on a \$24.00 tender offer price, for 136,505,958 outstanding shares, totaling \$3,276.1 million and settlement of outstanding stock options, restricted shares and performance-based restricted shares totaling \$46.4 million.
- (b) Represents write-off of previously acquired franchise agreements and reacquired franchise rights. At the Merger date, our franchise agreements will be recorded at fair value.
- (c) Represents write-off of previously acquired leases whose terms were favorable or unfavorable compared to market terms at the dates of previous acquisitions. At the Merger date, the terms of such leases will be compared to the market terms of comparable leases to determine if a favorable or unfavorable lease intangible asset or liability is required to be recorded.
- (d) Represents the adjustment to reflect the estimated fair value of the *Burger King* brand. In conjunction with our fiscal year 2010 annual impairment testing of indefinite-lived intangible assets as of April 1, 2010, the fair value of the *Burger King* brand was estimated at approximately \$2,379.0 million. We have assumed that this value approximates the fair value of the *Burger King* brand as of September 30, 2010 for the purposes of preparing these pro forma condensed consolidated financial statements. A final determination of fair value will be made as of the Merger date and may differ materially from the amount assumed in these pro forma condensed consolidated financial statements.
- (e) Represents write-off of accrued rent receivable historically recorded by the Company. As a lessor, the Company recognizes rental income on a straight-line basis over the lease terms of its leases in accordance with the provisions of ASC 840, *Leases*. The accumulated difference between rent recognized and the amount received in the consolidated statement of income on the straight-line basis is not recognized under acquisition accounting. However, rent received after the Merger date will give rise to accrued rent receivable to the extent that rent received is less than the amount recognized on a straight-line basis as determined from the Merger date.
- (f) Represents write-off of accrued rent payable recorded by the Company. As a lessee, the Company recognizes rental expense on a straight-line basis over the terms of its operating leases in accordance with

the provisions of ASC 840, *Leases*. The accumulated difference between rent recognized and the amount paid in the consolidated statement of income on the straight-line basis is not recognized under acquisition accounting. However, rent payments subsequent to the Merger will give rise to accrued rent payable to the extent that rent paid is less than the rent expense recognized on a straight-line basis as determined from the Merger date.

- (g) Represents the impact to deferred income taxes as a result of pro forma adjustment to finite-lived intangible assets, indefinite-lived intangible assets, other assets, and other accrued liabilities.
 - (h) Represents the preliminary excess of consideration transferred over the fair values of assets acquired and liabilities assumed as a result of the Merger.
- (3) Represents current portion of deferred financing costs associated with New Credit Facilities and Senior Notes of \$10.6 million in the aggregate, deferred payroll related to agreements with key executives of \$5.5 million, and escrow for compensation arrangements with certain key executives of \$7.5 million.

Table of Contents

- (4) Represents pro forma adjustments to other assets, net relating to deferred financings costs and deferred tax assets (in millions):

Deferred financing costs associated with New Credit Facilities and Original Notes - non-current	\$	58.6
Write-off of deferred financing costs related to existing credit facility		(2.5)
Deferred compensation - long term portion		7.6
Deferred tax asset ^(a)		(10.3)
	\$	53.4

- (a) Represents the impact to deferred income taxes, net as a result of pro forma deduction related to the settlement of outstanding options, restricted stock and performance-based restricted stock awards.

- (5) Represents pro forma adjustments to other accrued liabilities relating to accrued dividend equivalents, accrued fees, income taxes payable, severance accrual and settlement of interest rate swap liability (in millions):

Payment of current portion of cumulative accrued dividend equivalents on restricted stock awards outstanding	\$	(0.3)
Write-off of accrued letters of credit fees and commitment fees related to payoff of existing credit facility		(0.2)
Income taxes payable ^(a)		(32.5)
Severance accrual		0.6
Settlement of interest rate swap liability - current portion		(13.6)
	\$	(46.0)

- (a) Represents the impact to income taxes payable as a result of pro forma deduction related to the settlement of outstanding options, restricted stock and performance-based restricted stock awards.

- (6) Represents pro forma adjustments relating to additional indebtedness incurred in connection with the Transactions and repayment of all amounts outstanding under our existing credit facility (in millions):

Payoff of the existing credit facility - current portion ^(a)	\$	(65.6)
Borrowings under the New Credit Facilities - current portion		18.5
Original issue discount on New Term Loan Facility - current portion		(3.5)
Total adjustment to current portion of long term debt and capital leases	\$	(50.6)

Payoff of the existing credit facility - long-term portion ^(a)	\$	(666.2)
Borrowings under the New Credit Facilities - long-term portion		1,832.3
Original Notes		800.0
Original issue discount on New Term Loan Facility - long-term portion		(17.3)

Total issuance of new debt	\$	1,948.8
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- (a) Excludes \$5.8 million of the current portion of capital leases, \$64.4 million of the long-term portion of capital leases and related accrued interest that is not being paid off in connection with the Merger.

The adjustments are based on balances as of September 30, 2010. Any changes at the closing date of the Transactions to the amounts owed on our existing credit facility and the revolving portion of our existing credit facility and the liability under our interest rate swap agreements from the respective amounts at September 30, 2010 may or may not be material. No adjustments have been made to the unaudited pro forma financial statements for any changes in these balances subsequent to September 30, 2010.

- (7) Represents pro forma adjustments to other liabilities, net relating to interest rate swaps liability and accrued dividend equivalents (in millions):

Settlement of interest rate swap liability - long term portion	\$ (10.1)
Non-current portion of cumulative accrued dividend equivalents on restricted stock awards outstanding	(0.2)
	\$ (10.3)

Table of Contents

- (8) Represents the impact to deferred tax liability of \$3.7 million as a result of pro forma deduction related to the settlement of outstanding options, restricted stock and performance-based restricted stock awards.
- (9) The pro forma adjustment to stockholders' equity represents the elimination of our historical stockholders' equity, equity contributions from 3G, and adjustments for certain expenses related to the Transactions that are not reflected in the unaudited pro forma condensed consolidated statement of income as follows (in millions):

Cash investments by 3G	\$ 1,563.1
Less: historical stockholders' equity	(1,198.2)
	364.9
Expenses recognized in connection with the Transactions not reflected in the pro forma condensed consolidated statements of income:	
Merger-related transaction costs ^(a)	(55.4)
Tax benefit associated with the Transactions ^(b)	-
Write-off unamortized deferred financing costs on existing credit facility ^(c)	(2.5)
Compensation expense related to the settlement of outstanding options, restricted stock and performance-based restricted stock awards ^(d)	(33.2)
Excess tax benefit associated with settlement of outstanding options, restricted stock, and performance-based restricted stock ^(e)	18.5
Pro forma adjustment to stockholders' equity	\$ 292.3
(a) Represents a portion of the estimated fees and expenses associated with the Transactions, including financial advisory fees, legal, accounting, other professional fees, compensation arrangement with certain key executive and commitment fees associated with the bridge loan available at the closing of the Transactions. No bridge loan was required at the closing of the transaction. These fees were expensed immediately concurrent with the closing of the Transactions.	
(b) Assumes that merger related transactions costs are not considered deductible for income tax purposes.	
(c) Represents adjustment to write-off of the unamortized deferred financing costs as a result of repayment of existing credit facility.	
(d) Represents settlement of outstanding options, restricted stock and performance-based restricted stock awards at the closing of the Transactions.	
(e) The net impact of the adjustment to deferred income tax asset of \$10.3 million (refer to note (4)), income taxes payable of \$32.5 million (refer to note (5)) and deferred tax liability of \$3.7 million (refer to note (8)), which total \$18.5 million, represents excess tax benefits which have been recorded as a pro forma adjustment to stockholders' equity.	

Table of Contents

BURGER KING HOLDINGS, INC. AND SUBSIDIARIES
Unaudited Pro Forma Condensed Consolidated Statement of Income
For the three months ended September 30, 2010
(In millions)

	Historical	Adjustments	(a)	Pro Forma
Revenues:				
Company restaurant revenues	\$ 429.8	\$ -		\$ 429.8
Franchise revenues	141.6	-		141.6
Property revenues	28.6	-		28.6
 Total revenues	 600.0	 -		 600.0
Company restaurant expenses:				
Food, paper and product costs	135.8	-		135.8
Payroll and employee benefits	128.9	-		128.9
Occupancy and other operating costs	106.6	2.1	(b)	108.7
 Total Company restaurant expenses	 371.3	 2.1		 373.4
Selling, general and administrative expenses	127.8	(6.6)	(c)	121.2
Property expenses	15.5	1.1	(b)	16.6
Other operating (income) expenses, net	(5.4)	37.4	(b)(d)	32.0
 Total operating costs and expenses	 509.2	 34.0		 543.2
 Income from operations	 90.8	 (34.0)		 56.8
 Interest expense	 12.5	 43.4	(e)	 55.9
Interest income	(0.2)	-		(0.2)
 Total interest expense, net	 12.3	 43.4		 55.7
 Income before income taxes	 78.5	 (77.4)		 1.1
Income tax expense	15.1	(29.4)	(f)	(14.3)
 Net income	 \$ 63.4	 \$ (48.0)		 \$ 15.4

See accompanying notes to unaudited pro forma condensed consolidated statement of income.

Table of Contents

BURGER KING HOLDINGS, INC. AND SUBSIDIARIES
Unaudited Pro Forma Condensed Consolidated Statement of Income
For the fiscal year ended June 30, 2010
(In millions)

	Historical	Adjustments	(a)	Pro Forma
Revenues:				
Company restaurant revenues	\$ 1,839.3	\$ -		\$ 1,839.3
Franchise revenues	549.2	-		549.2
Property revenues	113.7	-		113.7
Total revenues	2,502.2	-		2,502.2
Company restaurant expenses:				
Food, paper and product costs	585.0	-		585.0
Payroll and employee benefits	568.7	-		568.7
Occupancy and other operating costs	461.1	10.4	(b)	471.5
Total Company restaurant expenses	1,614.8	10.4		1,625.2
Selling, general and administrative expenses	495.8	(23.1)	(c)	472.7
Property expenses	59.4	4.6	(b)	64.0
Other operating (income) expenses, net	(0.7)	(38.5)	(b)(d)	(39.2)
Total operating costs and expenses	2,169.3	(46.6)		2,122.7
Income from operations	332.9	46.6		379.5
Interest expense	49.6	175.0	(e)	224.6
Interest income	(1.0)	-		(1.0)
Total interest expense, net	48.6	175.0		223.6
Income before income taxes	284.3	(128.4)		155.9
Income tax expense	97.5	(49.9)	(f)	47.6
Net income	\$ 186.8	\$ (78.5)		\$ 108.3

See accompanying notes to unaudited pro forma condensed consolidated statement of income.

Table of Contents**Notes to Unaudited Pro Forma Condensed Consolidated Statement of Income**

- (a) The Merger is being accounted for as a business combination using the acquisition method of accounting and, accordingly, will result in the recognition of assets acquired and liabilities assumed at fair value. We have not estimated the fair value of assets acquired and liabilities assumed, including, but not limited to: property and equipment, net investment in property leased to franchisees, capital leases, other miscellaneous liabilities, deferred gift card revenue of gift cards, and favorable and unfavorable leases and other finite-lived intangible assets and liabilities, except with respect to the *Burger King* brand. For purposes of computing the pro forma adjustments, we have assumed the write-off of existing finite-lived intangible assets. The actual adjustments to historical amounts recorded of assets and liabilities to their respective fair values as of the Merger date may also result in material adjustments to the unaudited pro forma condensed consolidated financial information, including but not limited to: property revenues; occupancy and other operating costs; selling, general and administrative expenses; property expenses; and income tax expense. The pro forma condensed consolidated statement of income does not reflect such expenses and such expenses may be significant.

As a direct result of the Transactions, the Company expects to incur certain material, nonrecurring charges in the amount of an estimated \$55.4 million during the 12 months succeeding the Merger date. These charges include financial advisory fees, legal, accounting, other professional fees, compensation related to arrangements with certain key executives, and commitment fees associated with the bridge loan available at the closing of the Transactions. Due to the absence of a continuing impact on our operations, these charges have been excluded from the pro forma adjustments reflected here.

- (b) The pro forma adjustments to historical amortization of existing favorable and unfavorable lease intangible assets and liabilities (in millions):

	Three Months Ended September 30, 2010	Fiscal Year Ended June 30, 2010
Historical amortization in occupancy and other operating costs ⁽ⁱ⁾	\$ 2.1	\$ 10.4
Historical amortization in property expenses ⁽ⁱ⁾	1.1	4.6
Release of favorable and unfavorable leases ⁽ⁱⁱ⁾	2.9	5.8
	\$ 6.1	\$ 20.8

- (i) The total pro forma depreciation and amortization of \$27.2 million for the three months ended September 30, 2010 includes the historical amount of \$25.6 million for the three months ended September 30, 2010 plus the historical amortization in occupancy and other operating costs of \$2.1 million and the historical amortization in property expenses of \$1.1 million offset by the historical amortization of franchise agreements and reacquired franchise rights of \$1.6 million for the three months ended September 30, 2010 included in (c) below.

The total pro forma depreciation and amortization of \$120.6 million for the fiscal year ended June 30, 2010 includes the historical amount of \$111.7 million for the fiscal year ended June 30, 2010 plus the historical amortization in occupancy and other operating costs of \$10.4 million and the historical amortization in property expenses of \$4.6 million offset by the historical amortization of franchise agreements and reacquired franchise rights of \$6.1 million for the fiscal year ended June 30, 2010 included in (c) below.

- (ii) Release of favorable and unfavorable leases related to the assignment of such leases in conjunction with the refranchising of company-owned restaurants.

We have not estimated the fair value of favorable and unfavorable leases intangible assets and liabilities as of September 30, 2010 and we have assumed the write-off of our existing finite-lived intangible assets and liabilities associated with prior acquisitions (which includes favorable and unfavorable leases); therefore, the unaudited pro forma statement of income does not reflect any amortization relating to intangible assets and liabilities in the form of favorable and unfavorable leases.

- (c) The pro forma adjustments to selling, general and administrative expenses reflect the elimination of stock-based compensation expense of \$5.0 million for three months ended September 30, 2010 and

Table of Contents

\$17.0 million the fiscal year ended June 30, 2010. This adjustment also reflects the elimination of historical amortization of franchise agreements and reacquired franchise rights of \$1.6 million for the three months ended September 30, 2010 and \$6.1 million the fiscal year ended June 30, 2010. We have not estimated the fair value of franchise agreements as of September 30, 2010; therefore, the unaudited pro forma condensed consolidated statement of income does not reflect any amortization related to franchise agreements rights.

- (d) The pro forma adjustment to operating (income) expense, net also includes a foreign currency transaction loss of \$34.5 million for the three months ended September 30, 2010 and a foreign currency transaction gain of \$44.3 million for the fiscal year ended June 30, 2010 resulting from the re-measurement of 250.0 million tranche of New Term Loan Facility and the related original issue discount.
- (e) The pro forma adjustment to interest expense for new debt incurred consists of the following (in millions):

	Three Months Ended September 30, 2010	Fiscal Year Ended June 30, 2010
Interest on New Term Loan Facility borrowings of approximately \$1,850.8 million principal amount and \$800 million principal amount of Original Notes at an estimated blended interest rate of 7.4% ⁽ⁱ⁾⁽ⁱⁱ⁾	\$ 48.9	\$ 197.2
Amortization of \$69.2 million of debt issuance costs arising from the New Credit Facilities and Original Notes and of \$20.8 million of original issue discount on New Credit Facilities ⁽ⁱⁱⁱ⁾	3.5	14.0
Commitment fees related to unused portion of New Revolving Credit Facility and draws on letters of credit	0.7	2.7
Total interest expense on the new debt	\$ 53.1	\$ 213.9
Less:		
Historical interest expense on existing credit facility	\$ 4.0	\$ 15.0
Historical amortization of deferred financing fees	0.5	2.1
Historical commitment fees related to unused portion of existing revolver	0.2	0.6
Cancellation of interest rate swap agreements in a liability position offset by gain associated with previously terminated interest rate swaps	5.0	21.2
Total historical interest expense on existing credit facility	\$ 9.7	\$ 38.9
Total pro forma adjustment of interest expense	\$ 43.4	\$ 175.0

- (i) A 0.125% change in the assumed interest rate of the New Term Loan Facility would change aggregate pro forma interest expense by \$0.6 million for three months ended September 30, 2010 and \$2.3 million for the fiscal year ended June 30, 2010.

- (ii)

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Interest expense on 250.0 million tranche of New Term Loan Facility translated using the average rate during the periods presented and impacted by the changes in currency exchange rates.

- (iii) Straight-line amortization of debt issuance costs over the estimated weighted average maturities of the New Term Loan Facility and Original Notes and straight-line amortization of original issue discount over the maturity of the New Credit Facilities.

The estimated interest expense rate set forth above is solely for illustrative purposes and reflects assumptions with respects to the debt financing for the Transactions.

- (f) The pro forma adjustment to income tax expense reflects the tax effect of the pro forma adjustments, using a blended tax rate of 38.0% for the three months ended September 30, 2010 and 38.8% for the fiscal year ended June 30, 2010.

Table of Contents

The Exchange Offer

Purpose of the Exchange Offer

In connection with the issuance of the Original Notes, we entered into a registration rights agreement with the initial purchasers, under which we agreed to file with the SEC and to use our reasonable best efforts to cause to become effective an exchange offer registration statement under the Securities Act and to consummate the Exchange Offer.

We are making the Exchange Offer in reliance on the position of the SEC as set forth in certain no-action letters. However, we have not sought our own no-action letter. Based upon these interpretations by the SEC, we believe that a holder of Exchange Notes who exchanges Original Notes for Exchange Notes in the Exchange Offer generally may offer the Exchange Notes for resale, sell the Exchange Notes and otherwise transfer the Exchange Notes without further registration under the Securities Act and without delivery of a prospectus that satisfies the requirements of Section 10 of the Securities Act. This does not apply, however, to a holder who is our affiliate within the meaning of Rule 405 of the Securities Act. We also believe that a holder may offer, sell or transfer the Exchange Notes only if the holder acknowledges that the holder is acquiring the Exchange Notes in the ordinary course of its business and is not participating, does not intend to participate and has no arrangement or understanding with any person to participate in a distribution of the Exchange Notes.

Any holder of the Original Notes using the Exchange Offer to participate in a distribution of Exchange Notes cannot rely on the no-action letters referred to above. Any broker-dealer who holds Original Notes acquired for its own account as a result of market-making activities or other trading activities and who receives Exchange Notes in exchange for such Original Notes pursuant to the Exchange Offer may be a statutory underwriter and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Notes. See Plan of Distribution.

Each broker-dealer that receives Exchange Notes for its own account in exchange for Original Notes, where such Original Notes were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. See Plan of Distribution.

Except as described above, this prospectus may not be used for an offer to resell, resale or other transfer of Exchange Notes.

The Exchange Offer is not being made to, nor will we accept tenders for exchange from, holders of Original Notes in any jurisdiction in which the Exchange Offer or the acceptance of the Exchange Offer would not be in compliance with the securities or blue sky laws of such jurisdiction.

Terms of the Exchanges

Upon the terms and subject to the conditions of the Exchange Offer, we will accept any and all Original Notes validly tendered prior to 12:00 midnight, New York City time, on the expiration date for the Exchange Offer. Promptly after the expiration date (unless extended as described in this prospectus), we will issue an aggregate principal amount of up to \$800,000,000 of Exchange Notes for a like principal amount of outstanding Original Notes tendered and accepted in connection with the Exchange Offer.

The Exchange Notes issued in connection with the Exchange Offer will be delivered promptly after the expiration date. Holders may tender some or all of their Original Notes in connection with the Exchange Offer, but only in principal amounts of \$2,000 or in integral multiples of \$1,000 in excess thereof.

Table of Contents

The terms of the Exchange Notes will be identical in all material respects to the terms of the Original Notes, except that the Exchange Notes will have been registered under the Securities Act and will be issued free from any covenant regarding registration, including the payment of special interest upon a failure to complete the Exchange Offer by a certain date. The Exchange Notes will evidence the same debt as the Original Notes and will be issued under the same Indenture and be entitled to the same benefits under that Indenture as the Original Notes being exchanged. As of the date of this prospectus, \$800,000,000 in aggregate principal amount of the Original Notes are outstanding.

In connection with the issuance of the Original Notes, we arranged for the Original Notes purchased by qualified institutional buyers and those sold in reliance on Regulation S under the Securities Act to be issued and transferable in book-entry form through the facilities of DTC, acting as depository. Except as described under Book-Entry Settlement and Clearance, Exchange Notes will be issued in the form of a global note registered in the name of DTC or its nominee and each beneficial owner's interest in it will be transferable in book-entry form through DTC. See Book-Entry Settlement and Clearance.

Holders of Original Notes do not have any appraisal or dissenters' rights in connection with the Exchange Offer. Original Notes that are not tendered for exchange or are tendered but not accepted in connection with the Exchange Offer will remain outstanding and be entitled to the benefits of the Indenture, but certain registration and other rights under the registration rights agreement will terminate and holders of the Original Notes will generally not be entitled to any registration rights under the registration rights agreement. See Consequences of Failures to Properly Tender Original Notes in the Exchange Offer.

We shall be considered to have accepted validly tendered Original Notes if and when we have given oral (to be followed by prompt written notice) or written notice to the Exchange Agent. The Exchange Agent will act as agent for the tendering holders for the purposes of receiving the Exchange Notes from us.

If any tendered Original Notes are not accepted for exchange because of an invalid tender, the occurrence of certain other events described in this prospectus or otherwise, we will return the Original Notes, without expense, to the tendering holder promptly after the expiration date for the Exchange Offer.

Holders who tender Original Notes will not be required to pay brokerage commissions or fees or, subject to the instructions in the letter of transmittal, transfer taxes on exchange of Original Notes in connection with the Exchange Offer. We will pay all charges and expenses, other than certain applicable taxes described below, in connection with the Exchange Offer. See Fees and Expenses .

Expiration Date; Extensions; Amendments

The expiration date for the Exchange Offer is 12:00 midnight, New York City time, on [20 business days after commencement], unless extended by us in our sole discretion, in which case the term expiration date shall mean the latest date and time to which the Exchange Offer is extended.

We reserve the right, in our sole discretion:

subject to applicable law, to delay accepting any Original Notes, to extend the Exchange Offer or to terminate the Exchange Offer if, in our reasonable judgment, any of the conditions described below shall not have been satisfied, by giving oral (to be followed by prompt written notice) or written notice of the delay, extension or termination to the Exchange Agent; or

to amend the terms of the Exchange Offer in any manner.

If we amend the Exchange Offer in a manner that we consider material, we will disclose such

Table of Contents

amendment by means of a prospectus supplement, and we will extend the Exchange Offer for a period of five to ten business days, as required by law.

If we determine to extend, amend or terminate the Exchange Offer, we will publicly announce this determination by making a timely release through an appropriate news agency prior to 9:00am., New York City time, on the next business day after the scheduled expiration date.

During any extension, all Original Notes previously tendered will remain subject to the Exchange Offer and may be accepted for exchange by us only upon expiration of the Exchange Offer, unless validly withdrawn. If we terminate the Exchange Offer, we will promptly return any Original Notes deposited, pursuant to the Exchange Offer as required by Rule 14e-1(c).

Interest on the Exchange Notes

The Exchange Notes will bear interest at the rate of 97/8% per annum from the most recent date to which interest on the Original Notes has been paid. Interest will be payable semi-annually on October 15 and April 15 of each year, commencing April 15, 2011.

Conditions to the Exchange Offer

Notwithstanding any other provisions of the Exchange Offer, or any extension of the Exchange Offer, we will not be required to accept for exchange, or to exchange any Exchange Notes for any of the Original Notes and we may terminate the Exchange Offer or, at our option, modify, extend or otherwise amend the Exchange Offer, if any of the following conditions exist on or prior to the expiration date:

any action or event shall have occurred or been threatened, any action shall have been taken, or any statute, rule, regulation, judgment, order, stay, decree or injunction shall have been issued, promulgated, enacted, entered, enforced or deemed to be applicable to the Exchange Offer or the exchange of Original Notes for the Exchange Notes under the Exchange Offer by or before any court or governmental regulatory or administrative agency, authority, instrumentality or tribunal, including, without limitation, taxing authorities, that either:

(a) challenges the making of the Exchange Offer or the exchange of Original Notes for Exchange Notes under the Exchange Offer or might, directly or indirectly, be expected to prohibit, prevent, restrict or delay consummation of, or might otherwise adversely affect in any material manner, the Exchange Offer or the exchange of Original Notes for the Exchange Notes under the Exchange Offer; or

(b) in our reasonable judgment, could materially adversely affect our (or our subsidiaries) or Holdings business, condition (financial or otherwise), income, operations, properties, assets, liabilities or prospects or materially impair the contemplated benefits to us of the Exchange Offer or the exchange of Original Notes for the Exchange Notes under the Exchange Offer;

anything has occurred or may occur that would or might, in our reasonable judgment, be expected to prohibit, prevent, restrict or delay the Exchange Offer or impair our ability to realize the anticipated benefits of the Exchange Offer;

there shall have occurred (a) any general suspension of or limitation on trading in securities in the United States securities or financial markets, whether or not mandatory, (b) any material adverse change in the

prices of the Original Notes that are the subject of the Exchange Offer, (c) a material impairment in the general trading market for debt securities, (d) a declaration of a banking

Table of Contents

moratorium or any suspension of payments in respect of banks by federal or state authorities in the United States, whether or not mandatory, (e) a commencement of a war, armed hostilities, a terrorist act or other national or international calamity directly or indirectly relating to the United States, (f) any limitation, whether or not mandatory, by any governmental authority on, or other event having a reasonable likelihood of affecting, the extension of credit by banks or other lending institutions in the United States, (g) any material adverse change in the securities or financial markets in the United States generally or (h) in the case of any of the foregoing existing at the time of the commencement of the Exchange Offer, a material acceleration or worsening thereof; and

the Trustee with respect to the Indenture for the Original Notes that are the subject of the Exchange Offer and the Exchange Notes to be issued in the Exchange Offer shall have been directed by any holders of Original Notes to object in any respect to, or take any action that could, in our reasonable judgment, adversely affect the consummation of the Exchange Offer or the exchange of Original Notes for the Exchange Notes under the Exchange Offer, or the Trustee shall have taken any action that challenges the validity or effectiveness of the procedures used by us in making the Exchange Offer or the exchange of Original Notes for the Exchange Notes under the Exchange Offer.

The foregoing conditions are for our sole benefit and may be waived by us, in whole or in part, in our absolute discretion. Any determination made by us concerning an event, development or circumstance described or referred to above will be conclusive and binding.

If any of the foregoing conditions are not satisfied, we may, at any time on or prior to the expiration date:

terminate the Exchange Offer and promptly return all tendered Original Notes to the respective tendering holders;

modify, extend or otherwise amend the Exchange Offer and retain all tendered Original Notes until the expiration date, as extended, subject, however, to the withdrawal rights of holders; or

waive the unsatisfied conditions with respect to the Exchange Offer and accept all Original Notes tendered and not previously validly withdrawn, subject to any requirement to extend the period of time during which the Exchange Offer is open.

Effect of Tender

Any tender by a holder, and our subsequent acceptance of that tender, of Original Notes will constitute a binding agreement between that holder and us upon the terms and subject to the conditions of the Exchange Offer described in this prospectus and in the letter of transmittal. The participation in the Exchange Offer by a tendering holder of Original Notes will constitute the agreement by that holder to deliver good and marketable title to the tendered Original Notes, free and clear of any and all liens, restrictions, charges, pledges, security interests, encumbrances or rights of any kind of third parties.

Absence of Dissenters Rights

Holders of the Original Notes do not have any appraisal or dissenters rights in connection with the Exchange Offer.

Procedures for Tendering

If you wish to participate in the Exchange Offer and your Original Notes are held by a custodial entity such as a bank, broker, dealer, trust company or other nominee, you must instruct that custodial entity to

Table of Contents

tender your Original Notes on your behalf pursuant to the procedures of that custodial entity. Please ensure you contact your custodial entity as soon as possible to give them sufficient time to meet your requested deadline.

To participate in the Exchange Offer, you must either:

complete, sign and date a letter of transmittal, or a facsimile thereof, in accordance with the instructions in the letter of transmittal, including guaranteeing the signatures to the letter of transmittal, if required, and mail or otherwise deliver the letter of transmittal or a facsimile thereof, together with the certificates representing your Original Notes specified in the letter of transmittal, to the Exchange Agent at the address listed in the letter of transmittal, for receipt at or prior to 12:00 midnight, New York City time, on the expiration date; or

comply with the Automated Tender Offer Program (ATOP) procedures for book-entry transfer described below at or prior to 12:00 midnight, New York City time, on the expiration date.

The Exchange Agent and DTC have confirmed that the Exchange Offer is eligible for ATOP with respect to book-entry notes held through DTC. The letter of transmittal, or a facsimile thereof, with any required signature guarantees, or, in the case of book-entry transfer, an agent's message in lieu of the letter of transmittal, and any other required documents, must be transmitted to and received by the Exchange Agent on or prior to the expiration date at its address set forth below under the caption Exchange Agent. Original Notes will not be deemed to have been tendered until the letter of transmittal and signature guarantees, if any, or agent's message, is received by the Exchange Agent.

Holders of Original Notes whose certificates for Original Notes are not lost but are not immediately available or who cannot deliver their certificates and all other documents required by the letter of transmittal to the Exchange Agent at or prior to 12:00 midnight, New York City time, on the expiration date, or who cannot complete the procedures for book-entry transfer at or prior to 12:00 midnight, New York City time, on the expiration date, may tender their Original Notes according to the guaranteed delivery procedures set forth in Guaranteed Delivery Procedures below.

The tender by a holder of Original Notes will constitute an agreement between us and the holder in accordance with the terms and subject to the conditions set forth in this prospectus and in the letter of transmittal.

The method of delivery of Original Notes, the letter of transmittal and all other required documents to the Exchange Agent is at the election and risk of the holders. Instead of delivery by mail, we recommend that holders use an overnight or hand delivery service, properly insured. In all cases, sufficient time should be allowed to assure delivery to and receipt by the Exchange Agent on or prior to the expiration date. Do not send the letter of transmittal or any Original Notes to anyone other than the Exchange Agent.

If you are tendering your Original Notes in exchange for the Exchange Notes and anticipate delivering your letter of transmittal and other documents other than through DTC, we urge you to contact promptly a bank, broker or other intermediary that has the capability to hold notes custodially through DTC to arrange for receipt of any Original Notes to be delivered pursuant to the Exchange Offer and to obtain the information necessary to provide the required DTC participant with account information in the letter of transmittal.

If you are a beneficial owner which holds Original Notes through Euroclear (as defined herein) or Clearstream (as defined herein) and wish to tender your Original Notes, you must instruct Euroclear or Clearstream, as the case may be, to block the account in respect of the tendered Original Notes in accordance

Table of Contents

with the procedures established by Euroclear or Clearstream. You are encouraged to contact Euroclear and Clearstream directly to ascertain their procedure for tendering Original Notes.

Book-Entry Delivery Procedures for Tendering Original Notes Held with DTC

If you wish to tender Original Notes held on your behalf by a nominee with DTC, you must:

- inform your nominee of your interest in tendering your Original Notes pursuant to the Exchange Offer; and
- instruct your nominee to tender all Original Notes you wish to be tendered in the Exchange Offer into the Exchange Agent's account at DTC at or prior to 12:00 midnight, New York City time, on the expiration date.

Any financial institution that is a nominee in DTC, including Euroclear and Clearstream, must tender Original Notes by effecting a book-entry transfer of Original Notes to be tendered in the Exchange Offer into the account of the Exchange Agent at DTC by electronically transmitting its acceptance of the Exchange Offer through the ATOP procedures for transfer. DTC will then verify the acceptance, execute a book-entry delivery to the Exchange Agent's account at DTC and send an agent's message to the Exchange Agent. An agent's message is a message, transmitted by DTC to, and received by, the Exchange Agent and forming part of a book-entry confirmation, which states that DTC has received an express acknowledgement from an organization that participates in DTC (a participant), tendering Original Notes that the participant has received and agrees to be bound by the terms of the letter of transmittal and that we may enforce the agreement against the participant. A letter of transmittal need not accompany tenders effected through ATOP.

Proper Execution and Delivery of the Letter of Transmittal

Signatures on a letter of transmittal or notice of withdrawal described under **Withdrawal of Tenders**, as the case may be, must be guaranteed by an eligible guarantor institution unless the Original Notes tendered pursuant to the letter of transmittal are tendered for the account of an eligible guarantor institution. An eligible guarantor institution is one of the following firms or other entities identified in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act) (as the terms are used in Rule 17Ad-15):

- a bank;
- a broker, dealer, municipal securities dealer, municipal securities broker, government securities dealer or government securities broker;
- a credit union;
- a national securities exchange, registered securities association or clearing agency; or
- a savings institution that is a participant in a Securities Transfer Association recognized program.

If signatures on a letter of transmittal or notice of withdrawal are required to be guaranteed, that guarantee must be made by an eligible institution.

If the letter of transmittal is signed by the holders of Original Notes tendered thereby, the signatures must correspond with the names as written on the face of the Original Notes without any change whatsoever. If any of the Original

Notes tendered thereby are held by two or more holders, each holder must sign the letter of transmittal. If any of the Original Notes tendered thereby are registered in different names on different

Table of Contents

Original Notes, it will be necessary to complete, sign and submit as many separate letters of transmittal, and any accompanying documents, as there are different registrations of certificates.

If Original Notes that are not tendered for exchange pursuant to the Exchange Offer are to be returned to a person other than the tendering holder, certificates for those Original Notes must be endorsed or accompanied by an appropriate instrument of transfer, signed exactly as the name of the registered owner appears on the certificates, with the signatures on the certificates or instruments of transfer guaranteed by an eligible guarantor institution.

If the letter of transmittal is signed by a person other than the holder of any Original Notes listed in the letter of transmittal, those Original Notes must be properly endorsed or accompanied by a properly completed bond power, signed by the holder exactly as the holder's name appears on those Original Notes. If the letter of transmittal or any Original Notes, bond powers or other instruments of transfer are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, those persons should so indicate when signing, and, unless waived by us, evidence satisfactory to us of their authority to so act must be submitted with the letter of transmittal.

No alternative, conditional, irregular or contingent tenders will be accepted. By executing the letter of transmittal, or facsimile thereof, the tendering holders of Original Notes waive any right to receive any notice of the acceptance for exchange of their Original Notes. Tendering holders should indicate in the applicable box in the letter of transmittal the name and address to which payments and/or substitute certificates evidencing Original Notes for amounts not tendered or not exchanged are to be issued or sent, if different from the name and address of the person signing the letter of transmittal. If those instructions are not given, Original Notes not tendered or exchanged will be returned to the tendering holder.

All questions as to the validity, form, eligibility, including time of receipt, and acceptance and withdrawal of tendered Original Notes will be determined by us in our absolute discretion, which determination will be final and binding. We reserve the absolute right to reject any and all tendered Original Notes determined by us not to be in proper form or not to be tendered properly or any tendered Original Notes our acceptance of which would, in the opinion of our counsel, be unlawful. We also reserve the right to waive, in our absolute discretion, any defects, irregularities or conditions of tender as to particular Original Notes, whether or not waived in the case of other Original Notes. Our interpretation of the terms and conditions of the Exchange Offer, including the terms and instructions in the letter of transmittal, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of Original Notes must be cured within the time we determine. Neither we, the Exchange Agent nor any other person will be under any duty to notify holders of defects or irregularities with respect to tenders of Original Notes, nor shall any such party incur any liability for failure to give that notification. Tenders of Original Notes will not be deemed to have been made until any defects or irregularities therein have been cured or waived.

Any holder whose Original Notes have been mutilated, lost, stolen or destroyed will be responsible for obtaining replacement securities or for arranging for indemnification with the trustee of the Original Notes. Holders may contact the Exchange Agent for assistance with these matters.

In addition, we reserve the right, as set forth above under the caption "Conditions to the Exchange Offer," to terminate the Exchange Offer. By tendering, each holder represents and acknowledges to us, among other things, that:

it has full power and authority to tender, sell, assign and transfer the Original Notes it is tendering and that we will acquire good and unencumbered title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim when the same are accepted by us;

Table of Contents

the Exchange Notes acquired in connection with the Exchange Offer are being obtained in the ordinary course of business of the person receiving the Exchange Notes;

at the time of commencement of the Exchange Offer it had no arrangement with any person to participate in a distribution of such Exchange Notes;

it is not an affiliate (as defined in Rule 405 under the Securities Act) of BKC or any of the Guarantors; and

if the holder is a broker-dealer, that it is not engaged in, and does not intend to engage in, a distribution of the Exchange Notes, and that it will receive Exchange Notes for its own account in exchange for Original Notes that were acquired by such broker-dealer as a result of market-making activities or other trading activities and that it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. See Plan of Distribution .

Guaranteed Delivery Procedures

If your certificates for Original Notes are not lost but are not immediately available or you cannot deliver your certificates and any other required documents to the Exchange Agent at or prior to 12:00 midnight, New York City time, on the expiration date, or you cannot complete the procedures for book-entry transfer at or prior to 12:00 midnight, New York City time, on the expiration date, you may nevertheless effect a tender of your Original Notes if:

the tender is made through an eligible institution;

prior to the expiration date of the Exchange Offer, the Exchange Agent receives by facsimile transmission, mail or hand delivery from such eligible institution a validly completed and duly executed notice of guaranteed delivery, substantially in the form provided with this prospectus, or an agent's message with respect to guaranteed delivery which:

- i sets forth your name and address and the amount of your Original Notes tendered;
- i states that the tender is being made thereby; and
- i guarantees that within three trading days after the date of execution of the notice of guaranteed delivery, the certificates for all physically tendered Original Notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and any other documents required by the letter of transmittal will be deposited by the eligible institution with the Exchange Agent; and

the certificates for all physically tendered Original Notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and all other documents required by the letter of transmittal are received by the Exchange Agent within three trading days after the date of execution of the notice of guaranteed delivery.

Withdrawal of Tenders

Tenders of Original Notes in the Exchange Offer may be validly withdrawn at any time prior to 12:00 midnight, New York City time, on the expiration date.

For a withdrawal of a tender to be effective, a written or facsimile transmission notice of withdrawal

Table of Contents

must be received by the Exchange Agent prior to 12:00 midnight, New York City time, on the expiration date at its address set forth below under the caption Exchange Agent . The withdrawal notice must:

- (1) specify the name of the tendering holder of Original Notes;
- (2) bear a description of the Original Notes to be withdrawn;
- (3) specify, in the case of Original Notes tendered by delivery of certificates for those Original Notes, the certificate numbers shown on the particular certificates evidencing those Original Notes;
- (4) specify the aggregate principal amount represented by those Original Notes;
- (5) specify, in the case of Original Notes tendered by delivery of certificates for those Original Notes, the name of the registered holder, if different from that of the tendering holder, or specify, in the case of Original Notes tendered by book-entry transfer, the name and number of the account at DTC to be credited with the withdrawn Original Notes; and
- (6) be signed by the holder of those Original Notes in the same manner as the original signature on the letter of transmittal, including any required signature guarantees, or be accompanied by evidence satisfactory to us that the person withdrawing the tender has succeeded to the beneficial ownership of those Original Notes.

The signature on any notice of withdrawal must be guaranteed by an eligible guarantor institution, unless the Original Notes have been tendered for the account of an eligible guarantor institution.

If Original Notes have been tendered pursuant to the procedure for book-entry transfer described in Book-Entry Delivery Procedures for Tendering Original Notes Held with DTC, any notice of withdrawal must comply with the applicable procedures of DTC. All questions as to the validity, form and eligibility and time of receipt of such notice will be determined by BKC, whose determination shall be final and binding on all parties. Any Original Notes so properly withdrawn will be deemed not to have been validly tendered for exchange for purposes of the Exchange Offer and no Exchange Notes will be issued with respect thereto unless the Original Notes so withdrawn are validly retendered. Any Original Notes that have been tendered for exchange but which are not exchanged for any reason will be returned to the holder thereof without cost to such holder (or, in the case of Original Notes tendered by book-entry transfer into the Exchange Agent s account at DTC pursuant to the book-entry transfer procedures described in Book-Entry Delivery Procedures for Tendering Original Notes Held with DTC , such Original Notes will be credited to an account maintained with DTC for the Original Notes) as soon as practicable after withdrawal, rejection of the tender or termination of the Exchange Offer. Properly withdrawn Original Notes may be retendered by following the procedures described above at any time at or prior to 12:00 midnight, New York City time, on the expiration date.

Exchange Agent

Wilmington Trust FSB has been appointed as Exchange Agent in connection with the Exchange Offer. Questions and requests for assistance, as well as requests for additional copies of this prospectus or of the letter of transmittal, should be directed to the Exchange Agent at its offices at Wilmington Trust FSB, c/o Wilmington Trust Company, Corporate Capital Markets, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-1626. The Exchange Agent s telephone number is (302) 636-6181 and facsimile number is (302) 636-4139.

Fees and Expenses

We will not make any payment to brokers, dealers or others soliciting acceptances of the Exchange

Table of Contents

Offer. We will pay certain other expenses to be incurred in connection with the Exchange Offer, including the fees and expenses of the Exchange Agent and certain accountant and legal fees.

Holders who tender their Original Notes for exchange will not be obligated to pay transfer taxes. If, however:

Exchange Notes are to be delivered to, or issued in the name of, any person other than the registered holder of the Original Notes tendered;

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

a transfer tax is imposed for any reason other than the exchange of Original Notes in connection with the Exchange Offer;

then the amount of any such transfer taxes (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption from them is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed directly to the tendering holder.

Accounting Treatment

The Exchange Notes will be recorded at the same carrying value as the Original Notes as reflected in our accounting records on the date of the exchange. Accordingly, we will not recognize any gain or loss for accounting purposes upon the completion of the Exchange Offer.

Consequences of Failures to Properly Tender Original Notes in the Exchange Offer

Issuance of the Exchange Notes in exchange for the Original Notes under the Exchange Offer will be made only after timely receipt by the Exchange Agent of a properly completed and duly executed letter of transmittal (or an agent's message from DTC) and the certificate(s) representing such Original Notes (or confirmation of book-entry transfer), and all other required documents. Therefore, holders of the Original Notes desiring to tender such Original Notes in exchange for Exchange Notes should allow sufficient time to ensure timely delivery. We are under no duty to give notification of defects or irregularities of tenders of Original Notes for exchange. Original Notes that are not tendered or that are tendered but not accepted by us will, following completion of the Exchange Offer, continue to be subject to the existing restrictions upon transfer thereof under the Securities Act, and, upon completion of the Exchange Offer, certain registration rights under the registration rights agreement will terminate.

In the event the Exchange Offer is completed, we generally will not be required to register the remaining Original Notes, subject to limited exceptions. Remaining Original Notes will continue to be subject to the following restrictions on transfer:

the remaining Original Notes may be resold only if registered pursuant to the Securities Act, if any exemption from registration is available, or if neither such registration nor such exemption is required by law; and

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

We do not currently anticipate that we will register the remaining Original Notes under the Securities Act. To the extent that Original Notes are tendered and accepted in connection with the Exchange Offer, any

Table of Contents

trading market for remaining Original Notes could be adversely affected. See Risk Factors Risks Relating to the Exchange Offer If you fail to exchange your Original Notes, they will continue to be restricted securities and may become more illiquid.

Table of Contents

Description of Notes

General

Certain terms used in this description are defined under the subheading "Certain definitions" below. In this description, (i) the terms *we*, *our* and *us* each refer to BKC and its consolidated Subsidiaries; (ii) the term *Issuer* refers only to BKC and not to any of its Subsidiaries; (iii) *Holdings* refers only to Burger King Holdings, Inc. and not to any of its Subsidiaries and (iv) the *Notes* refers to both the Original Notes and the Exchange Notes.

On October 19, 2010, the Issuer issued \$800.0 million in aggregate principal amount 97/8% Senior Notes due 2018 under an indenture dated the Issue Date (the *Indenture*) among the Issuer, the Guarantors and Wilmington Trust, FSB, as trustee (the *Trustee*). The Original Notes were issued in a private transaction that is not subject to the registration requirements of the Securities Act. Except as set forth herein, the terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

The following description is only a summary of the material provisions of the Indenture, does not purport to be complete and is qualified in its entirety by reference to the provisions thereof, including the definitions therein of certain terms used below. We urge you to read the Indenture because it, and not this description, defines your rights as a Holder of the Notes. You may request copies of the Indenture at our address set forth under the heading "Prospectus Summary."

Brief description of notes

The Notes are:

general unsecured senior obligations of the Issuer;

pari passu in right of payment with all existing and future Senior Indebtedness (including the New Credit Facilities) of the Issuer;

effectively subordinated to all Secured Indebtedness of the Issuer (including the New Credit Facilities) to the extent of the value of the assets securing such Indebtedness;

senior in right of payment to any future Subordinated Indebtedness (as defined with respect to the Notes);

initially guaranteed on a senior unsecured basis by Holdings and each Restricted Subsidiary that guarantees the New Credit Facilities; and

structurally subordinated to all Indebtedness and other liabilities, including preferred stock, of Non-Guarantor Subsidiaries.

Guarantees

The Guarantors, as primary obligors and not merely as sureties, jointly and severally, irrevocably, fully and unconditionally guarantee, on an unsecured senior basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of the Issuer under the Indenture and the Notes,

whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise, on the terms set forth in the Indenture by executing the Indenture.

Table of Contents

Holdings and the Restricted Subsidiaries (other than as detailed below) initially guaranteed the Notes. Each of the Guarantees of the Notes is a general unsecured obligation of each Guarantor and is *pari passu* in right of payment with all existing and future Senior Indebtedness of each such entity, is effectively subordinated to all Secured Indebtedness of each such entity to the extent of the value of the assets securing such Indebtedness and is senior in right of payment to all existing and future Subordinated Indebtedness of each such entity.

Not all of the Issuer's Subsidiaries guarantee the Notes. The Notes are structurally subordinated to Indebtedness and other liabilities of Non-Guarantor Subsidiaries. In the event of a bankruptcy, liquidation or reorganization of any of these Non-Guarantor Subsidiaries, the Non-Guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to the Issuer.

As more fully described below under Certain covenants Limitation on guarantees of indebtedness by restricted subsidiaries, the Indenture requires that each of the Issuer's Wholly-Owned Restricted Subsidiaries that guarantees the obligations under the New Credit Facilities or any other Indebtedness of the Issuer, shall also be a Guarantor of the Notes.

The obligations of each Guarantor under its Guarantee are limited as necessary to prevent such Guarantee from constituting a fraudulent conveyance under applicable law.

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

The Indenture provides that each Guarantor may consolidate with or merge with or into or sell its assets to the Issuer or another Guarantor without limitation, or with other Persons upon the terms and conditions set forth in the Indenture. See Certain Covenants Merger, Consolidation or Sale of All or Substantially All Assets.

If a Guarantee were rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the Guarantor, and, depending on the amount of such indebtedness, a Guarantor's liability on its Guarantee could be reduced to zero. See Risk factors Risks related to the notes Federal and state fraudulent transfer laws may permit a court to void the notes and/or the guarantees, and if that occurs, you may not receive any payments on the notes. A Guarantee by a Guarantor shall provide by its terms that it shall be automatically and unconditionally released and discharged upon:

- (1) (a) in the case of a Subsidiary Guarantor, any sale, exchange, disposition or transfer (by merger or otherwise) of (x) the Capital Stock of such Subsidiary Guarantor, after which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary, or (y) all or substantially all the assets of such Subsidiary Guarantor, which sale, exchange, disposition or transfer in each case is made in compliance with the applicable provisions of the Indenture;
- (b) the release or discharge of the guarantee by such Guarantor of the New Credit Facilities or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee;
- (c) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in compliance with the applicable provisions of the Indenture; or

Table of Contents

- (d) the Issuer exercising its legal defeasance option or covenant defeasance option as described under Legal defeasance and covenant defeasance or the Issuer's obligations under the Indenture being discharged in accordance with the terms of the Indenture; and
- (2) such Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

Ranking

The payment of the principal of, premium, if any, and interest on the Notes and the payment of any Guarantee will rank *pari passu* in right of payment to all Senior Indebtedness of the Issuer or the relevant Guarantor, as the case may be, including the obligations of the Issuer and such Guarantor under the New Credit Facilities.

The Notes are effectively subordinated in right of payment to all of the Issuer's and each Guarantor's existing and future Secured Indebtedness to the extent of the value of the assets securing such Indebtedness. As of September 30, 2010, on a pro forma basis, after giving effect to the consummation of the Transactions, the Issuer would have had \$1,850.8 million (excluding OID under the New Term Facility) of outstanding Secured Indebtedness, consisting entirely of Secured Indebtedness under the New Credit Facilities (after giving effect to outstanding letters of credit for approximately \$38.0 million) and \$70.2 million of capital lease obligations, and the ability to borrow up to \$450.0 million of additional secured Indebtedness.

Although the Indenture contains limitations on the amount of additional Indebtedness that the Issuer and the Subsidiary Guarantors may incur, under certain circumstances the amount of such Indebtedness could be substantial and, in any case, such Indebtedness may be Senior Indebtedness. See Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock.

Paying agent and registrar for the notes

The Issuer will maintain one or more paying agents for the Notes. The initial paying agent for the Notes will be the Trustee. The Issuer will also maintain a registrar with respect to the Notes. The initial registrar will be the Trustee. The registrar will maintain a register reflecting ownership of the Notes outstanding from time to time and will make payments on and facilitate transfers of Notes on behalf of the Issuer.

The Issuer may change the paying agents or the registrars without prior notice to the Holders. The Issuer or any of its Subsidiaries may act as a paying agent or registrar.

Transfer and exchange

A Holder may transfer or exchange Notes in accordance with the Indenture. The registrar and the Trustee may require a Holder to furnish appropriate endorsements and transfer documents in connection with a transfer of Notes. Holders will be required to pay all taxes due on transfer. The Issuer is not required to transfer or exchange any Note selected for redemption or tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, an Asset Sale Offer or other tender offer. Also, the Issuer is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

Principal, maturity and interest

The Issuer issued \$800.0 million in aggregate principal amount of Original Notes on October 19,

Table of Contents

2010. The Notes will mature on October 15, 2018. Subject to compliance with the covenant described below under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock, the Issuer may issue additional Notes from time to time after this offering under the Indenture (*Additional Notes*). The Original Notes offered by the Issuer and any Additional Notes subsequently issued under the Indenture will be treated as a single class for all purposes under the Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to Notes for all purposes of the Indenture and this Description of Notes include any Additional Notes that are actually issued.

Interest on the Notes accrues at the rate of 97/8% per annum and will be payable semi-annually in arrears on each April 15 and October 15, commencing on April 15, 2011, to the Holders of record of the Notes on the immediately preceding April 1 and October 1. Interest on the Notes will accrue from the most recent date to which interest has been paid with respect to such Notes, or if no interest has been paid with respect to such Notes, from the date of original issuance thereof. Interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Principal of, premium, if any, and interest on the Notes will be payable at the office or agency of the Issuer maintained for such purpose or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders of the Notes at their respective addresses set forth in the register of Holders; *provided* that all payments of principal, premium, if any, and interest with respect to the Notes represented by one or more global notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Issuer, the Issuer's office or agency will be the office of the Trustee maintained for such purpose.

Mandatory redemption; offers to purchase; open market purchases

The Issuer is not required to make any mandatory redemption or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuer may be required to offer to purchase Notes as described under the caption Repurchase at the option of holders. We may at any time and from time to time purchase Notes in the open market or otherwise.

Optional redemption

Except as set forth below, the Issuer will not be entitled to redeem Notes at its option prior to October 15, 2014.

At any time prior to October 15, 2014, the Issuer may redeem all or a part of the Notes, upon notice as described under the heading Repurchase at the option of holders Selection and notice, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, but excluding the date of redemption (the *Redemption Date*), subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant interest payment date.

On and after October 15, 2014, the Issuer may redeem the Notes, in whole or in part, upon notice as described under the heading Repurchase at the option of holders Selection and notice, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon, but excluding the applicable Redemption Date, subject to the right of

Table of Contents

Holders of record on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on October 15 of each of the years indicated below:

Year	Percentage
2014	104.938%
2015	102.469%
2016 and thereafter	100.000%

In addition, until October 15, 2013, the Issuer may, at its option, upon notice as described under the heading *Repurchase at the option of holders Selection and notice*, on one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture at a redemption price equal to 109.875% of the aggregate principal amount thereof, plus accrued and unpaid interest thereon, but excluding the applicable Redemption Date, subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds of one or more Equity Offerings; *provided* that (a) at least 50% of the sum of the aggregate principal amount of Notes originally issued under the Indenture on the Issue Date and any Additional Notes of the relevant series that are issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption and (b) that each such redemption occurs within 90 days of the date of closing of each such Equity Offering. Any redemption or notice of any redemption may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of an Equity Offering, other offering or other corporate transaction or event. Notice of any redemption in respect of an Equity Offering may be given prior to the completion thereof.

The Trustee shall select the Notes to be redeemed in the manner described under *Repurchase at the option of holders Selection and notice*.

Repurchase at the option of holders*Change of control*

The Notes provide that if a Change of Control occurs, unless the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under *Optional redemption*, the Issuer will make an offer to purchase all of the Notes pursuant to the offer described below (the *Change of Control Offer*) at a price in cash (the *Change of Control Payment*) equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest to the date of purchase, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Issuer will send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the security register or otherwise in accordance with the procedures of DTC, with the following information:

- (1) that a Change of Control Offer is being made pursuant to the covenant entitled *Change of Control*, and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;

- (2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the *Change of Control Payment Date*);
- (3) that any Note not properly tendered will remain outstanding and continue to accrue interest;
- (4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes

Table of Contents

accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

- (5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled *Option of Holder to Elect Purchase* on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, *provided* that the paying agent receives, not later than the expiration time of the Change of Control Offer, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;
- (7) that if the Issuer is redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to \$2,000 or an integral multiple of \$1,000 in excess thereof;
- (8) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and
- (9) the other instructions, as determined by us, consistent with the covenant described hereunder, that a Holder must follow.

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

On the Change of Control Payment Date, the Issuer will, to the extent permitted by law,

- (1) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered; and
- (3) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

The New Credit Facilities prohibit or limit, and future credit agreements or other agreements to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Notes as a result of a Change of Control. In the event a Change of Control occurs at a time when the Issuer is prohibited from purchasing the Notes, the Issuer could seek the consent of its lenders to permit the purchase of the Notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain such consent or repay

Table of Contents

such borrowings, the Issuer will remain prohibited from purchasing the Notes. In such case, the Issuer's failure to purchase tendered Notes after any applicable notice and lapse of time would constitute an Event of Default under the Indenture.

The New Credit Facilities, and future credit agreements or other agreements relating to Senior Indebtedness to which the Issuer becomes a party may, provide that certain change of control events with respect to the Issuer would constitute a default thereunder (including a Change of Control under the Indenture). If we experience a change of control that triggers a default under our New Credit Facilities, we could seek a waiver of such default or seek to refinance our New Credit Facilities. In the event we do not obtain such a waiver or refinance the New Credit Facilities, such default could result in amounts outstanding under our New Credit Facilities being declared due and payable.

Our ability to pay cash to the Holders of Notes following the occurrence of a Change of Control may be limited by our then-existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases. See Risk factors Risks related to the notes We may not be able to repurchase the notes upon a change of control.

The Change of Control purchase feature of the Notes may in certain circumstances make more difficult or discourage a sale or takeover of us and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the Initial Purchasers and us. We have no present intention to engage in a transaction involving a Change of Control, although it is possible that we could decide to do so in the future. Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the Indenture, but that could increase the amount of indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to incur additional Indebtedness are contained in the covenants described under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock and Certain covenants Liens. Such restrictions in the Indenture can be waived only with the consent of the Holders of a majority in principal amount of the Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture will not contain any covenants or provisions that may afford Holders of the Notes protection in the event of a highly leveraged transaction.

We will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by us and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

The definition of Change of Control includes a disposition of all or substantially all of the assets of the Issuer and its Subsidiaries or Holdings and its Subsidiaries, in each case taken as a whole, to any Person other than a direct or indirect parent entity or a Permitted Holder. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of all or substantially all of the assets of the Issuer. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder of Notes may require the Issuer to make an offer to repurchase the Notes as described above.

The provisions under the Indenture relating to the Issuer's obligation to make an offer to repurchase

Table of Contents

the Notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes.

Asset sales

The Indenture provides that the Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

- (1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in Good Faith by the Issuer) of the assets sold or otherwise disposed of; and
- (2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that the amount of:
 - (a) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been shown on the Issuer or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in Good Faith by the Issuer) of the Issuer or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes, that are assumed by the transferee of any such assets and for which the Issuer and all of its Restricted Subsidiaries have been validly released by all creditors in writing,
 - (b) any securities or other obligations received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale, and
 - (c) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed 1.0% of Total Assets 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,

shall be deemed to be Cash Equivalents for purposes of this provision and for no other purpose.

Within 450 days after the receipt of any Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

- (1) to reduce or repay:
 - (a) Obligations under the New Credit Facilities, and to correspondingly reduce commitments with respect thereto;
 - (b)

Obligations under Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien, which Lien is permitted by the Indenture, and to correspondingly reduce commitments with respect thereto;

Table of Contents

- (c) Obligations under other Indebtedness (other than Subordinated Indebtedness) (and to correspondingly reduce commitments with respect thereto); *provided* that, to the extent the Issuer reduces Obligations under such Indebtedness, the Issuer shall equally and ratably reduce Obligations under the Notes as provided under Optional Redemption, through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the amount of Notes that would otherwise be prepaid; or
 - (d) Indebtedness of a Non-Guarantor Subsidiary, other than Indebtedness owed to the Issuer or another Restricted Subsidiary (and correspondingly reduce commitments with respect thereto);
- (2) to make (a) an Investment in any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) capital expenditures or (c) acquisitions of other assets (other than working capital assets), in the case of each of (a), (b) and (c), used or useful in a Similar Business; or
 - (3) to make an Investment in (a) any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or another of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties (other than working capital assets) or (c) acquisitions of other assets (other than working capital assets) that, in the case of each of (a), (b) and (c), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided that, in the case of clauses (2) and (3) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an *Acceptable Commitment*) and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a *Second Commitment*) within 180 days of such cancellation or termination; *provided further* that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

Any Net Proceeds from the Asset Sale that are not invested or applied as provided and within the time period set forth in the first sentence of the preceding paragraph will be deemed to constitute Excess Proceeds. When the aggregate amount of Excess Proceeds exceeds \$40.0 million, the Issuer shall make an offer to all Holders of the Notes and, if required by the terms of any Indebtedness that is *pari passu* with the Notes (*Pari Passu Indebtedness*), to the holders of such *Pari Passu Indebtedness* (an *Asset Sale Offer*), to purchase the maximum aggregate principal amount of the Notes and such *Pari Passu Indebtedness* that is equal to \$2,000 or an integral multiple of \$1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$40.0 million by mailing the notice required pursuant to the terms of the Indenture, with a copy to the Trustee or otherwise in accordance with the

Table of Contents

procedures of DTC. The Issuer may satisfy the foregoing obligations with respect to such Net Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Proceeds prior to the expiration of the Application Period.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for general corporate purposes, subject to compliance with other covenants contained in the Indenture. If the aggregate principal amount of Notes or the Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Issuer or agent for such Pari Passu Indebtedness shall select such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

Pending the final application of any Net Proceeds pursuant to this covenant, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise use such Net Proceeds in any manner not prohibited by the Indenture.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

The New Credit Facilities prohibit or limit, and future credit agreements or other agreements to which the Issuer becomes a party may prohibit or limit, the Issuer from purchasing any Notes pursuant to this Asset Sale covenant. In the event the Issuer is prohibited from purchasing the Notes, the Issuer could seek the consent of its lenders to the purchase of the Notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain such consent or repay such borrowings, it will remain prohibited from purchasing the Notes. In such case, the Issuer's failure to purchase tendered Notes would constitute an Event of Default under the Indenture.

Selection and notice

If the Issuer is redeeming less than all of the Notes issued by it at any time, the Trustee will select the Notes to be redeemed (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, (b) on a pro rata basis (to the extent practicable) or (c) by lot or such other similar method in accordance with the procedures of DTC. No Notes of \$2,000 or less can be redeemed in part.

Notices of purchase or redemption shall be mailed by first-class mail, postage prepaid, at least 30 but not more than 60 days before the purchase or redemption date to each Holder of record of Notes at such Holder's registered address or otherwise delivered in accordance with the procedures of DTC, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. If any Note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed.

Table of Contents

The Issuer will issue a new Note in a principal amount equal to the unredeemed portion of the original Note in the name of the Holder upon cancellation of the original Note. Notes called for redemption, including Notes called for Special Mandatory Redemption, become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions thereof called for redemption.

Certain covenants

Set forth below are summaries of certain covenants that are contained in the Indenture.

Effectiveness of covenants

Following the first day:

- (1) the Notes have an Investment Grade Rating from both of the Ratings Agencies; and
- (2) no Default has occurred and is continuing under the Indenture;

the Issuer and its Restricted Subsidiaries are not subject to the provisions of the Indenture summarized under the following headings (collectively, the *Suspended Covenants*):

Repurchase at the option of holders,

Limitation on restricted payments,

Limitation on indebtedness,

Clause (4) of the first paragraph of Merger, consolidation or sale of all or substantially all assets,

Transactions with Affiliates, and

Dividend and other payment restrictions affecting restricted subsidiaries.

If at any time the Notes credit rating is downgraded from an Investment Grade Rating by any Rating Agency or if a Default or Event of Default occurs and is continuing, then the Suspended Covenants will thereafter be reinstated as if such covenants had never been suspended (the *Reinstatement Date*) and be applicable pursuant to the terms of the Indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of the Indenture), unless and until the Notes subsequently attain an Investment Grade Rating and no Default or Event of Default is in existence (in which event the Suspended Covenants shall no longer be in effect for such time that the notes maintain an Investment Grade Rating and no Default or Event of Default is in existence); *provided, however*, that no Default, Event of Default or breach of any kind shall be deemed to exist under the Indenture, the Registration Rights Agreement, the Notes or the Guarantees with respect to the Suspended Covenants based on, and none of Holdings the Issuer or any of its Subsidiaries shall bear any liability for, any actions taken or events occurring during the Suspension Period (as defined below), or any actions taken at any time pursuant to any contractual obligation arising prior to the Reinstatement Date, regardless of whether such actions or events would have been permitted if the applicable Suspended Covenants remained in effect during such period. The period of time between the date of suspension of the covenants and the Reinstatement Date is referred to as the *Suspension Period*.

On the Reinstatement Date, all Indebtedness Incurred during the Suspension Period will be classified

Table of Contents

to have been Incurred pursuant to the first paragraph of Limitation on indebtedness or one of the clauses set forth in the second paragraph of Limitation on indebtedness (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reinstatement Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reinstatement Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to the first or second paragraph of Limitation on indebtedness, such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (3) of the second paragraph of Limitation on indebtedness. Calculations made after the Reinstatement Date of the amount available to be made as Restricted Payments under Limitation on restricted payments will be made as though the covenants described under Limitation on restricted payments had been in effect since the Issue Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of Limitation on restricted payments.

During any period when the Suspended Covenants are suspended, the board of directors of the Issuer may not designate any of the Issuer's Subsidiaries as Unrestricted Subsidiaries pursuant to the Indenture.

There can be no assurance that the Notes will ever achieve or maintain Investment Grade Ratings.

Limitation on restricted payments

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

(I) declare or pay any dividend or make any payment or distribution on account of the Issuer's, or any of its Restricted Subsidiaries', Equity Interests, including any dividend or distribution payable in connection with any merger or consolidation other than:

- (a) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or
- (b) dividends or distributions by a Restricted Subsidiary to the Issuer or any other Restricted Subsidiary (and if such Restricted Subsidiary is not a Wholly-Owned Subsidiary, to its other holders of common stock on a pro rata basis) so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer, including in connection with any merger or consolidation involving the Issuer;

(III) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

- (a) Indebtedness permitted under clauses (7) and (8) of the second paragraph of the covenant described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock; or

Table of Contents

- (b) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or (IV) make any Restricted Investment

(all such payments and other actions set forth in clauses (I) through (IV) above being collectively referred to as Restricted Payments), unless, at the time of such Restricted Payment:

- (1) no Default shall have occurred and be continuing or would occur as a consequence thereof;
- (2) immediately after giving effect to such transaction on a *pro forma* basis, the Issuer could incur \$1.00 of additional Indebtedness under the provisions of the first paragraph of the covenant described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock; and
- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (1), (9) and (14) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum of (without duplication):
 - (a) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) commencing October 1, 2010 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; plus
 - (b) 100% of the aggregate net cash proceeds and the fair market value, as determined in Good Faith by the Issuer, of marketable securities or other property received by the Issuer since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness, Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock) from the issue or sale of:

(i)(A) Equity Interests of the Issuer, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value, as determined in Good Faith by the Issuer, of marketable securities or other property received from the sale of:

(x) Equity Interests to members of management, members of the board of managers or directors or consultants of the Issuer, any direct or indirect parent company of the Issuer and the Issuer's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with clause (4) of the next succeeding paragraph; and

(y) Designated Preferred Stock; and

(B) to the extent such net cash proceeds are actually contributed to the Issuer, Equity Interests of the Issuer's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to

Table of Contents

Restricted Payments made in accordance with clause (4) of the next succeeding paragraph); or

(ii) debt securities of the Issuer that have been converted into or exchanged for such Equity Interests of the Issuer or any direct or indirect parent of the Issuer;

provided, however, that in addition to clauses (x) and (y) referred to above, this clause (b) shall not include the proceeds from (V) Refunding Capital Stock (as defined below), (X) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, as the case may be, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock, (Z) Excluded Contributions; plus

(c) 100% of the aggregate amount of cash and the fair market value, as determined in Good Faith by the Issuer, of marketable securities or other property contributed to the capital of the Issuer following the Issue Date (other than net cash proceeds to the extent such net cash proceeds (i) have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to clause (12)(a) of the second paragraph of Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock, (ii) are contributed by a Restricted Subsidiary or (iii) constitute Excluded Contributions); plus

(d) 100% of the aggregate amount received in cash and the fair market value, as determined in Good Faith by the Issuer, of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of Restricted Investments made by the Issuer or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Issuer or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent of the amount of the Investment in such Unrestricted Subsidiary made by the Issuer or a Restricted Subsidiary pursuant to clauses (7) or (11) of the next succeeding paragraph or to the extent of the amount of the Investment that constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; plus

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger or consolidation of an Unrestricted Subsidiary into the Issuer or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Issuer or a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined in Good Faith by the Issuer or, if such fair market value exceeds \$50.0 million, in writing by an Independent Financial Advisor, at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger or consolidation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged or consolidated or Indebtedness associated with the assets so transferred), other than to the extent of the amount of the Investment in such Unrestricted Subsidiary made by the Issuer or a Restricted Subsidiary pursuant to clauses (7) or (11) of the next succeeding paragraph or to the extent of the amount of the Investment that constituted a Permitted Investment.

Table of Contents

The foregoing provisions will not prohibit:

- (1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of the Indenture or the redemption, repurchase or retirement of Indebtedness if, at the date of any irrevocable redemption notice such payment would have complied with the provisions of the Indenture;
- (2) (a) the redemption, repurchase, retirement or other acquisition of any Equity Interests (Treasury Capital Stock) or Subordinated Indebtedness of the Issuer or any Equity Interests of any direct or indirect parent company of the Issuer, in exchange for, or out of the proceeds of, the substantially concurrent sale or issuance (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent contributed to the Issuer (in each case, other than any Disqualified Stock) (Refunding Capital Stock), (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) of Refunding Capital Stock, and (c) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (6) of this paragraph, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Issuer) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such treasury Capital Stock immediately prior to such retirement;
- (3) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Issuer or a Subsidiary Guarantor made by exchange for, or out of the proceeds of, the substantially concurrent sale of, new Indebtedness of the Issuer or such Subsidiary Guarantor, as the case may be, which is incurred in compliance with Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock so long as:
 - (a) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired for value, plus the amount of any premium (including any tender premiums), defeasance costs and any fees and expenses incurred in connection with such redemption, repurchase, defeasance, exchange, acquisition or retirement and the issuance of such new Indebtedness;
 - (b) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so repurchased, defeased, exchanged, redeemed, acquired or retired for value;
 - (c) such new Indebtedness has a final scheduled maturity date equal to or later than the earlier of the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired, or the maturity date of the Notes; and
 - (d) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, exchanged, acquired or retired;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for

Table of Contents

value of Equity Interests (other than Disqualified Stock) of the Issuer or any of its direct or indirect parent companies held by any future, present or former employee, member of the board of directors or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies (permitted transferees, assigns, estates or heirs of such employee, director or consultant), pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, including any Equity Interests rolled over by management of the Issuer in the Transactions; *provided, however*, that the aggregate Restricted Payments made under this clause (4) do not exceed in any calendar year \$25.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$50.0 million in any calendar year); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:

- (a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, Equity Interests of any of the Issuer's direct or indirect parent companies, in each case to any employee, member of the board of directors or consultant of the Issuer, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of the first paragraph of this covenant; plus
- (b) the cash proceeds of key man life insurance policies received by the Issuer or its Restricted Subsidiaries after the Issue Date; less
- (c) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a) and (b) of this clause (4);

and *provided further* that cancellation of Indebtedness owing to the Issuer or any Restricted Subsidiary from any employee, member of the board of directors or consultant of the Issuer, any of the Issuer's direct or indirect parent companies or any of the Issuer's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any of its direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of the Indenture;

- (5) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries issued in accordance with the covenant described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock to the extent such dividends are included in the definition of Fixed Charges ;
- (6) (a) the declaration and payment of dividends and distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date; *provided* that the amount of dividends paid pursuant to this clause (a) shall not exceed the aggregate amount of cash actually received by the Issuer from the sale of such Designated Preferred Stock;
- (b) the declaration and payment of dividends and distributions to a direct or indirect parent company of the Issuer, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of such parent company issued after the Issue Date; *provided* that the amount of dividends paid pursuant to this clause (b) shall not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

Table of Contents

- (c) the declaration and payment of dividends and distributions on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this paragraph;

provided, however, in the case of each of (a), (b) and (c) of this clause (6), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

- (7) Investments in Unrestricted Subsidiaries taken together with all other Investments made pursuant to this clause (7) that are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities, not to exceed the greater of (x) \$50.0 million and (y) 1.0% of Total Assets;
- (8) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (9) the declaration and payment of dividends and distributions on the Issuer's common stock (or the payment of dividends to any direct or indirect parent entity of the Issuer to fund a payment of dividends on such entity's common stock), following the consummation of the first public offering of the Issuer's common stock or the common stock of any of its direct or indirect parent companies after the Issue Date, of up to 6% per annum of the net cash proceeds received by or contributed to the Issuer in or from any such public offering, other than public offerings with respect to the Issuer's common stock registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution;
- (10) Restricted Payments that are made with Excluded Contributions;
- (11) other Restricted Payments in an aggregate amount, taken together with all other Restricted Payments made pursuant to this clause (11), that are at the time outstanding (without giving effect to the sale of an Investment to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, cash or marketable securities) not to exceed \$75.0 million at the time made;
- (12) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation, in each case in connection with a Qualified Securitization Financing;
- (13) any Restricted Payment used to fund the Transactions and the fees and expenses related thereto or used to fund amounts owed to Affiliates (including as a result of the cancellation or vesting of outstanding options and other equity-based awards, in connection therewith) in each case, as described herein and to the extent permitted by the covenant described under Transactions with affiliates; *provided* that payments to Affiliates due to the termination of agreements with the Sponsor described under Certain relationships and related party transactions or similar agreements shall be permitted by this clause (13) only to the extent such termination is attributable to an underwritten registered public offering of common stock of the Issuer or any direct or indirect parent of the Issuer or to a Change of Control;
- (14)

the repurchase, redemption or other acquisition or retirement for value of any Preferred Stock or Subordinated Indebtedness pursuant to in accordance with the provisions similar to those

Table of Contents

described under the captions Repurchase at the option of holders Change of control and Repurchase at the option of holders Asset sales ; *provided* that all Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

- (15) the declaration and payment of dividends by the Issuer to, or the making of loans to, any direct or indirect parent company in amounts required for any direct or indirect parent companies to pay, in each case without duplication,
- (a) franchise taxes and other fees, taxes and expenses required to maintain their corporate existence;
 - (b) foreign, federal, state and local income taxes, to the extent such income taxes are attributable to the income of the Issuer and its Restricted Subsidiaries and, to the extent of the amount actually received from its Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of such Unrestricted Subsidiaries; *provided* that in each case the amount of such payments in any fiscal year does not exceed the amount that the Issuer and its Restricted Subsidiaries would be required to pay in respect of foreign, federal, state and local taxes for such fiscal year were the Issuer, its Restricted Subsidiaries and its Unrestricted Subsidiaries (to the extent described above) to pay such taxes separately from any such parent entity;
 - (c) customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of the Issuer to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;
 - (d) general corporate operating and overhead costs and expenses of any direct or indirect parent company of the Issuer to the extent such costs and expenses are attributable to the ownership or operation of the Issuer and its Restricted Subsidiaries;
 - (e) amounts required for any direct or indirect parent company of the Issuer to pay fees and expenses incurred by any direct or indirect parent company of the Issuer related to (i) the maintenance of such parent entity of its corporate or other entity existence and performance of its obligations under the Indenture and the Registration Rights Agreement and similar obligations under the New Credit Facilities to the extent such obligations are permitted by the covenant described under Limitation on activities of Holdings and (ii) any unsuccessful equity or debt offering of such parent company; and
 - (f) taxes with respect to income of any direct or indirect parent company of the Issuer derived from funding made available to the Issuer and its Restricted Subsidiaries by such direct or indirect parent company;
- (16) the distribution, by dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are cash and/or Cash Equivalents); and
- (17) cash payments in lieu of the issuance of fractional shares or interests in connection with the exercise of warrants, options or other rights or securities convertible into or exchangeable for Capital Stock of the Issuer or any direct or indirect parent company of the Issuer; *provided* that any such cash payment shall not be for the purpose of evading the limitation of this covenant;

Table of Contents

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (7), (9), (11) and (16), no Default shall have occurred and be continuing or would occur as a consequence thereof.

The amount of all Restricted Payments (other than cash) will be the fair market value (as determined in Good Faith by the Issuer) on the date of such Restricted Payment of the assets or securities proposed to be paid, transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment.

As of the Issue Date, all of the Issuer's Subsidiaries were Restricted Subsidiaries. The Issuer will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the last sentence of the definition of Unrestricted Subsidiary. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Investments in an amount determined as set forth in the last sentence of the definition of *Investment*. Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time, whether pursuant to this covenant or pursuant to the definition of *Permitted Investments*, and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in the Indenture.

Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, *incur* and collectively, an *incurrence*) with respect to any Indebtedness (including Acquired Indebtedness) and the Issuer will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided, however*, that the Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any of its Restricted Subsidiaries may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio on a consolidated basis for the Issuer and its Restricted Subsidiaries most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period; *provided, further*, that Non-Guarantor Subsidiaries may not incur Indebtedness or Disqualified Stock or Preferred Stock if, after giving *pro forma* effect to such incurrence or issuance (including a *pro forma* application of the net proceeds therefrom), more than an aggregate of \$100.0 million of Indebtedness or Disqualified Stock or Preferred Stock of Non-Guarantor Subsidiaries would be outstanding pursuant to this paragraph at such time.

The foregoing limitations will not apply to:

- (1) the incurrence of Indebtedness under Credit Facilities by the Issuer or any of the Subsidiary Guarantors and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof), up to an aggregate principal amount of \$2,000.0 million outstanding at any one time; *provided* that the Issuer or any of the Subsidiary Guarantors may incur Indebtedness under Credit Facilities up to an aggregate principal amount of \$2,450.0 million if the Consolidated Secured Debt Ratio would be no greater than 4.00 to 1.00 at the time of incurrence;

Table of Contents

- (2) the incurrence by the Issuer and any Subsidiary Guarantor of Indebtedness represented by the Notes (including any Guarantee) (other than any Additional Notes) and any Guarantee thereof;
- (3) Indebtedness of the Issuer and its Restricted Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (1) and (2));
- (4) Indebtedness (including Capitalized Lease Obligations) incurred, or Disqualified Stock and Preferred Stock issued by the Issuer or any of its Restricted Subsidiaries, to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets; *provided* that the aggregate amount of Indebtedness, Disqualified Stock and Preferred Stock incurred pursuant to this clause (4), when aggregated with the outstanding amount of Indebtedness, Disqualified Stock and Preferred Stock under clause (13) incurred to refinance Indebtedness, Disqualified Stock and Preferred Stock initially incurred in reliance on this clause (4), does not exceed the greater of (x) \$150.0 million and (y) 3.0% of the Issuer's Total Assets at any one time outstanding;
- (5) Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, 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, however,* that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence;
- (6) Indebtedness arising from agreements of the Issuer or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; *provided, however,* that
 - (a) such Indebtedness is not reflected on the balance sheet of the Issuer, or any of its Restricted Subsidiaries prepared in accordance with GAAP (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (6)(a)); and
 - (b) with respect to a disposition, the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the fair market value of such non-cash proceeds being measured at the time received and without giving effect to any subsequent changes in value) actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;
- (7) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owing to a Non-Guarantor Subsidiary is expressly subordinated in right of payment to the Notes; *provided, further,* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause;

Table of Contents

- (8) Indebtedness of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary; *provided* that if a Subsidiary Guarantor incurs such Indebtedness owing to a Restricted Subsidiary that is not a Subsidiary Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Notes of such Subsidiary Guarantor; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause;
- (9) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Issuer or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock not permitted by this clause;
- (10) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk, exchange rate risk or commodity pricing risk;
- (11) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees or obligations in respect of letters of credit related thereto provided by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;
- (12) (a) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary equal to 100.0% of the net cash proceeds received by the Issuer since immediately after the Issue Date from the issue or sale of Equity Interests of the Issuer or cash contributed to the capital of the Issuer (in each case, other than Excluded Contributions or proceeds of Disqualified Stock or Designated Preferred Stock or sales of Equity Interests to the Issuer or any of its Subsidiaries or amounts applied to make a Restricted Payment in accordance with clause (2) of the second paragraph of *Certain covenants Limitation on restricted payments*) as determined in accordance with clauses (3)(b) and (3)(c) of the first paragraph of *Limitation on Restricted Payments* to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments or to make other Investments, payments or exchanges pursuant to the second paragraph of *Limitation on Restricted Payments* or to make Permitted Investments (other than Permitted Investments specified in clauses (1) and (3) of the definition thereof) (together with amounts applied under clause (13) to refinance Indebtedness or Disqualified Stock initially incurred in reliance on this clause 12(a)) and (b) Indebtedness or Disqualified Stock of the Issuer and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause 12(b), does not at any one time outstanding exceed \$150.0 million;
- (13) the incurrence or issuance by the Issuer of Indebtedness or Disqualified Stock or the incurrence or issuance by a Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to refund or refinance any Indebtedness incurred or Disqualified Stock or Preferred Stock issued as permitted under the first paragraph of this covenant and clauses (2), (3), (4) and (12)(a) above, this clause (13) and clause (14) below or any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock including

Table of Contents

Stock issued to pay premiums (including tender premiums), defeasance costs and fees in connection therewith (the *Refinancing Indebtedness*) prior to its respective maturity; *provided, however*, that such Refinancing Indebtedness:

- (a) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced,
- (b) to the extent such Refinancing Indebtedness refinances (i) Indebtedness subordinated or *pari passu* to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated or *pari passu* to the Notes or the Guarantee at least to the same extent as the Indebtedness being refinanced or refunded or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively,

(c) shall not include:

(i) Indebtedness, Disqualified Stock or Preferred Stock of a Non-Guarantor Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(ii) Indebtedness, Disqualified Stock or Preferred Stock of a Non-Guarantor Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary Guarantor; or

(iii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

(d) shall not be in a principal amount in excess of the principal amount of, premium, if any, accrued interest on and related fees and expenses (including tender premiums) of, the Indebtedness being refunded or refinanced, or

(e) shall not have a Stated Maturity date prior to the earlier of the Stated Maturity of the Indebtedness being so refunded or refinanced or the Stated Maturity of the Notes;

and *provided further* that subclauses (a) and (e) of this clause (13) will not apply to any refunding or refinancing of any Indebtedness outstanding under the New Credit Facilities;

(14) Indebtedness, Disqualified Stock or Preferred Stock of (x) the Issuer or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into or consolidated with the Issuer or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided* that after giving effect to such acquisition, merger or consolidation, either

(a) the Issuer would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of this covenant, or

(b) the Fixed Charge Coverage Ratio of the Issuer and the Restricted Subsidiaries is greater than immediately prior to such acquisition, merger or consolidation;

(15) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft

Table of Contents

or similar instrument drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five Business Days of its incurrence;

- (16) Indebtedness of the Issuer or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the New Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;
- (17) (a) any guarantee by the Issuer or a Subsidiary Guarantor of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness is permitted under the terms of the Indenture; *provided* that if such Indebtedness is by its express terms subordinated in right of payment to the Guarantee of such Restricted Subsidiary, any such guarantee of the Issuer or such Subsidiary Guarantor with respect to such Indebtedness shall be subordinated in right of payment to the Notes or such Subsidiary Guarantors' Guarantee with respect to the Notes substantially to the same extent as such Indebtedness is subordinated to the Guarantee of such Restricted Subsidiary, as applicable;
- (b) any guarantee by a Subsidiary Guarantor of Indebtedness of the Issuer *provided* that such guarantee is incurred in accordance with the covenant described below under 'Limitation on Guarantees of Indebtedness by Restricted Subsidiaries'; *provided* that if such Indebtedness is by its express terms subordinated in right of payment to the Notes, any such guarantee of such Subsidiary Guarantor with respect to such Indebtedness shall be subordinated in right of payment to the Notes or such Subsidiary Guarantors' Guarantee with respect to the Notes substantially to the same extent as such Indebtedness is subordinated to the Notes, as applicable or
- (c) any guarantee by a Non-Guarantor Subsidiary of Indebtedness of another Non- Guarantor Subsidiary incurred in accordance with the terms of the Indenture;
- (18) Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed \$75.0 million at any one time outstanding;
- (19) Indebtedness of the Issuer or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;
- (20) Indebtedness consisting of Indebtedness issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, members of the board of directors and employees and consultants thereof, their respective estates, spouses or former spouses, in each case to finance, either directly or through promissory notes issued to such persons, the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent described in clause (4) of the second paragraph under the caption 'Limitation on restricted payments'; and
- (21) Guarantees of or the assumption of up to \$300.0 million at any time outstanding of Indebtedness of Franchisees, suppliers, distributors or licensees of the Issuer and its Restricted Subsidiaries, in each case to the extent such guarantee or assumption constitutes a Permitted Investment.

For purposes of determining compliance with this covenant:

- (1)

in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness,

Table of Contents

Disqualified Stock or Preferred Stock described in clauses (1) through (20) above or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer, in its sole discretion, will classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses or the first paragraph of this covenant. Additionally, all or any portion of any item of Indebtedness may later be classified as having been incurred pursuant to any category of permitted Indebtedness described in clauses (1) through (20) above or pursuant to the first paragraph of this covenant so long as such Indebtedness is permitted to be incurred pursuant to such provision at the time of reclassification. Notwithstanding the foregoing, all Indebtedness outstanding under the New Credit Facilities on the Issue Date will be treated as incurred on the Issue Date under clause (1) of the preceding paragraph and may not later be reclassified; and

- (2) at the time of incurrence, the Issuer will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in the first and second paragraphs above.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this covenant.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

The Indenture provides that the Issuer will not, and will not permit any Subsidiary Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Issuer or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Issuer or such Subsidiary Guarantor, as the case may be.

The Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Senior Indebtedness as subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral or is secured by different collateral.

Liens

The Issuer will not, and will not permit any Subsidiary Guarantor to, directly or indirectly, create,

Table of Contents

incur, assume or suffer to exist any Lien (except Permitted Liens) (each, an *Initial Lien*) that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the Issuer or any Subsidiary Guarantor, or any income or profits therefrom, unless:

- (1) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or
- (2) in all other cases, the Notes or the Guarantees are equally and ratably secured, except that the foregoing shall not apply to Liens securing the Notes and the related Guarantees.

Any Lien created for the benefit of the Holders of the Notes pursuant to the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien that gave rise to the obligation to so secure the Notes and Guarantees.

Merger, consolidation or sale of all or substantially all assets

The Issuer may not consolidate or merge with or into or wind up into (whether or not the Issuer is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

- (1) the Issuer is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of the Issuer or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such Person, as the case may be, being herein called the *Successor Company*); *provided* that in the case where the surviving Person is not a corporation, a co-obligor of the Notes is a corporation;
- (2) the Successor Company, if other than the Issuer, expressly assumes all the obligations of the Issuer under the Indenture and the Notes pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;
- (3) immediately after such transaction, no Default exists;
- (4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four quarter period,
 - (a) the Successor Company or the Issuer would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first sentence of the covenant described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock, or
 - (b) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would be greater than the Fixed Charge Coverage Ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;
- (5) each Guarantor, unless it is the other party to the transactions described above, in which case clause (b) of the second succeeding paragraph shall apply, shall have by supplemental indenture

Table of Contents

confirmed that its Guarantee shall apply to such Person's obligations under the Indenture, the Notes and the Registration Rights Agreement; and

- (6) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture.

The Successor Company will succeed to, and be substituted for, the Issuer, as the case may be, under the Indenture, the Registration Rights Agreement, the Guarantees and the Notes, as applicable. Notwithstanding the foregoing clauses (3) and (4),

- (1) any Non-Guarantor Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer or another Restricted Subsidiary,
- (2) the Issuer or any Subsidiary Guarantor may consolidate with, merge into or transfer all or part of its properties and assets to the Issuer or a Subsidiary Guarantor, as applicable, and
- (3) the Issuer may consolidate or merge with an Affiliate of the Issuer, as the case may be, solely for the purpose of reincorporating the Issuer in any state of the United States, the District of Columbia or any territory thereof.

In addition, Holdings will not, nor will the Issuer permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not Holdings, the Issuer or such Subsidiary Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

- (1) (a) such Guarantor is the surviving corporation or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Guarantor, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the *Successor Person*);
 - (b) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under the Indenture and such Guarantor's related Guarantee pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;
 - (c) immediately after such transaction, no Default exists; and
 - (d) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with the Indenture; or
- (2) the transaction is made in compliance with the covenant described under Repurchase at the option of holders Asset sales.

Subject to certain limitations described in the Indenture, the Successor Person will succeed to, and be substituted for, such Guarantor under the Indenture, such Guarantor's Guarantee and the Registration Rights Agreement.

Notwithstanding the foregoing, any Subsidiary Guarantor may (i) merge into or with or wind up into or transfer all or part of its properties and assets to a Subsidiary Guarantor or the Issuer or (ii) merge

Table of Contents

with an Affiliate of the Issuer solely for the purpose of reincorporating or reorganizing the Guarantor in the United States, any state thereof, the District of Columbia or any territory thereof. Holdings may merge with an Affiliate of the Issuer solely for the purpose of reincorporating or reorganizing Holdings in the United States, any state thereof, the District of Columbia or any territory thereof. Notwithstanding the foregoing, any Restricted Subsidiary may liquidate or dissolve if the Issuer determines in good faith that such liquidation or dissolution is in the best interests of the Issuer and is not materially disadvantageous to the Holders.

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

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

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

Transactions with Affiliates

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an *Affiliate Transaction*) involving aggregate payments or consideration in excess of \$7.5 million, unless:

- (1) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and
- (2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$25.0 million, a resolution adopted by the majority of the board of directors of the Issuer approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) above.

The foregoing provisions will not apply to the following:

- (1) transactions between or among the Issuer or any of its Restricted Subsidiaries;
- (2) Restricted Payments permitted by the provisions of the Indenture described above under the covenant Limitation on restricted payments and the definition of *Permitted Investments* ;

- (3) the payment of management, consulting, monitoring, transaction and advisory fees and related expenses to the Sponsor pursuant to the Sponsor Management Agreement and the termination

Table of Contents

fees pursuant to the Sponsor Management Agreement, in each case as in effect on the Issue Date or any amendment thereto (so long as any such amendment is not materially disadvantageous, in the good faith judgment of the board of directors of the Issuer, to the Holders when taken as a whole as compared to the Sponsor Management Agreement in effect on the Issue Date;

- (4) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements provided for the benefit of, former, current or future officers, directors, employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries, as determined in Good Faith by the Issuer;
- (5) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Issuer or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;
- (6) any agreement or arrangement as in effect as of the Issue Date (other than the Sponsor Management Agreement, but including, without limitation, each of the other agreements entered into in connection with the Transactions), or any amendment thereto (so long as any such amendment is not materially disadvantageous to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);
- (7) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders' agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (7) to the extent that the terms of any such existing agreement, together with all amendments thereto, taken as a whole, are not otherwise disadvantageous in any material respect to the Holders when taken as a whole as compared to the original agreement in effect on the Issue Date;
- (8) the Transactions and the payment of all fees and expenses related to the Transactions, in each case as contemplated herein;
- (9) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of the Indenture which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the board of directors of the Issuer or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;
- (10) if otherwise permitted under the Indenture, the issuance or transfer of Equity Interests (other than Disqualified Stock) to Affiliates of the Issuer and the granting of registration and other customary rights in connection therewith or any contribution to the capital of direct or indirect parent companies, the Issuer or any Restricted Subsidiary;
- (11)

any customary transaction with a Securitization Subsidiary effected as part of a Qualified Securitization Financing;

Table of Contents

- (12) payments by the Issuer or any of its Restricted Subsidiaries to the Sponsor made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by a majority of the board of directors of the Issuer or a majority of the disinterested members of the board of directors of the Issuer in good faith;
- (13) payments or loans (or cancellation of loans) to employees or consultants of the Issuer, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and employment agreements, stock option plans, restricted stock plans, bonus programs and other similar arrangements with such employees or consultants which, in each case, are approved in Good Faith by the Issuer and in accordance with applicable law;
- (14) investments in securities of the Issuer or any of its Restricted Subsidiaries so long as (i) the investment is being offered generally to other investors on the same or more favorable terms and (ii) the investment constitutes less than 5% of the proposed or outstanding issue amount of such class of securities; and
- (15) transactions with a Person (other than an Unrestricted Subsidiary of the Issuer) that is an Affiliate of the Issuer solely because the Issuer or a Restricted Subsidiary of the Issuer owns an equity interest in or otherwise controls such Person.

Dividend and other payment restrictions affecting Restricted Subsidiaries

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

- (1) (a) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or
(b) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or
- (3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries,

except (in each case) for such encumbrances or restrictions existing under or by reason of:

- (a) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the New Credit Facilities and the related documentation and related Hedging Obligations and Cash Management Obligations;
- (b) the Indenture, the Notes and the Guarantees (including any exchange notes and related guarantees);
- (c) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature discussed in clause (3) above on the property so acquired;

(d) applicable law or any applicable rule, regulation or order;

Table of Contents

- (e) any agreement or other instrument of a Person acquired by the Issuer or any Restricted Subsidiary in existence at the time of such acquisition (or at the time it merges with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;
- (f) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of the Issuer pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;
- (g) Secured Indebtedness otherwise permitted to be incurred pursuant to the covenants described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock and Liens that limit the right of the debtor to dispose of the assets securing such Indebtedness;
- (h) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
- (i) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued subsequent to the Issue Date pursuant to the provisions of the covenant described under Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock that impose restrictions solely on the Foreign Subsidiaries party thereto or their Subsidiaries;
- (j) customary provisions in joint venture agreements or arrangements and other similar agreements relating solely to such joint venture; *provided* that with respect to any joint venture agreement relating to a Restricted Subsidiary, such provisions will not materially affect the Issuer's ability to make anticipated principal or interest payments on the Notes (as determined in Good Faith by the Issuer);
- (k) customary provisions contained in leases, subleases, licenses, sublicenses or other agreements, in each case, entered into in the ordinary course of business;
- (l) any agreement or instrument (A) relating to any Indebtedness or preferred stock of a Restricted Subsidiary permitted to be incurred subsequent to the Issue Date pursuant to the covenant described under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock if the encumbrances and restrictions are not materially more disadvantageous to the Holders than is customary in comparable financings (as determined in good faith by the Issuer) and (B) either (x) the Issuer determines that such encumbrance or restriction will not adversely affect the Issuer's ability to make principal and interest payments on the Notes as and when they come due or (y) such encumbrances and restrictions apply only during the continuance of a default in respect of a payment or financial maintenance covenant relating to such Indebtedness;
- (m) any encumbrances or restrictions of the type referred to in clauses (1), (2) and (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (l) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are,

Table of Contents

in the good faith judgment of the Issuer, no more restrictive in any material respect with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

- (n) restrictions created in connection with any Qualified Securitization Financing that, in the good faith determination of the Issuer, are necessary or advisable to effect such Securitization Facility.

Limitation on guarantees of indebtedness by Restricted Subsidiaries

The Issuer will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities of the Issuer or any Restricted Subsidiary or guarantee all or a portion of the New Credit Facilities), other than a Subsidiary Guarantor, to guarantee the payment of any Indebtedness of the Issuer or any other Subsidiary Guarantor unless:

- (1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to the Indenture and joinder or supplement to the Registration Rights Agreement providing for a senior Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Subsidiary Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes or such Subsidiary Guarantor's Guarantee; *provided that*
 - (a) if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee with respect to the Notes substantially to the same extent as such Indebtedness is subordinated to the Notes or such Subsidiary Guarantor's Guarantee of the Notes; and
 - (b) if the Notes or such Subsidiary Guarantor's Guarantee are subordinated in right of payment to such Indebtedness, the Guarantee under the supplemental indenture shall be subordinated to such Restricted Subsidiary's guarantee with respect to such Indebtedness substantially to the same extent as the Notes or the Subsidiary Guarantor's Guarantee are subordinated to such Indebtedness; and
- (2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee until payment in full of Obligations under the Indenture; and
- (3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel to the effect that:
 - (a) such Guarantee has been duly executed and authorized; and
 - (b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except

insofar as enforcement thereof is subject to general principals of equity;

Table of Contents

provided that this covenant shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary.

The Issuer may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to become a Guarantor, in which case, such Subsidiary shall only be required to comply with the 30-day period described above.

Reports and other information

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Indenture requires the Issuer to file with the SEC within 15 days after the dates set forth below:

- (1) within 90 days after the end of each fiscal year (120 days for the fiscal year ending December 31, 2010 but only in the event that BKC changes its fiscal year end to December 31 for such fiscal year), all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a Management's discussion and analysis of financial condition and results of operations and a report on the annual financial statements by the Issuer's independent registered public accounting firm;
- (2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (75 days for the fiscal quarters ending September 30, 2010 and December 31, 2010), all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC;
- (3) all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file such reports; and
- (4) any other information, documents and other reports which the Issuer would be required to file with the SEC if it were subject to Section 13 or 15(d) of the Exchange Act;

in each case, in a manner that complies in all material respects with the requirements specified in such form. Notwithstanding the foregoing, the Issuer shall not be so obligated to file such reports with the SEC if the SEC does not permit such filing, so long as the Issuer makes available such information to prospective purchasers of Notes, in addition to providing such information to the Trustee and the Holders of the Notes, in each case, at the Issuer's expense and by the applicable date the Issuer would be required to file such information pursuant to the immediately preceding sentence. To the extent any such information is not so filed or furnished, as applicable, within the time periods specified above and such information is subsequently filed or furnished, as applicable, the Issuer will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured; *provided* that such cure shall not otherwise affect the rights of the Holders under Events of Default and Remedies if Holders of at least 25% in principal amount of the then total outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure.

In addition, to the extent not satisfied by the foregoing, the Issuer will agree that, for so long as any Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Table of Contents

Substantially concurrently with the furnishing or making such information available to the Trustee pursuant to the immediately preceding paragraph, the Issuer shall also post copies of such information required by the immediately preceding paragraph on a website (which may be nonpublic and may be maintained by the Issuer or a third party) to which access will be given to Holders, prospective investors in the Notes (which prospective investors shall be limited to qualified institutional buyers within the meaning of Rule 144A of the Securities Act or non-U.S. persons (as defined in Regulation S under the Securities Act) that certify their status as such to the reasonable satisfaction of the Issuer), and securities analysts and market making financial institutions that are reasonably satisfactory to the Issuer. The Issuer shall hold quarterly conference calls that are publicly accessible after the Issuer's financial statements for the prior fiscal period have been made available, *provided* that such conference calls shall be held no later than 5 Business Days after the date that such financial statements are required to be made available. No fewer than three Business Days prior to the date of the conference call required to be held in accordance with the preceding sentence the Issuer shall issue a press release to the appropriate U.S. wire services announcing the time and the date of such conference call and directing the beneficial owners of, and prospective investors in, the Notes and securities analysts to contact an individual at the Issuer (for whom contact information shall be provided in such press release) to obtain information on how to access such conference call.

The Issuer will be deemed to have satisfied the requirements of this section if Holdings files and provides reports, documents and information of the types otherwise so required, in each case within the applicable time periods, and the Issuer is not required to file such reports, documents and information separately under the applicable rules and regulations of the SEC (after giving effect to any exemptive relief) because of the filings by Holdings; *provided* that such financial statements are accompanied by consolidating financial information for Holdings, the Issuer, the Subsidiary Guarantors and the Non-Guarantor Subsidiaries in the manner prescribed by the SEC to the extent such financial information would be required by the SEC.

In the event that any direct or indirect parent company of the Issuer becomes a guarantor of the Notes, the Indenture will permit the Issuer to satisfy its obligations in this covenant with respect to financial information relating to the Issuer by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, such requirements shall be deemed satisfied prior to the commencement of the exchange offer or the effectiveness of the shelf registration statement by the filing with the SEC of any registration statement or other filing, and any amendments thereto, with such financial information that satisfies Regulation S-X of the Securities Act.

Payments for consent

Neither the Issuer nor any of its Restricted Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders that are qualified institutional buyers within the meaning of Rule 144A of the Securities Act, who, upon request, confirm that they are qualified institutional buyers, consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

Limitation on activities of Holdings

Holdings shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any business or operations other than (a) its direct ownership of all of the Equity Interests in, and

Table of Contents

its management of, the Issuer, (b) the Transactions and the other transactions contemplated by the Merger Agreement and the other agreements contemplated thereby, (c) performance of its obligations under the New Credit Facilities, the Indenture, the Registration Rights Agreement and the other agreements contemplated thereby (collectively, the *Transaction Documents*) and other activities to the extent permitted by and in compliance with the Transaction Documents, (d) the provision of administrative, legal, accounting, tax and management services to, or on behalf of, any of its Subsidiaries, (e) the entry into, and exercise of rights and performance of obligations in respect of (A) any other agreement to which it is a party on the Issue Date; in each case as amended, supplemented waived or otherwise modified from time to time, and any refinancings, refundings, renewals or extensions thereof in accordance with such Transaction Documents, (B) contracts and agreements with officers, directors and employees of Holdings or any of its Subsidiaries relating to their employment or directorships, (C) insurance policies and related contracts and agreements, and (D) equity subscription agreements, registration rights agreements, voting and other stockholder agreements, engagement letters, underwriting agreements and other agreements in respect of its equity securities or any offering, issuance or sale thereof, (f) the offering, issuance, sale and repurchase or redemption of, and dividends or distributions on its equity securities, (g) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (h) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (i) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents and underwriters with respect to equity securities and, counsel, accountants and other advisors and consultants, (j) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (k) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable, (l) the incurrence, repayment and redemption of Indebtedness and (m) other activities incidental or related to the foregoing.

Events of default and remedies

The Indenture provides that each of the following is an Event of Default:

- (1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;
- (2) default for 30 days or more in the payment when due of interest on or with respect to the Notes;
- (3) failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less than 25% in principal amount of the outstanding Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (1) and (2) above) contained in the Indenture or the Notes;
- (4) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Issuer or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries, other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:
 - (a) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated

Table of Contents

final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

- (b) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate \$50.0 million or more at any one time outstanding;
- (5) failure by the Issuer or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Issuer for a fiscal period end provided as required under Reports and other information) would constitute a Significant Subsidiary), to pay final judgments aggregating in excess of \$50.0 million other than any judgments covered by indemnities provided by, or insurance policies issued by, reputable and creditworthy companies, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;
- (6) certain events of bankruptcy or insolvency with respect to the Issuer or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Issuer for a fiscal period end provided as required under Reports and other information) would constitute a Significant Subsidiary); or
- (7) the Guarantee of Holdings or the Guarantee of any Significant Subsidiary (or group of Subsidiaries that together (determined as of the most recent consolidated financial statements of the Issuer for a fiscal period end provided as required under Reports and other information) would constitute a Significant Subsidiary) shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of Holdings or of any Subsidiary Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Restricted Subsidiaries that, taken together (determined as of the most recent consolidated financial statements of the Issuer for a fiscal period end provided as required under Reports and other information) would constitute a Significant Subsidiary), as the case may be, denies that it has any further liability under its or their Guarantee(s) or gives notice to such effect, other than by reason of the termination of the Indenture or the release of any such Guarantee in accordance with the Indenture.

If any Event of Default (other than of a type specified in clause (6) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately.

Upon the effectiveness of such declaration, such principal and interest will be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under clause (6) of the first paragraph of this section, all outstanding Notes will become due and payable without further action or notice. The Indenture provides that the Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. In addition, the Trustee shall have no obligation to accelerate the Notes if in the best judgment of the Trustee acceleration is not in the best interest of the Holders of the Notes. The Indenture provides that the Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the

Holders of all of the Notes waive any existing Default and its consequences under the Indenture (except a continuing Default in the payment of interest on, premium, if any,

Table of Contents

or the principal of any Note held by a non-consenting Holder) and rescind any acceleration and its consequences with respect to the Notes, provided such rescission would not conflict with any judgment of a court of competent jurisdiction. In the event of any Event of Default specified in clause (4) above, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

- (1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or
- (2) Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or
- (3) the default that is the basis for such Event of Default has been cured.

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

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;
- (3) Holders of the Notes have offered and, if requested, provide to the Trustee indemnity or security reasonably satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period. Subject to certain restrictions, under the Indenture the Holders of a majority in principal amount of the total outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note or that would involve the Trustee in personal liability. The Indenture provides that the Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, within 10 Business Days, after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default.

No personal liability of directors, officers, employees and stockholders

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each

Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive

Table of Contents

liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

Legal defeasance and covenant defeasance

The obligations of the Issuer and the Guarantors under the Indenture will terminate (other than certain obligations) and will be released upon payment in full of all of the Notes. The Issuer may, at its option and at any time, elect to have all of its obligations discharged with respect to the Notes and have each Guarantor's obligation discharged with respect to its Guarantee (*Legal Defeasance*) and cure all then existing Events of Default except for:

- (1) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to the Indenture;
- (2) the Issuer's obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer's obligations in connection therewith; and
- (4) the Legal Defeasance provisions of the Indenture.

In addition, the Issuer may, at its option and at any time, elect to have its obligations and those of each Guarantor 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 with respect to the Notes. In the event Covenant Defeasance occurs, certain events (not including bankruptcy, receivership, rehabilitation and insolvency events pertaining to the Issuer) described under *Events of Default and Remedies* will no longer constitute an Event of Default with respect to the Notes.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

- (1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, 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 due on the Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date;
- (2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,
 - (a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or
 - (b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

Table of Contents

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. 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 Issuer shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such 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 (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and, in each case the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;
- (5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the New Credit Facilities or any other material agreement or instrument (other than the Indenture) to which the Issuer or any Guarantor is a party or by which, the Issuer or any Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);
- (6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;
- (7) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and
- (8) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel 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, as the case may be, have been complied with.

Satisfaction and discharge

The Indenture will be discharged and will cease to be of further effect as to all Notes, when either:

- (1) all 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, have been delivered to the Trustee for cancellation; or
- (2) (a) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under

Table of Contents

arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

- (b) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to the Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, the New Credit Facilities or any other material agreement or instrument (other than the Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);
- (c) the Issuer has paid or caused to be paid all sums payable by it under the Indenture; and
- (d) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Amendment, supplement and waiver

Except as provided in the next two succeeding paragraphs, the Indenture, any Guarantee and the Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes, and any existing Default or compliance with any provision of the Indenture or the Notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes, other than Notes beneficially owned by the Issuer or its Affiliates (including consents obtained in connection with a purchase of or tender offer or exchange offer for the Notes).

The Indenture provides that, without the consent of each affected Holder of Notes, an amendment or waiver may not, with respect to any Notes held by a non-consenting Holder:

- (1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to the covenants described above under the caption "Repurchase at the Option of Holders");
- (3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except

Table of Contents

a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in the Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;

- (5) make any Note payable in money other than that stated therein;
- (6) make any change in the provisions of the Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;
- (7) make any change in these amendment and waiver provisions;
- (8) impair the right of any Holder to receive payment of principal of, or interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;
- (9) make any change to or modify the ranking of the Notes that would adversely affect the Holders; or
- (10) except as expressly permitted by the Indenture, modify the Guarantees of any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Issuer for a fiscal period end provided as required under Reports and other information) would constitute a Significant Subsidiary), in any manner adverse to the Holders of the Notes.

Notwithstanding the foregoing, the Issuer, any Guarantor (with respect to a Guarantee or the Indenture to which it is a party) and the Trustee may amend or supplement the Indenture and any Guarantee or Notes without the consent of any Holder:

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Notes of such series in addition to or in place of certificated Notes;
- (3) to comply with the covenant relating to mergers, consolidations and sales of assets;
- (4) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders in a transaction that complies with the Indenture;
- (5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder;
- (6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;
- (7) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;
- (8) to evidence and provide for the acceptance and appointment under the Indenture of a successor Trustee thereunder pursuant to the requirements thereof;

Table of Contents

- (9) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;
- (10) to add a Guarantor under the Indenture;
- (11) to conform the text of the Indenture, Guarantees or the Notes to any provision of this Description of Notes to the extent that such provision in this Description of Notes was intended to be a verbatim recitation of a provision of the Indenture, Guarantee or Notes; or
- (12) to make any amendment to the provisions of the Indenture relating to the transfer and legending of Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes.

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

Notices

Notices given by publication will be deemed given on the first date on which publication is made and notices given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing.

Concerning the Trustee

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

The Indenture provides that the Holders of a majority in principal amount of the outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. The Indenture provides that in case an Event of Default shall occur (which shall not be cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in the conduct of his own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of the Notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

Governing Law

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

Certain Definitions

Set forth below are certain defined terms used in the Indenture. For purposes of the Indenture, unless otherwise specifically indicated, the term consolidated with respect to any Person refers to such Person on a

Table of Contents

consolidated basis in accordance with GAAP, but excluding from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

Acquired Indebtedness means, with respect to any specified Person,

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of; such other Person merging with or into or becoming a Restricted Subsidiary of, such specified Person, and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

Acquisition means the transactions contemplated by the Merger Agreement.

Affiliate of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, *control* (including, with correlative meanings, the terms *controlling*, *controlled by* and *under common control with*), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

Applicable Premium means, with respect to any Note on any Redemption Date, the greater of:

- (1) 1.0% of the principal amount of such Note; and
- (2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at October 15, 2014 (such redemption price being set forth in the table appearing above under the caption *Optional redemption*), plus (ii) all required interest payments due on such Note through October 15, 2014 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

Asset Sale means:

- (1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease- Back Transaction) of the Issuer (other than Equity Interests of the Issuer) or any of its Restricted Subsidiaries (each referred to in this definition as a *disposition*); or
- (2) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with the covenant described under *Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock* or directors *qualifying shares and shares issued to foreign nationals as required under applicable law*), whether in a single transaction or a series of related transactions;

in each case, other than:

- (a)

any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business of the Issuer and its Restricted Subsidiaries (it being understood that the sale of inventory or goods (or other assets other than real property interests) in bulk in connection with the closing of any number of retail

Table of Contents

- locations in the ordinary course of business shall be considered a sale in the ordinary course of business);
- (b) the disposition of all or substantially all of the assets of the Issuer in a manner permitted pursuant to the provisions described above under Certain covenants Merger, consolidation or sale of all or substantially all assets or any disposition that constitutes a Change of Control pursuant to the Indenture;
 - (c) the making of any Restricted Payment that is permitted to be made, and is made, under the covenant described above under Certain covenants Limitation on restricted payments and the making of any Permitted Investments;
 - (d) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate fair market value of less than \$5.0 million;
 - (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary of the Issuer to the Issuer or by the Issuer or a Restricted Subsidiary of the Issuer to another Restricted Subsidiary of the Issuer;
 - (f) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
 - (g) the lease, assignment, sub-lease, license or sublicense of any real or personal property in the ordinary course of business;
 - (h) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
 - (i) foreclosures, condemnation or any similar action on assets;
 - (j) any disposition of Securitization Assets, or participations therein, in connection with any Qualified Securitization Financing, or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business;
 - (k) the granting of a Lien that is permitted under the covenant described above under Certain covenants Liens;
 - (l) the sale or issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted by the covenant described under the caption Certain covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;
 - (m) any financing transaction with respect to property constructed, acquired, replaced, repaired or improved (including any reconstruction, refurbishment, renovation and/or development of real property) by the Issuer or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations, permitted by the Indenture;
 - (n) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business; and
 - (o) sales, transfers, leases or other dispositions of restaurants and related assets (other than the Core

Table of Contents

Marks (except to the extent licensed for the operation of such restaurants and related assets)) to Franchisees, including through the sale of Equity Interests of Persons owning such assets; *provided* that the aggregate fair market value of all owned real property sold, transferred or otherwise disposed of to Franchisees shall not exceed \$50.0 million pursuant to this clause.

Asset Sale Offer has the meaning set forth in the fourth paragraph under Repurchase at the option of holders Asset sales.

Bankruptcy Code means Title 11 of the United States Code, as amended.

Bankruptcy Law means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

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

Capital Stock means:

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

Capitalized Lease Obligation means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

Cash Equivalents means:

- (1) United States dollars;
- (2) (a) euro, or any national currency of any participating member state of the EMU; or
(b) any other foreign currency held by the Issuer and the Restricted Subsidiaries in the ordinary course of business;
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than

Table of Contents

equivalent as of the date of determination) in the case of non-U.S. banks, and in each case in a currency permitted under clause (1) or (2) above;

- (5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above, and in each case in a currency permitted under clause (1) or (2) above;
- (6) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 24 months after the date of creation thereof, and in each case in a currency permitted under clause (1) or (2) above;
- (7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof and in a currency permitted under clause (1) or (2) above;
- (8) investment funds investing 95% of their assets in securities of the types described in clauses (1) through (7) above;
- (9) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 24 months or less from the date of acquisition;
- (10) Indebtedness or Preferred Stock issued by Persons with a rating of A or higher from S&P or A2 or higher from Moody's with maturities of 24 months or less from the date of acquisition and in each case in a currency permitted under clause (1) or (2) above;
- (11) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's and in each case in a currency permitted under clause (1) or (2) above; and
- (12) credit card receivables and debit card receivables so long as such are considered cash equivalents under GAAP and are so reflected on the Issuer's balance sheet.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

Cash Management Services means any or the following to the extent not constituting a line of credit (other than an overnight overdraft facility that is not in default): ACH transactions, treasury and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

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

- (1) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the Issuer and its Subsidiaries or

Table of Contents

Holdings, taken as a whole, to any Person other than to (i) one or more Permitted Holders or (ii) any Subsidiary Guarantor; or

- (2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than one or more Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies holding directly or indirectly 100% of the total voting power of the Voting Stock of the Issuer; or
- (3) the Issuer ceases to be a Wholly-Owned Subsidiary of Holdings (except in a transaction consummated in accordance with the covenant described under the heading **Certain covenants Merger, consolidation or sale of all or substantially all assets**).

Code means the Internal Revenue Code of 1986, as amended, or any successor thereto.

Consolidated Depreciation and Amortization Expense means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

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

- (1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (x) penalties and interest related to taxes, (w) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (y) any expensing of bridge, commitment and other financing fees and (z) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Securitization Facility); plus
- (2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less
- (3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

Table of Contents

Consolidated Net Income means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided, however*, that, without duplication,

- (1) any net after-tax effect of extraordinary, non-recurring or unusual gains or losses, costs, charges or expenses (less all fees and expenses relating thereto) (including any such amounts relating to the Transactions to the extent incurred on or prior to the date that is the one year anniversary of the Issue Date), severance, relocation costs and curtailments or modifications to pension and post-retirement employee benefit plans shall be excluded,
- (2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,
- (3) any net after-tax effect of income (loss) from disposed, abandoned or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned or discontinued operations shall be excluded,
- (4) any net after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (including sales or other dispositions of assets under a Securitization Facility) other than in the ordinary course of business, as determined in Good Faith by the Issuer, shall be excluded,
- (5) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Issuer shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to the referent Person or a Restricted Subsidiary thereof in respect of such period (without duplication for purposes of this covenant described under *Certain covenants Limitation on restricted payments* of any amounts included under clause (3)(d)(i) of the first paragraph of such covenant),
- (6) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of the first paragraph of *Certain covenants Limitation on restricted payments*, the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) shall be excluded to the extent the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, is otherwise restricted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, *provided* that Consolidated Net Income of the Issuer will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to the Issuer or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,
- (7) effects of adjustments (including the effects of such adjustments pushed down to the Issuer and its Restricted Subsidiaries) in such Person's consolidated financial statements, including adjustments to the inventory, property and equipment, software and other intangible assets (including favorable and unfavorable leases and contracts), deferred revenue and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase

Table of Contents

accounting in relation to the Transactions or any consummated acquisition or the amortization or write-off or write-down of any amounts thereof, net of taxes, shall be excluded,

- (8) any after-tax effect of income (loss) from the early extinguishment or cancellation of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,
- (9) any impairment charge, asset write-off or write-down, in each case, pursuant to GAAP and the amortization of intangibles and other assets (including alcoholic beverage licenses) arising pursuant to GAAP shall be excluded,
- (10) any (i) non-cash compensation charge or expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights and (ii) income (loss) attributable to deferred compensation plans or trusts shall be excluded,
- (11) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such period as a result of any such transaction shall be excluded,
- (12) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transactions in accordance with GAAP, shall be excluded,
- (13) any net unrealized gain or loss resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any unrealized net loss or gain resulting from hedge agreements for currency exchange risk), and
- (14) any net unrealized gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Accounting Standards Codification Topic 815 and related pronouncements shall be excluded.

In addition, to the extent not already included in the Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Indenture.

Notwithstanding the foregoing, for the purpose of the covenant described under *Certain Covenants Limitation on restricted payments* only (other than clause (3)(d) thereof of the first paragraph), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Issuer and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Issuer and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Issuer or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to clause (3)(d) thereof.

Consolidated Secured Debt Ratio means, as of any date of determination, the ratio of

Table of Contents

(1) Consolidated Total Indebtedness of the Issuer and its Restricted Subsidiaries that is secured by Liens as of the end of the most recent fiscal period for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur to (2) the Issuer's EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro forma* adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

Consolidated Total Indebtedness means, as at any date of determination, an amount equal to the sum of (1) the aggregate amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments (and including, for the avoidance of doubt, all obligations relating to Qualified Securitization Financings) and (2) the aggregate amount of all outstanding Disqualified Stock of the Issuer and all Disqualified Stock and Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP; *provided* that Indebtedness of the Issuer and its Restricted Subsidiaries under any revolving credit facility or line of credit as at any date of determination shall be determined using the Average Quarterly Balance of such Indebtedness for the most recently ended four fiscal quarters for which internal financial statements are available as of such date of determination (the *Reference Period*). For purposes hereof, (a) the maximum fixed repurchase price of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in Good Faith by the Issuer, (b) *Average Quarterly Balance* means, with respect to any Indebtedness incurred by the Issuer or its Restricted Subsidiaries under a revolving facility or line of credit, the quotient of (x) the sum of each Individual Quarterly Balance for each fiscal quarter ended on or prior to such date of determination and included in the Reference Period divided by (y) 4, and (c) *Individual Quarterly Balance* means, with respect to any Indebtedness incurred by the Issuer or its Restricted Subsidiaries under a revolving credit facility or line of credit during any fiscal quarter of the Issuer, the quotient of (x) the sum of the aggregate outstanding principal amount of all such Indebtedness at the end of each day of such quarter divided by (y) the number of days in such fiscal quarter.

Contingent Obligations means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (*primary obligations*) of any other Person (the *primary obligor*) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,
- (2) to advance or supply funds
 - (a) for the purchase or payment of any such primary obligation, or
 - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any

Table of Contents

such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

Core Marks has the meaning set forth in the New Credit Facilities.

Credit Facilities means, with respect to the Issuer or any of its Restricted Subsidiaries, one or more debt facilities, including the New Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refunding thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or investor or group of lenders or investors.

Default means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

Designated Non-cash Consideration means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Issuer, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

Designated Preferred Stock means Preferred Stock of the Issuer or any parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer or the applicable parent company thereof, as the case may be, on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of the first paragraph of the Certain covenants Limitation on restricted payments covenant.

Disqualified Stock means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is puttable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided, however*, that if such Capital Stock is issued to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

EBITDA means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

Table of Contents

- (1) increased (without duplication) by:
- (a) provision for taxes based on income or profits or capital, including, without limitation, state, franchise and similar taxes and foreign withholding taxes of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; plus
 - (b) Fixed Charges of such Person for such period (including (x) net losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities, plus amounts excluded from the definition of *Consolidated Interest Expense* pursuant to clauses 1(x) through 1(z) thereof, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; plus
 - (c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; plus
 - (d) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by the Indenture (including a refinancing thereof) (whether or not successful), including
 - (i) such fees, expenses or charges related to the offering of the Notes and the New Credit Facilities and any Securitization Fees, and
 - (ii) any amendment or other modification of the Notes, the New Credit Facilities and any Securitization Fees, in each case, deducted (and not added back) in computing Consolidated Net Income; plus
 - (e) the amount of any restructuring charge or reserve, integration cost or other business optimization expense or cost associated with establishing new facilities that is certified by the chief financial officer of the Issuer and deducted (and not added back) in such period in computing Consolidated Net Income, including any one-time costs incurred in connection with acquisitions after the Issue Date and costs related to the closure and/or consolidation of facilities; *provided* that the aggregate amount of all charges, expenses, costs and losses added back under this clause (e) in any period of four consecutive fiscal quarters shall not exceed (x) 15% of EBITDA for any period of four consecutive fiscal quarters completed on or prior to the first anniversary of the Issue Date or (y) 10% of EBITDA for any period of four consecutive fiscal quarters completed thereafter; *provided, further*, that the cap under this clause (y) for any period of four consecutive fiscal quarters completed on or prior to the second anniversary of the Issue Date shall be increased up to 15% of EBITDA, but only to the extent the aggregate amount added back under this clause (e) for the corresponding period of four consecutive fiscal quarters of the previous fiscal year was less than 15% of Consolidated EBITDA; plus
 - (f) any other non-cash charges, expenses or losses reducing Consolidated Net Income for such period (including any impairment charges or the impact of purchase accounting), excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period; plus

Table of Contents

- (g) the amount of management, monitoring, consulting and advisory fees (including termination fees) and related indemnities and expenses paid or accrued in such period to the Sponsor to the extent otherwise permitted under Certain covenants Transactions with affiliates; plus
- (h) the amount of run-rate cost savings projected by the Issuer in good faith and certified by the chief financial officer of the Issuer to be realized as a result of specified actions either taken or initiated prior to or during such period (calculated on a *pro forma* basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized or expected to be realized prior to or during such period from such actions; *provided* that (A) the chief financial officer of the Issuer shall have certified that (x) such cost savings are reasonably identifiable, reasonably attributable to the actions specified and reasonably anticipated to result from such actions and (y) such actions have been taken or initiated and the benefits resulting therefrom are anticipated by the Issuer to be realized within 12 months, (B) no cost savings shall be added pursuant to this clause (h) to the extent duplicative of any expenses or charges relating to such cost savings that are included in clause (e) above with respect to such period or duplicative of any *pro forma* adjustments made pursuant to the definition of *Fixed Charge Coverage Ratio* and (C) the aggregate amount of cost savings added pursuant to this clause (h) shall not exceed 10% of EBITDA for any period of four consecutive fiscal quarters; plus
- (i) the amount of loss on sale of Securitization Assets and related assets to the Securitization Subsidiary in connection with a Qualified Securitization Financing; plus
- (j) any costs or expense incurred by the Issuer or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Issuer or net cash proceeds of an issuance of Equity Interest of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in clause (3) of the first paragraph under Certain covenants Limitation on restricted payments; plus
- (k) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to clause (2) below for any previous period and not added back; plus
- (l) any net loss included in the consolidated financial statements due to the application of Financial Accounting Standards No. 160 Non-controlling Interests in Consolidated Financial Statements (*FAS 160*); plus
- (m) rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP); plus
- (n) realized foreign exchange losses resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Issuer and its Restricted Subsidiaries;

Table of Contents

- (o) net realized losses from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements;
- (2) decreased (without duplication) by: (a) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase EBITDA in such prior period; plus (b) realized foreign exchange income or gains resulting from the impact of foreign currency changes on the valuation of assets or liabilities on the balance sheet of the Issuer and its Restricted Subsidiaries; plus (c) any net realized income or gains from Hedging Obligations or embedded derivatives that require similar accounting treatment and the application of Accounting Standard Codification Topic 815 and related pronouncements, plus (d) any net income included in the consolidated financial statements due to the application of FAS 160, plus (e) rent expense actually paid in cash during such period (net of rent expense paid in cash during such period in an amount equal to rent expense determined in accordance with GAAP) and
- (3) increased or decreased by (without duplication), as applicable, any adjustments resulting from the application of Accounting Standards Codification Topic 460 or any comparable regulation.

EMU means economic and monetary union as contemplated in the Treaty on European Union.

Equity Interests means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

Equity Offering means any public or private sale of common stock or Preferred Stock of the Issuer or any of its direct or indirect parent companies (excluding Disqualified Stock), other than:

- (1) public offerings with respect to the Issuer's or any direct or indirect parent company's common stock registered on Form S-4 or Form S-8;
- (2) issuances to any Subsidiary of the Issuer; and
- (3) any such public or private sale that constitutes an Excluded Contribution.

euro means the single currency of participating member states of the EMU.

Event of Default has the meaning set forth under *Events of default and remedies*.

Excess Proceeds has the meaning set forth in the fourth paragraph under *Repurchase at the option of holders* Asset sales.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder,

Excluded Contribution means net cash proceeds, marketable securities or Qualified Proceeds received by the Issuer from

(1) contributions to its common equity capital, and

97

Table of Contents

- (2) the sale (other than to a Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer, in each case designated as Excluded Contributions pursuant to an Officer's Certificate executed by the principal financial officer of the Issuer on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in clause (3) of the first paragraph under Certain covenants Limitation on restricted payment.

Fixed Charge Coverage Ratio means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the *Fixed Charge Coverage Ratio Calculation Date*), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or discontinued operations that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or discontinued operations had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be (x) made in good faith by a responsible financial or accounting officer of the Issuer (and may include, for the avoidance of doubt, cost savings and operating expense reductions resulting from such Investment, acquisition, merger or consolidation (including the Transactions) or discontinued operations which is being given *pro forma* effect that have been or are expected to be realized or (y) determined in accordance with Regulation S-X. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of

this definition. Interest on Indebtedness that may optionally be determined at an interest rate

Table of Contents

based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

Fixed Charges means, with respect to any Person for any period, the sum, of:

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

Foreign Subsidiary means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

GAAP means generally accepted accounting principles in the United States which are in effect on the Issue Date.

Good Faith by the Issuer means the decision in good faith by a responsible financial officer of the Issuer; *provided* that (a) if such decision involves a determination of fair market value in excess of \$7.5 million, the decision is made in good faith by the Senior Management of the Issuer and (b) if such decision involves a determination of fair market value in excess of \$25.0 million, the decision is made in good faith by the board of directors of the Issuer.

Government Securities means securities that are:

- (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or
- (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

guarantee means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

Guarantee means the guarantee by any Guarantor of the Issuer's Obligations under the Indenture and the Notes.

Table of Contents

Guarantor means Holdings and each Subsidiary Guarantor.

Hedging Obligations means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

Holder means the Person in whose name a Note is registered on the registrar's books.

Indebtedness means, with respect to any Person, without duplication:

- (1) any indebtedness (including principal and premium) of such Person, whether or not contingent:
 - (a) in respect of borrowed money;
 - (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers acceptances (or, without duplication, reimbursement agreements in respect thereof);
 - (c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business (and with respect to commercial letters of credit repaid in a timely manner) and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable; or
 - (d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

- (2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and
- (3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include Contingent Obligations incurred in the ordinary course of business. For the avoidance of doubt, Indebtedness does not include Cash Management Services.

Independent Financial Advisor means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Issuer, qualified to perform the task for which it has been engaged.

Initial Purchasers means the initial purchasers of the Original Notes.

Investment Grade Rating means a rating equal to or higher than Baa3 (or the equivalent) by

Table of Contents

Moody's and BBB- (or the equivalent) by S&P, or, in either case, an equivalent rating by any other Rating Agency.

Investment Grade Securities means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
- (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

Investments means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to officers and employees, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of *Unrestricted Subsidiary* and the covenant described under *Certain Covenants Limitation on Restricted Payments* :

- (1) *Investments* shall include the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent *Investment* in an Unrestricted Subsidiary in an amount (if positive) equal to:
 - (a) the Issuer's *Investment* in such Subsidiary at the time of such redesignation; less
 - (b) the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and
- (2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in Good Faith by the Issuer.

Issue Date means October 19, 2010.

Issuer has the meaning set forth in the first paragraph under *General* and its permitted successors.

Legal Holiday means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York.

Table of Contents

Lien means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

Merger Agreement means the Agreement and Plan of Merger, dated as of September 2, 2010, among Holdings, Parent and Merger Sub.

Moody's means Moody's Investors Service, Inc. and any successor to its rating agency business.

Net Income means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

Net Proceeds means the aggregate cash proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, any relocation expenses incurred as a result thereof; taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Senior Indebtedness secured by a Lien on the assets disposed of required (other than required by clause (1) of the second paragraph of Repurchase at the option of holders Asset sales) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

New Credit Facilities means the Credit Facility under the Credit Agreement by and among Merger Sub, Holdings, the Issuer, the lenders party thereto in their capacities as lenders thereunder and J.P. Morgan Securities LLC, as Administrative Agent, including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements, refundings or refinancings thereof and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof (*provided* that such increase in borrowings is permitted under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock above).

Non-Guarantor Subsidiary means any Restricted Subsidiary that is not a Subsidiary Guarantor.

Obligations means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and

bankers' acceptances), damages and other liabilities, and guarantees of payment

Table of Contents

of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

Officer means the Chairman of the Board, the Chief Executive Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Issuer or any other Person, as the case may be.

Officer's Certificate means a certificate signed on behalf of the Issuer by an Officer of the Issuer or on behalf of any other Person, as the case may be, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer or such other Person, that meets the requirements set forth in the Indenture.

Opinion of Counsel means a written opinion from legal counsel who is acceptable to the Trustee and that meets the requirements set forth in the indenture. The counsel may be an employee of or counsel to the Issuer or the Trustee.

Permitted Asset Swap means the concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalent received must be applied in accordance with the Repurchase at the option of holders Asset sales covenant.

Permitted Holders means the Sponsor and members of management of the Issuer (or its direct parent) who are holders of Equity Interests of the Issuer (or any of its direct or indirect parent companies) on the Issue Date and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, the Sponsor and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent companies held by such group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of the Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

Permitted Investments means:

- (1) any Investment in the Issuer or any of its Restricted Subsidiaries;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any of its Restricted Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:
 - (a) such Person becomes a Restricted Subsidiary; or
 - (b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary, and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;
- (4)

any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to the provisions

Table of Contents

- of Repurchase at the option of holders Asset sales or any other disposition of assets not constituting an Asset Sale;
- (5) any Investment existing on the Issue Date and any extension, modification, replacement or renewal of any such Investments existing on the Issue Date, but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investment as in effect on the Issue Date (or as subsequently amended or otherwise modified in a manner not disadvantageous to the Holders of the Notes in any material respect);
 - (6) any Investment acquired by the Issuer or any of its Restricted Subsidiaries:
 - (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or
 - (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
 - (7) Hedging Obligations permitted under clause (10) of the second paragraph of the covenant described in Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock;
 - (8) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed the greater of (x) \$50.0 million and (y) 1.0% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);
 - (9) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of the Issuer, or any of its direct or indirect parent companies; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the first paragraph under the covenant described in Certain covenants Limitation on restricted payments;
 - (10) guarantees of Indebtedness permitted under the covenant described in Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock;
 - (11) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under Certain covenants Transactions with affiliates (except transactions described in clauses (2), (5), (9), (11) and (15) of such paragraph);
 - (12) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment;
 - (13) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not

Table of Contents

consist of cash or marketable securities), not to exceed the greater of (x) \$75.0 million and (y) 1.5% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

- (14) Investments relating to a Securitization Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Qualified Securitization Financing;
- (15) advances to, or guarantees of Indebtedness of, officers, directors and employees not in excess of \$20.0 million outstanding at any one time, in the aggregate;
- (16) loans and advances to officers, directors and employees for business-related travel expenses, moving expenses and other similar expenses, in each case incurred in the ordinary course of business or consistent with past practices or to fund such Person's purchase of Equity Interests of the Issuer or any direct or indirect parent company thereof;
- (17) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements with other Persons;
- (18) Investments consisting of (i) Guarantees of or the assumption of Indebtedness (to the extent permitted by clause (21) of the second paragraph under Certain covenants Limitations on incurrence of indebtedness and issuance of disqualified stock and preferred stock) of, or (ii) loans made to, or the acquisition of loans made to or Equity Interests in, Franchisees, suppliers, distributors or licensees of the Issuer and its Restricted Subsidiaries in an aggregate amount not exceeding \$300.0 million (in each case determined at the time made and not reduced by any subsequent write-downs or write-offs and net of returns of capital or principal in respect of such Investments); and
- (19) contributions to a rabbi trust for the benefit of employees within the meaning of Revenue Procedure 92-64 or other grantor trust subject to the claims of creditors in the case of a bankruptcy of the Issuer.

Permitted Liens means, with respect to any Person:

- (1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;
- (2) Liens imposed by law, such as carriers', warehousemen's, materialmen's, repairmen's and mechanics' Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;
- (3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or which are being contested in good faith by appropriate proceedings diligently

Table of Contents

conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP, or for property taxes on property that the Issuer or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claims is to such property;

- (4) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business;
- (5) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;
- (6) Liens securing Indebtedness permitted to be incurred pursuant to clause (4) or (18) of the second paragraph under **Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock**; *; provided* that Liens securing Indebtedness permitted to be incurred pursuant to clause (18) extend only to the assets of Foreign Subsidiaries;
- (7) Liens existing on the Issue Date (with the exception of Liens securing the New Credit Facilities, on the Issue Date, which will be deemed incurred pursuant to clause (33) of this definition);
- (8) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however,* such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided, further, however,* that such Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;
- (9) Liens on property at the time the Issuer or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries; *provided, however,* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, merger or consolidation; *provided, further, however,* that the Liens may not extend to any other property owned by the Issuer or any of its Restricted Subsidiaries;
- (10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary permitted to be incurred in accordance with the covenant described under **Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock**;
- (11) Liens securing Hedging Obligations and Cash Management Services so long as related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligations;
- (12)

Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

Table of Contents

- (13) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries and do not secure any Indebtedness;
- (14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases or consignments entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;
- (15) Liens in favor of the Issuer or any Subsidiary Guarantor;
- (16) Liens on equipment of the Issuer or any of its Restricted Subsidiaries granted in the ordinary course of business to the Issuer's clients;
- (17) Liens on Securitization Assets and related assets incurred in connection with a Qualified Securitization Financing;
- (18) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (7), (8) and (9); *provided, however*, that (a) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (7), (8) and (9) at the time the original Lien became a Permitted Lien under the Indenture, and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;
- (19) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;
- (20) other Liens securing obligations incurred in the ordinary course of business which obligations do not exceed \$50.0 million at any one time outstanding;
- (21) Liens securing judgments for the payment of money not constituting an Event of Default under clause (5) under the caption Events of default and remedies so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (23) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

- (24) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock

Table of Contents

and preferred stock ; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

- (25) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;
- (26) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Issuer or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;
- (27) Liens solely on any cash earnest money deposits made by the Issuer or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under the Indenture;
- (28) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Issuer or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;
- (29) restrictive covenants affecting the use to which real property may be put; *provided, however*, that the covenants are complied with;
- (30) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;
- (31) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;
- (32) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business; and
- (33) Liens securing Indebtedness permitted to be incurred under Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of the Indenture to be incurred pursuant to clause (1) of the second paragraph under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock; and
- (34) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to the covenant described under Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified stock and preferred stock; *provided* that, with respect to Liens securing Obligations permitted under this clause (34), at the time of incurrence and after giving *pro forma* thereto, the Consolidated Secured Debt Ratio would be no greater than 3.5 to 1.0.

For purposes of this definition, the term Indebtedness shall be deemed to include interest on such Indebtedness.

Table of Contents

Person means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

Preferred Stock means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

Qualified Proceeds means assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business; *provided* that the fair market value of any such assets or Capital Stock shall be determined in Good Faith by the Issuer.

Qualified Securitization Financing means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the board of managers or directors of the Issuer shall have determined in good faith that such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Issuer and its Restricted Subsidiaries, (ii) all sales of Securitization Assets and related assets by the Issuer or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in Good Faith by the Issuer), (iii) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings and (iv) the Obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary). The grant of a security interest in any Securitization Assets of the Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under the New Credit Facilities shall not be deemed a Qualified Securitization Financing.

Rating Agencies means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody's or S&P or both, as the case may be.

Registration Rights Agreement means (i) the Registration Rights Agreement related to the Notes dated as of the Issue Date, among the Issuer, the Guarantors and the Initial Purchasers, as amended or supplemented, and (ii) any other registration rights agreement entered into in connection with the issuance of Additional Notes in a private offering by the Issuer after the Issue Date.

Related Business Assets means assets (other than cash or Cash Equivalents) used or useful in a Similar Business, *provided* that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

Restricted Investment means an Investment other than a Permitted Investment.

Restricted Subsidiary means, at any time, any direct or indirect Subsidiary of the Issuer (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided, however*, that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of *Restricted Subsidiary*.

S&P means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

Table of Contents

Sale and Lease-Back Transaction means any arrangement providing for the leasing by the Issuer or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing.

SEC means the U.S. Securities and Exchange Commission.

Secured Indebtedness means any Indebtedness of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

Securitization Asset means any accounts receivable, real estate asset, mortgage receivables or related assets, in each case subject to a Securitization Facility.

Securitization Facility means any of one or more securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Issuer or any of its Restricted Subsidiaries sells its Securitization Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells Securitization Assets to a Person that is not a Restricted Subsidiary.

Securitization Fees means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Qualified Securitization Financing.

Securitization Repurchase Obligation means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

Securitization Subsidiary means any Subsidiary in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto.

Securities Act means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

Senior Indebtedness means:

- (1) all Indebtedness of the Issuer or any Subsidiary Guarantor outstanding under the New Credit Facilities or Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of the Issuer or any Subsidiary Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;
- (2) all Hedging Obligations (and guarantees thereof) owing to a Lender (as defined in the New Credit Facilities) or any Affiliate of such Lender (or any Person that was a Lender or an Affiliate of

Table of Contents

such Lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into), *provided* that such Hedging Obligations are permitted to be incurred under the terms of the Indenture;

(3) any other Indebtedness of the Issuer or any Subsidiary Guarantor permitted to be incurred under the terms of the Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clause (1), (2) and (3);

provided, however, that Senior Indebtedness shall not include:

(a) any obligation of such Person to the Issuer or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Indenture.

Senior Management means the Chief Executive Officer and the Chief Financial Officer of the Issuer.

Significant Subsidiary means any Restricted Subsidiary that would be a *significant subsidiary* as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

Similar Business means any business conducted or proposed to be conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

Sponsor means 3G Capital, and each of its Affiliates but not including, however, any portfolio companies of any of the foregoing.

Sponsor Management Agreement means the management agreement between certain of the management companies associated with the Sponsor and the Issuer.

Standard Securitization Undertakings means representations, warranties, covenants and indemnities entered into by the Issuer or any Subsidiary of the Issuer which the Issuer has determined in good faith to be customary in a Securitization Financing, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

Subordinated Indebtedness means, with respect to the Notes,

Table of Contents

- (1) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Notes, and
- (2) any Indebtedness of any Subsidiary Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

Subsidiary means, with respect to any Person:

- (1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and
- (2) any partnership, joint venture, limited liability company or similar entity of which
 - (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and
 - (y) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Subsidiary Guarantor means each Restricted Subsidiary of the Issuer that provides a Guarantee of the Notes.

Total Assets means, as of any date, the total consolidated assets of the Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Issuer and its Restricted Subsidiaries, determined on a *pro forma* basis in a manner consistent with the *pro forma* basis contained in the definition of Fixed Charge Coverage Ratio.

Transaction Expenses means any fees or expenses incurred or paid by the Issuer or any Restricted Subsidiary in connection with the Transactions, including payments to officers, employees and members of the board of managers or directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options, restricted stock and deferred compensation.

Transactions means the transactions contemplated by the Merger Agreement, the issuance of the Notes and borrowings under the New Credit Facilities as in effect on the Issue Date.

Treasury Rate means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to October 15, 2014; *provided, however*, that if the period from the Redemption Date to October 15, 2014 is less

Table of Contents

than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Trust Indenture Act means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-777bbb).

Unrestricted Subsidiary means:

- (1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that

- (1) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by the Issuer;
- (2) such designation complies with the covenants described under *Certain Covenants Limitation on Restricted Payments*; and
- (3) each of:
 - (a) the Subsidiary to be so designated; and
 - (b) its Subsidiaries

has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any Restricted Subsidiary.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that, immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing and the Issuer or the relevant Restricted Subsidiary would be able to incur such Indebtedness pursuant to the covenant described under *Certain covenants Limitation on incurrence of indebtedness and issuance of disqualified and preferred stock*, on a *pro forma* basis taking into account such designation.

Any such designation by the Issuer shall be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of the Issuer or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

Voting Stock of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

Table of Contents

Weighted Average Life to Maturity means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

- (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by
- (2) the sum of all such payments.

Wholly-Owned Subsidiary of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

Table of Contents

Book-Entry Settlement and Clearance

The Global Notes

The Exchange Notes will be issued in the form of a registered note in global form without interest coupons, which we refer to as the global note.

Upon issuance, the global note will be deposited with the trustee as custodian for The Depository Trust Company, or DTC, and registered in the name of Cede & Co., as nominee of DTC. Ownership of beneficial interests in the global note will be limited to persons who have accounts with DTC, or DTC participants, or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

upon deposit of the global note with DTC's custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the initial purchasers; and

ownership of beneficial interests in the global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in the temporary Regulation S global note will initially be credited within DTC to Euroclear Bank S.A./N.V. and Clearstream Banking, société anonyme, on behalf of the owners of these interests. During the Distribution Compliance Period described below, beneficial interests in the temporary Regulation S global note may be:

held only through Euroclear or Clearstream; and

transferred only to non-U.S. persons under Regulation S, qualified institutional buyers under Rule 144A or institutional accredited investors.

After the Distribution Compliance Period ends, beneficial interests in temporary Regulation S global note may be exchanged for beneficial interests in the permanent Regulation S global note of the same series upon certification that those interests are owned either by non-U.S. persons or by U.S. persons who purchased those interests pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act.

Investors may hold their interests in the permanent Regulation S global note directly through Euroclear or Clearstream, if they are participants in those systems, or indirectly through organizations that are participants in those systems. After the Distribution Compliance Period ends, investors may also hold their interests in the permanent Regulation S global note through organizations other than Euroclear or Clearstream that are DTC participants. Each of Euroclear and Clearstream will appoint a DTC participant to act as its depository for the interests in the Regulation S global note that are held within DTC for the account of each settlement system on behalf of its participants.

Beneficial interests in the global note may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

The global note and beneficial interests in the global note will be subject to restrictions on transfer as described under Transfer Restrictions.

Table of Contents

Exchanges Among the Global Note

The Distribution Compliance Period will end 40 days after October 19, 2010.

Beneficial interests in one global note of a series may generally be exchanged for interests in another global note of the same series. Depending on whether the transfer is being made during or after the Distribution Compliance Period, and to which global note the transfer is being made, the trustee may require the seller to provide certain written certifications in the form provided in the Indenture. In addition, in the case of a transfer of interests to an institutional accredited investor, the trustee may require the buyer to deliver a representation letter in the form provided in the Indenture that states, among other things, that the buyer is not acquiring notes with a view to distributing them in violation of the Securities Act.

A beneficial interest in a global note that is transferred to a person who takes delivery through another global note will, upon transfer, become subject to any transfer restrictions and other procedures applicable to beneficial interests in the other global note.

Book-Entry Procedures for the Global Notes

All interests in the global note will be subject to the operations and procedures of DTC, Euroclear and Clearstream. We provide the following summaries of those operations and procedures solely for the convenience of investors. The information in this section concerning DTC, Euroclear and Clearstream and their book-entry systems has been obtained from sources that we believe to be reliable, but neither we nor the initial purchasers take any responsibility for or make any representation or warranty with respect to the accuracy of this information. DTC, Euroclear and Clearstream are under no obligation to follow the procedures described herein to facilitate the transfer of interest in global notes among participants and account holders of DTC, Euroclear and Clearstream, and such procedures may be discontinued or modified at any time. Neither BKC, the Guarantors, the trustee nor any paying agent will have any responsibility for the performance of DTC, Euroclear and Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a banking organization within the meaning of the New York State Banking Law;
- a member of the Federal Reserve System;
- a clearing corporation within the meaning of the Uniform Commercial Code; and
- a clearing agency registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC's participants include securities brokers and dealers, including the initial purchasers; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may

beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

Table of Contents

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below under Certificated Notes, owners of beneficial interests in a global note:

will not be entitled to have notes represented by the global note registered in their names;

will not receive or be entitled to receive physical, certificated notes; and

will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal, premium, if any, interest with respect to the notes represented by a global note will be made by the trustee to DTC's nominee as the registered holder of the global note.

Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds. Transfers between participants in Euroclear or Clearstream will be effected in the ordinary way under the rules and operating procedures of those systems. Cross-market transfers between DTC participants, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected within DTC through the DTC participants that are acting as depositories for Euroclear and Clearstream. To deliver or receive an interest in a global note held in a Euroclear or Clearstream account, an investor must send transfer instructions to Euroclear or Clearstream, as the case may be, under the rules and procedures of that system and within the established deadlines of that system. If the transaction meets its settlement requirements, Euroclear or Clearstream, as the case may be, will send instructions to its DTC depository to take action to effect final settlement by delivering or receiving interests in the relevant global notes in DTC, and making or receiving payment under normal procedures for same-day funds settlement applicable to DTC. Euroclear and Clearstream participants may not deliver instructions directly to the DTC depositories that are acting for Euroclear or Clearstream.

Because of time zone differences, the securities account of a Euroclear or Clearstream participant that purchases an interest in a global note from a DTC participant will be credited on the business day for Euroclear or Clearstream immediately following the DTC settlement date. Cash received in Euroclear or Clearstream from the sale of an interest in a global note to a DTC participant will be received with value on the DTC settlement date but will be available in the relevant Euroclear or Clearstream cash account as of the business day for Euroclear or Clearstream following the DTC settlement date.

DTC, Euroclear and Clearstream have agreed to the above procedures to facilitate transfers of

Table of Contents

interests in the global notes among participants in those settlement systems. However, the settlement systems are not obligated to perform these procedures and may discontinue or change these procedures at any time. Neither we nor the trustee will have any responsibility for the performance by DTC, Euroclear or Clearstream or their participants or indirect participants of their obligations under the rules and procedures governing their operations.

Certificated Notes

Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days;

DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days;

we, at our option, notify the trustee that we elect to cause the issuance of certificated notes; or

certain other events provided in the indenture should occur.

Table of Contents

Registration Rights

On October 19, 2010, in connection with the issuance of the Original Notes, Merger Sub entered into a registration rights agreement with the initial purchasers. Concurrently with the consummation of the Merger, BKC entered into a joinder agreement to the registration rights agreement with Holdings and the other guarantors of the Original Notes pursuant to which BKC assumed all rights and obligations of Merger Sub under the registration rights agreement and Holdings and the other guarantors became bound by the terms of the registration rights agreement. Upon consummation of the Exchange Offer, our obligations under the registration rights agreement, including our obligation to pay additional interest, will be terminated, subject to limited exceptions.

In the registration rights agreement, BKC and the guarantors agreed for the benefit of the holders of the notes to (1) file a registration statement on an appropriate registration form with respect to a registered offer to exchange the Original Notes for Exchange Notes guaranteed by the guarantors, with terms substantially identical in all material respects to the Original Notes (except that the Exchange Notes will not contain terms with respect to transfer restrictions or any increase in annual interest rate) and (2) use our reasonable best efforts to cause the registration statement to be declared effective under the Securities Act. When the SEC declares the exchange offer registration statement effective, we will offer the Exchange Notes (and the related note guarantees) in return for the Original Notes. The Exchange Offer will remain open for at least 20 business days (or longer if required by applicable law) after the date we mail notice of the Exchange Offer to the holders of Original Notes. For each Original Note surrendered to us under the Exchange Offer, the holders of such Original Note will receive an Exchange Note of equal principal amount. Interest on each Exchange Note will accrue (1) from the last interest payment date on which interest was paid on the Original Note surrendered in exchange therefor or (2) if no interest has been paid on the Original Note, from October 19, 2010. A holder of Original Notes that participates in the Exchange Offer will be required to make certain representations to us (as described in the registration rights agreement). We and the guarantors will use our reasonable best efforts to complete the Exchange Offer not later than 60 days after the exchange offer registration statement becomes effective. Under existing interpretations of the SEC contained in several no-action letters to third parties, the Exchange Notes (and the related note guarantees) will generally be freely transferable after the Exchange Offer without further registration under the Securities Act, except that any broker-dealer that participates in the exchange must deliver a prospectus meeting the requirements of the Securities Act when it resells the Exchange Notes.

We will agree to make available, during the period required by the Securities Act, a prospectus meeting the requirements of the Securities Act for use by participating broker-dealers and other persons, if any, with similar prospectus delivery requirements for use in connection with any resale of Exchange Notes. Original Notes not tendered in the Exchange Offer will bear interest at the rate of 97/8% per year and be subject to all the terms and conditions specified in the Indenture, including transfer restrictions, but will generally not retain any rights under the registration rights agreement (including with respect to increases in annual interest rate described below) after the consummation of the Exchange Offer.

In the event that we and the guarantors determine that a registered exchange offer is not available or may not be completed because it would violate any applicable law or applicable interpretations of the staff of the SEC, if for any reason, the Exchange Offer is not for any other reason completed within 365 days of October 19, 2010, or, in certain circumstances, any initial purchaser so requests in connection with any offer or sale of Original Notes, we and the guarantors will use our reasonable best efforts to cause to become effective a shelf registration statement relating to resales of the Original Notes and to keep that shelf registration statement effective until the date that the Original Notes cease to be registrable securities (as defined in the registration rights agreement), or such shorter period that will terminate when all Original Notes covered by the shelf registration statement have been sold pursuant to the shelf

registration statement. We and the guarantors will, in the event of such a shelf registration, provide to each participating holder of Original

Table of Contents

Notes copies of a prospectus, notify each participating holder of Original Notes when the shelf registration statement has become effective and take certain other actions to permit resales of the Original Notes. A holder of Original Notes that sells Original Notes under the shelf registration statement generally will be required to make certain representations to us (as described in the registration rights agreement), to be named as a selling security holder in the related prospectus and to deliver a prospectus to purchasers, will be subject to certain of the civil liability provisions under the Securities Act in connection with those sales and will be bound by the provisions of the registration rights agreement that are applicable to such a holder of Original Notes (including certain indemnification obligations). Holders of Original Notes will also be required to suspend their use of the prospectus included in the shelf registration statement under specified circumstances upon receipt of notice from us.

Under applicable interpretations of the staff of the SEC, our affiliates will not be permitted to exchange their Original Notes for Exchange Notes in the Exchange Offer.

If (1) we have not exchanged Exchange Notes for all Original Notes validly tendered in accordance with the terms of the exchange offer or (2) if applicable, a shelf registration statement covering resales of the Original Notes has been declared effective and such shelf registration statement ceases to be effective or the prospectus contained therein ceases to be usable at any time during the required effectiveness period, and such failure to remain effective or be usable exists for more than 60 days (whether or not consecutive) in any 12-month period (the 60th such day, the Trigger Date), then additional interest shall accrue on the principal amount of the Original Notes that are registrable securities at a rate of 0.25% per annum (which rate will be increased by an additional 0.25% per annum for each subsequent 90-day period that such additional interest continues to accrue, provided that the rate at which such additional interest accrues may in no event exceed 1.00% per annum) commencing on (a) the 366th day following the issuance of the notes, in the case of (1) above, or (b) the Trigger Date, in the case of (2) above, until the Exchange Offer is completed or the shelf registration statement is declared effective or the prospectus again becomes usable, as applicable, or such Original Notes cease to be registrable securities. In the case of a shelf registration statement required to be filed pursuant to a request by an initial purchaser, the increase in interest rate described above begins to apply on the 90th day following such request, if the shelf registration statement has not yet become effective.

Any amounts of additional interest due will be payable in cash on the same original interest payment dates as interest on the Original Notes is payable. The Exchange Notes will be accepted for clearance through DTC.

This summary of the provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, copies of which are available from us upon request.

Table of Contents

Material United States Federal Income Tax Consequences

The following discussion is a summary of certain material U.S. federal income tax consequences of the Exchange Offer to holders of Original Notes, but is not a complete analysis of all potential tax effects. The summary below is based upon the Internal Revenue Code of 1986, as amended (the Code), regulations of the Treasury Department, administrative rulings and pronouncements of the Internal Revenue Service and judicial decisions, all of which are subject to change, possibly with retroactive effect. This summary does not address all of the U.S. federal income tax consequences that may be applicable to particular holders, including dealers in securities, financial institutions, insurance companies and tax-exempt organizations. In addition, this summary does not consider the effect of any foreign, state, local, gift, estate or other tax laws that may be applicable to a particular holder. This summary applies only to a holder that holds such Original Notes as a capital asset within the meaning of Section 1221 of the Code.

An exchange of Original Notes for the Exchange Notes pursuant to the Exchange Offer will not be treated as a taxable exchange or other taxable event for U.S. federal income tax purposes. Accordingly, there will be no U.S. Federal income tax consequences to holders who exchange their Original Notes for the Exchange Notes in connection with the Exchange Offer and any such holder will have the same adjusted tax basis and holding period in the Exchange Notes as it had in the Original Notes immediately before the exchange.

The foregoing discussion of certain U.S. federal income tax considerations does not consider the facts and circumstances of any particular holder's situation or status. Accordingly, each holder of Original Notes considering the Exchange Offer should consult its own tax advisor regarding the tax consequences of the Exchange Offer to it, including those under state, foreign and other tax laws.

Table of Contents

Plan of Distribution

Each broker-dealer that receives Exchange Notes for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Notes received in exchange for Original Notes where such Original Notes were acquired as a result of market-making activities or other trading activities. We have agreed that, for a period of up to 180 days after consummation of the Exchange Offer, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until _____, all dealers effecting transactions in the Exchange Notes may be required to deliver a prospectus.

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

We have agreed to pay all expenses incident to the Exchange Offer, excluding underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, related to the sale or disposition of notes by a holder, and will indemnify the holders of the Original Notes, including any broker-dealers, against certain liabilities, including liabilities under the Securities Act in connection with the Exchange Offer.

Each broker-dealer further acknowledges and agrees that, upon receipt of notice from us of the happening of any event which makes any statement in the prospectus untrue in any material respect or which requires the making of any changes in the prospectus to make the statements in the prospectus not misleading, which notice we agree to deliver promptly to such broker-dealer, such broker-dealer will suspend use of the prospectus until we have notified such broker-dealer that delivery of the prospectus may resume and have furnished copies of any amendment or supplement to the prospectus to the broker-dealer.

Table of Contents

Legal Matters

Certain legal matters relating to the validity of the Exchange Notes will be passed upon for us by Holland & Knight LLP, Miami, Florida.

Experts

The consolidated financial statements of Holdings and subsidiaries as of June 30, 2010 and 2009, and for each of the years in the three-year period ended June 30, 2010, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

Where You Can Find More Information; Incorporation By Reference

Holdings files annual, quarterly and current reports, proxy statements and other information with the SEC. Holdings SEC filings are available over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document Holdings files at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for information on the operation of the Public Reference Room.

We incorporate by reference into this prospectus the following documents filed by Holdings with the SEC, other than information furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, each of which should be considered an important part of this prospectus:

- (i) Annual Report on Form 10-K for the fiscal year ended June 30, 2010;
- (ii) Quarterly Report on Form 10-Q for the quarter ended September 30, 2010;
- (iii) Current Reports on Form 8-K filed with the SEC on August 25, 2010, September 2, 2010, September 3, 2010, September 16, 2010, October 21, 2010, October 28, 2010, November 10, 2010, November 12, 2010, December 8, 2010 and December 9, 2010;
- (iv) Any filings (other than those listed in (i) – (iii) above) Holdings makes with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement and prior to effectiveness of the registration statement; and
- (v) Any future filings Holdings makes with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until this offering is complete or terminated.

You may request a copy of each of Holdings' filings at no cost, by writing or telephoning Holdings at the following address or telephone number:

Burger King Holdings, Inc.
5505 Blue Lagoon Drive
Miami, Florida 33126
Phone: (305) 378-3000

Exhibits to a document will not be provided unless they are specifically incorporated by reference in that document.

Table of Contents

Holdings maintains an internet website at <http://www.bk.com>, which contains information relating to Holdings and its business. The information contained on Holdings website is not part of this prospectus.

You should rely only on the information contained in and incorporated by reference into this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to exchange the Original Notes in any jurisdiction where the exchange is not permitted. You should not assume that the information in this prospectus or incorporated by reference into this prospectus is accurate as of any date other than the date on the front of the respective document. Our business, financial condition, results of operations and prospects may have changed since that date.

The information in this prospectus may not contain all of the information that may be important to you. You should read the entire prospectus, as well as the documents incorporated by reference into this prospectus, before making an investment decision.

Table of Contents

BURGER KING CORPORATION

Offer to Exchange

\$800,000,000 97/8% Senior Notes due 2018

for

\$800,000,000 97/8% Senior Notes due 2018, that have been registered under the Securities Act of 1933

Each broker-dealer that receives Exchange Notes for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Notes received in exchange for Original Notes where such Original Notes were acquired as a result of market-making activities or other trading activities. We have agreed that, for a period of up to 180 days after consummation of this Exchange Offer, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until _____, 2010, all dealers effecting transactions in the Exchange Notes may be required to deliver a prospectus.

Table of Contents

Part II

Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers

Delaware Corporations

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Section 145 further provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper. Any such indemnified person's rights to indemnification may not be eliminated after the occurrence of the act or omission giving rise to a claim in respect of which indemnification is sought, unless the relevant indemnification provision expressly permits such elimination. The Delaware General Corporation Law provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Burger King Holdings, Inc. - The certificate of incorporation of Holdings provides for the indemnification of its directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law. Holdings has entered into employment agreements with certain of its executive officers that provide for indemnification by Holdings of such executive officers to the fullest extent permitted by its certificate of incorporation (including payment of expenses in advance of final disposition of a proceeding). Holdings maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, while acting in their capacity as directors or officers of Holdings, and (b) to Holdings with respect to payments which may be made by Holdings to such officers and directors pursuant to any indemnification provision contained in its certificate of incorporation or otherwise as a matter of law. Holdings certificate of incorporation provides that it may maintain insurance, at its expense, to protect itself and its officers, directors, employees and agents against any expense, liability or loss, whether or not the registrant would have the

power

II-1

Table of Contents

to indemnify such persons under the Delaware General Corporation Law. Pursuant to the executive employment agreements referred to above, Holdings has agreed to provide certain executive officers with directors and officers insurance coverage both during and, with regard to matters occurring during their employment, after the termination of their employment.

BK Acquisition, Inc. - The certificate of incorporation of BK Acquisition, Inc. provides for the indemnification of its directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law. The certificate of incorporation also provides for advancement of expenses and that the rights provided therein will not be deemed exclusive of any other rights to which the indemnified party may be entitled.

BK CDE, Inc. - The bylaws of BK CDE, Inc. provide for the indemnification of its directors and officers. The bylaws also provide for advancement of expenses and that the rights provided therein will not be deemed exclusive of any other rights to which the indemnified party may be entitled.

TPC Number Four, Inc. - The bylaws of TPC Number Four, Inc. provide for the indemnification of its directors and officers to the fullest extent permitted by the Delaware General Corporation Law. The bylaws also provide for advancement of expenses and that the rights provided therein will not be deemed exclusive of any other rights to which the indemnified party may be entitled.

Florida Corporations

Under Section 607.0831 of the Florida Business Corporation Act (the "FBCA"), a director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act regarding corporate management or policy unless (1) the director breached or failed to perform his or her duties as a director and (2) the director's breach of, or failure to perform, those duties constitutes: (a) a violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful, (b) a transaction from which the director derived an improper personal benefit, either directly or indirectly, (c) a circumstance under which the liability provisions of Section 607.0834 are applicable, (d) in a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct, or (e) in a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

Under Section 607.0850 of the FBCA, a corporation has power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of the corporation), by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to

Table of Contents

be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, has reasonable cause to believe that his or her conduct was unlawful.

In addition, under Section 607.0850 of the FBCA, a corporation has the power to indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Under Section 607.0850 of the FBCA, the indemnification and advancement of expenses provided pursuant to Section 607.0850 of the FBCA are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute: (a) a violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful; (b) a transaction from which the director, officer, employee or agent derived an improper personal benefit; (c) in the case of a director, a circumstance under which the above liability provisions of Section 607.0834 are applicable; or (d) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

Burger King Corporation - The articles of incorporation of BKC provide that the personal liability of its directors is eliminated to the fullest extent permitted by law. In addition, the bylaws of BKC provide that it will, to the fullest extent permitted by applicable law, indemnify its officers, directors and specified agents. Further, the bylaws provide for BKC's obligation to advance expenses, under certain circumstances, and provide for additional procedural protections. The bylaws also provide that the right to indemnification and advancement of expenses is not exclusive of any other right the person may acquire.

Burger King Sweden Inc. - The bylaws of Burger King Sweden Inc. provide for the indemnification of its directors and officers.

Distron Transportation Systems, Inc. - The bylaws of Distron Transportation Systems, Inc. provide for the indemnification of its directors and officers.

Florida Limited Liability Companies

Section 608.4229 of the Florida Limited Liability Company Act provides that a limited liability company may, and has the power to, but is not be required to, indemnify and hold harmless any member or

Table of Contents

manager or other person from and against any and all claims and demands whatsoever, subject to any restrictions set forth in its articles or organization or operating agreement. Notwithstanding the foregoing, indemnification or advancement of expenses should not be made to or on behalf of any member, manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that the actions, or omissions to act, of such member, manager, managing member, officer, employee or agent were material to the cause of action so adjudicated and constitute any of the following: (i) a violation of criminal law, unless the member, manager, managing member, officer, employee, or agent had no reasonable cause to believe such conduct was unlawful; (ii) a transaction from which the member, manager, managing member, officer, employee, or agent derived an improper personal benefit; (iii) in the case of a manager or managing member, a circumstance under which the liability provisions of section 608.426 of the Florida Limited Liability Company Act are applicable; or (iv) willful misconduct or a conscious disregard for the best interests of the limited liability company in a proceeding by or in the right of the limited liability company to procure a judgment in its favor or in a proceeding by or in the right of a member.

Burger King Interamerica, LLC - The operating agreement of Burger King Interamerica, LLC provides for the indemnification of its current or former members, managers and officers to the full extent permitted by law. The bylaws also provide that the right to indemnification is not exclusive of any other right to which such person is entitled.

Louisiana Corporations

Section 83 of the Louisiana Business Corporation Law provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another business, foreign or nonprofit corporation, partnership, joint venture or other enterprise. The indemnity may include expenses, including attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. However, in case of actions by or in the right of the corporation, the indemnity will be limited to expenses, including attorneys fees and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the action to conclusion, actually and reasonably incurred in connection with the defense or settlement of such action, and no indemnification will be made in respect of any claim, issue, or matter as to which such person will have been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for willful or intentional misconduct in the performance of his duty to the corporation, unless, and only to the extent that the court determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 83 further provides that if a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any such action, suit or proceeding, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith. Section 83 permits a corporation to pay expenses incurred by the officer or director in defending an action, suit or proceeding in advance of the final disposition thereof if approved by the board of directors. The indemnification and advancement of expenses provided by Section 83 are not exclusive of any other rights to which the person indemnified or obtaining advancement of expenses is entitled under any bylaw, agreement or authorization of shareholders or directors.

Moxie's, Inc. - The articles of incorporation and the bylaws of *Moxie's, Inc.* do not contain any provisions relating to the indemnification of officers and directors.

II-4

Table of Contents

New Mexico Corporations

Section 53-11-4.1 of the New Mexico Business Corporation Act permits a corporation to indemnify any person made a party to any proceeding by reason of the fact that the person is or was a director or officer if (i) the person acted in good faith, (ii) the person reasonably believed the person's conduct (a) in the case of conduct in the person's official capacity with the corporation, that the person's conduct was in its best interests, and (b) in all other cases, that the person's conduct was at least not opposed to its best interests, and (iii) in the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses, actually incurred by the person in connection with the proceeding; except that if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect of any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person did not meet the requisite standard of conduct. Section 53-11-4.1 provides for the advancement of expenses of directors and officers in specified circumstances. The indemnification authorized by Section 53-11-4.1 is not exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation, the bylaws, an agreement, a resolution of shareholders or directors or otherwise.

The Melodie Corporation - The articles of incorporation and the bylaws of The Melodie Corporation do not contain any provisions relating to the indemnification of officers and directors.

Texas Corporations

Under Sections 8.101 and 8.102 of the Texas Business Organizations Code, subject to the procedures and limitations stated therein, a corporation may indemnify any person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director or officer against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the person in connection with the proceeding. Section 8.051 of the Texas Business Organizations Code requires a corporation to indemnify a director or officer against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a director or officer if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding. The statute provides that indemnification pursuant to its provisions is not exclusive of other rights of indemnification to which a person may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise.

TQW Company - The bylaws of TQW Company provide for the indemnification of its directors and officers.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable.

Item 21. Exhibits and Financial Statement Schedules

(a) Exhibits

Number	Description
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- 3.1 Amended and Restated Certificate of Incorporation of Burger King Holdings, Inc. ⁽¹⁾
- 3.2 Bylaws of Burger King Holdings, Inc. ⁽¹⁾

Table of Contents

- 3 .3 Amended and Restated Articles of Incorporation of Burger King Corporation. *
- 3 .4 Amended and Restated Bylaws of Burger King Corporation. *
- 3 .5 Certificate of Incorporation of BK Acquisition, Inc., as amended. *
- 3 .6 Bylaws of BK Acquisition, Inc. *
- 3 .7 Certificate of Incorporation of BK CDE, Inc. *
- 3 .8 Bylaws of BK CDE, Inc. *
- 3 .9 Articles of Organization of Burger King Interamerica, LLC. *
- 3 .10 Amended and Restated Operating Agreement of Burger King Interamerica, LLC. *
- 3 .11 Articles of Incorporation of Burger King Sweden Inc. *
- 3 .12 Bylaws of Burger King Sweden Inc. *
- 3 .13 Articles of Incorporation of Distron Transportation Systems, Inc. *
- 3 .14 Bylaws of Distron Transportation Systems, Inc. *
- 3 .15 Articles of Incorporation of Moxie s, Inc. *
- 3 .16 Bylaws of Moxie s, Inc. *
- 3 .17 Restated Articles of Incorporation of The Melodie Corporation. *
- 3 .18 Amended and Restated Bylaws of The Melodie Corporation. *
- 3 .19 Certificate of Incorporation of TPC Number Four, Inc. *
- 3 .20 Bylaws of TPC Number Four, Inc. *
- 3 .21 Articles of Incorporation of TQW Company, as amended. *
- 3 .22 Bylaws of TQW Company. *
- 4 .2 Indenture, dated October 19, 2010, between Blue Acquisition Sub, Inc. and Wilmington Trust FSB, as trustee. ⁽¹⁾
- 4 .3 Supplemental Indenture, dated October 19, 2010, among Blue Acquisition Sub, Inc., Burger King Corporation, Burger King Holdings, Inc., Wilmington Trust FSB, as trustee, and the subsidiary guarantors party thereto. ⁽¹⁾

- 4 .4 Form of 97/8% Senior Notes due 2018 (included in Exhibit 4.2).⁽¹⁾
- 5 .1 Opinion of Holland & Knight LLP regarding the legality of the securities being registered. **
- 10 .68 Registration Rights Agreement, dated October 19, 2010, among Blue Acquisition Sub, Inc. J.P. Morgan Securities LLC and Barclays Capital Inc., as representatives of the several initial purchasers named therein.⁽¹⁾
- 10 .69 Joinder to Registration Rights Agreement, dated October 19, 2010, among Burger King Corporation, Burger King Holdings, Inc., and the subsidiary guarantors party thereto and J.P. Morgan Securities LLC and Barclays Capital Inc., as representatives of the several initial purchasers named therein.⁽¹⁾
- 12 .1 Statement of Computation of Ratio of Earnings to Fixed Charges. *
- 23 .1 Consent of KPMG LLP. **
- 24 .1 Power of Attorney (set forth on the signature page of this Registration Statement). *
- 25 .1 Form T-1 Statement of Eligibility of Trustee. *
- 99 .1 Form of Letter of Transmittal. *

Table of Contents

- 99.2 Form of Notice of Guaranteed Delivery. *
- 99.3 Form of Letter to Clients. *
- 99.4 Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. *
- 99.5 Guidelines for Certification of Taxpayer Identification Number on Substitute IRS Form W-9. *

* Previously filed.

** Filed herewith.

(1) Incorporated by reference to the Form 8-K filed by Burger King Holdings, Inc. on October 21, 2010.

Item 22. Undertakings

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that

no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration

II-7

Table of Contents

statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(c) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of their counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(e) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(f) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BURGER KING HOLDINGS, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
* Alexandre Behring	Co-Chairman of the Board of Directors	December 17, 2010
John W. Chidsey	Co-Chairman of the Board of Directors	
	Director	
Paul J. Fribourg		
* Peter Harf	Director	December 17, 2010
* Peter Harf	Director	December 17, 2010

Marcel Herrmann Telles

II-9

Table of Contents

*

Director

December 17, 2010

Carlos Alberto da Veiga Sicupira

* /s/ Anne Chwat

Name: Anne Chwat

Title: Attorney-in-Fact

II-10

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BURGER KING CORPORATION

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
* Alexandre Behring	Co-Chairman of the Board of Directors	December 17, 2010
John W. Chidsey	Co-Chairman of the Board of Directors	
	Director	
Paul J. Fribourg *	Director	December 17, 2010
Peter Harf *	Director	December 17, 2010

Marcel Herrmann Telles

II-11

Table of Contents

*

Director

December 17, 2010

Carlos Alberto da Veiga Sicupira

* /s/ Anne Chwat

Name: Anne Chwat

Title: Attorney-in-Fact

II-12

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BK ACQUISITION, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BK CDE, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BURGER KING INTERAMERICA, LLC

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

BURGER KING SWEDEN INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

DISTRON TRANSPORTATION SYSTEMS, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

MOXIE S, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

THE MELODIE CORPORATION

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

TPC NUMBER FOUR, INC.

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Bernardo Hees Bernardo Hees	Chief Executive Officer and Director (Principal Executive Officer)	December 17, 2010
/s/ Ben K. Wells Ben K. Wells	Chief Financial Officer and Director (Principal Financial Officer)	December 17, 2010
/s/ David Chojnowski David Chojnowski	Vice President and Controller (Principal Accounting Officer)	December 17, 2010
/s/ Anne Chwat Anne Chwat	Director	December 17, 2010

Table of Contents

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on this 17th day of December, 2010.

TQW COMPANY

By: /s/ Bernardo Hees

Name: Bernardo Hees

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
<p>/s/ Bernardo Hees Bernardo Hees</p>	<p>Chief Executive Officer and Director (Principal Executive Officer)</p>	<p>December 17, 2010</p>
<p>/s/ Ben K. Wells Ben K. Wells</p>	<p>Chief Financial Officer and Director (Principal Financial Officer)</p>	<p>December 17, 2010</p>
<p>/s/ David Chojnowski David Chojnowski</p>	<p>Vice President and Controller (Principal Accounting Officer)</p>	<p>December 17, 2010</p>
<p>/s/ Anne Chwat Anne Chwat</p>	<p>Director</p>	<p>December 17, 2010</p>

Table of Contents

Exhibit Index

Number	Description
5.1	Opinion of Holland & Knight LLP regarding the legality of the securities being registered.
23.1	Consent of KPMG LLP.

II-22