

IDAHO POWER CO  
Form 8-K  
March 26, 2008

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): March 20, 2008

Commission	Exact name of registrants as specified in their charters, address of principal executive offices and registrants' telephone number	IRS Employer Identification Number
File Number 1-14465 1-3198	IDACORP, Inc. Idaho Power Company 1221 W. Idaho Street Boise, ID 83702-5627 (208) 388-2200 State or Other Jurisdiction of Incorporation: Idaho None	82-0505802 82-0130980
	Former name or former address, if changed since last report.	

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2.):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))



**IDACORP, Inc.**  
**Idaho Power Company**  
**Form 8-K**

**ITEM 5.02 DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS.**

Long-Term Incentive Compensation

On February 21, 2008, the Compensation Committee (the "Committee") of the Boards of Directors of IDACORP, Inc. ("IDACORP") and Idaho Power Company ("IPC") made grants of IDACORP common stock subject to performance-based vesting conditions ("Performance Shares") under the IDACORP 2000 Long-Term Incentive and Compensation Plan (the "Plan"). The Boards of Directors of IDACORP and IPC (the "Board") approved the awards at their meeting also held on February 21, 2008. On March 19, 2008, the Committee clarified that the peer group to be used for the awards was the utility companies in the S&P MidCap 400 Index at the end of the performance period. The Committee also stated that this peer group would be used for the outstanding 2006 and 2007 Performance Share Awards (performance with two goals) as originally intended by the Committee. The Board approved these actions at its meeting held on March 20, 2008. The form of IDACORP 2000 Long-Term Incentive and Compensation Plan Performance Share Award Agreement (performance with two goals) (the "Award Agreement") is attached hereto as Exhibit 10.1. Filed as Exhibit 10.2 and incorporated herein by reference is the IDACORP, Inc. 2000 Long-Term Incentive and Compensation Plan Performance Share Award Agreement (performance with two goals) NEO 2008 Award Opportunity Chart indicating the 2008 award opportunities for those executive officers who were named executive officers in the 2007 proxy statement for the Annual Meeting of Shareholders of IDACORP (the "NEOs").

The award of Performance Shares is subject to the attainment of performance goals established by the Committee for the period January 1, 2008 through December 31, 2010 (the "Performance Period"), at the threshold, target and maximum levels. The performance goals are a combination of: (i) cumulative earnings per share for the Performance Period, as reported on IDACORP's audited financial statements (weighted 50%) and (ii) IDACORP total shareholder return ("TSR") relative to a peer group for the Performance Period (weighted 50%).

If cumulative earnings per share are earned at the threshold level, the payout percentage is 50% of the target; target level - 100%; and maximum - 150%. If TSR is at the 40th percentile, the payout percentage is 50% of the target; the 55th percentile - 100%; and the 75th percentile or higher - 150%. Vesting of the Performance Shares will occur as soon as administratively practicable in the calendar year following the Performance Period to the extent performance goals are met. Participants will receive a prorated number of shares if they retire, die or become disabled during the Performance Period, if the performance goals are met, based on the number of full months they were employed. Participants who terminate employment for other reasons will forfeit the Performance Shares. Participants are entitled to vote the Performance Shares during the Performance Period. Dividends are accrued throughout the Performance Period and are paid following the Performance Period only on those Performance Shares that are earned.

The Performance Shares are subject to forfeiture as provided in the Plan and the Award Agreement. All performance shares for the 2005-2007 performance period were forfeited in February 2008 because IDACORP failed to meet the cumulative earnings per share goal.

**ITEM 8.01 OTHER EVENTS**

Fitch Ratings Revises Rating Outlook for IDACORP and IPC

On March 24, 2008, Fitch Ratings, Inc. ("Fitch") announced that it has revised its rating outlook to negative from stable for IDACORP, Inc. ("IDACORP") and Idaho Power Company ("IPC"), while affirming the existing ratings for both companies. Fitch affirmed its BBB Issuer Default Rating ("IDR") on IDACORP and IPC, its F2 short-term IDR rating on IDACORP and IPC, its A- rating on IPC's senior secured debt, its BBB+ rating on IPC's senior unsecured debt and its F2 ratings on IDACORP's and IPC's commercial paper.

Fitch stated that the outlook revision primarily reflects weakening underlying credit metrics due to IPC's inability under its power cost adjustment mechanism to fully recover higher thermal generation production and purchase power costs in rates. Fitch also cited below normal water conditions in six of the last seven years and the appearance that 2008 could extend that trend. Fitch stated that this dynamic in concert with a relatively large capital investment program and timing differences between when those costs are incurred and reflected in rates appear likely to result in earnings, cash flow and credit metrics more consistent with low "BBB" creditworthiness.

The following outlines the former and current Fitch ratings of IPC's and IDACORP's securities:

	IPC		IDACORP	
	Former	Current	Former	Current
Corporate Credit Rating	None	None	None	None
Senior Secured Debt	A-	A-	None	None

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Senior Unsecured Debt	BBB+	BBB+	BBB	BBB
Short-Term Tax-Exempt Debt	None	None	None	None
Commercial Paper	F2	F2	F2	F2
Rating Outlook	Stable	Negative	Stable	Negative

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The following outlines the current Standard & Poor's Ratings Services ("Standard and Poor's"), Moody's Investors Service (Moody's) and Fitch ratings of IPC's and IDACORP's securities:

	Standard and Poor's		Moody's		Fitch	
	IPC	IDACORP	IPC	IDACORP	IPC	IDACORP
Corporate Credit Rating	BBB	BBB	Baa1	Baa2	None	None
Senior Secured Debt	A-	None	A3	None	A-	None
Senior Unsecured Debt	BBB-	BBB-	Baa1	Baa2	BBB+	BBB
	(prelim)	(prelim)				
Short-Term Tax-Exempt	BBB-/A-2	None	Baa1/	None	None	None
Debt			VMIG-2			
Commercial Paper	A-2	A-2	P-2	P-2	F2	F2
Credit Facility	None	None	Baa1	Baa2	None	None
Rating Outlook	Stable	Stable	Stable	Stable	Negative	Negative

These security ratings reflect the views of the rating agencies. An explanation of the significance of these ratings may be obtained from each rating agency. Such ratings are not a recommendation to buy, sell or hold securities. Any rating can be revised upward or downward or withdrawn at any time by a rating agency if it decides that the circumstances warrant the change. Each rating should be evaluated independently of any other rating.

#### Oregon Power Cost Adjustment Mechanism

On August 17, 2007, IPC filed an application with the Public Utility Commission of Oregon ("OPUC") requesting the approval of a power cost adjustment mechanism to allow IPC to recover excess net power supply costs or distribute benefits to its Oregon customers in a more timely fashion than through the existing deferral process. IPC, the OPUC staff and the other parties to this proceeding (collectively, the "Parties") entered into a settlement stipulation on March 14, 2008. The stipulation is subject to approval by the OPUC.

On March 24, 2008, IPC submitted testimony to the OPUC to revise its previous calculation of its April 2008 through March 2009 net power supply costs ("October Update") to conform to the methodology agreed to by the Parties in the stipulation. IPC also submitted the second part of the mechanism ("March Forecast"), reflecting expected hydro conditions and forward prices for the April 2008 through March 2009 period. The expected power supply costs of \$150 million represent an increase of approximately \$23 million over the October Update.

If approved, the power supply cost update submitted by IPC would result in a \$4.8 million, or 15.69%, increase in Oregon revenues. If the OPUC approves the stipulation, any changes in rates are not expected to be effective until June 2008.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(d) Exhibits.

<b>Number</b>	<b>Description</b>
10.1	IDACORP, Inc. 2000 Long-Term Incentive and Compensation Plan Performance Share Award Agreement (performance with two goals), as amended March 20, 2008
10.2	IDACORP, Inc. 2000 Long-Term Incentive and Compensation Plan Performance Share Award Agreement (performance with two goals) NEO 2008 Award Opportunity Chart





**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

Dated: March 26, 2008

**IDACORP, Inc.**

By: /s/ Darrel T. Anderson

Darrel T. Anderson  
Senior Vice President -  
Administrative Services and  
Chief Financial Officer

**Idaho Power Company**

By: /s/ Darrel T. Anderson

Darrel T. Anderson  
Senior Vice President -  
Administrative Services and  
Chief Financial Officer

**INDEX TO EXHIBITS**

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obtain a properly completed bond power from the registered holder.

Please note that the transfer of registered ownership may take considerable time.

Signatures on a letter of transmittal or notice of withdrawal must be guaranteed unless the original notes tendered for exchange are tendered:

by the registered holder of the original notes who has not completed the box entitled Special Issuance Instructions or Special Delivery Instructions on the letter of transmittal; or

for the account of a recognized member in good standing of a Medallion Signature Guarantee Program recognized by the exchange agent, such as a firm which is a member of a registered national securities exchange, a member of the Financial Industry Regulatory Authority, Inc., a commercial bank or trust company having an office or correspondent in the United States, or certain other eligible institutions as that term is defined in Rule 17Ad-15 under the Exchange Act, each of the foregoing being referred to herein as an eligible institution.

If signatures on a letter of transmittal or notice of withdrawal are required to be guaranteed, the guarantor must be an eligible institution. If original notes are registered in the name of a person other than the person who signed the letter of transmittal, the original notes tendered for exchange must be endorsed by, or accompanied by a written instrument of transfer or exchange, in satisfactory form as determined by us in our sole discretion, duly executed by the registered holder with the registered holder's signature guaranteed by an eligible institution.

If trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity sign the letter of transmittal, any original notes, any notice of withdrawal or any instrument of transfer, such persons must so indicate when signing and must submit proper evidence satisfactory to us of such person's authority to so act.

We will determine in our sole discretion all questions as to the validity, form, eligibility (including time of receipt) and acceptance of original notes tendered for exchange and all other required documents. We reserve the absolute right to:

reject any and all tenders of any original notes not validly tendered;

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refuse to accept any original notes if, in our judgment or the judgment of our counsel, acceptance of the original notes may be deemed unlawful;

waive any defects or irregularities as to all or any particular original notes, either before or after the expiration time;

waive any conditions of the exchange offer; and

determine the eligibility of any holder who seeks to tender original notes in the exchange offer.

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Our determinations, either before or after the expiration time, with respect to the exchange offer, including the letter of transmittal and the instructions to the letter of transmittal, or as to any questions with respect to the tender of any original notes, will be final and binding on all parties. To the extent we waive any conditions to the exchange offer, we will waive such conditions as to all original notes. Holders must cure any defects and irregularities in connection with tenders of original notes for exchange within such reasonable period of time as we may determine, unless we waive such defects or irregularities. Neither we nor the exchange agent will be under any duty to give notification of any defect or irregularity with respect to any tender of original notes for exchange, or to waive any such defects or irregularities, nor will either of us incur any liability for failure to give such notification or waiver.

While we have no present plan to acquire any original notes that are not tendered in the exchange offer or to file a registration statement to permit resales of any original notes that are not tendered in the exchange offer, we reserve the right in our sole discretion to purchase or make offers to purchase any original notes that remain outstanding after consummation of the exchange offer. We also reserve the right to terminate the exchange offer, as described below under [Conditions to the Exchange Offer](#), and, to the extent permitted by applicable law, purchase the original notes in the open market, in privately negotiated transactions or otherwise. The terms of any such purchases or offers could differ materially from the terms of the exchange offer.

If you wish to tender your original notes for exchange notes in the exchange offer, we will require you to represent that:

you are acquiring the exchange notes in the ordinary course of your business;

you have no arrangement or understanding with any person to participate, you are not participating, and you do not intend to participate, in the distribution of the exchange notes (within the meaning of the Securities Act);

you are not an affiliate (as such term is defined in Rule 405 under the Securities Act) of ours;

you are not tendering original notes that have, or that are reasonably likely to have, the status of an unsold allotment of the initial placement of the original notes; and

if you are a broker-dealer, (i) you will receive the exchange notes for your own account, (ii) you acquired the original notes as a result of market-making activities or other trading activities and (iii) you will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such exchange notes.

If you do not meet these requirements and are unable to make the foregoing representations, you may not participate in the exchange offer, and any sale or transfer of your original notes must comply with the registration and prospectus delivery requirements of the Securities Act, unless such sale or transfer is made pursuant to an exemption from those requirements. See [Consequences of Failure to Exchange Original Notes](#) below for additional information.

**We make no recommendation as to whether you should exchange or refrain from exchanging all or any portion of your original notes in the exchange offer. In addition, we have not authorized anyone to make any such recommendation. You must make your own decision as to whether to exchange your original notes in the exchange offer and, if so, the aggregate amount of original notes to exchange, after reading this prospectus and the letter of transmittal and consulting with your advisors.**

### **Resales of the Exchange Notes**

Based on interpretations by the staff of the SEC contained in several no-action letters issued to third parties, we believe that a holder of original notes who meets the requirements and is able to make the representations

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described above under **Procedures for Tendering Original Notes** may offer for resale, resell or otherwise transfer the exchange notes received in the exchange offer without further registration and, except as described below, without the need to deliver a prospectus under the Securities Act. Any holder who does not meet these requirements and is unable to make such representations:

will not be able to rely on the interpretations of the staff of the SEC contained in such no-action letters;

will not be permitted to participate in the exchange offer; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of such holder's original notes, unless such sale or transfer is made pursuant to an exemption from those requirements.

Under the registration rights agreement, we agreed, among other matters, to file a shelf registration statement covering resales of the original notes (i) if any holder of the original notes, other than the initial purchasers, is not eligible to participate in the exchange offer or (ii) upon the request of the initial purchasers under certain specified circumstances. See **Filing of Shelf Registration Statement** below for additional information. We do not intend to file a shelf registration statement covering resales of the original notes unless we are required to do so under the registration rights agreement.

In connection with the resale of exchange notes, any participating broker-dealer who acquired the original notes for its own account as a result of market-making activities or other trading activities may be a statutory underwriter and must deliver a prospectus meeting the requirements of the Securities Act. In no-action letters issued to third parties, the SEC has taken the position that participating broker-dealers may fulfill their prospectus delivery requirements with respect to the exchange notes by delivery of the prospectus relating to the exchange offer. Under the registration rights agreement, we are required to allow participating broker-dealers and other persons, if any, subject to similar prospectus delivery requirements to use this prospectus, as it may be amended or supplemented from time to time, in connection with the resale of the exchange notes during the one-year period following the consummation of the exchange offer. See **Plan of Distribution** for a discussion of certain exchange and resale obligations of broker-dealers in connection with the exchange offer.

We have not requested, and do not intend to request, an interpretation by the staff of the SEC as to whether the exchange notes issued in the exchange offer may be offered for resale, resold or otherwise transferred by any holder without compliance with the registration and prospectus delivery provisions of the Securities Act. Because the SEC has not considered this exchange offer in the context of a no-action letter, we cannot assure you that the staff of the SEC would make a similar determination with respect to this exchange offer. If our belief is not accurate and you sell or transfer any exchange notes without delivering a prospectus meeting the requirements of the Securities Act or without an exemption from registration under the Securities Act, you may incur liability under the Securities Act. We do not and will not assume, or indemnify you against, this liability.

**Consequences of Failure to Exchange Original Notes**

If you do not exchange your original notes in the exchange offer, whether because you are not eligible to participate in the exchange offer or you decline to tender your original notes for exchange, your original notes will, following the consummation of the exchange offer, continue to be subject to the restrictions on transfer as stated in the indenture and the legend on the original notes. In general, original notes, unless the transfer is registered under the Securities Act, may not be offered, resold or otherwise transferred except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

We do not intend to file a shelf registration statement covering resales of the original notes unless we are required to do so under the registration rights agreement. We are required to file such a registration statement in only specific, limited circumstances which may not apply to you or your original notes. See **Filing of Shelf**

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Registration Statement below for additional information. If you are eligible to participate in the exchange offer, you should not decline to do so based on the assumption that a shelf registration statement will be on file and effective when you intend to resell your original notes.

See Risk Factors Risks Related to the Exchange Notes and the Exchange Offer for a discussion of certain risks you should consider before deciding whether to participate in the exchange offer.

### **Book-Entry Transfer**

Within two business days after receipt of this prospectus, the exchange agent is obligated to make a request to establish an account for the original notes at DTC for purposes of the exchange offer, unless the exchange agent already has established an account with DTC suitable for the exchange offer. Subject to the establishment of the account, any financial institution that is a participant in DTC's system may make book-entry delivery of the original notes by causing DTC to transfer the original notes into the exchange agent's account at DTC in accordance with DTC's Automated Tender Offer Program, known as ATOP. Such participant should transmit its acceptance to DTC at or prior to the expiration time or comply with the guaranteed delivery procedures described below under Guaranteed Delivery Procedures. DTC will verify such acceptance, execute a book-entry transfer of the tendered original notes into the exchange agent's account at DTC and then send to the exchange agent confirmation of such book-entry transfer.

The confirmation of such book-entry transfer will include an agent's message or a validly completed and duly executed letter of transmittal. The agent's message or letter of transmittal, with any required signature guarantees, and any other required documents, must be transmitted to and received by the exchange agent at the address set forth below under Exchange Agent at or prior to the expiration time, or the holder must comply with the guaranteed delivery procedures described below under Guaranteed Delivery Procedures.

### **Guaranteed Delivery Procedures**

If you wish to tender your original notes and: (i) certificates for the original notes are not immediately available; (ii) the letter of transmittal, the original notes or any other required documents cannot be delivered to the exchange agent at or prior to the expiration time; or (iii) the procedures for book-entry transfer cannot be completed at or prior to the expiration time, you may effect a tender if:

at or prior to the expiration time, the exchange agent receives from an eligible institution a validly completed and duly executed notice of guaranteed delivery, substantially in the form accompanying the letter of transmittal, setting forth your name and address and the amount of the original notes being tendered. The notice of guaranteed delivery will state that the tender is being made and will guarantee that, within three business days after the expiration time, the certificates for all physically tendered original notes, in proper form for transfer, or a book-entry confirmation, as the case may be, together with a validly completed and duly executed letter of transmittal, with any required signature guarantees, or an agent's message, and any other documents required by the letter of transmittal, will be transmitted to the exchange agent; and

the exchange agent receives the certificates for all physically tendered original notes, in proper form for transfer, or a book-entry confirmation, as the case may be, together with a validly completed and duly executed letter of transmittal, with any required signature guarantees, or an agent's message, and any other documents required by the letter of transmittal, within three business days after the expiration time.

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### **Withdrawal of Tenders**

You may withdraw tenders of your original notes at any time prior to the expiration time. For a withdrawal to be effective, a written notice of withdrawal must be received by the exchange agent at the address set forth below under Exchange Agent prior to the expiration time. Any such notice of withdrawal must:

specify the name of the holder having tendered the original notes to be withdrawn;

include a statement that such holder is withdrawing its election to have such original notes exchanged;

identify the original notes to be withdrawn (including the aggregate principal amount of the original notes to be withdrawn);

where certificates for original notes have been physically tendered, specify the name in which such original notes are registered, if different from that of the withdrawing holder, and the certificate numbers of the particular certificates to be withdrawn;

where original notes have been tendered pursuant to DTC's procedures for book-entry transfer, specify the name and number of the account at DTC to be credited with the withdrawn original notes and otherwise comply with DTC's book-entry transfer procedures; and

bear the signature of the holder in the same manner as the original signature on the letter of transmittal, if any, by which such original notes were tendered, with such signature guaranteed by an eligible institution, unless such holder is an eligible institution.

We will determine all questions as to the validity, form and eligibility (including time of receipt) of such notices of withdrawal, and our determination will be final and binding on all parties. Any original notes validly withdrawn will be deemed not to have been validly tendered for exchange for purposes of the exchange offer, and we will not issue exchange notes with respect to such original notes, unless such original notes are validly re-tendered. Validly withdrawn notes may be re-tendered by following one of the procedures described above under Procedures for Tendering Original Notes at any time at or prior to the expiration time.

### **Acceptance of Original Notes for Exchange; Delivery of Exchange Notes**

Subject to the satisfaction or waiver of the conditions to the exchange offer, promptly following the expiration time, we will accept for exchange all original notes that are validly tendered and not validly withdrawn and will issue the exchange notes. For purposes of the exchange offer, we will be deemed to have accepted validly tendered original notes for exchange when, as, and if we have given oral or written notice of acceptance to the exchange agent. For each original note accepted for exchange, the holder will receive an exchange note, the issuance of which is registered under the Securities Act, having a principal amount equal to, and in the denomination of, that of the tendered original note.

### **Return of Notes**

If we do not accept any tendered original notes, or if a holder withdraws previously tendered original notes or submits original notes for a greater principal amount than the holder desires to exchange, we will return such unaccepted, withdrawn or non-exchanged original notes without cost to the tendering holder promptly following the rejection of the tender, withdrawal or expiration or termination of the exchange offer, as applicable. In the case of original notes tendered by book-entry transfer into the exchange agent's account at DTC, such unaccepted, withdrawn or non-exchanged original notes will be credited to an account maintained with DTC.

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### **Conditions to the Exchange Offer**

The exchange offer is not conditioned upon the tender of any minimum principal amount of original notes. Notwithstanding any other provision of the exchange offer, or any extension of the exchange offer, we will not be required to accept for exchange, or to issue exchange notes in exchange for, any original notes, and we may amend or terminate the exchange offer as provided in this prospectus if, at any time before the expiration time, any of the following circumstances or events occurs and is not waived:

any action or proceeding is instituted or threatened in any court or by or before any governmental agency with respect to the exchange offer;

any stop order is threatened or in effect with respect to either (i) the registration statement of which this prospectus forms a part or (ii) the qualification of the indenture under the Trust Indenture Act of 1939, as amended; or

the exchange offer or the making of any exchange by a holder of original notes would violate applicable law or any applicable interpretation of the staff of the SEC.

If, at any time prior to the expiration time, any of the foregoing circumstances or events has occurred, we may:

refuse to accept any original notes and return all tendered original notes to the respective holders;

extend the exchange offer and retain all original notes tendered at or prior to the expiration time, subject, however, to your rights to withdraw such original notes; or

waive the occurrence of such circumstance or event with respect to the exchange offer and accept all validly tendered original notes that have not been validly withdrawn.

If the waiver constitutes a material change to the terms of the exchange offer, we will promptly disclose the waiver by means reasonably calculated to inform the registered holders of the original notes of such waiver, and we will extend the exchange offer to the extent required by law. Generally, we must keep the exchange offer open for at least five business days following a material change.

The condition that none of the foregoing circumstances or events have occurred is for our sole benefit and may be asserted by us, regardless of the circumstances giving rise to such circumstances or events, and the occurrence of any circumstance or event may be waived by us, in whole or in part, in our sole discretion. Any determination by us concerning the circumstances or events described above will be final and binding on all parties. Our rights hereunder will be deemed an ongoing right which may be asserted at any time and from time to time by us prior to the expiration time.

### **Termination of Rights**

If you are a holder of original notes, your rights under the registration rights agreement will generally terminate upon consummation of the exchange offer, except with respect to our continuing obligations to indemnify you and your related parties against certain liabilities, including liabilities under the Securities Act. After the exchange offer is consummated, except in limited circumstances, you will no longer be entitled to any exchange or registration rights with respect to any original notes that you continue to own.



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### **Filing of Shelf Registration Statement**

Under the registration rights agreement, we agreed, among other matters, that (i) if any changes in applicable law or applicable interpretations of the staff of the SEC do not permit us to effect the exchange offer, (ii) if for any reason the exchange offer is not consummated within 240 days following December 1, 2015, (iii) if any holder of the original notes, other than the initial purchasers, is not eligible to participate in the exchange offer or (iv) upon the request of the initial purchasers under the circumstances specified in the registration rights agreement, we and the subsidiary guarantors will, at our cost:

as promptly as practicable and in any event on or prior to 45 days after such filing obligation arises, file a shelf registration statement covering resales of the original notes;

use our respective commercially reasonable efforts to cause the shelf registration statement to be declared effective under the Securities Act within 180 days after such filing obligation arises; and

use our commercially reasonable efforts to keep the shelf registration continuously effective until the second anniversary of its effective date or until the date upon which all the notes covered by the registration statement have been sold.

We do not intend to file a shelf registration statement covering resales of the original notes unless we are required to do so under the registration rights agreement. If we file a shelf registration statement, we will provide to each holder of the original notes copies of the shelf registration statement and the prospectus which forms a part of the shelf registration statement, notify each holder when the shelf registration statement for the original notes has been filed with the SEC and become effective and take other actions as are required to permit unrestricted resales of the original notes. A holder of original notes that sells the original notes pursuant to the shelf registration statement generally will be:

required to be named as a selling security holder in the related prospectus and deliver a prospectus to purchasers;

subject to certain of the civil liability provisions under the Securities Act in connection with the sales; and

bound by the provisions of the registration rights agreement which are applicable to such a holder, including indemnification obligations.

In addition, each holder of the original notes will be required to deliver information to be used in connection with the shelf registration statement and to provide any comments on the shelf registration statement within the time periods described in the registration rights agreement to have their notes included in the shelf registration statement and to benefit from the provisions regarding additional interest described in Additional Interest below.

### **Additional Interest**

If any of the following (each a registration default ) occurs:

the exchange offer registration statement is not filed with the SEC on or before the 120th calendar day following December 1, 2015;

the exchange offer registration statement is not declared effective on or before the 210th calendar day following December 1, 2015;

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the exchange offer registration statement has been declared effective but ceases to be effective at any time at which it is required to be effective; or

the shelf registration statement is required to be filed with the SEC but is not filed or declared effective within the time periods set forth above under Filing of Shelf Registration Statement or is declared effective but thereafter ceases to be effective,

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the interest rate payable with respect to the original notes will be increased by 0.25% per annum upon the occurrence of such registration default. This rate will continue to increase by 0.25% per annum each 90 day period that the registration default continues. However, the maximum total increase in the interest rate will in no event exceed one percent (1.00%). Such interest is payable in addition to any other interest payable from time to time with respect to the original notes in cash on each interest payment date to the holders of record for such interest payment date. After the cure of all registration defaults, the accrual of additional interest will stop and the interest rate will revert to the original rate.

## **Exchange Agent**

We have appointed U.S. Bank National Association as the exchange agent for the exchange offer. All executed letters of transmittal and any other required documents should be directed to the exchange agent at the address set forth below. Questions and requests for assistance with respect to the exchange offer, and requests for additional copies of this prospectus, the letter of transmittal and any other required documents, should also be directed to the exchange agent at the address set forth below:

### **By registered mail, certified mail, overnight courier or hand delivery:**

U.S. Bank National Association

U.S. Bank West Side Flats Operations Center

60 Livingston Ave.

St. Paul, MN 55107

Attn: Specialized Finance

Reference: M/I Homes, Inc.

### **By facsimile (for eligible institutions only):**

(651) 466-7372

Reference: M/I Homes, Inc.

### **For information or confirmation by telephone:**

Specialized Finance

(800) 934-6802

**Delivery of the letter of transmittal or any other required documents to an address other than as set forth above or transmission of the letter of transmittal or any other required documents via facsimile to a number other than the one listed above will not constitute a valid delivery.**

## **Fees and Expenses**

We will bear the expenses of soliciting tenders for the exchange offer. We are making the principal solicitation of tenders through DTC. However, solicitations may also be made by mail, electronic mail, facsimile or telephone or in person by our officers and regular employees.

We have not retained any dealer manager in connection with the exchange offer, and we will not make any payments to brokers, dealers or other persons soliciting acceptances of the exchange offer. We will, however, pay the exchange agent reasonable and customary fees for its services and reimburse the exchange agent for its reasonable out-of-pocket expenses. We will also reimburse brokers, dealers, commercial banks, trust companies and other nominees for the reasonable out-of-pocket expenses they incur in forwarding copies of this prospectus, the letter of transmittal and related documents to the beneficial owners of the original notes and in handling or forwarding tenders of the original notes for exchange.

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We estimate that our cash expenses in connection with the exchange offer will be approximately \$120,000. These expenses include SEC registration fees, fees and expenses of the exchange agent and the trustee, accounting and legal fees, printing costs and related fees and expenses.

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**Transfer Taxes**

We will pay all transfer taxes, if any, applicable to the exchange of original notes in the exchange offer. The tendering holder, however, will be required to pay any transfer taxes, whether imposed on the record holder or any other person, if we are instructed to register exchange notes in the name of, or requested to return any original notes not tendered or accepted for exchange to, a person other than the registered tendering holder, or if a transfer tax is imposed for any other reason, other than by reason of the exchange of the original notes in the exchange offer. If satisfactory evidence of payment of such transfer taxes or exemption from payment is not submitted with the letter of transmittal, the amount of the transfer taxes will be billed directly to the tendering holder.

**Accounting Treatment**

The exchange notes will be recorded in our accounting records at the same carrying value as the original notes for which they are exchanged. Accordingly, we will not recognize any gain or loss for accounting purposes as a result of the exchange offer. We will amortize expenses incurred in connection with the issuance of the exchange notes over the term of the exchange notes.

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**DESCRIPTION OF NOTES**

As used in this Description of Notes section, the terms **Issuer**, **we**, **us** and **our** mean M/I Homes, Inc., an Ohio corporation, and its successors but not any of its Subsidiaries. The term **Notes** means the Issuer's senior debt securities designated as its 6.75% Senior Notes due 2021, including the original notes and the exchange notes, in each case except as otherwise expressly provided or as the context otherwise requires.

The Issuer issued the original notes, and will issue the exchange notes, under an indenture, dated as of December 1, 2015, among the Issuer, the Guarantors and U.S. Bank National Association, as trustee (the **Indenture**). The terms of the Notes include those set forth in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. You may obtain a copy of the Indenture from the Issuer at its address set forth under **Where You Can Find More Information**. The terms of the exchange notes are substantially identical to the terms of the original notes, including interest rates and maturity, except that the exchange notes will not be subject to the transfer restrictions, registration rights and additional interest provisions applicable to the original notes.

The exchange notes and any original notes that remain outstanding after the consummation of the exchange offer will have the same terms, will constitute a single class of debt securities under the Indenture and, therefore, will vote together as a single class for purposes of determining whether holders of the requisite percentage in principal amount thereof have taken actions or exercised rights they are entitled to take or exercise under the Indenture.

The following is a summary of the material terms and provisions of the Notes. Certain terms used in this Description of Notes section are defined under **Certain Definitions**.

**Principal, Maturity and Interest**

The Notes will mature on January 15, 2021. The Notes bear interest at the rate of 6.75% per annum, payable on January 15 and July 15 of each year, commencing on July 15, 2016, to holders of record at the close of business on January 1 and July 1, as the case may be, immediately preceding the relevant interest payment date. Interest on the Notes will be computed on the basis of a 360-day year of twelve 30-day months.

The original notes were, and the exchange notes will be, issued in registered form, without coupons, and in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The Notes constitute senior debt of the Issuer. The Issuer may issue an unlimited amount of notes having identical terms and conditions to the Notes (**Additional Notes**), subject to compliance with the **Limitations on Additional Indebtedness** covenant described below. Any Additional Notes will be part of the same issue as the Notes and will vote on all matters as one class with the Notes, including, without limitation, waivers, amendments, redemptions and offers to purchase. For purposes of this Description of Notes section, except for the covenants described under **Certain Covenants** **Limitations on Additional Indebtedness**, references to Notes include Additional Notes, if any.

**Methods of Receiving Payments on the Notes**

If a holder has given wire transfer instructions to the Issuer at least ten business days prior to the applicable payment date, the Issuer will make all payments on such holder's Notes in accordance with those instructions. Otherwise, payments on the Notes will be made at the office or agency of the paying agent and registrar for the Notes within the City and State of New York, unless the Issuer elects to make interest payments by check mailed to the holders at their addresses set forth in the register of holders.

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### **Ranking**

The Notes will be general unsecured obligations of the Issuer. The Notes will rank senior in right of payment to all future obligations of the Issuer that are, by their terms, expressly subordinated in right of payment to the Notes and *pari passu* in right of payment with all existing and future unsecured obligations of the Issuer that are not so subordinated. Each Guarantee will be a general unsecured obligation of the Guarantor thereof and will rank senior in right of payment to all future obligations of such Guarantor that are, by their terms, expressly subordinated in right of payment to such Guarantee and *pari passu* in right of payment with all existing and future unsecured obligations of such Guarantor that are not so subordinated.

The Notes and each Guarantee will be effectively subordinated to secured Indebtedness of the Issuer and the applicable Guarantor to the extent of the value of the assets securing such Indebtedness. Although the Indenture contains limitations on the amount of additional secured Indebtedness that the Issuer and the Restricted Subsidiaries may incur, the amount of this Indebtedness could be substantial. See Certain Covenants Limitations on Additional Indebtedness and Certain Covenants Limitations on Liens. At September 30, 2015, the Issuer and the Guarantors had approximately \$9.4 million of secured Indebtedness outstanding.

The Notes will also be effectively subordinated to all existing and future obligations, including Indebtedness, of any of our Unrestricted Subsidiaries. Claims of creditors of Unrestricted Subsidiaries, including trade creditors, will generally have priority as to the assets of our Unrestricted Subsidiaries over the claims of the Issuer and the holders of the Issuer's Indebtedness, including the Notes. At September 30, 2015, our Unrestricted Subsidiaries had approximately \$73.2 million of Indebtedness outstanding.

Substantially all the operations of the Issuer are conducted through its Subsidiaries. Therefore, the Issuer's ability to service its debt, including the Notes, is dependent upon the cash flow of its Subsidiaries and, to the extent they are not Guarantors, their ability to distribute those earnings as dividends, loans or other payments to the Issuer. If their ability to make these distributions were restricted, by law or otherwise, then the Issuer would not be able to use the cash flow of the non-guarantor Subsidiaries to make payments on the Notes.

### **Guarantees**

The Issuer's obligations under the Notes and the Indenture are jointly and severally guaranteed by each of our Restricted Subsidiaries.

Not all of our Subsidiaries are Guarantors of the Notes. Unrestricted Subsidiaries are not Guarantors. In the event of a bankruptcy, liquidation or reorganization of any of these non-guarantor Subsidiaries, these non-guarantor Subsidiaries will pay the holders of their debts and their trade creditors before they will be able to distribute any of their assets to us.

As of the date of this prospectus, all of our Subsidiaries, other than M/I Financial, LLC; M/I Title Agency Ltd.; TransOhio Residential Title Agency Ltd.; Washington/Metro Residential Title Agency, LLC; M/I Title, LLC; K-Tampa, LLC; and The M/I Homes Foundation, will be Guarantors. As of the date of this prospectus, each of M/I Financial, LLC; M/I Title Agency Ltd.; TransOhio Residential Title Agency Ltd.; Washington/Metro Residential Title Agency, LLC; M/I Title, LLC; K-Tampa, LLC; and The M/I Homes Foundation will be Unrestricted Subsidiaries. For the nine months ended September 30, 2015, the Unrestricted Subsidiaries accounted for approximately \$26.3 million, or 2.8%, of our total revenues, and as of September 30, 2015, the Unrestricted Subsidiaries accounted for approximately \$130.4 million, or 9.3%, of our total assets and \$103.1 million, or 12.5%, of our total liabilities. In addition to the Subsidiaries that are non-guarantor Unrestricted Subsidiaries as of the date of this prospectus, under the circumstances described below under the subheading Certain Covenants Limitations on Designation of Unrestricted Subsidiaries, the Issuer will be permitted to designate some of our other Subsidiaries as Unrestricted Subsidiaries. The effect of designating a Subsidiary as an Unrestricted Subsidiary will be:

an Unrestricted Subsidiary will not be subject to many of the restrictive covenants in the Indenture;

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a Subsidiary that has previously been a Guarantor and that is designated an Unrestricted Subsidiary will be released from its Guarantee; and

the assets, income, cash flow and other financial results of an Unrestricted Subsidiary will not be consolidated with those of the Issuer for purposes of calculating compliance with the restrictive covenants contained in the Indenture.

The obligations of each Guarantor under its Guarantee will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any guarantees under the Credit Facilities permitted under clause (1) of Certain Covenants Limitations on Additional Indebtedness ) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. See Risk Factors Risks Related to the Exchange Notes and the Exchange Offer The notes and the guarantees of the notes may not be enforceable because of fraudulent conveyance laws. Each Guarantor that makes a payment for distribution under its Guarantee is entitled to a contribution from each other Guarantor in a pro rata amount based on adjusted net assets of the respective Guarantors.

In the event (i) of a sale or other disposition of all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the Equity Interests of any Guarantor then held by the Issuer and the Restricted Subsidiaries to any Person other than the Issuer or a Restricted Subsidiary, (ii) any Guarantor merges with and into the Issuer or another Guarantor, with the Issuer or such other Guarantor surviving such merger, (iii) any Guarantor is designated as an Unrestricted Subsidiary, in accordance with the Indenture or otherwise ceases to be a Restricted Subsidiary (including by way of liquidation or dissolution) in a transaction permitted by the Indenture, (iv) the Issuer exercises its Legal Defeasance option or Covenant Defeasance option as described under Legal Defeasance and Covenant Defeasance or (v) all obligations under the Indenture are discharged in accordance with the terms of the Indenture as described under Satisfaction and Discharge, then, in each such case, such Guarantor will be released and relieved of any obligations under its Guarantee; provided, however, that the Net Available Proceeds of such sale or other disposition pursuant to clause (i) above shall be applied in accordance with the applicable provisions of the Indenture, to the extent required thereby. See Certain Covenants Limitations on Asset Sales.

**Optional Redemption**

At any time prior to January 15, 2018, the Issuer may redeem up to 40% of the aggregate principal amount of the Notes with the net cash proceeds of one or more Qualified Equity Offerings at a redemption price equal to 106.750% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon, if any, but not including, the date of redemption; provided, however, that (1) at least 60% of the aggregate principal amount of Notes issued under the Indenture remains outstanding immediately after the occurrence of such redemption and (2) the redemption occurs within 90 days of the date of the closing of any such Qualified Equity Offering.

The Issuer may redeem all or any portion of the Notes at any time and from time to time on or after January 15, 2018 and prior to maturity at the following redemption prices (expressed in percentages of the principal amount thereof) together, in each case, with accrued and unpaid interest to, but not including, the date of redemption, if redeemed during the 12-month period beginning on January 15 of each year indicated below:

Year	Percentage
2018	103.375%
2019	101.688%
2020 and thereafter	100.000%



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In addition, at any time prior to January 15, 2018, the Issuer may redeem all or a part of the Notes at a redemption price equal to 100% of the principal amount thereof *plus* the Applicable Premium *plus* accrued and unpaid interest, if any, to, but not including, the date of redemption.

The Issuer may acquire Notes by means other than a redemption, whether pursuant to an Issuer tender offer, open market purchase or otherwise, so long as the acquisition does not otherwise violate the terms of the Indenture.

### **Selection and Notice of Redemption**

In the event that less than all of the Notes are to be redeemed at any time pursuant to an optional redemption, selection of the Notes for redemption will be made by the trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a *pro rata* basis, by lot or by such method as the trustee shall deem fair and appropriate; *provided, however*, that no Notes of a principal amount of \$2,000 or less shall be redeemed in part.

Notice of redemption will be mailed by first-class mail at least 15 but not more than 60 days before the date of redemption to each holder of Notes to be redeemed at its registered address. If any Note is to be redeemed in part only, the notice of redemption that relates to that Note will state the portion of the principal amount of the Note to be redeemed. A new Note in a principal amount equal to the unredeemed portion of the Note will be issued in the name of the holder of the Note upon cancellation of the original Note. On and after the date of redemption, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Issuer has deposited with the paying agent for the Notes funds in satisfaction of the redemption price (including accrued and unpaid interest on the Notes to be redeemed) pursuant to the Indenture.

Notice of any redemption of Notes, whether in connection with a Qualified Equity Offering or otherwise, may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Qualified Equity Offering. If such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition and, if applicable, shall state that, in the Issuer's discretion, the redemption date may be delayed until such time as any or all of such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date as stated in such notice, or by the redemption date as so delayed. The Issuer may provide in such notice that payment of the redemption price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person.

### **Change of Control**

Upon the occurrence of any Change of Control, each holder will have the right to require that the Issuer purchase that holder's Notes for a cash price (the **Change of Control Purchase Price**) equal to 101% of the principal amount of the Notes to be purchased, *plus* accrued and unpaid interest thereon, if any, to, but not including, the date of purchase.

Within 30 days following any Change of Control, the Issuer will mail, or cause to be mailed, to the holders a notice (a **Change of Control Offer**):

- (1) describing the transaction or transactions that constitute the Change of Control;
- (2) offering to purchase, pursuant to the procedures required by the Indenture and described in the notice, on a date specified in the notice (which shall be a business day not earlier than 30 days nor later than 60 days from the date the notice is mailed) and for the Change of Control Purchase Price, all Notes properly tendered by such holder pursuant to such Change of Control Offer; and

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(3) describing the procedures that holders must follow to accept the Change of Control Offer. The Change of Control Offer is required to remain open for at least 20 business days or for such longer period as is required by law.

The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the date of purchase.

If a Change of Control Offer is made, there can be no assurance that the Issuer will have available funds sufficient to pay for all or any of the Notes that might be delivered by holders seeking to accept the Change of Control Offer. In addition, a Change of Control may constitute an event of default under the Credit Facilities or our other Indebtedness outstanding at such time. We cannot assure you that in the event of a Change of Control, the Issuer will be able to obtain the consents necessary to consummate a Change of Control Offer from the lenders under agreements governing outstanding Indebtedness which may prohibit the purchase. See Risk Factors Risks Related to the Exchange Notes and the Exchange Offer We may not have sufficient funds or be permitted by our existing indebtedness to purchase the notes upon a change of control.

The provisions described above that require us to make a Change of Control Offer following a Change of Control will be applicable regardless of whether any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the holders of the Notes to require that the Issuer purchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

The Issuer's obligation to make a Change of Control Offer will be satisfied if a third party makes the Change of Control Offer in the manner and at the times and otherwise in compliance with the requirements applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

A Change of Control includes certain sales of all or substantially all of the assets of the Issuer and the Restricted Subsidiaries. The phrase all or substantially all as used in the Indenture (including as set forth under Certain Covenants Limitations on Mergers, Consolidations, Etc. below) varies according to the facts and circumstances of the subject transaction, has no clearly established meaning under New York law (which governs the Indenture) and is subject to judicial interpretation. Accordingly, in certain circumstances there may be a degree of uncertainty in ascertaining whether a particular transaction would involve a disposition of all or substantially all of the assets of the Issuer and the Restricted Subsidiaries, and therefore it may be unclear as to whether a Change of Control has occurred and whether a Change of Control Offer is required.

The Issuer will comply with applicable tender offer rules, including the requirements of Rule 14e-1 under the Exchange Act and any other applicable laws and regulations, in connection with the purchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Indenture, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the Indenture by virtue of this compliance.

### **Certain Covenants**

The Indenture contains, among others, the following covenants:

#### ***Limitations on Additional Indebtedness***

Until the Notes receive an Investment Grade rating from both Rating Agencies (after which time the following covenant will no longer be in effect), the Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur any Indebtedness; provided, however, that the Issuer and any Restricted

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Subsidiary may incur additional Indebtedness (including Acquired Indebtedness) if no Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of the Indebtedness and if, after giving effect thereto, either (a) the Consolidated Fixed Charge Coverage Ratio would be at least 2.00 to 1.00 or (b) the ratio of Consolidated Indebtedness to Consolidated Tangible Net Worth would be less than 3.00 to 1.00 (either (a) or (b), the Ratio Exception ).

Notwithstanding the above, so long as no Event of Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of the following Indebtedness, each of the following shall be permitted (the Permitted Indebtedness ):

(1) Indebtedness of the Issuer and any Restricted Subsidiary under the Credit Facilities in an aggregate amount at any time outstanding not to exceed the greater of (a) \$500.0 million and (b) 30% of Consolidated Tangible Assets, less the aggregate amount of Net Available Proceeds applied by the Issuer or any Restricted Subsidiaries since the Issue Date to repay permanently any Indebtedness under a Credit Facility pursuant to Certain Covenants Limitations on Asset Sales ;

(2) the Notes and the Guarantees issued on the Issue Date;

(3) Indebtedness of the Issuer and the Restricted Subsidiaries to the extent outstanding on the Issue Date (including the 2018 Senior Notes and guarantees thereof, to the extent not acquired with the proceeds of the Notes, and the Existing Notes and guarantees thereof, but other than Indebtedness referred to in clauses (1) and (2) above);

(4) Indebtedness of the Issuer and the Restricted Subsidiaries under Hedging Obligations; provided, however, that: (a) such Hedging Obligations relate to payment obligations on Indebtedness otherwise permitted to be incurred by this covenant; and (b) the notional principal amount of such Hedging Obligations at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Obligations relate;

(5) Indebtedness of the Issuer owed to a Restricted Subsidiary and Indebtedness of any Restricted Subsidiary owed to the Issuer or any other Restricted Subsidiary; provided, however, that (a) any Indebtedness of the Issuer owed to a Restricted Subsidiary is unsecured and (b) upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Issuer or a Restricted Subsidiary, the Issuer or such Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (5);

(6) Indebtedness in respect of bid, performance or surety bonds issued for the account of the Issuer or any Restricted Subsidiary in the ordinary course of business, including guarantees or obligations of the Issuer or any Restricted Subsidiary with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed);

(7) Purchase Money Indebtedness incurred by the Issuer or any Restricted Subsidiary;

(8) Non-Recourse Indebtedness of the Issuer or any Restricted Subsidiary incurred for the acquisition, development and/or improvement of real property and secured by Liens only on such real property;

(9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five business days of incurrence;

(10) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(11) Refinancing Indebtedness with respect to Indebtedness incurred pursuant to the Ratio Exception or clauses (2) or (3) above;

(12) (a) Indebtedness of the Issuer or any Restricted Subsidiary incurred to finance an acquisition or merger or (b) Acquired Indebtedness of the Issuer or any Restricted Subsidiary; provided, however, that in

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either case, after giving effect to the transaction(s) that result in the incurrence, issuance or acquisition of such Indebtedness, on a pro forma basis, (i) the Issuer would have been able to incur at least \$1.00 of additional Indebtedness pursuant to the Ratio Exception, (ii) the Consolidated Fixed Charge Coverage Ratio of the Issuer would be greater than such ratio immediately prior to such transaction(s), or (iii) the ratio of Consolidated Indebtedness to Consolidated Tangible Net Worth of the Issuer would be less than such ratio immediately prior to such transaction(s); and

(13) In addition to Indebtedness allowed pursuant to the other clauses in this definition of Permitted Indebtedness, Indebtedness of the Issuer or any Restricted Subsidiary in an aggregate amount not to exceed the greater of (x) \$40.0 million and (y) 5% of Consolidated Tangible Assets at any one time outstanding.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (13) above or is entitled to be incurred pursuant to the Ratio Exception, the Issuer shall, in its sole discretion, classify such item of Indebtedness and may divide and reclassify such Indebtedness in more than one of the types of Indebtedness described, except that Indebtedness outstanding under the Credit Facilities on the Issue Date shall be deemed to have been incurred under clause (1) above.

The Indenture will not restrict any Unrestricted Subsidiary from incurring Indebtedness nor will Indebtedness of any Unrestricted Subsidiaries be included in the calculation of the Consolidated Fixed Charge Coverage Ratio or the ratio of Consolidated Indebtedness to Consolidated Tangible Net Worth, or in any component of any definition that is part of such calculation, hereunder, as long as the Unrestricted Subsidiary incurring such Indebtedness remains an Unrestricted Subsidiary.

***Limitations on Layering Indebtedness***

Until the Notes receive an Investment Grade rating from both Rating Agencies (after which time the following covenant will no longer be in effect), the Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur any Indebtedness that is or purports to be by its terms (or by the terms of any agreement governing such Indebtedness) contractually subordinated to any other Indebtedness of the Issuer or of such Restricted Subsidiary, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) contractually made expressly subordinate to the Notes or the Guarantee of such Restricted Subsidiary, to the same extent and in the same manner as such Indebtedness is contractually subordinated to such other Indebtedness of the Issuer or such Restricted Subsidiary, as the case may be.

***Limitations on Restricted Payments***

Until the Notes receive an Investment Grade rating from both Rating Agencies (after which time the following covenant will no longer be in effect), the Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment if at the time of such Restricted Payment:

- (1) a Default shall have occurred and be continuing or shall occur as a consequence thereof;
- (2) the Issuer cannot incur \$1.00 of additional Indebtedness pursuant to the Ratio Exception; or
- (3) the amount of such Restricted Payment, when added to the aggregate amount of all other Restricted Payments made after the Issue Date (other than Restricted Payments made pursuant to clause (2), (3) or (5) of the next paragraph), exceeds the sum (the **Restricted Payments Basket**) of (without duplication):
  - (a) \$125 million, *plus*
  - (b) 50% of Consolidated Net Income for the period (taken as one accounting period) commencing on the first day of the fiscal quarter in which the Issue Date occurs to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which consolidated financial

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statements are available (or, if such Consolidated Net Income shall be a deficit, minus 100% of such aggregate deficit), *plus*

(c) 100% of the aggregate net cash proceeds or the fair market value of any assets to be used in a Permitted Business (other than securities) received by the Issuer either (x) as contributions to the common equity of the Issuer after the Issue Date or (y) from the issuance and sale of Qualified Equity Interests after the Issue Date, other than to the extent any such proceeds are used to redeem Notes in accordance with the third paragraph under Optional Redemption, *plus*

(d) the aggregate amount by which Indebtedness of the Issuer or any Restricted Subsidiary of the Issuer is reduced on the Issuer's balance sheet upon the conversion or exchange (other than by a Subsidiary) subsequent to the Issue Date into Qualified Equity Interests (less the amount of any cash, or the fair value of assets, distributed by the Issuer or any Restricted Subsidiary upon such conversion or exchange), *plus*

(e) in the case of the disposition or repayment of or return on any Investment that was treated as a Restricted Payment made after the Issue Date, an amount (to the extent not included the computation of Consolidated Net Income) equal to the lesser of (i) the return of capital with respect to such Investment and (ii) the amount of such Investment that was treated as a Restricted Payment, in either case, less the cost of the disposition of such Investment and net of taxes, *plus*

(f) with respect to an Unrestricted Subsidiary that was designated as an Unrestricted Subsidiary after the Issue Date, upon a redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary, the lesser of (i) the fair market value of the Issuer's proportionate interest in such Subsidiary immediately following such redesignation and (ii) the aggregate amount of the Issuer's Investments in such Subsidiary to the extent such Investments reduced the amount available for subsequent Restricted Payments under this clause (3) and were not previously repaid or otherwise reduced.

The foregoing provisions will not prohibit:

(1) the payment by the Issuer or any Restricted Subsidiary of any dividend within 60 days after the date of declaration thereof (including those declared prior to the Issue Date), if on the date of declaration the payment would have complied with the provisions of the Indenture;

(2) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of any Equity Interests of the Issuer or any Restricted Subsidiary in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests;

(3) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of Subordinated Indebtedness of the Issuer or any Restricted Subsidiary (a) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests or (b) in exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted to be incurred under the Limitations on Additional Indebtedness covenant and the other terms of the Indenture;

(4) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such redemption, the redemption of Equity Interests of the Issuer held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; *provided, however*, that the aggregate cash consideration paid for all such redemptions shall not exceed \$3.0 million during any 12 month period;

(5) repurchases of Equity Interests deemed to occur upon the exercise of stock options if the Equity Interests represent a portion of the exercise price thereof; or

(6) so long as no Default shall have occurred and be continuing at the time of or as a consequence of such Restricted Payment, additional Restricted Payments not to exceed \$40.0 million since the Issue Date,

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*provided, however*, that no issuance and sale of Qualified Equity Interests pursuant to clause (2) or (3) above shall increase the Restricted Payments Basket, except to the extent the proceeds thereof exceed the amounts used to effect the transactions described in such clause. The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any assets or securities that are required to be valued by this covenant shall be approved in good faith by the board of directors, or the executive committee of the board of directors, of the Issuer, which resolution with respect thereto shall be delivered to the trustee.

***Limitations on Dividends and Other Restrictions Affecting Restricted Subsidiaries***

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

- (a) pay dividends or make any other distributions on or in respect of its Equity Interests;
- (b) make loans or advances or pay any Indebtedness or other obligation owed to the Issuer or any other Restricted Subsidiary; or
- (c) transfer any of its assets to the Issuer or any other Restricted Subsidiary.

The preceding limitation will not apply to:

- (1) encumbrances or restrictions existing under or by reason of applicable law;
- (2) encumbrances or restrictions existing under the Indenture, the Notes and the Guarantees;
- (3) non-assignment provisions of any contract or any lease entered into in the ordinary course of business;
- (4) encumbrances or restrictions existing under agreements existing on the date of the Indenture (including, without limitation, the Credit Agreement, the Letter of Credit Facilities, the 2018 Senior Notes and the Existing Notes) as in effect on that date;
- (5) restrictions on the transfer of assets subject to any Lien permitted under the Indenture imposed by the holder of such Lien;
- (6) restrictions on the transfer of assets imposed under any agreement to sell such assets permitted under the Indenture to any Person pending the closing of such sale;
- (7) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the assets of any Person, other than the Person or the assets so acquired and which encumbrance or restriction was not incurred in connection with, or in contemplation of the incurrence of such Acquired Indebtedness;
- (8) encumbrances or restrictions arising in connection with Refinancing Indebtedness; *provided, however*, that any such encumbrances and restrictions are not materially more restrictive with respect to any Restricted Subsidiary than those in effect on the Issue Date with respect to that Restricted Subsidiary pursuant to the agreements creating, or evidencing the Indebtedness being refinanced;
- (9) customary provisions in leases, partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of leasehold interests or ownership interests in such partnership, limited liability company, joint venture or similar Person;
- (10) Purchase Money Indebtedness incurred in compliance with the covenant described under **Limitations on Additional Indebtedness** that impose restrictions of the nature described in clause (c) above on the assets acquired;

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- (11) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
- (12) any operating lease or Capitalized Lease Obligation, insofar as the provisions thereof limit the grant of a security interest in, or other assignment of, the related leasehold interest to any other Person; and
- (13) any encumbrances or restrictions imposed by any amendments or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (12) above; *provided, however*, that such amendments or refinancings are, in the good faith judgment of the Issuer's board of directors, or executive committee of the board of directors, no more materially restrictive, taken as a whole, with respect to such encumbrances and restrictions than those prior to such amendment or refinancing.

***Limitations on Transactions with Affiliates***

Until the Notes receive an Investment Grade rating from both Rating Agencies (after which time the following covenant will no longer be in effect), the Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, in one transaction or a series of related transactions involving aggregate consideration in excess of \$2.0 million, sell, lease, transfer or otherwise dispose of any of its assets to, or purchase any assets from, or enter into any contract, agreement, loan or guarantee with, or for the benefit of, any Affiliate (an **Affiliate Transaction**), unless:

- (1) such Affiliate Transaction is on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that could be obtained in a comparable transaction at such time on an arm's-length basis by the Issuer or that Restricted Subsidiary from a Person that is not an Affiliate of the Issuer or such Restricted Subsidiary; and
- (2) the Issuer delivers to the trustee:
  - (a) with respect to any Affiliate Transaction involving aggregate value in excess of \$10.0 million, an officers' certificate certifying that such Affiliate Transaction complies with clause (1) above and a secretary's certificate which sets forth and authenticates a resolution that has been adopted by a majority of Independent Directors approving such Affiliate Transaction; and
  - (b) with respect to any Affiliate Transaction involving aggregate value of \$25.0 million or more, the certificates described in the preceding clause (a) and (x) a written opinion as to the fairness of such Affiliate Transaction to the Issuer or such Restricted Subsidiary from a financial point of view or (y) a written appraisal supporting the value of such Affiliate Transaction, in either case, issued by an Independent Financial Advisor.

The foregoing restrictions shall not apply to:

- (1) transactions exclusively between or among (a) the Issuer and one or more Restricted Subsidiaries or (b) Restricted Subsidiaries; *provided, however*, in each case, that no Affiliate of the Issuer (other than another Restricted Subsidiary) owns Equity Interests of any such Restricted Subsidiary;
- (2) reasonable director, officer, employee and consultant compensation (including bonuses) and other benefits (including retirement, health, stock and other benefit plans) and indemnification arrangements in each case consistent with past practices;
- (3) loans and advances permitted by clause (3) of the definition of Permitted Investments;
- (4) any agreement as in effect as of the Issue Date and described in the offering memorandum relating to the original notes or any extension, amendment or modification of such agreement (so long as any such extension, amendment or modification satisfies the requirements set forth in clause (1) of the first paragraph of this covenant) or any transaction contemplated by such agreement;
- (5) Restricted Payments of the type described in clause (1), (2) or (4) of the definition of Restricted Payment and which are made in accordance with the covenant described under Limitations on Restricted Payments; or

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(6) transactions in the ordinary course of business with M/I Financial, LLC or other Unrestricted Subsidiaries that are engaged in the business of originating mortgages on behalf of new home customers of the Issuer and its homebuilding Subsidiaries; *provided* that such transactions are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that could be obtained in a comparable transaction at such time on an arm's-length basis by the Issuer or such Restricted Subsidiary from a Person that is not an Affiliate of the Issuer or such Restricted Subsidiary.

***Limitations on Liens***

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or permit or suffer to exist any Lien of any nature whatsoever (other than Permitted Liens) against any assets of the Issuer or any Restricted Subsidiary (including Equity Interests of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, or any proceeds therefrom, or assign or otherwise convey any right to receive income or profits therefrom, which Lien secures Indebtedness or trade payables, unless contemporaneously therewith:

(1) in the case of any Lien securing an obligation that ranks *pari passu* with the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and

(2) in the case of any Lien securing an obligation that is subordinated in right of payment to the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation, in each case, for so long as such obligation is secured by such Lien.

***Limitations on Asset Sales***

Until the Notes receive an Investment Grade rating from both Rating Agencies (after which time the following covenant will no longer be in effect), the Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

(1) the Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets included in such Asset Sale; and

(2) at least 75% of the total consideration received in such Asset Sale or series of related Asset Sales consists of cash or Cash Equivalents.

For purposes of clause (2) only (and not for purposes of the definition of Net Available Proceeds ), the following shall be deemed to be cash:

(a) the amount (without duplication) of any Indebtedness (other than Subordinated Indebtedness) of the Issuer or such Restricted Subsidiary that is expressly assumed by the transferee in such Asset Sale and with respect to which the Issuer or such Restricted Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness;

(b) the amount of any obligations received from such transferee that is within 90 days converted by the Issuer or such Restricted Subsidiary to cash (to the extent of the cash actually so received); and

(c) the fair market value of any assets (including, but not limited to, Equity Interests in an entity engaged in a Permitted Business) received by the Issuer or any Restricted Subsidiary to be used by it in a Permitted Business.

If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary, as the case may be, in connection with any Asset Sale is repaid or converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then the date of such repayment, conversion or disposition shall be deemed to constitute the date of an Asset Sale hereunder and the Net Available Proceeds thereof shall be applied in accordance with this covenant.



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If the Issuer or any Restricted Subsidiary engages in an Asset Sale, the Issuer or such Restricted Subsidiary shall, within a period of 360 days (commencing after the Issue Date) before or after the receipt of any Net Available Proceeds of any Asset Sale (*provided, however*, that if during such 360-day period after the receipt of any Net Available Proceeds, the Issuer (or the applicable Restricted Subsidiary) enters into a definitive binding agreement committing it to apply such Net Available Proceeds in accordance with the requirements of clause (3) of this paragraph after such 360th day, such 360-day period will be extended with respect to the amount of Net Available Proceeds so committed for a period not to exceed 120 days until such Net Available Proceeds are required to be applied in accordance with such agreement (or, if earlier, until termination of such agreement)), apply an amount equal to all or any of the Net Available Proceeds therefrom to:

(1) repay, prepay, redeem or repurchase any Indebtedness under the Credit Facilities (which will be a permanent reduction of such Indebtedness);

(2) repay or prepay any Indebtedness which was secured by the assets sold in such Asset Sale;

(3) invest all or any part of the Net Available Proceeds thereof in the purchase of assets (other than securities, unless such securities represent Equity Interests in an entity engaged solely in a Permitted Business, such entity becomes a Restricted Subsidiary and the Issuer or a Restricted Subsidiary acquires voting and management control of such entity) or to make capital expenditures, in each case, to be used by or are useful to the Issuer or any Restricted Subsidiary in the Permitted Business; and/or

(4) make any combination of repayments, prepayments, redemptions, repurchases or Investments permitted by the foregoing clauses (1), (2) or (3).

Pending the final application of such Net Available Proceeds, the Issuer or any Restricted Subsidiary may temporarily reduce borrowings under the Credit Facilities or any other revolving credit facility, if any, or otherwise invest such Net Available Proceeds in Cash Equivalents, in each case in a manner not otherwise prohibited by the Indenture.

The amount of Net Available Proceeds not applied or invested as provided herein will constitute **Excess Proceeds**.

When the aggregate amount of Excess Proceeds equals or exceeds \$40.0 million, the Issuer will be required to make an offer to purchase from all holders of Notes and, if applicable, redeem (or make an offer to do so) any Pari passu Indebtedness of the Issuer the provisions of which require the Issuer to redeem such Indebtedness with the proceeds from any Asset Sales (or offer to redeem), in an aggregate principal amount of Notes and such Pari passu Indebtedness equal to the amount of such Excess Proceeds as follows:

(1) the Issuer will (a) make an offer to purchase (a **Net Proceeds Offer**) to all holders of Notes in accordance with the procedures set forth in the Indenture and (b) redeem (or make an offer to redeem) any such other Pari passu Indebtedness, *pro rata* in proportion to the respective principal amounts of the Notes and such other Indebtedness required to be redeemed, the maximum principal amount of the Notes and Pari passu Indebtedness that may be redeemed out of the amount (the **Payment Amount**) of such Excess Proceeds;

(2) the offer price for the Notes will be payable in cash in an amount equal to 100% of the principal amount of the Notes tendered pursuant to a Net Proceeds Offer, *plus* accrued and unpaid interest thereon, if any, to the date such Net Proceeds Offer is consummated (the **Offered Price**), in accordance with the procedures set forth in the Indenture and the redemption price for such Pari passu Indebtedness (the **Pari passu Indebtedness Price**) shall be as set forth in the related documentation governing such Indebtedness;

(3) if the aggregate Offered Price of Notes validly tendered and not withdrawn by holders thereof exceeds the *pro rata* portion of the Payment Amount allocable to the Notes, the Notes to be purchased will be selected on a *pro rata* basis; and

(4) upon completion of such Net Proceeds Offer in accordance with the foregoing provisions, the amount of Excess Proceeds with respect to which such Net Proceeds Offer was made shall be deemed to be zero.

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To the extent that the sum of the aggregate Offered Price of Notes tendered pursuant to a Net Proceeds Offer and the aggregate Pari passu Indebtedness Price paid to the holders of such Pari passu Indebtedness is less than the Payment Amount relating thereto, the Issuer may use such shortfall or a portion thereof, for general corporate purposes, subject to the provisions of the Indenture.

The Issuer will comply with applicable tender offer rules, including the requirements of Rule 14e-1 under the Exchange Act and any other applicable laws and regulations in connection with the purchase of Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with this Limitations on Asset Sales covenant, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Limitations on Asset Sales covenant by virtue of this compliance.

***Limitations on Designation of Unrestricted Subsidiaries***

As of the Issue Date, the Issuer shall be deemed to have designated each of M/I Financial, LLC; M/I Title Agency Ltd.; TransOhio Residential Title Agency Ltd.; Washington/Metro Residential Title Agency, LLC; M/I Title, LLC; K-Tampa, LLC; and The M/I Homes Foundation as Unrestricted Subsidiaries. The Issuer may designate any additional Subsidiary (including, without limitation, any Subsidiary acquired or created by the Issuer or any Restricted Subsidiary after the Issue Date) as an Unrestricted Subsidiary under the Indenture (a **Designation**) only if:

- (1) no Default shall have occurred and be continuing at the time of or after giving effect to such Designation; and
- (2) the Issuer would be permitted to make, at the time of such Designation, (a) a Permitted Investment or (b) an Investment pursuant to the Limitations on Restricted Payments covenant above, in either case, in an amount (the **Designation Amount**) equal to the fair market value of the Issuer's proportionate interest in such Subsidiary on such date.

No Subsidiary shall be subject to a Designation as an Unrestricted Subsidiary (whether such Designation is on or after the Issue Date) unless such Subsidiary:

- (1) has no Indebtedness other than Permitted Unrestricted Subsidiary Debt;
- (2) is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary unless the terms of the agreement, contract, arrangement or understanding are no less favorable to the Issuer or the Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer or such Restricted Subsidiary unless such agreement, contract, arrangement or understanding is permitted under the Limitations on Transactions with Affiliates covenant;
- (3) is a Person with respect to which neither the Issuer nor any Restricted Subsidiary has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve the Person's financial condition or to cause the Person to achieve any specified levels of operating results (other than guarantees in existence on the Issue Date); and
- (4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Issuer or any Restricted Subsidiary, except for any guarantee given solely to support the pledge by the Issuer or any Restricted Subsidiary of the Equity Interests of such Unrestricted Subsidiary, which guarantee is not recourse to the Issuer or any Restricted Subsidiary, and except to the extent the amount thereof constitutes a Restricted Payment permitted pursuant to the covenant described under Limitations on Restricted Payments.

At any time any Unrestricted Subsidiary fails to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness of the Subsidiary and any Liens on assets of such Subsidiary shall be deemed to be incurred by such

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Subsidiary as of such date. If, within ten (10) business days after such date, (a) the Issuer has not redesignated such Unrestricted Subsidiary as a Restricted Subsidiary and caused such Restricted Subsidiary to execute and deliver to the trustee a supplemental indenture and a notation of guarantee in accordance with the provisions of the Additional Guarantees covenant and (b) after giving effect to such redesignation and execution of a supplemental indenture and notation of guarantee, the Indebtedness is not permitted to be incurred under the covenant described under Limitations on Additional Indebtedness or the Lien is not permitted under the covenant described under Limitations on Liens, the Issuer shall be in default of the applicable covenant.

The Issuer may redesignate an Unrestricted Subsidiary (including any Subsidiary that was deemed to be designated as an Unrestricted Subsidiary on the Issue Date) as a Restricted Subsidiary only if:

- (1) no Default shall have occurred and be continuing at the time of and after giving effect to such redesignation; and
- (2) all Liens, Indebtedness and Investments of such Unrestricted Subsidiary outstanding immediately following such redesignation would, if incurred or made at such time, have been permitted to be incurred or made for all purposes of the Indenture.

All designations and redesignations must be evidenced by resolutions of the board of directors, or the executive committee of the board of directors, of the Issuer, delivered to the trustee certifying compliance with the foregoing provisions.

***Limitations on Mergers, Consolidations, Etc.***

The Issuer will not, directly or indirectly, in a single transaction or a series of related transactions, (a) consolidate or merge with or into (other than a merger that satisfies the requirements of clause (1) below with a wholly owned Restricted Subsidiary solely for the purpose of changing the Issuer's jurisdiction of incorporation to another State of the United States), or sell, lease, transfer, convey or otherwise dispose of or assign all or substantially all of the assets of the Issuer or of the Issuer and the Restricted Subsidiaries (taken as a whole) to, another Person or (b) adopt a plan of liquidation unless, in either case:

(1) either:

(a) the Issuer will be the surviving or continuing Person; or

(b) the Person formed by or surviving such consolidation or merger or to which such sale, lease, conveyance or other disposition shall be made (or, in the case of a plan of liquidation, any Person to which assets are transferred) (collectively, the **Successor**) is a corporation or limited liability company organized and existing under the laws of any State of the United States of America or the District of Columbia, and the Successor expressly assumes, by supplemental indenture in form and substance satisfactory to the trustee, all of the obligations of the Issuer under the Notes, the Indenture and the Registration Rights Agreement; *provided* that at any time the Successor is a limited liability company, there shall be a co-issuer of the Notes that is a corporation;

(2) immediately prior to and immediately after giving effect to such transaction and the assumption of the obligations as set forth in clause (1)(b) above and the incurrence of any Indebtedness to be incurred in connection therewith, no Default shall have occurred and be continuing; and

(3) immediately after giving effect to such transaction and the assumption of the obligations set forth in clause (1)(b) above and the incurrence of any Indebtedness to be incurred in connection therewith, and the use of any net proceeds therefrom on a *pro forma* basis, (a) the Consolidated Net Worth of the Issuer or the Successor, as the case may be, would be at least equal to the Consolidated Net Worth of the Issuer immediately prior to such transaction and (b) the Issuer or the Successor, as the case may be, could incur at least \$1.00 of additional Indebtedness pursuant to the Ratio Exception.

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For purposes of this covenant, any Indebtedness of the Successor which was not Indebtedness of the Issuer immediately prior to the transaction shall be deemed to have been incurred in connection with such transaction.

Except as provided under the caption Guarantees, no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, whether or not affiliated with such Guarantor, unless:

(1) either:

(a) such Guarantor will be the surviving or continuing Person; or

(b) the Person formed by or surviving any such consolidation or merger assumes, by supplemental indenture in form and substance satisfactory to the trustee, all of the obligations of such Guarantor under the Guarantee of such Guarantor under the Indenture and, to the extent not fully performed, the Registration Rights Agreement, and

(2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

Notwithstanding the foregoing, (a) any Restricted Subsidiary may merge into the Issuer or another Restricted Subsidiary, and (b) the requirements of the immediately preceding paragraph will not apply to any transaction pursuant to which such Guarantor is permitted to be released from its Guarantee in accordance with the provisions described under the section entitled Guarantees.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the assets of the Issuer, will be deemed to be the transfer of all or substantially all of the assets of the Issuer.

Upon any consolidation, combination or merger of the Issuer or a Guarantor, or any transfer of all or substantially all of the assets of the Issuer in accordance with the foregoing, in which the Issuer or such Guarantor is not the continuing obligor under the Notes or its Guarantee, the surviving entity formed by such consolidation or into which the Issuer or such Guarantor is merged, or to which the conveyance, lease or transfer is made, will succeed to and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor under the Indenture, the Notes and the Guarantees, with the same effect as if such surviving entity had been named therein as the Issuer or such Guarantor and, except in the case of a conveyance, transfer or lease, the Issuer or such Guarantor, as the case may be, will be released from the obligation to pay the principal of and interest on the Notes or in respect of its Guarantee, as the case may be, and all of the Issuer's or such Guarantor's other obligations and covenants under the Notes, the Indenture and its Guarantee, if applicable.

***Additional Guarantees***

If, after the Issue Date, (a) the Issuer or any Restricted Subsidiary of the Issuer shall acquire or create another Subsidiary (other than a Subsidiary that has been designated as an Unrestricted Subsidiary) or (b) any Unrestricted Subsidiary is redesignated a Restricted Subsidiary, then, in each such case, the Issuer shall, within ten (10) business days of such acquisition or creation, cause such Restricted Subsidiary to:

(1) execute and deliver to the trustee (a) a supplemental indenture in form and substance satisfactory to the trustee pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture and (b) a notation of guarantee in respect of its Guarantee; and

(2) deliver to the trustee one or more opinions of counsel that such supplemental indenture (a) has been duly authorized, executed and delivered by such Restricted Subsidiary and (b) constitutes a valid and legally binding obligation of such Restricted Subsidiary in accordance with its terms.

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### ***Reports***

Whether or not required by the SEC, so long as any Notes are outstanding, the Issuer will furnish to the holders of Notes, within the time periods specified in the SEC's rules and regulations (including any grace periods or extensions permitted by the SEC):

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Issuer were required to file these Forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations and, with respect to the annual information only, a report on the annual financial statements by the Issuer's independent registered public accounting firm; and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file these reports.

In addition, whether or not required by the SEC, so long as any Notes are outstanding, the Issuer will file a copy of all of the information and reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept the filing) and make the information available to securities analysts and prospective investors upon request. The Issuer and the Guarantors have agreed that, for so long as any Notes remain outstanding, the Issuer will furnish to the holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. Notwithstanding the foregoing, to the extent the Issuer files the information and reports referred to in clauses (1) and (2) above with the SEC and such information is publicly available (including, without limitation, on the SEC's website), the Issuer shall be deemed to be in compliance with its obligations to furnish such information to the holders of the Notes and to make such information available to securities analysts and prospective investors.

### **Events of Default**

Each of the following is an Event of Default:

(1) failure by the Issuer to pay interest on any of the Notes when it becomes due and payable and the continuance of any such failure for 30 days;

(2) failure by the Issuer to pay the principal on any of the Notes when it becomes due and payable, whether at stated maturity, upon redemption, upon purchase, upon acceleration or otherwise;

(3) failure by the Issuer to comply with any of its agreements or covenants described above under Certain Covenants Limitations on Additional Indebtedness, Certain Covenants Limitations on Restricted Payments, Certain Covenants Limitations on Asset Sales and Certain Covenants Limitations on Mergers, Consolidations, Etc., or the failure of the Issuer to comply with its obligations to make a Change of Control Offer as described above under Change of Control and continuance of such a failure for 60 days;

(4) failure by the Issuer to comply with any other agreement or covenant in the Indenture and continuance of this failure for 60 days after notice of the failure has been given to the Issuer by the trustee or by the holders of at least 25% of the aggregate principal amount of the Notes then outstanding;

(5) default under any mortgage, indenture or other instrument or agreement (other than the Notes and the Indenture) under which there may be issued or by which there may be secured or evidenced Indebtedness of the Issuer or any Restricted Subsidiary, whether such Indebtedness now exists or is incurred after the Issue Date, which default:

(a) is caused by a failure to pay when due principal on such Indebtedness within the applicable express grace period;

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(b) results in the acceleration of such Indebtedness prior to its express final maturity; or

(c) results in the commencement of judicial proceedings to foreclose upon, or to exercise remedies under applicable law or applicable security documents to take ownership of, the assets securing such Indebtedness, and

in each case, the principal amount of such Indebtedness, together with any other Indebtedness with respect to which an event described in clause (a) or (b) has occurred and is continuing, aggregates \$25.0 million or more; provided, however, that if any such default is cured or waived or any acceleration rescinded or such Indebtedness is repaid within a period of ten (10) days from the continuation of such default beyond any applicable grace period or the occurrence of such acceleration, as the case may be, such Event of Default under the Indenture and any consequential acceleration of the Notes shall automatically be rescinded so long as such rescission does not conflict with any judgment or decree;

(6) one or more judgments or orders that exceed \$25.0 million in the aggregate (net of amounts covered by insurance or bonded) for the payment of money have been entered by a court or courts of competent jurisdiction against the Issuer or any Restricted Subsidiary and such judgment or judgments have not been satisfied, stayed, annulled, or rescinded within 60 days of being entered;

(7) the Issuer or any Significant Subsidiary pursuant to or within the meaning of any bankruptcy law:

(a) commences a voluntary case;

(b) consents to the entry of an order for relief against it in an involuntary case;

(c) consents to the appointment of a custodian of it or for all or substantially all of its assets; or

(d) makes a general assignment for the benefit of its creditors;

(8) a court of competent jurisdiction enters an order or decree under any bankruptcy law that:

(a) is for relief against the Issuer or any Significant Subsidiary as debtor in an involuntary case;

(b) appoints a custodian of the Issuer or any Significant Subsidiary or a custodian for all or substantially all of the assets of the Issuer or any Significant Subsidiary; or

(c) orders the liquidation of the Issuer or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 60 days; or

(9) any Guarantee of any Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and the Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor from its Guarantee in accordance with the terms of the Indenture and the Guarantee).

If an Event of Default (other than an Event of Default specified in clause (7) or (8) above with respect to the Issuer), shall have occurred and be continuing under the Indenture, the trustee, by written notice to the Issuer, or the holders of at least 25% in aggregate principal amount of the Notes then outstanding by written notice to the Issuer and the trustee, may declare all amounts owing under the Notes to be due and payable immediately. Upon such declaration of acceleration, the aggregate principal of and accrued and unpaid interest on the outstanding Notes shall immediately become due and payable; *provided, however*, that after such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the outstanding Notes may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal and interest, have been cured or waived as provided in the Indenture. If an Event of Default specified in clause (7) or (8) with respect to the Issuer occurs, all outstanding Notes shall become due and payable without any further action or notice.

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The trustee shall, within 30 days after the occurrence of any Default, give the holders notice of all uncured Defaults thereunder known to it; *provided, however*, that, except in the case of an Event of Default in payment in respect of the Notes or a Default in complying with Certain Covenants Limitations on Mergers, Consolidations, Etc. in respect of the Notes, the trustee shall be protected in withholding such notice if and so long as a committee of its trust officers in good faith determines that the withholding of such notice is in the interest of the holders.

No holder will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless the trustee:

(1) has failed to act for a period of 60 days after receiving written notice of a continuing Event of Default by such holder and a request to act by holders of at least 25% in aggregate principal amount of outstanding Notes;

(2) has been offered indemnity satisfactory to it in its reasonable judgment; and

(3) has not received from the holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request.

However, such limitations do not apply to a suit instituted by a holder of any Note for enforcement of payment of the principal of or interest on such Note on or after the due date therefor (after giving effect to the grace period specified in clause (1) of the first paragraph of this Events of Default section).

The Indenture will provide that, at any time after a declaration of acceleration with respect to the Notes, the holders of a majority in principal amount of the Notes may rescind and cancel such declaration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured or waived except for nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(4) if the trustee has been paid its reasonable compensation and reimbursed for its expenses, disbursements and advances.

No such rescission shall affect any subsequent Default or Event of Default, or impair any right consequent thereto.

The holders of a majority in principal amount of the Notes may waive any existing Default or Event of Default under the Indenture, and its consequences, except a default in the payment of the principal of or interest on the Notes.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture and under the Trust Indenture Act. Subject to the provisions of the Indenture relating to the duties of the trustee, the trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request, order or direction of any of the holders, unless such holders have offered to the trustee indemnity satisfactory to it. Subject to all provisions of the Indenture and applicable law, the holders of a majority in aggregate principal amount of the then outstanding Notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee.

The Issuer is required to deliver to the trustee annually a statement regarding compliance with the Indenture and, upon any officer of the Issuer becoming aware of any Default, a statement specifying such Default and what action the Issuer is taking or proposes to take with respect thereto.

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**Legal Defeasance and Covenant Defeasance**

The Issuer may, at its option and at any time, elect to have its obligations and the obligations of the Guarantors discharged with respect to the outstanding Notes. Legal defeasance means that the Issuer and the Guarantors shall be deemed to have paid and discharged the entire indebtedness represented by the Notes and the Guarantees thereof, and the Indenture shall cease to be of further effect as to all outstanding Notes and the Guarantees thereof, except as to:

- (1) the rights of holders to receive payments in respect of the principal of and interest on the Notes when such payments are due from the trust funds referred to below;
- (2) the Issuer's obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes, and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trust, duties, and immunities of the trustee, and the Issuer's obligation in connection therewith; and
- (4) the legal defeasance provisions of the Indenture.

In addition, the Issuer may, at its option and at any time, elect to have its obligations and the obligations of the Guarantors released with respect to most of the covenants under the Indenture, except as described otherwise in the Indenture, and thereafter any omission to comply with such obligations shall not constitute a Default. In the event covenant defeasance occurs, certain Events of Default (not including non-payment and, solely for a period of 91 days following the deposit referred to in clause (1) of the next paragraph, bankruptcy, receivership, rehabilitation and insolvency events) will no longer apply. Covenant defeasance will not be effective until such bankruptcy, rehabilitation and insolvency events no longer apply. The Issuer may exercise its legal defeasance option regardless of whether it previously exercised covenant defeasance.

In order to exercise either legal defeasance or covenant defeasance:

- (1) the Issuer must irrevocably deposit with the trustee, in trust, for the benefit of the holders, U.S. legal tender, U.S. Government obligations or a combination thereof, in such amounts as will be sufficient (without reinvestment) in the opinion of a nationally recognized firm of independent public accountants selected by the Issuer, to pay the principal of and interest on the Notes on the stated date for payment or on the redemption date of the principal or installment of principal of or interest on the Notes, and the trustee must have a valid, perfected, exclusive security interest in such trust;
- (2) in the case of legal defeasance, the Issuer shall have delivered to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that:
  - (a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or
  - (b) since the date of the Indenture, there has been a change in the applicable U.S. federal income tax law;

in either case to the effect that, and based thereon this opinion of counsel shall confirm that, the holders of Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the legal defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

- (3) in the case of covenant defeasance, the Issuer shall have delivered to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that the holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the covenant defeasance had not occurred;



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(4) no Default shall have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowing);

(5) the legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, the Indenture or any other material agreement or instrument to which the Issuer or any Restricted Subsidiary is a party or by which the Issuer or any Restricted Subsidiary is bound;

(6) the Issuer shall have delivered to the trustee an officers' certificate stating that the deposit was not made by it with the intent of preferring the holders of the Notes over any other of its creditors or with the intent of defeating, hindering, delaying or defrauding any other of its creditors or others; and

(7) the Issuer shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that the conditions provided for, in the case of the officers' certificate, in clauses (1) through (6) and, in the case of the opinion of counsel, clauses (1) (with respect to the validity and perfection of the security interest), (2) and/or (3) and (5) of this paragraph have been complied with.

If the funds deposited with the trustee to effect covenant defeasance are insufficient to pay the principal of and interest on the Notes when due, then the Issuer's obligations and the obligations of Guarantors under the Indenture will be revived and no such defeasance will be deemed to have occurred.

**Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to rights of registration of transfer or exchange of Notes which shall survive until all Notes have been canceled) as to all outstanding Notes when either:

(1) all the Notes that have been authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from this trust) have been presented to the trustee for cancellation; or

(2) (a) all Notes not delivered to the trustee for cancellation otherwise have become due and payable or have been called for redemption pursuant to the provisions described under Optional Redemption, and the Issuer has irrevocably deposited or caused to be deposited with the trustee funds in trust in an amount of money sufficient to pay and discharge the entire Indebtedness (including all principal and accrued interest) on the Notes not theretofore delivered to the trustee for cancellation;

(b) the Issuer has paid all sums payable by it under the Indenture; and

(c) the Issuer has delivered irrevocable instructions to the trustee to apply the deposited money toward the payment of the Notes at maturity or on the date of redemption, as the case may be.

In addition, the Issuer must deliver an officers' certificate and an opinion of counsel (as to legal matters) stating that all conditions precedent to satisfaction and discharge have been complied with.

**Transfer and Exchange**

A holder will be able to register the transfer of or exchange Notes only in accordance with the provisions of the Indenture. The registrar may require a holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. Without the prior consent of the Issuer, the registrar is not required (1) to register the transfer of or exchange any Note selected for redemption, (2) to register the transfer of or exchange any Note for a period of 15 days before a selection of Notes to be redeemed or (3) to register the transfer of or exchange any Note between a record date and the next succeeding interest payment date.

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The original notes were, and the exchange notes will be, issued in registered form and the registered holder will be treated as the owner of such Note for all purposes.

### **Amendment, Supplement and Waiver**

Subject to certain exceptions, the Indenture or the Notes may be amended, with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the holders of at least a majority in principal amount of the Notes then outstanding, and any existing Default under, or compliance with any provision of, the Indenture may be waived (other than any continuing Default in the payment of the principal or interest on the Notes) with the consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the holders of at least a majority in principal amount of the Notes then outstanding; *provided, however*, that:

(a) no such amendment may, without the consent of the holders of at least two-thirds in aggregate principal amount of Notes then outstanding, amend the obligation of the Issuer under the heading **Change of Control** or the related definitions that could adversely affect the rights of any holder; and

(b) without the consent of each holder affected, the Issuer and the trustee may not:

(1) change the maturity of any Note;

(2) reduce the amount, extend the due date or otherwise affect the terms of any scheduled payment of interest on or principal of the Notes;

(3) reduce any premium payable upon optional redemption of the Notes, change the date on which Notes are subject to optional redemption or otherwise alter the provisions of the Indenture or the Notes with respect to redemption of Notes (other than the covenant described above under **Certain Covenants Limitations on Asset Sales** and reduction of the required notice period for an optional redemption);

(4) make any Note payable in money or currency other than that stated in the Notes;

(5) modify or change any provision of the Indenture or the related definitions to affect the ranking of the Notes or any Guarantee in a manner that adversely affects the holders;

(6) reduce the percentage of holders necessary to consent to an amendment or waiver to the Indenture or the Notes;

(7) impair the rights of holders to receive payments of principal of or interest on the Notes;

(8) release any Guarantor from any of its obligations under its Guarantee or the Indenture, except as permitted by the Indenture; or

(9) make any change in these amendment and waiver provisions.

Notwithstanding the foregoing, the Issuer and the trustee may amend the Indenture, the Guarantees or the Notes, without the consent of any holder, to: (i) cure any ambiguity, defect or inconsistency; (ii) provide for uncertificated Notes in addition to or in place of certificated Notes; (iii) provide for the assumption of the Issuer's obligations to the holders in the case of a merger, an acquisition or a sale of all or substantially all of the Issuer's assets; (iv) release any Guarantor from any of its obligations under its Guarantee or the Indenture (to the extent permitted by the Indenture); (v) make any change that does not materially adversely affect the rights of any holder or the trustee; (vi) make any change that would provide any additional rights or benefits to the holders of Notes or that does not adversely affect in any material respect the legal rights under the Indenture of any such holder; (vii) add any Person as a Guarantor; (viii) comply with any requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act; (ix) evidence and provide for the acceptance of appointment under the Indenture by a successor trustee; (x) secure all of the Notes; (xi) add to the covenants of the Issuer or any Guarantor for the benefit of the holders; (xii) surrender any right or power

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conferred upon the Issuer or any Guarantor; and (xiii) conform the text of the Indenture, the Guarantees or the Notes to any provision of this Description of Notes to the extent that such provision in this Description of Notes was intended to be a verbatim recitation of a provision of the Indenture, the Guarantee or the Notes.

### **No Personal Liability of Directors, Officers, Employees and Shareholders**

No director, officer, employee, incorporator or shareholder of the Issuer will have any liability for any obligations of the Issuer under the Notes or the Indenture or of any Guarantor under its Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes and the Guarantees.

### **Concerning the Trustee**

U.S. Bank National Association is the trustee under the Indenture and has been appointed by the Issuer as registrar and paying agent with regard to the Notes. The Indenture contains certain limitations on the rights of the trustee, should it become a creditor of the Issuer, to obtain payment of claims in certain cases, or to realize on certain assets received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest (as defined in the Indenture), it must eliminate such conflict or resign.

The holders of a majority in principal amount of the then outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee, subject to certain exceptions. The Indenture provides that in case an Event of Default occurs and is not cured, the trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in similar circumstances in the conduct of his or her own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any holder, unless such holder shall have offered to the trustee security and indemnity satisfactory to the trustee.

The trustee also serves as a lender under the Credit Agreement and a Letter of Credit Facility and as the trustee under the indentures governing the 2017 Convertible Notes and the 2018 Convertible Notes.

### **Governing Law**

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

### **Certain Definitions**

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms.

**2017 Convertible Notes** means the Issuer's 3.50% Convertible Senior Subordinated Notes due 2017, governed by the indenture dated as of September 11, 2012, among the Issuer, the guarantors named therein and U.S. Bank National Association, as trustee, as supplemented by a supplemental indenture dated as of September 11, 2013, among the Issuer, the guarantors named therein and U.S. Bank National Association, as trustee.

**2018 Convertible Notes** means the Issuer's 3.0% Convertible Senior Subordinated Notes due 2018, governed by the indenture dated as of September 11, 2012, among the Issuer, the guarantors named therein and U.S. Bank National Association, as trustee, as supplemented by a supplemental indenture dated as of March 11, 2013 among the Issuer, the guarantors named therein and U.S. Bank National Association, as trustee.

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**2018 Senior Notes** means the Issuer's 8.625% Senior Notes due 2018, governed by the indenture dated as of November 12, 2010, among the Issuer, the guarantors named therein and U.S. Bank National Association, as trustee.

**Acquired Indebtedness** means (1) with respect to any Person that becomes a Restricted Subsidiary after the Issue Date, Indebtedness of such Person and its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary that was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary and (2) with respect to the Issuer or any Restricted Subsidiary, any Indebtedness of a Person (other than the Issuer or a Restricted Subsidiary) existing at the time such Person is merged with or into the Issuer or a Restricted Subsidiary, or Indebtedness expressly assumed by the Issuer or any Restricted Subsidiary in connection with the acquisition of an asset or assets from another Person, which Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition.

**Affiliate** of any Person means any other Person which directly or indirectly controls or is controlled by, or is under direct or indirect common control with, the referenced Person. For purposes of the covenant described under **Certain Covenants Limitations on Transactions with Affiliates**, Affiliates shall be deemed to include, with respect to any Person, any other Person (1) which beneficially owns or holds, directly or indirectly, 10% or more of any class of the voting stock of the referenced Person; (2) of which 10% or more of the voting stock is beneficially owned or held, directly or indirectly, by the referenced Person or (3) with respect to an individual, any immediate family member of such Person. For purposes of this definition, **control** of a Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**Applicable Premium** means, with respect to a Note at any redemption date, the greater of (i) 1.0% of the principal amount of such Note and (ii) the excess of (A) the present value at such time of (1) the redemption price of such Note at January 15, 2018 (such redemption price being set forth in the table under **Optional Redemption**) plus (2) all required interest payments due on such Note (excluding accrued and unpaid interest to such redemption date) through January 15, 2018, computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such Note.

**Asset Acquisition** means:

- (1) an Investment by the Issuer or any Restricted Subsidiary in any other Person if, as a result of such Investment, such Person shall become a Restricted Subsidiary, or shall be merged with or into the Issuer or any Restricted Subsidiary, or
- (2) the acquisition by the Issuer or any Restricted Subsidiary of all or substantially all of the assets of any other Person or any division or line of business of any other Person.

**Asset Sale** means any sale, issuance, conveyance, transfer, lease, assignment or other disposition by the Issuer or any Restricted Subsidiary to any Person other than the Issuer or any Restricted Subsidiary (including by means of a Sale and Leaseback Transaction or a merger or consolidation), in one transaction or a series of related transactions, of any assets (including Equity Interests) of the Issuer or any Restricted Subsidiaries, other than in the ordinary course of business. For purposes of this definition, the term **Asset Sale** shall not include:

- (1) transfers of cash or Cash Equivalents;
- (2) transfers of assets (including Equity Interests) that are governed by, and made in accordance with, the provisions described under **Certain Covenants Limitations on Mergers, Consolidations, Etc.** ;
- (3) Permitted Investments and Restricted Payments permitted under the covenant described under **Certain Covenants Limitations on Restricted Payments** ;
- (4) the creation or realization of any Permitted Lien;

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(5) transactions in the ordinary course of business, including, without limitation, sales (directly or indirectly), dedications and other donations to governmental authorities, leases and sales and leasebacks of (a) homes, improved land and unimproved land and (b) real estate (including related amenities and improvements);

(6) any transfer or series of related transfers that, but for this clause, would be Asset Sales, if after giving effect to such transfers, the aggregate fair market value of the assets transferred in such transaction or any such series of related transactions does not exceed \$5.0 million;

(7) the surrender or waiver of contractual rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(8) a disposition of assets or property that are obsolete or that are no longer useful in the conduct of the business of the Issuer and/or any Restricted Subsidiaries; and

(9) an issuance of Equity Interests by a Restricted Subsidiary to the Issuer or to a Restricted Subsidiary.

**Attributable Indebtedness**, when used with respect to any Sale and Leaseback Transaction, means, at the time of determination, the present value (discounted at a rate equivalent to the Issuer's then-current weighted average cost of funds for borrowed money at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining terms of any Capitalized Lease included in any such Sale and Leaseback Transaction.

**Capitalized Lease** means a lease required to be capitalized for financial reporting purposes in accordance with GAAP.

**Capitalized Lease Obligations** of any Person means the obligations of such Person to pay rent or other amounts under a Capitalized Lease, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**Cash Equivalents** means (1) securities, certificates and notes with maturities of 364 days or less from the date of acquisition that are within one of the following classifications: (a) securities issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) mortgage backed securities issued or fully guaranteed or insured by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or a similar government sponsored enterprise or mortgage agency, (c) securities issued by States, territories and possessions of the United States and their political subdivisions (municipalities), with ratings of at least A or the equivalent thereof by S&P or Moody's, (d) time deposits, certificates of deposit, bankers' acceptances, or similar short-term notes issued by a commercial bank domiciled and registered in the United States with capital and surplus in excess of \$200 million, and which has (or the holding company of which has) a commercial paper rating of at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's, or (e) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's; and (2) money market mutual funds which invest in securities of the types listed in subclauses (a) through (e) of clause (1) above with a weighted average maturity of less than one year.

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

(1) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause that person or group shall be deemed to have beneficial ownership of all securities that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of voting stock representing more than 50% of the voting power of the total outstanding voting stock of the Issuer;

(2) during any period of two consecutive years, individuals who at the beginning of such period constituted the board of directors (together with any new directors whose election to such board of directors

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or whose nomination for election by the shareholders of the Issuer was approved by a vote of the majority of the directors of the Issuer then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors of the Issuer;

(3) (a) all or substantially all of the assets of the Issuer and the Restricted Subsidiaries are sold or otherwise transferred to any Person other than a wholly owned Restricted Subsidiary or one or more Permitted Holders or (b) the Issuer consolidates or merges with or into another Person other than a Permitted Holder or any Person other than a Permitted Holder consolidates or merges with or into the Issuer, in either case under this clause (3), in one transaction or a series of related transactions in which immediately after the consummation thereof Persons owning voting stock representing in the aggregate 100% of the total voting power of the voting stock of the Issuer immediately prior to such consummation do not own voting stock representing a majority of the total voting power of the voting stock of the Issuer or the surviving or transferee Person; or

(4) the Issuer adopts a plan of liquidation or dissolution or any such plan is approved by the shareholders of the Issuer.

**Consolidated Amortization Expense** for any period means the amortization expense of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (which, for the avoidance of doubt, shall not include the amortization expense of Unrestricted Subsidiaries in the consolidated determination).

**Consolidated Cash Flow Available for Fixed Charges** for any period means, without duplication, the sum of the amounts for such period of:

(1) Consolidated Net Income; plus

(2) in each case only to the extent (and in the same proportion) deducted in determining Consolidated Net Income and with respect to the portion of Consolidated Net Income attributable to any Restricted Subsidiary only if a corresponding amount would be permitted at the date of determination to be distributed to the Issuer by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its shareholders:

(a) Consolidated Income Tax Expense;

(b) Consolidated Amortization Expense (but only to the extent not included in Consolidated Interest Expense);

(c) Consolidated Depreciation Expense;

(d) Consolidated Interest Expense; and

(e) all other non-cash items reducing Consolidated Net Income (excluding any non-cash charge that results in an accrual of a reserve for cash charges in any future period) for such period;

in each case determined on a consolidated basis in accordance with GAAP; plus

(3) cash distributions from Unrestricted Subsidiaries to the extent such distributions have actually been received by the Issuer or a Restricted Subsidiary (*provided, however*, that with respect to such distributions to a Restricted Subsidiary, only to the extent that a corresponding amount would be permitted at the date of determination to be distributed to the Issuer by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its shareholders); *minus*

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(4) the aggregate amount of all non-cash items, determined on a consolidated basis, to the extent such items increased Consolidated Net Income for such period.

**Consolidated Depreciation Expense** for any period means the depreciation expense of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (which, for the avoidance of doubt, shall not include the depreciation expense of Unrestricted Subsidiaries in the consolidated determination).

**Consolidated Fixed Charge Coverage Ratio** means the ratio of Consolidated Cash Flow Available for Fixed Charges during the most recent four consecutive full fiscal quarters for which financial statements are available (the **Four-Quarter Period**) ending on or prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the **Transaction Date**) to Consolidated Interest Incurred for the Four-Quarter Period. For purposes of this definition, Consolidated Cash Flow Available for Fixed Charges and Consolidated Interest Incurred shall be calculated after giving effect on a *pro forma* basis for the period of such calculation to:

(1) the incurrence of any Indebtedness or the issuance of any preferred stock of the Issuer or any Restricted Subsidiary (and the application of the proceeds thereof) and any repayment of other Indebtedness or redemption of other preferred stock (and the application of the proceeds therefrom) (other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to any revolving credit arrangement) occurring during the Four-Quarter Period or at any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if such incurrence, repayment, issuance or redemption, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four-Quarter Period; and

(2) any Asset Sale or Asset Acquisition (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of the Issuer or any Restricted Subsidiary (including any Person who becomes a Restricted Subsidiary as a result of such Asset Acquisition) incurring Acquired Indebtedness and also including any Consolidated Cash Flow Available for Fixed Charges (including any *pro forma* expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) associated with any such Asset Acquisition) occurring during the Four-Quarter Period or at any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or Asset Acquisition or other disposition (including the incurrence of, or assumption or liability for, any such Indebtedness or Acquired Indebtedness) occurred on the first day of the Four-Quarter Period;

*provided, however*, that Indebtedness incurred under revolving credit facilities shall be deemed to be the average daily balance of Indebtedness during such Four-Quarter Period (or any shorter period in which such facilities are in effect).

If the Issuer or any Restricted Subsidiary directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness as if the Issuer or such Restricted Subsidiary had directly incurred or otherwise assumed such guaranteed Indebtedness as of the first day of the Four-Quarter Period.

In calculating Consolidated Interest Incurred for purposes of determining the denominator (but not the numerator) of the Consolidated Fixed Charge Coverage Ratio:

(1) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on this Indebtedness in effect on the Transaction Date;

(2) if interest on any Indebtedness actually incurred on the Transaction Date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the Transaction Date will be deemed to have been in effect during the Four-Quarter Period; and

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(3) notwithstanding clause (1) or (2) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements with a term of at least one year after the Transaction Date relating to Hedging Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of these agreements.

**Consolidated Income Tax Expense** for any period means the provision for taxes of the Issuer and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP (which, for the avoidance of doubt, shall not include the provision for taxes of Unrestricted Subsidiaries in the consolidated determination).

**Consolidated Indebtedness** means, as of any date, the total Indebtedness of the Issuer and the Restricted Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP (which, for the avoidance of doubt, shall not include the total Indebtedness of Unrestricted Subsidiaries in the consolidated determination).

**Consolidated Interest Expense** for any period means the sum, without duplication, of the total interest expense of the Issuer and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (which, for the avoidance of doubt, shall not include the total interest expense of Unrestricted Subsidiaries in the consolidated determination) and including without duplication:

- (1) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness;
- (2) commissions, discounts and other fees and charges owed with respect to letters of credit securing financial obligations, bankers acceptance financing and receivables financings;
- (3) the net costs associated with Hedging Obligations;
- (4) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses;
- (5) the interest portion of any deferred payment obligations;
- (6) all other noncash interest expense;
- (7) the product of (a) all dividend payments on any series of Disqualified Equity Interests of the Issuer or any preferred stock of any Restricted Subsidiary (other than any such Disqualified Equity Interests or any preferred stock held by the Issuer or a wholly owned Restricted Subsidiary), *multiplied by* (b) a fraction, the numerator of which is one and the denominator of which is one *minus* the then current combined federal, state and local statutory tax rate of the Issuer and the Restricted Subsidiaries, expressed as a decimal;
- (8) interest amortized to land and housing costs;
- (9) all interest payable with respect to discontinued operations; and
- (10) all interest on any Indebtedness of any other Person guaranteed by the Issuer or any Restricted Subsidiary.

**Consolidated Interest Incurred** for any period means the sum, without duplication, of (1) Consolidated Interest Expense and (2) interest capitalized for such period by the Issuer and the Restricted Subsidiaries (which, for the avoidance of doubt, shall not include interest capitalized by Unrestricted Subsidiaries in the consolidated determination), but excluding interest amortized to land and housing costs.

**Consolidated Net Income** for any period means the net income (or loss) of the Issuer and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

- (1) the net income (or loss) of any Person (other than a Restricted Subsidiary) in which any Person other than the Issuer and the Restricted Subsidiaries has an ownership interest, except to the extent that cash distributions have actually been received by the Issuer or any Restricted Subsidiaries during such period;



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(2) except to the extent includible in the consolidated net income of the Issuer pursuant to the foregoing clause (1), the net income (or loss) of any Person that accrued prior to the date that (a) such Person becomes a Restricted Subsidiary or is merged into or consolidated with the Issuer or any Restricted Subsidiary or (b) the assets of such Person are acquired by the Issuer or any Restricted Subsidiary;

(3) the net income of any Restricted Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of that income is not permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary during such period;

(4) for the purposes of calculating the Restricted Payments Basket only, in the case of a successor to the Issuer by consolidation, merger or transfer of its assets, any income (or loss) of the successor prior to such merger, consolidation or transfer of assets;

(5) other than for purposes of calculating the Restricted Payments Basket, any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized during such period by the Issuer or any Restricted Subsidiary upon (a) the acquisition of any securities, or the extinguishment of any Indebtedness, of the Issuer or any Restricted Subsidiary or (b) any Asset Sale by the Issuer or any Restricted Subsidiary; and

(6) other than for purposes of calculating the Restricted Payments Basket, any extraordinary gain (or extraordinary loss), together with any related provision for taxes on any such extraordinary gain (or the tax effect of any such extraordinary loss), realized by the Issuer or any Restricted Subsidiary during such period.

In addition, any return of capital with respect to an Investment that increased the Restricted Payments Basket pursuant to clause (3)(e) of the first paragraph under **Certain Covenants Limitations on Restricted Payments** or decreased the amount of Investments outstanding pursuant to clause (13) of the definition of **Permitted Investments** shall be excluded from Consolidated Net Income for purposes of calculating the Restricted Payments Basket.

**Consolidated Net Worth** means, with respect to any Person as of any date, the consolidated shareholders' equity of such Person, determined on a consolidated basis in accordance with GAAP, *less* (without duplication) (1) any amounts thereof attributable to Disqualified Equity Interests of such Person or its Subsidiaries or any amount attributable to Unrestricted Subsidiaries and (2) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of tangible assets of a going concern business made within twelve months after the acquisition of such business) subsequent to the Issue Date in the book value of any asset owned by such Person or a Subsidiary of such Person.

**Consolidated Tangible Assets** means, as of any date, the total amount of assets of the Issuer and the Restricted Subsidiaries on a consolidated basis (which, for the avoidance of doubt, shall not include the assets of Unrestricted Subsidiaries in the consolidated determination), at the end of the fiscal quarter immediately preceding such date, as determined in accordance with GAAP, less, to the extent otherwise included, the amounts of (without duplication): (1) Intangible Assets; (2) any assets securing Non-Recourse Indebtedness; (3) minority interest in consolidated Subsidiaries held by Persons other than the Issuer or a Restricted Subsidiary; (4) treasury stock; and (5) Investments in and of Unrestricted Subsidiaries.

**Consolidated Tangible Net Worth** means, with respect to any Person as of any date, the Consolidated Net Worth of such Person as of such date less (without duplication) all Intangible Assets of such Person as of such date.

**Credit Agreement** means (i) the Credit Agreement, dated July 18, 2013, as amended by the First Amendment to Credit Agreement, dated October 20, 2014, among the Issuer, as borrower, and the banks and other financial institutions from time to time party thereto as agents and lenders; and (ii) any related notes,

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guarantees, collateral and other security documents, instruments and agreements executed in connection therewith (including Hedging Obligations related to the Indebtedness incurred thereunder), including, without limitation, by Subsidiaries, and in each case as amended, modified, renewed, refunded, replaced or refinanced from time to time (including, without limitation, increases in the amount that may be borrowed thereunder and/or alterations of the maturity date thereof), and whether secured or unsecured.

**Credit Facilities** means, with respect to the Issuer or any Restricted Subsidiaries:

(1) the Credit Agreement;

(2) any agreement with banks or other financial institutions from time to time with respect to the issuance of letters of credit, including, without limitation, the Letter of Credit Facilities, and any related notes, guarantees, collateral and other security documents, instruments and agreements executed in connection therewith, including, without limitation, by Restricted Subsidiaries, and in each case as amended, modified, renewed, refunded, replaced or refinanced from time to time (including, without limitation, increases in the amount of letters of credit that may be borrowed thereunder and/or alterations of the maturity date thereof); and

(3) one or more debt facilities (which may be outstanding at the same time) or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans or other long-term indebtedness, including any notes, mortgages, guarantees, collateral and other security documents, instruments and agreements executed in connection therewith, including, without limitation, by Restricted Subsidiaries, and, in each case, any amendments, supplements, modifications, extensions, renewals, restatements or refunding thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

**Default** means (1) any Event of Default or (2) any event, act or condition that, after notice or the passage of time or both, would be an Event of Default.

**Disqualified Equity Interests** of any Person means any Equity Interests of such Person that, by their terms, or by the terms of any related agreement or of any security into which they are convertible, puttable or exchangeable, are, or upon the happening of any event or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is 91 days after the final maturity date of the Notes; *provided, however*, that any class of Equity Interests of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Equity Interests that are not Disqualified Equity Interests, and that are not convertible, puttable or exchangeable for Disqualified Equity Interests or Indebtedness, will not be deemed to be Disqualified Equity Interests so long as such Person satisfies its obligations with respect thereto solely by the delivery of Equity Interests that are not Disqualified Equity Interests; *provided, further, however*, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the Issuer to redeem such Equity Interests upon the occurrence of a change in control occurring prior to the final maturity date of the Notes shall not constitute Disqualified Equity Interests if the change in control provisions applicable to such Equity Interests are no more favorable to such holders than the provisions described under the caption **Change of Control** and such Equity Interests specifically provide that the Issuer will not redeem any such Equity Interests pursuant to such provisions prior to the Issuer's purchase of the Notes as required pursuant to the provisions described under the caption **Change of Control**.

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**Equity Interests** of any Person means (1) any and all shares or other equity interests (including common stock, preferred stock, limited liability company interests and partnership interests) in such Person and (2) all rights to purchase warrants or options (whether or not currently exercisable), participations or other equivalents of or interests in (however designated) such shares or other interests in such Person.

**Existing Notes** means the 2017 Convertible Notes and the 2018 Convertible Notes.

**GAAP** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States. For the purposes of calculating the financial tests contained in the Indenture, GAAP shall be applied as such principles and standards are in effect on the Issue Date.

**Guarantee** means the guarantee of the Notes by each Guarantor under the Indenture.

**Guarantor** means each Restricted Subsidiary of the Issuer on the Issue Date and each other Subsidiary that is required to become a Guarantor of the Notes by the terms of the Indenture after the Issue Date, in each case, until such Subsidiary is released from its Guarantee.

**Hedging Obligations** of any Person means the obligations of such Person pursuant to (1) any interest rate swap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in interest rates, (2) agreements or arrangements designed to protect such Person against fluctuations in foreign currency exchange rates in the conduct of its operations or (3) any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices, in each case entered into in the ordinary course of business for bona fide hedging purposes and not for the purpose of speculation.

**Indebtedness** of any Person at any date means, without duplication:

- (1) all liabilities, contingent or otherwise, of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof);
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto);
- (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred by such Person in the ordinary course of business in connection with obtaining goods, materials or services;
- (5) the maximum fixed redemption or repurchase price of all Disqualified Equity Interests of such Person;
- (6) all Capitalized Lease Obligations of such Person;
- (7) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;
- (8) all Indebtedness of others guaranteed by such Person to the extent of such guarantee; provided, however, that Indebtedness of the Issuer or its Subsidiaries that is guaranteed by the Issuer or the Issuer's Subsidiaries shall be counted only once in the calculation of the amount of Indebtedness of the Issuer and its Subsidiaries on a consolidated basis;
- (9) all Attributable Indebtedness;

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(10) to the extent not otherwise included in this definition, Hedging Obligations of such Person;

(11) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person; and

(12) the liquidation value of preferred stock of a Subsidiary of such Person issued and outstanding and held by any Person other than such Person (or one of its Restricted Subsidiaries).

Notwithstanding the foregoing, (a) earn-outs or similar profit sharing arrangements provided for in acquisition agreements which are determined on the basis of future operating earnings or other similar performance criteria (which are not determinable at the time of acquisition) of the acquired assets or entities and (b) accrued expenses, trade payables, customer deposits or deferred income taxes arising in the ordinary course of business shall not be considered Indebtedness. Any Indebtedness which is incurred at a discount to the principal amount at maturity thereof shall be deemed to have been incurred in the amount of the full principal amount at maturity thereof. The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above, the maximum liability of such Person for any such contingent obligations at such date and, in the case of clause (7), the lesser of (a) the fair market value of any asset subject to a Lien securing the Indebtedness of others on the date that the Lien attaches and (b) the amount of the Indebtedness secured. For purposes of clause (5), the maximum fixed redemption or repurchase price of any Disqualified Equity Interests that do not have a fixed redemption or repurchase price shall be calculated in accordance with the terms of such Disqualified Equity Interests as if such Disqualified Equity Interests were redeemed on any date on which an amount of Indebtedness outstanding shall be required to be determined pursuant to the Indenture.

**Independent Director** means a director of the Issuer who:

(1) is independent with respect to the transaction at issue;

(2) does not have any material financial interest in the Issuer or any of its Affiliates (other than as a result of holding securities of the Issuer); and

(3) qualifies as an independent director under the rules of the New York Stock Exchange or any other securities exchange on which a class of the Issuer's capital stock is listed.

**Independent Financial Advisor** means an accounting, appraisal or investment banking firm of nationally recognized standing that is, in the reasonable judgment of the Issuer's board of directors or the executive committee of the board of directors, qualified to perform the task for which it has been engaged and disinterested and independent with respect to the Issuer and its Affiliates; *provided, however*, that the prior rendering of services to the Issuer or an Affiliate of the Issuer shall not, by itself, disqualify the advisor.

**Intangible Assets** means, with respect to any Person, (a) all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, write-ups of assets over their carrying value (other than write-ups which occurred prior to the Issue Date and other than, in connection with the acquisition of an asset, the write-up of the value of such asset (within twelve months of its acquisition) to its fair market value in accordance with GAAP on the date of acquisition) and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

**Investment Grade** shall mean BBB- or higher by S&P and Baa3 or higher by Moody's or the equivalent of such ratings by S&P or Moody's.

**Investments** of any Person means:

(1) all direct or indirect investments by such Person in any other Person in the form of loans, advances or capital contributions or other credit extensions constituting Indebtedness of such other Person, and any guarantee of Indebtedness of any other Person;

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(2) all purchases (or other acquisitions for consideration) by such Person of Indebtedness, Equity Interests or other securities of any other Person;

(3) all other items that would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP; and

(4) the designation of any Subsidiary as an Unrestricted Subsidiary.

Except as otherwise expressly specified in this definition, the amount of any Investment (other than an Investment made in cash) shall be the fair market value thereof on the date such Investment is made. The amount of Investment pursuant to clause (4) shall be the Designation Amount determined in accordance with the covenant described under Certain Covenants Limitations on Designation of Unrestricted Subsidiaries. If the Issuer or any Subsidiary sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Issuer shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the fair market value of the Equity Interests of and all other Investments in such Subsidiary not sold or disposed of, which amount shall be determined by the board of directors, or the executive committee of the board of directors, of the Issuer. Notwithstanding the foregoing, redemptions of Equity Interests of the Issuer shall be deemed not to be Investments.

**Issue Date** means December 1, 2015.

**Joint Venture** means any Person (other than a Subsidiary) engaged in a Permitted Business in which the Issuer or a Guarantor holds any stock, partnership interest, joint venture interest, limited liability company interest or other equity interest.

**Letter of Credit Facilities** means collectively, (i) the Letter of Credit Agreement, dated July 27, 2009, by and between Regions Bank and the Issuer, as amended by First Amendment to Letter of Credit Agreement, dated August 16, 2010, as further amended by Second Amendment to Letter of Credit Agreement, dated August 31, 2011, as further amended by Third Amendment to Letter of Credit Agreement dated August 31, 2012, as further amended by Fourth Amendment to Letter of Credit Agreement dated August 31, 2013, as further amended by Fifth Amendment to Letter of Agreement dated August 31, 2014 and as further amended by Sixth Amendment to Letter of Agreement dated August 31, 2015; (ii) the Sixth Amended and Restated Master Letter of Credit Facility, dated September 30, 2015, by and between U.S. Bank National Association and the Issuer; and (iii) the Continuing Letter of Credit Agreement, dated June 4, 2010, as amended by letter agreement, dated February 28, 2011, as further amended by letter agreement, dated March 19, 2012, as further amended by letter agreement, dated May 30, 2013, as further amended by letter agreement, dated as of May 15, 2014, and as further amended by letter agreement, dated as of May 7, 2015, by and between Wells Fargo Bank, National Association and the Issuer.

**Lien** means, with respect to any asset, any mortgage, deed of trust, lien (statutory or other), pledge, lease, easement, restriction, covenant charge, security interest or other encumbrance of any kind or nature in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, and any lease in the nature thereof, any option or other agreement to sell, and any filing of, or agreement to give, any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction (other than cautionary filings in respect of operating leases).

**Moody's** means Moody's Investors Service, Inc., or any successor to its debt rating business.

**Net Available Proceeds** means, with respect to any Asset Sale, the proceeds thereof in the form of cash or Cash Equivalents, net of:

(1) brokerage commissions and other fees and expenses (including fees and expenses of legal counsel, accountants and investment banks) of such Asset Sale;

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- (2) provisions for taxes payable as a result of such Asset Sale (after taking into account any available tax credits or deductions and any tax sharing arrangements);
- (3) amounts required to be paid to any Person (other than the Issuer or any Restricted Subsidiary) owning a beneficial interest in the assets subject to the Asset Sale or having a Lien thereon;
- (4) payments of unassumed liabilities (not constituting Indebtedness) relating to the assets sold at the time of, or within 30 days after the date of, such Asset Sale; and
- (5) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the Issuer or any Restricted Subsidiary, as the case may be, after such Asset Sale, including pensions and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an officers' certificate delivered to the trustee; provided, however, that any amounts remaining after adjustments, revaluations or liquidations of such reserves shall constitute Net Available Proceeds.

**Non-Recourse Indebtedness** with respect to any Person means Indebtedness of such Person for which (1) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific property identified in the instruments evidencing or securing such Indebtedness and such property was acquired with the proceeds of such Indebtedness or such Indebtedness was incurred within 90 days after the acquisition of such property and (2) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness.

**Pari passu Indebtedness** means any Indebtedness of the Issuer or any Guarantor that is not subordinate as to payment with the Notes or the Guarantees, as applicable.

**Permitted Business** means the businesses engaged in by the Issuer and its Subsidiaries on the Issue Date as described in the Issuer's Annual Report on Form 10-K filed with the SEC for the fiscal year ended December 31, 2014, and businesses that are reasonably related thereto or reasonable extensions thereof.

**Permitted Holders** means Robert H. Schottenstein, his wife, children, and siblings, any corporation, limited liability company or partnership in which he has voting control and is the direct and beneficial owner of a majority of the Equity Interests and any trust for the benefit of him, his wife or children.

**Permitted Investment** means:

- (1) Investments by the Issuer or any Restricted Subsidiary in (a) any Restricted Subsidiary or (b) in any Person that is or will become immediately after such Investment a Restricted Subsidiary or that will merge or consolidate into the Issuer or a Restricted Subsidiary;
- (2) Investments in the Issuer by any Restricted Subsidiary;
- (3) loans and advances to directors, employees and officers of the Issuer and the Restricted Subsidiaries for bona fide business purposes and to purchase Equity Interests of the Issuer not in excess of \$2.0 million at any one time outstanding;
- (4) Hedging Obligations incurred pursuant to clause (4) of the second paragraph under the covenant described under Certain Covenants Limitations on Additional Indebtedness ;
- (5) Cash Equivalents;
- (6) receivables or loans owing to the Issuer or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided however, that such trade terms may include such concessionary trade terms as the Issuer or any such Restricted Subsidiary deems reasonable under the circumstances;

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- (7) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade, creditors or customers;
- (8) Investments made by the Issuer or any Restricted Subsidiary as a result of non-cash consideration (excluding any amounts deemed to be cash) received in connection with an Asset Sale made in compliance with the covenant described under Certain Covenants Limitations on Asset Sales ; lease, utility and other similar deposits in the ordinary course of business;
- (9) lease, utility and other similar deposits in the ordinary course of business;
- (10) Investments made by the Issuer or a Restricted Subsidiary for consideration consisting only of Qualified Equity Interests of the Issuer;
- (11) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or any Restricted Subsidiary or in satisfaction of judgments;
- (12) Investments in existence on the Issue Date;
- (13) Investments made by the Issuer or any Restricted Subsidiary in Unrestricted Subsidiaries or Joint Ventures; *provided, however*, that the aggregate cost for all Investments as determined in accordance with GAAP (excluding, however, the Issuer's or any Restricted Subsidiary's equity in the undistributed earnings or losses in each such Unrestricted Subsidiary or Joint Venture) made subsequent to the Issue Date pursuant to this clause (13) does not exceed fifteen percent (15%) of Consolidated Tangible Assets at any one time outstanding; and provided further, *however*, that no such Investment may be made if it causes or results (singly or with other actions or events) in (i) any violation of any other covenant or condition of the Indenture or (ii) any other Default; and
- (14) other Investments in an aggregate amount not to exceed the greater of (x) \$40.0 million and (y) 5% of Consolidated Tangible Assets at any one time outstanding (with each Investment being valued as of the date made and without regard to subsequent changes in value).

The amount of Investments outstanding at any time pursuant to clause (14) above shall be deemed to be reduced:

- (a) upon the disposition or repayment of or return on any Investment made pursuant to clause (14) above, by an amount equal to the return of capital with respect to such Investment to the Issuer or any Restricted Subsidiary (to the extent not included in the computation of Consolidated Net Income), less the cost of the disposition of such Investment and net of taxes; and
- (b) upon a redesignation of an Unrestricted Subsidiary (other than any Unrestricted Subsidiary that was designated as an Unrestricted Subsidiary on the Issue Date) as a Restricted Subsidiary, by an amount equal to the lesser of (x) the fair market value of the Issuer's proportionate interest in such Subsidiary immediately following such redesignation, and (y) the aggregate amount of Investments in such Subsidiary that increased (and did not previously decrease) the amount of Investments outstanding pursuant to clause (14) above.

**Permitted Liens** means the following types of Liens:

- (1) (a) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen and other Liens imposed by law incurred in the ordinary course of business and (b) Liens for taxes, assessments or governmental charges or claims, in either case, for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;
- (2) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

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- (3) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations, in respect of bankers acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (4) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other assets relating to such letters of credit and products and proceeds thereof;
- (5) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Issuer or any Restricted Subsidiary, including rights of offset and setoff;
- (6) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Issuer or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided, however*, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness which is not owed to that bank;
- (7) leases or subleases (or any Liens related thereto) granted to others that do not materially interfere with the ordinary course of business of the Issuer or any Restricted Subsidiary;
- (8) Liens arising from filing Uniform Commercial Code financing statements regarding leases;
- (9) Liens securing all of the Notes and Liens securing any Guarantee;
- (10) Liens in favor of the Issuer or a Guarantor;
- (11) (i) Liens existing on the Issue Date securing Indebtedness outstanding on the Issue Date and (ii) Liens securing Refinancing Indebtedness to the extent such Refinancing Indebtedness is permitted to be secured pursuant to clause (4) of the definition thereof;
- (12) Liens securing Indebtedness under the Credit Facilities;
- (13) Liens securing Non-Recourse Indebtedness of the Issuer or any Restricted Subsidiary permitted to be incurred under the Indenture; *provided, however*, that such Liens apply only to the property financed out of the net proceeds of such Non-Recourse Indebtedness within 90 days after the incurrence of such Non-Recourse Indebtedness;
- (14) Liens securing Purchase Money Indebtedness, which indebtedness is permitted to be incurred under the Indenture; *provided, however*, that such Liens apply only to the property acquired, constructed or improved with the proceeds of such Purchase Money Indebtedness within 90 days after the incurrence of such Purchase Money Indebtedness;
- (15) Liens securing Acquired Indebtedness permitted to be incurred under the Indenture; *provided, however*, that the Liens do not extend to assets not subject to such Lien at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than those securing such Acquired Indebtedness prior to the incurrence of such Acquired Indebtedness by the Issuer or a Restricted Subsidiary; and provided further, *however*, that the Liens were not incurred in connection with, or in contemplation of the incurrence of such Acquired Indebtedness;
- (16) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with the Issuer or any such Restricted Subsidiary (and not created in anticipation or contemplation thereof);
- (17) Liens to secure Attributable Indebtedness permitted to be incurred under the Indenture; *provided, however*, that any such Lien shall not extend to or cover any assets of the Issuer or any Restricted Subsidiary other than the assets which are the subject of the Sale and Leaseback Transaction in which the Attributable Indebtedness is incurred;



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- (18) attachment or judgment Liens not giving rise to a Default and which are being contested in good faith by appropriate proceedings;
- (19) easements, rights-of-way, restrictions and other similar charges or encumbrances not materially interfering with the ordinary course of business of the Issuer and its Subsidiaries;
- (20) zoning restrictions, licenses, restrictions on the use of real property or minor irregularities in title thereto, which do not materially impair the use of such real property in the ordinary course of business of the Issuer and its Subsidiaries or the value of such real property for the purpose of such business;
- (21) any option, contract or other agreement to sell an asset; *provided, however*, that such sale is not otherwise prohibited under the Indenture;
- (22) Liens on property existing at the time of acquisition thereof by the Issuer or any Subsidiary; provided, however, that such Liens were not entered into in contemplation of such acquisition;
- (23) any interest or title of a lessor under any lease, whether or not characterized as an operating lease or Capitalized Lease Obligation; *provided, however*, that such Liens do not extend to any property or assets which is not leased property subject to such lease;
- (24) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Issuer or any of its Subsidiaries in the ordinary course of business; and
- (25) in addition to Liens allowed pursuant to the other clauses in this definition of Permitted Liens, Liens securing Indebtedness of the Issuer or any Restricted Subsidiary permitted to be incurred under the Indenture (including all Indebtedness permitted to be secured by the other provisions of this definition, but excluding Non-Recourse Indebtedness) in an aggregate principal amount not exceeding 20% of Consolidated Tangible Assets at any one time outstanding (after giving effect to the incurrence of such Indebtedness and the use of the proceeds thereof).

**Permitted Unrestricted Subsidiary Debt** means Indebtedness of an Unrestricted Subsidiary:

- (1) as to which neither the Issuer nor any Restricted Subsidiary (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise, in each case, other than guarantees by the Issuer that are in existence on the Issue Date; and
- (2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action, against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Notes) of the Issuer or any Restricted Subsidiary to declare a default on the other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

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

**Purchase Money Indebtedness** means Indebtedness, including Capitalized Lease Obligations, of the Issuer or any Restricted Subsidiary incurred for the purpose of financing all or any part of the purchase price of property, plant or equipment used in the business of the Issuer or any Restricted Subsidiary or the cost of installation, construction or improvement thereof; provided, however, that (1) the amount of such Indebtedness shall not exceed such purchase price or cost, (2) such Indebtedness shall not be secured by any asset other than the specified asset being financed or, in the case of real property or fixtures, including additions and improvements, the real property to which such asset is attached and (3) such Indebtedness shall be incurred within 90 days before or after such acquisition of such asset by the Issuer or such Restricted Subsidiary or such installation, construction or improvement.

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**Qualified Equity Interests** means Equity Interests of the Issuer other than Disqualified Equity Interests; provided, however, that such Equity Interests shall not be deemed Qualified Equity Interests to the extent sold or owed to a Subsidiary or financed, directly or indirectly, using funds (1) borrowed from the Issuer or any Subsidiary until and to the extent such borrowing is repaid or (2) contributed, extended, guaranteed or advanced by the Issuer or any Subsidiary (including, without limitation, in respect of any employee stock ownership or benefit plan).

**Qualified Equity Offering** means the issuance and sale of Qualified Equity Interests of the Issuer to Persons other than any Permitted Holder or any other Person who is not, prior to such issuance and sale, an Affiliate of the Issuer.

**Rating Agencies** means (1) S&P and (2) Moody's.

**Ratio Exception** has the meaning set forth in the proviso in the first paragraph of the covenant described under **Certain Covenants Limitations on Additional Indebtedness**.

**Refinancing Indebtedness** means Indebtedness of the Issuer or a Restricted Subsidiary issued in exchange for, or the proceeds from the issuance and sale or disbursement of which are used substantially concurrently to redeem, repay or refinance in whole or in part, or constituting an amendment of, any Indebtedness of the Issuer or any Restricted Subsidiary (the **Refinanced Indebtedness**) in a principal amount not in excess of the principal amount of the Refinanced Indebtedness so repaid or amended (*plus* the amount of any premium paid and the amount of reasonable expenses incurred by the Issuer or any Restricted Subsidiary in connection with such repayment or amendment) (or, if such Refinancing Indebtedness refinances Indebtedness under a revolving credit facility or other agreement providing a commitment for subsequent borrowings, with a maximum commitment not to exceed the maximum commitment under such revolving credit facility or other agreement); *provided, however*, that:

(1) if the Refinanced Indebtedness was subordinated to or *pari passu* with the Notes or the Guarantees, as the case may be, then such Refinancing Indebtedness, by its terms, is expressly *pari passu* with (in the case of Refinanced Indebtedness that was *pari passu* with) or subordinate in right of payment to (in the case of Refinanced Indebtedness that was subordinated to) the Notes or the Guarantees, as the case may be, at least to the same extent as the Refinanced Indebtedness;

(2) the Refinancing Indebtedness is scheduled to mature either (a) no earlier than the Refinanced Indebtedness being repaid or amended or (b) six months after the maturity date of the Notes;

(3) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Notes has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Refinanced Indebtedness being repaid, redeemed or refinanced that is scheduled to mature on or prior to the maturity date of the Notes; and

(4) the Refinancing Indebtedness is secured only to the extent, if at all, and by the assets, that the Refinanced Indebtedness being repaid, redeemed, refinanced, extended or amended is secured.

**Registration Rights Agreement** means the registration rights agreement dated as of the Issue Date among the Issuer, the Guarantors and the initial purchasers.

**Restricted Payment** means any of the following:

(1) the declaration or payment of any dividend or any other distribution on Equity Interests of the Issuer or any Restricted Subsidiary or any payment made to the direct or indirect holders (in their capacities as such) of Equity Interests of the Issuer or any Restricted Subsidiary, including, without limitation, any

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payment in connection with any merger or consolidation involving the Issuer, but excluding (a) dividends or distributions payable solely in Qualified Equity Interests and (b) in the case of Restricted Subsidiaries, dividends or distributions payable to the Issuer or to a Restricted Subsidiary and *pro rata* dividends or distributions payable to minority shareholders of any Restricted Subsidiary;

(2) the redemption of any Equity Interests of the Issuer or any Restricted Subsidiary, including, without limitation, any payment in connection with any merger or consolidation involving the Issuer, but excluding any such Equity Interests held by the Issuer or any Restricted Subsidiary;

(3) any Investment other than a Permitted Investment; or

(4) any redemption prior to the scheduled maturity or prior to any scheduled repayment of principal or sinking fund payment, as the case may be, in respect of Subordinated Indebtedness.

For the avoidance of doubt, neither the conversion of the 2017 Convertible Notes and/or the 2018 Convertible Notes into common shares of the Company nor the satisfaction and discharge of the 2018 Senior Notes shall constitute a Restricted Payment.

**Restricted Payments Basket** has the meaning given to such term in the first paragraph of the covenant described under Certain Covenants Limitations on Restricted Payments.

**Restricted Subsidiary** means any Subsidiary of the Issuer, other than an Unrestricted Subsidiary.

**S&P** means Standard & Poor's Rating Group or any successor to its debt rating business.

**Sale and Leaseback Transaction** means, with respect to any Person, an arrangement with any bank, insurance company or other lender or investor or to which such lender or investor is a party, providing for the leasing by such Person of any asset of such Person which has been or is being sold or transferred by such Person to such lender or investor or to any Person to whom funds have been or are to be advanced by such lender or investor on the security of such asset.

**Significant Subsidiary** means (1) any Restricted Subsidiary that would be a significant subsidiary as defined in Regulation S-X promulgated pursuant to the Securities Act as such Regulation is in effect on the Issue Date and (2) any Restricted Subsidiary, not otherwise a Significant Subsidiary pursuant to clause (1) of this definition, that (x) is subject to any event described in clause (7) or (8) under Events of Default that has occurred and is continuing and (y) when aggregated with all other Restricted Subsidiaries that are not otherwise Significant Subsidiaries pursuant to clause (1) of this definition and as to which, at such time, any event described in clause (7) or (8) under Events of Default has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

**Subordinated Indebtedness** means Indebtedness of the Issuer or any Restricted Subsidiary that is subordinated in right of payment to the Notes or the Guarantees, respectively.

**Subsidiary** means, with respect to any Person:

(1) any corporation, limited liability company, association or other business entity (other than a partnership) of which more than 50% of the total voting power of the Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the board of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

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Unless otherwise specified, **Subsidiary** refers to a Subsidiary of the Issuer.

**Treasury Rate** means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source or similar market data)) most nearly equal to the period from the redemption date to January 15, 2018; *provided, however*, that if the period from the redemption date to January 15, 2018, is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to January 15, 2018, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

**Trust Indenture Act** means the Trust Indenture Act of 1939, as amended.

**Unrestricted Subsidiary** means (1) each of M/I Financial, LLC; M/I Title Agency Ltd.; TransOhio Residential Title Agency Ltd.; Washington/Metro Residential Title Agency, LLC; M/I Title, LLC; K-Tampa, LLC; and The M/I Homes Foundation, (2) any Subsidiary that at the time of determination shall be designated an Unrestricted Subsidiary by the board of directors, or the executive committee of the board of directors, of the Issuer in accordance with the covenant described under **Certain Covenants Limitations on Designation of Unrestricted Subsidiaries**, and (3) any Subsidiary of an Unrestricted Subsidiary, unless, in each case, any such Subsidiary is redesignated a Restricted Subsidiary after the Issue Date in accordance with the requirements of the covenant described under **Limitations on Designation of Unrestricted Subsidiaries**.

**Weighted Average Life to Maturity** when applied to any Indebtedness at any date means the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (2) the then outstanding principal amount of such Indebtedness.

**Book-Entry, Delivery and Form of Notes**

The original notes are represented by one or more global notes (the **Global Notes**) in definitive form that were deposited on or about December 1, 2015 with, or on behalf of, DTC and registered in the name of Cede & Co., as nominee of DTC (such nominee being referred to herein as the **Global Note Holder**). The exchange notes will also be issued in the form of one or more Global Notes that will be deposited with, or on behalf of DTC, and registered in the name of DTC or its nominee. DTC will maintain the Notes in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof through its book-entry facilities. Beneficial interests in the Notes will be shown on, and transfers of the Notes will be effected only through, records maintained by DTC and its participants.

DTC has advised the Issuer as follows:

DTC is a limited-purpose trust company that was created to hold securities for its participating organizations, including the Euroclear System and Clearstream Banking, Société Anonyme, Luxembourg (collectively, the **Participants** or the **Depository's Participants**), and to facilitate the clearance and settlement of transactions in these securities between Participants through electronic book-entry changes in accounts of its Participants. The Depository's Participants include securities brokers and dealers (including the initial purchasers), banks and trust companies, clearing corporations and certain other organizations. Access to DTC's system is also available to other entities such as banks, brokers, dealers and trust companies (collectively, the

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Indirect Participants or the Depository's Indirect Participants) that clear through or maintain a custodial relationship with a Participant, either directly or indirectly. Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Depository's Participants or the Depository's Indirect Participants. Pursuant to procedures established by DTC, ownership of the Notes will be shown on, and the transfer of ownership thereof will be effected only through, records maintained by DTC (with respect to the interests of the Depository's Participants) and the records of the Depository's Participants (with respect to the interests of the Depository's Indirect Participants).

The laws of some states require that certain Persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer the Notes will be limited to such extent.

So long as the Global Note Holder is the registered owner of any Notes, the Global Note Holder will be considered the sole holder of outstanding Notes represented by such Global Notes under the Indenture. Except as provided below, owners of Notes will not be entitled to have Notes registered in their names and will not be considered the owners or holders thereof under the Indenture for any purpose, including with respect to the giving of any directions, instructions, or approvals to the trustee thereunder. None of the Issuer, the Guarantors or the trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of Notes by DTC, or for maintaining, supervising or reviewing any records of DTC relating to such Notes.

Payments in respect of the principal, premium, if any, and interest on any Notes registered in the name of a Global Note Holder on the applicable record date will be payable by the trustee to or at the direction of such Global Note Holder in its capacity as the registered holder under the Indenture. Under the terms of the Indenture, the Issuer and the trustee may treat the Persons in whose names any Notes, including the Global Notes, are registered as the owners thereof for the purpose of receiving such payments and for any and all other purposes whatsoever. Consequently, neither the Issuer nor the trustee has or will have any responsibility or liability for the payment of such amounts to beneficial owners of Notes (including principal, premium, if any, and interest). The Issuer believes, however, that it is currently the policy of DTC to immediately credit the accounts of the relevant Participants with such payments, in amounts proportionate to their respective beneficial interests in the relevant security as shown on the records of DTC. Payments by the Depository's Participants and the Depository's Indirect Participants to the beneficial owners of Notes will be governed by standing instructions and customary practice and will be the responsibility of the Depository's Participants or the Depository's Indirect Participants.

If an Event of Default occurs, any Person having a beneficial interest in the Global Notes may, through the Depository's Participants or the Depository's Indirect Participants upon request to the trustee and confirmation of such beneficial interest by the Depository or its Participants or Indirect Participants, exchange such beneficial interest for Notes in definitive form. Upon any such issuance, the trustee is required to register such Notes in the name of, and cause the same to be delivered to, such Person or Persons (or the nominee of any thereof). Such Notes would be issued in fully-registered form and would be subject to applicable legal requirements.

Neither the Issuer nor the trustee will be liable for any delay by the Global Note Holder or DTC in identifying the beneficial owners of Notes, and the Issuer and the trustee may conclusively rely on, and will be protected in relying on, instructions from the Global Note Holder or DTC for all purposes.

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**MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES**

The following discussion is a summary of material U.S. federal income tax consequences relating to the exchange of the original notes for the exchange notes pursuant to the exchange offer and the ownership and disposition of the exchange notes acquired by holders pursuant to the exchange offer.

This summary deals only with original notes and exchange notes that are held as capital assets by a holder who exchanges original notes for exchange notes pursuant to the exchange offer. This discussion does not address all aspects of U.S. federal income taxation that may be relevant to such holders in light of their personal circumstances. This discussion also does not address tax consequences to holders that may be subject to special tax rules, including, without limitation, insurance companies, real estate investment trusts, regulated investment companies, grantor trusts, tax-exempt organizations, partnerships and other pass-through entities, persons holding original notes or exchange notes as part of a hedging, integrated, conversion or constructive sale transaction or a straddle, financial institutions, brokers, dealers in securities or currencies, traders that elect to mark-to-market their securities, persons that acquired original notes in connection with employment or other performance of services, U.S. Holders (as defined below) that have a functional currency other than the U.S. dollar, U.S. expatriates, controlled foreign corporations and passive foreign investment companies. In addition, the discussion does not describe any tax consequences arising out of the tax laws of any state, local or foreign jurisdiction, or any U.S. federal tax considerations other than income taxation (such as estate or gift taxation). Furthermore, the discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended (the Code), and regulations, rulings and judicial decisions thereunder, as of the date hereof, and such authorities may be repealed, revoked or modified, perhaps retroactively. The Company has not sought, and will not seek, any rulings from the Internal Revenue Service (the IRS) regarding the matters discussed below. There can be no assurance that the IRS or a court will not take positions concerning the tax consequences of the exchange of the original notes for the exchange notes and the ownership or disposition of the exchange notes that are different from those discussed below.

As used herein, a U.S. Holder means a beneficial owner of an original note or exchange note that is for U.S. federal income tax purposes: (i) an individual who is a citizen or resident of the United States; (ii) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust (a) the administration of which is subject to the primary supervision of a court within the United States and one or more United States persons as described in Section 7701(a)(30) of the Code have authority to control all substantial decisions of the trust, or (b) that has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

As used herein, a Non-U.S. Holder means a beneficial owner of an original note or exchange note that is, for U.S. federal income tax purposes, an individual, corporation, estate or trust that is not a U.S. Holder.

If any entity or arrangement that is treated as a partnership for U.S. federal income tax purposes is a beneficial owner of original notes or exchange notes, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. Holders that are partnerships (and partners in such partnerships) are urged to consult their own tax advisors regarding the tax consequences of exchanging original notes for exchange notes and of holding or disposing of exchange notes.

**HOLDERS CONSIDERING THE EXCHANGE OF ORIGINAL NOTES FOR EXCHANGE NOTES SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF FEDERAL ESTATE AND GIFT TAX LAWS, FOREIGN, STATE, AND LOCAL LAWS AND TAX TREATIES.**

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### **Exchange Offer**

The exchange of the original notes for the exchange notes pursuant to the exchange offer will not be treated as a taxable event for U.S. federal income tax purposes because the exchange notes will not be considered to differ materially in kind or extent from the original notes. Consequently, a holder will not recognize gain or loss upon receipt of an exchange note in exchange for an original note. The holding period of an exchange note will include the holding period of the original note exchanged for such exchange note, and the initial tax basis of an exchange note will be the same as the adjusted tax basis in the exchanged original note immediately before the exchange.

### **Contingent Payments**

In certain circumstances (see Description of Notes Optional Redemption and Description of Notes Change of Control ), the Company may be obligated to pay amounts on the exchange notes to some or all holders of the exchange notes that are in excess of the interest and principal of the exchange notes. Certain debt instruments that provide for one or more contingent payments are subject to U.S. Treasury regulations governing contingent payment debt instruments. A payment is not treated as a contingent payment under these U.S. Treasury regulations if, as of the issue date of the debt instrument, the likelihood that such payment will be made is remote or such contingency is considered incidental. The Company intends to take the position that the possibility that any such excess payment will be made is remote and/or incidental so that such possibility will not cause the exchange notes to be treated as contingent payment debt instruments. The Company's determination that these contingencies are remote and/or incidental is binding on holders of exchange notes unless a holder discloses its contrary position to the IRS in the manner that is required by applicable U.S. Treasury regulations. The Company's determination is not, however, binding on the IRS. It is possible that the IRS might take a different position from that described above, in which case the timing, character and amount of taxable income in respect of the exchange notes may be materially and adversely different from that described in this section. The remainder of this discussion assumes that the exchange notes are not contingent payment debt instruments.

### **U.S. Holders**

#### ***Taxation of Interest***

Interest on the exchange notes generally will be taxable to a U.S. Holder as ordinary income:

when it accrues, if the U.S. Holder uses the accrual method of accounting for U.S. federal income tax purposes; or

when it is received, if the U.S. Holder uses the cash method of accounting for U.S. federal income tax purposes.

#### ***Market Discount***

If a U.S. Holder purchased an original note (which will be exchanged for an exchange note pursuant to the exchange offer) for an amount that was less than its principal amount, the amount of the difference will be treated as market discount for U.S. federal income tax purposes. Any market discount applicable to an original note will carry over to the exchange note received in exchange for such original note. The amount of any market discount will be treated as de minimis and will be disregarded if it is less than one-quarter of one percent (0.25%) of the principal amount of the original note, multiplied by the number of complete years to maturity at the time that such original note was purchased by the U.S. Holder. The rules described below do not apply to a U.S. Holder who purchased an original note that has de minimis market discount.

Under the market discount rules, a U.S. Holder will be required to treat any principal payment on, or any gain on the sale, exchange, redemption, retirement or other taxable disposition of, an exchange note as ordinary income to the extent of any accrued market discount (on the original note or the exchange note) that has not

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previously been included in income. If a U.S. Holder disposes of an exchange note in an otherwise nontaxable transaction (other than certain specified nonrecognition transactions), the U.S. Holder will be required to include any accrued market discount as ordinary income as if the U.S. Holder had sold the exchange note at its then fair market value. In addition, a U.S. Holder may be required to defer, until the maturity of the exchange note or its earlier disposition in a taxable transaction, the deduction of a portion of the interest expense on any indebtedness incurred or continued to purchase or carry the original note or the exchange note received in exchange for the original note.

Market discount accrues ratably during the period from the date on which a U.S. Holder acquired the original note through the maturity date of the exchange note (for which the original note was exchanged), unless the U.S. Holder makes an irrevocable election to accrue market discount under a constant yield method. A U.S. Holder may elect to include market discount in income currently as it accrues (either ratably or under the constant yield method), in which case the rule described above regarding deferral of interest deductions will not apply. If a U.S. Holder elects to include market discount in income currently, the U.S. Holder's adjusted tax basis in an exchange note will be increased by any market discount included in income. A U.S. Holder's election to include market discount in income currently, once made, will apply to all market discount obligations acquired by the U.S. Holder during or after the first taxable year in which the election is made and may not be revoked without the consent of the IRS. U.S. Holders should consult their own tax advisors before making this election.

***Amortizable Bond Premium***

If a U.S. Holder purchased an original note (which will be exchanged for an exchange note pursuant to the exchange offer) for an amount in excess of its principal amount, the excess will be treated as bond premium. Any bond premium applicable to an original note will carry over to the exchange note received in exchange for such original note. A U.S. Holder generally may elect to amortize bond premium over the remaining term of an exchange note on a constant yield method. In such case, the U.S. Holder will reduce the amount required to be included in income each year with respect to interest on the exchange note by the amount of amortizable bond premium allocable to such year. Because we may call the notes under certain circumstances at a price in excess of their principal amount, the deduction for amortizable bond premium may be reduced or delayed. A U.S. Holder's election to amortize bond premium on a constant yield method, once made, applies to all taxable bonds held or subsequently acquired by the U.S. Holder on or after the first day of the first taxable year for which the election is made and may not be revoked without the consent of the IRS.

If a U.S. Holder elected to amortize bond premium on an original note, such election will carry over to the exchange note received in exchange for such original note. If a U.S. Holder does not make this election, the U.S. Holder will be required to include in gross income the full amount of interest on the exchange note in accordance with the U.S. Holder's regular method of accounting and will include the premium in the tax basis of the exchange note for purposes of computing the amount of any gain or loss recognized on a taxable disposition of the exchange note. U.S. Holders should consult their own tax advisors concerning the computation and amortization of any bond premium on the exchange notes.

***Sale or Other Disposition of Exchange Notes***

Upon the sale, exchange, redemption, retirement or other taxable disposition of an exchange note, a U.S. Holder generally will recognize gain or loss equal to the difference, if any, between:

the amount of cash proceeds and the fair market value of any property received on such disposition (less any amount attributable to accrued and unpaid interest, which generally will be taxable as ordinary income to the extent not previously included in gross income); and

the U.S. Holder's adjusted tax basis in the exchange note.

A U.S. Holder's adjusted tax basis in an exchange note generally will equal the initial tax basis of such exchange note, increased by market discount previously included in gross income and decreased (but not below



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zero) by payments previously received other than stated interest payments and by amortized bond premium. Gain or loss that is recognized on the sale or other disposition of the exchange note generally will be capital gain or loss, and will be long-term capital gain or loss if, at the time of the sale or other disposition, the holding period of the exchange note is more than one year. Non-corporate taxpayers generally are subject to reduced rates of U.S. federal income taxation on net long-term capital gains. The deductibility of capital losses is subject to limitations.

***Information Reporting and Backup Withholding***

Information reporting generally will apply to payments of interest on, and the proceeds of a sale or other disposition (including a retirement or redemption) of, exchange notes held by a U.S. Holder, unless such U.S. Holder is an exempt recipient. Backup withholding generally will apply to such payments unless the U.S. Holder provides the Company or the appropriate intermediary with a correct taxpayer identification number and complies with certain certification procedures, or the U.S. Holder otherwise establishes an exemption from backup withholding. Backup withholding is not an additional tax. A U.S. Holder subject to backup withholding may be allowed a credit in the amount withheld against such U.S. Holder's U.S. federal income tax liability and, if withholding results in an overpayment of tax, such U.S. Holder may be entitled to a refund, provided that the requisite information is properly furnished to the IRS on a timely basis.

***Medicare Tax***

Certain U.S. Holders who are individuals, estates or trusts will be subject to a 3.8% Medicare tax on the lesser of (i) the U.S. Holder's net investment income in the case of an individual, or undistributed net investment income in the case of an estate or trust, in each case for the relevant taxable year and (ii) the excess of the U.S. Holder's modified adjusted gross income in the case of an individual, or adjusted gross income in the case of an estate or trust, in each case for the taxable year, over a certain threshold (which in the case of individuals will be between \$125,000 and \$250,000, depending on the individual's circumstances). A U.S. Holder's net investment income generally will include its interest income and its net gains from the disposition of the exchange notes, unless such interest income or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). If you are a U.S. Holder that is an individual, estate or trust, you are urged to consult your own tax advisor regarding the applicability of the Medicare tax to your income and gains in respect of your investment in the exchange notes.

***Non-U.S. Holders***

***Taxation of Interest***

Subject to the discussion below under the headings Backup Withholding and Information Reporting and Foreign Account Tax Compliance Act, payments of interest on the exchange notes to a Non-U.S. Holder will qualify for the portfolio interest exemption, and thus will be exempt from U.S. federal withholding tax, if the Non-U.S. Holder certifies as to its nonresident status as described below, provided that:

interest paid on the exchange notes is not effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States (see Income or Gains Effectively Connected With a U.S. Trade or Business below);

the Non-U.S. Holder does not actually or constructively own 10% or more of the total combined voting power of all classes of the stock of the Company;

the Non-U.S. Holder is not a controlled foreign corporation with respect to which the Company is a related person within the meaning of the Code; and

the Non-U.S. Holder is not a bank receiving interest on a loan agreement entered into in the ordinary course of its trade or business.

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A Non-U.S. Holder may meet the certification requirement disclosed above by providing an IRS Form W-8BEN or W-8BEN-E, as applicable, or appropriate substitute or successor form to the Company, or the Company's paying agent, certifying, under penalties of perjury, that it is not a U.S. person. If the Non-U.S. Holder holds the exchange note through a financial institution or other agent acting on the Non-U.S. Holder's behalf, the Non-U.S. Holder generally will be required to provide appropriate documentation to the agent. The Non-U.S. Holder's agent generally will then be required to provide appropriate certifications to the Company or the Company's paying agent, either directly or through other intermediaries. Special certification rules apply to foreign estates and trusts and, in certain circumstances, certifications as to foreign status of trust owners or beneficiaries may have to be provided to the Company or the Company's paying agent.

Payments of interest that do not qualify for the portfolio interest exemption as described above, and that are not effectively connected with the conduct of a trade or business in the United States, will be subject to U.S. federal withholding tax at a rate of 30% unless a treaty applies to reduce or eliminate such withholding tax. To claim the benefit provided by an applicable tax treaty, a Non-U.S. Holder generally must provide a properly completed and executed IRS Form W-8BEN or W-8BEN-E, as applicable, to establish its entitlement to the applicable exemption or reduction of the U.S. federal withholding tax under the treaty.

***Sale or Other Disposition of Exchange Notes***

Subject to the discussion below under the headings "Backup Withholding and Information Reporting" and "Foreign Account Tax Compliance Act," Non-U.S. Holders generally will not be subject to U.S. federal income or withholding tax on any gain realized on the sale, exchange, redemption, retirement or other taxable disposition of the exchange notes (other than amounts attributable to accrued and unpaid interest, which will be treated as described above under "Taxation of Interest"), unless:

the gain is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States (and generally, if a treaty applies, the gain is attributable to a United States permanent establishment maintained by such Non-U.S. Holder), in which case such gain will be subject to U.S. federal income tax as described below under "Income or Gains Effectively Connected With a U.S. Trade or Business"; or

the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of the disposition, and certain other conditions are satisfied, in which case any gain (net of certain U.S. source capital losses) will be subject to U.S. federal income tax at a rate of 30% (or a lower applicable treaty rate).

***Income or Gains Effectively Connected With a U.S. Trade or Business***

If any interest on the exchange notes or gain from the sale, exchange or other disposition of the exchange notes is effectively connected with a U.S. trade or business conducted by the Non-U.S. Holder, then the income or gain will be subject to U.S. federal income tax on a net income basis generally in the same manner as a U.S. Holder. If the Non-U.S. Holder is eligible for the benefits of a tax treaty between the United States and the holder's country of residence, any effectively connected income or gain generally will be subject to U.S. federal income tax only if it is also attributable to a permanent establishment or fixed place of business maintained by the holder in the United States.

Payments of interest that are effectively connected with a U.S. trade or business are not subject to the 30% withholding tax. To claim this exemption from withholding, the Non-U.S. Holder must certify its qualification, which may be done by filing IRS Form W-8ECI. If the Non-U.S. Holder is a corporation, that portion of its earnings and profits, subject to adjustments, that is effectively connected with its U.S. trade or business may be subject to a branch profits tax. The branch profits tax rate is generally 30%, although an applicable tax treaty might provide for a lower rate.

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***Backup Withholding and Information Reporting***

In general, no backup withholding will be required with respect to payments received on the exchange notes or proceeds from the sale or other disposition (including retirement or redemption) of the exchange notes received by a Non-U.S. Holder if the Non-U.S. Holder has provided the Company, or the Company's paying agent, with an IRS Form W-8BEN or W-8BEN-E, as applicable (or a suitable substitute or successor form), directly or through an intermediary, or otherwise establishes an exemption, and the Company does not have actual knowledge or reason to know that the holder is a U.S. person. However, interest paid to a Non-U.S. Holder will be subject to information reporting requirements, even if no tax is required to be withheld from such payment. Backup withholding is not an additional tax. A Non-U.S. Holder subject to backup withholding may be allowed a credit in the amount withheld against such Non-U.S. Holder's U.S. federal income tax liability and, if withholding results in an overpayment of tax, such Non-U.S. Holder may be entitled to a refund, provided that the requisite information is furnished to the IRS on a timely basis.

**Foreign Account Tax Compliance Act**

The Foreign Account Tax Compliance Act imposes a U.S. federal withholding tax of 30% on payments of interest on, or the gross proceeds from a disposition of, a debt instrument paid to certain non-U.S. entities, including certain foreign financial institutions and investment funds (including, in some instances, where such an entity is acting as an intermediary), unless such non-U.S. entity complies with certain reporting requirements regarding its U.S. account holders and its U.S. owners. Pursuant to IRS administrative guidance, this withholding tax generally will not apply to payments of gross disposition proceeds until January 1, 2019. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States with respect to these rules may be subject to different rules. Under certain circumstances, a beneficial owner of the exchange notes may be eligible for refund or credit of such taxes. Holders of the exchange notes should consult their own tax advisors regarding the new withholding and reporting provisions.

THE PRECEDING DISCUSSION OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES IS NOT TAX ADVICE. EACH HOLDER SHOULD CONSULT ITS OWN TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF EXCHANGING ORIGINAL NOTES FOR EXCHANGE NOTES AND HOLDING AND DISPOSING OF EXCHANGE NOTES, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

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**PLAN OF DISTRIBUTION**

Each broker-dealer that receives exchange notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for original notes where such original notes were acquired as a result of market-making activities or other trading activities. We have agreed that, for the one-year period following the consummation of the exchange offer, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until the date that is 180 days from the date of the original issuance of the exchange notes, all dealers effecting transactions in the exchange notes may be required to deliver a prospectus.

We will not receive any proceeds from any sale of exchange notes by brokers-dealers. Exchange notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the exchange notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such exchange notes. Any broker-dealer that resells exchange notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such exchange notes may be deemed to be an underwriter within the meaning of the Securities Act, and any profit of any such resale of exchange notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act.

For a period of one year following the consummation of the exchange offer, we will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the letter of transmittal. We have agreed to pay all expenses incident to the exchange offer (including the reasonable fees and disbursements of one counsel for the initial purchasers of the original notes). We also have agreed to indemnify the holders of the notes (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

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**LEGAL MATTERS**

Certain legal matters in connection with the validity of the exchange notes will be passed upon for us by Vorys, Sater, Seymour and Pease LLP, Columbus, Ohio.

**EXPERTS**

The financial statements, and the related financial statement schedules, incorporated in this Prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2014, and the effectiveness of M/I Homes, Inc. and subsidiaries' internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and financial statement schedules have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

This prospectus is part of a registration statement on Form S-4 that we filed with the SEC registering the offering and issuance of the exchange notes. The registration statement, including the exhibits and schedules thereto, contains additional relevant information about us and the exchange notes that, as permitted by the rules and regulations of the SEC, we have not included in this prospectus. A copy of the registration statement can be obtained at the address set forth below. You should read the entire registration statement for further information about us and the exchange notes.

We are subject to the reporting requirements of the Exchange Act and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., in Washington, D.C. 20549. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. The SEC also maintains a website that contains reports, proxy and information statements and other information about issuers, like us, who file electronically with the SEC. The address of the SEC's website is [www.sec.gov](http://www.sec.gov).

In addition, our common shares are listed on the New York Stock Exchange, and similar information concerning us can be inspected and copied at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, NY 10005.

Our website address is [www.mihomes.com](http://www.mihomes.com). We make available, free of charge, on or through our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K that are filed with or furnished to the SEC, and amendments to those reports, as soon as reasonably practicable after we electronically file such reports with, or furnish them to, the SEC. The contents of our website are not part of this prospectus, and the reference to our website does not constitute incorporation by reference in this prospectus of the information contained at that site.

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**INCORPORATION BY REFERENCE**

We are incorporating by reference certain documents in this prospectus, which means that we are disclosing important information to you by referring you to other documents that contain such information. The information incorporated by reference in this prospectus is an important part of this prospectus. We incorporate by reference the following documents that we have previously filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, as filed with the SEC on February 27, 2015;

our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2015, as filed with the SEC on April 24, 2015; June 30, 2015, as filed with the SEC on July 24, 2015; and September 30, 2015, as filed with the SEC on October 23, 2015; and

our Current Reports on Form 8-K filed with the SEC on February 20, 2015, May 7, 2015, June 29, 2015, July 10, 2015, August 31, 2015, October 28, 2015, November 23, 2015 (two reports) and December 2, 2015.

We are also incorporating by reference in this prospectus all other documents (other than information furnished on Current Reports on Form 8-K under Item 2.02 or 7.01 and exhibits filed with such reports that are related to such items) that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (1) on or after the date of the initial registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement and (2) on or after the date of this prospectus and prior to the termination or completion of the offering of exchange notes under this prospectus.

Any statements contained in this prospectus or in a document incorporated by reference in this prospectus will be deemed to be modified or superseded to the extent that a statement contained in this prospectus or any subsequently filed document that is deemed to be incorporated by reference in this prospectus modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon written or oral request, a copy of any or all documents incorporated by reference in this prospectus (including exhibits specifically incorporated by reference in those documents). Written or telephone requests should be directed to:

M/I Homes, Inc.

3 Easton Oval, Suite 500

Columbus, Ohio 43219

Attention: J. Thomas Mason, Chief Legal Officer

(614) 418-8000

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**\$300,000,000**

**M/I Homes, Inc.**

**Offer to exchange**

**any and all outstanding 6.75% Senior Notes due 2021**

**for**

**an equal principal amount of 6.75% Senior Notes due 2021 which have been registered**

**under the Securities Act of 1933, as amended**

**PROSPECTUS**

**January 25, 2016**