

AVATAR HOLDINGS INC

Form 424B5

January 31, 2011

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The information contained in this Prospectus Supplement is not complete and may be changed. This Prospectus Supplement is not an offer to sell these securities and it 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. 333-161498

Subject to Completion, dated January 31, 2011

PROSPECTUS SUPPLEMENT
(To Prospectus dated August 28, 2009)

\$100,000,000

Avatar Holdings Inc.

% Senior Convertible Notes due 2016

This is an offering by Avatar Holdings Inc. of \$100,000,000 aggregate principal amount of its % Senior Convertible Notes due 2016 (the Notes).

The Notes will be convertible, at your option, into shares of our common stock initially at a conversion rate of shares (equivalent to an initial conversion price of approximately \$ per share), subject to adjustment as described in this prospectus supplement at any time on or prior to the close of business on the business day immediately preceding the maturity date.

In the event of certain types of fundamental changes, we will increase the conversion rate by a number of additional shares.

The Notes will bear interest at a rate of % per year, payable semi-annually in arrears in cash, on February 15 and August 15 of each year, commencing on August 15, 2011. The Notes will mature on February 15, 2016.

You may require us to repurchase all or a portion of your Notes upon a fundamental change or on February 15, 2014, in each circumstance at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest (including additional interest, if any). You may also require us to repurchase up to 50% of the aggregate principal amount of your Notes upon breach of certain financial covenants at a cash repurchase price equal to 110% of the principal amount plus accrued and unpaid interest (including additional interest, if any).

The Notes will be our senior unsecured obligations. As of September 30, 2010 we and our consolidated subsidiaries had approximately \$64.8 million principal amount of unsecured notes outstanding and approximately \$0.1 million of secured notes outstanding.

The Notes will not be listed on any securities exchange. Currently there is no public market for the Notes. Our common stock is listed on The Nasdaq Stock Market (Nasdaq) under the symbol AVTR. The last reported sale price of our common stock on January 28, 2011 was \$20.20 per share.

Investing in the Notes involves significant risks. See Risk Factors beginning on page S-8 of this prospectus supplement and page 2 of the accompanying prospectus.

	Per Note	Total
Price to the public ⁽¹⁾	\$	\$
Underwriting discounts and commissions	\$	\$
Proceeds to the company (before expenses)	\$	\$

⁽¹⁾ Plus accrued interest, if any, from February , 2011.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus supplement. Any representation to the contrary is a criminal offense.

Barclays Capital expects to deliver the Notes on or about February , 2011.

Barclays Capital

Prospectus Supplement dated February , 2011

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement is accompanied by a prospectus dated August 28, 2009. The accompanying prospectus is part of a Registration Statement on Form S-3 (Reg. No. 333-161498) that we filed with the Securities and Exchange Commission (the Commission) using a shelf registration process. Under this shelf registration process, we may, from time to time, offer and/or sell the securities referenced in the registration statement in one or more offerings. Each time our securities are offered, we provide a prospectus supplement and attach it to the accompanying prospectus. This prospectus supplement contains more specific information about the offering. This prospectus supplement may also add, update or change information contained in the accompanying prospectus. Any statement that we make in the accompanying prospectus is modified or superseded by any inconsistent statement made by us in this prospectus supplement. You should read both this prospectus supplement and the accompanying prospectus together with the additional information described under the heading Incorporation of Certain Documents by Reference.

You should rely only on the information contained in this prospectus supplement, the accompanying prospectus and those documents incorporated by reference herein or therein. We have not authorized anyone to provide you with information different from that contained in this prospectus supplement or the accompanying prospectus or information incorporated by reference herein or therein. This prospectus supplement may only be used where it is legal to sell these securities. This prospectus supplement is not an offer to sell, or a solicitation of an offer to buy, in any state where the offer or sale is prohibited. The information in this prospectus supplement, the accompanying prospectus, or any document incorporated by reference herein or therein is accurate as of the date of any such document. Neither the delivery of this prospectus supplement or the accompanying prospectus, nor any sale made under this prospectus supplement or the accompanying prospectus will, under any circumstances, imply that the information in this prospectus supplement or the accompanying prospectus is correct as of any date after the date of this prospectus supplement or the accompanying prospectus, respectively.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The Commission allows us to incorporate by reference into this prospectus supplement the information we have filed with the Commission. This means that we can disclose important information by referring you to those documents. All documents that we subsequently file with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the termination of this offering, will be deemed to be incorporated by reference into this prospectus supplement and to be a part hereof from the date of filing of such documents. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed below or filed in the future, that are not deemed filed with the Commission, including information furnished pursuant to Item 2.02 or 7.01 of Form 8-K. Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus supplement shall be deemed to be modified or superseded for purposes of this prospectus supplement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement.

We incorporate by reference the following documents that we have filed with the Commission, and any filings that we will make with the Commission in the future, under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, until this offering is terminated:

Annual Report on Form 10-K for the fiscal year ended December 31, 2009;

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Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2010, June 30, 2010, and September 30, 2010;

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Current Reports on Form 8-K filed with the Commission on May 24, 2010, June 4, 2010, August 30, 2010, October 25, 2010, October 28, 2010, November 16, 2010, January 4, 2011.

Definitive Proxy Statement on Schedule 14A, dated April 29, 2010, relating to our annual meeting of stockholders, which was held on June 3, 2010; and

Description of Avatar's Common Stock on Form 8-A filed October 15, 1980.

WHERE YOU CAN FIND MORE INFORMATION

The documents incorporated by reference into this prospectus supplement are available from us upon request. We will provide a copy of any and all of the information that is incorporated by reference in this prospectus supplement, without charge, upon written or oral request. If you would like to obtain this information from us, please direct your request, either in writing or by telephone, to:

Avatar Holdings Inc.
201 Alhambra Circle
Coral Gables, Florida 33134
(305) 442-7000
Attn: Corporate Secretary

Any statement made in this prospectus supplement or in documents incorporated by reference into this prospectus supplement, concerning the contents of any contract, agreement or other document is only a summary of the actual document. You may obtain a copy of any document summarized in this prospectus supplement or in documents incorporated by reference into this prospectus supplement, at no cost by writing to or telephoning us at the address and telephone number given above. Each statement regarding a contract, agreement or other document is qualified in its entirety by reference to the actual document.

We file reports, proxy statements and other information with the Commission. Copies of our reports, proxy statements and other information may be inspected and copied at the Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Copies of these materials can also be obtained by mail at prescribed rates from the Public Reference Room of the Commission, 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. The Commission maintains an internet site that contains reports, proxy and information statements and other information regarding us and other issuers that file electronically with the Commission. The address of the Commission internet site is www.sec.gov. This information is also available on our website at www.avatarholdings.com. Information contained on these websites is not incorporated by reference into and does not constitute a part of this prospectus supplement.

Reports, proxy statements and other information regarding us may also be inspected at:

The National Association of Securities Dealers
1735 K Street, N.W.
Washington, D.C. 20006

We filed a registration statement on Form S-3 (Reg. No. 333-161498) under the Securities Act of 1933, as amended (the Securities Act), with the Commission with respect to the securities to be sold hereunder. The accompanying prospectus has been filed as part of that registration statement. The registration statement is available for inspection and copying as set forth above.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference into these documents contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. We use words such as anticipates, believes, plans, expects, future, intends, foresee and similar expressions to identify these forward-looking statements. In addition, from time to time we or our representatives have made or may make forward-looking statements orally or in writing. Furthermore, such forward-looking statements may be included in various filings that we make with the Commission, or press releases or oral statements made by or with the approval of one of our authorized executive officers. These forward-looking statements are subject to certain known and unknown risks and uncertainties, as well as assumptions that could cause actual results to differ materially from those reflected in these forward-looking statements.

Factors that might cause actual results to differ include, but are not limited to, the stability of certain financial markets; disruption of the credit markets and reduced availability and more stringent financing requirements for commercial and residential mortgages of all types; the number of investor and speculator resale homes for sale and homes in foreclosure in our communities and in the geographic areas in which we develop and sell homes; the increased level of unemployment; the decline in net worth and/or of income of potential buyers; the decline in consumer confidence; the failure to successfully implement our business strategy (including our intention to focus primarily on the development of active adult communities in the future); shifts in demographic trends affecting demand for active adult and primary housing; the level of immigration and migration into the areas in which we conduct real estate activities; our access to financing; construction defect and home warranty claims; changes in, or the failure or inability to comply with, government regulations; the failure to successfully integrate acquisitions into our business, including our recent JEN transaction as described below under Prospectus Summary Recent Developments, and other factors more fully described under the caption Risk Factors in this prospectus supplement and the accompanying prospectus and the documents incorporated by reference herein or therein. Readers are cautioned not to place undue reliance on any forward-looking statements contained herein or therein, which reflect management's opinions only as of the date thereof.

Except as required by law, we undertake no obligation to revise or publicly release the results of any revision to any forward-looking statements. You are advised, however, to consult any additional disclosures we make in our reports to the Commission on Forms 10-K, 10-Q and 8-K. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this prospectus supplement.

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PROSPECTUS SUMMARY

This summary description of us and our business highlights selected information about us contained elsewhere in this prospectus supplement or the accompanying prospectus or the documents incorporated by reference herein or therein. This summary may not contain all of the information about us that you should consider before buying securities in this offering. You should carefully read this entire prospectus supplement and the accompanying prospectus, including each of the documents incorporated herein and therein by reference, before making an investment decision. As used herein, we, us and our refer to Avatar Holdings Inc. and its subsidiaries.

Our Company

We are engaged in the business of real estate operations in Florida and Arizona. Our residential community activities have been adversely affected in both markets, bringing home sales to low levels. We also engage in other real estate activities, such as the operation of amenities, the sale for third-party development of commercial and industrial land and the operation of a title insurance agency, which activities have also been adversely affected by economic conditions.

Our primary business strategy is the development of active adult communities, and we remain opportunistic about the development of primary residential communities. We believe the demographics are good for active adult development. Solivita and CantaMia, our active adult communities in Central Florida and Goodyear, Arizona, respectively, will initially serve as our flagship communities as we pursue our active adult business strategy. Our business remains capital intensive and requires or may require expenditures for land and infrastructure development, housing construction, funding of operating deficits and working capital, as well as potential new acquisitions of real estate and real estate-related assets. We continue to carefully manage our inventory levels through monitoring land development and home starts.

Recent Developments

JEN Transaction

On October 25, 2010, we acquired from entities affiliated with JEN Partners LLC (JEN) a portfolio of real estate assets in Arizona and Florida (the JEN Transaction), including a 1,781-unit active adult community, various developed or fully developed lots, completed houses and houses under construction, a private home developer, various partially developed single-family and townhome lots, a multi-family tract and a commercial site. The aggregate purchase price paid by us in the JEN Transaction was approximately \$65.6 million, comprised of \$33.6 million in cash, \$20.0 million in restricted common stock (which resulted in the issuance of 1,050,572 restricted shares) and \$12.0 million of promissory notes. In addition, we agreed to pay JEN up to \$8.0 million in common stock (up to 420,168 shares), depending upon the achievement of certain performance metrics related to the active adult community.

Changes in Management and Our Board of Directors

Jon M. Donnell was appointed our President and Chief Executive Officer, as well as a member of our Board, on November 15, 2010, upon the retirement of Gerald D. Kelfer as President and Chief Executive Officer. Mr. Kelfer continues as a member of and Vice Chairman of the Board.

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Joseph Carl Mulac, III, was appointed our Executive Vice President and as President of our wholly-owned subsidiary, Avatar Properties, Inc on October 25, 2010. Mr. Mulac was previously the chief executive officer of a private home builder purchased by us in the JEN Transaction.

Reuben S. Leibowitz and Allen J. Anderson were appointed to our Board on October 25, 2010. Mr. Leibowitz is the sole managing member of JEN Partners and is also a limited partner of

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certain affiliates of JEN. Mr. Anderson is employed by an affiliate of JEN, is a non-managing member of JEN and controls an entity that is a limited partner of certain affiliates of JEN.

Our Corporate Information

We are incorporated under the laws of the State of Delaware. Our executive headquarters are located at 201 Alhambra Circle, Coral Gables, Florida 33134. Our telephone number is (305) 442-7000. Our website is www.avatarholdings.com. Information contained in our website is not incorporated by reference into and does not constitute part of this prospectus supplement or the accompanying prospectus.

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The Offering

The summary below describes the principal terms of the Notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The Description of the Notes section of this prospectus supplement contains a more detailed description of the terms and conditions of the Notes.

Issuer	Avatar Holdings Inc.
Securities Offered	\$100 million aggregate principal amount of % Senior Convertible Notes due 2016, which we refer to as the Notes.
Offering Price	Each Note will be issued at a price of 100% of its principal amount plus accrued interest, if any, from , 2011.
Maturity	February 15, 2016, unless earlier converted, repurchased or redeemed.
Interest Rate	% per year. Interest will be payable semi-annually in arrears in cash on February 15 and August 15 of each year, beginning on August 15, 2011.
Ranking	<p>The Notes will be our senior unsecured obligations and will rank equal in right of payment with all of our existing and future senior unsecured indebtedness. The Notes will be effectively subordinated to any secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of our subsidiaries.</p> <p>As of September 30, 2010, we and our consolidated subsidiaries had approximately \$64.8 million principal amount of unsecured notes outstanding and approximately \$0.1 million of secured notes outstanding.</p>
Conversion Rights	<p>You may convert your Notes into shares of our common stock at any time on or prior to the close of business on the business day immediately preceding the maturity date.</p> <p>The Notes will be convertible at an initial conversion rate of shares of common stock per \$1,000 principal amount of the Notes (equivalent to an initial conversion price of approximately \$ per share). The conversion rate, and thus the conversion price, may be adjusted under certain circumstances as described under Description of the Notes Conversion Rights Conversion Rate Adjustments.</p> <p>Upon any conversion, subject to certain exceptions, you will not receive any cash payment</p>

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representing accrued and unpaid interest. See Description of the Notes Conversion Rights.

Adjustment to Conversion Rate Upon a Non-Stock Change of Control

If and only to the extent holders elect to convert the Notes in connection with a transaction described under certain clauses of the definition of fundamental change as described in Description of the Notes Repurchase Right of Holders Upon a Fundamental Change pursuant to which 10% or more of the consideration for our common stock (other than cash payments for fractional shares and cash payments made in respect of dissenters appraisal rights) consists of cash or securities (or other property) that are not common equity interests traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange, which we refer to as a non-stock change of control, we will increase the conversion rate by a number of additional shares. The number of additional shares will be determined by reference to the table in Description of the Notes Conversion Rights Adjustment to Conversion Rate Upon a Non-Stock Change of Control, based on the effective date and the price paid per share of our common stock in such non-stock change of control.

If holders of our common stock receive only cash in the type of transaction described above, the price paid per share will be the cash amount paid per share. Otherwise, the price paid per share will be the average of the last reported sale prices of our common stock on the five trading days prior to but not including the effective date of such non-stock change of control.

Certain Covenants

The indenture governing the Notes will, among other things, contain the following financial covenants, as described under Description of the Notes Certain Financial Covenants :

until February 15, 2014, we will maintain, at all times, cash and cash equivalents of not less than \$20 million;

until the second anniversary of the original issuance date of the Notes, our total consolidated indebtedness (as indebtedness, is defined in the Notes) shall not exceed \$150 million at any time excluding, for purposes of this clause, until April 5, 2011, our outstanding 4.50% convertible senior notes due 2024; and

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until the second anniversary of the original issuance date of the Notes, our total consolidated indebtedness (as indebtedness, is defined in the Notes) shall not exceed \$50 million at any time, excluding for purposes of this clause: (a) the Notes, (b) any indebtedness with a maturity date after , 2014, which indebtedness does not provide the holder with a unilateral put right prior to , 2014 and (c) until April 5, 2011, our outstanding 4.50% convertible senior notes due 2024.

Repurchase Right of Holders Upon Breach of Certain Financial Covenants

If we breach any of the financial covenants described in Description of the Notes Certain Financial Covenants, you will have the right to require us to repurchase, at the repurchase price described below, up to 50% in aggregate principal amount of your Notes, for which you have properly delivered and not withdrawn a written repurchase notice.

The repurchase price will be payable in cash and will equal 110% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the repurchase date. See Description of the Notes Repurchase Right of Holders Upon Breach of Certain Financial Covenants.

Repurchase Right of Holders on Specified Date

On February 15, 2014, you will have the right to require us to repurchase, at the repurchase price described below, all or part of your Notes for which you have properly delivered and not withdrawn a written repurchase notice.

The repurchase price will be payable in cash and will equal 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the repurchase date. See Description of the Notes Repurchase Right of Holders on Specified Date.

Repurchase Right of Holders Upon a Fundamental Change

If a fundamental change, as described in Description of the Notes Repurchase Right of Holders Upon a Fundamental Change occurs at any time prior to the maturity of the Notes, you will have the right to require us to repurchase, at the repurchase price described below, all or part of your Notes for which you have properly delivered and not withdrawn a written repurchase notice.

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The repurchase price will be payable in cash and will equal 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the repurchase date.

See Description of the Notes Repurchase Right of Holders Upon a Fundamental Change.

Redemption at Our Option

We may, at any time on or after February 15, 2014, at our option, redeem for cash all or any portion of the outstanding Notes, but only if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the trading day prior to the date we provide the notice of redemption to holders exceeds 130% of the conversion price in effect on each such trading day and certain other conditions described in this prospectus supplement are met.

The redemption price will be payable in cash and will equal 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the redemption date. See Description of the Notes Redemption at Our Option.

Events of Default

If an event of default on the Notes occurs, the principal amount of the Notes (or the repurchase price or redemption price, as applicable), plus accrued and unpaid interest (including additional interest, if any) may be declared immediately due and payable, subject to certain conditions set forth in the indenture. These amounts automatically become due and payable in the case of certain types of bankruptcy or insolvency events of default involving Avatar or certain of its subsidiaries.

The breach of a financial covenant will not be deemed to constitute an event of default so long as we satisfy our obligations to provide timely notice of such breach and repurchase all Notes we are required to purchase. In the event we fail to satisfy our obligations, such failure will constitute an event of default. Following such event of default, 100% of the aggregate principal amount of the Notes will become due and payable at the repurchase price of 110% of the principal amount of the Notes.

Absence of Public Market for the Notes The Notes will be a new issuance of securities and there is currently no established market for the Notes. Accordingly, we cannot assure you as to the development or liquidity of any market for the

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Notes. The underwriter has advised us that it currently intends to make a market in the Notes. However, it is not obligated to do so, and may discontinue any market making with respect to the Notes without notice. We do not intend to apply for a listing of the Notes on any securities exchange or any automated dealer quotation system.

Nasdaq Symbol for Our Common Stock Our common stock is listed on Nasdaq under the symbol AVTR.

Use of Proceeds We will receive approximately \$ million from this offering after deducting the underwriter's fee and estimated offering expenditures. We expect to use the net proceeds for general corporate purposes, including, without limitation, the repayment of debt (including our 4.50% Convertible Senior Notes due 2024) and potential new acquisitions of real estate and real estate-related assets. From time to time, we engage in preliminary discussions and negotiations with various businesses in order to explore the possibility of an acquisition or investment. As of the date of this prospectus supplement, no acquisitions or investments are probable. See Use of Proceeds.

U.S. Federal Income Tax Considerations For the U.S. federal income tax consequences of the holding, disposition and conversion of the Notes, and the holding and disposition of our common stock, see Certain United States Federal Income Tax Consequences.

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RISK FACTORS

An investment in our securities involves a high degree of risk. You should carefully consider the specific risks described below, the risks described in the accompanying prospectus and the risks under the caption Risk Factors in any of our filings with the Commission pursuant to Sections 13(a), 14 or 15(d) of the Exchange Act, which are incorporated herein and therein by reference, before making an investment decision. Each of the risks described could materially adversely affect our business, financial condition, results of operations and prospects, and could result in a complete loss of your investment. For more information, see Where You Can Find More Information and Incorporation of Certain Documents By Reference.

Risks Relating to the Notes and this Offering

Our debt will increase significantly as a result of this offering. Our substantial indebtedness could adversely affect our business, financial condition and results of operations and our ability to meet our payment obligations under the Notes and our other debt.

Our debt and debt service obligation will increase significantly as a result of this offering. As of September 30, 2010, as adjusted for this offering, we would have had approximately \$164.9 million of outstanding unsecured and secured note obligations. See the As Adjusted column of the Capitalization table below. This level of debt could have significant consequences on our future operations, including, among others:

making it more difficult for us to meet our payment and other obligations under the Notes and our other outstanding debt;

resulting in an event of default if we fail to comply with the financial and other restrictive covenants contained in our debt agreements, which event of default could result in all of our debt becoming immediately due and payable;

reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;

subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates;

limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and

placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.

Any of the above-listed factors could have a material adverse effect on our business, financial condition and results of operations and our ability to meet our payment obligations under the Notes and our other debt.

There are only limited restrictive covenants in the Notes indenture relating to our ability to incur future indebtedness or complete other financial transactions.

The indenture governing the Notes contains only limited financial restrictions on the incurrence of indebtedness, and no restrictions relating to the payment of dividends, transactions with affiliates, incurrence of liens, or the issuance or repurchase of securities by us or any of our subsidiaries. We therefore may in some circumstances, incur additional debt, including secured indebtedness effectively senior to the Notes, or indebtedness at the subsidiary level to which the Notes would be structurally subordinated. As part of our business strategy, we may use proceeds

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from this offering to finance potential acquisitions or develop communities, which may cause us to incur significant indebtedness.

A higher level of indebtedness increases the risk that we may default on our debt obligations. We cannot assure you that we will be able to generate sufficient cash flow to pay the interest on our debt or that future working capital, borrowings or equity financing will be available to pay or refinance such debt. The indenture contains no covenants or other provisions to afford protection to holders of the Notes upon the occurrence of designated events other than a breach of certain covenants contained in the indenture governing the Notes or a fundamental change (as described under **Repurchase Right of Holders Upon Breach of Certain Financial Covenants** and **Repurchase Rights of Holders Upon a Fundamental Change**).

Provisions of the Notes could discourage a potential future acquisition of us by a third party.

Certain provisions of the Notes could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of the Notes will have the right, at their option, to require us to repurchase all of their Notes or any portion of the principal amount of such Notes in integral multiples of \$1,000. We also may be required to issue additional shares upon conversion or provide for conversion into the acquirer's capital stock in the event of certain fundamental changes.

We may be unable to generate sufficient cash flow to satisfy our debt service obligations.

Our ability to generate cash flow from operations to make interest payments on the Notes will depend on our future performance, which will be affected by a range of economic, competitive, legislative, regulatory and business factors. We cannot control many of these factors, including general economic conditions and the condition of the real estate industry. If our operations do not generate sufficient cash flow from operations to satisfy our debt service obligations or to fund other liquidity needs, we may need to borrow additional funds to make these payments or undertake alternative financing plans, such as refinancing or restructuring our debt, including the Notes, selling assets or reducing or delaying capital investments and acquisitions. Additional funds or alternative financing may not be available to us on favorable terms, or at all. Our inability to generate sufficient cash flow from operations or obtain additional funds or alternative financing on acceptable terms could cause us to be unable to meet our payment obligations, which could have a material adverse effect on our business, financial condition and results of operations.

The indenture governing the Notes contains financial maintenance and other covenant restrictions that may limit our ability to operate our business and creates a risk of default.

The indenture governing the Notes contains financial maintenance and other covenant restrictions, and any of our other future debt agreements may contain covenant restrictions, that limit our ability to operate our business and create a risk of default. The financial maintenance covenants in the indenture include financial maintenance covenants relating to our cash levels and our total consolidated indebtedness, as more fully described under **Description of the Notes** below. Our ability to comply with these covenants and tests is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions. If we are not able to satisfy these financial covenants and you tender your Notes for repurchase, we may not have access to sufficient funds to repurchase your Notes which may result in an event of default under the terms of the indenture.

The Notes will be effectively subordinated to the liabilities of all of our subsidiaries, which may adversely affect your ability to receive payments on the Notes.

The Notes are obligations exclusively of Avatar and will not be guaranteed by any of our subsidiaries. We conduct a significant portion of our operations through our subsidiaries. Our subsidiaries are separate and distinct legal entities.

Our subsidiaries have no obligation to pay any

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amounts due on the Notes or, subject to existing or future contractual obligations between us and our subsidiaries, to provide us with funds for our payment obligations, whether by dividends, distributions, loans or other payments. In addition, any payment of dividends, distributions, loans or advances by our subsidiaries to us could be subject to statutory or contractual restrictions and taxes on distributions. Payments to us by our subsidiaries will also be contingent upon our subsidiaries' earnings and other business considerations.

Our right to receive any assets of any of our subsidiaries upon liquidation or reorganization, and, as a result, the right of the holders of the Notes to participate in those assets, will be effectively subordinated to the claims of that subsidiary's creditors, including trade creditors. The Notes do not restrict us or our subsidiaries from incurring indebtedness, including senior secured indebtedness in the future, subject only to financial maintenance covenants relating to our cash levels and our total consolidated indebtedness (which such covenants will expire as described under "Description of the Notes - Certain Financial Covenants").

You will not receive cash payments of accrued but unpaid interest upon conversion of your Notes.

Upon conversion of your Notes into shares of common stock, we will deliver to the holder of Notes the full number of shares of common stock into which \$1,000 principal amount of the Notes is convertible, together with cash payments for fractional shares, if any. Our obligation to pay accrued but unpaid interest attributable to the period from the most recent interest payment date through the conversion date will be deemed to be satisfied upon delivery of the shares and any accrued interest payable to you will be deemed to be paid in full, except as described under "Description of the Notes - Conversion Rights".

We may be unable to repay the principal amount of the Notes at maturity or repurchase the Notes for cash when required by the holders following a breach of certain financial covenants, upon the occurrence of a fundamental change, or on a specific repurchase date.

At maturity, the entire outstanding principal amount of the Notes will become due and payable by us. We cannot assure you that we will have sufficient funds or will be able to arrange for necessary financing on acceptable terms to pay the principal amount due. In that case, our failure to repay the Notes at maturity would constitute an event of default under the indenture.

Holders of the Notes also have the right to require us to repurchase the Notes upon a breach of certain financial covenants contained in the indenture governing the notes, upon the occurrence of a fundamental change, or on February 15, 2014. Any of our future debt agreements may contain a similar provision. We may not have sufficient funds to make the required repurchase in cash at such time or the ability to arrange necessary financing on acceptable terms. In addition, our ability to repurchase the Notes in cash may be limited by law or the terms of other agreements relating to our debt outstanding at the time, which will limit our ability to purchase the Notes for cash in certain circumstances. If we fail to repurchase the Notes in cash as required by the indenture, it would constitute an event of default under the indenture governing the Notes, which, in turn, would constitute an event of default under other debt.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to repurchase the Notes.

Upon the occurrence of a fundamental change, you have the right to require us to offer to repurchase the Notes. However, the fundamental change provisions will not afford protection to holders of the Notes in the event of certain transactions. For example, transactions such as leveraged recapitalizations, refinancings, restructurings or acquisitions initiated by us would not constitute a fundamental change requiring us to repurchase the Notes. In the event of any such transaction, the holders would not have the right to require us to repurchase the Notes, even though each of these

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transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of the Notes.

The terms of the Notes only provide limited protection in the event of a fundamental change.

The requirement that we offer to repurchase the Notes upon a fundamental change is limited to the transactions specified in the definition of a fundamental change under Description of the Notes Repurchase Right of Holders Upon a Fundamental Change . Similarly, the circumstances under which we are required to adjust the conversion rate upon the occurrence of a non-stock change of control are limited to circumstances where a Note is converted in connection with such a transaction as set forth under Description of the Notes Conversion Rights Adjustment to Conversion Rate Upon a Non-Stock Change of Control. Accordingly, subject to restrictions contained in our other debt agreements, we could enter into certain transactions, such as acquisitions, refinancings or recapitalizations, that could affect our capital structure and the value of the Notes and common stock but would not constitute a fundamental change under the Notes.

We cannot assure you that our obligation to repurchase, in certain circumstances, all or a portion of the Notes at a repurchase price of 110% of the aggregate principal amount will be judicially enforceable.

The Notes provide that if we breach any of the financial covenants, you will have the right to require us to repurchase up to 50% of the aggregate principal amount of the Notes at 110% of the aggregate principal amount. Any failure by us to repurchase such Notes will constitute an event of default, following which 100% of the aggregate principal amount of the Notes shall become due and payable at the repurchase price of 110% of the principal amount of the Notes. We cannot assure you that a court would not find that the premium paid by us under these circumstances was punitive in nature and, therefore, that such terms were unenforceable.

The adjustment to the conversion rate upon the occurrence of certain types of fundamental changes may not adequately compensate you for the lost option time value of your Notes as a result of such fundamental change.

If certain types of fundamental changes occur on or prior to the date when the Notes may be redeemed, we may adjust the conversion rate of the Notes to increase the number of shares issuable upon conversion. The number of additional shares to be added to the conversion rate will be determined based on the date on which the fundamental change becomes effective and the price paid per share of our common stock in the fundamental change as described under Description of the Notes Conversion Rights Adjustment to Conversion Price Upon Certain Fundamental Changes. Although this adjustment is designed to compensate you for the lost option value of your Notes as a result of certain types of fundamental changes, the adjustment is only an approximation of such lost value based upon assumptions made on the date of this Prospectus Supplement and may not adequately compensate you for such loss. In addition, if the price paid per share of our common stock in the fundamental change is less than \$ or more than \$ (subject to adjustment), there will be no such adjustment.

Because your right to require us to repurchase the Notes is limited, the market prices of the Notes may decline if we enter into a transaction that does not require us to repurchase the Notes under the indenture.

The circumstances upon which we are required to repurchase the Notes are limited and may not include every event that might cause the market prices of the Notes to decline or result in a downgrade of the credit rating of the Notes, if any. As a result, our obligations to repurchase the Notes in certain circumstances may not preserve the value of the Notes in the event of a highly leveraged transaction, reorganization, merger or similar transaction.

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There is no established trading market for the Notes, which could materially and adversely affect the liquidity and value of your Notes.

The Notes are a new issue of securities, and there is no existing market for the Notes. We do not intend to apply for listing of the Notes on any securities exchange or for quotation of the Notes on any automated dealer quotation system. We have been advised by the underwriter that following the completion of the offering, it currently intends to make a market in the Notes. However, it is not obligated to do so and any market-making activities with respect to the Notes may be discontinued at any time without notice. In addition, any market-making activity will be subject to limits imposed by law. A market may not develop for the Notes, and there can be no assurance as to the liquidity of any market that may develop for the Notes. If an active, liquid market does not develop for the Notes, the market price and liquidity of the Notes may be adversely affected. If any of the Notes are traded after their initial issuance, they may trade at a discount from their initial offering price.

The liquidity of the trading market, if any, and future trading prices of the Notes will depend on many factors, including, among other things, the market price of our common stock, prevailing interest rates, our operating results, financial performance and prospects, the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in these factors. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for the Notes will be subject to disruptions which may have a negative effect on the holders of the Notes, regardless of our operating results, financial performance or prospects.

Any adverse rating of the Notes may cause their trading price to fall.

We do not intend to seek a rating on the Notes. However, if a rating service were to rate the Notes and if such rating service were to withdraw its rating or lower its rating on the Notes below the rating initially assigned to the Notes or otherwise announces its intention to put the Notes on credit watch, the trading price of the Notes could decline.

Developments in the convertible debt markets may adversely affect the market value of the Notes.

During the last several years, the convertible debt markets have experienced unprecedented disruptions resulting from, among other things, the recent instability in the credit and capital markets and the emergency orders issued by the SEC on September 17 and 18, 2008 (and extended on October 1, 2008). These orders were issued as a stop-gap measure while Congress worked to provide a comprehensive legislative plan to stabilize the credit and capital markets. Among other things, these orders temporarily imposed a prohibition on effecting short sales of the common stock of certain financial companies. As a result, the SEC orders made the convertible arbitrage strategy that many convertible notes investors employ difficult to execute for outstanding convertible notes of those companies whose common stock was subject to the short sale prohibition. The SEC orders expired on October 8, 2008. However, any future governmental actions that impose limitations on short sales of common stock of issuers, including consideration by the SEC to reinstate the up-tick rule, could significantly affect the market value of convertible securities linked to those common stocks.

The price of our common stock, and therefore of the Notes, may fluctuate significantly, which may make it difficult for you to resell the Notes or common stock issuable upon conversion of the Notes when you want or at prices you find attractive.

The price of our common stock on The Nasdaq Stock Market constantly changes. We expect that the market price of our common stock will continue to fluctuate. In addition, because the Notes are convertible into our common stock, volatility or depressed prices for our common stock could have a similar effect on the trading price of the Notes.

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Our stock price may fluctuate as a result of a variety of factors, many of which are beyond our control. These factors include:

quarterly variations in our operating results;

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

changes in expectations as to our future financial performance;

announcements of innovations, new products, strategic developments, significant contracts, acquisitions and other material events by us or our competitors;

the operating and securities price performance of other companies that investors believe are comparable to us;

future sales of our equity or equity-related securities;

changes in general conditions in our industry and in the economy and the financial markets; and

departures of key personnel.

In addition, in recent years, the stock market in general has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market price of securities issued by many companies for reasons often unrelated to their operating performance. These broad market fluctuations may materially and adversely affect our stock price, regardless of our operating results.

Future sales of our common stock in the public market or the issuance of securities senior to our common stock could materially and adversely affect the trading price of our common stock, the value of the Notes and our ability to raise funds in new offerings.

In the future, we may sell additional shares of our common stock to raise capital or in connection with acquisitions, such as the JEN Transaction described above under Prospectus Summary Recent Developments. Sales of substantial amounts of additional shares of our common stock, including shares of our common stock underlying the Notes and shares issuable upon exercise of outstanding options, restricted stock units, and stock units, as well as sales of shares that may be issued in connection with future acquisitions or for other purposes, including to finance our operations and business strategy or to adjust our ratio of debt to equity, 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. The price of our common stock could also be affected by possible sales of our common stock by investors who view the Notes being offered in this offering as a more attractive means of equity participation in our company and by hedging or arbitrage trading activity that we expect will develop involving our common stock.

Future sales of common stock by our existing stockholders may cause our stock price to decline significantly.

The market price of our common stock could decline as a result of sales by our existing and future stockholders, including the holders of the Notes and our 4.50% Convertible Senior Notes due 2024 (our 4.50% Notes), or the perception that these sales could occur. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

Our share price could decline if a large number of shares of our common stock or equity-related securities become eligible for future sale.

Sales of a substantial number of shares of our common stock or other equity-related securities, as well as issuances of shares of common stock upon conversion of the Notes as well as our 4.50% Notes, could depress the market price of our common stock and impair our ability to raise

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capital through the sale of additional equity securities. Any such future sales or issuances could dilute the ownership interests of stockholders, and we cannot predict the effect that future sales argin-top: 6pt">the Services Company, such as our interest in certain of the leasehold properties if we determine that the ownership structure of such properties may produce income that would not qualify for purposes of the REIT income tests described below.

Gross Income Tests

We must satisfy two gross income tests annually to maintain our qualification as a REIT.

First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

rents from real property;

interest on debt secured by mortgages on real property, or on interests in real property;

dividends or other distributions on, and gain from the sale of, shares in other REITs;

gain from the sale of real estate assets; and

income derived from the temporary investment of new capital that is attributable to the issuance of our shares of beneficial interest or a public offering of our debt with a maturity date of at least five years and that we receive during the one year period beginning on the date on which we received such new capital.

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities or any combination of these.

Gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business is excluded from both the numerator and the denominator in both income tests. The following paragraphs discuss the specific application of the gross income tests to us.

Rents from Real Property. Rent that we receive from our real property will qualify as rents from real property, which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met:

First, the rent must not be based in whole or in part on the income or profits of any person. Participating rent, however, will qualify as rents from real property if it is based on percentages of receipts or sales and the percentages: (a) are fixed at the time the leases are entered into, (b) are not renegotiated during the term of the leases in a manner that has the effect of basing rent on income or profits, and (c) conform with normal business practice.

More generally, the rent will not qualify as rents from real property if, considering the relevant lease and all of the surrounding circumstances, the arrangement does not conform with normal business practice, but is in reality used as a means of basing the rent on income or profits. We intend to set and accept rents which are fixed dollar amounts, and not to any extent by reference to any person's income or profits, in compliance with the rules above.

Second, we must not own, actually or constructively, 10% or more of the stock or the assets or net profits of any lessee, referred to as a related party tenant, other than a TRS. The constructive ownership rules generally provide that, if 10% or more in value of our shares is owned, directly or indirectly, by or for any person, we are considered as owning the stock owned, directly or indirectly, by or for such person.

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We do not own any stock or any assets or net profits of any lessee directly, except that we may lease office or other space to our TRS or another taxable REIT subsidiary. We believe that each of the leases will conform with normal business practice, contain arm's-length terms and that the rent payable under those leases will be treated as rents from real property for purposes of the 75% and 95% gross income tests. However, there can be no assurance that the IRS will not successfully assert a contrary position or that a change in circumstances will not cause a portion of the rent payable under the leases to fail to qualify as rents from real property. If such failures were in sufficient amounts, we might not be able to satisfy either of the 75% or 95% gross income tests and could lose our REIT status. In addition, if the IRS successfully reapportions or reallocates items of income, deduction, and credit among and between us and our TRS under the leases or any intercompany transaction because it determines that doing so is necessary to prevent the evasion of taxes or to clearly reflect income, we could be subject to a 100% excise tax on those amounts. As described above, we may own one or more taxable REIT subsidiaries. Under an exception to the related-party tenant rule described in the preceding paragraph, rent that we receive from a taxable REIT subsidiary will qualify as rents from real property as long as (1) at least 90% of the leased space in the property is leased to persons other than taxable REIT subsidiaries and related party tenants, and (2) the amount paid by the TRS to rent space at the property is substantially comparable to rents paid by other tenants of the property for comparable space. If we receive rent from a TRS, we will seek to comply with this exception. Whether rents paid by our TRS are substantially comparable to rents paid by our other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a controlled TRS is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as rents from real property. For purposes of this rule, a controlled TRS is a TRS in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such TRS.

Third, the rent attributable to the personal property leased in connection with a lease of real property must not be greater than 15% of the total rent received under the lease.

The rent attributable to personal property under a lease is the amount that bears the same ratio to total rent under the lease for the taxable year as the average of the fair market values of the leased personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property covered by the lease at the beginning and at the end of such taxable year (the personal property ratio). With respect to each of our leases, we believe that the personal property ratio generally is less than 15%. Where that is not, or may in the future not be, the case, we believe that any income attributable to personal property will not jeopardize our ability to qualify as a REIT.

Fourth, we cannot furnish or render noncustomary services to the tenants of our properties, or manage or operate our properties, other than through an independent contractor who is adequately compensated and from whom we do not derive or receive any income. However, we need not provide services through an independent contractor, but instead may provide services directly to our tenants, if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of noncustomary services to the tenants of a property, other than through an independent contractor, as long as our income from the services does not exceed 1% of our income from the related property. Finally, we may own up to 100% of the stock of one or more taxable REIT subsidiaries, which may provide noncustomary services to our tenants without tainting our rents from the related properties.

We do not intend to perform any services other than customary ones for our lessees, other than services provided through independent contractors or taxable REIT subsidiaries. If a portion of the rent we receive from a property does not qualify as rents from real property because the rent attributable to personal property exceeds 15% of the total rent for a taxable year, the portion of the rent attributable to personal property will not be qualifying income for purposes of either the 75% or 95% gross income test. If rent attributable to personal property, plus any

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other income that is nonqualifying income for purposes of the 95% gross income test, during a taxable year exceeds 5% of our gross income during the year, we could lose our REIT status. By contrast, in the following circumstances, none of the rent from a lease of property would qualify as rents from real property : (1) the rent is considered based on the income or profits of the lessee; (2) the lessee is a related party tenant or fails to qualify for the exception to the related-party tenant rule for qualifying taxable REIT subsidiaries; or (3) we furnish noncustomary services to the tenants of the property, or manage or operate the property, other than through a qualifying independent contractor or a TRS and our income from the services exceeds 1% of our income from the related property.

Tenants may be required to pay, besides base rent, reimbursements for certain amounts we are obligated to pay to third parties (such as utility and telephone companies), penalties for nonpayment or late payment of rent, lease application or administrative fees. These and other similar payments should qualify as rents from real property.

Interest. The term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of the amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely because it is based on a fixed percentage or percentages of receipts or sales. Furthermore, in the case of a shared appreciation mortgage, any additional interest received on a sale of the secured property will be treated as gain from the sale of the secured property.

Prohibited Transactions. A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We do not have any current intention to sell any of our properties. Even if we do sell any of our properties, we believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction.

Foreclosure Property. We will be subject to tax at the maximum corporate rate on certain income from foreclosure property. We do not own any foreclosure properties and do not expect to own any foreclosure properties in the future. This would only change in the future if we were to make loans to third parties secured by real property.

Hedging Transactions. From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase such items, and futures and forward contracts. For 2004, any periodic income or gain from the disposition of any financial instrument for these or similar transactions to hedge indebtedness we incur to acquire or carry real estate assets should be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. Beginning in 2005, income from certain hedging transactions, clearly identified as such, is not included in our gross income for purposes of the 95% gross income test. Since the financial markets continually introduce new and innovative instruments related to risk-sharing or trading, it is not entirely clear which such instruments will generate income which will be considered qualifying income for purposes of the gross income tests. We intend to structure any hedging or similar transactions so as not to jeopardize our status as a REIT.

Failure to Satisfy Gross Income Tests

Beginning in 2005, if we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

our failure to meet the income tests was due to reasonable cause and not due to willful neglect; and

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we file a description of each item of our gross income in accordance with applicable Treasury Regulations.

We cannot with certainty predict whether any failure to meet these tests will qualify for the relief provisions. As discussed above in Taxation of Our Company, even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of the amounts by which we fail the 75% and 95% gross income tests, multiplied by a fraction intended to reflect our profitability.

Asset Tests

To maintain our qualification as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year:

First, at least 75% of the value of our total assets must consist of: (a) cash or cash items, including certain receivables, (b) government securities, (c) interests in real property, including leaseholds and options to acquire real property and leaseholds, (d) interests in mortgages on real property, (e) stock in other REITs, and (f) investments in stock or debt instruments during the one year period following our receipt of new capital that we raise through equity offerings or offerings of debt with at least a five year term;

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer's securities may not exceed 5% of the value of our total assets;

Third, we may not own more than 10% of the voting power or value of any one issuer's outstanding securities;

Fourth, no more than 20% of the value of our total assets may consist of the securities of one or more taxable REIT subsidiaries; and

Fifth, no more than 25% of the value of our total assets may consist of the securities of taxable REIT subsidiaries and other non-TRS taxable subsidiaries and other assets that are not qualifying assets for purposes of the 75% asset test.

For purposes of the second and third asset tests, the term securities does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, mortgage loans that constitute real estate assets, or equity interests in a partnership. For purposes of the 10% value test, the term securities generally does not include debt securities issued by a partnership to the extent of our interest as a partner of the partnership or if at least 75% of the partnership's gross income (excluding income from prohibited transactions) is qualifying income for purposes of the 75% gross income test. In addition, straight debt and certain other instruments are not treated as securities for purposes of the 10% value test.

Failure to Satisfy the Asset Tests

We will monitor the status of our assets for purposes of the various asset tests and will manage our portfolio in order to comply at all times with such tests. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT status if:

we satisfied the asset tests at the end of the preceding calendar quarter; and

the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets.

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

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Beginning in the 2005 taxable year, if we fail to satisfy one or more of the asset tests for any quarter of a taxable year, we nevertheless may qualify as a REIT for such year if we qualify for relief under certain provisions of the Code. These relief provisions generally will be available for failures of the 5% asset test and the 10% asset tests if (i) the failure is due to the ownership of assets that do not exceed the lesser of 1% of our total assets or \$10 million, and the failure is corrected within 6 months following the quarter in which it was discovered, or (ii) the failure is due to ownership of assets that exceed the amount in (i) above, the failure is due to reasonable cause and not due to willful neglect, we file a schedule with a description of each asset causing the failure in accordance with Treasury Regulations, the failure is corrected within 6 months following the quarter in which it was discovered, and we pay a tax consisting of the greater of \$50,000 or a tax computed at the highest corporate rate on the amount of net income generated by the assets causing the failure from the date of failure until the assets are disposed of or we otherwise return to compliance with the asset test. We may not qualify for the relief provisions in all circumstances.

Distribution Requirements

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gains, to our stockholders in an aggregate amount not less than: the sum of (a) 90% of our REIT taxable income, computed without regard to the dividends-paid deduction or our net capital gain or loss, and (b) 90% of our after-tax net income, if any, from foreclosure property, minus the sum of certain items of non-cash income.

We must pay such dividends in the taxable year to which they relate, or in the following taxable year if we declare the dividend before we timely file our federal income tax return for the year and pay the dividend on or before the first regular dividend payment date after such declaration.

To the extent that we do not distribute all of our net capital gains or distribute at least 90%, but less than 100%, of our real estate investment trust taxable income, as adjusted, we will have to pay tax on those amounts at regular ordinary and capital gains corporate tax rates. Furthermore, if we fail to distribute during each calendar year at least the sum of (a) 85% of our ordinary income for that year, (b) 95% of our capital gain net income for that year, and (c) any undistributed taxable income from prior periods, we would have to pay a 4% nondeductible excise tax on the excess of the required dividend over the amounts actually distributed.

We may elect to retain and pay income tax on the net long-term capital gains we receive in a taxable year. See Taxation of Taxable U.S. Holders. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% excise tax described above. We intend to make timely dividends sufficient to satisfy the annual dividend requirements and to avoid corporate income tax and the 4% excise tax.

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. For example, we may not deduct recognized capital losses from our REIT taxable income. Further, it is possible that, from time to time, we may be allocated a share of net capital gains attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional common or preferred shares or pay dividends in the form of taxable stock dividends.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirements for a year by paying deficiency dividends to our stockholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest based upon the amount of any deduction we take for deficiency dividends.

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Recordkeeping Requirements

We must maintain certain records in order to qualify as a REIT. In addition, to avoid paying a penalty, we must request on an annual basis information from our stockholders designed to disclose the actual ownership of the outstanding common stock. We have complied and intend to continue to comply with these requirements.

Accounting Period

In order to elect to be taxed as a REIT, we must use a calendar year accounting period. We use the calendar year as our accounting period for federal income tax purposes for each and every year we intend to operate as a REIT.

Failure to Qualify as a REIT

If we failed to qualify as a REIT in any taxable year and no relief provision applied, we would have the following consequences. We would be subject to federal income tax and any applicable alternative minimum tax at rates applicable to regular C corporations on our taxable income, determined without reduction for amounts distributed to stockholders. We would not be required to make any distributions to stockholders, and any dividends to stockholders would be taxable as ordinary income to the extent of our current and accumulated earnings and profits (which may be subject to tax at preferential rates to individual stockholders). Corporate stockholders could be eligible for a dividends-received deduction if certain conditions are satisfied. Unless we qualified for relief under specific statutory provisions, we would not be permitted to elect taxation as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We might not be entitled to the statutory relief described in this paragraph in all circumstances.

Relief From Certain Failures of the REIT Qualification Provisions

Beginning in the 2005 taxable year, if we fail to satisfy one or more of the requirements for REIT qualification (other than the income tests or the asset tests), we nevertheless may avoid termination of our REIT election in such year if the failure is due to reasonable cause and not due to willful neglect and we pay a penalty of \$50,000 for each failure to satisfy the REIT qualification requirements. We may not qualify for this relief provision in all circumstances.

Taxation of Taxable U.S. Holders

As used in this section, the term U.S. holder means a holder of securities who, for United States Federal income tax purposes, is:

a citizen or resident of the United States;

a domestic partnership;

a domestic corporation;

an estate whose income is subject to United States Federal income taxation regardless of its source; or

a trust if a United States court can exercise primary supervision over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust.

As long as we qualify as a REIT, distributions made by us out of our current or accumulated earnings and profits, and not designated as capital gain dividends, will constitute dividends taxable to our taxable U.S. holders as ordinary income. Individuals receiving qualified dividends from domestic and certain qualifying foreign subchapter C corporations may be entitled to lower rates on dividends (at rates applicable to long-term capital gains, currently at a maximum rate of 15%) provided certain holding period requirements are met. However, individuals

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receiving dividend distributions from us, a REIT, will generally not be eligible for the recent lower rates on dividends except with respect to the portion of any distribution which (a) represents dividends being passed through to us from a corporation in which we own shares (but only if such dividends would be eligible for the recent lower rates on dividends if paid by the corporation to its individual stockholders), including dividends from our TRS, (b) is equal to our REIT taxable income (taking into account the dividends paid deduction available to us) less any taxes paid by us on these items during our previous taxable year, or (c) are attributable to built-in gains realized and recognized by us from the disposition of properties acquired by us in certain non-recognition transactions, less any taxes paid by us on these items during our previous taxable year. The lower rates will apply only to the extent we designate a distribution as qualified dividend income in a written notice to you. Individual taxable U.S. holders should consult their own tax advisors to determine the impact of these provisions. Dividends of this kind will not be eligible for the dividends received deduction in the case of taxable U.S. holders that are corporations. Dividends made by us that we properly designate as capital gain dividends will be taxable to taxable U.S. holders as gain from the sale of a capital asset held for more than one year, to the extent that they do not exceed our actual net capital gain for the taxable year, without regard to the period for which a taxable U.S. holder has held its common stock. Thus, with certain limitations, capital gain dividends received by an individual taxable U.S. holder may be eligible for preferential rates of taxation. Taxable U.S. holders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

The 15% reduced maximum tax rate on qualified dividends and certain long-term capital gains, as described above, was provided in the Jobs and Growth Tax Relief Reconciliation Act of 2003 and generally is effective for taxable years ending on or after May 6, 2003 through December 31, 2008. On May 17, 2006, President Bush signed the Tax Relief Extension Reconciliation Act of 2005, which extended this reduction until December 31, 2010. Without future legislative changes, the maximum long-term capital gains and dividend rate discussed above will increase in 2011. This recent legislation could cause stock in non-REIT corporations to be a more attractive investment to individual investors than stock in REITs and could have an adverse effect on the market price of our equity securities.

To the extent that we pay dividends, not designated as capital gain dividends, in excess of our current and accumulated earnings and profits, these dividends will be treated first as a tax-free return of capital to each taxable U.S. holder. Thus, these dividends will reduce the adjusted basis which the taxable U.S. holder has in our stock for tax purposes by the amount of the dividend, but not below zero. Dividends in excess of a taxable U.S. holder's adjusted basis in its common stock will be taxable as capital gains, provided that the stock has been held as a capital asset.

Dividends authorized by us in October, November, or December of any year and payable to a stockholder of record on a specified date in any of these months will be treated as both paid by us and received by the stockholder on December 31 of that year, provided that we actually pay the dividend in January of the following calendar year. Stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

We may elect to retain, rather than distribute, all or a portion of our net long-term capital gains and pay the tax on such gains. If we make such an election, we will designate amounts as undistributed capital gains in respect of your shares or beneficial interests by written notice to you which we will mail out to you with our annual report or at any time within 60 days after December 31 of any year. When we make such an election, taxable U.S. holders holding common stock at the close of our taxable year will be required to include, in computing their long-term capital gains for the taxable year in which the last day of our taxable year falls, the amount that we designate in a written notice mailed to our stockholders. We may not designate amounts in excess of our undistributed net capital gain for the taxable year. Each taxable U.S. holder required to include the designated amount in determining the holder's long-term capital gains will be deemed to have paid, in the taxable year of the inclusion, the tax paid by us in respect of the undistributed net capital gains. Taxable U.S. holders to whom these rules apply will be allowed a credit or a refund, as the case may be, for the tax they are deemed to have paid. Taxable U.S. holders will increase their basis in their stock by the difference between the amount of the includible gains and the tax deemed paid by the stockholder in respect of these gains.

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Dividends made by us and gain arising from a taxable U.S. holder's sale or exchange of our stock will not be treated as passive activity income. As a result, taxable U.S. holders generally will not be able to apply any passive losses against that income or gain.

When a taxable U.S. holder sells or otherwise disposes of our securities, the holder will recognize gain or loss for Federal income tax purposes in an amount equal to the difference between (a) the amount of cash and the fair market value of any property received on the sale or other disposition, and (b) the holder's adjusted basis in the security for tax purposes. This gain or loss will be capital gain or loss if the U.S. holder has held the security as a capital asset. The gain or loss will be long-term gain or loss if the U.S. holder has held the security for more than one year. Long-term capital gains of an individual taxable U.S. holder is generally taxed at preferential rates. The highest marginal individual income tax rate is currently 35%. The maximum tax rate on long-term capital gains applicable to individuals is 15% for sales and exchanges of assets held for more than one year and occurring after May 6, 2003 through December 31, 2010. The maximum tax rate on long-term capital gains from the sale or exchange of section 1250 property (i.e., generally, depreciable real property) is 25% to the extent the gain would have been treated as ordinary income if the property were section 1245 property (i.e., generally, depreciable personal property). We generally may designate whether a distribution we designate as capital gain dividends (and any retained capital gain that we are deemed to distribute) is taxable to non-corporate holders at a 15% or 25% rate. The characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum of \$3,000 annually. A non-corporate taxpayer may carry unused capital losses forward indefinitely. A corporate taxpayer must pay tax on its net capital gains at corporate ordinary income rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses carried back three years and forward five years. In general, any loss recognized by a taxable U.S. holder when the holder sells or otherwise disposes of our securities that the holder has held for six months or less, after applying certain holding period rules, will be treated as a long-term capital loss, to the extent of dividends received by the holder from us which were required to be treated as long-term capital gains.

Information Reporting Requirements and Backup Withholding

We will report to our holders of our debt securities and stock and to the Internal Revenue Service the amount of interest or dividends we pay during each calendar year and the amount of tax we withhold, if any. A holder may be subject to backup withholding at a rate of 28% with respect to interest or dividends unless the holder:

is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or

provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A holder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the Internal Revenue Service. Any amount paid as backup withholding will be creditable against the holder's income tax liability. In addition, we may be required to withhold a portion of capital gain dividends to any holders who fail to certify their non-foreign status to us. For a discussion of the backup withholding rules as applied to non-U.S. holders, see Taxation of Non-U.S. Holders.

Taxation of Tax-Exempt Holders

Amounts distributed as dividends by a REIT generally do not constitute unrelated business taxable income when received by a tax-exempt entity. Provided that a tax-exempt holder is not one of the types of entity described in the next paragraph and has not held its stock as debt financed property within the meaning of the Code, and the stock is not otherwise used in a trade or business, the dividend income from the stock will not be unrelated business taxable income to a tax-exempt stockholder. Similarly, income from the sale of stock will not constitute unrelated business taxable income unless the tax-exempt holder has held the stock as debt financed property within the meaning of the Code or has used the stock in a trade or business.

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Income from an investment in our securities will constitute unrelated business taxable income for tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from Federal income taxation under the applicable subsections of Section 501(c) of the Code, unless the organization is able to properly deduct amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its securities. Prospective investors of the types described in the preceding sentence should consult their own tax advisors concerning these set aside and reserve requirements.

Notwithstanding the foregoing, however, a portion of the dividends paid by a pension-held REIT will be treated as unrelated business taxable income to any trust which:

is described in Section 401(a) of the Code;

is tax-exempt under Section 501(a) of the Code; and

holds more than 10% (by value) of the equity interests in the REIT.

Tax-exempt pension, profit-sharing and stock bonus funds that are described in Section 401(a) of the Code are referred to below as qualified trusts. A REIT is a pension-held REIT if:

it would not have qualified as a REIT but for the fact that Section 856(h)(3) of the Code provides that stock owned by qualified trusts will be treated, for purposes of the not closely held requirement, as owned by the beneficiaries of the trust (rather than by the trust itself); and

either (a) at least one qualified trust holds more than 25% by value of the interests in the REIT or (b) one or more qualified trusts, each of which owns more than 10% by value of the interests in the REIT, hold in the aggregate more than 50% by value of the interests in the REIT.

The percentage of any REIT dividend treated as unrelated business taxable income to a qualifying trust is equal to the ratio of (a) the gross income of the REIT from unrelated trades or businesses, determined as though the REIT were a qualified trust, less direct expenses related to this gross income, to (b) the total gross income of the REIT, less direct expenses related to the total gross income. A de minimis exception applies where this percentage is less than 5% for any year. We do not expect to be classified as a pension-held REIT, but this cannot be guaranteed.

The rules described above in Taxation of Taxable U.S. Holders concerning the inclusion of our designated undistributed net capital gains in the income of our stockholders will apply to tax-exempt entities. Thus, tax-exempt entities will be allowed a credit or refund of the tax deemed paid by these entities in respect of the includible gains.

Taxation of Non-U.S. Holders

The rules governing U.S. Federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships and other foreign stockholders are complex. This section is only a summary of such rules. We urge non-U.S. holders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of common stock, including any reporting requirements.

Ordinary Dividends. Dividends, other than dividends that are treated as attributable to gain from sales or exchanges by us of U.S. real property interests, as discussed below, and other than dividends designated by us as capital gain dividends, will be treated as ordinary income to the extent that they are made out of our current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the dividend will ordinarily apply to dividends of this kind to non-U.S. holders, unless an applicable income tax treaty reduces that tax. However, if income from an investment in our stock is treated as effectively connected with the non-U.S. holder's conduct of a U.S. trade or business or is attributable to a permanent establishment that the non-U.S. holder maintains in the United States (if that is required by an applicable income tax treaty as a condition for subjecting the

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non-U.S. holder to U.S. taxation on a net income basis), tax at graduated rates will generally apply to the non-U.S. holder in the same manner as U.S. holders are taxed with respect to dividends, and the 30% branch profits tax may also apply if the stockholder is a foreign corporation. We expect to withhold U.S. tax at the rate of 30% on the gross amount of any dividends, other than dividends treated as attributable to gain from sales or exchanges of U.S. real property interests and capital gain dividends, paid to a non-U.S. holder, unless (a) a lower treaty rate applies and the required form evidencing eligibility for that reduced rate (ordinarily, IRS Form W-8BEN) is filed with us or the appropriate withholding agent or (b) the non-U.S. holder files an IRS Form W-8ECI or a successor form with us or the appropriate withholding agent claiming that the dividends are effectively connected with the non-U.S. holder's conduct of a U.S. trade or business.

Dividends to a non-U.S. holder that are designated by us at the time of dividend as capital gain dividends which are not attributable to or treated as attributable to the disposition by us of a U.S. real property interest generally will not be subject to U.S. Federal income taxation, except as described below.

Return of Capital. Distributions in excess of our current and accumulated earnings and profits, which are not treated as attributable to the gain from our disposition of a U.S. real property interest, will not be taxable to a non-U.S. holder to the extent that they do not exceed the adjusted basis of the non-U.S. holder's stock. Distributions of this kind will instead reduce the adjusted basis of the stock. To the extent that distributions of this kind exceed the adjusted basis of a non-U.S. holder's common stock, they will give rise to tax liability if the non-U.S. holder otherwise would have to pay tax on any gain from the sale or disposition of its common stock, as described below. If it cannot be determined at the time a distribution is made whether the distribution will be in excess of current and accumulated earnings and profits, withholding will apply to the distribution at the rate applicable to dividends. However, the non-U.S. holder may seek a refund of these amounts from the IRS if it is subsequently determined that the distribution was, in fact, in excess of our current accumulated earnings and profits.

Capital Gain Dividends. For any year in which we qualify as a REIT, dividends that are attributable to gain from sales or exchanges by us of U.S. real property interests will be taxed to a non-U.S. holder under the provisions of the Foreign Investment in Real Property Tax Act of 1980, as amended. Under this statute, these dividends are taxed to a non-U.S. holder as if the gain were effectively connected with a U.S. business. Thus, non-U.S. holders will be taxed on the dividends at the normal capital gain rates applicable to U.S. holders, subject to any applicable alternative minimum tax and special alternative minimum tax in the case of non-U.S. holders that are individuals. Beginning in our 2005 taxable year, the above rules relating to distributions attributable to gains from our sales or exchanges of U.S. real property interests (or such gains that are retained and deemed to be distributed) will not apply with respect to a non-U.S. holder that does not own more than 5% of our common stock at any time during the taxable year, provided our common stock is regularly traded on an established securities market in the United States. We are required by applicable Treasury Regulations under the Foreign Investment in Real Property Tax Act of 1980, as amended, to withhold 35% of any distribution that we could designate as a capital gains dividend. However, if we designate as a capital gain dividend a distribution made before the day we actually effect the designation, then although the distribution may be taxable to a non-U.S. holder, withholding does not apply to the distribution under this statute. Rather, we must effect the 35% withholding from distributions made on and after the date of the designation, until the distributions so withheld equal the amount of the prior distribution designated as a capital gain dividend. The non-U.S. holder may credit the amount withheld against its U.S. tax liability.

Sale of Common Stock. Gain recognized by a non-U.S. holder upon a sale or exchange of our common stock generally will not be taxed under the Foreign Investment in Real Property Tax Act if we are a domestically controlled REIT, defined generally as a REIT, less than 50% in value of whose stock is and was held directly or indirectly by foreign persons at all times during a specified testing period. We believe that we will be a domestically controlled REIT, and, therefore, that taxation under this statute generally will not apply to the sale of our common stock, however, because our stock is publicly traded, no assurance can be given that we will qualify as a domestically controlled REIT at any time in the future. Gain to which this statute does not apply will be taxable to a non-U.S. holder if investment in the common stock is treated as effectively connected with the non-U.S. holder's U.S. trade or business or is attributable to a permanent establishment that the non-U.S. holder maintains in the United States (if that is required by an applicable income tax treaty as a condition for subjecting the non-U.S. holders to U.S. taxation on a

net income basis). In this case, the same treatment will apply to the non-U.S. holders as to U.S. holders with respect to the gain. In addition, gain to which the Foreign Investment in Real Property Tax Act does not apply will be taxable to a non-U.S. holder if the non-U.S. holder is a nonresident alien individual who

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was present in the United States for 183 days or more during the taxable year to which the gain is attributable. In this case, a 30% tax will apply to the nonresident alien individual's capital gains. A similar rule will apply to capital gain dividends to which this statute does not apply.

If we were not a domestically controlled REIT, tax under the Foreign Investment in Real Property Tax Act would apply to a non-U.S. holder's sale of common stock only if the selling non-U.S. holders owned more than 5% of the class of common stock sold at any time during a specified period. This period is generally the shorter of the period that the non-U.S. holder owned the common stock sold or the five-year period ending on the date when the stockholder disposed of the common stock. If tax under this statute applies to the gain on the sale of common stock, the same treatment would apply to the non-U.S. holder as to U.S. holders with respect to the gain, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals.

Backup Withholding and Information Reporting

If you are a non-U.S. holder, you are generally exempt from backup withholding and information reporting requirements with respect to:

dividend payments;

the payment of the proceeds from the sale of common stock effected at a United States office of a broker, as long as the income associated with these payments is otherwise exempt from United States Federal income tax; and

the payor or broker does not have actual knowledge or reason to know that you are a United States person and you have furnished to the payor or broker: (a) a valid Internal Revenue Service Form W-8BEN or an acceptable substitute form upon which you certify, under penalties of perjury, that you are a non-United States person, or (b) other documentation upon which it may rely to treat the payments as made to a non-United States person in accordance with U.S. Treasury Regulations, or (c) you otherwise establish an exemption.

Payment of the proceeds from the sale of common stock effected at a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, a sale of common stock that is effected at a foreign office of a broker will be subject to information reporting and backup withholding if:

the proceeds are transferred to an account maintained by you in the United States;

the payment of proceeds or the confirmation of the sale is mailed to you at a United States address; or

the sale has some other specified connection with the United States as provided in U.S. Treasury Regulations, unless the broker does not have actual knowledge or reason to know that you are a United States person and the documentation requirements described above are met or you otherwise establish an exemption.

In addition, a sale of common stock will be subject to information reporting if it is effected at a foreign office of a broker that is:

a United States person;

a controlled foreign corporation for United States tax purposes;

a foreign person 50% or more of whose gross income is effectively connected with the conduct of a United States trade or business for a specified three-year period; or

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a foreign partnership, if at any time during its tax year: (a) one or more of its partners are U.S. persons, as defined in U.S. Treasury Regulations, who in the aggregate hold more than 50% of the income or capital interest in the partnership, or (b) such foreign partnership is engaged in the conduct of a United States trade or business,

unless the broker does not have actual knowledge or reason to know that you are a United States person and the documentation requirements described above are met or you otherwise establish an exemption. Backup withholding will apply if the sale is subject to information reporting and the broker has actual knowledge that you are a United States person. You generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed your income tax liability by filing a refund claim with the Internal Revenue Service.

Tax Aspects of Our Investments in the Operating Partnership

The following discussion summarizes certain federal income tax considerations applicable to our direct or indirect investment in the Operating Partnership and any subsidiary partnerships or limited liability companies we form or acquire, each individually referred to as a Partnership and, collectively, as Partnerships. The following discussion does not cover state or local tax laws or any federal tax laws other than income tax laws.

Classification as Partnerships

We are entitled to include in our income our distributive share of each Partnership's income and to deduct our distributive share of each Partnership's losses only if such Partnership is classified for federal income tax purposes as a partnership, rather than as a corporation or an association taxable as a corporation. An organization with at least two owners or partners will be classified as a partnership, rather than as a corporation, for federal income tax purposes if it: is treated as a partnership under the Treasury Regulations relating to entity classification (the check-the-box regulations); and

is not a publicly traded partnership.

Under the check-the-box regulations, an unincorporated business entity with at least two owners or partners may elect to be classified either as a corporation or as a partnership. If such an entity does not make an election, it generally will be treated as a partnership for federal income tax purposes.

We intend that each partnership we own an interest in will be classified as a partnership for federal income tax purposes (or else a disregarded entity where there are not at least two separate beneficial owners).

A publicly traded partnership is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market (or a substantial equivalent). A publicly traded partnership is generally treated as a corporation for federal income tax purposes, but will not be so treated for any taxable year for which at least 90% of the partnership's gross income consists of specified passive income, including real property rents, gains from the sale or other disposition of real property, interest, and dividends (the 90% passive income exception). Treasury Regulations provide limited safe harbors from treatment as a publicly traded partnership. Pursuant to one of those safe harbors, known as the private placement exclusion, interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction or transactions that were not required to be registered under the Securities Act, and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. For the determination of the number of partners in a partnership, a person owning an interest in a partnership, grantor trust, or S corporation that owns an interest in the partnership is treated as a partner in the partnership only if (1) substantially all of the value of the owner's interest in the entity is attributable to the entity's direct or indirect interest in the partnership, and (2) a principal purpose of the use of the entity is to permit the partnership to satisfy the 100-partner limitation.

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We expect that each partnership we own an interest in will qualify for the private placement exclusion, one of the other safe harbors from treatment as a publicly traded partnership, and/or will satisfy the 90% passive income exception.

Income Taxation of the Partnerships and Their Partners

We own 99.0% of the interests in the Operating Partnership and certain subsidiary partnerships. Entities that we own 100% of the interests in (directly or through other disregarded entities) will be treated as disregarded entities. In addition we may hold interests in partnership or LLCs that are not disregarded entities (the Partnership or Partnerships).

Partners, Not the Partnerships, Subject to Tax. A Partnership is not a taxable entity for federal income tax purposes. We will therefore take into account our allocable share of each Partnership's income, gains, losses, deductions, and credits for each taxable year of the Partnership ending with or within our taxable year, even if we receive no distribution from the Partnership for that year or a distribution less than our share of taxable income. Similarly, even if we receive a distribution, it may not be taxable if the distribution does not exceed our adjusted tax basis in our interest in the Partnership.

Partnership Allocations. Although a partnership agreement generally will determine the allocation of income and losses among partners, allocations will be disregarded for tax purposes if they do not comply with the provisions of the federal income tax laws governing partnership allocations. If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners' interests in the Partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Each Partnership's allocations of taxable income, gain, and loss are intended to comply with the requirements of the federal income tax laws governing partnership allocations.

Sale of a Partnership's Property. Generally, any gain realized by a Partnership on the sale of property held for more than one year will be long-term capital gain, except for any portion of the gain treated as depreciation or cost recovery recapture. Conversely, our share of any Partnership gain from the sale of inventory or other property held primarily for sale to customers in the ordinary course of the Partnership's trade or business will be treated as income from a prohibited transaction subject to a 100% tax. Income from a prohibited transaction may have an adverse effect on our ability to satisfy the gross income tests for REIT status. See Requirements for Qualification. We do not presently intend to acquire or hold, or to allow any Partnership to acquire or hold, any property that is likely to be treated as inventory or property held primarily for sale to customers in the ordinary course of our, or the Partnership's, trade or business.

State and Local Taxes

We and/or our stockholders may be subject to taxation by various states and localities, including those in which we or a holder transacts business, owns property or resides. The state and local tax treatment may differ from the federal income tax treatment described above. Consequently, holders should consult their own tax advisors regarding the effect of state and local tax laws upon an investment in our securities.

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Our common stock being offered by this prospectus are being registered to permit secondary public trading of our common stock. Subject to the restrictions described in this prospectus, the selling stockholders, or their pledgees, donees, transferees or other successors in interest, may offer our common stock covered under this prospectus for resale from time to time. The shares of common stock covered, as to their resale, under this prospectus include shares issuable upon conversion of the units, including any additional shares issuable to prevent dilution as a result of stock splits, stock dividends or similar events. In addition, subject to the restrictions described in this prospectus, the selling stockholders may sell, transfer or otherwise dispose of a portion of our common stock being offered under this prospectus in transactions exempt from the registration requirements of the Securities Act. See Plan Of Distribution.

The following table sets forth the number of shares of common stock and units held by the selling stockholders as of February 15, 2007 and the maximum number of shares of common stock that may be sold by the selling stockholders, or by any of their pledgees, donees, transferees or other successors in interest. Each unit may be exchanged for one share of common stock, subject to adjustment. In lieu of issuing common stock upon the exchange of the units, we may, at our option, issue cash in an amount equal to the fair market value of an equivalent number of shares of our common stock. The table is prepared based on information from the selling stockholders. Based on such information, no selling stockholder is a registered broker-dealer or an affiliate of a broker-dealer. Since the selling stockholders may sell all, some or none of their shares, no estimate can be made of the aggregate number of shares that are to be offered by the selling stockholders under this prospectus or that will be owned by each selling stockholder upon completion of the offering to which this prospectus relates.

Selling Stockholder	Number of Units Held	Maximum Number of Shares of Common Stock to be Sold
Michael J. Henneman (1)	457,490	457,490
Roderick Schmidt	380,192	380,192
Keeling Family Irrevocable Trust	271,692	271,692
David Keeling	263,300	263,300
Eric Worner	191,905	191,905
Roger and Sheryl Marsh	71,943	71,943
Henneman Family LLC (1)	68,076	68,076
Schmidt Family Investments LLC	68,076	68,076
Rodney Poole	67,067	67,067
Ralph J. Henneman Trust	59,525	59,525
Michael Sheppard	55,279	55,279
Paul and Barbara Koch	42,591	42,591
Kent P. Dauten	32,171	32,171
David Diana Revocable Trust	27,230	27,230
Chad Worner	22,778	22,778
Dan Jaworski	19,607	19,607
HSW Properties LLC (1)	18,103	18,103
Dennis E. Smith	16,685	16,685
Sheryl Marsh	12,687	12,687
Joseph Giblin	10,616	10,616
Rita Henneman Trust	10,931	10,931
Donna Worner	9,646	9,646
Mary Jane Diana Revocable Trust	7,735	7,735
Lucille Frasca Trust	7,036	7,036

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Delores M. Henneman Trust B&C	5,271	5,271
Vernon Holland	4,246	4,246
Estate of Jeanette Holland	1,200	1,200
Jeffrey M. Fenster	1,070	1,070
Total	2,204,148	2,204,148

(1) Henneman Family LLC and HSW Properties LLC are each controlled by Michael J. Henneman. Mr. Henneman is a member of our board of directors.

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PLAN OF DISTRIBUTION

The selling stockholders and any of their pledgees, donees, transferees and successors-in-interest may, from time to time, sell any or all of their shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. The selling stockholders may use any one or more of the following methods when selling shares:

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

an exchange distribution in accordance with the rules of the applicable exchange;

privately negotiated transactions;

settlement of short sales;

broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

a combination of any such methods of sale; and

any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 under the Securities Act of 1933, if available, rather than under this prospectus. Broker-dealers engaged by the selling stockholders may arrange for other broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent to the purchase of shares, from the purchaser) in amount to be negotiated. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

The selling stockholders may from time to time pledge or grant a security interest in some or all of the units or common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the common stock from time to time under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provisions of the Securities Act of 1933, amending the list of selling stockholders to include the pledgee, transferee or other successor-in-interest as a selling stockholder under this prospectus.

The selling stockholders may also transfer the common stock in other circumstances, in which case the pledgees, donees, transferees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be underwriters within the meaning of the Securities Act of 1933 in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933. The selling stockholders have informed us that none of them have any agreement or understanding, directly or indirectly, with any person to distribute the common stock.

We will pay all fees and expenses incurred by us incident to the registration of the common stock.

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WHERE YOU CAN FIND MORE INFORMATION

We are a public company and file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC's web site at <http://www.sec.gov>. In addition, you may read and copy our SEC filings at the office of the New York Stock Exchange at 20 Broad Street, New York, New York 10005. Our website address is www.studenthousing.com.

This prospectus is only part of a registration statement on Form S-3 that we have filed with the SEC under the Securities Act of 1933 and therefore omits some of the information contained in the registration statement. We have also filed exhibits and schedules to the registration statement that are excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or other document. You may inspect or obtain a copy of the registration statement, including the exhibits and schedules, as described in the previous paragraph.

INCORPORATION OF DOCUMENTS BY REFERENCE

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

We incorporate by reference the documents listed below and any future filings made with the SEC (File No. 001-32265) under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until this offering is completed:

Annual Report on Form 10-K for the year ended December 31, 2005;

Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006; and

Current Reports on Form 8-K filed on February 13, 2006, March 7, 2006 as amended by the Current Report on Form 8-K/A filed on May 9, 2006, August 22, 2006 and September 14, 2006.

You may request a copy of these filings at no cost by writing or telephoning Investor Relations, at the following address and telephone number:

American Campus Communities, Inc.
805 Las Cimas Parkway, Suite 400
Austin, Texas 78746
(512) 732-1000

You should rely only on the information incorporated by reference or provided in this prospectus or in the supplement. We have not authorized anyone else to provide you with different information. You should not assume that the information in this prospectus or any supplement is accurate as of any date other than the date on the front of those documents.

LEGAL MATTERS

Locke Liddell & Sapp LLP, Dallas, Texas, has passed on the legality of the common stock offered through this prospectus.

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EXPERTS

The consolidated and combined financial statements of American Campus Communities, Inc. and its subsidiaries appearing in American Campus Communities, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2005 and American Campus Communities management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2005 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report included therein, and incorporated herein by reference. Such financial statements and management's assessment have been incorporated herein by reference and included herein, respectively, in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.