

BEAZER HOMES USA INC

Form 424B5

January 06, 2010

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The information in this prospectus supplement is not complete and may be changed. We may not sell these securities until the prospectus supplement is delivered in final form. This prospectus supplement is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**Filed Pursuant to Rule 424(b)(5)
File No. 333-163110**

SUBJECT TO COMPLETION DATED JANUARY 5, 2010

**PRELIMINARY PROSPECTUS SUPPLEMENT
(To Prospectus dated January 4, 2010)**

**\$50,000,000
Beazer Homes USA, Inc.
% Mandatory Convertible
Subordinated Notes due 2013**

We are offering \$50.0 million aggregate principal amount of our % Mandatory Convertible Subordinated Notes due 2013 (the notes). Interest on the notes will accrue at a rate of % per year, payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, beginning on April 15, 2010. The notes will mature on January 15, 2013, unless previously converted.

On the stated maturity date, each note, unless previously converted, will automatically convert to shares of our common stock at a conversion rate of not less than shares of our common stock per \$25 principal amount of notes (equivalent to an initial conversion price of \$ per share of our common stock) and not more than shares of our common stock per \$25 principal amount of notes (equivalent to an initial conversion price of \$ per share of our common stock), depending on the applicable market value of our common stock as described in this prospectus supplement, subject in each case to adjustment. In addition to the common stock issuable upon conversion of each note at its maturity, holders will have the right to receive an amount in cash equal to all accrued and unpaid interest on such notes up to but excluding the stated maturity date. We will deliver cash in lieu of any fractional shares of common stock issuable upon conversion.

Holders of the notes will have only the limited rights described in this prospectus supplement and the accompanying prospectus. In particular, holders will not have the right to the repayment of the principal amount of the notes under any circumstances and instead, on the stated maturity date, each note, unless previously converted, will automatically convert to shares of our common stock at the conversion rate described in this prospectus supplement.

At any time prior to the close of business on January 15, 2013, holders may convert the notes, in whole or in part, into shares of our common stock initially at a conversion rate of shares of our common stock per \$25 principal amount of note (equivalent to an initial conversion price of \$ per share of our common stock), subject to adjustment. Holders will not receive any cash payment or additional shares representing accrued and unpaid interest upon such conversion, except in limited circumstances. Instead, interest will be deemed paid in full by the delivery of

shares of common stock to holders upon conversion. We will deliver cash in lieu of any fractional shares of common stock issuable upon conversion.

We can not redeem or require the conversion of the notes prior to the stated maturity date, except in connection with a covenant event, as described in this prospectus supplement. If we undergo a fundamental change, holders may convert the notes into shares of our common stock at the fundamental change conversion rate plus the fundamental change interest make-whole amount as described herein.

We have granted the underwriters named in this prospectus supplement an option, for a period of 30 days from the date of this prospectus supplement, to purchase up to an additional \$7.5 million aggregate principal amount of notes at the public offering price less the underwriting discounts to cover over-allotments.

The notes will rank junior in right to payment to all of our existing and future senior indebtedness and to all indebtedness of our subsidiaries. As of September 30, 2009, we had approximately \$1.4 billion of senior indebtedness outstanding and our subsidiaries had approximately \$12.5 million of indebtedness outstanding.

Our common stock is listed on the New York Stock Exchange under the symbol BZH. The last reported sale price of the common stock on January 4, 2010, was \$5.26 per share.

Prior to this offering, there has been no public market for the notes. We have applied to have the notes listed on the New York Stock Exchange.

Concurrently with this offering of notes, pursuant to a separate prospectus supplement, we are offering 18 million shares of our common stock. The completion of this offering is not contingent on the completion of the offering of the common stock, and the completion of the offering of the common stock is not contingent on the completion of this offering.

Investing in the notes and our common stock issuable upon conversion of the notes involves risks. See Risk Factors beginning on page S-11.

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 is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Note	Total
Public Offering Price	\$	\$
Underwriting Discount	\$	\$
Proceeds to Beazer Homes USA, Inc. (before expenses)	\$	\$

The underwriters expect to deliver the notes to purchasers on or about January , 2010 only in book-entry form through the facilities of The Depository Trust Company.

Citi	<i>Joint Book-Running Managers</i>	Credit Suisse
Deutsche Bank Securities	<i>Joint Lead Managers</i>	UBS Investment Bank
	<i>Co-Manager</i> Moelis & Company	

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You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, and the underwriters have not, authorized anyone else to provide you with different or additional information. You should not rely upon any information or

representation not contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. We are not, and the underwriters are not, making an offer to sell these securities or soliciting an offer to buy these securities in any jurisdiction where the offer, sale, or solicitation is not permitted. You should assume that the information contained in this prospectus supplement and the accompanying prospectus is accurate only on the date set forth on the front of this prospectus supplement or the date of incorporation by reference, as applicable, even though this prospectus supplement and the accompanying prospectus may be delivered or securities may be sold on a later date.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first part is this prospectus supplement, which describes the terms of this offering of convertible notes and also adds to and updates information contained in the accompanying prospectus as well as the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The second part, the accompanying prospectus, gives more general information about securities we may offer from time to time, some of which information does not apply to the notes offered by the prospectus supplement and 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 or incorporated in this prospectus supplement updates and supersedes the information in the accompanying prospectus. This prospectus supplement 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, we, us, our, the Company, or Beazer refers to Beazer Homes USA, Inc. and its subsidiaries, unless we state otherwise or the context indicates otherwise.

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SUMMARY

This summary highlights selected information about us contained elsewhere or incorporated by reference in this prospectus supplement. It may not contain all the information that may be important to you in deciding whether to invest in our notes. You should carefully read this entire prospectus supplement and the accompanying prospectus, together with the information to which we refer and the information incorporated by reference herein, including the financial data and related notes and the Risk Factors sections, before making an investment decision.

Beazer Homes USA, Inc.

We are a geographically diversified homebuilder with active operations in 16 states. Our homes are designed to appeal to homeowners at various price points across various demographic segments and are generally offered for sale in advance of their construction. Our objective is to provide our customers with homes that incorporate exceptional value and quality while seeking to maximize our return on invested capital over time.

Our principal executive offices are located at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, telephone (770) 829-3700. We also provide information about our active communities through our Internet website located at <http://www.beazer.com>. Information on our website is not a part of, and shall not be deemed incorporated by reference in, this prospectus supplement.

Recent Developments

Concurrent Offering of Common Stock

Concurrently with this offering of notes, pursuant to a separate prospectus supplement, we are offering 18,000,000 shares of our common stock (20,700,000 shares of our common stock if the underwriters exercise their over-allotment with respect to the that offering in full) in an underwritten public offering (the Common Stock Offering). Assuming no exercise of the underwriters over-allotment option with respect to the Common Stock Offering, we estimate that the net proceeds of the Common Stock Offering, after deducting the underwriting discount and estimated expenses, will be approximately \$ million. However, there can be no assurance that the Common Stock Offering will be completed or what the terms will be. Completion of this offering is not contingent on the completion of the Common Stock Offering, and the Common Stock Offering is not contingent on the completion of this offering.

First Quarter Fiscal 2010 Orders and Closings

For our first fiscal quarter ended December 31, 2009, we expect to report a significant increase in net new home orders from continuing operations and a small increase in closings compared to our fiscal 2009 first quarter. The expected changes in both net new home orders and closings for the first quarter of 2010 compared to the same period in 2009 for each of our operating regions is set forth below.

Operating Region	Net New Orders for the First Fiscal Quarter			Closings for the First Fiscal Quarter		
	2010	2009	Change	2010	2009	Change

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West	357	253	41%	406	439	(8)%
East	274	201	36%	388	271	43%
Southeast	97	79	23%	167	180	(7)%
Total	728	533	37%	961	890	8%

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Redemption of our 85/8% Senior Notes due 2011

Prior to the closing of this offering, we intend to issue an irrevocable notice to redeem in full all of our outstanding 85/8% Senior Notes due 2011 (the "2011 Notes") and will deposit the full redemption price for the 2011 Notes with the trustee and terminate the indenture governing the 2011 Notes (the "2011 Notes Redemption"). The aggregate redemption price for the 2011 Notes will be equal to 100% of the outstanding principal amount of the 2011 Notes plus accrued interest to the redemption date. As of January 4, 2010, \$127.3 million in aggregate principal amount of 2011 Notes were outstanding.

Tax Refund Filing

We recently filed an application for a federal income tax refund of approximately \$101 million as a result of tax legislation enacted during the quarter ending December 31, 2009. This legislation permits a five year carryback of net operating losses incurred in certain defined periods. As a result, we expect to record a benefit of approximately \$101 million to shareholders' equity (approximately \$2.50 per common share) in the first quarter ended December 31, 2009 and to receive the refund proceeds in cash during the quarter ending March 31, 2010.

In connection with our decision to file an application for federal income tax refund, we have elected to defer the federal income taxes payable on any cancellation of indebtedness income generated in connection with our previously reported buy back of certain senior notes. This deferral is permitted under *The American Recovery and Reinvestment Act of 2009* and represents approximately \$51 million of incremental tax benefit to us arising from the deferral of federal income tax on approximately \$148 million of potential cancellation of indebtedness income. In accordance with *The American Recovery and Reinvestment Act of 2009*, federal income taxes deferred on the cancellation of indebtedness income will be payable starting in five equal annual installments beginning in fiscal 2014 and will not result in a reduction to shareholders' equity at that time.

We had previously disclosed that our estimated benefit of applying the five year carryback legislation discussed above was approximately \$50 million. Our subsequent decision to elect to defer federal income taxes on the cancellation of indebtedness income increased the benefit to approximately \$101 million. This decision was reached upon consultation with our external tax advisors.

Termination of Section 382 Rights Agreement

Based on recent impairments and our current financial performance, we generated net operating losses for fiscal 2008 and fiscal 2009 and expect to generate additional net operating losses in future years. Furthermore, we believe we have significant "built-in losses" in our assets (i.e., an excess tax basis over current fair market value) that may result in future operating losses as such assets are sold. Net operating losses generally may be carried forward for a 20-year period to offset future earnings and reduce our federal income tax liability. Built-in losses in our assets, if and when recognized, generally will result in tax losses that may then be deducted against our taxable income or carried forward to reduce our federal income tax liability in future years.

Section 382 of the Internal Revenue Code of 1986, as amended ("Section 382") contains rules that limit the ability of a company that undergoes an "ownership change," which is generally defined as any change in ownership of more than 50% of its common stock over a three-year period, to utilize its pre-ownership change net operating loss carryforwards and certain built-in losses or deductions that are recognized during the five-year period after the ownership change. These rules generally operate by focusing on changes in the ownership among stockholders owning, directly or indirectly, 5% or more of the company's common stock (including changes involving a stockholder becoming a 5% stockholder) and any change in ownership arising from a new issuance of stock or share repurchases by the company.

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We previously adopted a stockholder rights plan, which was intended to reduce the likelihood of an unintended ownership change within the meaning of Section 382 and thereby protect stockholder value by preserving our ability to use our net operating loss carryforwards. However, as a result of the recently enacted tax legislation and the corresponding federal income tax refund filing discussed above under Tax Refund Filing, we believe that the preservation of our existing net loss carryforwards may no longer be necessary as the federal income tax refund filing significantly reduced our net operating loss carryforwards. Furthermore, post-ownership change net operating losses, with the exception of certain recognized built-in-losses as defined in Section 382, that we recognize may not be subject to the annual limitation imposed by Section 382 to the extent we do not experience a subsequent ownership change as defined in Section 382. Therefore, we anticipate that we will terminate the stockholder rights plan prior to or soon after the close of this offering. No assurances can be provided, however, that if the rights plan is terminated that we will or will not experience a subsequent ownership change as defined in Section 382 as a result of this offering or otherwise.

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The Offering

The Notes	\$50,000,000 in principal amount of % Mandatory Convertible Subordinated Notes due 2013 (the notes). We have also granted the underwriters an option, for a period of 30 days from the date of this prospectus supplement, to purchase up to an additional \$7,500,000 aggregate principal amount of notes, solely to cover over-allotments.
Offering Price	\$ per \$25 principal amount of the notes. Holder of notes will have only the limited rights described in this prospectus supplement and the accompanying prospectus. In particular, holders will not have the right to the repayment of the principal amount of the notes under any circumstances and instead, on the stated maturity date, each note, unless previously converted, will automatically convert to shares of our common stock at the conversion rate described herein.
Interest	% per year. Interest will accrue from January , 2010 and will be payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2010.
Redemption	We will not be permitted to redeem or cause the conversion of the notes before maturity, except as described under Description of the Notes Covenant Event Conversion at the Option of the Company.
Stated Maturity Date	January 15, 2013
Mandatory Conversion	On the stated maturity date, the notes, unless previously converted, will automatically convert into shares of our common stock, based on the conversion rates described under Description of the Notes Mandatory Conversion.
Conversion Rate	<p>The conversion rate for the notes will not be more than shares of our common stock per \$25 principal amount of notes and not less than shares of our common stock per \$25 principal amount of notes, subject to certain anti-dilution adjustments, depending on the applicable market value of our common stock as described herein.</p> <p>The following table illustrates the conversion rate per \$25 principal amount of notes, subject to certain anti-dilution adjustments described in this prospectus supplement.</p>

20-Day Market Value

Conversion Rate

Less than or equal to \$

Between \$ and \$

\$25 divided by the 20-day market value

Equal to or greater than \$

Conversion at the Option of the Holder	Holders of the notes have the right to convert their notes, in whole or in part, at any time prior to maturity, into shares of our common stock at the minimum conversion rate of shares per \$25 principal amount of notes, subject to adjustment as described under Description of the Notes Anti-dilution Adjustments.
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Conversion Upon Fundamental Change	<p>If a fundamental change (as defined under Description of the Notes Conversion Upon Fundamental Change) occurs prior to January 15, 2013, we will provide for the conversion of the notes by permitting holders to submit their notes for conversion at any time during the period (the fundamental change conversion period) beginning on the effective date of such fundamental change (the fundamental change effective date) and ending on the earlier of (a) the stated maturity date and (b) the date that is 20 days after the fundamental change effective date at the conversion rate (the fundamental change conversion rate) specified in the table set forth under Description of the Notes Conversion Upon Fundamental Change. In addition, for any notes that are converted during the applicable fundamental change conversion period, we will either increase the conversion rate or deliver cash in an amount equal to the fundamental change interest make-whole amount as described under Description of the Notes Fundamental Change Interest Make-Whole Payment.</p>
Covenant Event Conversion at the Option of the Company	<p>Following the occurrence of a covenant event (as described below) and during the continuation thereof, we have the right to require holders to convert all, but not less than all, of the notes then outstanding for shares of our common stock at the maximum conversion rate of shares per \$25 principal amount of notes. In addition, for any notes that are so converted, we will either increase the conversion rate or deliver cash in an amount equal to the covenant event interest make-whole amount as described under Description of the Notes Covenant Event Conversion at the Option of the Company. We will provide notice of a covenant event and our election to specify a related mandatory conversion date as soon as practicable following the end of the fiscal quarter on which the covenant event has occurred (but in no event later than 10 days after the date we make such quarterly financial statements publicly available), specifying the applicable mandatory conversion date, which notice shall be issued not less than 15 nor more than 45 days prior to the mandatory conversion date.</p> <p>A covenant event will have been deemed to occur and continue during any quarter if our consolidated tangible net worth (as defined under Description of the Notes Covenant Event Conversion at the Option of the Company) shall be less than \$85,000,000 as of the last day of the immediately preceding fiscal quarter.</p>
Anti-dilution Adjustments	<p>The conversion rate may be adjusted in the event of, among other things, stock dividends or distributions of our shares, or subdivisions, splits and combinations of our shares. See Description of the Notes Anti-dilution Adjustments.</p>
Ranking	<p>The notes are general subordinated obligations of Beazer Homes USA, Inc. and will not be secured by any collateral or guaranteed by any of our subsidiaries. Your right to payment under the notes will be junior to the rights of the holders of our existing and future senior indebtedness.</p>

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Senior indebtedness includes all of our indebtedness other than:

any indebtedness which is by its terms subordinated to, or *pari passu* with, the notes;

shares of our capital stock and all warrants, options or other rights to acquire shares of our capital stock (but excluding any debt security that is convertible into, or exchangeable for, shares of our capital stock);

any indebtedness owed by us to any of our subsidiaries or affiliates; or

any trade payables.

Your right to payment under the notes also is structurally subordinated to holders of indebtedness of our subsidiaries.

Events of Default

Holders of the notes will have certain limited rights if an event of default occurs. The events of default are described under Description of the Notes Events of Default. Upon a default and the acceleration of the notes, the notes will automatically convert into shares of our common stock as described under Description of the Notes Mandatory Conversion.

Use of Proceeds

We expect to receive net proceeds from this offering of approximately \$ million (or approximately \$ million if the underwriters exercise their over-allotment option in full), after deducting underwriting discounts and estimated transaction expenses payable by us. We intend to use the net proceeds from this offering, together with the net proceeds from the concurrent Common Stock Offering, if completed, (i) to replenish funds used in connection with the 2011 Notes Redemption and (ii) for other general corporate purposes, including, without limitation, funding (or replenishing cash that has been used to fund) repurchases of our outstanding senior notes that we may make from time to time. Pending the application of the net proceeds, we may invest the proceeds in short-term, interest bearing instruments and other investment-grade securities.

Because UBS Securities LLC who is participating in this offering will receive more than 5% of the net proceeds of this offering, not including underwriting compensation, this offering is being conducted in compliance with Rule 2720 of Financial Industry Regulatory Authority (FINRA). Neither Citigroup Global Market Inc. nor Credit Suisse Securities (USA) LLC, who will act as joint book-running managers, nor any of their respective affiliates have a conflict of interest as defined in Rule 2720. Therefore, a qualified independent underwriter will not be necessary for this offering. UBS Securities LLC will not confirm sales to any account over which it exercises discretionary authority without the specific written approval of the accountholder.

Listing

We have applied to have the notes listed on the New York Stock Exchange; however, no assurance can be provided that the notes will be

approved for listing. Our shares of common stock are listed on the New York Stock Exchange under the symbol BZH.

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Concurrent Offering

Concurrently with this offering, we are offering 18,000,000 shares of our common stock (or 20,700,000 if the underwriters exercise in full their over-allotment option to purchase additional shares) pursuant to a separate prospectus supplement (the "Common Stock Offering"). Completion of this offering is not contingent on completion of the Common Stock Offering and the Common Stock Offering is not contingent on the completion of this offering.

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Our summary historical consolidated financial and operating data set forth below as of and for each of the years ended September 30, 2007, 2008 and 2009 are derived from our audited consolidated financial statements. These historical results are not necessarily indicative of the results to be expected in the future. You should also read our historical financial statements and related notes in our Annual Report on Form 10-K for the year ended September 30, 2009 as well as the section of our Annual Report on Form 10-K for the year ended September 30, 2009 entitled Management's Discussion and Analysis of Financial Condition and Results of Operations, which are incorporated herein by reference.

	Fiscal Year Ended September 30,		
	2007	2008	2009
	(\$ in millions)		
Statement of Operations Data(1):			
Total revenue	\$ 3,037	\$ 1,814	\$ 1,005
Gross (loss) profit	(109)	(234)	21
Operating loss	(548)	(616)	(242)
Net loss from continuing operations	(372)	(801)	(178)
Operating Statistics:			
Number of new orders, net of cancellations	8,377	5,403	4,205
Units in backlog at end of period(2)	2,612	1,318	1,193
Number of closings(3)	10,160	6,697	4,330
Average sales price per home closed (in thousands)	\$ 286.7	\$ 252.7	\$ 230.9
Balance Sheet Data (end of period):			
Cash, cash equivalents, and restricted cash	\$ 460	\$ 585	\$ 557
Inventory	2,775	1,652	1,318
Total assets	3,930	2,642	2,029
Total debt	1,857	1,747	1,509
Stockholders' equity	1,324	375	197
Supplemental Financial Data:			
Cash provided by/(used in):			
Operating activities	\$ 509	\$ 316	\$ 94
Investing activities	(52)	(18)	(80)
Financing activities	(171)	(167)	(91)
EBIT(4)	(493)	(686)	(57)
Adjusted EBITDA(4)	236	(28)	108
Interest incurred(5)	148	140	133
EBIT/interest incurred(4)(5)	(3.32)x	(4.91)x	(0.43)x
Adjusted EBITDA/interest incurred(4)(5)	1.59x	(0.20)x	0.81x
Deficiency of earnings to fixed charges(6)	428	542	41

- (1) Effective February 1, 2008, we exited the mortgage origination business. In fiscal 2008, we completed a comprehensive review of each of our markets in order to refine our overall investment strategy and to optimize our capital and resource allocations. As a result of this review, we decided to discontinue homebuilding operations in certain of our markets. As of September 30, 2009, all homebuilding operations in these exit markets

have ceased. Results from our mortgage origination business and our exit markets are reported as discontinued operations in the audited consolidated statement of operations for the three years ended September 30, 2007, 2008 and 2009.

Gross (loss) profit includes inventory impairments and lot options abandonments of \$572.0 million, \$406.2 million and \$97.0 million for the fiscal years ended September 30, 2007, 2008 and 2009. Operating loss also includes goodwill impairments of \$51.6 million, \$48.1 million and \$16.1 million for the fiscal

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years ended September 30, 2007, 2008 and 2009. Loss from continuing operations for fiscal 2007 and 2009 also include a (loss) gain on extinguishment of debt of (\$413,000) and \$144.5 million, respectively. The aforementioned charges were primarily related to the deterioration of the homebuilding environment over the past few years.

- (2) A home is included in backlog after a sales contract is executed and prior to the transfer of title to the purchaser. Because the closings of pending sales contracts are subject to contingencies, it is possible that homes in backlog will not result in closings.
- (3) A home is included in closings when title is transferred to the buyer. Revenue and cost of sales for a house are generally recognized at the date of closing.
- (4) We have provided EBIT and Adjusted EBITDA information in this prospectus supplement because we believe they provide investors with additional information to measure our operational performance and evaluate our ability to service our indebtedness. EBIT (earnings before interest and taxes) equals net income (loss) before (a) previously capitalized interest amortized to home construction and land sales expenses and interest expense and (b) income taxes. Adjusted EBITDA (earnings before interest, taxes, depreciation, amortization, and impairments) is calculated by adding non-cash charges, including depreciation, amortization, and inventory impairment and abandonment charges, goodwill impairments and joint venture impairment charges for the period to EBIT. EBIT and Adjusted EBITDA are not GAAP financial measures. EBIT and Adjusted EBITDA should not be considered alternatives to net income determined in accordance with GAAP as an indicator of operating performance, nor as an alternative to cash flows from operating activities determined in accordance with GAAP as a measure of liquidity. Because some analysts and companies may not calculate EBIT and Adjusted EBITDA in the same manner as us, the EBIT and Adjusted EBITDA information presented herein may not be comparable to similar presentations by others.

The magnitude and volatility of non-cash inventory impairment and abandonment charges, goodwill impairments and joint venture impairment charges for the Company, and for other home builders, have been significant in recent periods and as such have made financial analysis of our industry more difficult. Adjusted EBITDA, and other similar presentations by analysts and other companies, is frequently used to assist investors in understanding and comparing the operating characteristics of home building activities by eliminating many of the differences in companies' respective capitalization, tax position and level of impairments. Management believes this non-GAAP measure enables holders of our securities to better understand the cash implications of our operating performance and our ability to service our debt obligations as they currently exist and as additional indebtedness may be incurred in the future. The measure is also useful internally, helping management compare operating results and as a measure of the level of cash which may be available for discretionary spending.

A reconciliation of Adjusted EBITDA and EBIT to net loss, the most directly comparable GAAP measure, is provided below for each period presented:

	Fiscal Year Ended September 30,		
	2007	2008	2009
	(\$ in millions)		
Net loss	\$ (411)	\$ (952)	\$ (189)
(Benefit) provision for income taxes	(222)	85	(9)
Interest expense	140	181	141

EBIT	(493)	(686)	(57)
Depreciation and amortization	45	40	31
Inventory impairments and abandonments	600	497	104
Goodwill impairments	53	52	16
Joint venture impairment charges	31	69	14
Adjusted EBITDA	\$ 236	\$ (28)	\$ 108

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- (5) Interest incurred is expensed or, if qualified, capitalized to inventory and subsequently amortized to cost of sales as homes sales are closed.
- (6) Earnings consist of (i) income (loss) before income taxes, (ii) amortization of previously capitalized interest and (iii) fixed charges, exclusive of capitalized interest cost. Fixed charges consist of (i) interest incurred, (ii) amortization of deferred loan costs and debt discount and (iii) that portion of operating lease rental expense (33%) deemed to be representative of interest.

Ratio of Earnings to Fixed Charges

The following table presents our ratios of consolidated earnings to fixed charges for the periods presented.

**Fiscal Year Ended
September 30,
2007 2008 2009**

Ratio of Earnings to Fixed Charges(1)(2)

- (1) The ratio of earnings to fixed charges for each of the periods is determined by dividing earnings by fixed charges. Earnings consist of (loss) income from continuing operations before income taxes, amortization of previously capitalized interest and fixed charges, exclusive of capitalized interest cost. Fixed charges consist of interest incurred, amortization of deferred loan costs and debt discount, and that portion of operating lease rental expense (33%) deemed to be representative of interest. Earnings for fiscal years ended September 30, 2007, 2008 and 2009 were insufficient to cover fixed charges by \$428 million, \$542 million and \$41 million, respectively.
- (2) The ratio of earnings to combined fixed charges and preferred dividends is the same as the ratio of earnings to fixed charges for the periods presented because no shares of preferred stock were outstanding during these periods.

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RISK FACTORS

An investment in the notes and our common stock issuable upon conversion of the notes involves material risks. You should carefully consider the risks set forth below, as well as the other information contained in this prospectus supplement and the accompanying prospectus, before making an investment decision. The occurrence of any of the following risks could materially and adversely affect our business, financial condition, results of operations, cash flows and the value of the notes and our common stock. In such case, the trading price of our common stock could decline, and you could lose all or part of your investment. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition, results of operations and cash flows.

Risks Related to Our Company

The homebuilding industry is experiencing a severe downturn that may continue for an indefinite period and continue to adversely affect our business, results of operations and stockholders' equity.

Most housing markets across the United States continue to be characterized by an oversupply of both new and resale home inventory, including foreclosed homes, reduced levels of consumer demand for new homes, increased cancellation rates, aggressive price competition among homebuilders and increased incentives for home sales. As a result of these factors, we, like many other homebuilders, have experienced a material reduction in revenues and margins. These challenging market conditions are expected to continue for the foreseeable future and, in the near term, these conditions may further deteriorate. We expect that continued weakness in the homebuilding market would adversely affect our business, results of operations and stockholders' equity as compared to prior periods and could result in additional inventory impairments in the future.

During the past few years, we have experienced elevated levels of cancellations by potential homebuyers although the level of cancellations has improved significantly during the last few quarters. Our backlog reflects the number and value of homes for which we have entered into a sales contract with a customer but have not yet delivered the home. Although these sales contracts typically require a cash deposit and do not make the sale contingent on the sale of the customer's existing home, in some cases a customer may cancel the contract and receive a complete or partial refund of the deposit as a result of local laws or as a matter of our business practices. If the current industry downturn continues, economic conditions continue to deteriorate or if mortgage financing becomes less accessible, more homebuyers may have an incentive to cancel their contracts with us, even where they might be entitled to no refund or only a partial refund, rather than complete the purchase. Significant cancellations have had, and could have, a material adverse effect on our business as a result of lost sales revenue and the accumulation of unsold housing inventory. In particular, our cancellation rates for the fiscal quarter and fiscal year ended September 30, 2009 were 34.7% and 31.4%, respectively. It is important to note that both backlog and cancellation metrics are operational, rather than accounting data, and should be used only as a general gauge to evaluate performance. There is an inherent imprecision in these metrics based on an evaluation of qualitative factors during the transaction cycle.

Based on our impairment tests and consideration of the current and expected future market conditions, we recorded inventory impairment charges of \$102.1 million, lot option abandonment charges of \$5.0 million and non-cash goodwill impairment charges totaling \$16.1 million during fiscal 2009. During fiscal 2009, we also wrote down our investment in certain of our joint ventures reflecting \$14.8 million of impairments of inventory held within those ventures. While we believe that no additional joint venture investment or inventory impairments existed as of September 30, 2009, future economic or financial developments, including general interest rate increases, poor performance in either the national economy or individual local economies, or our ability to meet our projections could

lead to future impairments.

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Our home sales and operating revenues could decline due to macro-economic and other factors outside of our control, such as changes in consumer confidence, declines in employment levels and increases in the quantity and decreases in the price of new homes and resale homes in the market.

Changes in national and regional economic conditions, as well as local economic conditions where we conduct our operations and where prospective purchasers of our homes live, may result in more caution on the part of homebuyers and, consequently, fewer home purchases. These economic uncertainties involve, among other things, conditions of supply and demand in local markets and changes in consumer confidence and income, employment levels, and government regulations. These risks and uncertainties could periodically have an adverse effect on consumer demand for and the pricing of our homes, which could cause our operating revenues to decline. Additional reductions in our revenues could, in turn, further negatively affect the market price of our securities.

We are the subject of pending civil litigation which could require us to pay substantial damages or could otherwise have a material adverse effect on us. The failure to fulfill our obligations under the Deferred Prosecution Agreement (the DPA) with the United States Attorney (or related agreements) and the consent order with the SEC could have a material adverse effect on our operations.

On July 1, 2009, we entered into the DPA with the United States Attorney for the Western District of North Carolina and a separate but related agreement with the United States Department of Housing and Urban Development (HUD) and the Civil Division of the United States Department of Justice (the HUD Agreement). Under the DPA, we are obligated to make payments to a restitution fund in an amount not to exceed \$50 million. As of September 30, 2009, we have been credited with making \$10 million of such payments. However, the future payments to the restitution fund will be equal to 4% of adjusted EBITDA as defined in the DPA for the first to occur of (x) a period of 60 months and (y) the total of all payments to the restitution fund equaling \$50 million. In the event such payments do not equal at least \$50 million at the end of 60 months then, under the HUD Agreement, the obligations to make restitution payments will continue until the first to occur of (a) 24 months and (b) the date that \$48 million has been paid into the restitution fund. Our obligation to make such payments could limit our ability to invest in our business or make payments of principal or interest on our outstanding debt. In addition, in the event we fail to comply with our obligations under the DPA or the HUD Agreement, various federal authorities could bring criminal or civil charges against us which could be material to our consolidated financial position, results of operations and liquidity.

We and certain of our current and former employees, officers and directors have been named as defendants in securities lawsuits, class action lawsuits, lawsuits regarding Employee Retirement Income Security Act (ERISA) claims, and derivative stockholder actions. In addition, certain of our subsidiaries have been named in class action and multi-party lawsuits regarding claims made by homebuyers. While a number of these suits have been dismissed and/or settled, we cannot be assured that new claims by different plaintiffs will not be brought in the future. We cannot predict or determine the timing or final outcome of the current lawsuits or the effect that any adverse determinations in the lawsuits may have on us. An unfavorable determination in any of the lawsuits could result in the payment by us of substantial monetary damages which may not be covered by insurance. Further, the legal costs associated with the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations. In addition to expenses incurred to defend the Company in these matters, under Delaware law and our bylaws, we may have an obligation to indemnify our current and former officers and directors in relation to these matters. We have obligations to advance legal fees and expenses to certain directors and officers, and we have advanced, and may continue to advance, legal fees and expenses to certain other current and former employees.

In connection with the settlement agreement with the SEC entered into on September 24, 2008, we consented, without admitting or denying any wrongdoing, to a cease and desist order requiring future compliance with certain provisions of the federal securities laws and regulations. If we are found to be in violation of the order in the future, we may be

subject to penalties and other adverse consequences as a result

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of the prior actions which could be material to our consolidated financial position, results of operations and liquidity.

Our insurance carriers may seek to rescind or deny coverage with respect to certain of the pending lawsuits, or we may not have sufficient coverage under such policies. If the insurance companies are successful in rescinding or denying coverage or if we do not have sufficient coverage under our policies, our business, financial condition and results of operations could be materially adversely affected.

We are dependent on the services of certain key employees, and the loss of their services could hurt our business.

Our future success depends upon our ability to attract, train, assimilate and retain skilled personnel. If we are unable to retain our key employees or attract, train, assimilate or retain other skilled personnel in the future, it could hinder our business strategy and impose additional costs of identifying and training new individuals. Competition for qualified personnel in all of our operating markets is intense.

Recent and potential future downgrades of our credit ratings could adversely affect our access to capital and could otherwise have a material adverse effect on us.

During the three months ended June 30, 2009, S&P lowered the Company's corporate credit rating from CCC+ to CCC and maintained its negative outlook. S&P also cut ratings on the Company's senior unsecured notes from CCC to CCC-. On August 18, 2009, S&P lowered the Company's corporate credit rating to SD (selective default) and lowered the rating of the Company's senior unsecured notes from CCC- to D following the Company's repurchase of \$115.5 million of its senior unsecured notes on the open market at a discount to face value, which S&P determined to constitute a de facto restructuring under its criteria. On August 19, 2009, in accordance with its criteria for exchange offers and similar restructurings, S&P raised the Company's corporate credit rating back to CCC, and maintained the rating of the Company's senior unsecured notes of D, given S&P's expectation for additional discounted repurchases.

On March 6, 2009 Moody's lowered its rating from B2 to Caa2 and reaffirmed its negative outlook. On August 21, 2009, Moody's assigned a Caa2/LD probability of default rating to the Company following the Company's repurchase of \$115.5 million of senior unsecured notes in the open market at a discount to face value, which under Moody's definition, constituted a distressed exchange and a limited default. The ratings on the senior notes impacted by the open market transactions were lowered to Ca from Caa2 to reflect the discount incurred by participating bondholders. On August 27, 2009, Moody's removed the LD designation on the probability of default rating and changed the ratings on the Company's senior notes back to Caa2, which is consistent with Moody's loss given default framework.

On March 12, 2009, Fitch lowered the Company's issuer-default rating from B- to CCC and its senior notes rating from CCC+/RR5 to CC/RR5. The rating agencies announced that these downgrades reflect continued deterioration in our homebuilding operations, credit metrics, other earnings-based metrics and the significant decrease in our tangible net worth over the past year. These ratings and our current credit condition affect, among other things, our ability to access new capital, especially debt, and may result in more stringent covenants and higher interest rates under the terms of any new debt. Our credit ratings could be further lowered or rating agencies could issue adverse commentaries in the future, which could have a material adverse effect on our business, results of operations, financial condition and liquidity. In particular, a further weakening of our financial condition, including any further increase in our leverage or decrease in our profitability or cash flows, could adversely affect our ability to obtain necessary funds, result in a credit rating downgrade or change in outlook, or otherwise increase our cost of borrowing.

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Our senior notes, revolving credit and letter of credit facilities, and certain other debt impose significant restrictions and obligations on us. Restrictions on our ability to borrow could adversely affect our liquidity. In addition, our substantial indebtedness could adversely affect our financial condition, limit our growth and make it more difficult for us to satisfy our debt obligations.

Certain of our secured and unsecured indebtedness and revolving credit and letter of credit facilities impose certain restrictions and obligations on us. Under certain of these instruments, we must comply with defined covenants which limit the Company to, among other things, incur additional indebtedness, engage in certain asset sales, make certain types of restricted payments, engage in transactions with affiliates and create liens on assets of the Company. Failure to comply with certain of these covenants could result in an event of default under the applicable instrument. Any such event of default could negatively impact other covenants or lead to cross defaults under certain of our other debt. There can be no assurance that we will be able to obtain any waivers or amendments that may become necessary in the event of a future default situation without significant additional cost or at all.

As of September 30, 2009, after giving effect to this offering and the 2011 Notes Redemption, we would have had total outstanding indebtedness of approximately \$1.43 billion, net of unamortized discount of approximately \$27.1 million. Our substantial indebtedness could have important consequences to us and the holders of our securities, including, among other things:

causing us to be unable to satisfy our obligations under our debt agreements;

prohibiting us from being able to pay dividends;

making us more vulnerable to adverse general economic and industry conditions;

making it difficult to fund future working capital, land purchases, acquisitions, share repurchases, general corporate purposes or other purposes; and

causing us to be limited in our flexibility in planning for, or reacting to, changes in our business.

In addition, subject to restrictions in our debt instruments, we may incur additional indebtedness. If new debt is added to our current debt levels, the related risks that we now face could intensify. Our growth plans and our ability to make payments of principal or interest on, or to refinance, our indebtedness, will depend on our future operating performance and our ability to enter into additional debt and/or equity financings. If we are unable to generate sufficient cash flows in the future to service our debt, we may be required to refinance all or a portion of our existing debt, to sell assets or to obtain additional financing. We may not be able to do any of the foregoing on terms acceptable to us, if at all.

The differing financial exposure of our debt holders could impact our ability to complete any restructuring of our indebtedness or impact the terms of such restructuring.

We believe that a portion of the holders of our existing notes may have hedged the risk of default with respect to the existing notes. These holders may have an economic interest that is different from other holders of our existing notes. Such holders may be less willing to participate in any voluntary restructuring of our indebtedness if, under certain circumstances, they are entitled to receive higher consideration from a private counterparty. This could make any restructuring of our debt more expensive or prevent us from being able to complete certain types of recapitalization transactions.

A substantial increase in mortgage interest rates or unavailability of mortgage financing may reduce consumer demand for our homes.

Substantially all purchasers of our homes finance their acquisition with mortgage financing. Recently, the credit markets and the mortgage industry have been experiencing a period of unparalleled turmoil and disruption characterized by bankruptcies, financial institution failure, consolidation and an unprecedented level of intervention by the United States federal government. The U.S. residential mortgage market has been further impacted by the deterioration in the credit quality of loans originated to non-prime and subprime borrowers and an increase in mortgage foreclosure rates. These difficulties are not expected to improve until

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residential real estate inventories return to a more normal level and the mortgage credit market stabilizes. While the ultimate outcome of these events cannot be predicted, they have had and may continue to have an impact on the availability and cost of mortgage financing to our customers. The volatility in interest rates, the decrease in the willingness and ability of lenders to make home mortgage loans, the tightening of lending standards and the limitation of financing product options, have made it more difficult for homebuyers to obtain acceptable financing. Any substantial increase in mortgage interest rates or unavailability of mortgage financing would adversely affect the ability of prospective first-time and move-up homebuyers to obtain financing for our homes, as well as adversely affect the ability of prospective move-up homebuyers to sell their current homes. This disruption in the credit markets and the curtailed availability of mortgage financing has adversely affected, and is expected to continue to adversely affect, our business, financial condition, results of operations and cash flows as compared to prior periods.

If we are unsuccessful in competing against our homebuilding competitors, our market share could decline or our growth could be impaired and, as a result, our financial results could suffer.

Competition in the homebuilding industry is intense, and there are relatively low barriers to entry into our business. Increased competition could hurt our business, as it could prevent us from acquiring attractive parcels of land on which to build homes or make such acquisitions more expensive, hinder our market share expansion, and lead to pricing pressures on our homes that may adversely impact our margins and revenues. If we are unable to successfully compete, our financial results could suffer and the value of, or our ability to service, our debt could be adversely affected. Our competitors may independently develop land and construct housing units that are superior or substantially similar to our products. Furthermore, some of our competitors have substantially greater financial resources and lower costs of funds than we do. Many of these competitors also have longstanding relationships with subcontractors and suppliers in the markets in which we operate. We currently build in several of the top markets in the nation and, therefore, we expect to continue to face additional competition from new entrants into our markets.

Our financial condition, results of operations and stockholders' equity may be adversely affected by any decrease in the value of our inventory, as well as by the associated carrying costs.

We regularly acquire land for replacement and expansion of land inventory within our existing and new markets. The risks inherent in purchasing and developing land increase as consumer demand for housing decreases. The market value of land, building lots and housing inventories can fluctuate significantly as a result of changing market conditions and the measures we employ to manage inventory risk may not be adequate to insulate our operations from a severe drop in inventory values. When market conditions are such that land values are not appreciating, previously entered into option agreements may become less desirable, at which time we may elect to forego deposits and preacquisition costs and terminate the agreements. In fiscal 2009, we recorded \$5.0 million of lot option abandonment charges. During fiscal 2009, as a result of the further deterioration of the housing market, we determined that the carrying amount of certain of our inventory assets exceeded their estimated fair value. As a result of our analysis, during fiscal 2009, we incurred \$102.1 million of non-cash pre-tax charges related to inventory impairments. If these adverse market conditions continue or worsen, we may have to incur additional inventory impairment charges which would adversely affect our financial condition, results of operations and stockholders' equity and our ability to comply with certain covenants in our debt instruments linked to tangible net worth.

We conduct certain of our operations through unconsolidated joint ventures with independent third parties in which we do not have a controlling interest and we can be adversely impacted by joint venture partners' failure to fulfill their obligations.

We participate in land development joint ventures (JVs) in which we have less than a controlling interest. We have entered into JVs in order to acquire attractive land positions, to manage our risk profile and to leverage our capital base. Our JVs are typically entered into with developers, other homebuilders and financial partners to develop finished

lots for sale to the joint venture's members and other third parties. As a result of the continued deterioration of the housing market, in fiscal 2009 and 2008 we wrote down our investment in

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certain of our JVs reflecting \$14.8 million and \$68.8 million of impairments of inventory held within those JVs, respectively. If these adverse market conditions continue or worsen, we may have to take further write downs of our investments in our JVs.

Our joint venture investments are generally very illiquid both because we lack a controlling interest in the JVs and because most of our JVs are structured to require super-majority or unanimous approval of the members to sell a substantial portion of the JV's assets or for a member to receive a return of its invested capital. Our lack of a controlling interest also results in the risk that the JV will take actions that we disagree with, or fail to take actions that we desire, including actions regarding the sale of the underlying property.

Our JVs typically obtain secured acquisition, development and construction financing. At September 30, 2009, our unconsolidated JVs had borrowings totaling \$422.7 million, of which \$327.9 million related to one joint venture in which we are a 2.58% partner. Generally, we and our joint venture partners have provided varying levels of guarantees of debt or other obligations of our unconsolidated JVs. At September 30, 2009, these guarantees included, for certain joint ventures, construction completion guarantees, loan-to-value maintenance agreements, repayment guarantees and environmental indemnities. At September 30, 2009, we had repayment guarantees of \$15.8 million and loan-to-value maintenance guarantees of \$3.9 million of debt of three unconsolidated joint ventures. During fiscal 2008 and 2009, as the housing market continued to deteriorate, many of these joint ventures were in default or are at risk of defaulting under their debt agreements and it became more likely that our guarantees may be called upon. As of September 30, 2009, three of our unconsolidated joint ventures are in default (or have received default notices) under their debt agreements. If one or more of the guarantees under these debt agreements were drawn upon or otherwise invoked, our obligations could be significant, individually or in the aggregate, which could have a material adverse effect on our financial position or results of operations. We cannot predict whether such events will occur or whether such obligations will be invoked.

We may not be able to utilize all of our deferred tax assets.

As of September 30, 2009, we are in a cumulative loss position based on the guidance in Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* (ASC 740). Due to this cumulative loss position and the lack of sufficient objective evidence regarding the realization of our deferred tax assets in the foreseeable future, we have recorded a valuation allowance for substantially all of our deferred tax assets. Although we do expect the industry to recover from the current downturn to normal profit levels in the future, it may be necessary for us to record additional valuation allowances in the future related to operating losses. Additional valuation allowances could materially increase our income tax expense, and therefore adversely affect our results of operations and tangible net worth in the period in which such valuation allowance is recorded.

We could experience a reduction in home sales and revenues or reduced cash flows due to our inability to acquire land for our housing developments if we are unable to obtain reasonably priced financing to support our homebuilding activities.

The homebuilding industry is capital intensive, and homebuilding requires significant up-front expenditures to acquire land and begin development. Accordingly, we incur substantial indebtedness to finance our homebuilding activities. If internally generated funds are not sufficient, we would seek additional capital in the form of equity or debt financing from a variety of potential sources, including additional bank financing and/or securities offerings. The amount and types of indebtedness which we may incur are limited by the terms of our existing debt. In addition, the availability of borrowed funds, especially for land acquisition and construction financing, may be greatly reduced nationally, and the lending community may require increased amounts of equity to be invested in a project by borrowers in connection with both new loans and the extension of existing loans. The credit and capital markets have recently experienced significant volatility. If we are required to seek additional financing to fund our operations, continued volatility in

these markets may restrict our flexibility to access such financing. If we are not successful in obtaining sufficient capital to fund our planned capital and other expenditures, we may be unable to acquire land for our housing developments.

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Additionally, if we cannot obtain additional financing to fund the purchase of land under our option contracts, we may incur contractual penalties and fees.

We are subject to extensive government regulation which could cause us to incur significant liabilities or restrict our business activities.

Regulatory requirements could cause us to incur significant liabilities and operating expenses and could restrict our business activities. We are subject to local, state and federal statutes and rules regulating, among other things, certain developmental matters, building and site design, and matters concerning the protection of health and the environment. Our operating expenses may be increased by governmental regulations such as building permit allocation ordinances and impact and other fees and taxes, which may be imposed to defray the cost of providing certain governmental services and improvements. Other governmental regulations, such as building moratoriums and no growth or slow growth initiatives, which may be adopted in communities which have developed rapidly, may cause delays in new home communities or otherwise restrict our business activities resulting in reductions in our revenues. Any delay or refusal from government agencies to grant us necessary licenses, permits and approvals could have an adverse effect on our operations.

We may incur additional operating expenses due to compliance programs or fines, penalties and remediation costs pertaining to environmental regulations within our markets.

We are subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. The particular environmental laws which apply to any given community vary greatly according to the community site, the site's environmental conditions and the present and former use of the site. Environmental laws may result in delays, may cause us to implement time consuming and expensive compliance programs and may prohibit or severely restrict development in certain environmentally sensitive regions or areas. From time to time, the United States Environmental Protection Agency (EPA) and similar federal or state agencies review homebuilders' compliance with environmental laws and may levy fines and penalties for failure to strictly comply with applicable environmental laws or impose additional requirements for future compliance as a result of past failures. Any such actions taken with respect to us may increase our costs. Further, we expect that increasingly stringent requirements will be imposed on homebuilders in the future. Environmental regulations can also have an adverse impact on the availability and price of certain raw materials such as lumber. Our communities in California are especially susceptible to restrictive government regulations and environmental laws.

We may be subject to significant potential liabilities as a result of construction defect, product liability and warranty claims made against us.

As a homebuilder, we have been, and continue to be, subject to construction defect, product liability and home warranty claims, including moisture intrusion and related claims, arising in the ordinary course of business. These claims are common to the homebuilding industry and can be costly.

We and certain of our subsidiaries have been, and continue to be, named as defendants in various construction defect claims, product liability claims, complaints and other legal actions that include claims related to Chinese drywall and moisture intrusion. As of September 30, 2009, we had accrued \$2.7 million in our warranty reserves for the repair of less than 40 homes in southwest Florida where certain of our subcontractors installed defective Chinese drywall in homes that were delivered during our 2006 and 2007 fiscal years. We are inspecting additional homes in order to determine whether they also contain the defective Chinese drywall. The outcome of these inspections may require us to increase our warranty reserve in the future. However, the amount of additional liability, if any, is not reasonably estimable. Furthermore, plaintiffs may in certain of these legal proceedings seek class action status with potential class sizes that vary from case to case. Class action lawsuits can be costly to defend, and if we were to lose any certified

class action suit, it could result in substantial liability for us.

With respect to certain general liability exposures, including construction defect, Chinese drywall and related claims and product liability, interpretation of underlying current and future trends, assessment of claims

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and the related liability and reserve estimation process is highly judgmental due to the complex nature of these exposures, with each exposure exhibiting unique circumstances. Furthermore, once claims are asserted for construction defects, it is difficult to determine the extent to which the assertion of these claims will expand geographically. Although we have obtained insurance for construction defect claims subject to applicable self-insurance retentions, such policies may not be available or adequate to cover any liability for damages, the cost of repairs, and/or the expense of litigation surrounding current claims, and future claims may arise out of events or circumstances not covered by insurance and not subject to effective indemnification agreements with our subcontractors.

Our operating expenses could increase if we are required to pay higher insurance premiums or litigation costs for various claims, which could cause our net income to decline.

The costs of insuring against construction defect, product liability and director and officer claims are high. This coverage may become more costly or more restricted in the future.

Increasingly in recent years, lawsuits (including class action lawsuits) have been filed against builders, asserting claims of personal injury and property damage. Our insurance may not cover all of the claims, including personal injury claims, or such coverage may become prohibitively expensive. If we are not able to obtain adequate insurance against these claims, we may experience losses that could reduce our net income and restrict our cash flow available to service debt.

Historically, builders have recovered from subcontractors and their insurance carriers a significant portion of the construction defect liabilities and costs of defense that the builders have incurred. Insurance coverage available to subcontractors for construction defects is becoming increasingly expensive, and the scope of coverage is restricted. If we cannot effectively recover from our subcontractors or their carriers, we may suffer greater losses which could decrease our net income.

A builder's ability to recover against any available insurance policy depends upon the continued solvency and financial strength of the insurance carrier that issued the policy. Many of the states in which we build homes have lengthy statutes of limitations applicable to claims for construction defects. To the extent that any carrier providing insurance coverage to us or our subcontractors becomes insolvent or experiences financial difficulty in the future, we may be unable to recover on those policies, and our net income may decline.

We experience fluctuations and variability in our operating results on a quarterly basis and, as a result, our historical performance may not be a meaningful indicator of future results.

Our operating results in a future quarter or quarters may fall below expectations of securities analysts or investors and, as a result, the market value of our common stock will fluctuate. We historically have experienced, and expect to continue to experience, variability in home sales and net earnings on a quarterly basis. As a result of such variability, our historical performance may not be a meaningful indicator of future results. Our quarterly results of operations may continue to fluctuate in the future as a result of a variety of both national and local factors, including, among others:

the timing of home closings and land sales;

our ability to continue to acquire additional land or secure option contracts to acquire land on acceptable terms;

conditions of the real estate market in areas where we operate and of the general economy;

raw material and labor shortages;

seasonal home buying patterns; and

other changes in operating expenses, including the cost of labor and raw materials, personnel and general economic conditions.

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The occurrence of natural disasters could increase our operating expenses and reduce our revenues and cash flows.

The climates and geology of many of the states in which we operate, including California, Florida, Georgia, North Carolina, South Carolina, Tennessee and Texas, present increased risks of natural disasters. To the extent that hurricanes, severe storms, earthquakes, droughts, floods, wildfires or other natural disasters or similar events occur, our homes under construction or our building lots in such states could be damaged or destroyed, which may result in losses exceeding our insurance coverage. Any of these events could increase our operating expenses, impair our cash flows and reduce our revenues, which could, in turn, negatively affect the market price of our securities.

Future terrorist attacks against the United States or increased domestic or international instability could have an adverse effect on our operations.

Adverse developments in the war on terrorism, future terrorist attacks against the United States, or any outbreak or escalation of hostilities between the United States and any foreign power, including the armed conflict in Iraq, may cause disruption to the economy, our Company, our employees and our customers, which could adversely affect our revenues, operating expenses, and financial condition.

We are dependent on the continued availability and satisfactory performance of our subcontractors, which, if unavailable, could have a material adverse effect on our business.

We conduct our construction operations only as a general contractor. Virtually all construction work is performed by unaffiliated third-party subcontractors. As a consequence, we depend on the continued availability of and satisfactory performance by these subcontractors for the construction of our homes. There may not be sufficient availability of and satisfactory performance by these unaffiliated third-party subcontractors in the markets in which we operate. In addition, inadequate subcontractor resources could have a material adverse effect on our business.

Risks Related to Ownership of Our Common Stock

Our stock price is volatile and could further decline.

The securities markets in general and our common stock in particular have experienced significant price and volume volatility over the past two years. The market price and volume of our common stock may continue to experience significant fluctuations due not only to general stock market conditions but also to a change in sentiment in the market regarding the home building industry, or our operations or business prospects. In addition to the other risk factors discussed in this section, the price and volume volatility of our common stock may be affected by:

operating results that vary from the expectations of securities analysts and investors;

factors influencing home purchases, such as availability of home mortgage loans and interest rates, credit criteria applicable to prospective borrowers, ability to sell existing residences, and homebuyer sentiment in general;

the operating and securities price performance of companies that investors consider comparable to us;

announcements of strategic developments, acquisitions and other material events by us or our competitors; and

changes in global financial markets and global economies and general market conditions, such as interest rates, commodity and equity prices and the value of financial assets.

These risks could be further magnified by the large number of shares sold in this offering and the size of the Common Stock Offering. To the extent that the price of our common stock remains low or declines, our ability to raise funds through the issuance of equity or otherwise use our common stock as consideration will be reduced. This, in turn, may adversely impact our ability to reduce our financial leverage, as measured by

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the ratio of debt to total capital. As of September 30, 2009, our financial leverage was 88.4%. Continued high levels of leverage or further increases may adversely affect our credit ratings and make it more difficult for us to access additional capital. These factors may limit our ability to implement our operating and growth plans.

Future sales of our common stock or preferred stock in the public market could adversely affect the trading price of our common stock and our ability to raise funds in new stock offerings.

Sales of substantial numbers of additional shares of common stock or preferred stock, or the perception that such sales could occur, may have a harmful effect on prevailing market prices for our common stock and our ability to raise additional capital in the financial markets at a time and price favorable to us. We may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy, to adjust our ratio of debt to equity, to satisfy our obligations upon exercise of outstanding options or for other reasons. We cannot predict the effect that future sales of our common stock or preferred stock would have on the market price of our common stock.

Our certificate of incorporation limits the number of shares of common stock that we can issue to fund our operations and provide us with additional liquidity

Our amended and restated certificate of incorporation provides that we have authority to issue 80,000,000 shares of common stock and 5,000,000 shares of preferred stock. After giving effect to the Common Stock Offering, 57,819,273 shares of common stock would be outstanding. In addition, we will have reserved 4,811,252 shares of common stock issuable related to awards outstanding under our incentive compensation plans and our 45/8% Convertible Senior Notes due 2024 (the Existing Convertible Notes). As a result, we will have a very limited number of shares of common stock available to us to sell to fund our operations and provide us with additional liquidity, unless we amend our certificate of incorporation to increase the number of authorized shares.

We do not intend to pay cash dividends on our common stock in the foreseeable future.

We do not anticipate paying cash dividends on our common stock in the foreseeable future. Any payment of cash dividends will depend upon our financial condition, results of operations, capital requirements, earnings and other factors deemed relevant by our board of directors. Effective November 2, 2007, our board of directors suspended payment of quarterly dividends. The board concluded that suspending dividends, which will allow us to conserve approximately \$16 million of cash annually, was a prudent effort in light of the continued deterioration in the housing market. In addition, the indentures under which our senior notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At September 30, 2009, under the most restrictive covenants of each indenture, none of our retained earnings was available for cash dividends. Hence, there were no dividends paid in fiscal 2009 or fiscal 2008. The agreements governing our current and future indebtedness may not permit us to pay dividends on our common stock in the foreseeable future.

Provisions in our certificate of incorporation and bylaws, the agreements governing our indebtedness and Delaware law may discourage a takeover attempt even if doing so might be beneficial to our stockholders.

Provisions contained in our restated certificate of incorporation and bylaws could impose impediments to the ability of a third party to acquire us even if a change of control would be beneficial to you. Provisions of our certificate of incorporation and bylaws impose various procedural and other requirements, which could make it more difficult for stockholders to effect certain corporate actions. For example, our certificate of incorporation authorizes our board of directors to determine the rights, preferences, privileges and restrictions of unissued series of preferred stock, without any vote or action by our stockholders. Thus, our board of directors can authorize and issue shares of preferred stock with voting or conversion rights that could adversely affect the voting or other rights of holders of our common stock. We are also subject to provisions of Delaware law that prohibit us from engaging in any business combination with

any interested stockholder, meaning, generally, that a stockholder who beneficially owns more than 15% of our stock cannot acquire us for a period of three years from the date this person became an interested stockholder unless various conditions are met, such as approval of the transaction by our board of directors. These provisions may have the effect of delaying

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or deterring a change of control of our Company, and could limit the price that certain investors might be willing to pay in the future for shares of our common stock. See Description of Capital Stock in the accompanying prospectus.

Non-U.S. holders who own, or in certain cases have owned, directly or constructively, more than 5% of our common stock will generally be subject to U.S. federal income tax on gain realized on the disposition of such stock.

Because we have significant U.S. real estate holdings, we believe that we may currently be or become a United States real property holding corporation (USRPHC) for U.S. federal income tax purposes. As a result, a non-U.S. holder (as defined in Material United States Federal Income Tax Considerations Non-U.S. Holders) will generally be subject to U.S. federal income tax on gain realized on a sale or other disposition of our common stock if such non-U.S. holder has owned, actually or constructively, more than 5% of our common stock at any time during the shorter of (a) the five-year period ending on the date of disposition and (b) the non-U.S. holder's holding period in such stock. Non-U.S. holders who may own, or may have owned, directly or constructively, more than 5% of our common stock should consult their own U.S. income tax advisors concerning the consequences of disposing of such stock.

Risks Related to the Notes

The notes have only limited debt holders rights.

Holder of notes will have only the limited rights described in this prospectus supplement and the accompanying prospectus. In particular, holders will not have the right to the repayment of the principal amount of the notes under any circumstances and instead, on the stated maturity date, each note, unless previously converted, will automatically convert to shares of our common stock at the conversion rate described herein. Furthermore, upon default, including in our bankruptcy or upon our failure to make interest payments on the notes, the sole remedy of holders of the notes will be the conversion of the notes into shares of our common stock and the payment of any accrued and unpaid interest plus a make whole amount based on the present value of all remaining interest payments.

In the event of our bankruptcy, liquidation or winding up, the notes will mandatorily convert into shares of our common stock. Holders of our common stock will have claims against our assets only after all of our liabilities have been paid in full, and following the satisfaction of any claims of any of our preferred stock, if any. In addition, the notes will effectively rank junior to all existing and future liabilities of our subsidiaries and the capital stock (other than common stock) of our subsidiaries held by third parties. The rights of holders of the notes to participate in the assets of our subsidiaries upon any liquidation or reorganization of any subsidiary will rank junior to the prior claims of that subsidiary's creditors and holders of preferred stock, if any.

The notes will, at our election, be mandatorily converted into shares of common stock upon the occurrence of a covenant event.

Following the occurrence of a covenant event (as described under Description of the Notes Covenant Event Conversion at the Option of the Company) and during the continuation thereof, we have the right to require holders to convert all, but not less than all, of the notes then outstanding for shares of our common stock at the maximum conversion rate of _____ shares per \$25 principal amount of notes. In addition, for any notes that are so converted, we will either increase the conversion rate or deliver cash in an amount equal to the covenant event interest make-whole amount as described under Description of the Notes Covenant Event Conversion at the Option of the Company. The increase in conversion rate may not compensate you for any loss you may incur as a result of the mandatory conversion.

Holders' rights under the notes, including for the payment of interest, is subordinated to senior indebtedness.

Our obligations under the notes, including to pay interest and make other payments when due, are subordinated in right of payment to all existing and future senior indebtedness and, effectively, all existing and future liabilities (including trade payables) of our subsidiaries. By reason of such subordination of the notes,

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holders right to receive interest and any other payments will be subject to the prior claims of all senior indebtedness. See Description of the Notes Ranking.

Certain terms of this offering may adversely impact our liquidity.

This offering will increase the amount of debt we have outstanding and the required on-going payments of interest we are required to make, which already are significant. As adjusted to give effect to the 2011 Notes Redemption and this offering, we estimate that as of September 30, 2009 we would have had approximately \$1.43 billion of outstanding debt (net of unamortized discount of approximately \$27.1 million), which we will be required to service.

Payments on our debt, including required interest payments on the notes, is dependent in part on cash flow generated by our subsidiaries.

Our subsidiaries own a significant portion of our assets and conduct a significant portion of our operations. Accordingly, repayment of our indebtedness, including the making of interest payments on the notes, is dependent, to a significant extent, on the generation of cash flow by our subsidiaries and their ability to make such cash available to us, by dividend, debt repayment or otherwise. Our subsidiaries may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness, including the notes. Each subsidiary is a distinct legal entity with no obligation to provide us with funds for our repayment obligations, and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries. In the event that we do not receive distributions from our subsidiaries, we may be unable to make required principal and interest payments on our indebtedness, or make interest payments on the notes.

The notes are not protected by covenants restricting the incurrence of indebtedness, the payment of dividends, or the issuance or repurchase of securities. We will have the ability to incur substantially more indebtedness, including secured indebtedness.

The indenture governing the notes will not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. If we and our subsidiaries incur significant additional indebtedness, the related risks that we face could intensify. In addition, the indenture does not contain covenants or other provisions to afford protection to holders of the notes in the event of specified corporate transactions or a fundamental change involving us except to the extent described under Description of the Notes herein under the subheadings Conversion Upon Fundamental Change and Anti-dilution Adjustments.

If you hold notes, you are not entitled to any rights with respect to our common stock, but you are subject to all changes made with respect to our common stock.

If you hold notes, you are not entitled to any rights with respect to our common stock, including voting rights and rights to receive any dividends or other distributions on our common stock, but you are subject to all changes affecting the common stock. You will have the rights with respect to our common stock only if you receive our common stock upon conversion and only as of the date when you become an owner of the shares of our common stock upon such conversion. For example, in the event that an amendment is proposed to our charter or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the date you are deemed the owner of the shares of our common stock, if any, due upon conversion, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock once you become a stockholder.

There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock and the value of the notes.

Except as described under the heading Underwriting, we are not restricted from issuing additional common stock, including securities that are convertible into or exchangeable for, or that represent the right to receive, common stock. The issuance of additional shares of our common stock will dilute the ownership interest of our existing common stockholders.

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Sales of a substantial number of shares of our common stock or other equity-related securities in the public market could depress the market price of the notes, our common stock, or both, and impair our ability to raise capital through the sale of additional equity securities. We cannot predict the effect that future sales of our common stock or other equity-related securities would have on the market price of our common stock or the value of the notes. The price of our common stock could be affected by possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in our company and by hedging or arbitrage trading activity. The hedging or arbitrage could, in turn, affect the market price of the notes.

The market price of the notes is expected to be significantly affected by the market price of our common stock, which may be volatile and will be affected by factors beyond our control.

We expect that the market price of the notes will be significantly affected by the market price of our common stock. This may result in greater volatility in the market price of the notes than would be expected for nonconvertible debt securities. The market price of our common stock will likely continue to fluctuate in response to the factors discussed elsewhere in Risk Factors, including under the subheading, Risks Related to Ownership of Our Common Stock, and in Forward-Looking Statements, among others, many of which are beyond our control.

The notes may adversely affect the market price of our common stock.

The market price of our common stock is likely to be influenced by the notes. For example, the market price of our common stock could become more volatile and could be depressed by investors' anticipation of the potential resale in the market of a substantial number of additional shares of our common stock received upon conversion of the notes; possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in us than owning shares of our common stock; and hedging or arbitrage trading activity that may develop involving the notes and our common stock.

Purchasers of the notes may not realize any or all of the benefit of an increase in the market price of our common stock.

The market value of our common stock that you will receive upon mandatory conversion of the notes on the stated maturity date will exceed \$ per note, the principal amount per such note, only if the applicable market value, which is the average of the closing prices of our common stock over the 20 consecutive trading day period ending on the third trading day immediately preceding the mandatory conversion date, equals or exceeds the threshold appreciation price of \$. The threshold appreciation price for each series of notes represents an appreciation of approximately % over the initial price. This means that the opportunity for equity appreciation provided by an investment in the notes is more limited than that provided by a direct investment in our common stock.

If the applicable market value of our common stock exceeds the initial price but is less than the threshold appreciation price, a holder of the notes will realize no equity appreciation on our common stock. Furthermore, if the applicable market value of our common stock exceeds the threshold appreciation price, the value of our common stock received upon conversion will be approximately % of the value of our common stock that could have been purchased with \$25 at the time of this offering.

You will bear the full risk of a decline in the market price of our common stock.

The number of shares of our common stock that you will receive upon conversion at maturity is not fixed, but instead will depend on the applicable market value of our common stock (or, in the event you elect to convert your notes in connection with a fundamental change, will depend on the stock price (as described under Description of the Notes Conversion Upon Fundamental Change)). If you elect to convert prior to maturity, you will receive a fixed number of

shares of common stock equal to the minimum conversion rate. If notes are converted pursuant to a covenant event, you will receive a fixed number of shares of our common stock equal to the maximum conversion rate. The aggregate market value of the shares of our common stock you receive upon conversion may be less than the principal amount of your notes. Specifically, if the applicable market value of our common stock is less than \$, which is the initial price, the market value of each share of our common stock you receive upon mandatory conversion will be less than \$, and your

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investment in the notes will result in a loss. Accordingly, you will bear the full risk of a decline in the market price of our common stock. Any such decline could be substantial.

There may not be a liquid trading market for the notes.

The notes are an issuance of new securities and an active trading market for the notes may not develop. We have applied for listing of the notes on the New York Stock Exchange; however, we can give no assurance that the notes will be so listed. Each underwriter has advised us that it intends to make a market in the notes, but no underwriter is obligated to do so. Any underwriter may discontinue market making at any time in its sole discretion without notice. Accordingly we cannot assure you that a liquid trading market will develop for the notes (or, if developed, than a liquid trading market for the notes will be maintained), that you will be able to sell your notes at a particular time or that the prices you receive when you sell will be favorable.

The conversion rate for notes may not be adjusted for all dilutive events.

The conversion rate of the notes is subject to adjustment for certain events, including, but not limited to, the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, certain cash dividends and certain issuer tender or exchange offers as described under Description of the Notes Anti-dilution Adjustments. Such conversion rate will not be adjusted, however, for other events, such as a third-party tender or exchange offer or an issuance of common stock for cash, that may adversely affect the trading price of the notes or our common stock. In addition, an event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to such conversion rate.

Non-U.S. holders who own, or in certain cases have owned, directly or constructively, more than a certain ownership threshold may be subject to U.S. federal income tax on gain realized on the disposition of the notes.

Because we have significant U.S. real estate holdings, we believe that we may currently be or become a USRPHC for U.S. federal income tax purposes. As a result, a non-U.S. holder of the notes (as defined in Material United States Federal Income Tax Considerations Non-U.S. Holders) will be subject to U.S. federal income tax on gain realized on a sale or other disposition of the notes if the non-U.S. holder exceeds certain ownership thresholds. Non-U.S. holders are urged to consult with their own tax advisors as to the application of the tax rules to their disposition of their notes.

The U.S. tax treatment of the notes could differ from what we expect in ways that could adversely affect U.S. holders.

As described in more detail under Material United States Federal Income Tax Considerations, below, we intend to treat the notes for U.S. federal income tax purposes as equity. Except where specifically indicated otherwise, the discussion under Material United States Federal Income Tax Considerations assumes such treatment. Such treatment, however, is not binding on the Internal Revenue Service or the courts, and there can be no assurance that the Internal Revenue Service (IRS) would not argue, or that a court would not hold, that the notes should be treated otherwise for U.S. federal income tax purposes. The IRS could assert or a court could hold that the notes should be treated differently for U.S. federal income tax purposes. For example, under one alternative treatment, the IRS could seek to treat the notes as subject to the Treasury regulations governing contingent payment debt instruments, which would affect the timing and character of income, gain and loss recognized by a U.S. holder. Under an alternative treatment, the IRS could seek to treat the notes as consisting of a prepaid forward contract to purchase our common stock at maturity or upon conversion. Such alternative treatments could result in adverse tax consequences and thus could adversely affect the value of the notes. U.S. holders are urged to consult their own tax advisors regarding possible alternative characterizations of the notes, and the resulting tax consequences.

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FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein contain forward-looking statements. These forward-looking statements represent our expectations or beliefs concerning future events, and it is possible that the results described in such documents will not be achieved. These forward-looking statements can generally be identified by the use of statements that include words such as estimate, project, believe, expect, anticipate, intend, plan, foresee, likely, will, goal, target or other similar

These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of our control, that could cause actual results to differ materially from the results discussed in the forward-looking statements. Factors that could lead to material changes in our performance may include, but are not limited to:

the final outcome of various putative class action lawsuits, the derivative claims, multi-party suits and similar proceedings as well as the results of any other litigation or government proceedings and fulfillment of the obligation in our Deferred Prosecution Agreement with the United States Attorney and other settlement agreements and consent orders with governmental authorities;

additional asset impairment charges or write downs;

economic changes nationally or in local markets, including changes in consumer confidence, volatility of mortgage interest rates and inflation;

continued or increased downturn in the homebuilding industry;

estimates related to homes to be delivered in the future (backlog) are imprecise as they are subject to various cancellation risks which cannot be fully controlled;

continued or increased disruption in the availability of mortgage financing;

our cost of and ability to access capital and otherwise meet our ongoing liquidity needs including the impact of any further downgrades of our credit ratings or reductions in our tangible net worth or liquidity levels;

potential inability to comply with covenants in our debt agreements or satisfy such obligations through repayment or refinancing;

increased competition or delays in reacting to changing consumer preference in home design;

shortages of or increased prices for, labor, land or raw materials used in housing production;

factors affecting margins such as decreased land values underlying land option agreements, increased land development costs on communities under development or delays or difficulties in implementing initiatives to reduce production and overhead cost structure;

the performance of our joint ventures and our joint venture partners;

the impact of construction defect and home warranty claims, including those related to possible installation of drywall imported from China;

the cost and availability of insurance and surety bonds;

delays in land development or home construction resulting from adverse weather conditions;

potential delays or increased costs in obtaining necessary permits as a result of changes to, or complying with, laws, regulations or governmental policies and possible penalties for failure to comply with such laws, regulations and governmental policies;

effects of changes in accounting policies, standards, guidelines or principles; or

terrorist acts, acts of war and other factors over which we have little or no control.

Any forward-looking statement speaks only as of the date on which such statement is made, and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time and it is not possible for management to predict all such factors.

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USE OF PROCEEDS

We expect to receive net proceeds from this offering of approximately \$ million (or approximately \$ million if the underwriters exercise their over-allotment option in full), after deducting underwriting discounts and estimated transaction expenses payable by us. In addition, we expect that the net proceeds from the concurrent Common Stock Offering will be approximately \$ million (or approximately \$ million if the underwriters exercise their over-allotment option in full for the Common Stock Offering), after deducting underwriting discounts and estimated transaction expenses payable by us. However, there can be no assurance that the Common Stock Offering will be completed or what the terms will be.

We intend to use the net proceeds from this offering, together with the net proceeds from the concurrent Common Stock Offering, (i) to replenish funds used in connection with the 2011 Notes Redemption and (ii) for other general corporate purposes, including, without limitation, funding (or replenishing cash that has been used to fund) repurchases of our outstanding senior notes that we may make from time to time. Pending the application of the net proceeds, we may invest the proceeds in short-term, interest bearing instruments and other invest-grade securities.

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The following table sets forth our cash and cash equivalents and our capitalization as of September 30, 2009 on an actual basis. This information has not been adjusted to give effect to the sale of the notes offered hereby, the use of proceeds therefrom as described under "Use of Proceeds" or to give further effect to the sale of common stock offered in the concurrent Common Stock Offering and the use of proceeds therefrom as described under "Use of Proceeds." This table should be read in conjunction with our historical financial statements and related notes in our Annual Report on Form 10-K for the year ended September 30, 2009, as well as the section of our Annual Report on Form 10-K for the fiscal year ended September 30, 2009 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations," which is incorporated herein by reference. However, there can be no assurance that the Common Stock Offering will be completed or what the terms will be.

	As of September 30, 2009 (\$ in thousands)
Cash, cash equivalents and restricted cash	\$ 556,800
Debt:	
Revolving credit facility	
Senior notes	
85/8% Senior notes due 2011	\$ 127,254
83/8% Senior notes due 2012	303,599
61/2% Senior notes due 2013	164,473
67/8% Senior notes due 2015	209,454
81/8% Senior notes due 2016	180,879
Existing Convertible Notes	154,500
12% Senior secured notes due 2017	250,000
Junior subordinated notes	103,093
Other secured notes payable	12,543
Model home financing obligations	30,361
Unamortized debt discounts	(27,257)
Total debt	\$ 1,508,899
Stockholders' equity:	
Common stock, \$.001 par value; 80,000,000 shares authorized; 43,150,472 shares issued	43
Additional paid-in capital	568,019
Accumulated deficit	(187,538)
Treasury stock, at cost (3,357,156 shares)	(183,969)
Total stockholders' equity	196,555
Total capitalization	\$ 1,705,454

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DESCRIPTION OF THE NOTES

The following description of the particular terms of the notes supplements the general description of the notes set forth in the accompanying prospectus under the heading Description of Debt Securities and Guarantees. It is important for you to consider the information contained in the accompanying prospectus and this prospectus supplement before making your decision to invest in the notes. If any specific information regarding the notes in this prospectus supplement is inconsistent with the more general description of the notes described in the prospectus, you should rely on the information contained in this prospectus supplement. In this description, we, us, our, the Company, or Beazer refer to Beazer Homes USA, Inc. and its subsidiaries on a consolidated basis, unless we state otherwise or the context indicates otherwise.

The following descriptions are a summary of the material terms of the notes and an indenture by and between Beazer and U.S. Bank National Association, as trustee, including the supplement to that indenture concerning the notes. This summary does not purport to describe all of, or to restate any of the terms of the notes or the indenture. We urge you to read the notes, the indenture and the supplemental indenture because those documents, and not this description, definitively set forth your rights as investors. You can obtain a copy of the indenture, the form of supplemental indenture and of the form of the notes by contacting us as described under Where You Can Find More Information.

General

The notes will be limited to \$57.5 million in aggregate principal amount and will mature on January 15, 2013. Each note, unless previously converted, will automatically convert at maturity (whether the stated maturity date or the settlement date resulting from any acceleration of the notes following an event of default or as otherwise described herein) into a number of shares of our common stock at the conversion rate described herein. The notes will be issued in registered form, without coupons, and only in denominations of \$25 and integral multiples of \$25.

Interest on the notes will accrue at the rate of $\quad\quad\quad\%$ per year. We will pay interest on the notes quarterly in arrears on each January 15, April 15, July 15 and October 15, beginning April 15, 2010, to the persons in whose names the notes are registered at the close of business on the January 1, April 1, July 1 or October 1, respectively, immediately preceding the relevant interest payment date. If any date on which interest is payable is not a business day, we will pay interest on the next business day (without any interest or other payment resulting from the delay). Interest on the notes will be calculated on the basis of a 360-day year consisting of twelve 30-day months and, in the case of an incomplete month, the actual number of days elapsed. If the stated maturity date or any conversion date for the notes falls on a day that is not a business day, we will pay the interest on the next business day (without any interest or other payment resulting from the delay). The term business day, as used herein, means a day other than a Saturday or a Sunday, a legal holiday or a day on which banking institutions or trust companies in that place of payment are authorized or obligated by law to close.

Interest payments for the notes will include accrued interest from and including the date of issue or from and including the last date on which interest has been paid, as the case may be, up to (but excluding) the interest payment date or the date of maturity or conversion, as the case may be.

Any monies deposited with the trustee or any paying agent or then held by us in trust for the payment of interest on the notes that remains unclaimed for two years after the date the payments became due and payable, shall, at our request, be repaid to us or released from trust, as applicable, and the holder of the note shall thereafter look, as a general unsecured creditor, only to us for payment thereof.

Ranking

The notes will be general, unsecured and subordinated obligations of Beazer Homes USA, Inc. and will not be guaranteed by any of our subsidiaries. The notes will be subordinate in right of payment to all of our existing and future senior indebtedness. In addition, the notes will effectively rank junior to any existing and

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future secured indebtedness that we may incur to the extent of the value of the assets securing such indebtedness.

Senior indebtedness means, with respect to Beazer:

all obligations for money borrowed;

indebtedness evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses;

reimbursement obligations with respect to letters of credit, bankers' acceptances or similar facilities issued for our account;

indebtedness issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business);

capital lease obligations;

indebtedness for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements;

all obligations of the types previously described of other persons for the payment of which we are responsible or liable as obligor, guarantor or otherwise; and

any renewals, extensions, refundings, amendments or modifications of any of the obligations described above.

However, senior indebtedness does not include:

any indebtedness which is by its terms subordinated to, or *pari passu* with, the notes, including, without limitation, the Company's junior subordinated notes due 2036;

shares of our capital stock and all warrants, options or other rights to acquire shares of our capital stock (but excluding any debt security that is convertible into, or exchangeable for, shares of our capital stock, which may constitute senior indebtedness);

any indebtedness owed by us to any of our subsidiaries or affiliates; or

any trade payables.

Under the indenture, unless all principal of and any premium or interest on our senior indebtedness has been paid in full, no payment or other distribution in cash may be made in respect of the notes:

in the event of any insolvency or bankruptcy proceeding, or any receivership, liquidation, reorganization, assignment for creditors or other similar proceedings or events involving the Company or our assets;

(a) in the event and during the continuation of any default in the payment of principal, premium or interest on any senior indebtedness beyond any applicable grace period, (b) in the event that any event of default with respect to any senior indebtedness has occurred and is continuing, permitting the holders of that senior indebtedness (or a trustee) to accelerate the maturity of that senior indebtedness, whether or not the maturity is in fact accelerated (unless, in the case of (a) or (b), the payment default or event of default has been cured or

waived or ceased to exist and any related acceleration has been rescinded) or (c) in the event that any judicial proceeding is pending with respect to a payment default or event of default described in (a) or (b); or

in the event that notes have been accelerated.

If the trustee or any holder of the notes receives any payment or distribution that is prohibited under the subordination provisions included in the indenture, then the trustee or the holder will have to repay that money to us, and we will remit any such payment to the holders of the senior indebtedness.

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As a holding company, our assets primarily consist of the equity securities of our subsidiaries. Therefore, the notes will be effectively subordinated to all indebtedness and other liabilities, including trade payables, debt and preferred stock, incurred or issued by our subsidiaries. As of September 30, 2009, we had outstanding approximately \$1.4 billion of senior indebtedness and our subsidiaries had approximately \$12.5 million of indebtedness that will be effectively senior to the notes. The indenture will not limit the amount of indebtedness we or our subsidiaries may incur, and we expect from time to time to incur additional indebtedness and other liabilities that will constitute senior indebtedness and, therefore, will be senior to the notes.

Mandatory Conversion

Each note, unless previously converted, will automatically convert on the stated maturity date into a number of shares of our common stock at the conversion rate described below. In addition to the shares of common stock issuable upon conversion of each note at its maturity, holders will have the right to receive an amount in cash equal to all accrued and unpaid interest on such notes up to (but excluding) the stated maturity date.

The conversion rate, which is the number of shares of our common stock deliverable upon conversion of each note on the applicable conversion date, will be as set forth below, subject in each case to adjustment as described under

Anti-dilution Adjustments, Conversion Upon Fundamental Change and Covenant Event Conversion at the Option of the Company below:

if the applicable market value (as defined below) of our common stock is equal to or greater than \$, which we call the threshold appreciation price, then the conversion rate will be common shares per note (the minimum conversion rate), which is equal to \$25 divided by the threshold appreciation price;

if the applicable market value of our common stock is less than the threshold appreciation price but greater than \$, which we call the initial price, then the conversion rate per note will be equal to \$25 divided by the applicable market value of our common stock; or

if the applicable market value of our common stock is less than or equal to the initial price, then the conversion rate will be common shares per note (the maximum conversion rate), which is equal to \$25 divided by such initial price.

The threshold appreciation price with respect to the notes represents approximately % appreciation over the initial price.

We refer to the minimum conversion rate and the maximum conversion rate for the notes collectively as the fixed conversion rates. The fixed conversion rates, the initial price and the threshold appreciation price for the notes are each subject to adjustment as described under Anti-dilution Adjustments below. When we refer to a note (or an amount per such note), we mean per \$25 principal amount of such note.

Assuming the actual market value of the shares of our common stock we deliver to you at maturity of the notes is equal to the applicable market value of our common stock, the aggregate value you receive upon conversion will be:

greater than the principal amount per such note, if the applicable market value is greater than the threshold appreciation price;

equal to the principal amount per such note, if the applicable market value is less than or equal to the threshold appreciation price and greater than or equal to the initial price; and

less than the principal amount per such note, if the applicable market value is less than the initial price.

Accordingly, the market price of the shares of common stock we deliver to you at maturity may be less than the principal amount of your notes.

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Applicable market value means the average of the closing prices of our common stock over the 20 consecutive trading day period ending on the third trading day immediately preceding the mandatory conversion date.

The closing price of our common stock on any given date means:

the reported closing price on that date or, if no closing price is reported, the last reported sale price of shares of our common stock on the New York Stock Exchange on that date; or

if our common stock is not traded on the New York Stock Exchange, the closing price on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which our common stock are so traded or, if no closing price is reported, the last reported sale price of shares of our common stock on the principal U.S. national or regional securities exchange on which our common stock is so traded; or

if our common stock is not traded on a U.S. national or regional securities exchange, the last quoted bid price on that date for our common stock in the over-the-counter market as reported by Pink OTC Markets Inc. or a similar organization; or

if our common stock is not so quoted by Pink OTC Markets Inc. or a similar organization, the market value of our common stock on that date as determined by our board of directors.

All references herein to the closing price of our common stock and the last reported sale price of our common stock on the New York Stock Exchange shall be such closing price and such last reported sale price as reflected on the website of the New York Stock Exchange (www.nyse.com) and as reported by Bloomberg Professional Service; provided that in the event that there is a discrepancy between the closing price and the last reported sale price as reflected on the website of the New York Stock Exchange and as reported by Bloomberg Professional Service, the closing price and the last reported sale price on the website of the New York Stock Exchange shall govern.

A trading day is a day on which shares of our common stock:

are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and

has traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of our common stock.

We will not issue fractional shares upon conversion, as discussed under Fractional Shares below.

Table of Contents***Hypothetical conversion values upon mandatory conversion***

For illustrative purposes only, the following table shows the number of shares of our common stock that a holder of the notes would receive upon mandatory conversion of each note at various applicable market values for our common stock. The table assumes that there will be no conversion adjustments as described below under Anti-dilution Adjustments. The actual applicable market value of shares of our common stock may differ from those set forth in the table below. Given an initial price of \$ and a threshold appreciation price of \$, a holder of the notes would receive on the mandatory conversion date the number of shares of our common stock per note, with a corresponding conversion value, set forth below:

Applicable Market Value of our Common Stock	Number of Shares of our Common Stock to be Received Upon Conversion	Conversion Value (Applicable Market Value Multiplied by the Number of our Shares of Common Stock to be Received Upon Conversion)
\$		
\$		
\$		
\$		
\$		
\$		
\$		

As the above chart illustrates,

if the applicable market value is greater than or equal to \$ (the threshold appreciation price), we will be obligated to deliver shares of common stock for each note. As a consequence, we would receive the benefit of the % of the appreciation in market price above the threshold appreciation price and you would receive the benefit of the % of the appreciation in market price above the threshold appreciation price;

if the applicable market value is greater than \$ (the initial price) and less than \$ (the threshold appreciation price), we will be obligated to deliver a number of shares of our common stock having an applicable market value equal to \$25 (the principal amount of a note). As a consequence, we would retain all of the benefit of the appreciation in the market price of the common stock; and

if the applicable market value is less than or equal to \$ (the initial price), we will be obligated to deliver shares of common stock per note, regardless of the market price of our common stock. As a consequence, you will bear the full risk of a decline in market price of our common stock.

Conversion at the Option of the Holder

Other than during a fundamental change conversion period (as defined below), holders of the notes will have the right to convert their notes, in whole or in part, at any time prior to maturity, into shares of our common stock at the minimum conversion rate of shares of common stock per note, subject in each case to adjustment as described under Anti-dilution Adjustments below.

In addition to the number of shares of common stock issuable upon such conversion, each holder that elects to convert its notes prior to maturity will have the right to receive an amount equal to all accrued and unpaid interest on such converted notes up to the interest payment date that is on or immediately preceding the date of such optional conversion. Accrued and unpaid interest to (but not including) the conversion date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Except as described herein, upon any optional conversion of the notes, we will make no payment or allowance for unpaid interest on the notes.

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If notes are converted after any regular record date but prior to the related payment date, holders of such notes at the close of business on such record date will receive the payment of interest on the related payment date notwithstanding the optional conversion.

Conversion Upon Fundamental Change

General. If a fundamental change (as defined below) occurs prior to January 15, 2013, we will provide for the conversion of the notes by:

permitting holders to submit their notes for conversion at any time during the period (the fundamental change conversion period) beginning on the effective date of such fundamental change (the fundamental change effective date) and ending on the earlier of (i) the stated maturity date and (ii) the date that is 20 days after the fundamental change effective date, in either case, at the conversion rate (the fundamental change conversion rate) specified in the table below; and

paying to converting holders the fundamental change interest make-whole payment or increasing the conversion rate in lieu thereof (as described below under Fundamental Change Interest Make-Whole Payment).

We will notify holders, to the extent practicable, at least 20 days prior to the anticipated effective date of such fundamental change, of the anticipated fundamental change effective date and the corresponding fundamental change conversion period, but in any event not later than two business days following the Company becoming aware of the occurrence of a fundamental change. In addition, if we elect to deliver the fundamental change interest make-whole amount in shares of our common stock (as described below), such notice will indicate such election. A fundamental change will be deemed to have occurred at any time after the notes are originally issued upon the occurrence of any of the following:

our common stock or other common stock into which the notes are convertible is neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States; or

the consummation of any acquisition (whether by means of a liquidation, share exchange, tender offer, consolidation, recapitalization, reclassification, merger of us or any sale, lease or other transfer of the consolidated assets of ours and our subsidiaries) or a series of related transactions or events pursuant to which:

90% or more of our common stock is exchanged for, converted into or constitutes solely the right to receive cash, securities or other property; and

more than 10% of the cash, securities or other property consists of cash, securities or other property that are not, or upon issuance will not be, traded on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

Fundamental Change Conversion Rate. The following table sets forth the fundamental change conversion rate per note for each hypothetical stock price and fundamental change effective date set forth below:

Effective Date	Stock Price on Effective Date									
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

January , 2010
January , 2011
January , 2012
January , 2013

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The fundamental change conversion rate will be determined by reference to the table above, based on the fundamental change effective date and the stock price in the fundamental change, which will be:

in the case of a fundamental change described in the second bullet of the definition of fundamental change (i.e., constituting an acquisition) in which the holders of our common stock receive only cash in the fundamental change, the stock price shall be the cash amount paid per share of our common stock; and

otherwise, the average of the closing prices of our common stock over the 10 consecutive trading day period ending on the trading day preceding the fundamental change effective date.

The stock prices set forth in the first row of the table above (i.e., the column headers) will be adjusted as of any date on which the fixed conversion rates of the notes are adjusted. The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the minimum conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the minimum conversion rate as so adjusted. Each of the conversion rates in the table will be subject to adjustment in the same manner as each fixed conversion rate as set forth under Anti-dilution Adjustments.

The exact stock price and fundamental change effective dates may not be set forth on the table, in which case:

if the applicable stock price is between two stock price amounts on the table or the fundamental change effective date is between two dates on the table, the fundamental change conversion rate will be determined by straightline interpolation between the fundamental change conversion rates set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year;

if the applicable stock price is in excess of \$ per share (subject to adjustment as described above), then the fundamental change conversion rate will be the applicable minimum conversion rate, subject to adjustment; and

if the applicable stock price is less than \$ per share (subject to adjustment as described above), then the fundamental change conversion rate will be the applicable maximum conversion rate, subject to adjustment.

Our obligation to deliver shares at the fundamental change conversion rate could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

Fundamental Change Interest Make-Whole Payment.

For any notes that are converted during the applicable fundamental change conversion period, in addition to the shares of common stock delivered upon conversion, we will either:

pay the holders of such notes, in cash, the sum (which we refer to as the fundamental change interest make-whole amount) of (a) an amount equal to any accrued and unpaid interest on the notes, and (b) the present value of all remaining interest payments on the notes through and including the stated maturity date; or

increase the number of shares of our common stock to be issued upon conversion by a number of shares of our common stock equal to the fundamental change interest make-whole amount divided by the stock price (as defined above).

The present value of the remaining interest payments will be computed using a discount rate equal to the treasury yield plus 50 basis points. Treasury yield means the weekly average yield at the time of computation for United States

Treasury securities at constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two business days prior to the conversion date (or, if such Statistical Release is no longer published, any publicly available source for similar market data) most nearly equal to the then-remaining term to January 15, 2013;

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provided, however, that if the then-remaining term to January 15, 2013 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the treasury rate will be obtained by straightline interpolation).

Covenant Event Conversion at the Option of the Company

Following the occurrence of a covenant event (as defined below) and during the continuation thereof, we have the right to require holders to convert all, but not less than all, of the notes then outstanding for shares of our common stock at the maximum conversion rate. We will provide notice of a covenant event and our election to specify a related mandatory conversion date as soon as practicable following the end of the fiscal quarter on which the covenant event has occurred (but in no event later than 10 days following our making such financial statement for such fiscal quarter publicly available), specifying the applicable mandatory conversion date, which notice shall be issued not less than 15 nor more than 45 days prior to the mandatory conversion date, by mail to the trustee, the paying agent and each holder of notes. Such notice shall specify whether we elected to deliver the covenant event interest make-whole amount (defined below) in cash or shares of our common stock.

In addition to the shares of common stock delivered upon conversion and any other amounts which may then be due to holders upon conversion (including for the avoidance of doubt under Fundamental Change Conversion Rate), we will either

pay the holders of such notes, in cash, the sum (which we refer to as the covenant event interest make-whole amount) of (a) an amount equal to any accrued and unpaid interest on your notes, and (b) the present value of all remaining interest payments on your notes through and including the stated maturity date, calculated as described above under Fundamental Change Interest Make Whole-Payment; or

increase the number of shares of our common stock to be issued on conversion by a number of shares of our common stock equal to the covenant event interest make-whole amount divided by the average of the closing prices of our common stock over the 5 consecutive trading day period ending on the third trading day immediately preceding the mandatory conversion date.

A covenant event will have been deemed to occur and continue during any quarter if our consolidated tangible net worth (as defined below) shall be less than \$85,000,000 as of the last day of the immediately preceding fiscal quarter.

Consolidated Tangible Net Worth as of any date means the stockholders' equity (including any Preferred Stock (as defined in the Company's Indenture dated September 11, 2009 governing its 12% Senior Secured Notes due 2017 (the Secured Notes Indenture)) of the Company that is classified as equity under GAAP, other than Disqualified Stock (as defined in the Secured Notes Indenture) of the Company and its Restricted Subsidiaries (as defined in the Secured Notes Indenture) on a consolidated basis at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, plus any amount of unvested deferred compensation included, in accordance with GAAP, as an offset to stockholders' equity, less the amount of Intangible Assets (as defined in the Secured Notes Indenture) reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the fiscal quarter immediately preceding such date.

Early Redemption

We will not be permitted to redeem or cause the conversion of the notes before maturity, except as described under Covenant Event Conversion at the Option of the Company above.

Conversion Procedures

Upon any mandatory conversion. The persons entitled to receive the shares of common stock issuable upon any mandatory conversion of the notes (either at maturity or as a result of a covenant event or event of default) will be treated as the record holder(s) of such shares as of 5:00 p.m., New York City time, on the mandatory conversion date. Prior to 5:00 p.m. New York City time on the mandatory conversion date, the

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shares of common stock issuable upon conversion of the notes will not be deemed to be outstanding for any purpose and noteholders will have no rights with respect to such shares of common stock by virtue of holding the notes, including voting rights, rights to respond to tender offers and rights to receive any dividends or other distributions on the common stock.

Upon optional conversion. If you elect to convert your notes prior to the stated maturity date, in the manner described in Conversion at the Option of the Holder or Conversion Upon Fundamental Change, you must observe the following conversion procedures:

If you hold a beneficial interest in a global note, to convert you must deliver to The Depository Trust Company (DTC) the appropriate instruction form for conversion pursuant to DTC's conversion program and, if required, pay all taxes or duties, if any.

If you hold notes in certificated form, to convert you must:

complete and manually sign the conversion notice on the back of the note or a facsimile of the conversion notice;

deliver the completed conversion notice and the certificated notes to be converted to the conversion agent;

if required, furnish appropriate endorsements and transfer documents; and

if required, pay all transfer or similar taxes or duties, if any.

The conversion date will be the date on which you have satisfied all of the foregoing requirements. You will not be required to pay any taxes or duties relating to the issuance or delivery of our common stock if you exercise your conversion rights, but you will be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of the common stock in a name other than your own. Certificates representing common stock will be issued and delivered only after all applicable taxes and duties, if any, payable by you have been paid in full.

The person or persons entitled to receive the shares of common stock issuable upon optional conversion of the notes will be treated as the record holder(s) of such shares as of 5:00 p.m., New York City time, on the applicable conversion date. Prior to 5:00 p.m. New York City time on the applicable conversion date, the shares of common stock issuable upon conversion of the notes will not be deemed to be outstanding for any purpose and you will have no rights with respect to such shares of common stock by virtue of holding the notes, including voting rights, rights to respond to tender offers and rights to receive any dividends or other distributions on the common stock.

Fractional shares. No fractional shares of common stock will be issued to holders of the notes upon conversion. In lieu of any fractional shares of common stock otherwise issuable in respect of the aggregate principal amount of notes of any holder that are converted, that holder will be entitled to receive an amount in cash (computed to the nearest cent) equal to the same fraction of:

in the case of a mandatory conversion or conversion in connection with a fundamental change, the average of the closing prices of our common stock over the 10 consecutive trading days immediately preceding the conversion date; or

in the case of each early conversion at the option of a holder, the closing price per share of our common stock on the second trading day immediately preceding the conversion date.

The number of shares of our common stock issuable to any holder upon conversion shall be computed on the basis of the aggregate principal amount of notes so surrendered by such holder.

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Anti-dilution Adjustments

Each fixed conversion rate will be adjusted if:

(a) We issue common stock to all or substantially all of the holders of our common stock as a dividend or other distribution, in which event, each fixed conversion rate in effect at 5:00 p.m., New York City time, on the date fixed for determination of the holders of our common stock entitled to receive such dividend or other distribution will be divided by a fraction:

the numerator of which is the number of shares of our common stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination, and

the denominator of which is the sum of the number of shares of our common stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the total number of shares of our common stock constituting such dividend or other distribution.

Any adjustment made pursuant to this clause (a) will become effective immediately after 5:00 p.m., New York City time, on the date fixed for such determination. If any dividend or distribution described in this clause (a) is declared but not so paid or made, each fixed conversion rate shall be readjusted, effective as of the date our board of directors publicly announces its decision not to make such dividend or distribution, to such fixed conversion rate that would be in effect if such dividend or distribution had not been declared. For the purposes of this clause (a), the number of shares of common stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination shall not include shares held in treasury but shall include any shares issuable in respect of any scrip certificates issued in lieu of fractions of shares of common stock. We will not pay any dividend or make any distribution on shares of common stock held in treasury.

(b) We issue to all or substantially all holders of our common stock rights or warrants (other than rights or warrants issued pursuant to a dividend reinvestment plan or share purchase plan or other similar plans) entitling them, for a period of up to 45 calendar days from the date of issuance of such rights or warrants, to subscribe for or purchase our shares of common stock at less than the current market price (as defined below) of our common stock, in which case each fixed conversion rate in effect at 5:00 p.m., New York City time, on the date fixed for determination of the holders of our common stock entitled to receive such rights or warrants will be increased by multiplying such fixed conversion rate by a fraction:

the numerator of which is the sum of the number of shares of common stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the number of shares of our common stock issuable pursuant to such rights or warrants, and

the denominator of which shall be the sum of the number of shares of common stock outstanding at 5:00 p.m., New York City time, on the date fixed for such determination and the number of shares of common stock equal to the quotient of the aggregate offering price payable to exercise such rights or warrants divided by the current market price of our common stock.

Any adjustment made pursuant to this clause (b) will become effective immediately after 5:00 p.m., New York City time, on the date fixed for such determination. In the event that such rights or warrants described in this clause (b) are not so issued, each fixed conversion rate shall be readjusted, effective as of the date our board of directors publicly announces its decision not to issue such rights or warrants, to such fixed conversion rate that would then be in effect if such issuance had not been declared. To the extent that such rights or warrants are not exercised prior to their expiration or shares of our common stock are otherwise not delivered pursuant to such rights or warrants upon the

exercise of such rights or warrants, each fixed conversion rate shall be readjusted to such fixed conversion rate that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of our common stock actually delivered. In determining the aggregate offering price payable for such shares of our common stock, there shall be taken into account any consideration received for such rights or warrants and the value of such consideration (if other than cash, to be determined by our board of directors). For the purposes of this clause (b), the number of shares of common stock at the time outstanding shall not include shares held in treasury but shall include any shares issuable in respect of any scrip certificates issued in lieu of

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fractions of shares of common stock. We will not issue any such rights or warrants in respect of shares of common stock held in treasury.

(c) We subdivide or combine our common stock, in which event the conversion rate in effect at 5:00 p.m., New York City time, on the effective date of such subdivision or combination shall be multiplied by a fraction:

the numerator of which is the number of shares of our common stock that would be outstanding immediately after, and solely as a result of, such subdivision or combination, and

the denominator of which is the number of shares of our common stock outstanding immediately prior to such subdivision or combination.

Any adjustment made pursuant to this clause (c) shall become effective immediately after 5:00 p.m., New York City time, on the effective date of such subdivision or combination.

(d) We distribute to all or substantially all holders of our common stock evidences of our indebtedness, shares of capital stock, securities, cash or other assets, excluding:

any dividend or distribution covered by clause (a) above;

any rights or warrants covered by clause (b) above;

any dividend or distribution covered by clause (e) below; and

any spin-off to which the provisions set forth below in this clause (d) shall apply,

in which event each fixed conversion rate in effect at 5:00 p.m., New York City time, on the date fixed for the determination of holders of our common stock entitled to receive such distribution will be multiplied by a fraction:

the numerator of which is the current market price of our common stock, and

the denominator of which is the current market price of our common stock minus the fair market value, as determined by our board of directors, on such date fixed for determination of the portion of the evidences of indebtedness, shares of capital stock, securities, cash or other assets so distributed applicable to one share of our common stock.

In the event that we make a distribution to all or substantially all holders of our common stock consisting of capital stock of, or similar equity interests in, or relating to a subsidiary or other business unit of ours (herein referred to as a spin-off), each fixed conversion rate in effect at 5:00 p.m., New York City time, on the date fixed for the determination of holders of our common stock entitled to receive such distribution will be multiplied by a fraction:

the numerator of which is the sum of the current market price of our common stock and the fair market value, as determined by our board of directors, of the portion of those shares of capital stock or similar equity interests so distributed applicable to one share of common stock as of the fifteenth trading day after the ex-date for such distribution (or, if such shares of capital stock or equity interests are listed on a national or regional securities exchange, the average of the closing prices of such securities for the ten consecutive trading day period ending on such fifteenth trading day), and

the denominator of which is the current market price of our common stock.

Any adjustment made pursuant to this clause (d) shall become effective immediately after 5:00 p.m., New York City time, on the date fixed for the determination of the holders of our common stock entitled to receive such distribution. In the event that such distribution described in this clause (d) is not so made, each fixed conversion rate shall be readjusted, effective as of the date our board of directors publicly announces its decision not to pay such dividend or distribution, to such fixed conversion rate that would then be in effect if such distribution had not been declared. If an adjustment to each fixed conversion rate is required under this clause (d) during any conversion period in respect of the notes that have been tendered for conversion, delivery of the shares of our common stock issuable upon conversion will be delayed to the extent necessary in order to complete the calculations provided for in this clause (d).

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(e) We make a distribution consisting exclusively of cash to all or substantially all holders of our common stock, excluding:

any cash that is distributed in a reorganization event (as described below),

any dividend or distribution in connection with our liquidation, dissolution or winding up, and

any consideration payable as part of a tender or exchange offer,

in which event, each fixed conversion rate in effect at 5:00 p.m., New York City time, on the date fixed for determination of the holders of our common stock entitled to receive such distribution will be multiplied by a fraction:

the numerator of which is the current market price of our common stock, and

the denominator of which is the current market price of our common stock minus the amount per share of such distribution.

Any adjustment made pursuant to this clause (e) shall become effective immediately after 5:00 p.m., New York City time, on the date fixed for the determination of the holders of our common stock entitled to receive such distribution. In the event that any distribution described in this clause (e) is not so made, each fixed conversion rate shall be readjusted, effective as of the date our board of directors publicly announces its decision not to pay such distribution, to such fixed conversion rate which would then be in effect if such distribution had not been declared.

(f) We or any of our subsidiaries successfully complete a tender or exchange offer pursuant to a Schedule TO or registration statement on Form S-4 for our common stock (excluding any securities convertible or exchangeable for our common stock), where the cash and the value of any other consideration included in the payment per share of our common stock exceeds the current market price of our