

TORO CO  
 Form 424B2  
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 Registration No. 333-142282

**SUBJECT TO COMPLETION, DATED APRIL 23, 2007**

**The information in this prospectus supplement is not complete and may be changed. This prospectus supplement and the accompanying prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

Prospectus Supplement  
 April , 2007  
 (To Prospectus dated April 23, 2007)

\$

## The Toro Company

### % Notes due 2037

Toro will pay interest on the notes on \_\_\_\_\_ and \_\_\_\_\_ of each year. The first interest payment will be made on \_\_\_\_\_, 2007. The notes will mature on \_\_\_\_\_, 2037. Toro may redeem some or all of the notes at any time at the make-whole redemption price set forth in this prospectus supplement under Description of the Notes Optional Redemption. If Toro experiences a change of control triggering event and has not otherwise elected to redeem the notes, Toro will be required to offer to purchase the notes from holders as described under Description of the Notes Repurchase Upon a Change of Control.

The notes will be Toro's unsecured senior obligations and will rank equally with Toro's other unsecured and unsubordinated indebtedness from time to time outstanding.

See **Risk Factors** beginning on page S-5 of this prospectus supplement and in our 2006 Annual Report on Form 10-K, incorporated herein by reference, for a discussion of factors you should consider carefully before investing in the notes.

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

	Per Note	Total
Price to public(1)	%	\$
Underwriting discount	%	\$
Proceeds (before expenses) to Toro(1)	%	\$

(1) Plus accrued interest from \_\_\_\_\_, 2007, if settlement occurs after that date.

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The notes will not be listed on any securities exchange or quoted on any automated dealer quotation system. Currently, there is no public market for the notes.

Delivery of the notes in book-entry form only will be made through the facilities of The Depository Trust Company ( DTC ) on or about 2007.

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**Banc of America Securities LLC**

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**TABLE OF CONTENTS**

**Prospectus Supplement**

<u>About this Prospectus Supplement</u>	ii
<u>Prospectus Supplement Summary</u>	S-1
<u>Risk Factors</u>	S-5
<u>Use of Proceeds</u>	S-7
<u>Description of the Notes</u>	S-8
<u>Underwriting</u>	S-13
<u>Legal Matters</u>	S-13

**Prospectus**

<u>About This Prospectus</u>	1
<u>Where You Can Find More Information</u>	1
<u>Incorporation By Reference</u>	2
<u>Cautionary Note Regarding Forward-Looking Statements</u>	2
<u>Ratio of Earnings to Fixed Charges</u>	3
<u>Use of Proceeds</u>	3
<u>Description of Debt Securities</u>	4
<u>Plan of Distribution</u>	17
<u>Legal Matters</u>	19
<u>Experts</u>	19

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You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus prepared by us or on our behalf. If information in this prospectus supplement is inconsistent with the accompanying prospectus, you should rely on this prospectus supplement. Neither we nor the underwriter has authorized anyone to provide you with information that is different. This prospectus supplement and the accompanying prospectus may only be used where it is legal to offer and sell these securities. The information in this prospectus supplement and the accompanying prospectus may only be accurate as of the date of this prospectus supplement, the accompanying prospectus or the documents incorporated by reference therein. Our business, financial condition, results of operations and prospects may have changed since those dates.

**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document contains two parts. The first part is this prospectus supplement, which describes the specific terms of the notes we are offering and certain other matters relating to us. The second part, the accompanying prospectus, gives more general information about debt securities we may offer from time to time, some of which does not apply to the notes we are offering by this prospectus supplement. You should read this entire prospectus supplement, as well as the accompanying prospectus and the documents incorporated by reference therein that are described under "Where You Can Find More Information" in the accompanying prospectus.

To the extent any inconsistency or conflict exists between the information included in this prospectus supplement and the information included in the accompanying prospectus, the information included in this prospectus supplement updates and supersedes the information in the accompanying prospectus. The accompanying prospectus incorporates by reference important business and financial information about us that is not included in or delivered with this prospectus supplement.

In this prospectus supplement, references to "The Toro Company," "Toro," "the Company," "we," "us" and "our" mean The Toro Company and its subsidiaries, unless we state otherwise or the context indicates otherwise. The "underwriter" refers to Banc of America Securities LLC.

The distribution of this prospectus supplement and the accompanying prospectus and the offering of the notes in certain jurisdictions may be restricted by law. Persons who receive this prospectus supplement and the accompanying prospectus should inform themselves about and observe any such restrictions. This prospectus supplement and the accompanying prospectus do not constitute, and may not be used in connection with, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. See "Underwriting."

References herein to "\$" and "dollars" are to United States dollars.

## PROSPECTUS SUPPLEMENT SUMMARY

*This summary highlights basic information about us and this offering. Because it is a summary, it does not contain all of the information that you should consider before investing. You should read this entire prospectus supplement and the accompanying prospectus carefully, including the section entitled Risk Factors herein and in the materials filed with the SEC that are incorporated by reference into the accompanying prospectus, before making an investment decision. See Where You Can Find More Information in the accompanying prospectus.*

### **The Toro Company**

We design, manufacture, and market professional turf maintenance equipment and services, turf and micro irrigation systems, landscaping equipment, and residential yard products. We produced our first mower for golf course use in 1921 and our first lawn mower for home use in 1939, and we have continued to enhance our product lines ever since. We classify our operations into two reportable segments: professional and residential. A third segment called other consists of domestic company-owned distributorships, corporate functions and Toro Credit Company, a wholly owned financing subsidiary. Net sales of our segments accounted for the following approximate percentages of our consolidated net sales for fiscal 2006: Professional, 67 percent; Residential, 31 percent; and Other, 2 percent.

Our products are advertised and sold at the retail level under the primary trademarks of Toro®, Toro® Wheel Horse®, Lawn-Boy®, Irritrol®, Exmark®, Toro® Dingo®, Aqua-TraXX®, Pope®, Hayter®, and Lawn Genie®, most of which are registered in the United States and/or in the principal foreign countries where we market our products.

We emphasize quality and innovation in our customer service, products, manufacturing, and marketing. We strive to provide well-built, dependable products supported by an extensive service network. We have committed funding for engineering and research in order to improve existing products and develop new products. Through these efforts, we seek to be responsive to trends that may affect our target markets now and in the future. A sizeable portion of our revenue has historically been attributable to new and enhanced products. Our mission is to be the leading worldwide provider of outdoor landscaping products, support services, and integrated systems that help customers preserve and beautify their outdoor landscapes with environmentally responsible solutions of customer-valued quality and innovation. Additional information on our strategic initiatives is included in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, of our 2006 Annual Report on Form 10-K.

We strive to be a leader in adapting advanced technologies to products and services that provide solutions for landscape, turf care maintenance, and residential demands. The following is a summary of our products by market for the professional and residential segments:

**Professional Segment.** We design professional turf products and market them worldwide through a network of distributors and dealers as well as directly to government customers and rental companies. Products are sold by distributors and dealers to professional users engaged in maintaining and creating landscapes, such as golf courses, sports fields, municipal properties, and residential and commercial landscapes. Professional turf maintenance equipment marketed under the Toro brand name is our oldest product line that began in 1921 with tractor-towed mowers for golf courses. Over time, we have expanded our product lines to include products designed for large turf areas, such as golf courses, schools, parks, cemeteries, sports fields, industrial sites, apartments and townhouse complexes. Professional segment net sales represented 67 percent of consolidated net sales for fiscal 2006, and 64 and 62 percent of consolidated net sales in fiscal 2005 and 2004, respectively.

**Residential Segment.** We market our residential products to homeowners through a variety of distribution channels, including dealers, hardware retailers, home centers, mass retailers and over the Internet. These products are sold mainly in North America, Europe, and Australia, with the exception of

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snow removal products, which are sold primarily in North America and Europe. We also license our trade name to other manufacturers and retailers on certain products as a means of expanding our brand name presence. Residential segment net sales represented 31 percent of consolidated net sales for fiscal 2006, and 33 and 34 percent of consolidated net sales in fiscal 2005 and 2004, respectively.

We manufacture our products in the United States, Mexico, Australia, Italy and the United Kingdom for sale throughout the world and maintain sales offices in the United States, Canada, Belgium, the United Kingdom, France, Australia, Singapore, Japan, China and Italy. New product development is pursued primarily in the United States.

The Toro Company was incorporated in Minnesota in 1935 as a successor to a business founded in 1914 and was reincorporated in Delaware in 1983. Our executive offices are located at 8111 Lyndale Avenue South, Bloomington, Minnesota 55420-1196. Our telephone number is (952) 888-8801.

**Ratio of Earnings to Fixed Charges.** Information concerning our ratio of earnings to fixed charges for each of the periods indicated is set forth below:

	Years Ended October 31,					Three Months Ended	
	2002	2003	2004	2005	2006	February 3, 2006	February 2, 2007
Ratio of earnings to fixed charges	4.43	6.43	7.96	8.01	8.98	4.64	5.16

For purposes of computing this ratio, earnings consist of earnings before income taxes plus fixed charges. Fixed charges include interest, whether expensed or capitalized, and such portion of rental expense that we deem to be representative of interest.

**The Offering**

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The following summary contains basic information about the notes. It does not contain all the information that may be important to you. For a more complete understanding of the notes, please refer to the section of this prospectus supplement entitled *Description of the Notes* and the section of the accompanying prospectus entitled *Description of Debt Securities*.

Issuer	The Toro Company, a Delaware corporation.
Notes Offered	\$ million in aggregate principal amount of % Notes due 2037.
Maturity Date	, 2037.
Interest	Interest on the notes will accrue from the date of their issuance at the annual rate of % per year and will be payable in cash semi-annually in arrears on and of each year, commencing , 2007.
Ranking	The notes will be Toro s unsecured senior obligations and will rank equally in right of payment with all of Toro s existing and future unsecured and unsubordinated indebtedness. As of February 2, 2007, Toro had approximately \$302 million of unsecured and unsubordinated indebtedness outstanding, including amounts outstanding under bank credit facilities. The notes will not be guaranteed by any of Toro s subsidiaries and so will be effectively subordinated to all of the obligations of these subsidiaries, including trade payables and lease obligations. As of February 2, 2007, Toro s subsidiaries did not have any indebtedness outstanding, although there was on that date \$127 million outstanding under Toro s bank revolving credit facility, as to which certain subsidiaries of Toro were co-obligors.
Optional Redemption	Toro may, at its option, redeem some or all of the notes at any time at the make-whole redemption price described in Description of the Notes Optional Redemption.
Repurchase Upon Change of Control	Upon the occurrence of both (1) a change of control of us and (2) a downgrade of the notes below an investment grade rating by both of Moody s Investors Service Inc. and Standard & Poor s Ratings Services within a specified period, we will be required to make an offer to purchase the notes at a price equal to 101% of the principal amount of such notes, plus any accrued and unpaid interest to the date of repurchase. See Description of the Notes Repurchase Upon a Change of Control .
Use of Proceeds	We intend to use the net proceeds from the sale of the notes to pay at maturity our \$75 million outstanding principal amount of 7.125% Notes due June 15, 2007 and for general corporate purposes. See Use of Proceeds.
Covenants	The indenture governing the notes contains various covenants. These covenants are subject to a number of important qualifications and exceptions. See Description of Debt Securities Certain Covenants of the Company in the accompanying prospectus.

S-3



Minimum Denominations	The notes will be issued and may be transferred only in minimum denominations of \$1,000 and integral multiples of \$1,000.
Risk Factors	For a discussion of factors you should carefully consider before deciding to purchase the notes, see <b>Risk Factors</b> beginning on page S-5 of this prospectus supplement and under the headings <b>Risk Factors</b> and <b>Management's Discussion and Analysis of Financial Condition and Results of Operations</b> in our 2006 Annual Report on Form 10-K filed with the SEC and incorporated by reference into the accompanying prospectus.
Listing	The notes will not be listed on any securities exchange or quoted on any automated dealer quotation system.
Governing Law	New York law will govern the indenture and the notes.

S-4

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## RISK FACTORS

*An investment in the notes involves risks. You should carefully consider the following risk factors and the other information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus, including the information under the heading Risk Factors in our 2006 Annual Report on Form 10-K, before making an investment in the notes. The information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus includes forward-looking statements that involve risks and uncertainties. Toro refers you to Cautionary Note Regarding Forward-Looking Statements in the accompanying prospectus. Toro's actual results could differ materially from those anticipated in the forward-looking statements as a result of certain factors, including the risks described below and elsewhere in this prospectus supplement and the accompanying prospectus.*

The following risks relate specifically to the offering of the notes. There may be additional risks that are not material or that are not presently known to Toro. There are also risks within the economy, the industry and the capital markets that affect Toro generally, which have not been described below.

***The notes are subject to prior claims of any secured creditors of Toro.***

The notes are our unsecured general obligations, ranking equally with other unsecured senior indebtedness but below any secured indebtedness to the extent of the value of the assets constituting the security. The indenture governing the notes permits us and our subsidiaries to incur secured debt under specified circumstances. If we incur any debt secured by our assets or assets of our subsidiaries, these assets will be subject to the prior claims of our secured creditors.

In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding, Toro's pledged assets would be available to satisfy obligations of the secured debt before any payment could be made on the notes. To the extent that such assets cannot satisfy in full Toro's secured debt, the holders of such debt would have a claim for any shortfall that would rank equally in right of payment with the notes. In that case, Toro may not have sufficient assets remaining to pay amounts due on any or all of the notes. As of February 2, 2007, Toro did not have any outstanding consolidated secured debt. Toro may, however, in the future issue secured debt to the extent permitted by the indenture and such secured debt will have a right of payment superior to that of the notes.

***The indenture does not restrict the amount of additional debt that we may incur.***

The notes and indenture do not place any limitation on the amount of unsecured debt, including trade payables, that we may incur. As of February 2, 2007, Toro had approximately \$302 million of unsecured and unsubordinated indebtedness outstanding, including amounts outstanding under bank credit facilities. The holders of those obligations will be entitled to share ratably with the holders of the notes in any proceeds distributed upon our insolvency, liquidation, reorganization, dissolution or other winding up. This may have the effect of reducing the amount of proceeds paid to the holders of the notes. Toro's working capital needs, and its outstanding indebtedness, varies on a seasonal basis, with peak borrowings typically occurring between February and May. If there are not sufficient assets remaining to pay all these creditors, all or a portion of the notes then outstanding would remain unpaid. In addition, our incurrence of additional debt could lead to a loss in the market value of the notes, if any, and a risk that the credit rating of the notes is lowered or withdrawn.

***The claims of creditors of Toro's subsidiaries are superior to the claims of Toro's equity interests in its subsidiaries.***

Toro's equity interest in its subsidiaries is subordinate to any debt and other liabilities and commitments, including trade payables and lease obligations, of Toro's subsidiaries, whether or not secured. The notes will not be guaranteed by any of Toro's subsidiaries and Toro may not have direct access to the assets of its subsidiaries unless these assets are transferred by dividend or otherwise to Toro.

As of February 2, 2007, Toro's subsidiaries did not have any indebtedness outstanding, although there was on that date \$127 million outstanding under Toro's bank revolving credit facility, as to which certain subsidiaries of Toro were co-obligors. The notes and the indenture do not place any limitation on the amount of unsecured debt, including trade payables, that our subsidiaries may incur. The ability of the subsidiaries to pay dividends or otherwise transfer assets to Toro is subject to various restrictions under applicable law. Toro's right to receive assets of any of its subsidiaries upon the subsidiary's liquidation or reorganization is subordinated to the claim of that subsidiary's creditors. As note holders' claims to the assets of Toro's subsidiaries are derivative of Toro's equity claims in its subsidiaries, the claims of Toro's subsidiaries' creditors are superior to any claims of the note holders to all liabilities, including trade payables and lease obligations, of any of Toro's subsidiaries and any subsidiaries that Toro may in the future acquire or establish.

***Changes in our credit ratings may adversely affect the value of the notes.***

The credit ratings assigned to the notes are limited in scope, and do not address all material risks relating to an investment in the notes, but rather reflect only the view of each rating agency at the time the rating is issued. An explanation of the significance of such rating may be obtained from such rating agency. There can be no assurance that such credit ratings will remain in effect for any given period of time or that such ratings will not be lowered, suspended or withdrawn entirely by the rating agencies, if, in each rating agency's judgment, circumstances so warrant. Agency credit ratings are not a recommendation to buy, sell or hold any security. Each agency's rating should be evaluated independently of any other agency's rating. Actual or anticipated changes or downgrades in our credit ratings, including any announcement that our ratings are under further review for a downgrade, could affect the market value of the notes and increase our corporate borrowing costs.

***An active trading market may not develop for the notes.***

The notes are a new issue of securities with no established trading market. The notes will not be listed on any securities exchange or quoted on any automated dealer quotation system. The underwriter may make a market in the notes as permitted by applicable law. However, the underwriter is not obligated to make a market in the notes and may cease any market-making activities at any time at its discretion without notice. In addition, the liquidity of the trading market in the notes, and the market price quoted for the notes, may be adversely affected by changes in the overall market for securities and by changes in the financial performance or prospects of Toro and/or companies in Toro's industry generally. As a result, Toro cannot assure you that an active trading market will develop or be maintained for the notes. If a market for the notes does not develop or is not maintained, the market price and liquidity of the notes may be adversely affected.

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

Upon the occurrence of specific kinds of change of control events, we will be required to make an offer to repurchase all or any part of each holder's notes at a price equal to 101% of their principal amount, plus accrued and unpaid interest, if any, to the date of repurchase. If any such change of control occurs we may not have sufficient financial resources available to satisfy our obligations to repurchase the notes. Our failure to repurchase the notes as required under the indenture governing the notes would result in a default under the indenture, which could have material adverse consequences for us and the holders of the notes. In addition, the definition of Change of Control includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of all or substantially all of the properties or assets of Toro and its subsidiaries taken as a whole. 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, the ability of a holder of notes to require Toro to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of Toro and its

subsidiaries taken as a whole to another person (as defined in the indenture) or group may be uncertain. See Description of the Notes Repurchase Upon a Change of Control.

#### USE OF PROCEEDS

The net proceeds from the sale of the notes will be approximately \$ (after deducting the underwriting discount and expenses related to the offering payable by us). We intend to use the net proceeds to pay at maturity our \$75 million outstanding principal amount of 7.125% Notes due June 15, 2007. The amount payable at maturity of these notes, including accrued interest, is expected to be approximately \$ million. The balance of the net proceeds will be used for general corporate purposes, which may include repurchase of our common stock, investments in or extensions of credit to our subsidiaries, the financing of possible acquisitions or business expansion, or other lawful purposes. We currently have no definitive agreements or commitments with respect to any acquisition. However, in connection with our ongoing acquisition program, from time to time we enter into confidentiality agreements on customary terms and non-binding preliminary indications of interest. Any future acquisition would be expected to involve a business complementary to our existing businesses. Pending any specific application, we may initially invest the net proceeds from the offering in short-term marketable securities or apply them to reduce short-term indebtedness.

S-7

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## DESCRIPTION OF THE NOTES

The notes will be issued as a series of debt securities under an indenture dated as of April 20, 2007, between us and The Bank of New York Trust Company, N.A., as trustee, as amended and supplemented by a First Supplemental Indenture, dated as of April , 2007 (as so amended and supplemented, the indenture ). The following description of notes, together with the description of the general terms of our debt securities and the indenture in the accompanying prospectus, is a summary of all the material provisions of the notes and the indenture but does not include all the provisions of the notes and the indenture. We urge you to read the indenture because it fully defines the rights of holders of the notes. You may obtain a copy of the indenture without charge. See Incorporation by Reference in the accompanying prospectus. For a description of the general terms applicable to our debt securities, including the notes, see Description of Debt Securities in the accompanying prospectus. Capitalized terms used but not otherwise defined in this section have the meanings assigned to them in the accompanying prospectus.

The terms of the notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended. The notes are subject to all such terms, and investors are referred to the indenture and the Trust Indenture Act of 1939, as amended, for a statement thereof.

When we refer to The Toro Company, Toro, the Company, we, us and our in this section, we refer only to The Toro Company, a Delaware corporation, and not its subsidiaries.

### General

The notes will be initially limited to \$ million aggregate principal amount and will mature on , 2037. We will have the ability to reopen the series of notes and issue additional notes from time to time without the consent of the then existing noteholders. Any additional notes will be treated as part of the same series of notes as the initial notes for all purposes under the indenture. The notes will be issued in registered form only in denominations of \$1,000 and integral multiples of \$1,000.

The notes will be unsecured senior obligations and will rank equally in right of payment with all of our existing and future unsecured and unsubordinated indebtedness. As of February 2, 2007, we had approximately \$302 million of unsecured and unsubordinated indebtedness outstanding, including amounts outstanding under bank credit facilities. The notes will not be guaranteed by any of our subsidiaries and so will be effectively subordinated to all of the obligations of these subsidiaries, including trade payables and lease obligations. As of February 2, 2007, Toro s subsidiaries did not have any indebtedness outstanding.

The notes will not be subject to any sinking fund. The notes will be subject to defeasance and discharge and to defeasance of certain obligations as described in the accompanying prospectus under the captions Description of Debt Securities Discharge of the Indenture and Description of Debt Securities Defeasance and Covenant Defeasance.

### Interest on the Notes

The notes will bear interest from , 2007 at the annual rate set forth on the cover page of this prospectus supplement. Interest will be payable semi-annually on and of each year, beginning , 2007, to the persons in whose names the notes are registered in the security register at the close of business on the applicable regular record date, which is the or next preceding such interest payment date. Interest on the notes will be computed on the basis of a 360-day year of twelve 30-day months.

### Optional Redemption

We may, at our option, redeem some or all of the notes at any time, upon notice by mail not less than 30 nor more than 60 days before the date fixed for redemption, at a redemption price equal to the sum of

the principal amount of the notes we redeem, accrued interest on that principal amount to the date of redemption, and the make-whole amount, if any, with respect to the notes. This sum is referred to as the redemption price. Make-whole amount means, in connection with the optional redemption, the excess, if any, of the aggregate present value as of the date of such redemption of each dollar of principal being redeemed and the amount of interest, exclusive of interest accrued to the date of redemption, that would have been payable in respect of each such dollar if such redemption had not been made, determined by discounting, on a semi-annual basis (assuming a 360-day year of twelve 30-day months), such principal and interest at the reinvestment rate, determined on the third business day preceding the date notice of such redemption is given, from the respective dates on which such principal and interest would have been payable if such redemption had not been made, to the date of redemption, over (b) the aggregate principal amount of the notes being redeemed. In case of any redemption at our election of less than all of the notes, we shall, not less than 30 days nor more than 60 days prior to the redemption date fixed by us, notify the trustee in writing of such redemption date, and of the principal amount of the notes to be redeemed.

Reinvestment rate means % plus the arithmetic mean of the yields under the headings Week Ending published in the most recent statistical release under the caption Treasury Constant Maturities for the maturity, rounded to the nearest month, corresponding to the remaining life to maturity, as of the payment date of the notes being redeemed. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity will be calculated pursuant to the immediately preceding sentence and the reinvestment rate will be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of the relevant periods to the nearest month. For purposes of calculating the reinvestment rate, the most recent statistical release published prior to the date of determination of the make-whole amount will be used.

Statistical release means the statistical release designated H.15(519) or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination, then such other reasonably comparable index which shall be designated by us.

#### **Repurchase Upon a Change of Control**

If a Change of Control Triggering Event occurs, unless we have exercised our right to redeem the notes as described above, we will make an offer to each holder (the Change of Control Offer ) to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000 in excess thereof) of such holder's notes at a repurchase price in cash equal to 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest, if any, thereon, to the date of purchase (the Change of Control Payment ). Within 30 days following any Change of Control Triggering Event, we will be required to mail a notice to holders of notes describing the transaction or transactions that constitute the Change of Control Triggering Event and offering to repurchase the notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the Change of Control Payment Date ), pursuant to the procedures required by the notes and described in such notice. We must comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934 and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control repurchase provisions of the notes, we will be required to comply with the applicable securities laws and regulations and will not be deemed to have breached our obligations under the Change of Control repurchase provisions of the notes by virtue of such conflicts.

On the Change of Control Payment Date, we will be required, to the extent lawful, to:

- accept for payment all notes or portions of notes properly tendered pursuant to the Change of Control Offer;
- deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes properly tendered; and
- deliver or cause to be delivered to the Trustee the notes properly accepted, together with an officers certificate stating the aggregate principal amount of notes or portions of notes being purchased.

The definition of Change of Control includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of all or substantially all of the properties or assets of Toro and its subsidiaries taken as a whole. 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, the applicability of the requirement that we offer to repurchase the notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of Toro and its subsidiaries taken as a whole to another Person (as defined in the indenture) or group may be uncertain.

For purposes of the foregoing discussion of the applicable Change of Control provisions, the following definitions are applicable:

**Below Investment Grade Rating Event** means the notes are rated below an Investment Grade Rating by both of the Rating Agencies (as defined below) on any date from the date of the public notice of an arrangement that could reasonably be expected to result in a Change of Control until the end of the 60-day period following public notice of the occurrence of the Change of Control (which 60-day period shall be extended so long as the rating of the notes is under publicly announced consideration for possible downgrade by either of the Rating Agencies).

**Change of Control** means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Toro and its subsidiaries taken as a whole to any person (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) other than Toro or one of its subsidiaries; (2) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of Toro's voting stock; or (3) the first day on which a majority of the members of Toro's Board of Directors are not Continuing Directors; provided, however, that a transaction will not be deemed to involve a Change of Control if we become a wholly owned subsidiary of a holding company and the holders of the voting stock of such holding company immediately following that transaction are substantially the same as the holders of our voting stock immediately prior to that transaction. For purposes of this definition, voting stock means capital stock of any class or kind the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of Toro, even if the right to vote has been suspended by the happening of such a contingency.

**Change of Control Triggering Event** means the occurrence of both a Change of Control and a Below Investment Grade Rating Event.

**Continuing Directors** means, as of any date of determination, any member of the Board of Directors of Toro who (1) was a member of such Board of Directors on the date of the issuance of the notes; or (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election (either by a specific vote or by approval of Toro's proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

**Investment Grade Rating** means a rating by Moody's equal to or higher than Baa3 (or the equivalent under any successor rating category of Moody's) and a rating by S&P equal to or higher than BBB- (or the equivalent under any successor rating category of S&P).

**Moody's** means Moody's Investors Service, Inc.

**Rating Agencies** means (1) both Moody's and S&P; and (2) if either or both of Moody's or S&P ceases to rate the notes or fails to make a rating of the notes publicly available for reasons outside of our control, a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, selected by us (as certified by a resolution of our Board of Directors) as a replacement agency for either of Moody's or S&P, or both of them, as the case may be.

**S&P** means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

### **Global Notes; Book-Entry System**

Notes will be evidenced by one or more global notes deposited with the trustee as custodian for DTC, and registered in the name of Cede & Co., as DTC's nominee.

Record ownership of the global notes may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee, except as set forth below. An owner of beneficial interests may hold its interests in the global notes directly through DTC if such owner is a participant in DTC, or indirectly through organizations which are direct DTC participants if such owner is not a participant in DTC. Transfers between direct DTC participants will be effected in the ordinary way in accordance with DTC's rules and will be settled in same-day funds. You may also beneficially own interests in the global notes held by DTC through certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a direct DTC participant, either directly or indirectly.

So long as Cede & Co., as nominee of DTC, is the registered owner of the global notes, Cede & Co. for all purposes will be considered the sole holder of the global notes. Except as provided below, owners of beneficial interests in the global notes:

- will not be entitled to have certificates registered in their names; and
- will not be considered holders of the global notes.

The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability of an owner of a beneficial interest in a global security to transfer the beneficial interest in the global security to such persons may be limited.

We will wire, through the facilities of the trustee, payments of principal, interest or the redemption price on the global notes to Cede & Co., the nominee of DTC, as the registered owner of the global notes. None of us, the trustee or any paying agent will have any responsibility or be liable for paying amounts due on the global notes to owners of beneficial interests in the global notes.

It is DTC's current practice, upon receipt of any payment on the global notes, to credit participants' accounts on the payment date in amounts proportionate to their respective beneficial interests in the notes represented by the global notes, as shown on the records of DTC. Payments by DTC participants to owners of beneficial interests in notes represented by the global notes held through DTC participants will be the responsibility of DTC participants, as is now the case with securities held for the accounts of customers registered in street name.

Because DTC can only act on behalf of DTC participants, who in turn act on behalf of indirect DTC participants and other banks, your ability to pledge your interest in the notes represented by global notes to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate.



We will issue the notes in definitive certificated form if DTC notifies us that it is unwilling or unable to continue as depository or DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934. In addition, beneficial interests in a global note may be exchanged for definitive certificated notes upon request by or on behalf of DTC in accordance with DTC's customary procedures if an event of default with respect to the notes has occurred and is continuing. We may determine at any time and in our sole discretion that notes shall no longer be represented by global notes, in which case we will issue certificates in definitive form in exchange for the global notes.

Neither we nor the trustee (nor any registrar or paying agent under the indenture) will have any responsibility for the performance by DTC or direct or indirect DTC participants of their obligations under the rules and procedures governing their operations. DTC has advised us that it will take any action permitted to be taken by a holder of notes only at the direction of one or more direct DTC participants to whose account with DTC interests in the global notes are credited and only for the principal amount of the notes for which directions have been given.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC was created to hold securities for DTC participants and to facilitate the settlement of securities transactions among DTC participants through electronic computerized book-entry changes to the accounts of its participants, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations, such as the underwriter of the notes. Certain DTC participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others, known as indirect participants, such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the global notes among DTC participants, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. None of us, the trustee or any of either's respective agents will have any responsibility for the performance by DTC or direct or indirect DTC participants of their obligations under the rules and procedures governing their operations, including maintaining, supervising or reviewing the records relating to or payments made on account of beneficial ownership interests in global notes.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy thereof.

#### **Governing Law**

The indenture and the notes will be governed by, and construed in accordance with, the laws of the State of New York.

#### **Information Concerning the Trustee**

The Bank of New York Trust Company, N.A., as trustee under the indenture, has been appointed by us as paying agent and registrar with regard to, and will serve as DTC's custodian for, the notes. The trustee or its affiliates have provided and may in the future provide commercial banking, brokerage or other services to us and our affiliates in the ordinary course of business, for which they will receive customary compensation.

**UNDERWRITING**

## Edgar Filing: TORO CO - Form 424B2

Subject to the terms and conditions of the underwriting agreement dated the date of this prospectus supplement, Banc of America Securities LLC has agreed to purchase from us, and we have agreed to sell to Banc of America Securities LLC, \$ \_\_\_\_\_ aggregate principal amount of notes.

The underwriting agreement provides that the obligations of the underwriter to purchase the notes offered hereby are subject to certain conditions and that the underwriter will purchase all of the notes offered by this prospectus supplement if any of these notes are purchased.

The underwriter proposes to offer the notes directly to the public at the public offering price set forth on the cover page of this prospectus supplement and to certain dealers at such price less a concession not in excess of \_\_\_\_\_ % of the principal amount of the notes. The underwriter may allow, and such dealers may reallow, a concession not in excess of \_\_\_\_\_ % of the principal amount of the notes to certain other dealers. After the initial public offering, the underwriter may change the offering price and other selling terms.

We estimate that the expenses of this offering payable by us, excluding the underwriting discount, will be approximately \$ \_\_\_\_\_.

We have agreed to indemnify the underwriter against certain liabilities, including liabilities under the Securities Act of 1933, and to contribute to payments the underwriter may be required to make in respect of any of these liabilities.

The notes are a new issue of securities with no established trading market. The notes will not be listed on any securities exchange or quoted on any automated dealer quotation system. The underwriter may make a market in the notes after completion of the offering, but will not be obligated to do so and may discontinue any market-making activities at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes or that an active trading market for the notes will develop. If an active trading market for the notes does not develop, the market price and liquidity of the notes may be adversely affected.

In connection with the offering of the notes, the underwriter may engage in transactions that stabilize, maintain or otherwise affect the price of the notes. Specifically, the underwriter may overallocate in connection with the offering, creating a short position. In addition, the underwriter may bid for, and purchase, notes in the open market to cover short positions or to stabilize the price of the notes. Any of these activities may stabilize or maintain the market price of the notes above independent market levels, but no representation is made hereby that the underwriter will engage in any of those transactions or of the magnitude of any effect that the transactions described above may have on the market price of the notes. The underwriter will not be required to engage in these activities, and if it engages in these activities, it may end any of these activities at any time without notice.

Banc of America Securities LLC and/or its affiliates have provided and in the future may continue to provide investment banking, commercial banking and/or other financial services, including the provision of credit facilities, to us in the ordinary course of business for which it has received and will receive customary compensation. Bank of America, N.A., an affiliate of the underwriter, is a lender under our revolving credit facility.

### LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for us by Oppenheimer Wolff & Donnelly LLP, Minneapolis, Minnesota. Certain legal matters in connection with this offering will be passed upon for the underwriter by Shearman & Sterling LLP, New York, New York.

PROSPECTUS

## The Toro Company

### Debt Securities

The Toro Company may offer and sell, from time to time, debt securities, in one or more series, consisting of notes, bonds, debentures or other evidences of indebtedness.

The aggregate initial offering price of debt securities that may be sold pursuant to this prospectus will be as stated in one or more supplements to this prospectus. We will provide the specific terms of the debt securities to be sold by us in supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest.

Our principal executive offices are located at 8111 Lyndale Avenue South, Bloomington, Minnesota 55420-1196. Our telephone number is (952) 888-8801.

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

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We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, or through a combination of these methods, on a continuous or delayed basis. We will provide specific terms of the plan of distribution for any securities to be offered in supplements to this prospectus. The applicable prospectus supplement also will set forth any applicable commissions or discounts and our net proceeds from the sale of securities.

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The date of this prospectus is April 23, 2007

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**Table of Contents**

<u>About This Prospectus</u>	1
<u>Where You Can Find More Information</u>	1
<u>Incorporation By Reference</u>	2
<u>Cautionary Note Regarding Forward-Looking Statements</u>	2
<u>Ratio Of Earnings To Fixed Charges</u>	3
<u>Use Of Proceeds</u>	3
<u>Description Of Debt Securities</u>	4
<u>Plan Of Distribution</u>	17
<u>Legal Matters</u>	19
<u>Experts</u>	19

## **ABOUT THIS PROSPECTUS**

This prospectus is part of an automatic shelf registration statement that we filed with the Securities and Exchange Commission (the SEC) as a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933. Under the automatic shelf process, we may, over time, sell any combination of the debt securities described in this prospectus or in any applicable prospectus supplement in one or more offerings. The exhibits to our registration statement contain the full text of certain contracts and other important documents we have summarized in this prospectus. Since these summaries may not contain all the information that you may find important in deciding whether to purchase the securities we offer, you should review the full text of these documents. The registration statement and the exhibits can be obtained from the SEC as indicated under the heading **Where You Can Find More Information**.

This prospectus provides you with a general description of the debt securities we may offer. Each time we sell debt securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading **Where You Can Find More Information**.

In this prospectus, references to **The Toro Company**, **Toro**, **the Company**, **we**, **us** and **our** mean The Toro Company, unless we state otherwise in the context indicates otherwise.

Unless otherwise stated, currency amounts in this prospectus and any prospectus supplement are stated in United States dollars, or \$.

## **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You can inspect and copy these reports, proxy statements and other information at the public reference facilities of the SEC at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. The SEC also maintains a web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC (<http://www.sec.gov>). Our internet address for Toro branded product related information [www.toro.com](http://www.toro.com) and our web site for corporate and investor information is [www.thetorocompany.com](http://www.thetorocompany.com). The information on or linked to/from our Web site is not part of, and is not incorporated by reference into, this prospectus or any applicable prospectus supplement. You can inspect reports and other information we file at the office of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

We have filed a registration statement and related exhibits with the SEC under the Securities Act of 1933. The registration statement contains additional information about us and the securities we may issue. You may inspect the registration statement and exhibits without charge at the office of the SEC at 100 F Street, N.E., Washington, D.C. 20549, and you may obtain copies from the SEC at prescribed rates.

## INCORPORATION BY REFERENCE

The SEC allows us to incorporate by reference information into this prospectus, which means that we can disclose important information to you by referring to those documents. We hereby incorporate by reference the documents listed below, which means that we are disclosing important information to you by referring you to those documents. The information that we file later with the SEC will automatically update and in some cases supersede this information. Specifically, we incorporate by reference the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- Our Annual Report on Form 10-K for the year ended October 31, 2006;
- Our Quarterly Report on Form 10-Q for the quarterly period ended February 2, 2007;
- Our Current Reports on Form 8-K filed on January 12, March 6 and April 13, 2007;
- Our Proxy Statement filed on January 31, 2007; and
- Future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus and before the termination of this offering.

You may request a copy of these filings at no cost by writing or telephoning us at the following address:

The Toro Company  
8111 Lyndale Avenue South  
Bloomington, Minnesota 55420-1196  
Attention: J. Lawrence McIntyre  
Vice President, Secretary & General Counsel  
(952) 888-8801

You should rely only on the information incorporated by reference or provided in this prospectus and any applicable supplement or any free writing prospectus provided, authorized or used by us. We have not authorized anyone else to provide you with other information.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information we are incorporating by reference into it contains not only historical information, but also forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 that are subject to the safe harbor created by those sections. Statements that are not historical are forward-looking and reflect expectations and assumptions. We try to identify forward-looking statements in this prospectus and the information incorporated by reference into this prospectus by using words such as expect, looking ahead, anticipate, plan, estimate, believe, should, may, intend, and similar expressions. Our forward-looking statements generally relate to our future performance, including our anticipated operating results and liquidity requirements, our business strategies and goals, and the effect of laws, rules, regulations as well as new accounting pronouncements and outstanding litigation, on our business, operating results and financial condition.

Forward-looking statements involve risks and uncertainties. These risks and uncertainties include factors that affect all businesses operating in a global market as well as matters specific to Toro. The most significant factors known to us that could materially adversely affect our business, operations, industry, financial position or future financial performance are described under the caption Risk Factors in the applicable prospectus supplement to be provided with this prospectus and in our Annual Report on Form 10-K, and the description of trends and other factors in the Management's Discussion and Analysis

of Financial Condition and Results of Operations set forth in our Annual Report on Form 10-K and in our other filings with the SEC. We wish to caution investors not to place undue reliance on any forward-looking statement which speaks only as of the date made and to recognize that forward-looking statements are predictions of future results, which may not occur as anticipated. Actual results could differ materially from those anticipated in the forward-looking statements and from historical results, due to the risks and uncertainties referred to earlier in this paragraph, as well as other risks and uncertainties that we may consider immaterial or do not anticipate at this time. The risks and uncertainties referred to in this paragraph are not exclusive and further information concerning our company and our businesses, including factors that potentially could materially affect our financial results or condition, may emerge from time to time.

We assume no obligation to update forward-looking statements to reflect actual results or changes in factors or assumptions affecting such forward-looking statements. We advise you, however, to consult any further disclosures we make on related subjects in our future annual, quarterly and current reports that we file with or furnish to the SEC.

**RATIO OF EARNINGS TO FIXED CHARGES**

The table below presents our ratio of earnings to fixed charges for each of the periods indicated.

	Years Ended October 31,					Three Months Ended	
	2002	2003	2004	2005	2006	February 3, 2006	February 2, 2007
Ratio of earnings to fixed charges	4.43	6.43	7.96	8.01	8.98	4.64	5.16

For purposes of computing this ratio, earnings consist of earnings before income taxes plus fixed charges. Fixed charges include interest, whether expensed or capitalized, and such portion of rental expense that we deem to be representative of interest.

**USE OF PROCEEDS**

Unless otherwise specified in a prospectus supplement accompanying this prospectus, the net proceeds from the sale of the securities to which this prospectus relates will be used for general corporate purposes, which may include repurchase of our common stock, investments in or extensions of credit to our subsidiaries, the financing of possible acquisitions or business expansion, or other lawful purposes. Net proceeds may be temporarily invested before use.



## DESCRIPTION OF DEBT SECURITIES

### General

The debt securities will be issued under an Indenture, as supplemented from time to time in accordance with its terms (the Indenture), between the Company and The Bank of New York Trust Company, N.A. The following summary of the Indenture and the debt securities is subject to the detailed provisions of the Indenture, a copy of which is an exhibit to the Registration Statement. Wherever references are made to particular provisions of the Indenture, such provisions are incorporated by reference as a part of the statements made herein and such statements are qualified in their entirety by such reference. Certain defined terms in the Indenture are capitalized herein. Italicized references appearing in parentheses are to section numbers of the Indenture. As used in this Description of Debt Securities, the Company refers to The Toro Company and does not include its subsidiaries.

The Indenture does not limit the amount of debt securities that may be issued thereunder. It provides that debt securities may be issued from time to time in series. The debt securities will be unsecured senior obligations of the Company and will rank pari passu with all other unsecured and un-subordinated debt of the Company.

The applicable prospectus supplement will describe the specific terms of the debt securities we will offer, including, where applicable, the following:

- the title of such debt securities;
- the limit, if any, upon the aggregate principal amount of such debt securities;
- the dates on which or periods during which such debt securities may be issued and the date or dates on which, and the place or places at which, the principal of (and premium, if any, on) such debt securities will be payable;
- the rate or rates, if any, or the method of determination thereof, at which such debt securities will bear interest, if any, the date or dates from which such interest will accrue, the dates on which such interest will be payable and the regular record dates for the interest payable on such interest payment dates;
- the person to whom any interest on the debt securities is payable, if other than the person in whose name the debt security is registered on the regular record date for such interest;
- the obligation, if any, of the Company to redeem, repay or purchase such debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder and the periods within which or the dates on which, the prices at which and the terms and conditions upon which such debt securities will be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;
- the periods within which or the dates on which, the prices, if any, at which and the terms and conditions upon which such debt securities may be redeemed, in whole or in part, at the option of the Company and, if other than by a board resolution, the manner in which any election by the Company will be evidenced;
- if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which such debt securities will be issuable;
- whether such debt securities are to be issued at less than the principal amount thereof and the amount of discount with which such debt securities will be issued;
- provisions, if any, for the defeasance of such debt securities;



- provisions for determining the amount of principal outstanding on the debt securities at any date prior to the stated maturity, whether for purposes of acceleration or otherwise;
- if other than the entire principal amount, the portion of the principal amount of any debt securities of a series outstanding which will be payable upon acceleration of their maturity as permitted by the Indenture;
- if other than United States dollars, the currency or composite currency in which such debt securities are to be denominated, or in which payment of the principal of (and premium, if any) and interest on such debt securities will be made and the manner of determining the equivalent thereof in United States Dollars for any purpose;
- if the principal of (and premium, if any) or interest on such debt securities are to be payable, at the election of the Company or a holder, in a currency or composite currency other than that in which such debt securities are denominated or stated to be payable, the periods within which and the terms and conditions upon which, such election may be made and the time and the manner of determining the exchange rate between the currency or composite currency in which such debt securities are denominated or stated to be payable and the currency in which such debt securities are to be paid pursuant to such election;
- if the amount of payments of principal of (and premium, if any) or interest on the debt securities may be determined with reference to an index or pursuant to a formula, the manner in which such amounts will be determined;
- whether such debt securities will be issued in the form of one or more Global Securities and, if so, the identity of the depository for such Global Securities, the form of legend to appear on any such Global Security, the circumstances under which such Global Security may be exchanged in whole or in part for debt securities registered in the name of a person other than the depository;
- any additions to or changes in the events of default or covenants relating solely to such debt securities or any events of default or covenants generally applicable to debt securities which are not to apply to the particular series of debt securities in respect of which the prospectus supplement is being delivered and any change in the right of the Trustee or the requisite holders of such debt securities to declare the principal amount thereof due and payable; and
- any other terms of such debt securities not inconsistent with the provisions of the Indenture. (*Section 3.01*)

Unless otherwise indicated in the applicable prospectus supplement, the Indenture does not afford the holder of any series of debt securities the right to tender such debt securities to the Company for repurchase, or provide for any increase in the rate or rates of interest per annum at which such debt securities will bear interest, in the event the Company should become involved in a highly leveraged transaction.

The debt securities may be issued under the Indenture bearing no interest or interest at a rate below the prevailing market rate at the time of issuance, to be offered and sold at a discount below their stated principal amount. Federal income tax consequences and other special considerations applicable to any such discounted debt securities or to other debt securities offered and sold at par which are treated as having been issued at a discount for federal income tax purposes may be described in the prospectus supplement relating thereto.

A portion of the assets of the Company is held by subsidiaries. The Company's right and the rights of its creditors, including the holders of debt securities, to realize the proceeds of the assets of any subsidiary upon its liquidation or recapitalization would be subject to the prior claims of such subsidiary's creditors, except to the extent that the Company may itself be a creditor with recognized claims against such

subsidiary. The indenture provides that subsidiaries of the Company may incur additional debt under certain circumstances.

Unless otherwise described in the applicable prospectus supplement, the debt securities will be issued only in fully registered form without coupons, in denominations of \$1,000 and multiples of \$1,000, and will be payable only in United States dollars. *(Section 3.02)* In addition, all or a portion of the debt securities of any series may be issued as permanent registered Global Securities, which will be exchangeable for definitive debt securities only under certain conditions. *(Section 2.04)* The applicable prospectus supplement indicates the denominations to be issued, the procedures for payment of interest and principal thereon and other matters. No service charge will be made for any registration of transfer or exchange of the debt securities, but the Company may, in certain instances, require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. *(Section 3.05)*

The Company will deliver debt securities of any series, duly executed by the Company, to the Trustee for authentication, together with an order for the authentication and delivery of such debt securities. The Trustee, in accordance with such order, will authenticate and deliver such debt securities. No debt security of any series is entitled to any benefit under the Indenture or will be valid or obligatory for any purpose unless there appears thereon a certificate of authentication substantially in the form provided for in the Indenture and manually executed by the Trustee or an authenticating agent duly appointed by the Trustee. Such certificate will be conclusive evidence, and the only evidence, that such debt securities have been duly authenticated and delivered under, and are entitled to the benefits of, the Indenture. *(Section 3.03)*

### **Global Securities**

The debt securities of a particular series may be issued in the form of one or more Global Securities which will be deposited with a depository (the Depository), or its nominee, each of which will be identified in the prospectus supplement relating to such series. Unless and until exchanged, in whole or in part, for debt securities in definitive registered form, a Global Security may not be transferred except as a whole by the Depository for such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor of such Depository or a nominee of such successor. *(Section 2.04)* The specific terms of the depository arrangement with respect to any portion of a particular series of debt securities to be represented by a Global Security will be described in the prospectus supplement relating to such series. The Company anticipates that the following provisions will apply to all depository arrangements.

Upon the issuance of a Global Security, the Depository therefor or its nominee will credit, on its book entry and registration system, the respective principal amounts of the debt securities represented by such Global Security to the accounts of the persons having accounts with such Depository ( participants ) designated by the underwriters or agents participating in the distribution of such debt securities or by the Company if such debt securities are offered and sold directly by the Company. Ownership of beneficial interests in a Global Security will be limited to participants or persons that may hold beneficial interests through participants. Ownership of beneficial interests in a Global Security will be shown on, and the transfer of such ownership will be effected only through, records maintained by the Depository therefor or its nominee (with respect to beneficial interests of participants) or by participants or persons that hold through participants (with respect to interests of persons other than participants). The laws of some states require certain purchasers of securities to take physical delivery thereof in definitive form. Such depository arrangements and such laws may impair the ability to transfer beneficial interests in a Global Security.

So long as the Depository for a Global Security or its nominee is the registered owner thereof, such Depository or such nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by such Global Security for all purposes under the Indenture. Except as provided below, owners of beneficial interests in a Global Security will not be entitled to have debt securities of the

series represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of debt securities of such series in definitive form and will not be considered the owners or holders thereof under the Indenture for any other purpose.

Principal, premium, if any, and interest payments on a Global Security registered in the name of a Depository or its nominee will be made to such Depository or nominee, as the case may be, as the registered owner of such Global Security. None of the Company, the Trustee or any paying agent for debt securities of the series represented by such Global Security will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in such Global Security or for maintaining, supervising or reviewing any records relating to such beneficial interests.

The Company expects that the Depository for a Global Security or its nominee, upon receipt of any payment of principal, premium or interest, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Security as shown on the records of such Depository or its nominee. The Company also expects that payments by participants to owners of beneficial interests in such Global Security held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in street name, and will be the responsibility of such participants.

If the Depository for a Global Security representing debt securities of a particular series is at any time unwilling or unable to continue as Depository or has ceased to be a clearing agency registered under the Securities Exchange Act of 1934, or there has been an event of default with respect to the Global Security that remains uncured, the Company will issue debt securities of such series in definitive form in exchange for such Global Security. In addition, the Company may at any time and in its sole discretion determine not to have the debt securities of a particular series represented by one or more Global Securities and, in such event, will issue debt securities of such series in definitive form in exchange for all of the Global Securities representing debt securities of such series.

Unless otherwise specified in the applicable prospectus supplement, The Depository Trust Company, or DTC, will act as depository for securities issued in the form of Global Securities. Global Securities will be issued only as fully registered securities registered in the name of Cede & Co., which is DTC's nominee. One or more fully registered Global Securities will be issued for these securities representing in the aggregate the total number of these securities, and will be deposited with or on behalf of DTC.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC was created to hold securities for DTC participants and to facilitate the settlement of securities transactions among DTC participants through electronic computerized book-entry changes to the accounts of its participants, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations, such as the underwriter of the notes. Certain DTC participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others, known as indirect participants, such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

Purchases of securities within the DTC system must be made by or through direct participants, which will receive a credit for the securities on DTC's records. The ownership interest of each actual purchaser of each security, commonly referred to as the beneficial owner, is in turn to be recorded on the direct and indirect participants' records. Beneficial owners will not receive written confirmation from DTC of their

purchases, but beneficial owners are expected to receive written confirmations providing details of the transactions, as well as periodic statements of their holdings, from the direct or indirect participants through which the beneficial owners purchased securities. Transfers of ownership interests in securities issued in the form of Global Securities are accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in these securities, except if use of the book-entry system for such securities is discontinued.

DTC has no knowledge of the actual beneficial owners of the securities issued in the form of Global Securities. DTC's records reflect only the identity of the direct participants to whose accounts such securities are credited, which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Any redemption notices must be sent to DTC. If less than all of the securities of a series or class are being redeemed, DTC's practice is to determine by lot the amount to be redeemed from each participant.

Although voting with respect to securities issued in the form of Global Securities is limited to the holders of record, when a vote is required, neither DTC nor Cede & Co. will itself consent or vote with respect to such securities. Under its usual procedures, DTC would mail an omnibus proxy to the issuer of the securities as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants to whose accounts such securities are credited on the record date, identified in a listing attached to the omnibus proxy.

Payments in respect of securities issued in the form of Global Securities will be made by the issuer of such securities to DTC. DTC's practice is to credit direct participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payments on such payment date. Payments by participants to beneficial owners will be governed by standing instructions and customary practices and will be the responsibility of such participant and not of DTC or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payments to DTC are the responsibility of the issuer of the applicable securities, disbursement of such payments to direct participants is the responsibility of DTC, and disbursements of such payments to the beneficial owners is the responsibility of direct and indirect participants.

DTC may discontinue providing its services as depository with respect to any securities at any time by giving reasonable notice to the issuer of such securities. If a successor depository is not obtained, individual security certificates representing such securities are required to be printed and delivered. We, at our option, may decide to discontinue use of the system of book-entry transfers through DTC or a successor depository.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be accurate, but we assume no responsibility for its accuracy. We have no responsibility for the performance by DTC or its participants of their obligations as described in this prospectus or under the rules and procedures governing their operations.

#### **Certain Covenants of the Company**

*Limitation on Debt Secured by a Mortgage.* The Indenture provides that neither the Company nor any Restricted Subsidiary will issue, incur, create, assume or guarantee any Debt secured by any mortgage, security interest, pledge, lien, charge or other encumbrance ( Mortgage ) on any Principal Property of the

Company or a Restricted Subsidiary or upon any shares of stock of any Restricted Subsidiary unless the Company secures or causes such Restricted Subsidiary to secure the debt securities equally and ratably with, or prior to, such secured Debt. This restriction will not apply to Debt secured by:

- Mortgages on property existing at the time of acquisition thereof by the Company or any Subsidiary;
- Mortgages on property, shares of stock or Debt or other assets of any corporation existing at the time such corporation becomes a Restricted Subsidiary;
- Mortgages on property, shares of stock or Debt existing at the time of acquisition thereof by the Company or a Restricted Subsidiary or Mortgages thereon to secure the payment of all or any part of the purchase price thereof, or Mortgages on property, shares of stock or Debt to secure any Debt for borrowed money incurred prior to, at the time of or within 270 days after, the latest of the acquisition thereof or, in the case of property, the completion of construction, the completion of improvements, or the commencement of substantial commercial operation of such property for the purpose of financing all or any part of the purchase price thereof, such construction, or the making of such improvements;
- Mortgages to secure Debt owing to the Company or to a Restricted Subsidiary;
- Mortgages existing at the dates of issuance of the series of debt securities under the Indenture;
- Mortgages on property of a corporation existing at the time such corporation is merged into or consolidated with the Company or a Restricted Subsidiary or at the time of a sale, lease or other disposition of the properties of a corporation as an entirety or substantially as an entirety to the Company or a Restricted Subsidiary;
- Mortgages in favor of the United States or any State, territory or possession thereof (or the District of Columbia) or any department, agency, instrumentality or political subdivision of any of them, to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any Debt incurred for the purpose of financing all or any part of the purchase price or cost of constructing or improving the property subject to such Mortgages;
- Mortgages created in connection with the acquisition of assets or a project financed with, and created to secure, a Nonrecourse Obligation; and
- Mortgages representing the extension, renewal, refinancing or replacement of any Mortgage referred to in the foregoing bullet points, inclusive, subject to some limitations.

Notwithstanding the restrictions set forth in the preceding paragraph, the Company or any Restricted Subsidiary will be permitted to issue, incur, create, assume or guarantee Debt secured by a Mortgage, without equally and ratably securing the debt securities, so long as the aggregate of all Debt secured by Mortgages other than Mortgages referred to in the foregoing bullet points and the aggregate Value of the Sale and Lease-Back Transactions in existence at that time (not including those in connection with which the Company has voluntarily retired funded Debt as provided in the Indenture) does not exceed 15% of Consolidated Net Tangible Assets. (*Section 10.08*)

*Limitation on Sale and Lease-Back Transactions.* The Indenture provides that neither the Company nor any Restricted Subsidiary will enter into any Sale and Lease-Back Transaction with respect to any Principal Property, other than any such transaction involving a lease for a term of not more than three years or any such transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries, unless: (1) the Company or such Restricted Subsidiary would be entitled to incur indebtedness secured by a Mortgage on the Principal Property involved in such transaction at least equal in amount to the Attributable Debt with respect to such Sale and Lease-Back Transaction, without equally and ratably securing the debt securities pursuant to the covenant described above under *Limitation on*





Debt Secured by a Mortgage ; or (2) the Company applies an amount equal to the greater of the net proceeds of such sale or the Attributable Debt with respect to such Sale and Lease-Back Transaction within 270 days of such sale to either (or a combination of) the retirement (other than any mandatory retirement, mandatory prepayment or sinking fund payment or by payment at maturity) of debt for borrowed money of the Company or a Restricted Subsidiary that matures more than 12 months after the creation of such indebtedness or the purchase, construction or development of other comparable property. *(Section 10.09)*

*Certain Definitions.*

Attributable Debt is defined in the Indenture to mean, when used in connection with a Sale and Lease-Back Transaction involving a Principal Property, at the time of determination, the present value of the total net amount of rent and other payments required to be paid under such lease during the remaining term thereof (or any renewal or extension) discounted at the rate of interest set forth in such lease or, if not practicable to determine such rate, the weighted average interest rate per annum (in the case of Original Issue Discount Securities, the imputed interest rate) borne by the debt securities of each series outstanding pursuant to the Indenture, compounded semi-annually. *(Section 1.01)*

Consolidated Net Tangible Assets is defined in the Indenture to mean total assets (excluding applicable reserves and other properly deductible items) less: (a) total current liabilities, except for (1) notes and loans payable, (2) current maturities of long-term Debt, and (3) current maturities of obligations under capital leases; and (b) goodwill, patents and trademarks, to the extent included in total assets; all as set forth on the most recent consolidated balance sheet of the Company and its Restricted Subsidiaries and computed in accordance with generally accepted accounting principles. *(Section 1.01)*

Debt is defined in the Indenture to mean, without duplication, with respect to any person, whether recourse is to all or a portion of the assets of such person and whether or not contingent, (i) every obligation of such person for money borrowed, (ii) every obligation of such person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses, (iii) every reimbursement obligation of such person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such person, (iv) every obligation of such person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business), (v) the maximum fixed redemption or repurchase price of redeemable stock of such person at the time of determination, (vi) every obligation to pay rent or other payment amounts of such person with respect to any Sale and Lease-back Transaction to which such person is a party, and (vii) every obligation of the type referred to in clauses (i) through (vi) of another person and all dividends of another person the payment of which, in either case, such person has guaranteed or is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise. *(Section 1.01)*

Nonrecourse Obligation is defined in the Indenture to mean Debt or other obligations substantially related to (i) the acquisitions of assets not previously owned by the Company or any Restricted Subsidiary, or (ii) the financing of a project involving the development or expansion of properties of the Company or any Restricted Subsidiary, as to which the obligee with respect to such Debt or obligation has no recourse to the Company or any Restricted Subsidiary or any assets of the Company or any Restricted Subsidiary other than the assets which were acquired with the proceeds of such transaction or the project financed with the proceeds of such transaction (and the proceeds thereof). *(Section 1.01)*

Original Issue Discount Security is defined in the Indenture to mean any debt security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity of such debt security. *(Section 1.01)*

Outstanding, with respect to debt securities, is generally defined in the Indenture to mean, as of the date of determination, all debt securities authenticated and delivered under the Indenture, except:

- debt securities previously cancelled by the Trustee or delivered to the Trustee for cancellation;
- debt securities for which adequate funds for the payment or redemption of such securities have previously been deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside for the holders of such debt securities;
- debt securities which have been defeased; and
- debt securities which have been paid pursuant to destruction, loss or theft as provided for in the Indenture or in exchange for or in lieu of which other debt securities have been authenticated and delivered pursuant to the Indenture, other than any such debt securities held by a bona fide purchaser. (*Section 1.01*)

Principal Property is defined in the Indenture to mean the land, land improvements, buildings and fixtures (to the extent they constitute real property interests) (including any leasehold interest therein), constituting the principal corporate office, any manufacturing facility or any distribution center (whether now owned or hereafter acquired) which: (a) is owned by the Company or any Subsidiary; (b) is located within any of the present 50 states of the United States or the District of Columbia; (c) has not been determined in good faith by the board of directors of the Company not to be materially important to the total business conducted by the Company and its Subsidiaries taken as a whole; and (d) has a market value on the date as of which the determination is being made in excess of 1.0% of the Consolidated Net Tangible Assets of the Company as most recently determined on or prior to such date. (*Section 1.01*)

Redemption Price is defined in the Indenture to mean, when used with respect to any debt security to be redeemed, the price at which it is to be redeemed pursuant to the Indenture. (*Section 1.01*)

Restricted Subsidiary is defined in the Indenture to mean any Subsidiary which owns any Principal Property which has a market value on the date as of which the determination is being made in excess of 2.0% of Consolidated Net Tangible Assets of the Company as most recently determined on or prior to such date. (*Section 1.01*)

Sale and Lease-Back Transaction is defined in the Indenture to mean any arrangement with any person providing for the leasing by the Company or any Restricted Subsidiary of any Principal Property which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to any person. (*Section 1.01*)

Subsidiary is defined in the Indenture to mean any corporation of which at least a majority of the outstanding voting stock having the power to elect a majority of the board of directors of such corporation is at the time owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. (*Section 1.01*)

#### **Consolidation, Merger and Sale of Assets**

The Indenture provides that the Company may not consolidate with or merge into any other person, or convey, transfer or lease its properties and assets substantially as an entirety to any other person, and that the Company will not permit any person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless, among other things, (i) the person formed by such consolidation or into which the Company is merged or the person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety, is a corporation, partnership or trust organized and existing under the laws of the United States, any State thereof or the District of Columbia and expressly assumes the Company's obligations on the debt securities and under the Indenture by means of an indenture supplemental to the

Indenture; and (ii) immediately after giving effect to such transaction, and treating any indebtedness which becomes an obligation of the Company or any Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no event of default and no event which, after notice or lapse of time, or both, would become an event of default, has occurred and is continuing. (*Section 8.01*)

#### **Events of Default, Waiver and Notice**

With respect to the debt securities of any series, an event of default is defined in the Indenture as being any one of the following events:

- default in the payment of any interest upon any debt securities of that series when it becomes due and payable, and continuance of such default for a period of 30 days;
- default in payment of the principal of or premium, if any, on any debt security of that series at its maturity;
- default in the deposit of any sinking fund payment, when and as due by the terms of any debt securities of that series;
- default by the Company in the performance of any other of the covenants or warranties in the Indenture for the benefit of such series applicable to the Company which has not been remedied for a period of 30 days after a notice of default has been given under the Indenture by the Trustee or by holders of at least 10% in principal amount of the Outstanding debt securities of that series;
- the failure to pay when due any existing or future indebtedness for money borrowed (including indebtedness evidenced by debt securities of any series other than that series) with a principal amount then outstanding in excess of \$10,000,000 under any mortgage, indenture or other instrument under which any such Debt is issued or secured or evidenced (including the Indenture), or any other default under any such mortgage, indenture or other instrument which results in the acceleration of maturity of such indebtedness, unless such indebtedness or acceleration has been discharged or annulled within 10 days after a notice of default has been given under the Indenture by the Trustee or by holders of at least 25% in principal amount of the Outstanding debt securities of that series;
- certain events of bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary; or
- any other event of default provided with respect to the debt securities of that series. (*Section 5.01*)

Within 90 days after the occurrence of any event of default under the Indenture with respect to debt securities of any series, the Trustee is required to notify the holders of debt securities of any default unless, in the case of any default other than a default in the payment of principal of or premium, if any, or interest on any debt securities, a trust committee of the board of directors or responsible officers of the Trustee in good faith considers it in the interest of the holders of debt securities not to do so. (*Section 6.02*)

The Indenture provides that if an event of default, other than an event of default as described in the sixth bullet point in the above paragraph, with respect to debt securities of any series at the time Outstanding has occurred and is continuing, then either the Trustee or the holders of at least 25% in aggregate principal amount of the debt securities of that series then Outstanding may declare the entire principal and accrued interest of all debt securities of such series (or, if any of the debt securities of that series are Original Issue Discount Securities, such portion of the principal amount of such debt securities as may be specified by the terms thereof) to be due and payable immediately. If an event of default described in the sixth bullet point in the above paragraph with respect to any series of debt securities at the time Outstanding occurs, the principal amount of all the debt securities of that series (or, if any of the debt

securities of that series are Original Issue Discount Securities, such portion of the principal amount of such debt securities as may be specified by the terms thereof) will automatically, and without any declaration or other action on the part of the Trustee or any holder, become immediately due and payable. Any time after such a declaration of acceleration with respect to the debt securities of any series has been made, but before a judgment or decree for the payment of money based on such acceleration has been obtained by the Trustee, the holders of a majority in principal amount of the Outstanding debt securities of that series, may, under certain circumstances, rescind and annul such acceleration. The holders of not less than a majority in aggregate principal amount of the Outstanding debt securities of any series may on behalf of the holders of all the debt securities of such series waive any past defaults under the Indenture with respect to such series and its consequences, except that defaults in payment of principal or premium, if any (other than by a declaration of acceleration), or interest on the debt securities or provisions of such series may not be modified or amended without the consent of the holders of all Outstanding debt securities of such series affected. *(Sections 5.02 and 5.13)*

The Company will be required to furnish to the Trustee annually a statement as to whether the Company is in default in the performance and observance of any of the terms, provisions and conditions of the Indenture and, if the Company is in default, specifying all such defaults and the nature and status of such defaults. *(Section 10.04)*

Subject to certain conditions set forth in the Indenture, the holders of a majority in principal amount of the then Outstanding debt securities of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee under the Indenture in respect of such series. No holder of any debt securities has any right to cause the Trustee to institute any proceedings, judicial or otherwise, with respect to the Indenture, or for the appointment of a receiver or trustee, or for any remedy thereunder unless, among other things, the holder or holders of debt securities has offered to the Trustee reasonable indemnity against costs, expenses and liabilities relating to such proceedings. *(Sections 5.12 and 5.07)*

The Indenture provides that, in determining whether the holders of the requisite aggregate principal amount of the Outstanding debt securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action thereunder as of any date, (a) the principal amount of an Original Issue Discount Security that will be deemed to be Outstanding will be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the maturity thereof to such date, (b) if, as of such date, the principal amount payable at the stated maturity of a debt security is not determinable, the principal amount of such debt security which will be deemed to be Outstanding will be the amount as established in or pursuant to a board resolution and set forth, or determined in the manner provided, in an officers certificate, or established in one or more supplemental indentures, prior to the issuance of such debt securities, (c) the principal amount of a debt security denominated in one or more foreign currencies or currency units which will be deemed to be Outstanding will be the U.S. dollar equivalent, determined as of such date in the manner as described in clause (b) above, of the principal amount of such debt security (or, in the case of a debt security described in clause (a) or (b) above, of the amount determined as provided in such clause), and (d) debt securities owned by the Company or any other obligor upon the debt securities or any affiliate of the Company or of such other obligor will be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee is protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only debt securities which the Trustee actually knows to be so owned will be so disregarded. Debt securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such debt securities and that the pledgee is not the Company or any other obligor upon the debt securities or any affiliate of the Company or of such other obligor. *(Section 1.01)*

## Redemption

Debt securities that are redeemable pursuant to the terms of any series are redeemable in whole or in part at the election of the Company upon at least 60 days notice to the Trustee of the principal amount of debt securities to be redeemed, the date of redemption, and other pertinent details of the debt securities to be redeemed. If less than all the debt securities of any series are to be redeemed, the particular securities to be redeemed will be selected by the Trustee not more than 60 days prior to the redemption date from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee deems fair and appropriate. Notice of redemption will also be given to each holder of debt securities to be redeemed not less than 30 nor more than 60 days prior to the redemption date to each holder of debt securities to be redeemed, at the holder's address appearing in the security registrar. Such notice to holders will state the redemption date, the redemption price, the amount of debt securities of any series that is to be redeemed, that on the Redemption Date the Redemption Price will become due and payable upon each debt security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after that date, the place where the debt securities may be surrendered for payment and whether the redemption is for a sinking fund. Such notice is irrevocable. Prior to any redemption date, the Company will deposit with the Trustee or with a paying agent an amount of money sufficient to pay the redemption price and any accrued interest on all the debt securities which are to be redeemed on that date. (*Sections 11.01, 11.02, 11.03 and 11.04*)

With respect to any debt securities subject to repayment at the option of the holder, the paying agent must receive at least 30 days but not more than 60 days prior notice containing wire instructions for payment as well as information, guaranteed by an eligible financial institution, pertaining to the principal amount of such debt security, the portion to be repaid, and the certificate number or a description of the terms and tenor of such security. Unless otherwise provided with respect to a particular series, exercise of a repayment option by a holder will be irrevocable. (*Section 11.08*)

## Modification of the Indenture

The Indenture provides that the Company, when authorized by a board resolution, and the Trustee may, without the consent of the holders, modify or amend the Indenture in order to:

- evidence the succession of another person to the Company and the assumption by any such successor of the covenants of the Company in the Indenture and in the debt securities;
- add to the covenants of the Company for the benefit of the holders of all or any series of debt securities (and if such covenants are to be for the benefit of less than all series of debt securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power conferred upon the Company by the Indenture, as supplemented from time to time;
- add any events of default for the benefit of the holders of all or any series of debt securities (and if such additional events of default are to be for the benefit of less than all series of debt securities, stating that such additional events of default are expressly being included solely for the benefit of such series);
- add to or change any of the provisions of the Indenture as necessary to permit or facilitate the issuance of debt securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit the issuance of debt securities in uncertificated form;
- add to, change or eliminate any of the provisions of the Indenture, in respect of one or more series of debt securities, provided that any such addition, change or elimination may not apply to any debt security of any series created prior to such addition, change or elimination or modify the rights of the holder of any such debt security;

- to secure the debt securities if and as required under the Indenture;
- establish the form or terms of debt securities of any series as permitted under the Indenture;
- evidence and provide for the acceptance of appointment under the Indenture of a successor Trustee with respect to the debt securities of one or more series and to add to or change any of the provisions of the Indenture as necessary to provide for or facilitate the administration of the trusts thereunder by more than one Trustee, pursuant to the requirements of the Indenture; or
- cure any ambiguity, or correct or supplement any provision of the Indenture which may be inconsistent with any other provision of the Indenture, or add any other provisions with respect to matters or questions arising under the Indenture, provided that such action does not adversely affect the interest of the holders of debt securities of any series. (*Section 9.01*)

With respect to the debt securities of any series, modification or amendment of the Indenture may be made by the Company, when authorized by a board resolution, and the Trustee with the consent of the holders of a majority in aggregate principal amount of the debt securities of such series, except that no such modification or amendment may, without the consent of the holders of all then Outstanding debt securities of such series:

- change the maturity date of the principal of, or any installment of principal of or interest on, any debt securities of such series;
- reduce the principal amount of, or any installment of principal or interest or rate of interest on, or any premium payable on redemption of any debt securities of such series;
- reduce the principal amount of any debt securities of such series payable upon acceleration of the maturity thereof;
- change the place or the currency of payment of principal of, or any premium or interest on, any debt securities of such series;
- impair the right to institute suit for the enforcement of any payment on or with respect to any debt securities of such series on or after the due date thereof (or, in the case of redemption, on or after the redemption date thereof);
- reduce the percentage in principal amount of debt securities of such series then Outstanding, the consent of whose holders is required for modification or amendment of the Indenture or for waiver of certain defaults provided for in the Indenture or for waiver of compliance with certain provisions of the Indenture; or
- modify certain provisions of the Indenture regarding the amendment or modification of, or waiver of past defaults with respect to, or waiver of certain covenants with respect to, the Indenture or the debt securities. (*Section 9.02*)

#### **Discharge of the Indenture**

The Indenture, with respect to the debt securities of any series (if all series issued under the Indenture are not to be affected), will upon the written request or order of the Company cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of debt securities therein expressly provided for), when:

- either (A) all debt securities theretofore authenticated and delivered (other than (1) debt securities which have been destroyed, lost or stolen and which have been replaced or paid and (2) debt securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the

Company or discharged from such trust) have

15

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been delivered to the Trustee for cancellation or (B) all such debt securities not theretofore delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their stated maturity within one year or (3) are to be called for redemption within one year, and the Company in the case of (1), (2) or (3) above, has deposited or caused to be deposited with the Trustee an amount in United States dollars sufficient to pay and discharge the entire Debt on such debt securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of debt securities which have become due and payable) or to the stated maturity or any redemption date, as the case may be;

- the Company has paid or caused to be paid all other sums payable under the Indenture by the Company; and
- the Company has delivered to the Trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent provided for in the Indenture relating to the satisfaction and discharge of the Indenture have been complied with. (*Section 4.01*)

#### **Defeasance and Covenant Defeasance**

Unless otherwise specified in the applicable prospectus supplement, the following provisions relating to defeasance and discharge of Debt, or relating to defeasance of certain covenants in the Indenture, will apply to the debt securities of any series, or to any specified part of a series. (*Section 13.01*)

*Defeasance and Discharge.* The Indenture provides that the Company will be discharged from all its obligations with respect to such debt securities (except for certain obligations to exchange or register the transfer of debt securities, to replace stolen, lost or mutilated debt securities, to maintain paying agencies and to hold moneys for payment in trust) upon the deposit in trust for the benefit of the holders of such debt securities of money or U.S. government obligations, or a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certificate delivered to the Trustee, to pay and discharge, and which will be applied by the Trustee to pay and discharge, the principal of and any premium and interest on such debt securities on the respective stated maturities, in accordance with the terms of the Indenture and such debt securities. Such defeasance or discharge may occur only if, among other things, the Company has delivered to the Trustee an opinion of counsel to the effect that the Company has received from, or there has been published by, the United States Internal Revenue Service a ruling, or since the date of the Indenture, there has been a change in the applicable tax law, in either case to the effect that holders of such debt securities will not recognize gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred. (*Sections 13.02 and 13.04*)

*Defeasance of Certain Covenants.* The Indenture provides that the Company may omit to comply with certain restrictive covenants described under the captions Certain Covenants of the Company Limitation on Debt Secured by a Mortgage and Certain Covenants of the Company Limitation on Sale and Lease-Back Transactions above and any that may be described in the applicable prospectus supplement, and that such omission will be deemed not to be or result in an event of default, in each case with respect to such debt securities. In order to do so, the Company will be required to deposit, in trust for the benefit of the holders of such debt securities, money or U.S. government obligations, or a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certificate delivered to the Trustee, to pay and discharge, and which will be applied by the Trustee, to pay and discharge the principal of and any premium and interest on such debt securities on the respective stated maturities in accordance with the terms of the Indenture and such debt securities. The Company will also be required, among other things, to deliver to the Trustee an opinion of counsel to the effect that holders of such debt securities will not recognize gain or loss for federal income





tax purposes as a result of such deposit and defeasance of certain obligations and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred. In the event the Company exercises this option with respect to any debt securities and such debt securities are declared due and payable because of the occurrence of any event of default, the amount of money and U.S. government obligations so deposited in trust will be sufficient to pay amounts due on such debt securities at the time of their respective stated maturities but may not be sufficient to pay amounts due on such debt securities upon any acceleration resulting from such event of default. In such case, the Company will remain liable for such payments. *(Sections 13.03 and 13.04)*

#### **The Trustee**

The Bank of New York Trust Company, N.A., will serve as the Trustee for the debt securities. The Bank of New York Trust Company, N.A., or its affiliates have provided and may in the future provide commercial banking, brokerage or other services to us and our affiliates in the ordinary course of business for which they have received and will receive customary compensation. The Trustee may serve as a trustee under other indentures entered into by the Company. Upon the occurrence of an event of default under the Indenture or an event which, after notice or lapse of time or both, would become such an event of default, or upon the occurrence of a default under any such other indenture, the Trustee may be deemed to have a conflicting interest with respect to the debt securities for purposes of the Trust Indenture Act and, unless the Trustee is able to eliminate any such conflicting interest, the Trustee may be required to resign as Trustee under the Indenture. In that event, the Company would be required to appoint a successor Trustee for the Indenture. *(Sections 6.08 and 6.10)*

#### **Governing Law**

The Indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York. *(Section 1.12)*

#### **PLAN OF DISTRIBUTION**

We may sell any of the debt securities offered hereby in one or more of the following ways from time to time:

- to or through underwriters or dealers,
- through agents,
- through dealers, and
- directly by us.

#### **Sale Through Underwriters or Dealers**

If underwriters are used in the sale of any of these securities, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in any prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include overallotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, which means that selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if the offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, the underwriters may discontinue these activities at any time.

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market and the securities that we offer through this prospectus may or may not be listed on a securities exchange or quoted on any automated quotation system. Any underwriters to whom we sell these securities for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities that we offer.

If dealers are used in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

#### **Direct Sales and Sales Through Agents**

We may sell the securities directly, and not through underwriters or agents. We may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act of 1933, with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

#### **Delayed Delivery Contracts**

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

#### **General Information**

We may have agreements with the agents, dealers and underwriters to indemnify them and certain of their affiliates against certain civil liabilities, including liabilities under the Securities Act of 1933, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers and underwriters may be customers of, engage in transactions with or perform services for us in the ordinary course of their businesses.

**LEGAL MATTERS**

Unless otherwise specified in the prospectus supplement accompanying this prospectus, Oppenheimer Wolff & Donnelly LLP will pass upon the validity of any debt securities issued under this prospectus. Any underwriters will be represented by their own legal counsel, which will be named in the prospectus supplement.

**EXPERTS**

The consolidated financial statements and schedule of the Company as of October 31, 2006 and 2005, and for each of the years in the three-year period ended October 31, 2006, and management's assessment of the effectiveness of internal control over financial reporting as of October 31, 2006 have been incorporated by reference herein in reliance upon the reports 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.

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**The Toro Company**

**% Notes due 2037**

Prospectus Supplement  
, 2007

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**Banc of America Securities LLC**

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