

AVATAR HOLDINGS INC

Form S-3/A

July 16, 2004

UNITED STATES

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

AMENDMENT NO. 1

**TO
FORM S-3**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

AVATAR HOLDINGS INC.

(Exact Name Of Registrant as Specified in its Charter)

DELAWARE

(State or Other Jurisdiction of Incorporation or Organization)

6552

(Primary Standard Industrial Classification Code Numbers)

23-1739078

(I.R.S. Employer Identification No.)

AVATAR HOLDINGS INC.

**201 ALHAMBRA CIRCLE
CORAL GABLES, FLORIDA 33134
(305) 442-7000**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrants' Principal Executive Offices)

JUANITA I. KERRIGAN

VICE PRESIDENT AND SECRETARY

**201 ALHAMBRA CIRCLE
CORAL GABLES, FLORIDA 33134
(305) 442-7000**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

copy to:

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APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after this registration statement becomes effective.

If only the securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell securities, nor is it soliciting offers to buy these securities, in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION DATED JULY 16, 2004

PROSPECTUS

\$120,000,000

Avatar Holdings Inc.

4.50% Convertible Senior Notes due 2024

This prospectus relates to our \$120,000,000 aggregate principal amount of 4.50% convertible senior notes due 2024 which we previously issued and sold in a private placement in reliance on an exemption from registration under the Securities Act of 1933, as amended.

The notes and the common stock into which the notes are convertible may be offered and sold from time to time pursuant to this prospectus by the holders of those securities or by their transferees, pledgees, donees, or successors, all of which we refer to as selling security holders. The selling security holders may sell the securities directly to purchasers or through underwriters, broker-dealers or agents. If required at the time of a particular offering of securities by a selling security holder, a supplement to this prospectus will be circulated setting forth the name or names of any underwriters, broker-dealers or agents, any discounts, commissions or other terms constituting compensation for underwriters and any discounts, commissions or concessions that will be allowed or reallocated or paid to agents or broker-dealers.

The notes bear interest at the rate of 4.50% per year. Interest on the notes is payable on April 1 and October 1 of each year, beginning October 1, 2004. The notes will mature on April 1, 2024.

Holders may convert all or a portion of their notes into shares of our common stock under the following circumstances: (1) at any time during any calendar quarter commencing after June 30, 2004 if the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the calendar quarter prior to such quarter is greater than 120% of the conversion price per share of common stock on such last day; (2) subject to certain exceptions, during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of the notes for each day of the five trading day period was less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the notes; (3) if the notes have been called for redemption; or (4) upon the occurrence of specified corporate transactions described in this prospectus.

The conversion rate will be 19.0006 shares of our common stock per \$1,000 principal amount of the notes, subject to adjustment. Upon conversion, we may at our option choose to deliver, in lieu of our common stock, cash or a combination of cash and common stock as described herein.

Beginning April 5, 2011, we may redeem all or a portion of the notes for cash for a price equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest, if any.

Holders may require us to repurchase all or a portion of their notes for cash on April 1, 2011, April 1, 2014 and April 1, 2019 at a repurchase price equal to 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest, if any.

Our common stock is traded through The Nasdaq Stock Market (Nasdaq) under the symbol AVTR. On July 15, 2004, the last reported sale price of our common stock on Nasdaq was \$41.53 per share.

Investing in the notes involves risks. See Risk Factors beginning on page 7.

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

Citigroup

, 2004

You should rely only on the information contained in this prospectus and those documents incorporated by reference herein. We have not authorized anyone to provide you with different information. The selling security holders are not making an offer of these securities in any state where the offer is not permitted.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward looking statements. When used in this prospectus, the words anticipate, believe, estimate, will, plan, intend and expect and similar expressions identify forward-looking statements. Although we believe that our plans, intentions and expectations reflected in any forward looking statements are reasonable, these plans, intentions or expectations may not be achieved. Our actual results, performance or achievements could differ materially from those contemplated, expressed or implied by the forward-looking statements contained in this prospectus. Important factors that could cause actual results to differ materially from our forward looking statements are set forth in this prospectus, including under the heading Risk Factors. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements set forth in this prospectus. Except as required by federal securities laws, we are under no obligation to update any forward looking statement, whether as a result of new information, future events or otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the SEC). You may read and copy materials that we have filed with the SEC at the SEC's public reference room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings also are available to the public on the SEC's web site at <http://www.sec.gov>, which contains reports, proxies and information statements and other information regarding issuers that file electronically. Our SEC filings are also available through our website at <http://www.avatarholdings.com>. The information on our website is not, and you must not consider such information to be, a part of this prospectus.

We have agreed that if, at any time that the notes are restricted securities within the meaning of the Securities Act and we are not subject to the information reporting requirements of the Exchange Act of 1934, we will furnish to holders of the notes and to prospective purchasers designated by them the information required to be delivered pursuant to Rule 144(d)(4) under the Securities Act to permit compliance with Rule 144A in connection with resales of the notes.

SUMMARY

This summary contains basic information about us and this offering. Because it is a summary, it does not contain all of the information that you should consider before investing. You should read this entire prospectus carefully, including the section entitled Risk Factors and our financial statements and the related notes, contained elsewhere or incorporated by reference in this prospectus, before making an investment decision.

Our Company

Our Business

We are engaged in the business of real estate operations. Our residential community development activities are focused primarily in the state of Florida and include the development of active adult and primary residential communities. We currently own more than 18,000 acres of developed, partially developed or developable residential, commercial and industrial property in the states of Florida and Arizona, some portion of which may be developed as roads, retention ponds, parks, school sites, community amenities and for other similar uses. We also engage in a variety of other real estate related activities, such as the operation of amenities, the sale of commercial and industrial land, and the operation of a title insurance agency. We also operate a water and wastewater utility in Rio Rico, Arizona.

Active Adult Community Development. Within the Central Florida master-planned community of Poinciana we are developing the highly-amenitized active adult community of Solivita. This community incorporates the natural topography of the land, including more than 1,200 acres of wetlands and an oak hammock. The community currently includes approximately 100,000 square feet of recreation and service facilities, as well as an 18-hole golf course and an active park housing a variety of sporting and games facilities.

Primary Residential Community Development. Our primary residential community development business includes construction of production homes, both on scattered lots and on contiguous parcels as part of planned communities, in Poinciana, Florida and Rio Rico, Arizona. Our primary residential operations also include the development and construction of semi-custom homes in Harbor Islands, Florida. During the fourth quarter of 2003, we commenced closings at our Central Florida community of Bellalago, which opened for sales in late 2002. Also during 2003, we commenced sales and closings within Cory Lake Isles, in Tampa, Florida, on parcels acquired in 2002.

Highrise Joint Ventures. In December 2002, a subsidiary of ours, Avatar Ocean Palms, Inc., entered into a joint venture for development of a 38-story, 240-unit highrise condominium on a 3.5-acre oceanfront site in Hollywood, Florida. In 2003, sales commenced and as of March 31, 2004, 208 units have been sold at an aggregate sales volume of \$165.9 million. In December 2003, the joint venture closed on a \$115.0 million construction financing package and commenced development and construction.

In March 2004, another subsidiary of ours, Avatar Regalia, Inc., entered into a joint venture for development of a luxury residential highrise condominium on an oceanfront site of approximately 1.18 acres in Sunny Isles Beach, Florida, approximately three miles south of Hollywood.

Other Residential Real Estate Assets. Banyan Bay, located in Martin County, Florida, with frontage on the St. Lucie River, consists of 250 acres. We have applied for master plan approval for permitting of a community of approximately 200 single-family and 300 multi-family homes. It is anticipated that prices will range from approximately \$220,000 for multi-family product to more than \$600,000 for single-family homes.

Ocala Springs, located five miles northeast of Ocala in Marion County, Florida, is comprised of approximately 4,600 acres of undeveloped land, which is being held for future development and/or sale. We do not currently have specific plans for this property.

We also own a small number of homesites and a small amount of additional acreage in other areas within Florida.

Commercial and Industrial and Other Operations. We also earn nominal revenues through rental and other operations, including a small community shopping center in each of Poinciana and Rio Rico, title insurance agency operations, real estate brokerage services and a water and wastewater utility in Rio Rico.

Business Strategy

Our primary business strategy continues to be the development of lifestyle communities, including active adult and primary residential communities, as well as development and construction of housing on scattered lots. We have expanded our community development and homebuilding operations to newly-acquired land parcels and joint ventures for the development of highrise condominium projects.

As part of our business strategy, from time to time we dispose of non-core assets that we believe do not represent significant long-term opportunities for us. For example, during 2002, we sold the Rio Rico Resort and golf course and substantially all of our remaining land in Cape Coral, Golden Gate and Leisure Lakes, Florida.

We are actively pursuing other long-term investment and business opportunities. Future opportunities may be in those real estate businesses in which we are presently engaged or may extend to other real estate activities or unrelated businesses.

Our Corporate Information

Avatar Holdings Inc. was incorporated in the state of Delaware in 1970. Our principal executive offices are located at 201 Alhambra Circle, Coral Gables, Florida 33134 (telephone (305) 442-7000). Our internet address is <http://www.avatarholdings.com>. The information contained on our website is not part of this prospectus.

The Offering

Notes Offered	\$120,000,000 aggregate principal amount of 4.50% Convertible Senior Notes due 2024. Each note was issued at a price of \$1,000 per note and has a principal amount of \$1,000.
Maturity	April 1, 2024.
Interest	The notes bear interest at the rate of 4.50% per year on the principal amount from March 30, 2004, or from the most recent date to which interest has been paid or provided for. Interest is payable semiannually in arrears on April 1 and October 1 of each year, beginning October 1, 2004. The interest rate will be calculated using a 360-day year composed of twelve 30-day months.
Conversion Rights	<p> Holders may convert all or a portion of their notes, in multiples of \$1,000 principal amount, into common stock only if at least one of the conditions described below is satisfied. For each \$1,000 principal amount of notes surrendered for conversion, if the conditions for conversion are satisfied, a holder will receive 19.0006 shares of our common stock. When we refer to common stock throughout this prospectus, we include all rights attaching to our common stock under any stockholder rights plan then in effect. In lieu of delivering shares of our common stock upon conversion of all or any portion of the notes, we may elect to pay cash or a combination of cash and shares of our common stock for the notes surrendered.</p> <p> Holders may surrender notes for conversion into shares of our common stock at any time during any calendar quarter (but only during such calendar quarter) commencing after June 30, 2004 if the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 120% of the conversion price per share of common stock on such last day. The conversion price per share as of any day will equal the principal amount of a note divided by the conversion rate, subject to any adjustments to the conversion rate through that day.</p> <p> Holders may also surrender notes for conversion during the five business day period after any five-consecutive-trading-day period in which the trading price per \$1,000 principal amount of notes for each day of that period was less than 98% of the product of the closing sale price for our common stock for each day of that period and the number of shares of common stock issuable upon conversion of \$1,000 principal amount of notes; provided that if on the date of any such conversion that is on or after April 1, 2019, the closing sale price of our common stock is greater than the conversion price, then holders will receive, in lieu of common stock based on the conversion price, cash or common stock or a combination of cash and common stock, at our option, with a value equal to the principal amount of such notes plus accrued and unpaid interest, as of the conversion date.</p>

Notes called for redemption may be surrendered for conversion until the close of business on the second business day immediately preceding the redemption date. In addition, if we make a distribution to our stockholders with a per share value of more than 5% of the closing sale price of our common stock on the date immediately preceding the declaration of such distribution, or if we are a party to certain consolidations, mergers or binding share exchanges, notes may be surrendered for conversion, as provided in Description of Notes Conversion Rights.

The ability to surrender notes for conversion will expire at the close of business on the second business day immediately preceding the final maturity date.

Ranking	The notes are our senior, unsecured obligations and rank equal in right of payment to all of our existing and future unsecured and senior debt. However, the notes are effectively subordinated to all our existing and future secured debt to the extent of the collateral securing such indebtedness, and to all existing and future liabilities of our subsidiaries. See Description of Notes Ranking of the Notes. As of March 31, 2004, after giving effect to the issuance of the notes, there was \$128.4 million of total long-term debt outstanding of Avatar Holdings Inc., of which \$8.4 million was total long-term debt outstanding of our subsidiaries.
Sinking Fund	None.
Redemption of Notes at Our Option	We may redeem for cash all or a portion of the notes at any time on or after April 5, 2011, at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest, if any. See Description of Notes Redemption of Notes at Our Option.
Repurchase at Option of the Holder on Specified Dates	Holders may require us to repurchase the notes for cash on April 1, 2011, April 1, 2014 and April 1, 2019 at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, if any. See Description of Notes Repurchase at Option of the Holder on Specified Dates.
Repurchase at Option of the Holder Upon a Designated Event	In certain circumstances involving a designated event (as described under Description of Notes Repurchase at Option of the Holder Upon a Designated Event) prior to maturity, holders may require us to purchase all or a portion of their notes for cash at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, if any. See Description of Notes Repurchase at Option of the Holder Upon a Designated Event.
DTC Eligibility	The notes were issued in fully registered book entry form and are evidenced by one or more global notes deposited with the trustee for the notes, as custodian for and registered in the name of a nominee of The Depository Trust Company, or DTC, in New York, New York. Beneficial interests in the global note are

shown on, and transfers thereof will be effected only through, records maintained by DTC and its direct and indirect participants, and your interest in the global note may not be exchanged for certificated notes, except in limited circumstances described herein. See Description of Notes Book-Entry System.

Registration Rights

We have, for the benefit of holders, filed with the SEC a shelf registration statement, of which this prospectus is a part, covering resales of the notes and the shares of our common stock issuable upon conversion of the notes. We will use our reasonable best efforts to cause the shelf registration statement to become effective within 180 days after the date of original issuance and keep such shelf registration statement effective until the earliest of (i) the sale pursuant to Rule 144 under the Securities Act or a shelf registration statement of all the notes and the shares of common stock issuable upon conversion of the notes and (ii) the expiration of the holding period applicable to such securities held by our non affiliates under Rule 144(k) under the Securities Act, or any successor provision, subject to certain permitted exceptions. See Description of Notes Registration Rights.

Trading

The notes originally sold in private placement transactions are eligible for trading in the PORTALSM Market of the National Association of Securities Dealers, Inc. Notes sold using this prospectus, however, will no longer be eligible for trading in the PORTALSM Market. Upon the effective date of the registration statement of which this prospectus is a part, we do not expect the notes to be listed on any other national securities exchange or in any automated quotation system.

Common Stock

Our common stock is traded through Nasdaq under the symbol AVTR.

Use of Proceeds

We will not receive any of the proceeds of the sale by the selling security holders of the notes or the common stock into which the notes may be converted. We used approximately \$42.9 million of the net proceeds of the offering to purchase shares of our common stock from purchasers of the notes. The remaining portion of the proceeds are to be used for general corporate purposes.

Risk Factors

Investing in the notes involves a number of material risks. For a discussion of certain risks that should be considered in connection with an investment in the notes, see Risk Factors beginning on page 7 of this prospectus.

Summary Financial Data

The following table sets forth our summary financial data and other operating information. The summary financial data in the table are derived from our audited year-end consolidated financial statements and our unaudited quarterly consolidated financial statements. The financial data set forth below should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2003 and our Quarterly Reports on Form 10-Q and Form 10-Q/A for the quarter ended March 31, 2004 incorporated by reference in this prospectus.

	Year Ended December 31,					Three months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
(dollars in thousands except per share data)							
Statement of Income Data							
Revenues	\$ 183,828	\$ 157,137	\$ 157,026	\$ 190,251	\$ 253,008	\$ 50,541	\$ 78,316
Income (loss) from continuing operations before income taxes and discontinued operations	\$ (1,411)	\$ 9,414	\$ 6,344	\$ 5,641	\$ 9,909	\$ 3,141	\$ 10,410
Income tax (expense) benefit	563	293	(2,484)	(2,266)	8,554	(1,109)	(3,723)
Income (loss) from continuing operations after income taxes and before discontinued operations	\$ (848)	\$ 9,707	\$ 3,860	\$ 3,375	\$ 18,463	\$ 2,032	\$ 6,687
Discontinued operations:							
Income (loss) from operations of discontinued operations, operations (including gain on disposal of \$103,188 for 1999, \$2,649 for 2002 and \$2,784 for 2004)	102,149	(639)	(1,382)	1,265		(16)	2,737
Income tax benefit (expense)	(13,151)	246	532	987		6	(1,040)
Income (loss) on discontinued operations	88,998	(393)	(850)	2,252		(10)	1,697
Net income	\$ 88,150	\$ 9,314	\$ 3,010	\$ 5,627	\$ 18,463	\$ 2,022	\$ 8,384
Basic Per Share Data							
Income (loss) from continuing operations after income tax and before discontinued operations	\$ (0.09)	\$ 1.16	\$ 0.46	\$ 0.38	\$ 2.13	\$ 0.23	\$ 0.72
Discontinued operations:							
Income (loss) on discontinued operations	9.73	(0.05)	(0.10)	0.26		0.00	0.18
Net income	\$ 9.64	\$ 1.11	\$ 0.36	\$ 0.64	\$ 2.13	\$ 0.23	\$ 0.90
Diluted Per Share Data							
Income (loss) from continuing operations after income tax and before discontinued operations	\$ (0.09)	\$ 1.16	\$ 0.46	\$ 0.38	\$ 2.11	\$ 0.23	\$ 0.70
Discontinued operations:							

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Income (loss) on discontinued operations	9.73	(0.05)	(0.10)	0.26		0.00	0.18
Net income	\$ 9.64	\$ 1.11	\$ 0.36	\$ 0.64	\$ 2.11	\$ 0.23	\$ 0.88
Balance Sheet Data							
Total assets	\$ 391,135	\$ 369,192	\$ 371,630	\$ 386,067	\$ 362,719	\$ 381,128	\$ 462,165
Notes, mortgage notes and other debt	\$ 119,468	\$ 114,860	\$ 109,031	\$ 107,712	\$ 19,771	\$ 100,127	\$ 128,386
Stockholders equity	\$ 193,577	\$ 202,987	\$ 211,078	\$ 221,592	\$ 263,649	\$ 218,500	\$ 229,289
Other Financial Data							
Ratio of earnings to fixed charges	0.89x(1)	1.95x	1.44x	1.57x	2.74x	2.39x	31.66x

(1) Additional earnings of \$1,123 would have been required to cover fixed charges.

RISK FACTORS

In deciding whether to purchase the notes, you should carefully consider the risks described below, which could cause our operating results and financial condition to be materially adversely affected, as well as other information and data included or incorporated by reference in this prospectus.

Risks Related to Our Company

Our access to financing may be limited, which could harm our business.

Our business is capital intensive and requires expenditures for land and infrastructure development, housing construction, working capital and new development opportunities. Accordingly, we anticipate incurring indebtedness to fund real estate development activities. As of March 31, 2004, after giving effect to the issuance of the notes, our total consolidated indebtedness was \$128.4 million. We may not sustain profitability or positive cash flows from operating activities. We anticipate, but cannot assure you, that the amounts available from internally generated funds, cash on hand, the sale of non-strategic assets and existing long-term financing will be sufficient to fund our anticipated operations and meet debt service or working capital requirements. We may be required to seek additional capital in the form of equity or debt financing from a variety of potential sources, including additional bank financing and sales of debt or equity securities. We cannot assure you that such financing will be available or, if available, will be on favorable terms. If we are not successful in obtaining sufficient capital to fund the implementation of our business strategy and other expenditures, development projects may be delayed or abandoned. Any such delay or abandonment could result in a reduction in sales and would adversely affect future results of operations.

A rise in interest rates or a decline in the capital markets could have an adverse effect on our business.

Some purchasers of our homes finance their purchases through third-party lenders providing mortgage financing or, to some extent, rely upon investment income. In general, housing demand is dependent on home equity, consumer savings and third-party financing and could be adversely affected by increases in interest rates, decreases in investment income, unavailability of mortgage financing, increasing housing costs and unemployment levels. The amount or value of discretionary income and savings, including retirement assets, available to home purchasers can be affected by a decline in the capital markets. If mortgage interest rates increase or the capital markets decline or undergo a major correction, the ability of prospective buyers to finance home purchases may be adversely affected.

Our success significantly depends on our key personnel and our ability to attract and retain additional personnel.

Implementation of our real estate business strategy has required, and will continue to require, among other things, the addition of new management personnel and employees, as well as the development of additional expertise by existing management personnel and employees. The loss of the services of certain members of the senior management team could have a material adverse effect on the success of our real estate business strategy and on our ability to expand our operations.

We may not succeed in obtaining new development, investment and business opportunities.

We have under development or in the planning process a substantial portion of the historical landholdings that we believe can be profitably developed at this time or in the near future. Although we are actively pursuing other development, long term investment and business opportunities, we cannot assure you that we will succeed in our efforts to obtain new development, investment and business opportunities.

Our industry is highly cyclical and is affected by general economic conditions and other factors beyond our control.

The real estate industry is highly cyclical and is affected by changes in national, global and local economic conditions and events, such as employment levels, availability of financing, interest rates, consumer confidence and the demand for housing and other types of construction. Real estate developers are subject to various risks, many of which are outside the control of the developer, including real estate market conditions (both where our communities and homebuilding operations are located and in areas where potential customers reside), changing demographic conditions, adverse weather conditions and natural disasters, such as hurricanes, tornadoes and wildfires, delays in construction schedules, cost overruns, changes in government regulations or requirements, increases in real estate taxes and other local government fees and availability and cost of land, materials and labor. The occurrence of any of the foregoing could result in a reduction of sales. Lower than expected sales by us as a result of these occurrences could have a material adverse effect on the timing of our cash flows and therefore, on our ability to service our obligation with respect to the notes.

We are concentrated geographically, which could harm our business.

Our development activities are primarily focused on locations in Florida and therefore depend to a significant degree on the levels of immigration to Florida from outside the United States and migration to Florida from within the United States in addition to other local market conditions. Our geographic concentration may create increased vulnerability during regional economic downturns or other Florida-related events which may reduce our cash flows and adversely affect our financial condition.

Increased roadway and school impact fees instituted by Osceola County portion of Poinciana, Florida may reduce our cash flow.

Our primary residential community development includes the construction of production homes, both on scattered lots and on contiguous parcels as part of planned communities, in Poinciana, Florida. A portion of our cash flow from our operation is generated through sales of homes in the Osceola County portion of Poinciana, Florida. In 2003, Osceola County increased the fees required to be paid by developers whose construction impacts local schools and roads. As a result of these increased impact fees, gross margins from future sales will be reduced and our future cash flow and our ability to service our debt obligations may be adversely affected.

If we are unable to develop and market our communities, our cash flows could decline.

Our communities will be developed over time. Therefore, our medium- and long-term future will be dependent on our ability to develop and market existing and future communities successfully. Committing the financial and managerial resources to develop a community involves significant risks. Before a community generates any revenues, material expenditures are required, among other things, to obtain development approvals to construct project infrastructure, recreation centers, model homes and sales facilities and, where opportunities are suitable and appropriate, to acquire land. It generally takes several years for a community development to achieve cumulative positive cash flow. No assurance can be given that we will successfully develop and market communities in the future. Our inability to develop and market our communities successfully and to generate positive cash flows from such operations in a timely manner would have an adverse effect on the ability to service debt and to meet working capital requirements.

Our joint ventures and partnerships may not achieve anticipated results.

In connection with our business strategy, we may seek additional joint venture or partnership arrangements with entities whose complementary resources or other business strengths we believe will contribute to our competitive position. A joint venture or other partnership may involve special risks associated with the possibility that a partner or partnership (i) at any time may have economic or business interests or goals that are inconsistent with ours, (ii) may take actions contrary to our instructions or

requests or contrary to our policies or objectives with respect to our real estate investments or (iii) could experience financial difficulties. Actions by a partner may have the result of subjecting property owned by the joint venture or partnership to liabilities in excess of those contemplated by the terms of the joint venture or partnership agreement or have other adverse consequences. As a participant in certain joint ventures or partnerships, we may be jointly and severally liable for the debts and liabilities of a joint venture or partnership. We cannot assure you that any joint venture or partnership arrangements entered into will achieve the results anticipated or otherwise prove successful.

The results of our operations are subject to fluctuations, which could hinder our ability to service debt and meet working capital requirements.

Our real estate projects are long-term in nature. Sales activity at active adult and other community and real estate developments varies from period to period, and the ultimate success of any community cannot be determined from results in any particular period or periods. A community may generate significantly higher sales levels at inception (whether because of local pent-up demand or other reasons) than it does during later periods over the life of the community. Revenues and earnings will also be affected by period-to-period fluctuations in the mix of product, subdivisions and home closings among our homebuilding operations. Thus, the timing and amount of revenues are subject to considerable uncertainty. The inability to predict the cash flows from operations could have an adverse effect on our ability to service debt and to meet working capital requirements.

Our business is subject to substantial competition.

Our homebuilding, planned community development and other real estate operations are subject to substantial existing and potential competition (including increased competition from a number of national homebuilders). Some current and potential competitors have longer operating histories and greater financial, sales, marketing, technical and other resources than us. Competition within the geographic locations of our developments extends from price and design of products to the ability to acquire diminishing supplies of raw land, to retain and employ experienced real estate management and sales personnel and to contract with development and construction firms. We cannot assure you that we will have sufficient resources to compete successfully in our market or against our competitors. Accordingly, existing and new competitors may rapidly accrue market share.

Our inability to meet the demands of increased volume could harm our business.

The expansion of our operations has placed increased burdens on existing staff and development and construction subcontractors. In addition, our ability to manage growth and to redeploy resources effectively will require us to continue to implement and improve operational, financial and sales systems. The inability to meet the demands of higher volume through retention and hiring of experienced management and sales personnel, through entering into contracts for development and construction and by updating and/or installing more sophisticated systems could have a detrimental effect on our competitive position and results of operation.

One of our highly profitable developments is nearing completion.

Our semi-custom community of Harbor Islands, where prices range from \$900,000 to \$3.0 million, generates substantial cash flow and profitability. As of March 31, 2004, nine units remained for sale, and 30 units were in backlog. It is anticipated the remaining units will be sold out during 2004 and development at Harbor Islands will be completed during 2005, which may have an adverse effect on our future cash flows.

We are subject to extensive governmental regulation and environmental considerations.

Our business is subject to extensive federal, state and local regulatory requirements, the broad discretion that governmental agencies have in administering those requirements and no growth or slow growth policies, all of which can prevent, delay, make uneconomic or significantly increase the costs of

development. Various governmental approvals and permits are required throughout the development process, and no assurance can be given as to the receipt (or timing of receipt) of these approvals or permits. The incurrence of substantial compliance costs and the imposition of delays and other regulatory burdens could have a material adverse effect on our operations. Furthermore, various federal, state and local laws subject property owners or operators to liability for the costs of removal or remediation of certain hazardous substances released on a property. Such laws often impose liability without regard to whether the owner knew of, or was responsible for, the release of the hazardous substances. The presence of such hazardous substances at one or more properties, and the requirement to remove or remediate such substances, may result in significant cost.

Risks Related to the Notes and the Offering

We have increased our leverage as a result of the sale of the notes.

In connection with the sale of the notes, we incurred \$120.0 million of indebtedness. As a result of this indebtedness, our interest payment obligations have increased. The degree to which we are leveraged could adversely affect our ability to obtain further financing for working capital, acquisitions or other purposes and could make us more vulnerable to industry downturns and competitive pressures. Our ability to meet our debt service obligations will be dependent upon our future performance, which will be subject to the financial, business and other factors affecting our operations, many of which are beyond our control.

There are no restrictive covenants in the notes indenture relating to our ability to incur future indebtedness or complete other financial transactions.

The indenture governing the notes does not contain any financial or operating covenants or restrictions on the payment of dividends, the incurrence of indebtedness, transactions with