

NCI BUILDING SYSTEMS INC

Form S-4/A

October 13, 2009

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As filed with the Securities and Exchange Commission on October 13, 2009

Registration No. 333-161842

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Amendment No. 3  
to  
Form S-4  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**NCI BUILDING SYSTEMS, INC.**  
*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**  
*(State or Other Jurisdiction of  
Incorporation or Organization)*

**3448**  
*(Primary Standard Industrial  
Classification Code Number)*

**76-0127701**  
*(I.R.S. Employer  
Identification No.)*

**10943 North Sam Houston Parkway West  
Houston, Texas 77064  
(281) 897-7788**  
*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive  
Offices)*

**Todd R. Moore**  
**Executive Vice President, General Counsel and Secretary**  
**10943 North Sam Houston Parkway West  
Houston, Texas 77064  
(281) 897-7788**  
*(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)*

***Copies to:***

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New York, New York 10022  
(212) 446-4800**

**Approximate date of commencement of proposed sale to the public:** September 10, 2009

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company   
(Do not check if a smaller reporting company)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this prospectus/disclosure statement may change. We may not complete the exchange offer and issue these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus/disclosure statement is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO AMENDMENT, DATED OCTOBER 13, 2009**

**PRELIMINARY PROSPECTUS/DISCLOSURE STATEMENT**

**Offer to Exchange  
Cash and Shares of Common Stock  
for  
2.125% Convertible Senior Subordinated Notes due  
2024  
(CUSIP No. 628852AG0)**

**Disclosure Statement  
for  
Solicitation of Acceptances of  
Prepackaged Plan of Reorganization**

**THIS EXCHANGE OFFER AND THE SOLICITATION PERIOD FOR THE PREPACKAGED PLAN WILL EXPIRE AT 11:59 P.M., NEW YORK CITY TIME, ON OCTOBER 19, 2009, UNLESS EXTENDED OR EARLIER TERMINATED BY US. AS OF THE DATE OF THIS PROSPECTUS/DISCLOSURE STATEMENT, WE HAVE NO INTENTION OF EXTENDING SUCH DATE.**

NCI Building Systems, Inc. is proposing a financial restructuring to address an immediate need for liquidity in light of a potentially imminent default under, and acceleration of, our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to a default under, and acceleration of, our other indebtedness, including the \$180.0 million in principal amount of 2.125% Convertible Senior Subordinated Notes due 2024, which we refer to as the convertible notes), and the high likelihood that we will be required to repurchase the convertible notes on November 15, 2009, the first scheduled mandatory repurchase date under the convertible notes indenture. We are proposing to effect the financial restructuring through one of the following two approaches:

an out-of-court financial restructuring, which we refer to as the recapitalization plan, consisting of:

this exchange offer to acquire any and all of the convertible notes for cash and shares of our common stock, par value \$0.01 per share, in accordance with the terms and subject to the conditions set forth in this prospectus/disclosure statement and in the related letter of transmittal;

a \$250.0 million investment, which we refer to as the CD&R investment, by Clayton, Dubilier & Rice Fund VIII, L.P., which we refer to as the CD&R Fund, a fund managed by Clayton, Dubilier & Rice, Inc., which we refer to as CD&R, a leading private equity investment firm, involving a private placement to the CD&R Fund of a newly created series of our preferred stock, par value \$1.00 per share, to be designated as the Series B Cumulative Convertible Participating Preferred Stock, which we refer to as the Series B convertible preferred stock;

the refinancing of our existing credit facility, which we refer to as the term loan refinancing, under which we and the lenders under our existing credit agreement will enter into an amendment to our existing credit agreement, providing for, among other things, the repayment of approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding under our existing credit facility and a modification of the terms and maturity of the \$150.0 million balance; and

the ABL financing, pursuant to which we will enter into an agreement for a \$125.0 million asset-based loan facility;

**OR, IN THE ALTERNATIVE  
(if conditions to completion of the recapitalization plan are not satisfied or waived)**

an in-court financial restructuring, through which we would seek to accomplish the results contemplated by the recapitalization plan through the effectiveness of a prepackaged plan of reorganization, which we refer to as the prepackaged plan, acceptances for which we are soliciting in compliance with chapter 11 of title 11 of the United States Code, which we refer to as the Bankruptcy Code, pursuant to this prospectus/disclosure statement.

We refer to the financial restructuring, whether accomplished through the recapitalization plan or the prepackaged plan, as the restructuring. For a description of this exchange offer and the procedures for tendering convertible notes, see The Exchange Offer. For a description of the prepackaged plan and the procedures for submitting ballots, see The Prepackaged Plan.

We have entered into lock-up and voting agreements, each of which we refer to as a lock-up agreement and which collectively we refer to as the lock-up agreements, with the holders of convertible notes and holders of obligations under our existing credit agreement, pursuant to which such holders have agreed, in accordance with the terms of the applicable lock-up agreement, (1) to the extent that they hold convertible notes, to tender their convertible notes in this exchange offer; (2) to the extent that they hold obligations under our existing credit agreement, to support the term loan refinancing by accepting their portion of the repayment contemplated thereby and by executing an amendment to our existing credit agreement substantially in the form attached as Annex J after giving effect to the matters set forth in Annex K; and (3) to vote all of their convertible notes and obligations under our existing credit facility in favor of the prepackaged plan, among other things. Including the holders that are subject to a lock-up agreement, we have commitments from holders of convertible notes holding more than 79% of the aggregate principal amount of the outstanding convertible notes, and commitments or confirmation of intent from lenders under our existing credit agreement holding more than two thirds of the outstanding principal amount of the obligations under existing credit agreement, to support the restructuring and vote their convertible notes and/or obligations in favor of the prepackaged plan.

Holders of convertible notes will receive \$500 in cash and 390 shares of common stock for each \$1,000 principal amount of convertible notes and related accrued interest that we accept in the exchange offer. In the alternative, under the prepackaged plan, holders of convertible notes will receive the same consideration for each \$1,000 principal amount of convertible notes and related accrued interest. The closing of this exchange offer is conditioned upon, among other things, at least 95% of the aggregate principal amount of outstanding convertible notes being validly tendered and not withdrawn, which we refer to as the minimum tender condition, the receipt of proceeds from the CD&R investment (which is itself subject to several conditions, including the consummation of the term loan refinancing and the ABL financing and the expiration or termination of any waiting period required to consummate the CD&R investment under the Austrian Cartel Act of 2005, which we refer to as the Austrian Act) and the effectiveness of the registration statement of which this prospectus/disclosure statement forms a part. See The Exchange Offer Conditions to Completion of the Exchange Offer.

The shares of common stock to be issued pursuant to this exchange offer, or in the alternative, pursuant to the prepackaged plan, have been authorized to be listed on the New York Stock Exchange, which we refer to as the

NYSE, subject to official notice of issuance. Our common stock is traded on the NYSE under the symbol NCS. We will not receive any proceeds from this exchange offer. See Source and Use of Proceeds.

*We urge you to carefully read the Risk Factors section beginning on page 28 before you make any decision regarding this exchange offer or the prepackaged plan.*

**NONE OF THIS EXCHANGE OFFER, THE PREPACKAGED PLAN NOR THE SHARES OF COMMON STOCK OFFERED HEREBY HAVE BEEN APPROVED OR DISAPPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY BANKRUPTCY COURT, NOR HAS THE SEC, ANY STATE SECURITIES COMMISSION OR ANY BANKRUPTCY COURT PASSED UPON THE ACCURACY, COMPLETENESS OR ADEQUACY OF THIS PROSPECTUS/DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE IN THE UNITED STATES.**

*The Dealer-Manager for the Exchange Offer is:*

**Greenhill & Co., LLC**

October 13, 2009

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**NONE OF NCI BUILDING SYSTEMS, INC., THE CD&R FUND, CD&R, GREENHILL & CO., LLC (THE DEALER-MANAGER), MORROW & CO., LLC (THE INFORMATION AGENT), COMPUTERSHARE TRUST COMPANY, N.A. (THE EXCHANGE AGENT), FINANCIAL BALLOTING GROUP LLC (THE VOTING AGENT) OR ANY OF THEIR RESPECTIVE AFFILIATES IS MAKING ANY RECOMMENDATION AS TO WHETHER YOU SHOULD TENDER YOUR CONVERTIBLE NOTES IN THE EXCHANGE OFFER OR VOTE TO ACCEPT OR REJECT THE PREPACKAGED PLAN. YOU MUST MAKE YOUR OWN DECISION WHETHER TO TENDER CONVERTIBLE NOTES IN THE EXCHANGE OFFER AND WHETHER TO VOTE TO ACCEPT OR REJECT THE PREPACKAGED PLAN.**

**This prospectus/disclosure statement incorporates important business and financial information about us from documents that we have filed with the SEC but have not been included in, or delivered with, this prospectus/disclosure statement. For a listing of the documents that we have incorporated by reference into this prospectus/disclosure statement, see Incorporation of Certain Documents by Reference. This information is available without charge upon written or oral request to NCI Building Systems, Inc., 10943 North Sam Houston Parkway West, Houston, Texas 77064, Attn: Investor Relations Department, or made by telephone at (281) 897-7788. To obtain timely delivery, holders of convertible notes must request the information no later than the fifth business day prior to the expiration date of the exchange offer.**

**We have not authorized any person to provide any information or to make any representation in connection with the exchange offer or the prepackaged plan other than the information contained or incorporated by reference in this prospectus/disclosure statement or the accompanying letter of transmittal or ballot, and if any person provides any of this information or makes any representation of this kind, that information or representation must not be relied upon as having been authorized by us.**

**The Company is not aware of any jurisdiction in which the making of the exchange offer or the tender of convertible notes in connection therewith would not be in compliance with the laws of such jurisdiction. If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered by this prospectus/disclosure statement are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer and solicitation presented in this document does not extend to you. In those jurisdictions where the securities, blue sky or other laws require this exchange offer, or the solicitation of acceptances to the prepackaged plan, to be made by a licensed broker or dealer and the dealer-manager or any of its affiliates is such a licensed broker or dealer in such jurisdictions, this exchange offer, or the solicitation of acceptances to the prepackaged plan, shall be deemed to be made by the dealer-manager or such affiliate (as the case may be) on our behalf in such jurisdictions. The exchange offer and solicitation of acceptances of the prepackaged plan are being made on the basis of this prospectus/disclosure statement and the accompanying letter of transmittal or ballot and are subject to the terms and conditions described herein. Any decision to participate in the exchange offer or to vote on the prepackaged plan must be based on the information contained in this prospectus/disclosure statement, the accompanying letter of transmittal or the ballot, or specifically incorporated by reference herein. In making an investment decision, prospective investors must rely on their own examination of us and the terms of the restructuring and the new securities, including the merits and risks involved. Prospective investors should not construe anything in this prospectus/disclosure statement as legal, business or tax advice. Each prospective investor should consult its advisors as needed to make its investment decision and to determine whether it is legally permitted to participate in the exchange offer or to vote on the prepackaged plan under applicable legal investment or similar laws or regulations.**

**Each prospective investor must comply with all applicable laws and regulations in force in any jurisdiction in which it participates in this exchange offer or in the solicitation for acceptances to the prepackaged plan, or in**

**which it possesses or distributes this prospectus/disclosure statement, and must obtain any consent, approval or permission required by it for participation in this exchange offer or in the solicitation for acceptances to the prepackaged plan, under the laws and regulations in force in any jurisdiction to which it is subject, and none of us, the dealer-manager, the information agent, the exchange agent, the voting agent, CD&R, the CD&R Fund or any of our or their respective representatives shall have any responsibility therefor.**

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Neither CD&R nor the CD&R Fund is making this exchange offer or soliciting votes for the prepackaged plan, and none of CD&R, the CD&R Fund, any of their respective affiliates or any of their, or their respective affiliates representatives is responsible for the accuracy of any information in this prospectus/disclosure statement.

The information contained in this prospectus/disclosure statement is as of the date of this prospectus/disclosure statement only and is subject to change or amendment without notice. Neither the delivery of this prospectus/disclosure statement, nor any sale made hereunder, shall under any circumstances create any implication that there has been no change in our affairs since the date on the front cover of this prospectus/disclosure statement or that the information incorporated by reference herein is correct as of any time subsequent to the date of such information.

This prospectus/disclosure statement contains summaries believed to be accurate and materially complete with respect to certain documents, but reference is made to the actual documents for complete information. Copies of documents referred to herein will be made available to prospective investors upon request to the information agent or the voting agent.

In this prospectus/disclosure statement and in the documents incorporated by reference herein, we rely on and refer to information and statistics regarding our industry. We obtained this market data from independent industry publications or other publicly available information. Although we believe that these sources are reliable, we and the dealer-manager have not independently verified the accuracy and completeness of this information and the estimated information and statistics contained in such publications or publicly available information are inherently uncertain, involve risks and uncertainties and are subject to change based on various factors, including those discussed in Risk Factors.

All references to NCI refer to NCI Building Systems, Inc. only and all references to we, our, ours, us, the Company and similar terms are to NCI Building Systems, Inc., and its subsidiaries, unless the context otherwise requires.

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**QUESTIONS AND ANSWERS ABOUT THE RESTRUCTURING**

*The following are some questions and answers regarding the restructuring, including the recapitalization plan (which includes this exchange offer) and the prepackaged plan. It does not contain all of the information that may be important to you. You should carefully read this prospectus/disclosure statement, including the information incorporated by reference into this prospectus/disclosure statement, to understand fully the terms of the restructuring, the recapitalization plan (which includes this exchange offer) and the prepackaged plan, as well as the other considerations that are important to you in making your investment decision. You should pay special attention to the Risk Factors beginning on page 28 and Cautionary Statement Regarding Forward-Looking Statements beginning on page 52.*

**General**

**Q: What is the purpose of the restructuring?**

A: The purpose of the restructuring is to address the Company's immediate need for liquidity in light of a potentially imminent default under, and acceleration of, our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to a default under, and acceleration of, our other indebtedness, including the convertible notes indenture), and the high likelihood that we will be required to repurchase the convertible notes on November 15, 2009, the first scheduled mandatory repurchase date under the convertible notes indenture.

The restructuring consists of four related transactions:

the CD&R investment, which involves the sale and issuance to the CD&R Fund of 250,000 shares of Series B convertible preferred stock for \$250.0 million;

the retirement of the convertible notes;

the term loan refinancing, which involves the refinancing of our existing credit facility under which we will repay approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding under our existing credit facility and enter into an amendment to our existing credit agreement providing for a modification of the terms and maturity of the \$150.0 million balance; and

the ABL financing, which involves our entry into a \$125.0 million asset-based loan facility.

Each of the transactions comprising the restructuring may be accomplished through either the out-of-court recapitalization plan or, in the alternative, the in-court prepackaged plan. If the restructuring is being accomplished through the recapitalization plan, the retirement of the convertible notes tendered in the exchange offer would be accomplished through this exchange offer and the refinancing of our existing credit facility would be accomplished through an amendment to our existing credit agreement. In the alternative, if the restructuring is being accomplished through the prepackaged plan, the retirement of the convertible notes as well as the refinancing of our existing credit facility would be accomplished through the effectiveness of the prepackaged plan. See The Restructuring.

The closing of the exchange offer is conditioned on the satisfaction or, with the consent of the CD&R Fund, waiver of the minimum tender condition, which requires that at least 95% of the aggregate principal amount of outstanding

convertible notes are validly tendered and not withdrawn in this exchange offer. If the restructuring is accomplished through the recapitalization plan, we intend, but are not required, to retire any remaining convertible notes outstanding after the consummation of this exchange offer by exercising our redemption right under the convertible notes indenture on or after November 20, 2009; if we do not so exercise our redemption right, such remaining convertible notes will otherwise be retired pursuant to the terms of the convertible notes indenture.

For a more detailed description of this exchange offer, see The Exchange Offer.

**Q: What is the recapitalization plan?**

A: The recapitalization plan is one method to accomplish the restructuring. Under the recapitalization plan:



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the CD&R investment would be effected through a private placement transaction;

the retirement of the convertible notes tendered in this exchange offer would be effected through this exchange offer, pursuant to which the Company is offering to acquire any and all of its outstanding convertible notes in exchange for cash and shares of common stock;

the term loan refinancing would be effected through an amendment to our existing credit agreement by us and the lenders under our existing credit agreement; and

the ABL financing would be effected through our entry into the ABL agreement.

If the restructuring is accomplished through the recapitalization plan, we intend, but are not required, to retire any remaining convertible notes outstanding after the consummation of this exchange offer by exercising our redemption right under the convertible notes indenture on or after November 20, 2009; if we do not so exercise our redemption right, such remaining convertible notes will otherwise be retired pursuant to the terms of the convertible notes indenture.

See The Restructuring and The Exchange Offer.

**Q: What is the prepackaged plan?**

A: The prepackaged plan is an alternative to the recapitalization plan for accomplishing the restructuring. In the event that the conditions to the recapitalization plan are not satisfied or, with the prior consent of the CD&R Fund, waived (including, for example, the minimum tender condition) but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired class of claims, as an alternative to the recapitalization plan, we may elect and, under the terms of the investment agreement, we may be required, to seek confirmation of the prepackaged plan in a chapter 11 proceeding. See The Restructuring Description of the CD&R Investment The Investment Agreement Commencement of a Reorganization Case in Connection with the Prepackaged Plan Covenant.

Under the prepackaged plan, holders of convertible notes and the lenders under our existing credit agreement (as well as the holders of all other claims and interests) would receive the same treatment with respect to their claims (and interests) as they would receive in the recapitalization plan, the CD&R Fund would receive the same 250,000 shares of Series B convertible preferred stock contemplated by the CD&R investment and the Company would enter into the ABL agreement. Existing holders of our common stock would continue to hold such common stock.

See The Prepackaged Plan.

**Q: In what circumstances will we file the prepackaged plan instead of close the exchange offer?**

A: We will file the prepackaged plan instead of close the exchange offer if: (1) we are unable to complete the recapitalization plan because the minimum tender condition is not satisfied or waived (which minimum tender condition requires that at least 95% of the aggregate principal amount of outstanding convertible notes are validly tendered and not withdrawn), or because less than all of the lenders under our existing credit facility consent to entering into the amended credit agreement, but (2) holders of convertible notes or obligations under our credit

agreement holding, in either case, at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in the applicable class who actually cast ballots vote to accept the prepackaged plan. In such circumstances, we will seek to accomplish the restructuring, on the same economic terms as the recapitalization plan, by way of the prepackaged plan. See Questions and Answers About the Restructuring What is the Prepackaged Plan? and Summary The Prepackaged Plan.

For the prepackaged plan to be confirmed by the bankruptcy court without invoking the cram-down provisions of the Bankruptcy Code, each class of claims or interests that is impaired must vote to accept the prepackaged plan. An impaired class of claims is deemed to accept a plan of reorganization if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in such class who actually cast ballots vote to accept the prepackaged plan.

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Pursuant to the lock-up agreements, each holder of convertible notes and obligations under our credit agreement that executed a lock-up agreement has irrevocably agreed, in accordance with the terms of the applicable lock-up agreement, to vote all of its convertible notes and obligations under our existing credit facility in favor of the prepackaged plan. Such holders who are parties to the lock-up agreements represent more than 79% of the aggregate principal amount of the outstanding convertible notes. We have entered into lock-up agreements with the holders of convertible notes and holders of obligations under our existing credit agreement, pursuant to which such holders have agreed, in accordance with the terms of the applicable lock-up agreement, (1) to the extent that they hold convertible notes, to tender their convertible notes in this exchange offer; (2) to the extent that they hold obligations under our existing credit agreement, to support the term loan refinancing by accepting their portion of the repayment contemplated thereby and by executing an amendment to our existing credit agreement substantially in the form attached as Annex J after giving effect to the matters set forth in Annex K; and (3) to vote all of their convertible notes and obligations under our existing credit facility in favor of the prepackaged plan, among other things. Including the holders that are subject to a lock-up agreement, we have commitments from holders of convertible notes holding more than 79% of the aggregate principal amount of the outstanding convertible notes, and commitments or confirmation of intent from lenders under our existing credit agreement holding more than two-thirds (2/3) of the outstanding principal amount of the obligations under existing credit agreement, to support the restructuring and vote their convertible notes and/or obligations in favor of the prepackaged plan. See [The Restructuring The Lock-Up Agreements](#). If such holders also represent more than one-half (1/2) of the number of the claims in the applicable class who actually cast ballots (which cannot be determined until all ballots have been cast), then we will have received sufficient votes from the convertible noteholders to approve the prepackaged plan with respect to the impaired class of convertible notes claims.

The confirmation and effectiveness of the prepackaged plan are subject to certain conditions that may not be satisfied and are different from those under the recapitalization plan (including the exchange offer). We cannot assure you that all requirements for confirmation and effectiveness of the prepackaged plan will be satisfied or that the bankruptcy court will conclude that the requirements for confirmation and effectiveness of the prepackaged plan have been satisfied. See [The Prepackaged Plan Confirmation of the Prepackaged Plan](#) and [The Prepackaged Plan Conditions to Effective Date of the Prepackaged Plan](#).

The effective date of the prepackaged plan will not occur until the conditions set forth below have been satisfied or waived: (1) the confirmation order has been entered and no stay of such order is in effect; (2) the receipt of proceeds from the CD&R investment; (3) the consummation of the term loan refinancing; and (4) the consummation of the ABL financing. See [The Prepackaged Plan Conditions to the Effective Date of the Prepackaged Plan](#).

**Q: What are the expected results of the restructuring, either accomplished through the recapitalization plan or the prepackaged plan?**

A: The restructuring, if successful, will increase the Company's capital and liquidity levels and reduce the amount of our outstanding debt. Specifically, upon the completion of the restructuring, we expect our indebtedness to be reduced from approximately \$473.7 million as of August 2, 2009 to approximately \$150.4 million at the closing of the restructuring, consisting of \$150.0 million in principal amount of term loans under the amended credit agreement and \$0.4 million of our industrial revenue bond. See [Capitalization](#) and [Source and Use of Proceeds](#).

The ABL financing contemplated by the restructuring will provide us with up to \$125.0 million in liquidity, subject to availability under a borrowing base, for working capital purposes and future expansion. Based on its discussions with prospective lenders under the ABL agreement, the Company expects that because of borrowing base constraints, initial availability under the ABL agreement will be substantially less than the \$125.0 million

commitment, and may be as low as \$45.0 million. We have been in discussions with prospective lenders regarding the terms of the ABL agreement to give effect to the ABL financing and the Company has finalized with such prospective lenders the form of ABL agreement attached hereto as Annex Q and confirmed participation from such prospective lenders for the full availability under such facility. While the form of ABL agreement attached hereto as Annex Q has been agreed to in principle with such

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prospective lenders, and the Company has been informed that the prospective lenders have indicated their willingness to enter into the form of ABL agreement attached hereto as Annex Q in connection with the consummation of the CD&R investment, no loan commitment letter from any such prospective lender has been received by the Company.

Assuming we are able to complete the restructuring, we expect that, for the foreseeable future, cash generated from operations, together with the proceeds of the ABL financing, will be sufficient to allow us to fund our operations, to increase working capital as necessary to support our strategy and to fund planned capital expenditures and expansions (including approximately \$5 million expected for the remainder of fiscal 2009).

**Q: What are the lock-up agreements?**

A: We have entered into lock-up agreements with the holders of convertible notes and holders of obligations under our existing credit agreement, pursuant to which such holders have agreed, in accordance with the terms of the applicable lock-up agreement, (1) to the extent that they hold convertible notes, to tender their convertible notes in this exchange offer; (2) to the extent that they hold obligations under our existing credit agreement, to support the term loan refinancing by accepting their portion of the repayment contemplated thereby and by executing an amendment to our existing credit agreement substantially in the form attached as Annex J after giving effect to the matters set forth in Annex K; and (3) to vote all of their convertible notes and obligations under our existing credit facility in favor of the prepackaged plan, among other things. Including the holders that are subject to a lock-up agreement, we have commitments from holders of convertible notes holding more than 79% of the aggregate principal amount of the outstanding convertible notes, and commitments or confirmation of intent from lenders under our existing credit agreement holding more than two-thirds (2/3) of the outstanding principal amount of the obligations under existing credit agreement, to support the restructuring and vote their convertible notes and/or obligations in favor of the prepackaged plan. See The Restructuring The Lock-Up Agreements.

**Q: Why is it important that I tender my convertible notes and vote to accept the prepackaged plan?**

A: If we do not complete the restructuring either through the recapitalization plan or the prepackaged plan, because the conditions to the recapitalization plan and the prepackaged plan have not been satisfied or waived or otherwise, we will face an immediate liquidity crisis. If we do not complete the restructuring, we do not expect, and we cannot assure you, that we will have, or have access to, sufficient liquidity (1) to meet our debt repayment/repurchase obligations, including any potential acceleration of our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to a default under, and acceleration of, our other indebtedness, including the convertible notes indentures) and (2) to meet our obligation to repurchase the convertible notes at the option of the holders thereof on November 15, 2009, the next scheduled repurchase date.

Due to our non-compliance as of August 2, 2009 with the required leverage, senior leverage and interest coverage ratios in our existing credit agreement, our outstanding indebtedness of approximately \$293.3 million thereunder may be declared immediately due and payable as early as November 6, 2009, the date the current waiver from the lenders under our existing credit agreement expires. In the event that we do not repay such borrowings upon acceleration, the lenders under our existing credit agreement could exercise their remedies as secured creditors with respect to the collateral securing such borrowings. A failure to pay or refinance such borrowings will also result in a default under the convertible notes indenture, which convertible notes could also then be declared immediately due and payable, and under our swap agreement, which could then be terminated by the counterparty thereto. If all such indebtedness, which totaled approximately \$473.7 million as of August 2, 2009 and such amounts payable pursuant to the termination of the swap agreement were to become due and payable on November 6, 2009, it would result in a material adverse effect on our financial condition, operations and debt service capabilities. As of August 2, 2009, excluding restricted cash, we had a current cash balance of

approximately \$105.4 million to address our liquidity needs. For a description of our non-compliance with the financial ratio covenants under our existing credit agreement, see our quarterly report on Form 10-Q for the quarter ended August 2, 2009, our current reports on Form 8-K filed on May 21, 2009, July 15, 2009 and August 27, 2009 and Incorporation of Certain Documents by Reference.

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In the event that we experience a liquidity crisis as described above, it could likely result in our filing for bankruptcy protection pursuant to the Bankruptcy Code on terms other than as contemplated by the prepackaged plan. If we commence such a bankruptcy filing, holders of convertible notes may receive consideration that is substantially less than what is being offered under the restructuring. See Risk Factors Risk Relating to NOT Accepting the Exchange Offer or Rejecting the Prepackaged Plan for more information on the possible consequences if the restructuring is not successfully completed.

Both this exchange offer and the prepackaged plan are subject to certain conditions. In particular, this exchange offer is subject to the satisfaction of the minimum tender condition that at least 95% of the aggregate principal amount of the outstanding convertible notes must have been validly tendered and not withdrawn in this exchange offer, and confirmation and effectiveness of the prepackaged plan requires the receipt of acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes.

**Accordingly, it is important that you tender your convertible notes for exchange in this exchange offer and vote to accept the prepackaged plan to avoid the adverse consequences described above.**

**This Exchange Offer**

**Q: Who is making this exchange offer?**

A: NCI Building Systems, Inc. (the issuer of the convertible notes) is making this exchange offer.

**Q: What amount of convertible notes are you seeking in this exchange offer?**

A: We are seeking to acquire any and all outstanding convertible notes.

**Q: What will I receive in this exchange offer if I tender my convertible notes and they are accepted?**

A: For each \$1,000 principal amount of convertible notes that you tender and not withdraw in this exchange offer and that we accept, you will, upon the terms and subject to the conditions set forth in this prospectus/disclosure statement and the letter of transmittal, receive \$500 in cash and 390 shares of common stock. The cash payment and the shares of common stock to be issued pursuant to this exchange offer will be in full satisfaction of the principal amount of, and any accrued but unpaid interest through the consummation of this exchange offer on, the convertible notes so tendered and accepted.

Assuming that all Series B convertible preferred stock were converted to common stock and an equity value based on the midpoint enterprise valuation of the Company of \$450 million, the cash and stock consideration offered in this exchange offer represents value of approximately \$987.50 per \$1,000 in principal amount of convertible notes.

**Q: Who may participate in this exchange offer?**

A: All holders of convertible notes may participate in this exchange offer.

**Q: Does the success of this exchange offer depend on the participation of any minimum number of holders of convertible notes?**

A: Yes. This exchange offer is subject to the satisfaction of the minimum tender condition, which means that at least 95% of the aggregate principal amount of the outstanding convertible notes must have been validly tendered and not withdrawn in this exchange offer. The satisfaction of the minimum tender condition is a condition to the closing of the CD&R investment and the term loan refinancing under the recapitalization plan. If this condition is not met, subject to applicable laws and our obligation under the investment agreement, we may amend this exchange offer. Under the investment agreement, however, we are prohibited from waiving any condition to this exchange offer or making any changes to the terms and conditions to this exchange offer without the prior consent of the CD&R Fund. In addition, any change to the minimum tender condition could result in a termination of the lock-up agreements.



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We may extend this exchange offer beyond the initial expiration date without the prior consent of the CD&R Fund for a period of not more than 10 business days if, at such date, any of the conditions to this exchange offer have not been satisfied or, with the prior written consent of the CD&R Fund, waived, and, subject to the termination of the investment agreement, we are required to extend this exchange offer if it expires before the registration statement of which this prospectus/disclosure statement forms a part is declared effective.

**Q: How do I tender my convertible notes in this exchange offer?**

A: Please follow the procedures for tendering your convertible notes in this exchange offer described in *The Exchange Offer Procedures for Tendering Convertible Notes*. For further information contact the information agent or the dealer-manager at the addresses or telephone numbers on the back cover of this prospectus/disclosure statement or consult your broker, dealer, commercial bank, trust company or other nominee for assistance.

**Q: How long will this exchange offer remain open?**

A: This exchange offer and the withdrawal rights will expire at 11:59 p.m., New York City time, on October 19, 2009, or any subsequent time or date to which this exchange offer is extended.

As more fully described below, we may extend the expiration date or amend any of the terms or conditions of this exchange offer for any reason, subject to applicable laws and our obligations under the investment agreement (see *The Restructuring Description of the CD&R Investment The Investment Agreement The Exchange Offer; Solicitation of Acceptances of the Prepackaged Plan* ). The last date on which tenders will be accepted, whether on October 19, 2009, or any later date to which this exchange offer may be extended, is referred to as the expiration date.

Subject to our obligations under the investment agreement and applicable laws, we have the right to:

extend the expiration date and retain all tendered convertible notes, subject to your right to withdraw your tendered convertible notes; and

waive any condition in our sole discretion or otherwise amend any of the terms or conditions of this exchange offer in any respect.

Under the investment agreement, we are prohibited from waiving any condition to this exchange offer or making any changes to the terms and conditions to this exchange offer without the prior consent of the CD&R Fund. We may extend this exchange offer beyond the initial expiration date without the prior consent of the CD&R Fund for a period of not more than 10 business days, if, at such date, any of the conditions to this exchange offer have not been satisfied or, with the prior written consent of the CD&R Fund, waived, and, subject to the termination of the investment agreement, we are required to extend this exchange offer if it expires before the registration statement of which this prospectus/disclosure statement forms a part is declared effective. See *The Restructuring Description of the CD&R Investment The Investment Agreement The Exchange Offer; Solicitation of Acceptances of the Prepackaged Plan*. Any change to the minimum tender condition could result in the termination of the lock-up agreements.

If we extend the expiration date, we will issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the scheduled expiration date. If we extend the expiration date, you must tender your convertible notes on or prior to the date identified in such press release or public announcement if you wish to participate in this exchange offer. If we amend any of the terms or conditions

of this exchange offer, we will issue a press release or other public announcement. See The Exchange Offer Extensions; Amendments.

We expressly reserve the right, in our sole discretion, to terminate this exchange offer and not accept for exchange any convertible notes (1) if any of the conditions to this exchange offer have not been satisfied or validly waived by us, subject to applicable laws and our obligations under the investment agreement or (2) in order to comply in whole or in part with any applicable law. See The Exchange Offer Extensions; Amendments.

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**Q: When will I receive cash and shares of common stock if I tender my convertible notes in the exchange offer?**

A: Upon satisfaction or waiver of all of the conditions to this exchange offer, all convertible notes validly tendered to the exchange agent by 11:59 p.m., New York City time, on the expiration date will be accepted for exchange. The cash and shares of common stock will be delivered promptly after the expiration date. See The Exchange Offer Acceptance of Convertible Notes for Exchange; Delivery of Cash and Shares of Common Stock.

**Q: Can I withdraw my tender of convertible notes?**

A: Unless you are a party to a lock-up agreement and are otherwise restricted by such lock-up agreement, you may withdraw tendered convertible notes at any time prior to 11:59 p.m., New York City time, on the expiration date. You must send a written withdrawal notice to the exchange agent, or comply with the appropriate procedures of DTC's Automated Tender Offer Program, which we refer to as ATOP. If you change your mind, you may re-tender your convertible notes by again following the tender procedures at any time prior to 11:59 p.m., New York City time, on the expiration date. See The Exchange Offer Withdrawal Rights.

**Q: What risks should I consider in deciding whether or not to tender my convertible notes?**

A: In deciding whether to participate in this exchange offer, you should carefully consider the discussion of risks and uncertainties affecting the Company, this exchange offer, the prepackaged plan and the common stock described in the section titled Risk Factors and the documents incorporated by reference into this prospectus/disclosure statement.

**Q: If this exchange offer is consummated, but I do not tender my convertible notes, how will my rights be affected?**

A: If this exchange offer is consummated and you do not exchange your convertible notes in this exchange offer, or if your convertible notes are not accepted for exchange, unless the restructuring is being accomplished through the prepackaged plan, you will continue to hold your convertible notes and will be entitled to all the rights and subject to all the limitations applicable to the convertible notes. If you continue to hold your convertible notes, you have the right to require that we repurchase the convertible notes (1) upon the closing of the exchange offer because such closing would result in a designated event under the convertible notes indenture, at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, including additional amounts, if any, plus under certain circumstances, if the restructuring occurs on or prior to November 15, 2009, a make-whole premium payable solely in shares of our common stock (other than cash paid in lieu of fractional shares) and (2) after five, 10 and 15 years from the date of the issuance of the convertible notes, at 100% of their principal amount, plus accrued and unpaid interest, if any, beginning November 15, 2009, and we will be required to repurchase any outstanding convertible notes for which you deliver a written repurchase notice to the paying agent, subject to certain conditions in the indenture under which the convertible notes are issued.

Unless we consummate the restructuring, however, we do not expect, and we cannot assure you, that we will have, or have access to, sufficient liquidity to meet our debt obligations, including any potential acceleration of our indebtedness and our obligation to repurchase the convertible notes at the option of the holders thereof on November 15, 2009, the next scheduled repurchase date. Furthermore, due to our non-compliance as of August 2, 2009 with the required leverage, senior leverage and interest coverage ratios in our existing credit agreement, our outstanding indebtedness of approximately \$293.3 million thereunder, which is senior to the convertible notes, may be declared immediately due and payable as early as November 6, 2009, the date of expiration of the current

waiver from the lenders under our existing credit agreement. In the event that we do not repay such borrowings upon acceleration, lenders under our existing credit agreement could exercise their remedies as secured creditors with respect to the collateral securing such borrowings. A failure to pay or refinance such borrowings will also result in a default under the convertible notes indenture, which could also then be declared immediately due and payable, and under our swap agreement, which could then be terminated by the counterparty thereto. If all such indebtedness, which totaled approximately \$473.7 million as of August 2, 2009, and such amounts payable pursuant to the termination of the swap agreement, were to become

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due and payable on November 6, 2009, it would result in a material adverse effect on our financial condition, operations and debt service capabilities. As of August 2, 2009, excluding restricted cash, we had a current cash balance of approximately \$105.4 million to address our liquidity needs. For a description of our non-compliance with the financial ratio covenants under our existing credit agreement, see our quarterly report on Form 10-Q for the quarter ended August 2, 2009, our current reports on Form 8-K filed on May 21, 2009, July 15, 2009 and August 27, 2009 and Incorporation of Certain Documents by Reference.

See Risk Factors Risks Relating to NOT Accepting the Exchange Offer or Rejecting the Prepackaged Plan.

**Q: What happens if my convertible notes are not accepted in this exchange offer?**

A: If we do not accept your convertible notes for exchange for any reason, the unaccepted convertible notes will be returned to you without expense and the convertible notes tendered by book-entry transfer into the account of the exchange agent at DTC will be credited to your account at DTC. See The Exchange Offer Return of Convertible Notes Not Accepted for Exchange.

**Q: What is the source for the financial resources to make payment?**

A: Assuming 100% of the convertible notes are tendered and accepted in this exchange offer, approximately \$90.0 million is required to pay the cash consideration for all of the convertible notes.

We expect to use a portion of the proceeds from the CD&R investment to fund the aggregate cash payment in this exchange offer. If we are unable to consummate the CD&R investment, we will not be able to accomplish the restructuring.

**Q: If I decide to tender my convertible notes, will I have to pay any fees or commissions in connection with this exchange offer?**

A: If you are the record owner of your convertible notes and you tender your convertible notes directly to the exchange agent, you will not have to pay any fees or commissions. If you hold your convertible notes through a custodian or nominee, and your custodian or nominee tenders the convertible notes on your behalf, your custodian or nominee may charge you a fee for doing so. You should consult with your custodian or nominee to determine whether any charges will apply. Additionally, we will pay all other expenses related to this exchange offer and the solicitation of acceptances to the prepackaged plan, except any commissions or concessions of any broker or dealer other than the dealer-manager. The Company will also pay any transfer taxes applicable to the exchange of the convertible notes pursuant to the exchange offer, except in circumstances described in the letter of transmittal.

**Q: Are there dissenters' rights in connection with this exchange offer?**

A: Holders of convertible notes do not have dissenters' rights of appraisal in connection with this exchange offer.

**Q: Whom do I call if I have any questions about how to tender my convertible notes or any other questions relating to this exchange offer?**

A: Questions and requests for assistance with respect to the procedures for tendering convertible notes pursuant to this exchange offer may be directed to Morrow & Co., LLC, as the information agent, at its address and telephone number set forth on the back cover of this prospectus/disclosure statement.

You may also contact Greenhill & Co., LLC, as the dealer-manager, at its address and telephone number set forth on the back over of this prospectus/disclosure statement with any questions you may have regarding this exchange offer.

**The Prepackaged Plan**

**Q: Who is soliciting votes on the prepackaged plan?**

A: NCI Building Systems, Inc. is soliciting votes on the prepackaged plan.

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**Q: Why is NCI soliciting votes on the prepackaged plan if the restructuring can be accomplished through the recapitalization plan?**

A: We have prepared the prepackaged plan as an alternative to the recapitalization plan for accomplishing the restructuring, if the conditions to completion of the recapitalization plan, including, for example, the minimum tender condition, are not met or waived, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes. The prepackaged plan consists of a plan of reorganization under chapter 11 of the Bankruptcy Code that would effect the same transactions contemplated by the recapitalization plan, including the issuance of shares of Series B convertible preferred stock in connection with the CD&R investment, the payment of cash and the issuance of shares of common stock in exchange for convertible notes, the term loan refinancing and the ABL financing. Under the prepackaged plan, holders of convertible notes and the lenders under our existing credit agreement (as well as the holders of all other claims and interests) would receive the same treatment with respect to their claims (and interests) as they would receive in the recapitalization plan, the CD&R Fund would receive the same 250,000 shares of Series B convertible preferred stock contemplated by the CD&R investment and the Company would enter into the ABL agreement. Existing holders of our common stock would continue to hold such common stock. See The Prepackaged Plan.

For the prepackaged plan to be confirmed by the bankruptcy court without invoking the cram-down provisions of the Bankruptcy Code, each class of claims or interests that is impaired must vote to accept the prepackaged plan. An impaired class of claims (such as holders of convertible notes) is deemed to accept a plan of reorganization if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in such class who actually cast ballots vote to accept the prepackaged plan. If the prepackaged plan is confirmed by the bankruptcy court, it will bind all holders of claims and equity interests in the Company regardless of whether they voted for, against, or did not vote at all on, the prepackaged plan.

Therefore, assuming the prepackaged plan satisfies the other requirements of the Bankruptcy Code, a significantly smaller number of claim holders can bind other claim holders to the terms of the prepackaged plan to accomplish the restructuring than are required to effect this exchange offer and the other transactions contemplated by the recapitalization plan.

The confirmation and effectiveness of the prepackaged plan are subject to certain conditions that may not be satisfied and are different from those under the recapitalization plan. We cannot assure you that all requirements for confirmation and effectiveness of the prepackaged plan will be satisfied or that the bankruptcy court will conclude that the requirements for confirmation and effectiveness of the prepackaged plan have been satisfied. See The Prepackaged Plan Confirmation of the Prepackaged Plan and The Prepackaged Plan Conditions to Effective Date of the Prepackaged Plan.

**Q: Who is eligible to vote for the prepackaged plan?**

A: Generally, holders of claims or interests in classes that are impaired (other than classes that receive nothing under the prepackaged plan and are, therefore, deemed to reject it) are eligible to vote on the prepackaged plan. As more fully explained in this prospectus/disclosure statement, a claim or equity interest is impaired, generally speaking, if its treatment under a plan of reorganization alters the terms of, or rights associated with, that claim or interest. The rights in respect of the convertible notes would be altered by the prepackaged plan and consequently holders of convertible notes may vote on the prepackaged plan.

For the purposes of the prepackaged plan, we have organized the various claims and interests against the Company into different classes. Holders of claims impaired by the prepackaged plan that are entitled to vote on the prepackaged plan will vote on the prepackaged plan by class. Under the prepackaged plan, members of the same class are treated the same. The claims of the lenders under our existing credit agreement are classified under the prepackaged plan as Class 3 claims, and the claims of holders of convertible notes are separately classified under the prepackaged plan as Class 5 claims. The holders of Class 3 claims and Class 5 claims are impaired and are eligible to vote on the prepackaged plan. The holders of all other claims (other than holders of certain claims



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relating to section 510(b) of the Bankruptcy Code who are deemed to reject the prepackaged plan and are not entitled to vote) are unimpaired and are not eligible to vote on the prepackaged plan. However, any party in interest may object to the prepackaged plan, regardless of whether such party is impaired and entitled to vote or unimpaired and not entitled to vote. Indeed, pursuant to section 1109(b) of the Bankruptcy Code, a party in interest may raise and may appear and be heard on any issue in a chapter 11 case. See *The Prepackaged Plan of Reorganization Summary of Classification and Treatment of Claims and Equity Interests under the Prepackaged Plan* and *The Prepackaged Plan Summary of Distributions under the Prepackaged Plan*, for a description of the various classes of claims and equity interests under the prepackaged plan and their treatment.

**Q: What will I receive under the prepackaged plan if it is confirmed and consummated?**

A: For each \$1,000 principal amount of convertible notes, you will, upon the terms and subject to the conditions set forth in this prospectus/disclosure statement and the prepackaged plan, receive \$500 in cash and 390 shares of common stock. The cash payment and shares of common stock to be issued pursuant to the prepackaged plan will be in full satisfaction of the claims with respect to the convertible notes, including principal and accrued interest.

**Q: What vote is needed to confirm the prepackaged plan?**

A: The Bankruptcy Code provides that only holders of claims entitled to vote and who actually cast a ballot will be counted for purposes of determining whether acceptances from a sufficient number of holders of impaired claims in an impaired class of claims have been received to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes. Failure by a holder to deliver an original, duly completed and signed ballot will not be counted as a vote to accept or reject the prepackaged plan. See *The Prepackaged Plan Vote Required for Class Acceptance of the Prepackaged Plan*.

For the prepackaged plan to be confirmed by the bankruptcy court without invoking the cram-down provisions of the Bankruptcy Code, each class of claims or interests that is impaired must vote to accept the prepackaged plan. An impaired class of claims (such as holders of convertible notes) is deemed to accept a plan of reorganization if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in such class who actually cast ballots vote to accept the prepackaged plan. Under the prepackaged plan, the claims held by the lenders under our existing credit agreement and the claims held by holders of convertible notes constitute separate impaired classes of claims. Under the prepackaged plan, other classes of claims against and interests in the Company (other than holders of certain claims relating to section 510(b) of the Bankruptcy Code who are deemed to reject the prepackaged plan and are not entitled to vote) are unimpaired and, therefore, conclusively presumed to accept the prepackaged plan. These other classes deemed to be unimpaired include existing holders of our common stock, notwithstanding that the prepackaged plan contemplates that such holders' interest in the Company will be diluted. Shares of our common stock are governed by our existing certificate of incorporation and bylaws and Delaware law, and, irrespective of the prepackaged plan or any bankruptcy case, are subject to dilution on account of the issuance by the Company of preferred stock and additional common stock. Under our existing certificates of incorporation and by-laws (the terms of which will remain the same after the effectiveness of the prepackaged plan) and Delaware law, our board of directors has been and will be vested with the authority to fix and determine the relative rights and preferences of any series of preferred stock, including voting rights of such series, and to issue shares of common stock, in each case, within the limitations set forth in our restated certificate of incorporation. As further described under *Description of Capital Stock*, our authorized capital stock consists of 100,000,000 shares of common stock, par value \$0.01 per share, and 1,000,000 shares of preferred stock, par value \$1.00 per share. The issuance of the shares of Series B convertible preferred stock to the CD&R Fund and the issuance of the shares of common stock to holders of the convertible notes under the prepackaged plan are both within the authority of our board of directors and within the number of authorized but unissued

shares of preferred stock and common stock and other limitations set forth in our existing restated certificates of incorporation (which will remain in effect after the effectiveness of the prepackaged plan). Thus, the prepackaged plan leaves unaltered the legal, equitable and contractual rights to which such common stock entitles the holders of such common stock. See The Prepackaged Plan Confirmation of the Prepackaged Plan Without Acceptance by All Classes of Impaired Claims. Assuming that we complete the restructuring

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and all outstanding convertible notes are retired, based on the number of shares of common stock authorized, issued and outstanding as of September 4, 2009, at the closing of, and after giving effect to, the restructuring, existing holders of our common stock would hold approximately 7.0% of our voting power.

The bankruptcy court may disagree with our classification of claims and interests and any party in interest may challenge our classification of claims and interests. If the bankruptcy court concludes that the classification of claims and interests under the prepackaged plan does not comply with the requirements of the Bankruptcy Code, the prepackaged plan may not be confirmed. See Risk Factors Risks Relating to the Prepackaged Plan The bankruptcy court may disagree with our classification of claims and interests.

If the prepackaged plan is confirmed by the bankruptcy court, it would bind all holders of claims and equity interests in the Company regardless of whether they voted for, against, or did not vote at all on, the prepackaged plan. Therefore, assuming the prepackaged plan satisfies the other requirements of the Bankruptcy Code, a significantly smaller number of claim holders can bind other claim holders to the terms of the prepackaged plan than are required to effect this exchange offer and the other transactions contemplated by the recapitalization plan. Additionally, since claims and equity interests are grouped in classes for the purpose of voting on the prepackaged plan, holders of claims and interests may be bound by the decisions of other claim or interest holders in a way that they otherwise would not outside of bankruptcy.

If we do not receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, the prepackaged plan will not be confirmed or become effective.

**Q: What are the effects of the prepackaged plan?**

Under the prepackaged plan, holders of convertible notes and the lenders under our existing credit agreement (as well as the holders of all other claims and interests) would receive the same treatment with respect to their claims (and interests) as they would receive in the recapitalization plan, the CD&R Fund would receive the same 250,000 shares of Series B convertible preferred stock contemplated by the CD&R investment and the Company would enter into the ABL agreement. Existing holders of our common stock would continue to hold such common stock. See Summary Liquidity and The Prepackaged Plan.

**Q: When is the deadline for submitting ballots?**

A: The ballots must be received by the voting agent by 11:59 p.m., New York City time, on the voting deadline, or October 19, 2009. If the voting deadline is extended, then the ballots must be received by the voting agent by any such extended voting deadline. In the case of an extension, we will notify the voting agent and issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the scheduled voting deadline. Ballots must be sent by mail, hand delivery or overnight courier to the voting agent, Financial Balloting Group LLC, by the voting deadline. Electronic and facsimile ballots will not be accepted.

See The Prepackaged Plan Holders of Claims Entitled to Vote; Voting Record Date and The Prepackaged Plan Solicitation and Voting Procedures Voting Deadline.

**Q: How do I vote on the prepackaged plan?**

A:

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Please follow the procedures for voting on the prepackaged plan described in the section titled "The Prepackaged Plan Solicitation and Voting Procedures Voting Instructions."

For further information, contact the voting agent at its address and telephone number on the back cover of this prospectus/disclosure statement or consult your broker, dealer, commercial bank, trust company or other nominee for assistance.

Only the beneficial owners of convertible notes and/or term loans and other obligations under our existing credit agreement (or their authorized signatories) as of the voting record date are eligible to vote on the prepackaged plan.

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**Q: Can I revoke my vote?**

A: Unless you are a party to a lock-up agreement or are otherwise restricted by such lock-up agreement, any party who has previously submitted to the voting agent prior to the voting deadline a properly completed ballot may revoke such ballot and change its vote by submitting to the voting agent, prior to the voting deadline, a subsequent properly completed ballot for acceptance or rejection of the prepackaged plan.

**Q: Whom do I call if I have any questions about how to submit ballots or any other questions relating to the prepackaged plan?**

A: Questions and requests for assistance with respect to the procedures for voting on the prepackaged plan, as well as requests for additional copies of this prospectus/disclosure statement and the ballot, may be directed to Financial Balloting Group, LLC, as the voting agent, at its address and telephone number set forth on the back cover of this prospectus/disclosure statement.

**Q: What risks should I consider in deciding whether to accept or reject the prepackaged plan?**

A: In deciding whether to vote to accept or reject the prepackaged plan, you should carefully consider the discussion of risks and uncertainties affecting the Company, this exchange offer, the prepackaged plan and the common stock described in the section titled **Risk Factors** and the risk factors described in the documents incorporated by reference into this prospectus/disclosure statement.

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**SUMMARY**

*This summary highlights some of the information contained, or incorporated by reference, in this prospectus/disclosure statement to help you understand our business and the restructuring, including the recapitalization plan (which includes this exchange offer) and the prepackaged plan. It does not contain all of the information that may be important to you. You should carefully read this prospectus/disclosure statement, including the information incorporated by reference into this prospectus/disclosure statement, to understand fully the terms of the restructuring, the recapitalization plan (which includes this exchange offer) and the prepackaged plan, as well as the other considerations that are important to you in making your investment decision. You should pay special attention to the Risk Factors beginning on page 28 and Cautionary Statement Regarding Forward-Looking Statements beginning on page 52.*

**Our Business**

We are a leading North American integrated manufacturer and supplier of metal coil coating services, metal building components and engineered metal buildings systems. Of the \$236 billion nonresidential construction industry in 2008, we primarily serve the low-rise nonresidential construction market (five stories or less), which, according to FW Dodge/McGraw-Hill, represents approximately 88% of the total nonresidential construction industry. Our broad range of products is used in repair, retrofit and new construction activities, primarily in North America.

We provide metal coil coating services for commercial and construction applications, servicing both internal and external customers. We design, engineer, manufacture and market what we believe is one of the most comprehensive lines of metal components and engineered building systems in the industry, with a reputation for high quality and superior engineering and design. We go to market with well-recognized brands, which allows us to compete effectively within a broad range of end-user markets, including industrial, commercial, institutional and agricultural. Our service versatility allows us to support the varying needs of our diverse customer base, which includes general contractors and subcontractors, developers, manufacturers, distributors and a network of over 4,400 authorized builders across North America.

We are comprised of a family of companies operating manufacturing facilities across the United States and Mexico, with additional sales and distribution offices throughout the United States and Canada. Our broad geographic footprint, along with our hub-and-spoke distribution system, allows us to efficiently supply a broad range of customers with high quality customer service and reliable deliveries.

The Company was founded in 1984 and reincorporated in Delaware in 1991. In 1998, we acquired Metal Building Components, Inc. and doubled our revenue base. With the merger, we became the largest domestic manufacturer of nonresidential metal components. In 2006, we acquired Robertson-Ceco II Corporation, which operates the Ceco Building Systems, Star Building Systems and Robertson Building Systems divisions of our business and is a leader in the metal buildings industry. This transaction has created an organization with greater product and geographic diversification, a stronger customer base and a more extensive distribution network than either company had separately.

Our principal offices are located at 10943 North Sam Houston Parkway West, Houston, Texas 77064, and our telephone number is (281) 897-7788. Our website address is [www.ncilp.com](http://www.ncilp.com). The information contained on our website is not part of this prospectus/disclosure statement.

**Liquidity**

We believe that the completion of the restructuring through the recapitalization plan, or, in the alternative, through the prepackaged plan, is critical to our continuing viability. The restructuring, if successful, will increase the Company's capital and liquidity levels and reduce the amount of its outstanding debt. Specifically, upon the completion of the restructuring, we expect our indebtedness to be reduced from approximately \$473.7 million as of August 2, 2009 to approximately \$150.4 million at the closing of the restructuring, consisting of \$150.0 million in principal amount of term loans under the amended credit agreement and \$0.4 million of our industrial revenue bond. See Capitalization and Source and Use of Proceeds.

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The ABL financing contemplated by the restructuring would provide us with up to \$125.0 million in liquidity, subject to availability under a borrowing base, for working capital purposes and future expansion. Based on discussions with prospective lenders under the ABL agreement, however, we expect that, because of borrowing base constraints, initial availability under the ABL agreement would be substantially less than the \$125.0 million commitment, and may be as low as \$45.0 million. We have been in discussions with prospective lenders regarding the terms of the ABL agreement to give effect to the ABL financing and the Company has finalized with such prospective lenders the form of ABL agreement attached hereto as Annex Q and confirmed participation for the full availability under such ABL financing. While the form of ABL agreement attached hereto as Annex Q has been agreed to in principle with such prospective lenders, and the Company has been informed that the prospective lenders have indicated their willingness to enter in to the form of ABL agreement attached hereto as Annex Q in connection with the consummation of the CD&R investment, no loan commitment letter from any such prospective lender has been received by the Company.

Assuming we are able to complete the restructuring, we expect that, for the foreseeable future, cash generated from operations, together with the proceeds of the ABL financing, will be sufficient to allow us to fund our operations, to increase working capital as necessary to support our strategy and to fund planned capital expenditures and expansions, including approximately \$5.0 million expected, for the remainder of fiscal 2009.

### **The Restructuring**

#### **The Restructuring**

This exchange offer and solicitation of acceptances to the prepackaged plan are part of, and are being conducted pursuant to, the restructuring, which may be accomplished through an out-of-court recapitalization plan or, in the alternative, if the conditions to the recapitalization plan are not satisfied or waived, through an in-court prepackaged plan. The restructuring consists of four related transactions:

the CD&R investment, which involves the sale and issuance to the CD&R Fund of 250,000 shares of Series B convertible preferred stock for \$250.0 million;

the retirement of all convertible notes;

the term loan refinancing, which involves the refinancing of our existing credit facility under which we will repay approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding under our existing credit facility and enter into an amendment to our existing credit agreement providing for a modification of the terms and maturity of the \$150.0 million balance; and

the ABL financing, which involves our entry into a \$125.0 million asset-based loan facility.

Each of the transactions comprising the restructuring may be accomplished through either the out-of-court recapitalization plan or, in the alternative, the in-court prepackaged plan. If the restructuring is accomplished through the recapitalization plan, the retirement of the convertible notes tendered in the exchange offer would be accomplished through this exchange offer and the refinancing of our existing credit



facility would be accomplished through an amendment to our existing credit agreement. In the alternative, if the restructuring is accomplished through the prepackaged plan, the retirement of the convertible notes as well as the refinancing of our existing credit facility would be accomplished through the effectiveness of the prepackaged plan. See The Restructuring.

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The closing of the exchange offer is conditioned on the satisfaction or, with the consent of the CD&R Fund, waiver of the minimum tender condition, which requires that at least 95% of the aggregate principal amount of outstanding convertible notes are validly tendered and not withdrawn in this exchange offer. If the restructuring is accomplished through the recapitalization plan, we intend, but are not required, to retire any remaining convertible notes outstanding after the consummation of this exchange offer by exercising our redemption right under the convertible notes indenture on or after November 20, 2009; if we do not so exercise our redemption right, such remaining convertible notes will otherwise be retired pursuant to the terms of the convertible notes indenture.

For a more detailed description of this exchange offer, see [The Exchange Offer](#).

See [Liquidity](#) above and [The Restructuring](#) for a discussion of the anticipated effects of the restructuring.

## **Pro Forma Capitalization**

Assuming that we complete the restructuring and all outstanding convertible notes are retired through the exchange offer or the prepackaged plan, based on the number of shares of common stock authorized, issued and outstanding as of September 4, 2009, at the closing of, and after giving effect to, the restructuring:

holders of convertible notes would receive 70,200,000 shares of our common stock in the aggregate (or approximately 24.5% of our voting power);

the CD&R Fund would receive 250,000 shares of Series B convertible preferred stock convertible into 196,109,194 shares of common stock based on the initial conversion price (assuming that we have sufficient authorized but unissued shares to permit such conversion, which, after giving effect to the restructuring, we do not expect to have (see [Summary The Restructuring CD&R Investment](#) )) (or approximately 68.5% of our voting power); and

our current stockholders would continue to hold approximately 19,981,585 shares of our common stock in the aggregate (or approximately 7.0% of our voting power).

See [Capitalization](#).

## **Lock-Up Agreements**

We have entered into lock-up agreements with the holders of convertible notes and holders of obligations under our existing credit agreement, pursuant to which such holders have agreed, in accordance with the terms of the applicable lock-up agreement, (1) to the extent that they hold convertible notes, to tender their convertible notes in this exchange offer;

(2) to the extent that they hold obligations under our existing credit agreement, to support the term loan refinancing by accepting their portion of the repayment contemplated thereby and by executing an amendment to our existing credit agreement substantially in the form attached as Annex J after giving effect to the matters set forth in Annex K; and (3) to vote all of their convertible notes and obligations under our existing credit facility in favor of the prepackaged plan, among other things. Including the holders that are subject to a lock-up agreement, we have commitments from holders of convertible notes holding more than 79% of the aggregate principal

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amount of the outstanding convertible notes, and commitments or confirmation of intent from lenders under our existing credit agreement holding more than two-thirds (2/3) of the outstanding principal amount of the obligations under existing credit agreement, to support the restructuring and vote their convertible notes and/or obligations in favor of the prepackaged plan. See The Restructuring-The Lock-Up Agreements.

**CD&R Investment**

Pursuant to the investment agreement, the CD&R Fund has agreed to purchase from the Company an aggregate of 250,000 shares of Series B convertible preferred stock, which represents approximately 68.5% of our voting power after giving effect to the restructuring (based on the number of shares of common stock authorized, issued and outstanding as of September 4, 2009), for a total purchase price of \$250.0 million in cash. See The Restructuring Description of the CD&R Investment.

The obligation of the CD&R Fund to purchase the shares of Series B convertible preferred stock is subject to certain conditions, including the satisfaction or, with the consent of the CD&R Fund, waiver, of the conditions to this exchange offer or the effectiveness of the prepackaged plan, the consummation of the term loan refinancing (see Term Loan Refinancing below) and the ABL financing (see ABL Financing below) and the expiration or termination of any waiting period required to consummate the CD&R investment under the Austrian Act. The investment agreement may be terminated by the CD&R Fund or the Company under specified circumstances. See The Restructuring Description of the CD&R Investment The Investment Agreement Conditions to the CD&R Investment and The Restructuring Description of the CD&R Investment The Investment Agreement Termination of the Investment Agreement.

Holders of Series B convertible preferred stock will participate equally and ratably with the holders of common stock in all cash dividends paid on the shares of the common stock on an as-converted basis. In addition to such dividends, the Series B convertible preferred stock will accrue dividends at a rate *per annum* of 12.00% if paid in kind or at a rate *per annum* of 8.00% if paid in cash, which would be reduced to a rate *per annum* of 0.00% if, at any time after the 30-month anniversary of the closing of the restructuring, the trading price per share of common stock equals or exceeds two times a specified target price (which is equal to \$1.2748 at the closing of the restructuring, but is subject to adjustments thereafter) for each trading day during any period of 20 consecutive trading days. Upon the occurrence of a default under the terms of the Series B convertible preferred stock, the applicable dividend rate will increase by:

6.00% *per annum*, if the default is the result of a failure by us after June 30, 2011 to reserve and keep available for issuance a number of shares of common stock equal to 110% of the number of shares of common stock issuable upon conversion of all outstanding shares of

Series B convertible preferred stock; or

3.00% *per annum* for any other default.

See The Restructuring Description of the CD&R Investment Certain Terms  
of the Series B Convertible Preferred Stock Dividends and

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The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Defaults.

The Series B convertible preferred stock is convertible into common stock at an initial conversion price of \$1.2748, which conversion price is subject to anti-dilution adjustments, including adjustments if the Company issues common stock or other securities below the then-current market price or, during the first three years after the closing of the restructuring, below the then-current conversion price. See The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti-Dilution Adjustments.

On and after the 10th anniversary of the closing of the restructuring:

each holder of shares of Series B convertible preferred stock will have the right to require that the Company redeem all of such holder's shares of Series B convertible preferred stock; and

the Company will have the right to redeem all, but not less than all, of the then issued and outstanding shares of Series B convertible preferred stock.

In either case, the redemption price for each share of Series B convertible preferred stock redeemed will be an amount equal to the sum of (1) the liquidation preference of such share of Series B convertible preferred stock to be redeemed and (2) the accrued dividends of such share as of the date on which the redemption of such share occurs. See The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Milestone Redemption.

After giving effect to the restructuring, we do not expect to have sufficient authorized but unissued shares of common stock to enable the conversion of all 250,000 shares of Series B convertible preferred stock to be issued to the CD&R Fund pursuant to the CD&R investment. Pursuant to the stockholders agreement to be entered into between the Company and the CD&R Fund in connection with the CD&R investment (see The Restructuring Description of the CD&R Investment The Stockholders Agreement ), from and after the closing of the restructuring, we will use our best efforts and take all corporate actions necessary to obtain approval from holders of our common stock of an amendment to Article FOURTH, section 1 of our restated certificate of incorporation to increase the number of authorized shares of common stock. In the event that we do not obtain such approval prior to June 30, 2010, the dividend rate with respect to the Series B convertible preferred stock will increase by 3.00% *per annum* (and by an additional 3.00% *per annum* if such approval is not obtained prior to June 30, 2011, for an aggregate increase of 6.00% *per annum*) as further described in The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends Default Dividend Rate. See The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek



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**Retirement of Convertible Notes**

As part of the restructuring, we are seeking to retire all of the convertible notes. See [This Exchange Offer](#) below with respect to the retirement of convertible notes under the recapitalization plan and [The Prepackaged Plan](#) below with respect to the retirement of convertible notes under the prepackaged plan.

**Term Loan Refinancing**

As part of the restructuring, we expect to enter into an amendment to our existing credit agreement, providing for, among other things, the repayment of approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding as of August 2, 2009 under our existing credit facility and a modification of the terms and maturity of the \$150.0 million balance. See [The Restructuring Description of the Term Loan Refinancing](#) and the [ABL Financing The Term Loan Refinancing](#).

The closing of the term loan refinancing through the recapitalization plan requires 100% of the lenders under our existing credit agreement to enter into the amended credit agreement. Confirmation and effectiveness of the prepackaged plan requires lenders under our existing credit facility holding at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in respect of the obligations under our existing credit agreement who actually cast ballots to vote to accept the prepackaged plan. See [Summary of Terms of the Restructuring The Prepackaged Plan](#).

**ABL Financing**

As part of the restructuring, we expect to enter into an ABL agreement providing for a \$125.0 million asset-based loan facility. See [The Restructuring Description of the Term Loan Refinancing and the ABL Financing The ABL Financing](#).

Whether the restructuring is accomplished through the recapitalization plan or the prepackaged plan, the closing of the ABL financing requires the approval and execution of the ABL agreement by all lenders providing revolving credit commitments thereunder.

**Importance of Tendering in this Exchange Offer and Voting to Accept the Prepackaged Plan**

Both the recapitalization plan and the prepackaged plan are subject to certain conditions. In particular, the consummation of the recapitalization plan requires that the conditions to this exchange offer are met, including the minimum tender condition. The confirmation and effectiveness of the prepackaged plan requires the receipt of acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes.

See also [Questions and Answers About the Restructuring General Why is it important that I tender my convertible notes and vote to accept the prepackaged plan?](#)



**Risk Factors**

You should carefully consider the matters described in this prospectus/disclosure statement under Risk Factors, and the risk factors described in the documents incorporated by reference into this prospectus/disclosure statement.

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**Material U.S. Federal Income Tax Considerations** For a discussion of the material U.S. federal income tax considerations for holders of convertible notes, see Material U.S. Federal Income Tax Considerations.

**Accounting Treatment** For a description of the accounting treatment of the restructuring, see Accounting Treatment.

**Fees and Expenses** We will pay all fees and expenses associated with this exchange offer and the solicitation of acceptances to the prepackaged plan, other than any commissions or concessions of any broker or dealer. Excluding fees and expenses related to the CD&R Investment and the other transactions contemplated by the investment agreement separate from the exchange offer and this consent solicitation, we expect that we will incur fees and expenses of approximately \$7.3 million, based on estimated legal, accounting, exchange agent, voting agent, dealer-manager, trustee, printing and other expenses associated with this exchange offer and the solicitation of acceptances to the prepackaged plan. See The Exchange Offer Fees and Expenses.

**Listing** The shares of common stock to be issued pursuant to this exchange offer, or in the alternative, pursuant to the prepackaged plan, have been authorized to be listed on the NYSE, subject to official notice of issuance.

**Transferability** The shares of common stock to be issued pursuant to this exchange offer will be freely transferable and not subject to any transfer restrictions unless held by our affiliates as that term is defined under Rule 144 under the Securities Act. If the restructuring is accomplished through the prepackaged plan, we expect that the confirmation order of the bankruptcy court will provide that the issuance of the shares of common stock distributed under the prepackaged plan shall be exempt from the registration requirements of the Securities Act in accordance with section 1145 of the Bankruptcy Code and therefore will be freely transferable by most recipients thereof, and all resales and subsequent transactions in the new securities will be exempt from registration under federal and state securities laws, unless the holder is an underwriter with respect to such securities.

**This Exchange Offer**

**Securities Subject to this Exchange Offer** Any and all of our \$180.0 million aggregate principal amount of 2.125% Convertible Senior Subordinated Notes due 2024, which we refer to as the convertible notes.

**Exchange Offer** We are offering to acquire any and all of the convertible notes for cash and shares of common stock, in accordance with the terms and subject to the conditions set forth in this prospectus/disclosure statement and in the letter of transmittal. You may tender your convertible notes for exchange by following the procedures described in the section titled The Exchange

Offer Procedures for Tendering Convertible Notes.

For each \$1,000 principal amount of convertible notes that you tender and that we accept in this exchange offer, you will, upon the terms and subject to the conditions set forth in this prospectus/disclosure

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statement and the letter of transmittal, receive \$500 in cash and 390 shares of common stock. The cash payment and the shares of common stock to be issued pursuant to this exchange offer will be in full satisfaction of the principal amount of, and any accrued but unpaid interest through the consummation of this exchange offer on, the convertible notes so tendered and accepted. See The Exchange Offer Terms of the Exchange Offer.

**Minimum Tender Condition; Other Conditions to this Exchange Offer**

This exchange offer is subject to certain conditions, including, among others, (1) the satisfaction of the minimum tender condition, which requires that at least 95% of the aggregate principal amount of outstanding convertible notes are validly tendered and not withdrawn in this exchange offer, (2) the receipt of proceeds from the purchase by the CD&R Fund of the Series B convertible preferred stock pursuant to the investment agreement, which purchase itself is subject to several conditions, including the satisfaction of the conditions to this exchange offer, the consummation of the term loan refinancing and the ABL financing and the expiration or termination of any waiting period required to consummate the CD&R investment under the Austrian Act, and (3) the effectiveness of the registration statement of which this prospectus/disclosure statement forms a part. See The Exchange Offer Conditions to Completion of the Exchange Offer.

**Information Agent**

Morrow & Co., LLC.

**Exchange Agent**

Computershare Trust Company, N.A.

**Dealer-Manager**

Greenhill & Co., LLC.

**Use of Proceeds**

We will not receive any cash proceeds from this exchange offer. Convertible notes that are validly tendered and exchanged pursuant to this exchange offer will be retired and canceled. See Source and Use of Proceeds.

**The Prepackaged Plan**

**Prepackaged Plan**

We have prepared the prepackaged plan as an alternative to the recapitalization plan for accomplishing the restructuring if the conditions to completion of the recapitalization plan, including, for example, the minimum tender condition, are not satisfied or waived, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes.

The prepackaged plan consists of a plan of reorganization under chapter 11 of the Bankruptcy Code that would effect the same transactions contemplated by the recapitalization plan, including the issuance of shares of Series B convertible preferred stock in connection with the CD&R

investment, the issuance of shares of common stock in exchange for convertible notes, the term loan refinancing and the ABL financing. If confirmed, the prepackaged plan would be binding on all

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of our creditors regardless of whether such creditors voted to accept or reject the prepackaged plan. See The Prepackaged Plan.

Under the prepackaged plan, holders of convertible notes and the lenders under our existing credit agreement (as well as the holders of all other claims and interests) would receive the same treatment with respect to their claims (and interests) as they would receive in the recapitalization plan, the CD&R Fund would receive the same 250,000 shares of Series B convertible preferred stock contemplated by the CD&R investment and the Company would enter into the ABL agreement. Existing holders of our common stock would continue to hold such common stock. See The Prepackaged Plan.

If we do not receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, the prepackaged plan will not be confirmed or become effective.

**Voting Record Date**

The voting record date for determining the holders of claims entitled to vote on the prepackaged plan is August 28, 2009. See The Prepackaged Plan Holders of Claims Entitled to Vote; Voting Record Date.

**Conditions to the Effective Date of the Prepackaged Plan**

The effective date of the prepackaged plan will not occur until the conditions set forth below have been satisfied or waived:

the confirmation order has been entered and no stay of such order is in effect;

the receipt of proceeds from the CD&R investment;

the consummation of the term loan refinancing; and

the consummation of the ABL financing.

We retain the right to waive any condition in our sole and absolute discretion, subject to our obligations under the investment agreement. See The Prepackaged Plan Conditions to the Effective Date of the Prepackaged Plan and The Restructuring Description of the CD&R Investment The Investment Agreement Commencement of a Reorganization Case in Connection With the Prepackaged Plan Covenant.

**Voting Agent**

Financial Balloting Group LLC.

**Table of Contents****Capitalization**

The following table sets forth our capitalization (1) as of August 2, 2009 on a preliminary, unaudited basis and (2) on an as adjusted basis, giving effect to the pro forma impact of the transactions contemplated by the recapitalization plan, which include (1) the retirement of the convertible notes (assuming 100% of the convertible notes are retired), (2) the CD&R Investment, (3) the term loan refinancing and (4) the ABL financing. The pro forma capitalization presented in this section does not give effect to the pro forma impact of the transactions contemplated by the prepackaged plan. The filing of a prepackaged plan would result in the application of restart accounting which could significantly change to recorded value of asset, liabilities and stockholders' equity.

We use the assumptions above for illustrative purposes only. This table should be read in conjunction with the Selected Consolidated Financial and Other Data and Unaudited Pro Forma Financial Information elsewhere in this prospectus/disclosure statement, the financial statements and schedules and related notes for the fiscal year ended 2008 that are included in the consolidated financial statements for the fiscal year ended in 2008, which are attached as Exhibit 99.1 to our current report on Form 8-K filed with the SEC on September 10, 2009 and the consolidated financial statements and related notes for the quarters ended February 1, 2009, May 3, 2009 and August 2, 2009 contained in our Quarterly Reports on Form 10-Q, which are incorporated by reference into this prospectus/disclosure statement.

	<b>As of August 2, 2009</b>	
	<b>Actual</b>	<b>As Adjusted</b>
	<b>(Unaudited, in thousands, except for share data)</b>	
Cash and cash equivalents(1)(4)	\$ 105,376	\$ 60,264
Restricted Cash(2)	13,224	13,224
Note Payable	962	962
Debt		
\$125 Million Senior Secured Revolving Credit Facility		
\$400 Million Term Loan, due 2010 (\$150 Million Term Loan, due 2014, amended and restated)	293,290	150,000
2.125% Convertible Senior Subordinated Notes, Due 2024	180,000	
Industrial Revenue Bond	420	420
Total Debt	473,710	150,420
Series B Convertible Preferred Stock: \$1.00 par value per share, 250,000 shares authorized, issued and outstanding, as adjusted		212,579
Stockholders' equity (deficit):		
Series A Preferred Stock: \$1.00 par value per share, 1,000,000 shares authorized, none issued and outstanding		
Common Stock: \$0.01 par value per share, 100,000,000 shares authorized; 22,683,165 issued; and 19,982,173 outstanding, actual; 100,000,000 shares authorized; 93,217,165 issued; and 90,516,173 outstanding as adjusted(3)(4)	227	929

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Additional paid-in capital(4)	203,401	380,911
Retained earnings (deficit)(4)	(103,882)	(215,324)
Accumulated other comprehensive income (loss)(4)	(917)	975
Treasury stock, at cost	(117,050)	(117,050)
Total stockholders equity (deficit)	(18,221)	50,441
Total capitalization	\$ 456,451	\$ 414,402
Book Value per share		
Basic	(0.91)	0.60
Diluted	(0.91)	0.60



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- (1) Cash equivalents are stated at cost plus accrued interest, which approximates fair value. Cash equivalents are highly liquid debt instruments with an original maturity of three months or less and may consist of time deposits with a number of commercial banks with high credit ratings, Eurodollar time deposits, certificates of deposit and commercial paper.
- (2) Restricted cash is stated at cost plus accrued interest, which approximates fair value. Restricted cash is held as deposited collateral for letters of credit.
- (3) Share amounts as presented reflect the 70,200,000 shares of common stock to be issued to repay a portion of the convertible notes and the 334,000 shares of common stock to be issued related to the accelerated vesting of shares issued under the 2003 Long-Term Stock Incentive Plan. If fully converted, the Series B convertible preferred stock would result in an additional 196,109,194 shares of common stock outstanding.
- (4) See Unaudited Pro Forma Condensed Consolidated Balance Sheet and Notes to Unaudited Pro Forma Condensed Balance Sheet for explanations of significant adjustments to cash and cash equivalents, additional paid-in capital, accumulated other comprehensive loss, and retained deficit.

**Table of Contents****Selected Consolidated Financial and Other Data**

The following table sets forth selected consolidated financial and other data for each of the fiscal years ended in 2008, 2007, 2006, 2005 and 2004 and for the nine months ended August 2, 2009 and July 27, 2008. Operating results for the fiscal nine months period ended August 2, 2009 and July 27, 2008 are not necessarily indicative of the results that may be expected for the full fiscal year. The selected consolidated financial and other data below is only a summary and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements contained in Part III, Item 15, (a)(1) and (a)(2) of our annual reports on Form 10-K (except with respect to the consolidated financial statements for the fiscal year ended in 2008, which are attached as Exhibit 99.1 to our current report on Form 8-K filed with the SEC on September 10, 2009) and in Part I, Item 1 of our quarterly reports on Form 10-Q and with the current reports filed by us with the SEC, which are incorporated by reference herein. See Where You Can Find More Information and Incorporation of Certain Documents by Reference. The historical financial information presented may not be indicative of our future performance.

	Nine Months Ended		Fiscal Year				
	August 2, 2009	July 27, 2008	2008(1)	2007	2006	2005	2004
	(In thousands, except per share data)						
<b>Statement of Operations Data:</b>							
Sales	\$ 723,522	\$ 1,255,228	\$ 1,764,159	\$ 1,625,068	\$ 1,571,183	\$ 1,130,066	\$ 1,084,863
Cost of sales	568,773	940,095	1,325,624	1,221,463	1,187,151	850,699	822,722
Lower of cost or market adjustment	39,986						
Asset impairment	5,944						
Gross Profit	108,819	315,133	438,535	403,605	384,032	279,367	262,141
Selling, general and administrative expenses	158,564	210,501	283,825	271,871	246,044	174,897	165,165
Goodwill and other intangible asset impairments	622,564						
Restructuring charge	7,488	909					
Income (loss) from operations	(679,797)	103,723	154,710	131,734	137,988	104,470	96,976
Interest income	360	917	1,085	725	5,432	5,019	68
Interest expense	(13,029)	(17,859)	(23,535)	(28,829)	(24,915)	(14,459)	(15,126)
Loss on debt refinancing							(9,879)
Other (expense) income, net	757	1,022	(1,880)	1,195	527	1,181	2,618

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Income (loss) before income taxes	(691,709)	87,803	130,380	104,825	119,032	96,211	74,657
Provision (benefit) for income taxes	(46,863)	33,536	51,499	41,096	45,236	40,260	29,767
Net income (loss)	(644,846)	54,267	78,881	63,729	73,796	55,951	44,890
Earnings (loss) per share:							
Basic	\$ (33.12)	\$ 2.81	\$ 4.08	\$ 3.25	\$ 3.70	\$ 2.73	\$ 2.28
Diluted	\$ (33.12)	\$ 2.79	\$ 4.05	\$ 3.06	\$ 3.45	\$ 2.68	\$ 2.24
Weighted average shares outstanding:							
Basic	19,468	19,308	19,332	19,582	19,959	20,501	19,709
Diluted	19,468	19,455	19,486	20,793	21,395	20,857	19,996
Ratio of Earnings to Fixed Charges(2)	(3)	5.40	5.95	4.27	5.30	6.93	5.48

(1) Fiscal 2008 includes 53 weeks of operating activity.

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- (2) For purposes of calculating the ratio of earnings to fixed charges: (a) earnings are defined as earnings (loss) from continuing operations before provision for income taxes and fixed charges; and (b) fixed charges consist of net interest expense on all indebtedness, deferred financing charges and an estimate of the interest within rental expense.
- (3) The pre-tax loss from continuing operations for the fiscal nine months ended August 2, 2009 were not sufficient to cover fixed charges by a total of \$676,787. As a result, the ratio of earnings to fixed charges has not been computed for this period.

	<b>Nine Months Ended</b>		<b>Fiscal Year</b>				
	<b>August 2, 2009</b>	<b>July 27, 2008</b>	<b>2008(1)</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>
	(In thousands, except per share data)						
<b>Statement of Cash Flows and Balance Sheet Data:</b>							
Cash flow from operating activities	\$ 75,340	\$ 3,224	\$ 40,194	\$ 137,625	\$ 121,514	\$ 118,267	\$ 23,730
Total assets	627,635	1,396,696	1,380,701	1,343,058	1,299,701	990,219	786,426
Total debt	473,710	474,630	474,400	497,037	497,984	373,000	216,700
Stockholders equity (deficit)	(18,221)	598,650	623,829	539,696	498,409	444,144	401,177
Cash dividends per share(2)							

(1) Fiscal 2008 includes 53 weeks of operating activity.

(2) We did not pay dividends on our common stock for any of the periods referred to above.

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**Selected Unaudited Pro Forma Consolidated Financial Data**

The following selected unaudited pro forma consolidated financial data for the year ended November 2, 2008, and as of and for the nine months ended August 2, 2009 has been derived by the application of pro forma adjustments to our historical consolidated financial statements. The selected unaudited pro forma consolidated financial data is presented for illustrative purposes only and is not necessarily indicative of the financial position or results of operations that would have actually been reported had the recapitalization plan occurred at the beginning of the periods presented, nor is it indicative of our future financial position or results of operations.

The unaudited pro forma financial information presented in this prospectus/disclosure statement does not give effect to the pro forma impact of the transactions contemplated by the prepackaged plan. The filing of a prepackaged plan would result in the application of restart accounting which could significantly change to recorded value of asset, liabilities and stockholders' equity.

The unaudited pro forma adjustments were prepared based on the assumptions we believe are reasonable. The unaudited pro forma summary selected consolidated balance sheet as of August 2, 2009, gives effect to the recapitalization plan as if it had occurred on August 2, 2009. The unaudited pro forma summary selected condensed consolidated statements of operations for the year ended November 2, 2008, and the nine months ended August 2, 2009, give effect to the recapitalization plan as if it had occurred on October 29, 2007.

Due to the fact that the transactions contemplated by the recapitalization plan have not yet been completed, except as indicated, the unaudited pro forma summary selected financial information assumes that:

100% of the convertible notes are exchanged for a combination of \$500 in cash and 390 shares of common stock for each \$1,000 principal amount of the convertible notes and accrued and unpaid interest thereon;

the conversion price of the Series B convertible preferred stock to be issued in the CD&R investment is \$1.2748 per share of common stock;

the restructuring is effected through the consummation of the recapitalization plan as opposed to the prepackaged plan;

the market price for common stock for all computations is \$2.61 per share, which was the closing market price on September 4, 2009; and

the fair market value of the derivative liability related to default dividend rates is expected to be \$7.5 million (\$4.6 million net of tax) in all periods.

If (1) the consideration offered in this exchange offer changes, (2) the conversion price of the Series B convertible preferred stock changes (see "The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti Dilution Adjustments") and/or (3) we are required to file the prepackaged plan (see "The Prepackaged Plan"), the unaudited pro forma adjustments could be materially different. These adjustments could result in significant differences in the estimates for the embedded derivative liability of the Series B convertible preferred stock, the estimated beneficial conversion feature of the Series B convertible preferred stock, and the estimated debt extinguishment cost of the convertible notes.

The selected unaudited pro forma consolidated financial information has been derived from our consolidated financial statements for the fiscal year ended in 2008, which are attached as Exhibit 99.1 to our current report on Form 8-K filed with the SEC on September 10, 2009 and our consolidated financial statements for the quarterly period ended August 2, 2009, which are included in our quarterly report on Form 10-Q, each of which is incorporated herein by reference and should be read in conjunction with Selected Consolidated Financial and Other Data and Unaudited Pro Forma Financial Information and the consolidated financial statements and related notes included in this prospectus/disclosure statement. Our financial statements and schedules included in this prospectus/disclosure statement have been prepared on the assumption that we have the ability to continue as a going concern. The financial statements do not include any adjustments related to the recoverability and classification of asset carrying amounts or the amount and classification of liabilities that might result should we be unable to continue as a going concern.

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	<b>Pro Forma (unaudited)</b>	
	<b>Nine</b>	
	<b>Months</b>	<b>Year Ended</b>
	<b>Ended</b>	<b>Year Ended</b>
	<b>August 2,</b>	<b>November 2,</b>
	<b>2009</b>	<b>2008</b>
	(In thousands, except per share data)	
<b>Statement of Operations Data:</b>		
Sales	\$ 723,522	\$ 1,764,159
Net income (loss)	(642,851)	88,400
Dividends and accretion on Series B convertible preferred stock	28,898	35,119
Net income (loss) available to common stockholders	\$ (671,749)	53,281
Earnings (loss) per share:		
Basic	\$ (2.15)	\$ 0.18
Diluted	\$ (2.15)	\$ 0.18
Weighted average shares outstanding:		
Basic	90,002	89,866
Diluted	90,002	89,866

**Pro Forma (unaudited)**  
**As of August 2, 2009**  
(In thousands, except per share data)

<b>Balance Sheet Data:</b>		
Total assets	\$	587,091
Total debt		150,420
Series B convertible preferred stock		212,579
Stockholders' equity		50,441

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**RISK FACTORS**

*Before you participate in this exchange offer or vote on the prepackaged plan, you should carefully consider the risks described below. You should also consider the other information included or incorporated by reference in this prospectus/disclosure statement before deciding whether to participate in this exchange offer or how to vote on the prepackaged plan.*

**Risks Relating to NOT Accepting the Exchange Offer or Rejecting the Prepackaged Plan**

*The following risks specifically apply to the extent a holder of convertible notes elects not to participate in this exchange offer or to vote against the prepackaged plan. There are additional risks attendant to being an investor in our securities that you should review, whether or not you elect to tender your convertible notes. These risks are described in *Risk Factors* in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended November 2, 2008 and Part II, Item 1A of our Quarterly Reports on Form 10-Q for the quarterly periods ended February 1, 2009, May 3, 2009 and August 2, 2009, each of which is incorporated by reference herein.*

**If the minimum tender condition is not met for this exchange offer and we cannot implement the recapitalization plan, there nonetheless may be sufficient votes to accept the prepackaged plan to accomplish the restructuring.**

The consummation of this exchange offer is conditioned upon, among other things, satisfaction of the minimum tender condition. If we are not able to complete the recapitalization plan because the minimum tender condition is not met or waived or for any other reason, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, as an alternative to the recapitalization plan, we may elect and, under the terms of the investment agreement, we may be required, to seek confirmation of the prepackaged plan in a chapter 11 proceeding.

To obtain confirmation of the prepackaged plan without invoking the cram-down provisions of the Bankruptcy Code, each class of claims or interests that is impaired must vote to accept the prepackaged plan. An impaired class of claims (such as holders of convertible notes) is deemed to accept a plan of reorganization if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the claims in such class who actually cast ballots vote to accept the prepackaged plan. If the prepackaged plan is confirmed by the bankruptcy court, it will bind all holders of claims against, and equity interests in, the Company regardless of whether they voted for, against or did not vote at all on the prepackaged plan.

Therefore, assuming the prepackaged plan satisfies the other requirements of the Bankruptcy Code, a significantly smaller number of claim holders can bind other claim holders to the terms of the prepackaged plan than are required to effect this exchange offer and the other transactions contemplated by the recapitalization plan. Additionally, since claims and equity interests are grouped in classes for the purpose of voting on the prepackaged plan, holders of claims and interests may be bound by the decisions of other claim or interest holders in a way that they otherwise would not outside of bankruptcy.

The confirmation and effectiveness of the prepackaged plan are subject to certain conditions that may not be satisfied and are different from those under the recapitalization plan. We cannot assure you that all requirements for confirmation and effectiveness of the prepackaged plan will be satisfied or that the bankruptcy court will conclude that



the requirements for confirmation and effectiveness of the prepackaged plan have been satisfied. See The Prepackaged Plan Confirmation of the Prepackaged Plan and The Prepackaged Plan Conditions to the Effective Date of the Prepackaged Plan.

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**If we are not able to consummate the exchange offer, the prepackaged plan or the CD&R investment, we do not expect that we will be able to meet our obligations to repurchase the convertible notes pursuant to the rights of the holders thereof to such repurchase on November 15, 2009, and we will likely be in default under our existing credit agreement, the convertible notes indenture, and our swap agreement on November 6, 2009 and our obligations under such agreements may become immediately due and payable.**

The consummation of the exchange offer or, in the alternative, confirmation of the prepackaged plan, is a condition to the CD&R investment and the term loan refinancing to accomplish the restructuring. If we are unable to consummate the restructuring, we do not expect that we will have, or have access to, sufficient liquidity to meet our debt obligations. As a result, we will have an immediate need to pursue other alternatives to manage our liquidity needs, including potentially filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan. See Risk Factors If we do not consummate the restructuring by November 6, 2009, adverse capital and credit market conditions may significantly and adversely affect our ability to otherwise refinance our existing debt.

Unless we consummate the restructuring, we do not expect that we will have, or have access to, sufficient liquidity to meet our debt repayment/repurchase obligations, including any potential acceleration of our existing term loan indebtedness and our obligation to repurchase the convertible notes at the option of the holders thereof on November 15, 2009, the next scheduled repurchase date. Due to our non-compliance as of August 2, 2009 with the required leverage, senior leverage and interest coverage ratios in our existing credit agreement, our outstanding indebtedness of approximately \$293.3 million thereunder may be declared immediately due and payable as early as November 6, 2009, the date the current waiver from the lenders under our existing credit agreement expires. In the event that we do not repay such borrowings upon acceleration, the lenders under our existing credit agreement could exercise their remedies as secured creditors with respect to the collateral securing such borrowings. A failure to pay or refinance such borrowings will also result in a default under the convertible notes indenture, which could also then be declared immediately due and payable, and under our swap agreement, which could then be terminated by the counterparty thereto. If all such indebtedness, which totaled approximately \$473.7 million as of August 2, 2009 and such amounts payable pursuant to the termination of the swap agreement, were to become due and payable on November 6, 2009, it would result in a material adverse effect on our financial condition, operations and debt service capabilities. As of August 2, 2009, excluding restricted cash, we had a current cash balance of approximately \$105.4 million to address our liquidity needs. For a description of our non-compliance with the financial ratio covenants under our existing credit agreement, see our quarterly report on Form 10-Q for the quarter ended August 2, 2009, our current reports on Form 8-K filed on May 21, 2009, July 15, 2009 and August 27, 2009 and Incorporation of Certain Documents by Reference.

In such event, we will have an immediate need to pursue other alternatives to manage our liquidity needs, including potentially filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan. We do not expect, and there can be no assurance, that any alternative to such bankruptcy filing would be found. There can be no assurance as to the value, if any, that would be available to holders of convertible notes in the case of any such bankruptcy filing. The convertible notes are unsecured obligations of the Company and rank junior to the secured obligations under our existing credit facility. Accordingly, upon any distribution to our creditors in any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding relating to us or our property, the holders of our term loans under our existing credit facility will be entitled to be paid in full before any payment may be made with respect to the convertible notes.

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**If we are unable to consummate this exchange offer, the prepackaged plan or the CD&R investment, the Company will face an immediate liquidity crisis that could likely result in the Company filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan, which could materially adversely affect the relationships between us and our existing and potential customers, employees, partners and other stakeholders.**

We believe that seeking relief under the Bankruptcy Code by filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan could materially adversely affect the relationships between us and our existing and potential customers, employees, partners and other stakeholders. For example:

such a bankruptcy filing could erode our customers' confidence in our ability to provide our products and services and, as a result, there could be a significant and precipitous decline in our revenues, profitability and cash flow;

employees could be distracted from performance of their duties, or more easily attracted to other career opportunities;

it may be more difficult to attract or replace key employees;

lenders and other partners could seek to terminate their relationship with us, require financial assurances or enhanced performance, or refuse to provide credit on the same terms as prior to the reorganization case;

we could be forced to operate in bankruptcy for an extended period of time while we tried to develop a reorganization plan that could be confirmed, which we believe may impair our business and prospects;

our suppliers, vendors, and service providers could terminate their relationship with us or require financial assurances or enhanced performance;

we may not be able to obtain debtor-in-possession financing to sustain us during the bankruptcy case under the Bankruptcy Code; or

if we are not able to confirm and implement a plan of reorganization or if sufficient debtor-in-possession financing is not available, we may be forced to liquidate under chapter 7 of the Bankruptcy Code.

In addition, any distributions that you may receive in respect of your convertible notes under a liquidation or under a protracted reorganization case or cases under the Bankruptcy Code other than in connection with the prepackaged plan would likely be substantially delayed and the value of any potential recovery likely would be adversely impacted by such delay.

Furthermore, in the event of any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding other than in connection with the prepackaged plan, there can be no assurance as to the value, if any, that would be available to holders of convertible notes. The convertible notes are unsecured obligations of the Company and rank junior to the secured obligations under our existing credit facility. Accordingly, upon any distribution to our creditors in any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding relating to us or our property other than in connection with the prepackaged plan, the holders of our indebtedness under our existing credit facility will be entitled to be paid in full before any payment may be made with respect to the convertible notes. If you do not tender your convertible notes or vote to accept the prepackaged plan, you may receive less value for the convertible notes in the event of any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding other than the prepackaged plan than you

would under the restructuring.

**Risks Relating to Accepting the Exchange Offer or to the Effectiveness of the Prepackaged Plan and Becoming Holders of Common Stock**

*The following risks specifically apply only to holders of common stock issued pursuant to this exchange offer or, in the alternative, the prepackaged plan, and should be considered, along with the other risk factors, by holders of convertible notes. There are additional risks attendant to being an investor in our securities that you should review, whether or not you elect to tender your convertible notes. These risks are described in Risk Factors in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended November 2, 2008, and Part II, Item 1A*

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*of our Quarterly Reports on Form 10-Q for the quarterly periods ended February 1, 2009, May 3, 2009 and August 2, 2009, each of which is incorporated by reference herein.*

**The exchange ratio for this exchange offer or, in the alternative, the prepackaged plan does not reflect any independent valuation of the convertible notes or shares of common stock.**

We have not obtained or requested, and do not intend to obtain or request, a fairness opinion from any banking or other firm as to the fairness of the exchange ratios or the relative values of convertible notes and shares of common stock. If you tender your convertible notes or vote to accept the prepackaged plan and the exchange offer is consummated or the prepackaged plan is confirmed and becomes effective, you may or may not receive more than or as much value as you would if you choose to keep your convertible notes (whether this exchange offer was or was not consummated) or if the prepackaged plan did not become effective and in the event of any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding other than in connection with the prepackaged plan, you may have a smaller claim than if you had retained your convertible notes and you may recover less than you would have had you retained your convertible notes.

**The consummation of each of this exchange offer and the prepackaged plan is subject to satisfaction of certain conditions, including the receipt of proceeds from the CD&R investment.**

The consummation of this exchange offer is subject to the receipt of proceeds from the CD&R investment (which is itself subject to several conditions, including the consummation of the term loan refinancing and the ABL financing and the expiration or termination of any waiting period required to consummate the CD&R investment under the Austrian Act (see The Restructuring Description of the CD&R Investment The Investment Agreement Conditions to the CD&R Investment )), the minimum tender condition and effectiveness of the registration statement of which this prospectus/disclosure statement forms a part. See The Exchange Offer Conditions to Completion of the Exchange Offer.

The effective date of the prepackaged plan is subject to the entry of the confirmation order and the absence of a stay of such order, the receipt of proceeds from the CD&R investment, the consummation of the term loan refinancing, the consummation of the ABL financing and such other conditions as to which the Company and the CD&R Fund may reasonably agree. See The Prepackaged Plan Conditions to the Effective Date of the Prepackaged Plan.

There can be no assurance that any of such conditions will be met.

**Holders of the convertible notes who participate in this exchange offer or, in the alternative, receive common stock pursuant to the prepackaged plan will lose their rights under the convertible notes indenture.**

Holders whose convertible notes are accepted for exchange and receive shares of common stock, or holders who receive shares of common stock pursuant to the prepackaged plan, will lose all rights associated with the convertible notes. Please see The Exchange Offer Material Differences in the Rights of Holders of Convertible Notes and Common Stock for a more detailed description of the material differences in your rights as a result of the restructuring.

**There are risks associated with the common stock.**

The value of the common stock may be adversely affected by a number of factors, including many of the risks described in this prospectus/disclosure statement. If, for example, our stockholders decide to sell a substantial number of their shares of common stock, the value of the common stock could decline. Similarly, if we fail to comply with the covenants in our existing credit agreement (which are also incorporated into our existing swap agreement), the

amended credit agreement, the ABL agreement or the convertible notes indenture, as applicable, resulting in an event of default thereunder, certain of our outstanding indebtedness could be accelerated, which could have a material adverse effect on the value of the common stock.

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**If our common stock is deemed a penny stock, its liquidity will be adversely affected.**

As of October 8, 2009, the closing stock price for our common stock was \$2.78 per share. If the market price for our common stock falls below \$1.00 per share, our common stock may be deemed to be a penny stock. If our common stock is considered a penny stock, it would be subject to rules that impose additional sales practices on broker-dealers who sell our securities. For example, broker-dealers must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to sale. Also, a disclosure schedule must be delivered to each purchaser of a penny stock, disclosing sales commissions and current quotations for the securities. Monthly statements are also required to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks. Because of these additional conditions, some brokers may choose not to effect transactions in penny stocks. This could have an adverse effect on the liquidity of our common stock.

**The common stock is junior to all of our other securities, including our existing and future indebtedness and the Series B convertible preferred stock.**

The common stock is the most junior of all of our securities. As a result, our existing and future indebtedness and other non-equity claims, as well as our preferred stock, including the Series B convertible preferred stock, will rank senior to the common stock as to rights upon any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding relating to the Company. In the event of any distribution or payment of our assets in any foreclosure, dissolution, winding-up, liquidation or reorganization, or other bankruptcy proceeding, our creditors and holders of our preferred stock will have a superior claim and interest, as applicable, to the interests of holders of our common stock. If any of the foregoing events occur, we cannot assure you that there will be sufficient assets for distribution in respect of the common stock. In addition, in the event of a change of control, holders of the Series B convertible preferred stock may be entitled to superior rights relative to the holders of common stock, including a right to require redemption by the Company of such Series B convertible preferred stock. See "The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Change of Control Redemption Right."

**The issuance of shares of common stock in this exchange offer or, in the alternative, pursuant to the prepackaged plan and the issuance of shares of Series B convertible preferred stock upon consummation of the CD&R investment will dilute the ownership interest of our existing stockholders and may not be fully reflected in the current market price of our common stock and we cannot predict the price at which our common stock will trade following the restructuring.**

As of September 4, 2009, we had approximately 19,981,585 shares of common stock issued and outstanding, excluding shares held by us as treasury stock. Assuming that we complete the restructuring and all outstanding convertible notes are tendered and accepted in this exchange offer or retired pursuant to the prepackaged plan, based on the number of shares of common stock authorized, issued and outstanding as of September 4, 2009, at the closing of, and after giving effect to, the restructuring:

holders of convertible notes would receive 70,200,000 shares of common stock, or approximately 24.5% of our voting power;

the CD&R Fund would receive 250,000 shares of Series B convertible preferred stock convertible into 196,109,194 shares of common stock based on the initial conversion price (assuming that we have sufficient authorized but unissued shares to permit such conversion, which, after giving effect to the restructuring, we do not expect to have (see "Summary The Restructuring CD&R Investment ")), or approximately 68.5% of our voting power;

our current stockholders would continue to hold approximately 19,981,585 shares of common stock, or approximately 7.0% of our voting power.

The average daily trading volume of our common stock on the NYSE during the three months ending August 2, 2009, was approximately 1.21 million shares. Given these low trading volumes relative to the number of shares of common stock outstanding, any sales in the public market of the shares of common stock issuable in this exchange



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offer or, in the alternative, pursuant to the prepackaged plan, are likely to adversely affect the prevailing market price of our common stock.

This issuance of the common stock in this exchange offer or, in the alternative, pursuant to the prepackaged plan and the issuance of the Series B convertible preferred stock in the CD&R investment could materially depress the price of our common stock if holders of a large number of shares of common stock attempt to sell all or a substantial portion of their holdings following the restructuring. Pursuant to the lock-up agreements, unless the shares of common stock issuable in respect of the convertible notes subject to the lock-up agreements are registered or are otherwise freely tradable pursuant to the provisions of the Bankruptcy Code, we agreed to enter into registration rights agreements that will provide registration rights to holders of convertible notes who are parties to the lock-up agreements in the event that this exchange offer is consummated. See *The Restructuring The Lock-Up Agreements*. In accordance with the terms of the lock-up agreements or, in the alternative, pursuant to the prepackaged plan, such registration rights agreement would, among other things and subject to certain conditions, obligate us to file with the SEC a shelf registration statement covering resales of the common stock received by such noteholders on a delayed or continuous basis. Upon effectiveness of such shelf registration statement, holders of notes that executed a lock-up agreement, which hold more than 79% of the aggregate principal amount of the outstanding convertible notes, would be able to freely transfer their shares of common stock received pursuant to the exchange offer. We cannot predict what the demand for our common stock will be following the restructuring, how many shares of our common stock will be offered for sale or be sold following the restructuring, or the price at which our common stock will trade following the restructuring.

**The Series B convertible preferred stock may be dilutive to our stockholders from and after the closing of the restructuring. The Series B convertible preferred stock will accrue dividends, which may be paid in cash or in kind. If dividends on the Series B convertible preferred stock are paid in kind, they will dilute the ownership interest of our stockholders. In addition, the dividend rate of the Series B convertible preferred stock will increase upon the occurrence of certain events which constitute defaults under the terms of the Series B convertible preferred stock, which may cause further dilution. Furthermore, the Series B convertible preferred stock also provides for anti-dilution rights, which may dilute the ownership interest of stockholders in the future.**

Upon issuance, the Series B convertible preferred stock will accrue dividends at a rate *per annum* of 12.00% if paid in kind or at a rate *per annum* of 8.00% if paid in cash, unless and until such dividends are reduced to 0.00%, which will occur if the trading price per share of common stock equals or exceeds two times a specified target price (which is equal to \$1.2748 at the closing of the restructuring, but is subject to adjustments thereafter) for each trading day during any period of 20 consecutive trading days occurring after the 30-month anniversary of the closing of the restructuring.

If dividends on the Series B convertible preferred stock are paid in kind, it will dilute the ownership interest of stockholders, including holders of convertible notes who become holders of common stock pursuant to this exchange offer or pursuant to the prepackaged plan.

Furthermore, upon the occurrence of a default, the applicable dividend rate is subject to increase by:

6.00% *per annum*, if the default is the result of a failure by us after June 30, 2011 to reserve and keep available for issuance a number of shares of common stock equal to 110% of the number of shares of common stock issuable upon conversion of all outstanding shares of Series B convertible preferred stock; or

3.00% *per annum* for any other default.

See The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends.

After giving effect to the restructuring, we do not expect to have sufficient authorized but unissued shares of common stock to enable the conversion of all 250,000 shares of Series B convertible preferred stock to be issued to the CD&R Fund pursuant to the CD&R investment. Pursuant to the stockholders agreement (see The Restructuring Description of the CD&R Investment The Stockholders Agreement ), from and after the closing of the

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restructuring, we will use our best efforts and take all corporate actions necessary to obtain approval from holders of our common stock of an amendment to Article FOURTH, section 1 of our restated certificate of incorporation to increase the number of authorized shares of common stock. However, there is no assurance that we will be able to obtain such approval. In the event that we do not obtain such approval prior to June 30, 2010, the dividend rate with respect to the Series B convertible preferred stock will increase by 3.00% *per annum*, and if we do not obtain such approval prior to June 30, 2011, the dividend rate will increase by an additional 3.00% *per annum* (resulting in an aggregate increase of 6.00% *per annum*) as described in The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends Default Dividend Rate. See The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek Amendments to our Restated Certificate of Incorporation. In such event, stockholders' ownership interest in the Company will be further diluted to the extent that dividends paid in respect of such additional default dividend rate are dividends paid in kind.

As further described in The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti Dilution Adjustments, the conversion price of the Series B convertible preferred stock is subject to adjustment, including if the Company issues common stock or other securities below the then-current market price or, during the first three years after the closing of the restructuring, below the then-current conversion price. Adjustments to the conversion price will dilute the ownership interest of stockholders.

**At the closing of the CD&R investment, we will enter into a stockholders agreement with the CD&R Fund pursuant to which the CD&R Fund will have substantial governance and other rights.**

At the closing of the CD&R investment, we will enter into a stockholders agreement with the CD&R Fund setting forth certain terms and conditions regarding the CD&R investment and the ownership of the CD&R Fund's shares of Series B convertible preferred stock. Pursuant to the stockholders agreement with the CD&R Fund, subject to certain ownership and other requirements and conditions, the CD&R Fund will have the right to appoint a majority of directors to our board of directors, including the Lead Director or Chairman of the Executive Committee of our board of directors, and will have consent rights over a variety of significant corporate and financing matters, including, subject to certain customary exceptions and specified baskets, sales and acquisitions of assets, issuances and redemptions of equity, incurrence of debt, the declaration or payment of extraordinary distributions or dividends and changes to the Company's line of business. In addition, the CD&R Fund will be granted subscription rights under the terms and conditions of the stockholders agreement. See The Restructuring Description of the CD&R Investment The Stockholders Agreement.

Further, effective as of the closing, the Company will be required to have taken all corporate action and filed all election notices or other documentation with the NYSE necessary to elect to take advantage of the exemptions to the requirements of sections 303A.01, 303A.04 and 303A.05 of the NYSE Listed Company Manual and, for so long as we qualify as a controlled company within the meaning set forth in the NYSE Listed Company Manual or any similar provision in the rules of a stock exchange on which the securities of the Company are quoted or listed for trading, we have agreed to use our reasonable best efforts to take advantage of the exemptions therein. Such exemptions would exempt us from compliance with the NYSE's requirements for companies listed on the NYSE to have (1) a majority of independent directors, (2) a nominating/corporate governance committee and a compensation committee, in each case, composed entirely of independent directors, and (3) charters for the nominating/corporate governance committee and the compensation committee, in each case, addressing certain specified matters. See The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement with Respect to Controlled Company Status.

**The Series B convertible preferred stock to be issued in connection with the CD&R investment has substantial rights and will rank senior to the common stock.**

Assuming consummation of the CD&R investment, if your convertible notes are accepted for exchange for cash and shares of common stock in this exchange offer or if you receive cash and common stock under the prepackaged plan, your shares of common stock will rank junior as to dividend rights, redemption payments and rights (including as to distribution of assets) in any liquidation, dissolution, or winding-up of the affairs of the Company and otherwise to the shares of Series B convertible preferred stock to be issued to the CD&R Fund in

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connection with the CD&R investment. The terms of the Series B convertible preferred stock will entitle the holders thereof to vote on an as-converted basis (without taking into account any limitations on convertibility that may then be applicable) with the holders of common stock. At the closing of the restructuring, we expect that the CD&R Fund will have a majority voting position and holders of common stock will be in the minority. See [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Voting Rights](#). In addition, certain actions by the Company, including, upon the occurrence of certain specified defaults, the adoption of an annual budget, the hiring and firing, or the changing of the compensation, of executive officers and the commitment, resolution or agreement to effect any business combination, among others, require the prior affirmative vote or written consent of the holders representing at least a majority of the then-outstanding shares of Series B convertible preferred stock, voting together as a separate class. See [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Voting Rights Class Voting Rights](#) and [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Voting Rights Special Contingent Voting Rights](#). This level of control, together with the CD&R Fund's rights under the stockholders agreement, could discourage others from initiating any potential merger, takeover or other change of control transaction that may otherwise be beneficial to our business or our stockholders. See [The Restructuring Description of the CD&R Investment The Stockholders Agreement](#).

Furthermore, the terms of the Series B convertible preferred stock also provide for anti-dilution rights, which may dilute the ownership interest of stockholders in the future, and change of control redemption rights, which may entitle the holders of Series B convertible preferred stock to receive higher value for their shares of Series B convertible preferred stock than the shares of common stock would receive in the event of a change of control (see [The Restructuring Description of the CD&R Investment Certain Terms of the Series B convertible preferred Stock Convertibility and Anti-Dilution Adjustments](#) and see [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Change of Control Redemption Right](#) ). In addition, the terms of the Series B convertible preferred stock also provide that the CD&R Fund will participate in common stock dividends, receive preferred dividends and have preferential rights in liquidation, including make whole rights (see [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends](#) ).

**The trading price of our common stock has been and may continue to be volatile.**

The trading price of our common stock has fluctuated in the past and is subject to significant fluctuations in response to the following factors, some of which are beyond our control:

- variations in quarterly operating results;
- deviations in our earnings from publicly disclosed forward-looking guidance;
- changes in earnings estimates by analysts;
- our announcements of significant contracts, acquisitions, strategic partnerships or joint ventures;
- general conditions in the metal components and engineered building systems industries;
- uncertainty about current global economic conditions;
- fluctuations in stock market price and volume; and
- other general economic conditions.

During fiscal 2008, the sale prices of our common stock on the NYSE ranged from a high of approximately \$40.95 per share to a low of approximately \$14.25 per share. Since the beginning of fiscal 2009, the sale prices of our common stock on the NYSE ranged from a high of approximately \$19.35 per share to a low of approximately \$1.76 per share. In recent years, the stock market in general has experienced extreme price and volume fluctuations that have affected the market price for many companies in industries similar to ours. Some of these fluctuations have been unrelated to the operating performance of the affected companies. These market fluctuations may decrease the market price of the common stock in the future.

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**If we cannot meet the NYSE's continued listing requirements, the NYSE may delist our common stock, and such a delisting could have an adverse impact on the liquidity and market price of the common stock.**

Our common stock is currently listed on the NYSE. In the future, we may not be able to meet the NYSE's continued listing requirements, which include, among other things: (1) that the average closing price of our common stock be above \$1.00 over 30 consecutive trading days; (2) that our average global market capitalization over a consecutive 30 trading-day period is at or above \$50.0 million or, if our average global market capitalization over a consecutive 30 trading-day period is less than \$50.0 million, that our total stockholders' equity is at or above \$50.0 million; and (3) that the average market capitalization be at least \$15.0 million over 30 consecutive trading days. The closing price of our common stock on October 8, 2009 was \$2.78 per share, and our market capitalization was approximately \$55.5 million as of such date.

A delisting of our common stock could negatively affect holders of common stock and negatively affect us by, among other things, reducing the liquidity and market price of our common stock; reducing the number of investors willing to hold or acquire our common stock, which could negatively affect our ability to raise equity financing; decreasing the amount of news and analyst coverage for our company; and limiting our ability to issue additional securities or obtain additional financing in the future.

**We are not currently paying dividends on our common stock and have no current plans to do so in the future.**

Historically, we have not paid dividends on our common stock and have no current plans to do so in the future. Furthermore, the terms of our existing credit agreement restrict our ability to do so, and we expect that, if the term loan refinancing or the ABL financing is consummated, the amended credit agreement or the ABL agreement, respectively, will have similar restrictions. In addition, under the terms of the Series B convertible preferred stock, the holders of such shares would participate in any declared common stock dividends and also receive preferred dividends, reducing the cash available to holders of common stock. See [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock](#). Our other future indebtedness, if any, may also restrict payment of dividends on our common stock. Also, assuming the consummation of the CD&R investment, we may not declare or pay any extraordinary dividend or distribution without the prior consent of the CD&R Fund pursuant to the stockholders agreement. See [The Restructuring Description of the CD&R Investment The Stockholders Agreement Consent Rights](#).

In addition, the terms of the Series B convertible preferred stock will limit the circumstances under which the Company will be able to pay dividends or make distributions on junior securities, including common stock. Specifically, at all times during which shares of Series B convertible preferred stock are issued and outstanding, we may not (1) declare, pay or set aside for payment any dividends or distributions upon any junior securities, except for certain limited exceptions or (2) repurchase, redeem or otherwise acquire any junior securities for any consideration or pay any moneys or make available for a sinking fund for the redemption of any shares of such junior securities, except for certain limited exceptions, unless, in each case, the Company has access to sufficient lawful funds to redeem in full all shares of the Series B convertible preferred stock then issued and outstanding. In addition, subject to certain limited exceptions, at any time during which a default under the terms of the Series B convertible preferred stock is occurring, we may not declare or pay or set apart for payment any dividend or other distribution with respect to any junior securities, or redeem, purchase or otherwise acquire for any consideration any junior securities. See [The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends Restrictions with Respect to Junior Securities Dividends](#).

**We may issue securities senior to the common stock without your approval.**

We may authorize, create or increase the authorized amount of any class or series of stock that ranks senior to the common stock with respect to the payment of dividends or amounts payable upon liquidation, dissolution or winding-up without the consent of the holders of the outstanding common stock, subject to applicable laws and our obligations under the stockholders agreement.



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**Change-of-control, consent or notice provisions in agreements may be triggered upon the completion of this exchange offer or, in the alternative, the effectiveness of the prepackaged plan.**

We may be a party to agreements that contain change-of-control, consent or notice provisions that may be triggered following the issuance of the shares of common stock in this exchange offer, or in the alternative, pursuant to the prepackaged plan and/or the consummation of the CD&R investment. These change-of-control, consent or notice provisions, if triggered and not waived by any beneficiaries of those provisions, could result in termination of an agreement or in unanticipated expenses following the restructuring and could adversely affect our results of operations and financial condition.

**If we file for bankruptcy protection after the consummation of this exchange offer, there is a risk that any cash consideration received in this exchange offer may be determined to be a preferential transfer and the court may require that such consideration be returned to the Company.**

If a holder of convertible notes chooses to exchange its convertible notes in this exchange offer and receives cash consideration and if a bankruptcy involving the Company is commenced within 90 days after the consummation of this exchange offer (or one year after the consummation of this exchange offer if the holder of convertible notes is an insider of the Company), the bankruptcy court may determine that the holder of convertible notes received preferential treatment to the detriment of other unsecured creditors. In that event, any value received by such holder may be required to be returned. The holder of convertible notes would then have a claim against the bankruptcy estate equal to the value of the avoided transfer.

**We may incur tax liability or lose tax attributes, and our ability to use certain of our tax attributes may be limited, as a result of the consummation of the recapitalization plan or the prepackaged plan.**

We may incur cancellation-of-indebtedness income, which we refer to as COD income, for U.S. federal income tax purposes as a result of the consummation of the recapitalization plan or the prepackaged plan.

To the extent that we were considered insolvent from a tax perspective immediately prior to the consummation of the recapitalization plan, any such COD income generally would be excluded from our taxable income. Alternatively, if the discharge of our liability were to occur in a chapter 11 bankruptcy case pursuant to the prepackaged plan, any COD income from such discharge generally would be excluded from our taxable income.

If and to the extent any COD income is excluded from taxable income pursuant to the insolvency exception or the bankruptcy exception described above, we generally will be required to reduce certain of our tax attributes, including, but not limited to, our net operating losses, loss carryforwards, credit carryforwards and tax basis in certain assets. This may result in a significant reduction in, and possible elimination of, certain of our tax attributes.

If any COD income is not excluded from our taxable income and we do not have sufficient losses to offset fully such COD income, we may incur tax liability from such COD income. We may make an election under recently enacted section 108(i) of the Internal Revenue Code of 1986, as amended, which we refer to as the Internal Revenue Code, to defer the inclusion of all or a portion of any COD income resulting from the consummation of the recapitalization plan or the prepackaged plan, with the amount of deferred COD income becoming includible in taxable income ratably over a five-taxable-year period beginning in, if such consummation occurs in 2009, the fifth taxable year after such consummation.

Notwithstanding our ability to utilize our available losses to offset any such COD income for regular U.S. federal income tax purposes, we may nonetheless be subject to tax under the alternative minimum tax provisions of the Internal Revenue Code. Furthermore, if we make the election under section 108(i) of the Internal Revenue Code to

defer our COD income, we may incur current state income tax liability with respect to such deferred COD income in states that do not recognize the election.

Because we are expected to undergo an ownership change under section 382 of the Internal Revenue Code as a result of the restructuring, our ability to use our loss carryforwards, if any, and certain other tax attributes may be subject to limitation under section 382 of the Internal Revenue Code.

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**Risks Relating to the Prepackaged Plan**

**The prepackaged plan may have a material adverse effect on our operations.**

The prepackaged plan solicitation or any subsequent commencement of a prepackaged chapter 11 case could adversely affect the relationships between us and our customers, employees, partners and others. There is a risk, due to uncertainty about our future, that:

customers could seek alternative suppliers;

such a bankruptcy filing could erode our customers' confidence in our ability to provide our products and services and, as a result, there could be a significant and precipitous decline in our revenues, profitability and cash flow;

it may be more difficult to attract or replace key employees;

employees could be distracted from performance of their duties or more easily attracted to other career opportunities; and

our suppliers, vendors, and service providers could terminate their relationship with us or require financial assurances or enhanced performance.

These factors could adversely affect our ability to obtain confirmation of the prepackaged plan.

**Our business may be negatively affected if we are unable to assume our executory contracts.**

The prepackaged plan provides for the assumption of all executory contracts and unexpired leases other than those leases and contracts that we specifically reject. Our intention is to preserve as much of the benefit of our existing contracts and leases as possible. However, some limited classes of executory contracts may not be assumed in this way. In these cases, we would need to obtain the consent of the counterparty to maintain the benefit of the contract. There is no guaranty that such consent would either be forthcoming or that conditions would not be attached to any such consent that make assuming the contracts unattractive. We would then be required to either forego the benefits offered by such contracts or to find alternative arrangements to replace them. We intend to attempt to pass through to the reorganized company all licenses in respect of patents, trademarks, copyright or other intellectual property that cannot otherwise be assumed pursuant to the Bankruptcy Code. The counterparty to any contract that we seek to pass through may object to our attempt to pass through the contract and require us to seek to assume or reject the contract or seek approval of the bankruptcy court to terminate the contract. In such an event, we could lose the benefit of the contract, which could harm our business.

**We may not be successful in obtaining first day orders to permit us to pay our key suppliers in the ordinary course of business.**

We have tried to address potential concerns of our key customers, vendors, employees, licensors/licensees and other key parties in interest that might arise from the filing of the prepackaged plan through a variety of provisions incorporated into or contemplated by the prepackaged plan, including our intention to seek appropriate court orders to permit us to pay our accounts payable to key parties in interest in the ordinary course, assume contracts with such parties in interest and in the case of those key vendors who have agreed to continue to extend business terms to us

during and after our bankruptcy proceeding, to provide for the payments of prepetition accounts payable. However, there can be no guaranty that we will be successful in obtaining the necessary approvals of the bankruptcy court for such arrangements or for every party in interest we may seek to treat in this manner, and as a result, our business might suffer.

**The bankruptcy court may not confirm the prepackaged plan.**

In the event that the conditions to the recapitalization plan are not satisfied or, with the consent of the CD&R Fund, waived, including, for example, the minimum tender condition, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of

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section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, as an alternative to the recapitalization plan, we may elect and, under the terms of the investment agreement, we may be required, to seek confirmation of the prepackaged plan in a chapter 11 bankruptcy proceeding. See The Restructuring Description of the CD&R Investment The Investment Agreement Commencement of a Reorganization Case in Connection with the Prepackaged Plan Covenant.

We cannot assure you that the prepackaged plan, if filed, will be confirmed by the bankruptcy court. Section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a plan of reorganization, requires, among other things, a finding by the bankruptcy court that the plan is feasible, that all claims and interests have been classified in compliance with the provisions of section 1122 of the Bankruptcy Code, and that, under the plan, each holder of a claim or interest within each impaired class either accepts the plan or receives or retains cash or property of a value, as of the date the plan becomes effective, that is not less than the value such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. See The Prepackaged Plan Confirmation of the Prepackaged Plan.

There can be no assurance that a bankruptcy court will conclude that the feasibility test and other requirements of section 1129 of the Bankruptcy Code have been met with respect to the prepackaged plan.

If the prepackaged plan is filed, there can be no assurance that modifications to such plan would not be required for confirmation, or that such modifications would not require a resolicitation of votes on the prepackaged plan. We believe that, if the prepackaged plan is confirmed, it would not be followed by a liquidation or an immediate need for further financial reorganization and that holders of claims and interests would receive or retain value that is not less than the value such holders would receive or retain if we were liquidated under chapter 7 of the Bankruptcy Code.

Moreover, the bankruptcy court could determine that our disclosures made in this document are inadequate and that the votes in favor of the prepackaged plan do not count. We would then have to commence the solicitation process again, which would include re-filing a plan of reorganization and disclosure statement. Typically, this process involves a 90-day or longer period and includes a court hearing for the required approval of a disclosure statement, followed (after bankruptcy court approval) by another solicitation of claim and interest holder votes for the plan of reorganization, followed by a confirmation hearing for the bankruptcy court to determine whether the requirements for confirmation have been satisfied, including the requisite claim and (if applicable) interest holder acceptances.

If the prepackaged plan is not confirmed, our reorganization case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate our assets for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of holders of claims and interests and our liquidation analysis are set forth under The Prepackaged Plan Liquidation Analysis. We believe that liquidation under chapter 7 of the Bankruptcy Code would result in (1) smaller distributions being made to creditors than those provided for in the prepackaged plan because of (a) the likelihood that our assets would have to be sold or otherwise disposed of in a less orderly fashion over a short period of time, (b) additional administrative expenses involved in the appointment of a trustee, and (c) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of our operations, and (2) no distributions being made to holders of our common stock.

If (1) our reorganization case is dismissed or converted into a case under chapter 7 of the Bankruptcy Code, or we filed a motion or other pleading with the bankruptcy court seeking the dismissal or conversion of the prepackaged plan proceeding or (2) if the bankruptcy court (a) grants relief that is materially inconsistent with the investment agreement or the prepackaged plan in any respect or (b) enters an order confirming any plan of reorganization other than the prepackaged plan, the CD&R Fund would have the right to terminate the investment agreement. See The



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**If we commence a chapter 11 bankruptcy proceeding, other parties in interest might be permitted to propose alternative plans of reorganization that may be less favorable to certain of our constituencies than the prepackaged plan.**

If our reorganization case is commenced, other parties in interest could seek authority from the bankruptcy court to propose an alternative plan of reorganization. Under the Bankruptcy Code, a debtor-in-possession initially has the exclusive right to propose and solicit acceptances of a plan of reorganization. However, such exclusivity period can be reduced or terminated upon order of the bankruptcy court. If such an order were to be entered, other parties in interest would then have the opportunity to propose alternative plans of reorganization.

If other parties in interest were to propose an alternative plan following expiration or termination of our exclusivity period, such a plan may be less favorable to existing equity interest holders and may seek to exclude these holders from retaining any shares of common stock under their plan. Alternative plans of reorganization also may treat less favorably the claims of a number of other constituencies, including our employees, our trading partners and customers. We consider maintaining relationships with our employees, customers and trading partners as critical to maintaining the value of our business as we restructure, and have sought to treat those constituencies accordingly. However, proponents of alternative plans of reorganization may not share our assessment and seek to impair the claims of such constituencies to a greater degree. If there were competing plans of reorganization, our reorganization case is likely to become longer and more complicated. If this were to occur, or if our employees or other constituencies important to our business reacted adversely to an alternative plan of reorganization, the adverse consequences discussed in the first risk factor in this section discussing risks related to the prepackaged plan could also occur.

If a bankruptcy proceeding is commenced by a third party against us or our subsidiaries (other than a bankruptcy contemplated by the prepackaged plan), the CD&R Fund may terminate the investment agreement if such proceeding has not been dismissed within 30 days of its commencement. See [The Restructuring Description of the CD&R Investment Termination of the Investment Agreement](#).

**The bankruptcy court may disagree with our classification of claims and interests.**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. We believe that the classification of claims and interests under the prepackaged plan complies with the requirements set forth in the Bankruptcy Code; however, once a chapter 11 case has been commenced, a claim or interest holder could challenge the classification. In such event, the cost of the prepackaged plan and the time needed to confirm the prepackaged plan may increase and we cannot assure you that the bankruptcy court will agree with our classification of claims and interests. If the bankruptcy court concludes that the classification of claims and interests under the prepackaged plan does not comply with the requirements of the Bankruptcy Code, we may need to modify the prepackaged plan. Such modification could require a resolicitation of votes on the prepackaged plan. If the bankruptcy court determined that our classification of claims and interests was not appropriate, the prepackaged plan may not be confirmed.

**The bankruptcy court may find the solicitation of acceptances inadequate.**

Usually, a plan of reorganization is filed and votes to accept or reject the plan are solicited after the filing of a petition commencing a chapter 11 case. Nevertheless, a debtor may solicit votes prior to the commencement of a chapter 11 case in accordance with section 1126(b) of the Bankruptcy Code and bankruptcy rule 3018(b). Section 1126(b) of the Bankruptcy Code and bankruptcy rule 3018(b) require that:

the plan of reorganization be transmitted to substantially all creditors and other interest holders entitled to vote;

the time prescribed for voting is not unreasonably short; and

the solicitation of votes is in compliance with any applicable nonbankruptcy law, rule or regulation governing the adequacy of disclosure in such solicitation, including the Exchange Act and Rules 13e-4(d),



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13e-4(e)(3), 14e-1 and 14e-4 promulgated under the Exchange Act. If no such law, rule or regulation exists, votes be solicited only after the disclosure of adequate information.

Section 1125(a)(1) of the Bankruptcy Code describes adequate information as information of a kind and in sufficient detail as would enable a hypothetical reasonable investor typical of holders of claims and interests to make an informed judgment about the plan. With regard to solicitation of votes prior to the commencement of a bankruptcy case, if the bankruptcy court concludes that the requirements of Bankruptcy Rule 3018(b) have not been met, then the bankruptcy court could deem such votes invalid, whereupon the prepackaged plan could not be confirmed without a resolicitation of votes to accept or reject the prepackaged plan. While we believe that the requirements of section 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018 will be met, there can be no assurance that the bankruptcy court will reach the same conclusion.

**Even if all classes of claims that are entitled to vote accept the prepackaged plan, we may fail to meet all conditions precedent to effectiveness of the prepackaged plan or the prepackaged plan may not become effective.**

Although we believe that the effective date of the prepackaged plan will occur very shortly after confirmation of the prepackaged plan, there can be no assurance as to such timing.

The confirmation and effectiveness of the prepackaged plan are subject to certain conditions that may not be satisfied. We cannot assure you that all requirements for confirmation and effectiveness required under the prepackaged plan will be satisfied or that the bankruptcy court will conclude that the requirements for confirmation and effectiveness of the prepackaged plan have been satisfied. See [The Prepackaged Plan Confirmation of the Prepackaged Plan](#) and [The Prepackaged Plan Conditions to Effective Date of the Prepackaged Plan](#).

If the conditions precedent to the effective date, including entry of the confirmation order, the receipt of proceeds from the CD&R investment, the consummation of the term loan refinancing, the consummation of the ABL financing and such other condition as to which the Company and the CD&R Fund may reasonably agree, have not occurred, the prepackaged plan may be vacated by the bankruptcy court.

Furthermore, in the event that the CD&R Fund does not fund the CD&R investment, and without a suitable alternative new investment, we do not believe the prepackaged plan would meet the confirmation requirement of section 1129 of the Bankruptcy Code that the plan be feasible. See [The Prepackaged Plan Confirmation of the Prepackaged Plan](#). In that event, we will not seek confirmation of the prepackaged plan and your vote in favor of the prepackaged plan will be disregarded.

The lock-up agreement (dated August 31, 2009) (see [The Restructuring The Lock-Up Agreements Lock-Up Agreement \(dated August 31, 2009\)](#) ) may be terminated by a number of holders that executed such lock-up agreement holding not less than two-thirds (2/3) in aggregate principal amount of all convertible notes held by all holders that executed such lock-up agreement if an event occurs that would provide either the Company or the CD&R Fund with the right to terminate the investment agreement under the terms of the investment agreement, which includes certain triggers relating to the timing of events in the prepackaged plan proceeding (see [The Restructuring Description of the CD&R Investment The Investment Agreement Termination of the Investment Agreement](#) ). The lock-up agreement (dated October 8, 2009) (see [The Restructuring The Lock-Up Agreements Lock-Up Agreement \(dated October 8, 2009\)](#) ) may be terminated by a number of holders that executed such lock-up agreement holding not less than two-thirds (2/3) in aggregate principal amount of all convertible notes and obligations under our existing credit agreement held by all holders that executed such lock-up agreement if an event occurs that would provide either the Company or the CD&R Fund with the right to terminate the investment agreement under the terms of the investment agreement, which includes certain triggers relating to the timing of events in the prepackaged plan proceeding (see [The](#)

Restructuring Description of the CD&R Investment The Investment Agreement Termination of the Investment Agreement ).

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**We cannot predict the amount of time that we would spend in bankruptcy for the purpose of implementing the prepackaged plan, and a lengthy bankruptcy proceeding would disrupt our business, as well as impair the prospect for reorganization on the terms contained in the prepackaged plan.**

While we expect that a chapter 11 bankruptcy filing solely for the purpose of implementing the prepackaged plan would be of short duration (*e.g.*, 60 days) and would not be unduly disruptive to our business, we cannot be certain that this would be the case. Although the prepackaged plan is designed to minimize the length of the bankruptcy proceeding, it is impossible to predict with certainty the amount of time that we may spend in bankruptcy, and we cannot be certain that the prepackaged plan would be confirmed. Even if confirmed on a timely basis, a bankruptcy proceeding to confirm the prepackaged plan could itself have an adverse effect on our business. There is a risk, due to uncertainty about our future, that:

customers could seek alternative sources of products from our competitors, including competitors that have comparatively greater financial resources and that are in little or no relative financial distress;

employees could be distracted from performance of their duties or more easily attracted to other career opportunities; and

business partners could terminate their relationship with us or require financial assurances or enhanced performance.

A lengthy bankruptcy proceeding would also involve additional expenses and divert the attention of management from operation of our business, as well as creating concerns for employees, suppliers and customers.

The disruption that a bankruptcy proceeding would inflict upon our business could increase with the length of time it takes to complete the proceeding, and the severity of that disruption would depend upon the attractiveness and feasibility of the prepackaged plan of reorganization from the perspective of the constituent parties on whom we depend, including vendors, employees and customers. If we are unable to obtain confirmation of the prepackaged plan on a timely basis, because of a challenge to the prepackaged plan or a failure to satisfy the conditions to the effectiveness of the prepackaged plan, we may be forced to operate in bankruptcy for an extended period while we try to develop a different reorganization plan that can be confirmed. A protracted bankruptcy case could increase both the probability and the magnitude of the adverse effects described above.

**We may be unable to obtain adequate financing or authority to use cash collateral during the pendency of the bankruptcy proceeding.**

On or shortly after commencing the prepackaged chapter 11 bankruptcy case, we intend to ask the bankruptcy court to authorize us to obtain debtor-in-possession financing and/or to use cash collateral to fund the prepackaged chapter 11 bankruptcy case. Such financing arrangements and access to cash collateral will provide liquidity during the pendency of the prepackaged chapter 11 bankruptcy case. There can be no assurance that the bankruptcy court will approve such financing arrangements or the use of cash collateral on the terms requested. Moreover, if the prepackaged chapter 11 bankruptcy case takes longer than expected to conclude, we may exhaust our financing and available cash collateral. There is no assurance that we will be able to obtain additional financing or an extension of the right to use cash collateral. In such case, the liquidity necessary for the orderly functioning of our businesses may be materially impaired.

**We may seek to amend, waive, modify or withdraw the prepackaged plan any time prior to the confirmation of the prepackaged plan.**

We reserve the right, prior to the confirmation or substantial consummation thereof, subject to the provisions of section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, to amend the terms of the prepackaged plan or waive any conditions thereto, if and to the extent such amendments or waivers are necessary or desirable to consummate the prepackaged plan. The potential impact of any such amendment or waiver on the holders of claims and interests cannot presently be foreseen, but may include a change in the economic impact of the prepackaged plan on some or all of the classes or a change in the relative rights of such classes. All holders of claims and interests will receive notice of such amendments or waivers required by applicable law and the bankruptcy court. If, after receiving sufficient acceptances, but prior to confirmation of the prepackaged plan, we seek to modify the

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prepackaged plan, the previously solicited acceptances will be valid only if (i) all classes of adversely affected creditors and interest holders accept the modification in writing or (ii) the bankruptcy court determines, after notice to designated parties, that such modification was *de minimis* or purely technical or otherwise did not adversely change the treatment of holders accepting claims and interests.

**If we are unable to obtain confirmation of the prepackaged plan on a timely basis, then, in accordance with the terms of the investment agreement, the investment agreement may be terminated and we will not receive the proceeds of the CD&R investment.**

If the reorganization case in connection with the prepackaged plan has been commenced and the effective date of the prepackaged plan has not occurred by a date that is no later than four weeks and ten days after the entry of the order confirming the prepackaged plan (provided, that the party seeking to so terminate has not breached in any material respect its obligations under the investment agreement in any manner that has been a proximate cause of the failure to consummate the CD&R investment on or before such date), either we or the CD&R Fund may terminate the investment agreement. The CD&R Fund also has the right to terminate the investment agreement if:

at any time after eight weeks after the filing of the prepackaged plan, the bankruptcy court has not entered the confirmation order with respect to the prepackaged plan on or prior to such date; or

the bankruptcy court enters an order denying confirmation of the prepackaged plan or the confirmation order is vacated or reversed and does not become a final order within four weeks and ten days after the entry of the confirmation order. See The Restructuring Description of the CD&R Investment The Investment Agreement Termination of the Investment Agreement.

**The distribution of proceeds in the prepackaged plan will be delayed until after the effective date.**

If we file a chapter 11 case and the prepackaged plan is confirmed, the date of the distributions to be made pursuant to the prepackaged plan will be delayed until after the effective date of the prepackaged plan. We estimate that the process of obtaining court approval of the prepackaged plan will last approximately 30 days from the date of the commencement of our chapter 11 case but it could last considerably longer. The distribution would be delayed for a minimum of 11 days thereafter and may be delayed for a substantially longer period.

**In the event that the restructuring is accomplished through the confirmation and effectiveness of the prepackaged plan, the Company would need to adopt fresh start accounting, which may have a material effect on the Company's financial statements, and certain of the fair values established under fresh start reporting may differ materially from the values recorded on the Company's historical financial statements and reflected or projected in this prospectus/disclosure statement.**

In the event the restructuring is accomplished through the confirmation and effectiveness of the prepackaged plan pursuant to the Bankruptcy Code, the Company would need to adopt fresh start reporting as of its emergence from chapter 11 of the Bankruptcy Code, in accordance with applicable accounting rules. These rules require the Company to revalue its assets and liabilities to current estimated fair value, re-establish shareholders' equity at the reorganization value determined in connection with the plan of reorganization, and record any portion of the reorganization value which cannot be attributed to specific tangible or identified intangible assets as goodwill. The adoption of fresh start accounting may have a material effect on the Company's financial statements, and certain of the fair values established under fresh start reporting may differ materially from the values recorded on the Company's historical financial statements and reflected or projected in this prospectus/disclosure statement. As a result, the Company's financial statements published for periods following its emergence from chapter 11 of the Bankruptcy Code will not be comparable with those prepared before that date or contained herein.



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**Other Risks Relating to the Company**

**Our industry is currently experiencing a downturn which, if sustained, could materially and adversely affect our business, liquidity and results of operations.**

The United States economy is currently undergoing a period of slowdown and unprecedented volatility, which is having an adverse effect on our business. During fiscal 2008, McGraw-Hill's estimate of low-rise new construction starts for buildings less than five stories declined by 15.1% in square feet compared to 2007. This industry decline contributed to a 34% decline in our total tons shipped. During the first nine months of fiscal 2009, our external tons shipped declined 41% as compared to the same period of 2008, and McGraw-Hill is currently predicting a 35% decline in square footage for nonresidential construction activity in calendar 2009.

Continued uncertainty about current economic conditions has had a negative effect on our business and will continue to pose a risk to our business as our customers may postpone spending in response to tighter credit, negative financial news and/or declines in income or asset values, which could have a material negative effect on the demand for our products. Other factors that could influence demand include fuel and other energy costs, conditions in the nonresidential real estate markets, labor and healthcare costs, access to credit and other macroeconomic factors. From time to time, our industry has also been adversely affected in various parts of the country by declines in nonresidential construction starts, including, but not limited to, high vacancy rates, changes in tax laws affecting the real estate industry, high interest rates and the unavailability of financing. Sales of our products may be adversely affected by weakness in demand for our products within particular customer groups, or a recession in the general construction industry or particular geographic regions. These and other economic factors could have a material adverse effect on demand for our products and on our financial condition and operating results.

We cannot predict the ultimate severity or length of the current economic crisis, or the timing or severity of future economic or industry downturns. Any economic downturn, particularly in states where many of our sales are made, could have a material adverse effect on our results of operations and financial condition, including potential asset impairments.

**Current challenges in the credit markets may adversely affect our business and financial condition.**

The financial turmoil that affected the banking system and financial markets beginning in the second half of 2007 has resulted in a tightening in the credit markets, a low level of liquidity in many financial markets, and extreme volatility in fixed income, credit, currency and equity markets. The current challenges in the credit markets have had, and may continue to have, a negative impact on our business and our financial condition. We may face significant challenges if conditions in the financial markets do not improve, including raw material shortages resulting from the insolvency of key suppliers and the inability of customers to obtain credit to finance purchases of our products. In addition, declining customer spending may result in higher levels of order cancellations than we have historically experienced, and may drive us to sell our products at lower prices, which would have an adverse effect on our margins and profitability.

**If we do not consummate the restructuring by November 6, 2009, we expect to violate the financial covenants in our existing credit agreement, which would be an event of default under our existing credit agreement and could cause all of our existing indebtedness to be declared immediately due and payable.**

Our existing credit agreement requires compliance with various covenants and provisions customary for agreements of this nature, including a restricted payments test, and a minimum ratio of Consolidated EBITDA (as defined in our

existing credit agreement) to interest expense of 5.0 to 1 and maximum ratios of total debt and senior debt to Consolidated EBITDA of 4.0 to 1 and 2.75 to 1, respectively. Such covenants and provisions are also incorporated by reference into our swap agreement. As of August 2, 2009, we continued not to be in compliance with the required leverage, senior leverage and interest coverage ratios in our existing credit agreement, although we were in compliance with the remaining covenants.

We have obtained a waiver from the lenders under our existing credit agreement, including waivers of our financial maintenance covenants, which is effective through November 6, 2009.



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If we are unable to consummate the restructuring either through the recapitalization plan or, in the alternative, the prepackaged plan, or otherwise to refinance our outstanding debt by November 6, 2009, we expect that we will fail to be in compliance with the financial covenants under our existing credit agreement as of such date. Absent an extension of the waiver, such violations will constitute an event of default under our existing credit agreement, and the lenders under our existing credit agreement could elect to declare all \$293.3 million of our outstanding borrowings thereunder immediately due and payable. In the event that we do not repay such borrowings upon acceleration, the lenders under our existing credit agreement could exercise their remedies as secured creditors with respect to the collateral securing such borrowings. A failure to pay or refinance such borrowings will also result in a default under the convertible notes indenture, which could also then be declared immediately due and payable, and under our swap agreement, which could then be terminated by the counterparty thereto. If all such indebtedness, which totaled approximately \$473.7 million as of August 2, 2009 and such amounts payable pursuant to the termination of the swap agreement, were to become due and payable on November 6, 2009, it would result in a material adverse effect on our financial condition, operations and debt service capabilities. As of August 2, 2009, excluding restricted cash, we had a current cash balance of approximately \$105.4 million to address our liquidity needs. For a description of our non-compliance with the financial ratio covenants under our existing credit agreement, see our quarterly report on Form 10-Q for the quarter ended August 2, 2009, our current reports on Form 8-K filed on May 21, 2009, July 15, 2009 and August 27, 2009, and Incorporation of Certain Documents by Reference.

In such event, we will immediately need to pursue other alternatives to manage our liquidity needs, including potentially commencing a bankruptcy on terms other than as contemplated by the prepackaged plan.

**If we do not consummate the restructuring by November 6, 2009, adverse capital and credit market conditions may significantly and adversely affect our ability to otherwise refinance our existing debt.**

If we do not consummate the restructuring either through the recapitalization plan or, in the alternative, through the prepackaged plan, adverse capital and credit market conditions may significantly and adversely affect our ability to otherwise refinance our existing debt. Beginning in the third quarter of 2008 and continuing into 2009, the credit markets have been very volatile and have presented very unattractive terms and conditions for the few companies entering into credit transactions during that period. The credit markets have favored investment grade securities and securities issued to companies within non-cyclical industries during that period. In the event that we need to complete an alternative refinancing, lenders, if willing to provide credit, may seek more restrictive lending provisions and higher interest rates that may reduce our borrowing capacity and increase our costs. Also, given the increased stress in the financial sector, current or future lenders may become unwilling or unable to continue to advance funds under any agreements in place. We can make no assurances that we will be able to refinance our indebtedness, or that any such refinancing will be under terms that are as favorable to us as past credit agreements or the agreements as contemplated by the restructuring. If we are unable to refinance our indebtedness in a timely fashion, our cash from operations may be insufficient to meet our debt obligations. In addition, the failure to obtain sufficient financing may constrain our ability to operate or grow our business and affect our strategy.

**If we do not consummate the restructuring by November 6, 2009, we will need to pursue all other alternatives to refinance our existing debt. Any refinancing of our existing debt using equity will likely be highly dilutive to our existing stockholders and could adversely affect the price of our common stock.**

If we do not consummate the restructuring either through the recapitalization plan or, in the alternative, through the prepackaged plan, by November 6, 2009, we will need to pursue all other alternatives to refinance our existing debt, including an equity refinancing. At our current market valuation, any equity refinancing of our debt would be highly dilutive to our existing stockholders, which may be more or less dilutive than the restructuring. In addition, the issuance and sale of substantial amounts of common stock, or the announcement that such issuances and sales may occur, could adversely affect the market price of our common stock.



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**Our future operational and financial performance may vary materially from the financial projections contained in this prospectus/disclosure statement.**

In order to comply with the feasibility test of section 1129 of the Bankruptcy Code, we have provided financial projections in this prospectus/disclosure statement. See The Prepackaged Plan Confirmation of the Prepackaged Plan, The Prepackaged Plan Feasibility of the Prepackaged Plan and Unaudited Projected Consolidated Financial Information for Restructuring under the Prepackaged Plan. These projections are based upon a number of assumptions and estimates, including that the financial restructuring will be implemented in accordance with its current terms.

Financial projections are necessarily speculative in nature and one or more of the assumptions and estimates underlying these projections may prove not to be valid. We believe the assumptions and estimates underlying these projections to be reasonable, but they are by their very nature inherently uncertain and subject to significant business, economic and competitive risks and uncertainties, many of which are beyond our control to predict or mitigate. See Risk Factors Other Risks Relating to the Company. Accordingly, our financial condition and results of operations following the implementation of the recapitalization plan or the prepackaged plan are likely to vary significantly from those set forth in the financial projections. Consequently, the financial projections should not be regarded as a representation by us, our advisors or any other person that the results suggested by the projections will be achieved. Holders of convertible notes are cautioned to read the financial projections in conjunction with the Selected Consolidated Financial and Other Data elsewhere in this prospectus/disclosure statement, the financial statement and schedules and related convertible notes for the fiscal year ended 2008 that are attached as Exhibit 99.1 to our current report on Form 8-K filed with the SEC on September 10, 2009 and the consolidated financial statements and related convertible notes for the quarters ended February 1, 2009, May 3, 2009 and August 2, 2009 contained in our Quarterly Reports on Form 10-Q, which are incorporated by reference into this prospectus/disclosure statement, and not to place undue reliance on the financial projections in determining whether to tender your convertible notes or vote to accept or reject the prepackaged plan.

**We may not be able to service our debt or obtain future financing and we may be limited operationally.**

We may incur additional debt from time to time to finance acquisitions, capital expenditures or for other purposes if we comply with the restrictions in our existing credit agreement, and if the restructuring is consummated, the amended credit agreement and the ABL agreement.

The debt that we carry may have important consequences to us, including the following:

our ability to obtain additional financing, if necessary, for working capital, capital expenditures, acquisitions or other purposes may be impaired or additional financing may not be available on favorable terms;

we must use a portion of our cash flow to pay the principal and interest on our debt. These payments reduce the funds that would otherwise be available for our operations and future business opportunities;

a substantial decrease in our net operating cash flows could make it difficult for us to meet our debt service requirements and force us to modify our operations; and

we may be more vulnerable to a downturn in our business or the economy generally.

If we cannot service our debt, we will be forced to take actions such as reducing or delaying acquisitions and/or capital expenditures, selling assets, restructuring or refinancing our debt, or seeking additional equity capital. We can give no assurance that we can do any of these things on satisfactory terms or at all.

**Restrictive covenants in our existing and future credit agreements may adversely affect us.**

We must comply with operating and financing restrictions in our existing credit agreement and swap agreement. These restrictions affect, and in many respects limit or prohibit, our ability to:

incur additional indebtedness;

make restricted payments, including dividends or other distributions;

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incur liens;

make investments, including joint venture investments;

sell assets;

repurchase our debt, including our convertible notes, and our capital stock; and

merge or consolidate with or into other companies or sell substantially all our assets.

If the term loan refinancing is consummated on the terms contemplated in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, we will need to comply with the operating and financing restrictions in such amended credit agreement in lieu of the restrictions under our existing credit agreement. We expect that these restrictions will affect and, in many respects, limit or prohibit our ability to:

incur additional indebtedness;

incur guarantee obligations;

make dividends and other restricted payments;

create liens;

make investments;

dispose of assets;

prepay other indebtedness;

make acquisitions;

engage in mergers;

change the nature of our business; and

engage in certain transactions with affiliates.

We may also have similar restrictions with any future debt.

We are required to make mandatory payments under our existing credit agreement upon the occurrence of certain events, including the sale of assets and the issuance of debt or equity securities, in each case subject to certain limitations and conditions set forth in our existing credit agreement. Our existing credit agreement also requires us to achieve specified financial and operating results and satisfy set financial tests relating to our leverage, interest coverage and senior debt ratios. These restrictions could limit our ability to plan for or react to market conditions or to meet extraordinary capital needs or otherwise could restrict our activities. In addition, under certain circumstances and subject to the limitations set forth in our existing credit agreement, we are required to pay down our existing term loan to the extent we generate positive cash flow each fiscal year. These restrictions could also adversely affect our ability to finance our future operations or capital needs or to engage in other business activities that would be in our interest.

If the term loan refinancing is consummated on the terms contemplated in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, such amended credit agreement will have provisions requiring us, subject to certain limitations and conditions set forth therein, to prepay the term loans thereunder upon the occurrence of certain events, including specified sales of assets, certain debt offerings and certain insurance recovery and condemnation events. In addition, if the term loan refinancing is consummated on the terms contemplated in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, under certain circumstances and subject to the limitations set forth therein, we will be required to pay down the outstanding term loans thereunder (i) in an amount equal to 50% of annual excess cash flow (as defined in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K) for any fiscal year ending on or after October 31, 2010 and (ii) in an amount equal to the greater of \$10.0 million and 50% of certain 2009 tax refunds (as defined in the form of

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amended credit agreement attached hereto as Annex J after giving effect to the matters specified in Annex K) received by the Company. These restrictions could adversely affect our ability to finance our future operations or capital needs or to engage in other business activities that would be in our interest.

In addition, if the ABL financing is consummated on the terms contemplated in the form of ABL agreement attached hereto as Annex Q, we will need to comply with the operating and financing restrictions in, and make the mandatory repayments required by, such ABL agreement in addition to those described above. We expect that these restrictions will affect and, in many respects, limit or prohibit our ability to:

incur additional indebtedness;

guarantee certain obligations;

make dividends and other restricted payments;

create or suffer to exist certain liens;

make investments;

dispose of assets;

engage in sale and leaseback transactions;

prepay other indebtedness;

modify organizational documents and certain other agreements;

create or permit restrictions on dividends or payments from subsidiaries;

make acquisitions or engage in mergers;

change the nature of our business; and

engage in certain transactions with affiliates.

**Our businesses are seasonal, and our results of operations during our first two fiscal quarters may be adversely affected by seasonality.**

The metal coil coating, metal components and engineered building systems businesses, and the construction industry in general, are seasonal in nature. Sales normally are lower in the first calendar quarter of each year compared to the other three quarters because of unfavorable weather conditions for construction and typical business planning cycles affecting construction. This seasonality adversely affects our results of operations for the first two fiscal quarters. Prolonged severe weather conditions can delay construction projects and otherwise adversely affect our business.

**Price volatility and supply constraints in the steel market could prevent us from meeting delivery schedules to our customers or reduce our profit margins.**

Our business is heavily dependent on the price and supply of steel. The steel industry is highly cyclical in nature, and steel prices have been volatile in recent years and may remain volatile in the future. Steel prices are influenced by

numerous factors beyond our control, including general economic conditions domestically and internationally, the availability of raw materials, competition, labor costs, freight and transportation costs, production costs, import duties and other trade restrictions. Steel prices increased through most of fiscal 2008 due to cost increases in iron, ore, coke, steel scrap, ocean freight and transportation costs. However, rapidly declining demand due to the effects of the credit crisis and global economic slowdown on the construction, automotive and industrial markets has resulted in many steel manufacturers around the world announcing plans to cut production by closing plants and furloughing union and non-union workers. Steel suppliers such as U.S. Steel and Arcelor Mittal are among these manufacturers who have cut production.

We do not have any long-term contracts for the purchase of steel and normally do not maintain an inventory of steel in excess of our current production requirements. However, from time to time, we may purchase steel in



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advance of announced steel price increases. We can give you no assurance that steel will remain available or that prices will not continue to be volatile. While most of our contracts have escalation clauses that allow us, under certain circumstances, to pass along all or a portion of increases in the price of steel after the date of the contract but prior to delivery, we may, for competitive or other reasons, not be able to pass such price increases along. If the available supply of steel declines, we could experience price increases that we are not able to pass on to our customers, a deterioration of service from our suppliers or interruptions or delays that may cause us not to meet delivery schedules to our customers. Any of these problems could adversely affect our results of operations and financial condition.

### **We rely on a few major suppliers for our supply of steel, which makes us more vulnerable to supply constraints and pricing pressure, as well as the financial condition of those suppliers.**

We rely on a few major suppliers for our supply of steel and may be adversely affected by bankruptcy, change in control, financial condition or other factors affecting those suppliers. During the first nine months of fiscal 2009, we purchased approximately 28% of our steel requirements from one vendor. No other vendor accounted for over 10% of our steel requirements during the first nine months of fiscal 2009. Due to unfavorable market conditions and our inventory supply requirements, during the first nine months of fiscal 2009 we purchased insignificant amounts of steel from foreign suppliers. Limiting purchases to domestic suppliers further reduces our available steel supply base. Therefore, recently announced cutbacks, a prolonged labor strike against one or more of our principal domestic suppliers, or financial or other difficulties of a principal supplier that affects its ability to produce steel, could have a material adverse effect on our operations. Furthermore, if one or more of our current suppliers is unable for financial or any other reason to continue in business or to produce steel sufficient to meet our requirements, essential supply of our primary raw materials could be temporarily interrupted and our business could be adversely affected. However, alternative sources, including foreign steel, are currently believed to be sufficient to maintain required deliveries.

### **We may recognize additional goodwill or other intangible asset impairment charges.**

As of February 1, 2009, we estimated the market implied fair value of our goodwill was less than its carrying value by approximately \$508.9 million, which was recorded as a goodwill impairment charge in the first quarter of fiscal 2009. This charge was an estimate based on the result of the preliminary allocation of fair value in the second step of the goodwill impairment test. However, due to the timing and complexity of the valuation calculations required under the second step of the test, we finalized our allocation of the fair value during the second quarter of fiscal 2009 with regard to property, plant and equipment and intangible assets in which their respective values are dependent on property, plant and equipment.

Based on our Phase III restructuring plan to close certain of our manufacturing facilities, management determined that there was an indicator to require us to perform another interim goodwill impairment test for each of our reporting units that had goodwill remaining as of May 3, 2009. As a result of this impairment indicator, we updated the first step of our goodwill impairment test in the second quarter of fiscal 2009 and determined that our carrying value exceeded our fair value at most of our reporting units with goodwill remaining in each of our operating segments, indicating that goodwill was potentially impaired. As a result, we initiated the second step of the goodwill impairment test. As of May 3, 2009, we determined the market implied fair value of our goodwill was less than its carrying value by approximately \$102.5 million, which has been recorded as a goodwill impairment charge in the second quarter of fiscal 2009. The goodwill impairment charge from this triggering event was finalized in the second quarter of fiscal 2009.

In addition, a future triggering event, such as a decline in our cash flow projections, may cause additional impairments based on factors such as our stock price, projected cash flows, assumptions used, control premiums or other variables. Any future triggering event, such as declines in our cash flow projections, may also cause additional intangible asset impairments.



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**Failure to retain or replace key personnel could hurt our operations.**

Our success depends to a significant degree upon the efforts, contributions and abilities of our senior management, plant managers and other highly skilled personnel, including our sales executives. These executives and managers have many accumulated years of experience in our industry and have developed personal relationships with our customers that are important to our business. If we do not retain the services of our key personnel or if we fail to adequately plan for the succession of such individuals, our customer relationships, results of operations and financial condition may be adversely affected.

**If we are unable to enforce our intellectual property rights, or if our intellectual property rights become obsolete, our competitive position could be adversely affected.**

We utilize a variety of intellectual property rights in our services. We have a number of U.S. patents, pending patent applications and other proprietary rights, including those relating to metal roofing systems, metal overhead doors, our pier and header system, our Long Bay® System and our building estimating and design system. We also have several registered trademarks and pending registrations in the United States. We view our portfolio of process and design technologies as one of our competitive strengths. We may not be able to successfully preserve these intellectual property rights in the future and these rights could be invalidated, circumvented or challenged. If we are unable to protect and maintain our intellectual property rights, or if there are any successful intellectual property challenges or infringement proceedings against us, our business and revenue could be materially and adversely affected.

**We incur costs to comply with environmental laws and have liabilities for environmental cleanups.**

Because we have air emissions, discharge wastewater, own and operate real property, and handle hazardous substances and solid waste, we incur costs and liabilities to comply with environmental laws and regulations and may incur significant additional costs as those laws and regulations or their enforcement change in the future or if there is an accidental release of hazardous substances into the environment. The operations of our manufacturing facilities are subject to stringent and complex federal, state and local environmental laws and regulations. These include, for example, (1) the federal Clean Air Act and comparable state laws and regulations that impose obligations related to air emissions, (2) the federal RCRA and comparable state laws that impose requirements for the storage, treatment, handling and disposal of waste from our facilities and (3) the CERCLA and comparable state laws that regulate the cleanup of hazardous substances that may have been released at properties currently or previously owned or operated by us or at locations to which we have sent waste for disposal. Failure to comply with these laws and regulations may trigger a variety of administrative, civil and criminal enforcement measures, including the assessment of monetary penalties, the imposition of remedial requirements, personal injury, property or natural resource damages claims and the issuance of orders enjoining future operations. For more information about costs we have incurred for environmental matters in recent years, see Item 3. Legal Proceedings and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in our annual report on Form 10-K for the year ended November 2, 2008.

**The industries in which we operate are highly competitive.**

We compete with all other alternative methods of building construction, which may be viewed as more traditional, more aesthetically pleasing or having other advantages over our products. In addition, competition in the metal components and metal buildings markets of the building industry and in the metal coil coating segment is intense. It is based primarily on:

quality;

service;

on-time delivery;

ability to provide added value in the design and engineering of buildings;

price;

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speed of construction in buildings and components; and

personal relationships with customers.

We compete with a number of other manufacturers of metal components and engineered building systems and providers of coil coating services ranging from small local firms to large national firms. In addition, we and other manufacturers of metal components and engineered building systems compete with alternative methods of building construction. If these alternative building methods compete successfully against us, such competition could adversely affect us.

In addition, several of our competitors have recently been acquired by steel producers. Competitors owned by steel producers may have a competitive advantage on raw materials that we do not enjoy. Steel producers may prioritize deliveries of raw materials to such competitors or provide them with more favorable pricing, both of which could enable them to offer products to customers at lower prices or accelerated delivery schedules.

**Our acquisition strategy may be unsuccessful if we incorrectly predict operating results or are unable to identify and complete future acquisitions and integrate acquired assets or businesses.**

We have a history of expansion through acquisitions, and we believe that as our industry continues to consolidate, our future success will depend, in part, on our ability to complete acquisitions. Growing through acquisitions and managing that growth will require us to continue to invest in operational, financial and management information systems and to attract, retain, motivate and effectively manage our employees. Pursuing and integrating acquisitions, including our acquisition of Robertson-Ceco II Corporation, involves a number of risks, including:

the risk of incorrect assumptions or estimates regarding the future results of the acquired business or expected cost reductions or other synergies expected to be realized as a result of acquiring the business;

diversion of management's attention from existing operations;

unexpected losses of key employees, customers and suppliers of the acquired business;

conforming the financial, technological and management standards, processes, procedures and controls of the acquired business with those of our existing operations; and

increasing the scope, geographic diversity and complexity of our operations.

Although we expect acquisitions to be an integral part of our future growth, we can provide no assurance that we will be successful in identifying or completing any acquisitions or that any businesses or assets that we are able to acquire will be successfully integrated into our existing business. We cannot predict the effect, if any, that any announcement or consummation of an acquisition would have on the trading prices of our securities.

**Our acquisition strategy subjects us to numerous risks that could adversely affect our results of operations.**

Acquisitions are an essential part of our growth strategy, and our ability to acquire additional businesses or operations on favorable terms is important to our long-term growth. Depending on conditions in the acquisition market, it may be difficult or impossible for us to identify businesses or operations for acquisition, or we may not be able to make acquisitions on terms that we consider economically acceptable. Even if we are able to identify suitable acquisition opportunities, our acquisition strategy depends upon, among other things, our ability to obtain financing and, in some

cases, regulatory approvals, including under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, which we refer to as the HSR Act.

Our incurrence of additional debt, contingent liabilities and expenses in connection with our acquisition of Robertson-Ceco II Corporation, or in connection with any future acquisitions, could have a material adverse effect on our financial condition and results of operations. Furthermore, our financial position and results of operations may fluctuate significantly from period to period based on whether significant acquisitions are completed in particular periods. Competition for acquisitions is intense and may increase the cost of, or cause us to refrain from, completing acquisitions.

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus/disclosure statement contains forward-looking statements. Any statements about our expectations, beliefs, plans, objectives, assumptions, future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as anticipate, estimate, plans, projects, continuing, ongoing, expects, management believes, we believe, similar words or phrases. Accordingly, these statements involve estimates, assumptions and uncertainties that could cause actual results to differ materially from those expressed in them. Our actual results could differ materially from those anticipated in such forward-looking statements as a result of several factors more fully described under the caption Risk Factors and elsewhere in this prospectus/disclosure statement, including the exhibits hereto. All forward-looking statements are necessarily only estimates of future results and there can be no assurance that actual results will not differ materially from expectations, and, therefore, you are cautioned not to place undue reliance on such statements. Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout this prospectus/disclosure statement. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events, except as required by law.

Forward-looking statements regarding future events and our future performance, including the expected completion and timing of the restructuring and other information relating thereto, involve risks and uncertainties that could cause actual results to differ materially. These risks and uncertainties include, without limitation, the following items:

industry cyclicality and seasonality and adverse weather conditions;

ability to service or refinance our debt;

fluctuations in customer demand and other patterns;

raw material pricing and supply;

competitive activity and pricing pressure;

the ability to make strategic acquisitions accretive to earnings;

general economic conditions affecting the construction industry;

the current financial crisis and U.S. recession;

changes in laws or regulations;

our ability to obtain, on reasonable terms, if at all, the financing we will need in the future to meet our debt maturities and debt service obligations and to execute our business strategies;

the volatility of our stock price and the potential risk of delisting from the NYSE;

the potential dilution associated with future equity or equity-linked financings that we may undertake to raise additional capital and the risk that the equity pricing may not be favorable to us;

our ability to comply with the financial tests and covenants in our existing and future debt obligations;

the significant demands on our liquidity while current economic and credit conditions are severely affecting our operations, including the potential for acceleration on our outstanding indebtedness and our potential obligation to repurchase convertible notes upon consummation of the CD&R investment and on November 15, 2009 if this exchange offer is not fully subscribed and we do not have sufficient cash to satisfy the obligation of the remaining amount of convertible notes outstanding and of our other outstanding indebtedness;

the satisfaction of the conditions to consummate the recapitalization plan or, in the alternative, the prepackaged plan;

the impact of the prepackaged plan on our operations, credibility and valued relationships;



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the uncertainty surrounding the restructuring, including our ability to retain employees, customers and vendors;

the occurrence of any event, change or other circumstances that could give rise to the termination of the investment agreement;

the failure of the CD&R investment to close for any other reason;

the failure of the Company to enter into or consummate the term loan refinancing and/or the ABL financing for any reason;

the amount of the costs, fees, expenses and charges related to the restructuring; and

other risks detailed in the section titled "Risk Factors" and other factors and matters contained or incorporated in this prospectus/disclosure statement.

Although our management believes that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Undue reliance should not be placed on these forward-looking statements, which speak only as of the date of this prospectus/disclosure statement. We undertake no obligation to publicly release the results of any revisions to these forward-looking statements that may arise from changing circumstances or unanticipated events, except as otherwise required by law.

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**RECENT DEVELOPMENTS**

As widely reported, worldwide financial markets began experiencing extreme disruptions in the second half of 2007, including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, rating downgrades of certain investments and declining valuations of others. In addition, during the same period, the U.S. economy has been contracting, as evidenced by reduced demand for a range of goods and services and a declining gross domestic product. These economic developments affect our business in a number of ways. The overall decline in economic conditions has reduced demand for our products. In addition, the tightening of credit in financial markets adversely affects the ability of our customers to obtain financing for construction projects. These factors have resulted in a decrease in, or cancellation of, orders for our products and have also affected the ability of our customers to make payments. The uncertainty surrounding future economic activity levels and diminished credit availability along with steel price volatility have resulted in significantly decreased activity levels for our business.

During the first nine months of fiscal 2009, our sales volumes were significantly below expectations, primarily in the engineered buildings and components segments. When we began fiscal 2009, McGraw-Hill predicted a 12% decline in nonresidential construction in 2009. Subsequently, McGraw-Hill revised its forecast further downward and, as of July 2009, was predicting a 35% decline in nonresidential construction activity in 2009. McGraw-Hill reported a 48% decline in the period from January 2009 through July 2009 of nonresidential square footage compared to the same prior year period and approximately a 62% decline from January 2009 through July 2009 of nonresidential construction square footage in our commercial and industrial sectors compared to the same prior year period. McGraw-Hill also reported a 41.8% reduction in low-rise nonresidential (five stories or less) square-footage starts during the first nine months of fiscal 2009 compared with the same period in fiscal 2008.

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**THE RESTRUCTURING**

**Overview**

We are proposing the restructuring to address the Company's immediate need for liquidity in light of a potentially imminent default under, and acceleration of, our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to the acceleration of our other indebtedness, including under the convertible notes indenture), and the high likelihood that we will be required to repurchase the convertible notes on November 15, 2009, the first scheduled mandatory repurchase date under the convertible notes indenture.

The restructuring consists of four related transactions:

the CD&R investment, which involves a \$250.0 million investment by the CD&R Fund in the form of a private placement to the CD&R Fund of 250,000 shares of Series B convertible preferred stock (see "The Restructuring Description of the CD&R Investment");

a retirement of all of the convertible notes (see "The Restructuring Retirement of the Convertible Notes");

the term loan refinancing, which involves the refinancing of our existing credit facility under which we will repay approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding under our existing credit facility and enter into an amendment to our existing credit agreement providing for a modification of the terms and maturity of the \$150.0 million balance (see "The Restructuring Description of the Term Loan Refinancing and the ABL Financing The Term Loan Refinancing"); and

the ABL financing, which involves our entry into an ABL agreement for a \$125.0 million asset-based loan facility (see "The Restructuring Description of the Term Loan Refinancing and the ABL Financing The ABL Financing").

Each of the transactions comprising the restructuring may be accomplished through either the out-of-court recapitalization plan or, in the alternative, the in-court prepackaged plan. If the restructuring is being accomplished through the recapitalization plan, the retirement of the convertible notes tendered in the exchange offer would be accomplished through this exchange offer and the refinancing of our existing credit facility would be accomplished through an amendment to our existing credit agreement. In the alternative, if the restructuring is being accomplished through the prepackaged plan, the retirement of the convertible notes as well as the refinancing of our existing credit facility would be accomplished through the prepackaged plan.

The closing of the exchange offer is conditioned on the satisfaction or, with the consent of the CD&R Fund, waiver of the minimum tender condition, which requires that at least 95% of the aggregate principal amount of outstanding convertible notes are validly tendered and not withdrawn in this exchange offer. If the restructuring is accomplished through the recapitalization plan, we intend, but are not required, to retire any remaining convertible notes outstanding after the consummation of this exchange offer by exercising our redemption right under the convertible notes indenture on or after November 20, 2009; if we do not so exercise our redemption right, such remaining convertible notes will otherwise be retired pursuant to the terms of the convertible notes indenture.

For a more detailed description of this exchange offer, see "The Exchange Offer."

The restructuring, if successful, will increase the Company's capital and liquidity levels and reduce the amount of its outstanding debt. Specifically, upon the completion of the restructuring, we will reduce our outstanding indebtedness by (1) using the proceeds from the CD&R investment to retire the convertible notes by either funding the aggregate cash consideration in this exchange offer or, in the alternative, by paying holders of convertible notes pursuant to the prepackaged plan and (2) using the proceeds from the CD&R investment and a portion of the Company's existing cash on hand to repay approximately \$143.3 million in principal amount of term loans under our existing credit facility.

We expect our indebtedness to be reduced from approximately \$473.7 million as of August 2, 2009 to approximately \$150.4 million at the closing of the restructuring, consisting of \$150.0 million in principal amount of term loans under the amended credit agreement and \$0.4 million of our industrial revenue bond. See Capitalization.

The ABL financing contemplated by the restructuring would provide us with up to \$125.0 million in liquidity subject to availability under a borrowing base for working capital purposes and future expansion. Based on discussions with prospective lenders under the ABL agreement, we expect that because of borrowing base constraints, initial availability under the ABL agreement would be substantially less than the \$125.0 million

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commitment, and may be as low as \$45.0 million. We have been in discussions with prospective lenders regarding the terms of the ABL agreement to give effect to the ABL financing and the Company has finalized with such prospective lenders the form of ABL agreement attached hereto as Annex Q and confirmed participation for the full availability under such ABL financing. While the form of ABL agreement attached hereto as Annex Q has been agreed to in principle with such prospective lenders, and the Company has been informed that the prospective lenders have indicated their willingness to enter in to the form of ABL agreement attached hereto as Annex Q in connection with the consummation of the CD&R investment, no loan commitment letter from any such prospective lender has been received by the Company.

Assuming we are able to complete the restructuring, we expect that, for the foreseeable future, cash generated from operations, together with the proceeds of the ABL financing, will be sufficient to allow us to fund our operations, to increase working capital as necessary to support our strategy and to fund planned capital expenditures and expansions (including approximately \$5.0 million expected, for the remainder of fiscal 2009).

In the event that we cannot effect the restructuring either through the recapitalization plan or the prepackaged plan because the conditions to the recapitalization plan or the prepackaged plan have not been satisfied or waived, we will face an immediate liquidity crisis. Absent the consummation of the restructuring, we do not expect, and we cannot assure you, that we will have, or have access to, sufficient liquidity to meet our debt repayment/repurchase obligations, including any potential acceleration of our existing term loan indebtedness and our obligation to repurchase the convertible notes at the option of the holders thereof on November 15, 2009, the next scheduled repurchase date. Due to our non-compliance with the required leverage, senior leverage and interest coverage ratios in our existing credit agreement, our outstanding indebtedness of approximately \$293.3 million thereunder may be declared immediately due and payable as early as November 6, 2009, the date of expiration of the current waiver from the lenders under our existing credit agreement. In the event that we do not repay such borrowings upon acceleration, the lenders under our existing credit agreement could exercise their remedies as secured creditors with respect to the collateral securing such borrowings. A failure to pay or refinance such borrowings will also result in a default under the convertible notes indenture, which could also then be declared immediately due and payable, and under our swap agreement, which could then be terminated by the counterparty thereto. If all such indebtedness, which totaled approximately \$473.7 million as of August 2, 2009, and such amounts payable pursuant to the termination of the swap agreement were to become due and payable on November 6, 2009, it would result in a material adverse effect on our financial condition, operations and debt service capabilities. As of August 2, 2009, excluding restricted cash, we had a current cash balance of approximately \$105.4 million to address our liquidity needs. For a description of our non-compliance with the financial ratio covenants under our existing credit agreement, see our quarterly report on Form 10-Q for the quarter ended August 2, 2009, our current reports on Form 8-K filed on May 21, 2009, July 15, 2009 and August 27, 2009 and Incorporation of Certain Documents by Reference.

In the event that we experience a liquidity crisis as described above, it could likely result in us filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan. If we commence such a bankruptcy filing, holders of convertible notes may receive consideration that is substantially less than what is being offered under the restructuring.

## **Background to the Restructuring**

In 2004, the Company entered into its existing senior secured credit facility and issued the convertible notes. The existing senior secured credit facility was initially comprised of a \$125 million revolving credit facility and a \$400 million term loan due on June 18, 2010. The revolving credit facility expired in June of 2009 and approximately \$293.3 million of the term loans remain outstanding. The convertible notes mature in November 2024, but, on certain specified dates, the first of which is November 15, 2009, holders of convertible notes may, at their option, require the Company to purchase all or a portion of their convertible notes at a repurchase price equal to 100% of the principal

amount of such convertible notes, plus accrued and unpaid interest thereon. The convertible notes are convertible into 24.9121 shares of common stock per \$1,000 principal amount of the convertible notes (which equates to a conversion price of approximately \$40.14 per share), but, in lieu of issuing all of such shares upon conversion, the Company is required to pay, in respect of a portion of such shares, cash up to the principal amount of the convertible notes and to issue shares of common stock in respect of the remaining value of the convertible notes that are so converted.

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Until the middle of 2008, in light of the trading range of the common stock (which was generally at or above the conversion price for the convertible notes), the Company's results of operations and cash flow, and the general robustness of the credit markets, the Company believed that:

it was not likely that holders of convertible notes would exercise their rights to require the Company to repurchase their convertible notes in November 2009 instead of converting their convertible notes into common stock;

the Company could refinance the convertible notes on commercially acceptable terms in the event that such holders were to exercise their rights; and

it was not likely that the Company would have difficulty obtaining a new credit facility or an extension of the existing credit facility on commercially acceptable terms at the expiration of the existing credit facility.

In March 2008, in light of the nearing maturities of the existing credit facility, the Company began to explore alternatives for refinancing its existing credit facility.

In the second half of 2008, the Company's business began to be severely negatively affected by the domestic and global recession and, in particular, by the dramatic reduction in new non-residential construction in the United States. In addition, financial turmoil affecting the banking system and financial markets resulted in severe tightening in the credit markets, and the Company's stock price declined dramatically, from approximately \$40 per share in early August 2008, to as low as approximately \$15 per share in mid-October 2008. In late August to early September 2008, in light of these events and the increasing likelihood that holders of convertible notes would elect to exercise their rights to require the Company to repurchase their convertible notes at the earliest scheduled repurchase date (November 15, 2009), management began to explore the Company's alternatives for refinancing the convertible notes and continued to explore alternatives for refinancing its existing credit facility.

In late 2008, the Company retained J.P. Morgan Securities Inc. to assist the Company in discussions with our key relationship banks and to explore a comprehensive range of potential alternatives to strengthen the Company's balance sheet and enhance our long-term financial and competitive position, including but not limited to capital raises and strategic investments. Around this time, we also began to engage in discussions with a number of private equity investors about a potential investment in the Company.

In late November 2008, a representative of CD&R contacted the Company about a potential transaction involving the Company and a private investment fund managed by CD&R, and in December 2008, CD&R and the Company entered into a customary confidentiality agreement with respect to such potential transaction. In January 2009, representatives of CD&R met with representatives of the Company's senior management team. At this meeting, Company representatives conducted a management presentation in which they described the Company's operations and business.

From early February 2009 through early March 2009, the Company and CD&R negotiated the terms of a potential significant, minority investment in the Company of \$200 million, and CD&R and its representatives and advisors engaged in a due diligence investigation of the Company's business. During this period, the global financial crisis continued and the economic outlook for the non-residential construction industry in general, and for the Company specifically, continued to deteriorate, and the Company's share price fell precipitously, to below \$4 per share. On March 10, 2009, the Company issued its earnings release for its fiscal quarter ended January 31, 2009, in which it reported, among other things, that the effects of worsening economic conditions on our end markets and the rapid decline in steel prices caused tonnage volume shipped in the first quarter to decline 45% sequentially and 40% year-over-year, and that as a result of substantially lower utilization rates and high inventory costs, the Company

reported an operating loss for the period that was significantly increased by non-cash impairment charges. By March 2009, as a result of the worsening conditions in the capital markets, the downturn in the Company's end markets and the effect of these developments on the operating performance of and business forecast plan for the Company, the terms of the potential investment then under discussion between CD&R and the Company were no longer sufficient to address the Company's capital structure needs. In March 2009, CD&R indicated to the Company that it maintained its interest in a potential transaction involving the Company and that it would work with the Company and its representatives to revise such terms for a potential transaction that would provide a more comprehensive solution to the Company's capital needs.

In early March 2009, the Company engaged Greenhill & Co., LLC as an additional financial advisor.



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In early April 2009, CD&R outlined to management the revised terms of a potential investment in the Company that would provide a more comprehensive solution to the Company's capital needs. The revised terms increased the amount of CD&R's potential investment in the Company from \$200 million to \$250.0 million and provided for a transaction in which a private investment fund managed by CD&R would purchase from the Company \$250.0 million of preferred stock that would be convertible into 80% of the outstanding common stock of the Company on a fully diluted basis. In addition, in connection with the transaction, the private investment fund managed by CD&R would have the ability to appoint a majority of the directors of the Company and obtain other rights customarily afforded to controlling stockholders. The revised terms also indicated that the potential investment in the Company would be contingent upon the satisfaction of certain conditions aimed at addressing the Company's leverage and liquidity, including that (1) the Company would pay down a significant portion of the outstanding term loans and seek agreement of the lenders under its existing credit agreement to extend the maturity of the remaining term loans on amended terms, (2) the Company would restructure, retire or otherwise satisfy its expected redemption obligations under the convertible notes without using cash in excess of needed operating liquidity and (3) the Company would have sufficient liquidity, after taking into account the satisfaction of the Company's obligations with respect to the convertible notes, in the form of cash on the balance sheet and a committed revolver with a term commensurate with the extended remaining term loans to support the Company's business operations. CD&R indicated that a potential investment on these terms was subject to satisfactory completion of CD&R's on-going due diligence investigation and other customary conditions.

From mid-March through May 2009, JP Morgan contacted approximately six industry participants and approximately 15 financial investors and private equity firms to gauge their interest in a potential investment in, or acquisition or recapitalization of, the Company. Only a few of these contacted firms were willing to execute a confidentiality agreement and begin discussions, and ultimately none expressed any interest in pursuing a transaction other than restructuring transactions at valuation levels that implied no recovery for holders of common stock and substantial impairment for holders of convertible notes. In particular, the Company received no indications of interest competitive with the value and commitment to completion offered by CD&R.

By late April 2009, CD&R and the Company, although not yet agreeing to the final terms of the transaction, had agreed on a basis for continuing discussions regarding a CD&R investment transaction, including that:

the Company would offer to pay down approximately \$143.0 million in principal amount of term loans outstanding under our existing credit facility and seek agreement of the term loan lenders to extend the maturity of the remaining \$150.0 million for a period of five years on amended terms;

the Company would seek the agreement of a group of lenders to commit to a new asset-backed revolving credit facility, in the amount of at least \$125.0 million;

the Company would launch an exchange offer to acquire substantially all of the convertible notes in exchange for a combination of cash and equity consideration; and

if the foregoing steps and transactions could be accomplished, at the concurrent closings of such transactions, CD&R would purchase from the Company \$250.0 million of preferred stock, which would be convertible into 75% of the outstanding common stock on a fully diluted basis, but before giving effect to dilution in respect of any common stock required to be issued in such exchange offer to holders of convertible notes.

Accordingly, in May and June 2009, the Company and its representatives together with CD&R and its representatives engaged in discussions with the agent banks and one other lead financial institution under the Company's existing credit agreement and revolving credit facility (which were bound by confidentiality obligations to the Company and were able to receive material non-public information about the Company).

During May 2009, in light of the dramatic decline during the first two fiscal quarters ended April 30, 2009 of the Company's results of operations, including its Adjusted EBITDA (a financial measure used and defined in the existing credit agreement), due to the continuing recession and economic crisis, the Company's management became concerned that the Company would fall out of compliance with several financial covenants under the existing credit agreement, which failure would result in a default that would allow the lenders to accelerate and demand immediate repayment of the entire outstanding term loans. If the Company were unable to make the

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required repayment, it would also be in default under the convertible notes indenture, which could then be declared immediately due and payable. In order to obtain additional time to complete a transaction with CD&R or an alternative refinancing or restructuring, on May 20, 2009, the Company obtained a waiver from its lenders, including waiver of its financial maintenance covenants and restrictions on the Company's ability to enter into an agreement for a substantial investment in the Company. The waiver was effective through July 15, 2009, with an automatic extension to September 15, 2009, upon the signing of a definitive agreement for an investment. In the press release announcing that the Company obtained the waiver from its lenders, the Company also announced that it had made significant progress with a leading private equity firm with regard to a substantial investment in the Company, and that it was in advanced stages of negotiations with that private equity firm. At the time of the press release, although CD&R continued to indicate a high level of commitment to completing a transaction with the Company, CD&R indicated that it was unwilling to allow its name to be associated with a transaction until definitive documentation was executed, and, given the conditions to a transaction set forth in CD&R's revised proposal with respect to the Company's leverage and liquidity, CD&R indicated that it was not prepared to execute definitive documentation until more progress was made with respect to the proposed refinancing.

On June 15, 2009, without yet reaching an agreement with the lenders under the Company's existing credit agreement, the Company's revolving credit facility matured, leaving the Company with cash on hand as its only source to address its liquidity needs.

In June 2009, senior management and an industry participant, which we refer to as the Industry Participant, spoke regarding the Industry Participant's potential interest in acquiring the Company. The Industry Participant had not shown interest when originally contacted by JP Morgan in the spring of 2009, but the Industry Participant explained that, due to improvements in its own business in the intervening two months, it had determined to reconsider a possible acquisition of the Company. In early and mid-July 2009, the Company's senior management, together with Greenhill, met twice in person with senior management of the Industry Participant and its financial advisor, and throughout July 2009, the Industry Participant engaged in due diligence of the Company while it continued to evaluate whether to proceed to make an acquisition proposal for the Company.

During June 2009, negotiations continued with CD&R with respect to the final terms of the CD&R investment in the Company, and negotiations continued between the Company and its representatives, on the one hand, and a group of the Company's lenders, on the other hand, with respect to the terms of the amendment and extension to the Company's existing credit agreement that would be a condition to a CD&R investment. In addition, during this period, the Company and its representatives, together with CD&R and its representatives, began negotiations with certain of the Company's lenders with respect to a new asset-backed revolving credit facility that would be a condition to a CD&R investment. In mid-July 2009, in order to obtain additional time to complete these negotiations and discussions, the Company obtained an extension of the credit agreement waiver, which had originally been set to expire on July 15, 2009, so that it would expire on August 14, 2009, which date would automatically extend to September 15, 2009 upon the signing of a definitive agreement for an investment.

Throughout July and the first half of August 2009, negotiations continued between the Company and CD&R with respect to the investment, and between the Company and the Industry Participant with respect to a potential acquisition of the Company. In addition, during this period, (a) the Company and its representatives, together with CD&R and its representatives, continued negotiations with certain of the Company's lenders with respect to the terms of a potential new asset-backed revolving credit facility and (b) CD&R and its representatives joined the Company and its representatives to continue discussions with certain of the Company's lenders with respect to the terms of a potential amendment of the Company's existing credit agreement to amend and extend a portion of the term loans outstanding thereunder. During this time, CD&R and the Company discussed that, if the consent of 100% of the lenders under the Company's existing credit agreement could not be obtained or if the holders of substantially all of the convertible notes opted not to tender their convertible notes in an exchange offer for a combination of cash and

Company common stock, then both the Company and CD&R would be willing to effect the CD&R investment and the restructuring of the Company's balance sheet through a prepackaged plan of reorganization. A prepackaged plan of reorganization would require acceptance by a smaller percentage of the lenders under our existing credit facility and holders of convertible notes, thereby increasing the likelihood that the CD&R investment and the restructuring of the Company's balance sheet could be achieved (see Summary The Prepackaged Plan ).

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On August 12, 2009, the Industry Participant informed the Company that it and its board of directors had determined not to make a proposal to acquire the Company. From August 12 through August 14, 2009, the Company and CD&R completed negotiation and documentation of the CD&R investment.

During the evening of August 13, 2009, the Company's board of directors met to consider the proposed investment and related transactions. The Company's board of directors had met in person and by telephone on numerous occasions over the previous weeks and months, including an in-person meeting on August 10, 2009, and had received numerous presentations from management regarding the Company's business, operations and prospects, and from management JP Morgan and Greenhill regarding the Company's search for a strategic, financial or restructuring solution to the Company's impending debt repayment obligations under the existing credit facility and the convertible notes, regarding the negotiations with and terms of the proposed transaction with CD&R and regarding possible outcomes and recovery scenarios to creditors and stockholders in the event the Company were to file for bankruptcy protection on terms other than as contemplated by the prepackaged plan. Among other things, the directors considered (1) the absence of interest from any third parties other than the Industry Participant, which had withdrawn its interest, (2) the potentially imminent default under, and acceleration of, the Company's existing credit facility (which default, in turn, could lead to the potential acceleration of the Company's other indebtedness, including under the convertible notes indenture), and that such default could have occurred as early as August 15, 2009 (the expiration date of the waiver then in effect, which waiver was subsequently extended to November 6, 2009), and (3) the high likelihood that the Company would be required to repurchase the convertible notes on November 15, 2009. At the August 13, 2009 board meeting, Greenhill delivered its opinion, subsequently confirmed in writing, that, as of such date, and based on and subject to, among other things, the limitations and assumptions set forth in the opinion, the consideration to be received by the Company pursuant to the proposed CD&R investment is fair, from a financial point of view, to the Company (which opinion was subsequently superseded by an updated opinion delivered to the Company's board of directors on August 31, 2009 and described below). See The Restructuring Opinion of Greenhill Relating to the CD&R Investment.

Based on the presentations and discussions at the August 13, 2009 meeting and at prior meetings, the Company's board of directors believed that, in the absence of a CD&R transaction, the Company would likely be forced to file for bankruptcy protection on terms other than as contemplated by the prepackaged plan, that such a bankruptcy filing would materially adversely affect the Company's business and destroy value (see Risk Factors Risks Relating to NOT Accepting the Exchange Offer or Rejecting the Prepackaged Plan ), that the CD&R transaction would result in the Company's receipt of \$250.0 million of additional capital and would create significant value for the Company, its creditors and shareholders, and that the CD&R transaction would create significantly greater value than would be created in a bankruptcy case with respect to a filing on terms other than as contemplated by the prepackaged plan or would likely be created in a restructuring in which either no new outside capital would be provided, or in which existing creditors would be required to contribute new capital. Following further discussion, the Company's board of directors unanimously approved the original investment agreement and the transactions contemplated thereby. During the evening of August 13, 2009, the Company, CD&R and their respective outside legal counsels finalized the original investment agreement, and in the early morning of August 14, 2009, the parties executed the original investment agreement and announced the transaction (see The Restructuring Description of the CD&R Investment ), including the Company's intention to commence an exchange offer to acquire the convertible notes in exchange for \$500 in cash and 125 shares of Common Stock for each \$1,000 in principal amount of convertible notes tendered and not withdrawn. On a pro forma basis, after taking into account the common stock that would be issued to holders of convertible notes under the terms of the proposed exchange offer, the CD&R Fund's ownership of the Company would be approximately 71.5% while holders of convertible notes would receive, in the aggregate, shares of common stock representing approximately 15.0% of the Company.

On August 21, 2009, the Company obtained another extension, dated as of August 20, 2009, of the credit agreement waiver to November 6, 2009, pursuant to which, in addition to waiving certain of the Company's financial covenants,

the term loan lenders waived any default or event of default resulting from the company's execution of the original investment agreement and/or arising from the issuance of the Series B convertible preferred stock.

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After the announcement of the execution of the original investment agreement, the Company began negotiations with representatives of a group of existing holders of convertible notes to increase the proposed consideration in the exchange offer.

As a result of these negotiations, on August 26, 2009, the Company and the group of holders of convertible notes reached consensus on possible amended exchange offer terms provided that holders of convertible notes representing more than two-thirds of the outstanding convertible notes would execute a lock-up and voting agreement committing such noteholders to tender their convertible notes in the amended exchange offer. Such possible amended terms contemplated that the CD&R Fund would continue to invest \$250.0 million in the Company but its pro forma ownership of the Company would be approximately 68.5%, and holders of convertible notes would receive \$500 cash and 390 shares of common stock for each \$1,000 principal amount of convertible notes tendered in such proposed exchange offer, representing, in the aggregate, approximately 24.5% of the ownership of the Company on a pro forma basis. During the period of negotiations with the noteholder group, the Company also engaged in negotiations with the CD&R Fund regarding the amendments to the investment agreement that would be necessitated by the terms under negotiation with the noteholder group. CD&R indicated a willingness to proceed on the basis of the terms negotiated by the Company with the noteholder group. On August 27, 2009, the Company issued a press release announcing its entry into negotiations with the CD&R Fund and the group of noteholders on the basis of such possible amended terms. On August 28, 2009, the Company and the CD&R Fund executed an amendment to the investment agreement to extend the date by which the Company would be obligated to commence the exchange offer. Negotiations continued from August 25, 2009 to August 30, 2009.

On the evening of August 31, 2009, the Company's board of directors met to consider the proposed amended terms. Among other things, the directors weighed the costs and benefits of the increased certainty of success of the restructuring that a lock-up and voting agreement would provide against the reduced ownership of the Company by the current stockholders on a pro forma basis. At the August 31, 2009 board meeting, Greenhill delivered a revised opinion, subsequently confirmed in writing, that, as of such date, and based on and subject to, among other things, the limitations and assumptions set forth in the opinion, the consideration to be received by the Company pursuant to the revised proposed CD&R investment is fair, from a financial point of view, to the Company. This opinion superseded the opinion of Greenhill previously delivered to the Company's board of directors on August 13, 2009.

Following discussions, the Company's board of directors unanimously approved the amended terms contemplated by amendment no. 2 to the investment agreement (see Annex D). In addition, the Audit Committee met and redetermined that the delay necessary in securing stockholder approval prior to the issuance of the Series B convertible preferred stock and of the common stock pursuant to the exchange offer would seriously jeopardize the financial viability of the Company and approved the reliance by the Company on the exception to the NYSE's Shareholder Approval Policy contained in Paragraph 312.05 of the NYSE Listed Company Manual. The Audit Committee had previously determined the same in connection with the execution of the original investment agreement.

On August 31, 2009, (1) the Company and the CD&R Fund executed amendment no. 2 to the investment agreement which, among other things, amended the terms of the exchange offer contemplated by the original investment agreement to provide that holders of convertible notes would receive \$500 cash and 390 shares of common stock for each \$1,000 principal amount of convertible notes tendered in the exchange offer, and (2) concurrently with such execution, the Company and a group of noteholders representing more than 75% of the outstanding convertible notes executed the lock-up and voting agreement, dated August 21, 2009. Certain of the members of the group of noteholders also hold term loans and other obligations under our existing credit agreement and agreed to support the term loan refinancing as part of such lock-up agreement. Subsequent to the execution of such lock-up agreement, additional holders of notes became party to such lock-up agreement, increasing the aggregate amount of convertible notes subject thereto to 79% of the outstanding convertible notes.

After the launch of this exchange offer, the Company began negotiations with representatives of a group of holders of obligations under our existing credit agreement to amend the terms of the proposed term loan refinancing. As a result of these negotiations, on October 8, 2009, (1) the Company and the CD&R Fund executed amendment no. 3 to the investment agreement (see Annex E) which, among other things, amended certain provisions to the



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investment agreement to reflect the CD&R Fund's and the Company's agreement that, pursuant to the terms and conditions of the investment agreement, the execution of the form of amended credit agreement attached as Annex J after giving effect to the matters set forth in Annex K is deemed to satisfy the related condition to the CD&R investment, (2) concurrently with such execution, the Company and a group of lenders executed the lock-up agreement (dated October 8, 2009) (see The Restructuring The Lock-Up Agreements Lock-Up Agreement (dated October 8, 2009) ) and (3) the Company and holders of convertible notes that executed the lock-up agreement attached as Annex M executed an amendment to such lock-up agreement (see Annex N) to take into account the matters set forth on Annex K.

After the announcement of the execution of the original investment agreement, the Company and its representatives, together with CD&R and its representatives, continued negotiations with certain of the Company's lenders with respect to the terms of the proposed ABL financing. As a result of these negotiations, the form of ABL agreement attached hereto as Annex Q has been agreed to in principle with such prospective lenders to effect the proposed ABL financing, and the prospective lenders have indicated their willingness to enter into the form of ABL agreement attached hereto as Annex Q; however, no loan commitment letter from any such prospective lender has been received by the Company.

## **Reasons for the Restructuring**

The Company is pursuing the restructuring in order to address its imminent debt repayment and repurchase obligations. We are currently facing a potentially imminent default under, and acceleration of, our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to a default under, and acceleration of, our other indebtedness, including under the convertible notes indenture). In addition, there is a high likelihood that we will be required to repurchase the convertible notes on November 15, 2009, the first scheduled mandatory repurchase date under the convertible notes indenture. In short, we may be required to repay or repurchase \$473.7 million of our outstanding indebtedness by the middle of November. As of August 2, 2009, the Company had only approximately \$105.4 million of unrestricted cash with which to satisfy these obligations, and no realistic ability to obtain the necessary additional funds in the capital markets.

We expect that the restructuring, if successful, will increase the Company's capital and liquidity levels and reduce the amount of our outstanding debt. Specifically, upon the completion of the restructuring, we expect that our indebtedness would be reduced from approximately \$473.7 million as of August 2, 2009 to approximately \$150.4 million at the closing of the restructuring (consisting of \$150.0 million in principal amount of term loans under the amended credit agreement and \$0.4 million of our industrial revenue bond).

In addition, the ABL financing contemplated by the restructuring will provide us with liquidity in the range of \$45.0 million to \$125.0 million (based upon our borrowing base from time to time), for working capital purposes and future expansion.

Assuming we are able to complete the restructuring, we expect that, for the foreseeable future, cash generated from operations, together with the proceeds of the ABL financing, will be sufficient to allow us to service our debt, fund our operations, increase working capital as necessary to support our strategy and to fund planned capital expenditures and expansions (including approximately \$5 million expected for the remainder of fiscal 2009).

If we do not complete the restructuring either through the recapitalization plan or the prepackaged plan, we will face an immediate liquidity crisis. If we do not complete the restructuring, we do not expect, and we cannot assure you, that we will have, or have access to, sufficient liquidity (1) to meet our debt repayment/repurchase obligations, including any potential acceleration of our existing credit facility, which may occur as early as November 6, 2009 (which may, in turn, also lead to a default under, and acceleration of, our other indebtedness, including under the

convertible notes indentures) and (2) to meet our obligation to repurchase the convertible notes at the option of the holders thereof on November 15, 2009, the next scheduled repurchase date.

In such event, we will have an immediate need to pursue other alternatives to manage our liquidity needs, including potentially filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan. Based upon our efforts to identify alternatives to the restructuring described above under The Restructuring

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Background to the Restructuring, we do not expect, and there can be no assurance, that any alternative to such bankruptcy filing would be found.

We believe that a bankruptcy (other than the prepackaged plan) could result in recoveries to the companies creditors and equity holders substantially below those expected to result from the restructuring or prepackaged plan, and could materially adversely affect our business and prospects.

We therefore determined to pursue this restructuring because we believed that it was superior to any existing alternative.

### **Opinion of Greenhill Relating to the CD&R Investment**

On August 31, 2009, Greenhill rendered its oral opinion, which was subsequently confirmed in writing, to our board of directors and which addressed, subject to the limitations and assumptions set forth in the opinion, only the fairness, from a financial point of view, to the Company of the consideration to be paid by the CD&R Fund for the Series B convertible preferred stock pursuant to the investment agreement. **GREENHILL'S OPINION AND ANALYSIS DO NOT ADDRESS ANY OTHER ASPECT OF THE RESTRUCTURING, INCLUDING THE FAIRNESS OF THIS EXCHANGE OFFER AND THE CONSIDERATION TO BE PAID TO THE HOLDERS OF CONVERTIBLE NOTES PURSUANT TO THIS EXCHANGE OFFER, AND DO NOT CONSTITUTE RECOMMENDATIONS AS TO WHETHER OR NOT A HOLDER OF CONVERTIBLE NOTES OR ANY OTHER PERSON SHOULD TENDER ITS CONVERTIBLE NOTES IN THIS EXCHANGE OFFER OR ACCEPT OR REJECT THE PREPACKAGED PLAN. GREENHILL'S OPINION AND ANALYSIS WERE NOT PREPARED WITH A VIEW TOWARDS PUBLIC DISCLOSURE, AND GREENHILL BELIEVES ITS OPINION AND ANALYSIS ARE OF LITTLE OR NO RELEVANCE TO A DECISION BY A HOLDER OF CONVERTIBLE NOTES OR ANY OTHER PERSON WHETHER OR NOT TO TENDER ITS CONVERTIBLE NOTES IN THIS EXCHANGE OFFER OR TO ACCEPT OR REJECT THE PREPACKAGED PLAN.**

Based upon the express limitations contained in its opinion, Greenhill believes that holders of convertible notes and other persons (other than our board of directors) are not entitled to rely upon or otherwise use its opinion or analysis for any purpose, and Greenhill would intend to assert the substance of the noted limitations on use against any holder of convertible notes or other such person seeking to or otherwise claiming a right to rely upon or otherwise use such opinion or analysis.

Greenhill is not aware of any controlling court decision addressing the validity of such a claim. It is possible that holders of convertible notes or other persons could seek to assert a claim that they may rely upon or otherwise use the opinion or analysis, which Greenhill would intend to oppose. The validity of any such claim, if asserted, could only be finally determined by a court of competent jurisdiction. The availability of such a state-law defense would have no effect on the rights and responsibilities of our board of directors under governing state law, or the rights and responsibilities of our board of directors or Greenhill under the federal securities laws. Subject to the foregoing, Greenhill has not objected to the inclusion of its opinion or the summary of its analysis as part of this prospectus/disclosure statement.

The foregoing factors should be taken into account in deciding whether Greenhill's opinion and analysis should be considered by readers of this document.

The full text of the written opinion of Greenhill, dated August 31, 2009, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limits on the opinion and the review undertaken in connection with rendering the opinion, is attached as Annex L to this prospectus/disclosure statement and is

incorporated herein by reference. This opinion replaced and superseded Greenhill's opinion, dated August 13, 2009.

In connection with rendering the opinion described above, Greenhill, among other things:

reviewed the investment agreement, dated as of August 14, 2009, by and between the Company and the CD&R Fund, as amended by an amendment thereto, dated August 28, 2009, and as proposed to be amended by a draft of Amendment No. 2 thereto (including certain related documents), which as amended by such draft Amendment No. 2, we refer to as the draft investment agreement;

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reviewed a draft of the form of certificate of designations, preferences and rights of the Series B convertible preferred stock included as an exhibit to the draft investment agreement;

reviewed the form of the amended credit agreement attached hereto as Annex J;

reviewed a draft of the ABL term sheet attached hereto as Annex P;

reviewed the form of the stockholders agreement attached hereto as Annex F;

reviewed the form of the indemnification agreement attached hereto as Annex I;

reviewed the form of the registration rights agreement attached hereto as Annex H;

reviewed a draft of the lock-up and voting agreement;

reviewed certain publicly available financial statements of the Company;

reviewed certain other publicly available business and financial information relating to the Company that Greenhill deemed relevant;

reviewed certain information, including financial forecasts and other financial and operating data concerning the Company, prepared by the management of the Company;

discussed the past and present operations and financial condition and the prospects of the Company with senior executives of the Company;

compared the equity value implied by the consideration to be paid for the Series B convertible preferred stock pursuant to the investment agreement with the trading valuations of certain publicly traded companies that Greenhill deemed relevant;

compared the equity value implied by the consideration to be paid for the Series B convertible preferred stock pursuant to the investment agreement with that received in certain publicly available transactions that Greenhill deemed relevant;

compared the equity value implied by the consideration to be paid for the Series B convertible preferred stock pursuant to the investment agreement to the valuation derived by discounting future cash flows and a terminal value of the business at discount rates Greenhill deemed appropriate;

reviewed the illustrative bankruptcy recoveries by the Company's stockholders and creditors implied by management's projections under various scenarios;

participated, at the written request of the Company, in discussions and negotiations among representatives of the Company and its legal advisors and representatives of the CD&R Fund and its legal advisors; and

performed such other analyses and considered such other factors as Greenhill deemed appropriate.

Greenhill's opinion is for the information of our board of directors and was rendered to our board of directors in connection with their consideration of the CD&R investment. The opinion may not be used for any other purpose

without Greenhill's prior written consent. Greenhill was not requested to opine as to, and Greenhill's opinion does not in any manner address, (1) the underlying business decision to proceed with or effect the CD&R investment or the restructuring, (2) any of the financial or other terms of the restructuring or (3) any plan of reorganization under chapter 11 of the Bankruptcy Code. Greenhill expressed no opinion as to the fairness of any portion or aspect of the CD&R investment or the restructuring to the holders of any class of securities, creditors or other constituencies of the Company, the fairness of any portion or aspect of the CD&R investment or the restructuring to any one class or group of the Company's security holders relative to any other class or group of the Company's security holders, or the solvency, creditworthiness or fair value of the Company under any applicable laws relating to bankruptcy, insolvency, fraudulent conveyance or similar matters. In particular, Greenhill expressed no opinion as to the prices at which any publicly-traded shares of common stock of the Company will trade at any future time. Greenhill's opinion was approved by a fairness committee. The opinion is not intended to be and does not constitute a recommendation to the members of our board of directors as to whether they should approve the CD&R investment or the investment agreement.

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In giving its opinion, Greenhill assumed and relied upon, without independent verification, the accuracy and completeness of all information that was either publicly available or supplied or otherwise made available to it by management of the Company for the purposes of its opinion. Greenhill further relied upon the assurances of the management of the Company that they were not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to financial forecasts, projections and other data furnished or otherwise provided to it, Greenhill assumed that they were reasonably prepared on a basis reflecting the best then currently available estimates and good faith judgments of the management of the Company as to those matters, and Greenhill relied on such forecasts and data in arriving at its opinion. Greenhill expressed no opinion with respect to such financial projections and data or the assumptions upon which they were based. In addition, Greenhill did not make any independent appraisal of the assets or liabilities of the Company, nor was it furnished with any such valuations or appraisals. At the direction of our board of directors, Greenhill based its review of the potential recoveries by the Company's stockholders and creditors in a bankruptcy of the Company on those implied by management's projections under various scenarios. Greenhill has assumed that the CD&R investment will be consummated in accordance with the terms set forth in the final, executed investment agreement, the terms of which it has assumed are identical in all material respects to the draft investment agreement reviewed by Greenhill, without any waiver of any material terms or conditions set forth in the investment agreement, and that the CD&R investment and restructuring will be effectuated as contemplated therein. Greenhill has assumed and relied upon, without independent verification, the accuracy of the representations and warranties contained in the investment agreement and that no indemnification payments will be made by the Company under the investment agreement. Greenhill has further assumed that all material governmental, regulatory and other consents and approvals necessary for the consummation of the CD&R investment will be obtained without any effect on the Company, the CD&R investment or the contemplated benefits of the CD&R investment in any way meaningful to its analysis. Greenhill's opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to it as of, the date of the opinion. It should be understood that subsequent developments may affect its opinion, but Greenhill does not have any obligation to update, revise or reaffirm its opinion.

The following is a summary of the material financial and comparative analyses delivered by Greenhill to the Company's board of directors in connection with rendering its opinion described above. The summary set forth below does not purport to be a complete description of the analyses performed by Greenhill, nor does the order of analyses described represent relative importance or weight given to those analyses by Greenhill. Some of the summaries of the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are not alone a complete description of Greenhill's financial analyses.

**Financial Forecast**

For the purposes of Greenhill's analysis, the Company provided to Greenhill, and instructed Greenhill to rely on, the financial forecast prepared by management that is summarized below:

	<b>FY2009 (P)</b>	<b>FY2010 (P)</b>	<b>FY2011 (P)</b>	<b>FY2012 (P)</b>
	<b>(\$ in millions)</b>			
Revenue	\$ 961	\$ 861	\$ 1,084	\$ 1,331
Gross Profit	\$ 161	\$ 190	\$ 252	\$ 335
<i>Margin (%)</i>	<i>16.8%</i>	<i>22.1%</i>	<i>23.2%</i>	<i>25.2%</i>
Adjusted EBIT(1)	\$ (3)	\$ 1	\$ 36	\$ 93
<i>Margin (%)</i>	<i>(0.3)%</i>	<i>0.1%</i>	<i>3.4%</i>	<i>7.0%</i>
Adjusted EBITDA(1)	\$ 36	\$ 36	\$ 73	\$ 127
<i>Margin (%)</i>	<i>3.8%</i>	<i>4.1%</i>	<i>6.7%</i>	<i>9.6%</i>

Capital Expenditures	\$	(23)	\$	(9)	\$	(50)	\$	(40)
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(1) Excludes the effects of the significant charges incurred in 2009 for lower of cost or market adjustments, asset impairments, goodwill and intangible asset impairments, and debt extinguishment and refinancing costs.



**Table of Contents****Comparable Company Analysis**

Greenhill reviewed revenue, adjusted equity value and enterprise value as multiples of estimated earnings before interest, taxes, depreciation and amortization, which we refer to as EBITDA, commonly referred to as trading multiples, of the Company and selected companies in the building products sector and selected steel producers with businesses deemed comparable to the Company for the purposes of this analysis. The companies reviewed by Greenhill are listed below:

**Building Products**

Kingspan Group  
Acuity Brands  
Armstrong World Industries  
Worthington Industries  
Simpson Manufacturing  
Interface  
Gibraltar Industries  
Apogee  
Quanex Building Products

**Steel Producers with Businesses Comparable to the Company**

Nucor  
Bluescope Steel

Although no company is directly comparable to the Company, Greenhill selected these companies because it believed that they had characteristics that were instructive for purposes of its analysis. Greenhill reviewed the trading multiples for the selected companies based upon publicly available I/B/E/S estimates.

Based upon these multiples, and applying its professional judgment, Greenhill selected a range of EBITDA trading multiples from 7.0x to 9.5x and applied this range to management's forecasted EBITDA for each of 2009 and 2010. This analysis indicated the following ranges of enterprise values, equity values and equity values per share for the Company:

Comparable Company	Current Trading			EBITDA	Enterprise Valuation Range			Net Debt(1)	Equity Value Range			Equity Value per Share Range(2)		
	Low	-	High		Low	-	High		Low	-	High	Low	-	High
Technology	7.0x	-	9.5x	\$ 36	\$ 253	-	\$ 343	\$ 375	\$ (122)	-	\$ (32)	\$ (6.11)	-	\$ (
EBITDA	7.0x	-	9.5x	\$ 36	\$ 249	-	\$ 337	\$ 375	\$ (126)	-	\$ (37)	\$ (6.31)	-	\$ (

(1) Based on \$474 million debt outstanding less \$99 million in projected cash at November 1, 2009.

(2) Based on 20.0 million fully-diluted shares outstanding.

Greenhill believes that the comparable company analysis is of little or no relevance to a decision by a holder of convertible notes whether or not to tender its convertible notes in this exchange offer or accept or reject the prepackaged plan because, given the Company's liquidity crisis and limited alternatives, Greenhill does not believe that the range of enterprise values implied by the analysis is likely to be a meaningful indicator of potential recoveries

by any holder of convertible notes. In addition, Greenhill's opinion did not address, and the comparable company analysis should not be relied upon as indicating, the price at which the Company's common stock will trade at any future time.

**Table of Contents****Comparable Transaction Analysis**

Using publicly available information, Greenhill reviewed selected precedent transactions with a transaction value between \$200.0 million and \$1.5 billion announced since 2000 by companies in the building products and steel producers sector. Specifically, Greenhill reviewed the following transactions:

**Building Products Transactions**

<b>Date</b>	<b>Target</b>	<b>Acquiror</b>
03/13/2008	Pavestone Co.	CRH
12/19/2007	IMSA Acero	Bluescope Steel
02/09/2007	ElkCorp	Building Materials Corp.
09/25/2006	Alcoa Home Exteriors	Ply Gem Industries
06/19/2006	APAC, Inc.	Oldcastle Materials
03/02/2006	Material Service Corp.	Hanson Aggregates
07/10/2002	Kiewit Materials	Rinker Materials
08/11/2000	Republic Group	Premier Construction Products
06/20/2000	Justin Industries	Berkshire Hathaway
06/02/2000	Celotex Ceiling Products	BPB

**Steel Producers Transactions**

<b>Date</b>	<b>Target</b>	<b>Acquiror</b>
09/04/2008	Beta Steel	NLMK
07/28/2008	AmeriCast Technologies	Bradken Limited
06/16/2008	Bayou Steel	Arcelor Mittal
05/20/2008	Esmark	Severstal
12/09/2007	Claymont Steel	Evrast Group S.A.
06/21/2007	Novamerican Steel	Barzel Industries
06/13/2007	The Techs Holdings	Steel Dynamics
02/28/2007	Steel Technologies	Mitsui & Co.
12/29/2006	Harris Steel	Nucor Corp.
11/10/2006	Tube City IMS	Onex Corp.
04/26/2006	MMI Products	Oldcastle (CRH)
05/30/2002	Birmingham Steel	Nucor Corp.
05/25/2000	Steelscape	IMSA Acero

For each of the selected precedent transactions, Greenhill analyzed the enterprise value of the target company expressed as a multiple of EBITDA and revenue for the last twelve months. Based upon these multiples and applying its professional judgment, Greenhill selected a range of EBITDA transaction multiples from 7.5x to 9.0x and applied this range to management's forecasted EBITDA for each of 2009 and 2010. This analysis indicated the following ranges of enterprise values, equity values and equity value per shares for the Company:

<b>Transaction</b>	<b>Enterprise</b>	<b>Equity Value</b>	<b>Equity Value</b>
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Comparable Transaction	Multiples		Valuation Range				Range			Share Range				
	Low	-	High	EBITDA	Low	-	High	Net Debt(1)	Low	-	High	Low	-	High
(\$ in millions, except per share data)														
EBITDA	7.5x	-	9.0x	\$ 36	\$ 271	-	\$ 325	\$ 375	\$ (104)	-	\$ (50)	\$ (5.21)	-	\$
EBITDA	7.5x	-	9.0x	\$ 36	\$ 266	-	\$ 320	\$ 375	\$ (109)	-	\$ (55)	\$ (5.43)	-	\$

(1) Based on \$474 million debt outstanding less \$99 million in projected cash at November 1, 2009.

(2) Based on 20 million fully-diluted shares outstanding.

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Greenhill believes that the comparable transaction analysis is of little or no relevance to a decision by a holder of convertible notes whether or not to tender its convertible notes in this exchange offer or accept or reject the prepackaged plan because, given the Company's liquidity crisis and limited alternatives, Greenhill does not believe that the range of enterprise values implied by the analysis is likely to be a meaningful indicator of potential recoveries by a holder of convertible notes. In addition, Greenhill's opinion did not address, and the comparable transaction analysis should not be relied upon as indicating, the price at which the Company's common stock will trade at any future time.

### **Discounted Cash Flow Analysis**

Using a discounted cash flow methodology, Greenhill calculated the present values of the estimated future cash flows for the Company implied by management's forecast. In this analysis, Greenhill assumed a weighted average cost of capital of between 11.0% and 13.0% and EBITDA terminal multiples of between 6.0x and 8.0x. While Greenhill's discounted cash flow analysis implied a range of per share equity values of the Company of \$18.48 to \$32.14 and a range of enterprise values of the Company of \$745 million to \$1,018 million, Greenhill noted that such a traditional discounted cash flow analysis was of little utility because, among other things: (1) the analysis implicitly assumed that the Company's near-term liquidity crisis could be averted, the Company's existing stockholders would survive the near-term liquidity crisis and retain an equity interest, and the Company had no other actionable alternatives to the CD&R investment and restructuring other than filing for bankruptcy protection on terms other than as contemplated by the prepackaged plan; (2) the analysis was highly sensitive to the scale and timing of a recovery in the non-residential construction market, which was very uncertain; (3) the vast majority of the value in the discounted cash flow analysis was in the terminal value, which caused the total value to be very sensitive to small changes in terminal value and discount rate assumptions; and (4) a traditional weighted average cost of capital analysis did not reflect financing terms then-available to the Company. Greenhill noted the sensitivity of the calculated present values to potential delays in the recovery of the non-residential construction market by up to four years as well as to blended market costs of capital ranging from 15% to 25%, which costs of capital might be more indicative of the Company's true cost of capital given its liquidity position. Greenhill believes that these considerations make the discounted cash flow analysis of little or no relevance to a decision by a holder of convertible notes whether or not to tender its convertible notes in this exchange offer or to accept or reject the prepackaged plan.

### **Illustrative Bankruptcy Recovery Analysis**

Greenhill reviewed the illustrative bankruptcy recoveries by the Company's stockholders and creditors implied by management's projections under various scenarios. Greenhill applied EBITDA multiples of 7.0x to 9.5x to forecasted EBITDA for each of 2009 and 2010 to derive an implied enterprise value range for the Company. The implied enterprise value range for 2009 and 2010 ranged from \$253 million to \$343 million and from \$249 million to \$337 million, respectively. Greenhill then subtracted the amount of specified secured claims (the existing credit facility and industrial revenue bonds) and unsecured claims (the convertible notes), which resulted in potential remaining equity value per existing share ranging from a negative \$11.26 through a negative \$6.54 (*i.e.*, no recovery). In performing this analysis, Greenhill assumed that the Company's cash on hand would be required to pay bankruptcy expenses and for working capital needs and would therefore be unavailable to pay creditors.

Based on such analysis, Greenhill observed that the enterprise valuation of the Company would have to exceed 13.1x and 13.3x forecasted 2009 EBITDA and forecasted 2010 EBITDA, respectively, for current stockholders to attain any recovery under this analysis.

Greenhill's illustrative bankruptcy recovery analysis supported Greenhill's conclusion that in a standalone restructuring through bankruptcy, stockholders of the Company would be unlikely to retain any meaningful value. While the

illustrative bankruptcy recovery analysis examined, among other things, illustrative potential recoveries for the holders of convertible notes, Greenhill did not conduct any independent valuation or appraisal of the assets or liabilities of the Company, nor was Greenhill furnished with any such appraisals, and at the Company's direction Greenhill based its analysis of the potential recoveries by the Company's stockholders and creditors in a bankruptcy on those implied by management's financial forecast. While Greenhill believes that the illustrative bankruptcy recovery analysis was an appropriate and reasonable way to generally analyze the nature of the potential

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stockholders recoveries in a bankruptcy of the Company, Greenhill believes that an analysis intended to provide reasonable estimates of potential creditor recoveries in a bankruptcy would be substantially more complex and would require, among other things, a valuation or appraisal of the assets and liabilities of the Company, and thus Greenhill believes that the illustrative bankruptcy recovery analysis is of little or no relevance to a decision by a holder of convertible notes whether or not to tender its convertible notes in this exchange offer or accept or reject the prepackaged plan. In this regard, Greenhill notes that in *The Prepackaged Plan Liquidation Analysis* the Company has set forth a liquidation analysis that is an estimate by the Company of the proceeds that may be generated as a result of the hypothetical chapter 7 liquidation of the Company's assets.

The consideration for the CD&R investment was determined through arm's length negotiations between the Company and the CD&R Fund and was approved by the Company's board of directors. Greenhill provided advice to the Company during these negotiations. Greenhill did not, however, recommend any specific amount of consideration to the Company or its board of directors, that any specific amount of consideration constituted the only appropriate consideration for the CD&R investment or that the terms of the CD&R investment are the most beneficial terms from the Company's perspective that could under the circumstances be negotiated among the parties to the CD&R investment.

Our board of directors selected Greenhill as the Company's financial advisor based on its qualifications and expertise in providing financial advice to acquirors, target companies and their respective boards of directors in merger and acquisition transactions. During the two years preceding the date of the opinion Greenhill was not engaged by, performed any services for or received any compensation from the Company or any other parties to the investment agreement (other than any amounts that were paid to it under the letter agreement pursuant to which Greenhill was retained as a financial advisor to the Company in connection with the CD&R investment) and at the date of the opinion Greenhill had no material relationships mutually understood to be contemplated with such parties. The Company has paid Greenhill a fee for delivering its opinion to the Company's board of directors, in addition to a monthly advisory fee and certain contingent transaction fees, which fees will become payable upon closing of the restructuring. As a result, a substantial portion of Greenhill's compensation is dependent upon the successful consummation of the CD&R investment. In addition, the Company has agreed to reimburse Greenhill for travel and other reasonable out-of-pocket expenses incurred in connection with, or arising out of Greenhill's activities under or contemplated by its engagement, including all reasonable fees and disbursement of its legal counsel, consultants and other advisors, and to indemnify Greenhill and its affiliates for certain liabilities, including liabilities under the federal securities laws, arising out of its engagement. Greenhill is also acting as the dealer-manager in connection with this exchange offer, for which it will be reimbursed for its reasonable out-of-pocket expenses and be indemnified for certain liabilities, including liabilities under the federal securities laws, and for which it may receive an additional fee.

Greenhill's opinion was one of many factors considered by the Company's board of directors in evaluating the CD&R investment and restructuring and should not be viewed as determinative of the views of the Company's board of directors with respect to the CD&R investment and restructuring.

## **Description of the CD&R Investment**

On August 14, 2009, we entered into an investment agreement with the CD&R Fund, which we refer to as the original investment agreement, which was subsequently amended by (1) an amendment, dated as of August 28, 2009, and (2) an amendment no. 2, dated as of August 31, 2009, which we refer to as the amendments. The term "investment agreement" refers to the investment agreement, as amended. Pursuant to the investment agreement, subject to the terms and conditions therein, the Company agreed to sell, and the CD&R Fund agreed to purchase, for a total purchase price of \$250.0 million, an aggregate of 250,000 shares of a new class of our preferred stock, par value \$1.00 per share, to be designated the Series B Cumulative Convertible Participating Preferred Stock, at a price of \$1,000 per share.

**The Investment Agreement**

*The following is a summary of the material terms and provisions of the investment agreement. While we believe this summary covers the material terms and provisions of the investment agreement, it may not contain all of the information that is important to you. The original investment agreement is included as Annex C and the amendments*



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*are included as Annex C, Annex D and Annex E hereto, each of which we incorporate by reference into this document. We encourage you to read carefully the investment agreement in its entirety.*

*The investment agreement has been included to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company, the CD&R Fund, or CD&R or their respective subsidiaries and affiliates. The investment agreement contains representations and warranties by the Company, on the one hand, and by the CD&R Fund, on the other hand, each made solely for the benefit of the other. In the investment agreement, the assertions embodied in the representations and warranties are qualified by information in a confidential disclosure letter delivered in connection with the signing of the original investment agreement. The disclosure letter contains information that has been included in the Company's general prior public disclosures, as well as additional potentially nonpublic information. While the Company does not believe that the disclosure letter contains information required to be publicly disclosed under the securities laws other than information that has already been so disclosed, the disclosure letter contains information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the investment agreement. Moreover, certain representations and warranties in the investment agreement were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to stockholders, or may have been used for the purpose of allocating risk between the Company, on the one hand, and the CD&R Fund, on the other hand. Accordingly, the representations and warranties in the investment agreement should not be relied on by any persons as characterizations of the actual state of facts about the Company or the CD&R Fund at the time they were made or otherwise. In addition, information concerning the subject matter of the representations and warranties may change after the date of the original investment agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.*

*In this section of the prospectus/disclosure statement, we refer to (1) the investment agreement, (2) the stockholders agreement (see *The Restructuring Description of the CD&R Investment The Stockholders Agreement* ), (3) the registration rights agreement (see *The Restructuring Description of the CD&R Investment The Registration Rights Agreement* ), (4) the indemnification agreement (see *The Restructuring Description of the CD&R Investment The Indemnification Agreement* ), (5) the certificate of designations (see *The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock* ), (6) the ABL agreement, the amended credit agreement and the ancillary refinancing documents related to the ABL agreement and the amended credit agreement (see *The Restructuring Description of the Term Loan Refinancing and the ABL Financing* ), and (7) the prepackaged plan (see *The Prepackaged Plan* ) as the transaction documents. We refer to the concurrent closing of the CD&R investment, the term loan refinancing, the ABL financing and this exchange offer, or, in the alternative, the effectiveness of the prepackaged plan, as the closing.*

**Structure**

Under the investment agreement, at the closing, the CD&R investment and the other transactions contemplated by the restructuring will be accomplished as follows:

the Company will issue, sell and deliver to the CD&R Fund, and the CD&R Fund will purchase from the Company, an aggregate of 250,000 shares of Series B convertible preferred stock for an aggregate purchase price of \$250.0 million, upon the terms and subject to the conditions of the investment agreement;

the Company and our subsidiaries, as applicable, will execute and deliver an amendment to our existing credit agreement (see *The Restructuring Description of the Term Loan Refinancing and the ABL Financing The Term Loan Refinancing* ); and

the Company and our subsidiaries, as applicable, will execute and deliver an ABL agreement (see The Restructuring Description of the Term Loan Refinancing and the ABL Financing The ABL Financing ).

Concurrently with the closing, but after the Company receives the proceeds from the CD&R investment, the Company will:

repay \$143.3 million in principal amount of term loans outstanding under our existing credit agreement that are not rolled into the amended credit agreement, together with all accrued and unpaid interest and all other interest due and payable as of the closing, and cash collateralize or backstop in full, or replace with or roll

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over and novate into letters of credit issued and outstanding under the ABL agreement, all letters of credit outstanding under our existing credit agreement;

pay all fees, costs, expenses and other obligations (including under the amended credit agreement, the ABL agreement and related documents) that are due and payable as of the closing;

(1) if the restructuring is being accomplished through the recapitalization plan, accept the convertible notes validly tendered and not withdrawn pursuant to this exchange offer and (2) if the restructuring is being accomplished through the prepackaged plan, pay the claims with respect to the convertible notes pursuant to the prepackaged plan;

reimburse the CD&R Fund for transaction expenses up to \$14.5 million (net of any transaction expenses that were previously reimbursed); and

pay CD&R a deal fee in an amount equal to \$8.25 million.

***The Exchange Offer; Solicitation of Acceptances of the Prepackaged Plan***

We have agreed to commence this exchange offer and the solicitation for acceptances to the prepackaged plan under the terms of the investment agreement. Pursuant to the investment agreement, this exchange offer and the solicitation must be commenced and conducted on the terms and subject to the conditions set forth on Annex A to the investment agreement. We are prohibited from waiving any condition to this exchange offer or making any changes to the terms and conditions to this exchange offer without the prior consent of the CD&R Fund.

We may extend this exchange offer beyond the initial expiration date without the prior consent of the CD&R Fund for a period of not more than 10 business days, if, at such date, any of the conditions to this exchange offer have not been satisfied or, with the prior written consent of the CD&R Fund, waived and, subject to the termination of the investment agreement, we are required to extend this exchange offer if it expires before the registration statement of which this prospectus/disclosure statement forms a part is declared effective.

In the event that the conditions to the recapitalization plan are satisfied, including the conditions to this exchange offer (which includes the minimum tender condition), the Company has agreed to accept for exchange all convertible notes validly tendered in this exchange offer.

***Commencement of a Reorganization Case in Connection with the Prepackaged Plan Covenant***

Under the investment agreement, we and the CD&R Fund have agreed that in the event that the conditions to the recapitalization plan are not satisfied or waived, we will seek to accomplish the restructuring through the prepackaged plan. Specifically, we agreed, among other things:

to use our reasonable best efforts to obtain acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes; and

if the conditions to this exchange offer are not satisfied or, with the prior written consent of the CD&R Fund waived, by the expiration date, but we have received, as of the expiration date, acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down

provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes:

to file chapter 11 petitions in the U.S. Bankruptcy Court for the District of Delaware and commence the prepackaged plan proceeding under the Bankruptcy Code;

to file certain first day motions and seek to obtain entry of the orders approving such motions;

to schedule a hearing in the U.S. Bankruptcy Court for the District of Delaware on the earliest date possible to consider confirmation of the prepackaged plan and approve this prospectus/disclosure statement;

to send notices to all persons to whom such notices are required to be sent under the Bankruptcy Code and to such other persons as ordered by the bankruptcy court, as soon as practicable after the commencement of the prepackaged plan proceeding;

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to use our reasonable best efforts to obtain confirmation of the prepackaged plan by the U.S. Bankruptcy Court for the District of Delaware;

to use our reasonable best efforts to obtain the dismissal of any and all appeals and motions for reconsideration filed with respect to the prepackaged plan or with respect to the confirmation order relating to the prepackaged plan; and

to cause the prepackaged plan to become effective and the distributions provided for under the prepackaged plan to be commenced as promptly as possible on or following the day on which conditions to effectiveness set forth in the prepackaged plan have been satisfied or waived.

***Conditions to the CD&R Investment***

*Conditions to the CD&R Investment under the Recapitalization Plan.* The obligation of the CD&R Fund, on the one hand, and the Company, on the other hand, to consummate the CD&R investment at the closing of the recapitalization plan is conditioned on the satisfaction or waiver by both the Company and the CD&R Fund of the following conditions:

the expiration or termination of any waiting period required to consummate the CD&R investment under the HSR Act (which condition was satisfied on September 8, 2009, when the U.S. Federal Trade Commission granted early termination of the waiting period under the HSR Act) and the Austrian Act (which condition was satisfied on September 26, 2009, when the review period under the Austrian Act expired);

the absence of (1) any provision of any applicable law and any issued injunction, judgment, decree or other order that prohibits the closing, that restricts the CD&R Fund or its affiliates from owning, voting, or converting or exercising any Series B convertible preferred stock in accordance with its terms, or exercising the CD&R Fund's consent rights contemplated by the stockholders agreement and (2) any lawsuit by a governmental entity seeking to effect any of the foregoing;

the NYSE's confirmation that the issuance of the Series B convertible preferred stock and the restructuring are in compliance with the NYSE's stockholder approval policy; and the Company's proper, unconditional obtainment of an exception under Paragraph 312.05 of the NYSE Listed Company Manual to issue the Series B convertible preferred stock without stockholder approval (which confirmation was provided to the Company on August 13, 2009, subject to the Audit Committee's determination that the delay necessary in securing stockholder approval prior to the issuance of the Series B convertible preferred stock and of the common stock pursuant to the exchange offer would seriously jeopardize the financial viability of the Company and its approval of the Company's reliance on the exception contained in Paragraph 312.05 of the NYSE Listed Company Manual, which determination was made by the Audit Committee on August 13, 2009 and on August 31, 2009);

the Company's provision of notice to its stockholders as required by, and in compliance with, Paragraph 312.05 of the NYSE Listed Company Manual (which was provided by the Company on September 29, 2009), and the expiration of the ten-day notice period set forth in such paragraph (which occurred on October 8, 2009);

the Company's filing with the Secretary of State of the State of Delaware of the certificate of designations for the Series B convertible preferred stock;

the expiration of this exchange offer and the satisfaction or waiver, with the prior consent of the CD&R Fund, of all of the conditions to this exchange offer; and

the sufficiency for the following applications of the proceeds from the CD&R investment, together with the Company's available cash, which sufficiency we refer to as the sufficiency of proceeds condition:

to repay \$143.3 million in principal amount of term loans outstanding under our existing credit agreement that are not rolled into the amended credit agreement, together with all accrued and unpaid interest and all other interest due and payable as of the closing;

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to cash collateralize or backstop in full all letters of credit outstanding under our existing credit agreement that are not replaced with or rolled over and novated into letters of credit issued and outstanding under the ABL agreement;

to pay all fees, costs, expenses and other obligations relating to the recapitalization plan (including under the amended credit agreement, the ABL agreement and related documents) that are due and payable as of the closing;

to pay the cash consideration for all convertible notes validly tendered and not withdrawn under this exchange offer; and

to pay the maximum consideration necessary to repurchase or redeem all convertible notes not so tendered under this exchange offer pursuant to the convertible notes indenture.

The obligation of the Company to consummate the CD&R investment is conditioned on the satisfaction or waiver by the Company of the following conditions:

the truth and correctness (without regard to materiality or material adverse effect qualifications) of the representations and warranties of the CD&R Fund contained in the investment agreement (excluding the private placement representations (see Representation and Warranties below)) as of the date of the investment agreement and at and as of the date of the closing as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, has not had, and would not reasonably be expected to have, a material adverse effect on the ability of the CD&R Fund to consummate the CD&R investment;

the truth and correctness in all respects of the private placement representations at and as of the date of the investment agreement and at and as of the date of the closing as if made at and as of such time;

the receipt by the Company of a customary certificate of a senior officer of the CD&R Fund certifying to the satisfaction of the conditions described in the immediately preceding two bullet points;

the CD&R Fund's performance of and compliance in all material respects with all covenants and obligations in the investment agreement that are to be performed or complied with by it at or prior to the closing; and

the CD&R Fund's due execution and delivery of each of the stockholders agreement, the registration rights agreement and the indemnification agreement.

The obligation of the CD&R Fund to consummate the CD&R investment is conditioned on the satisfaction or waiver by the CD&R Fund of the following conditions:

the truth and correctness (without regard to materiality or material adverse effect qualifications) of the representations and warranties of the Company contained in the investment agreement (excluding those relating to capitalization and the lack of a material adverse change) as of the date of the investment agreement and at and as of the date of the closing as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, has not had, and would not reasonably be expected to have, a material adverse effect;

the truth and correctness in all but *de minimis* respects of the representations and warranties of the Company relating to capitalization at and as of the date of the investment agreement and at and as of the date of the closing as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date);

the truth and correctness in all respects of the representations and warranties of the Company relating to the lack of a material adverse change at and as of the date of the closing as if made at and as of such time;

the Company's performance of, and compliance in, all material respects with all covenants and obligations in the investment agreement that are to be performed or complied with by it at or prior to the closing;



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the Company's due execution and delivery of each of the stockholders agreement, the registration rights agreement and the indemnification agreement;

the Company's due authorization, execution and delivery of the amended credit agreement either (1) in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K with such changes thereto deemed advisable by the CD&R Fund in its sole discretion (exercised in good faith) (see The Restructuring Description of the Term Loan Refinancing and the ABL Financing Term Loan Refinancing ), or (2) on terms and conditions that are, in the CD&R Fund's sole discretion (exercised in good faith), (x) no less favorable (as to each item (other than immaterial items) and in the aggregate) to the Company and the CD&R Fund (as a prospective shareholder of the Company) than the terms and conditions contemplated in the form of the amended credit agreement attached hereto as Annex J or (y) otherwise acceptable to the CD&R Fund;

the amended credit agreement and other related documents being in full force and effect;

the satisfaction of all conditions precedent to the effectiveness of the amended credit agreement and the other related documents;

the receipt by the CD&R Fund of copies of the amended credit agreement and the other related documents;

subject to the consummation of the CD&R investment, (1) the termination of the revolving commitments under our existing credit agreement, and (2) to the extent required by the amended credit agreement and the ABL agreement, the subordination of the security interests arising under the amended credit agreement and related documents with respect to the collateral securing the ABL financing on a first-priority basis to the security interests in such collateral;

the Company's due authorization, execution and delivery of the ABL agreement on terms and conditions that either (1) reflect the terms and conditions summarized in the ABL term sheet attached as Annex P or (2) are, in the CD&R Fund's sole discretion (exercised in good faith), no less favorable (as to each item and in the aggregate) to the Company and the CD&R Fund (as a prospective shareholder of the Company) than the terms and conditions summarized in the ABL term sheet and, in each case described in clauses (1) and (2), otherwise are either (a) in the CD&R Fund's reasonable discretion (exercised in good faith), consistent with and no less favorable (as to each item (other than immaterial items) and in the aggregate) to the Company and the CD&R Fund (as a prospective shareholder of the Company) than the terms and conditions of asset-based revolving credit financing transactions for companies sponsored by CD&R, or (b) in the CD&R Fund's sole discretion (exercised in good faith), acceptable to the CD&R Fund (see The Restructuring Description of the Term Loan Refinancing and the ABL Financing The ABL Financing );

the ABL agreement and the other related documents being in full force and effect;

the satisfaction of all conditions precedent to (1) the effectiveness of the ABL agreement and the other related documents, (2) the initial borrowings and any other extensions of credit thereunder other than delivery of a borrowing notice, and (3) the effectiveness of the documents related to the ABL agreement;

the receipt by the CD&R Fund of copies of the ABL agreement and the other related documents;

the due authorization, execution and delivery of each ancillary refinancing document contemplated by the term loan refinancing and the ABL financing on terms that are (1) consistent with the amended credit agreement and

the ABL agreement, as applicable, and (2) otherwise either (a) in the CD&R Fund's reasonable discretion (exercised in good faith), consistent with and no less favorable (as to each item (other than immaterial items) and in the aggregate) to the Company and the CD&R Fund (as a prospective shareholder of the Company) than the terms and conditions of such agreement or document for companies sponsored by CD&R, or (b) in the CD&R Fund's sole discretion (exercised in good faith), acceptable to the CD&R Fund;

on the date of the closing, after giving effect to the closing, (A) the absence of (1) any breach or default under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing, (2) any allegations of breach or default by a person with the right to cause an acceleration of, or with the right to exercise any other remedy under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan

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refinancing and the ABL financing, and (3) any notice of intention to terminate the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing and (B) the absence of any default or event or circumstance that, with or without notice or lapse of time or both, would (1) constitute a breach, default or event of default under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing, (2) result in a termination of the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing, (3) cause or permit the acceleration or any other change of the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing, (4) cause or permit the acceleration or any other change in any right or obligation under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing, or (5) cause or permit the acceleration or any other change in the loss or impairment of any benefit under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing;

the Company reasonably believing that we and our subsidiaries will be able to satisfy all terms and conditions to be satisfied by any of them under the amended credit agreement, the ABL agreement or the ancillary refinancing documents contemplated by the term loan refinancing and the ABL financing;

no more than \$150.0 million in term loans being outstanding under the amended credit agreement after giving effect to the term loan refinancing;

the revolving credit commitments provided for under the ABL agreement being not less than \$125.0 million in aggregate;

the available revolving credit commitments under the ABL agreement and the unrestricted cash available to the Company after applying any cash of the Company to the purposes set forth in the sufficiency of proceeds condition being not less than \$90.0 million in the aggregate;

the ability of the Company to satisfy all conditions to borrowings and other extensions of credit under the ABL agreement;

the approval by our board of directors, including the approval by the disinterested directors serving on our board pursuant to Article TENTH of our restated certificate of incorporation, of the investment agreement, the other transaction documents and the transactions contemplated thereby (which such approval, with respect to the agreements and transactions related to the CD&R investment and with respect to this exchange offer, was received on August 13, 2009);

to the extent that the Company has authorized and unissued shares of common stock sufficient to permit the conversion of all or a portion of the shares of Series B convertible preferred stock to be issued at the closing, (1) the due authorization for listing, subject to official notice of issuance, on the NYSE or such other exchange on which the common stock is then listed or quoted, of such shares of common stock (which authorization was received by the Company on October 1, 2009) and (2) the number of such shares of common stock issuable upon conversion of the Series B convertible preferred stock that are so duly authorized for listing is no less than 7.8 million shares;

the adoption and declaration of advisability, and the approval and recommendation, by our board of directors, of certain amendments to our restated certificate of incorporation to increase the number of authorized shares (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek

Amendments to our Restated Certificate of Incorporation ); and

the receipt by the CD&R Fund of customary certificates of certain senior officers of the Company certifying to the satisfaction of certain of the conditions, including a certificate of our Chief Executive Officer or Chief Financial Officer certifying to the satisfaction of the sufficiency of proceeds condition.

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*Conditions to the CD&R Investment under the Prepackaged Plan.* In the event that we seek to accomplish the restructuring through the prepackaged plan, the obligation of the CD&R Fund, on the one hand, and the Company, on the other hand, to consummate the CD&R investment is conditioned on the satisfaction or waiver by both the Company and the CD&R Fund of the following conditions in addition to the conditions to the closing of the recapitalization plan:

the confirmation order has been entered and no stay of such order is in effect; and

the satisfaction or waiver of all other conditions to the effectiveness of the prepackaged plan (see *The Prepackaged Plan Conditions to the Effective Date of the Prepackaged Plan* ),

and the following conditions to the closing of the recapitalization plan will not apply:

the NYSE's confirmation that the issuance of the Series B convertible preferred stock and the restructuring are in compliance with the NYSE's stockholder approval policy; and the Company's proper, unconditional obtainment of an exception under Paragraph 312.05 of the NYSE Listed Company Manual to issue the Series B convertible preferred stock without stockholder approval;

the Company's provision of notice to its stockholders as required by, and in compliance with, Paragraph 312.05 of the NYSE Listed Company Manual, and the expiration of the ten-day notice period set forth in such paragraph; and

the expiration of this exchange offer and the satisfaction or waiver, with the prior consent of the CD&R Fund, of all of the conditions to this exchange offer.

***Termination of the Investment Agreement***

The investment agreement may be terminated at any time prior to the consummation of the CD&R investment:

(1) by either the CD&R Fund or the Company, if:

by November 12, 2009:

the closing of this exchange offer has not occurred; and

acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes have not been received; or

the prepackaged plan proceeding has been commenced and the effective date of the prepackaged plan has not occurred by a date that is no later than four weeks and ten days after the entry of the order confirming the prepackaged plan;

provided, that the party seeking to so terminate has not breached in any material respect its obligations under the investment agreement in any manner that has been a proximate cause of the failure to consummate the CD&R investment on or before the date on which the investment agreement can be so terminated, which date we refer to as the outside date;

(2) by either the CD&R Fund or the Company in the event that any governmental entity issues an order or takes any other action (and such order or other action has become final and nonappealable):

restraining, enjoining or otherwise prohibiting the closing;

prohibiting or restricting the CD&R Fund or its affiliates from owning and exercising in full all exchange, conversion and voting rights of the Series B convertible preferred stock contemplated to be exercisable by the CD&R Fund; or

prohibiting or restricting the CD&R Fund from exercising its consent rights under the stockholders agreement;

provided that the party seeking to so terminate has not breached in any material respect its obligations under the investment agreement in any manner that was a proximate cause of such order or action;

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(3) by the CD&R Fund, if:

the Company terminates this exchange offer or this exchange offer expires in accordance with the terms of the investment agreement without the Company having accepted for purchase the convertible notes pursuant to this exchange offer, unless, in either case, the Company has commenced the prepackaged plan proceeding by the day following the date on which acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes have been received and this exchange offer has expired pursuant to the terms of the investment agreement; or

this exchange offer has expired on or after the outside date and the conditions to this exchange offer have not been satisfied and acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes have not been received;

(4) by the CD&R Fund, if our board of directors:

approves or recommends to our stockholders a superior proposal (see Acceptance of Superior Proposal below);

formally withdraws its support for this exchange offer;

makes a recommendation against this exchange offer or the restructuring;

recommends another company transaction proposal; or

resolves to effect any of the foregoing;

(5) by the CD&R Fund, if:

the Company or any of our subsidiaries commence any case, proceeding or other action under any existing or future law of any jurisdiction, relating to bankruptcy, insolvency, reorganization or similar laws relating to relief of debtors, which we refer to as a bankruptcy proceeding:

seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent,

seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution or composition or similar action with respect to it or its debts generally, or

seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets

in each case, other than with respect to the prepackaged plan proceeding;

any bankruptcy proceeding has been commenced against any of the Company and our subsidiaries other than the prepackaged plan proceeding and such bankruptcy proceeding has not been dismissed within 30 days of such commencement;

the Company or any of our subsidiaries have become unable, admit our inability or fail generally to pay our debts as they become due;

the Company or any of our subsidiaries make a general assignment for the benefit of our creditors;

the Company fails to comply with our obligations to commence the prepackaged plan proceeding (see Commencement of a Reorganization Case in Connection with the Prepackaged Plan Covenant above);

if the prepackaged plan proceeding has been commenced, at any time after 25 days after the filing of the prepackaged plan, if the bankruptcy court has not entered the order approving the motion relating to the fees and expenses payable to the CD&R Fund and CD&R under the investment agreement on or prior to such date;



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if the prepackaged plan proceeding has been commenced, at any time after eight weeks after the filing of the prepackaged plan, if the bankruptcy court has not entered the confirmation order with respect to the prepackaged plan on or prior to such date;

if the prepackaged plan proceeding has been commenced, the prepackaged plan proceeding is dismissed or converted from a case under chapter 11 to one under chapter 7 of the Bankruptcy Code, or the Company files a motion or other pleading with the bankruptcy court seeking the dismissal or conversion of the prepackaged plan proceeding;

at any time, if the Company or any of our subsidiaries file a plan of reorganization or liquidation other than the prepackaged plan; or

if the prepackaged plan proceeding has been commenced, at any time, if the bankruptcy court (a) grants relief that is materially inconsistent with the investment agreement or the prepackaged plan in any respect or (b) enters an order confirming any plan of reorganization other than the prepackaged plan;

(6) by the Company, to accept a superior proposal or if the bankruptcy court enters an order requiring the Company to terminate the investment agreement in order to accept a qualifying transaction (see *Termination Fees; Transaction Expenses Following Termination* below);

(7) by either the CD&R Fund or the Company, if the prepackaged plan proceeding has been commenced and the bankruptcy court enters an order denying confirmation of the prepackaged plan, or the order confirming the prepackaged plan is vacated or reversed and does not become a final order within four weeks and ten days after the entry of such confirmation order; or

(8) by the mutual written consent of the CD&R Fund and the Company.

If the investment agreement is terminated and the CD&R investment is abandoned, except for the provisions relating to the indemnity obligations of the Company in connection with the CD&R losses for execution and performance of the investment agreement (see *Indemnity* below), confidentiality, the provisions described in *Termination Fees; Transaction Expenses Following Termination* below, the provisions relating to amendment, and waivers and certain other miscellaneous provisions in the investment agreement, the investment agreement forthwith becomes void and there will be no liability on the part of either party thereto.

***Termination Fees; Transaction Expenses Following Termination***

In the event the investment agreement is terminated for any reason (other than in circumstances described in clause (8) above under *Termination of the Investment Agreement* and other than solely as a result of the failure of the parties to obtain the clearance or approval under the HSR Act) and the CD&R Fund has not taken any action, or failed to take any action, in breach of the investment agreement that proximately caused the event, condition or passage of time giving rise to the termination of the investment agreement or the failure of the closing to occur, then we will reimburse the CD&R Fund for all of its transaction expenses up to \$9.5 million in the aggregate (net of any transaction expenses already paid no later than two business days after submission of reasonable supporting documentation of such expenses).

In the event that the investment agreement is terminated:

in circumstances described in clause (4) or clause (6) above under Termination of the Investment Agreement ;  
or

in circumstances described in clause (1) above under Termination of the Investment Agreement, and (a) within 12 months of the date of termination, the Company enters into a definitive agreement with respect to, or consummates, a transaction contemplated by any qualifying transaction (as described below), and (b) at the time of the termination, (x) the CD&R Fund is not in material breach of any of its material covenants and agreements contained in the investment agreement or its representations and warranties contained in the investment agreement and (y) the following conditions have been satisfied:

the expiration or termination of any waiting period required to consummate the CD&R investment under the HSR Act and the Austrian Act (each, as described on the front cover of this prospectus/disclosure statement);

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the absence of (1) any provision of any applicable law and any issued injunction, judgment, decree or other order that prohibits the closing, that restricts the CD&R Fund or its affiliates from owning, voting, or converting or exercising any Series B convertible preferred stock in accordance with its terms, or exercising the CD&R Fund's consent rights contemplated by the stockholders agreement and (2) any lawsuit by a governmental entity seeking to effect any of the foregoing; or

in circumstances described in clause (3), clause (5) or clause (7) above under Termination of the Investment Agreement, and at the time of such termination, the CD&R Fund is not in material breach of any of its material covenants and agreements contained in the investment agreement or its representations and warranties contained in the investment agreement, and within 12 months of the date of termination, the Company enters into a definitive agreement with respect to, or consummates, a transaction contemplated by any qualifying transaction;

then the Company will pay to the CD&R Fund a termination fee in an amount equal to \$8.25 million and the Company will reimburse the CD&R Fund for up to \$9.5 million of its expenses relating to the restructuring (net of any amounts previously paid or reimbursed).

A qualifying transaction means any company transaction proposal (see No Solicitation Covenant below), which, in the case of a company transaction proposal that is a restructuring, reorganization, liquidation, dissolution or similar transaction, is a superior lender proposal (as described in No Solicitation Covenant below, without giving regard to the parenthetical in such definition).

***Term Loan Refinancing Covenant***

We have agreed to pay when due all interest, fees, expenses and other obligations arising under our existing credit agreement and related credit documents as and when they become payable, and to otherwise comply with and timely perform all of our obligations under such agreements and documents at all times during the term of the investment agreement, including during the pendency of the prepackaged plan proceeding (subject to the consent or approval of the U.S. Bankruptcy Court for the District of Delaware).

In addition, we have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use reasonable best efforts to cooperate with us in such efforts) to take all reasonable actions and to do all things reasonably necessary, proper or advisable, to amend our existing credit agreement on the terms and conditions provided in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K or otherwise contemplated thereby. The CD&R Fund may make such additions, modifications, alterations, corrections or other changes to the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K as it deems advisable in its sole discretion (exercised in good faith) to:

add, provide or complete any schedule, annex, exhibit, numerical amount or other information that is omitted, missing or incomplete, or modify, alter, correct or change (including without limitation by deleting or replacing) any wording that is in brackets;

cure any ambiguity, mistake, omission or defect;

cure any inconsistency, including with any other provision of the same agreement or of the ABL agreement or any other transaction document or other agreement entered into in connection therewith;

address a material risk that (1) we will be unable to comply with the terms or conditions of the agreement or (2) by complying with the terms and conditions of the agreement we will be subject to a material risk of not

complying with the terms and conditions of the ABL agreement or any other transaction document or other agreement entered into in connection therewith;

effect the intent evidenced by the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K ; or

avoid adverse tax consequences to us or any of our subsidiaries.

In the event that we cannot amend our existing credit agreement on the terms and conditions contemplated in the previous paragraph for any reason, we have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use commercially reasonable efforts to cooperate with us in such efforts, including by actively assisting us

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in negotiation of related definitive documentation) to amend the terms of our existing credit agreement (1) on terms and conditions that are, in the CD&R Fund's sole discretion (exercised in good faith), (x) no less favorable (as to each item (other than immaterial items) and in the aggregate) to the Company and the CD&R Fund (as a prospective stockholder of the Company) than the terms and conditions contemplated in the form of the amended credit agreement attached hereto as Annex J or (y) otherwise acceptable to the CD&R Fund, and (2) to extend the maturity of \$150.0 million principal amount of the term loans outstanding under our existing credit agreement, as promptly as practicable but in any event no later than outside date (see Termination of the Investment Agreement above).

See The Restructuring Description of the Term Loan Refinancing and the ABL Financing The Term Loan Refinancing

Pursuant to the lock-up agreements, holders of obligations under our existing credit agreement that executed a lock-up agreement have agreed, subject to the terms contained in the applicable lock-up agreement, (1) to support the term loan refinancing by accepting a portion of the repayment contemplated thereby and by executing an amendment to our existing credit agreement in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K and (2) to vote all their obligations under the existing credit agreement in favor of the prepackaged plan, among other things. See The Restructuring The Lock-Up Agreements. Including the holders of obligations under our existing credit agreement, we have commitments or confirmation of intent from lenders under our existing credit agreement holding more than two-thirds (2/3) of the outstanding principal amount of the obligations under existing credit agreement to consummate the term loan refinancing by executing the form of amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K.

***ABL Financing Covenant***

We have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use commercially reasonable efforts to cooperate with us in such efforts) to take all reasonable actions and to do all things reasonably necessary, proper or advisable, to arrange and obtain revolving credit commitments for general corporate purposes from lenders on terms and conditions that reflect the terms and conditions summarized in the ABL term sheet attached as Annex P and otherwise are either (a) in the CD&R Fund's reasonable discretion (exercised in good faith), consistent with and no less favorable (as to each item (other than immaterial item) and in the aggregate) to the Company and the CD&R Fund (as a prospective stockholder of the Company) than the terms and conditions of asset-based revolving credit financing transactions for companies sponsored by CD&R, or (b) in the CD&R Fund's sole discretion (exercised in good faith), acceptable to the CD&R Fund.

In the event that revolving credit commitments cannot be obtained on terms and conditions described in the previous paragraph, we have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use commercially reasonable efforts to cooperate with us in such efforts, including by actively assisting us in our negotiation of related definitive documentation) to obtain alternative financing from alternative sources (A) that is on terms and conditions that (1) are, in the CD&R Fund's sole discretion (exercised in good faith), no less favorable (as to each item and in the aggregate) to the Company and the CD&R Fund (as a prospective stockholder of the Company) than the terms and conditions summarized in the ABL term sheet and otherwise (2) are either (a) in the CD&R Fund's reasonable discretion (exercised in good faith), consistent with and no less favorable to the Company and the CD&R Fund (as a prospective stockholder of the Company) than the terms and conditions of asset-based revolving credit financing transactions for companies sponsored by CD&R, or (b) in the CD&R Fund's sole discretion (exercised in good faith), acceptable to the CD&R Fund, and (B) that provides revolving credit commitments in an aggregate principal amount that is not less than \$125.0 million, as promptly as practicable but in any event no later than the outside date.

See The Restructuring Description of the Term Loan Refinancing and the ABL Financing The ABL Financing.

We have been in discussions with prospective lenders regarding the terms of the ABL agreement to give effect to the ABL financing and the Company has finalized with such prospective lenders the form of ABL agreement attached hereto as Annex Q and confirmed participation for the full availability under such ABL financing. While the form of ABL agreement attached hereto as Annex Q has been agreed to in principle with such prospective

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lenders, and the Company has been informed that the prospective lenders have indicated their willingness to enter in to the form of ABL agreement attached hereto as Annex Q in connection with the consummation of the CD&R investment, no loan commitment letter from any such prospective lender has been received by the Company.

***Conduct of Business Covenant***

We have agreed that, except (1) as expressly permitted or required by the transaction documents or otherwise consented to by the CD&R Fund and (2) as set forth in the disclosure letter to the investment agreement, from the date of the original investment agreement to the date of the closing (or the termination of the investment agreement, if applicable), we and our subsidiaries will conduct our business in all material respects in the ordinary course of business consistent with past practice provided that we may make such changes to the manner in which we conduct business as are required by the prepackaged plan proceeding.

In addition, during the same period, except as expressly permitted or required by the transaction documents, without the prior written consent of the CD&R Fund, neither we nor any of our subsidiaries:

will take any action that, if taken after the issuance of the Series B convertible preferred stock:

would require the written consent of or vote by holders of such Series B convertible preferred stock under the certificate of designations (see The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Voting Rights ) or would require the consent of the CD&R Fund and its affiliates pursuant to the stockholders agreement (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Consent Rights );

would trigger a redemption right under the certificate of designations (see The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Change of Control Redemption Right ); or

would result in an adjustment to be made under the certificate of designations (see The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti Dilution Adjustments );

amend, modify, terminate or otherwise make any change to, directly or indirectly, our existing credit agreement and related credit documents except we may extend (and, as described in our current report on Form 8-K filed on August 27, 2009, on August 21, 2009, have extended) the current waiver from the lenders under our existing credit agreement;

other than with respect to the prepackaged plan proceeding, commence a bankruptcy proceeding (see Termination of the Investment Agreement above); or

take any action that is in furtherance of the delisting of the common stock from the NYSE or the listing of the common stock on any other stock exchange or automated quotation system.

We also agree not to declare or pay any dividend or distribution on any of our securities on or prior to the closing.

***No Solicitation Covenant***

We have agreed to cease any discussions or negotiations with any parties that may be ongoing with respect to a company transaction proposal (as described below). In addition, after the execution of the investment agreement, we

agreed not to, and not to authorize or permit our subsidiaries to:

solicit, initiate or knowingly encourage any inquiry with respect to, or the making, submission or announcement of, any proposal that constitutes or could reasonably be expected to lead to a company transaction proposal;

participate in any negotiations regarding a company transaction proposal with, or furnish any nonpublic information relating to a company transaction proposal to, any person;

engage in discussions regarding a company transaction proposal with any person, except to notify such person of the restrictions in the investment agreement;

approve, endorse or recommend any company transaction proposal;



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enter into any letter of intent or agreement in principle or any agreement providing for any company transaction proposal, except for a confidentiality agreement, which confidentiality provisions are no less restrictive to such person making the company transaction proposal than the provisions in the confidentiality agreement executed by the CD&R Fund with the Company is to the CD&R Fund, its affiliates, and their respective personnel and representatives; or

propose or agree to do any of the foregoing.

Notwithstanding the foregoing, if at any time prior to the closing, we receive a bona fide, written and unsolicited company transaction proposal and our board of directors determines in good faith, after consultation with outside counsel and our independent financial advisor, that such company transaction proposal constitutes a superior proposal (as described below) or is reasonably likely to result in a superior proposal, the Company may:

furnish nonpublic information to the person making such company transaction proposal, if:

prior to so furnishing such nonpublic information, we have (1) advised the CD&R Fund of the receipt of the company transaction proposal and made specified disclosures to the CD&R Fund regarding the terms and conditions of such company transaction proposal and (2) have received from such person making the company transaction proposal a customarily restrictive confidentiality agreement; and

all such nonpublic information has previously been provided to the CD&R Fund or is provided to the CD&R Fund prior to or substantially contemporaneously with the time it is provided to the person making such company transaction proposal; and

engage in discussions or negotiations with such person with respect to the company transaction proposal.

Until the later of (1) any scheduled expiration date on which all of the conditions to this exchange offer have been satisfied (or, with the prior written consent of the CD&R Fund, waived) or acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes have been received and (2) the date on which all conditions to the CD&R investment have been satisfied (or in our reasonable judgment, such conditions are reasonably certain to be satisfied by the outside date (see Termination of the Investment Agreement above)), at any time at which (a) any of the conditions to this exchange offer has not been satisfied (or, with the prior written consent of the CD&R Fund, waived), acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes have not been received or any other condition to the CD&R investment has not been satisfied (and, in the Company's reasonable judgment, there is material uncertainty as to whether any such condition will be satisfied by the outside date) and (b) we are not in material breach of any of our material covenants and agreements contained in the investment agreement, then we may:

propose a contingency plan proposal (as described below) to any person that, to our knowledge, is not considering making, and, in the case of a holder of convertible notes or a lender under our existing credit agreement, has not since April 1, 2009 made, a company transaction proposal other than a contingency plan proposal;

participate in negotiations and engage in discussions regarding a contingency plan proposal with, or furnish nonpublic information relating to a contingency plan proposal to, any person that, to our knowledge, is not considering making, and, in the case of a holder of convertible notes or a lender under our existing credit agreement, has not since April 1, 2009 made, a company transaction proposal other than a contingency plan proposal; or

propose or agree to do any of the foregoing;

so long as:

prior to furnishing any nonpublic information, we have (i) advised the CD&R Fund of the receipt of the contingency plan proposal and made specified disclosures to the CD&R Fund regarding the terms and conditions of such contingency plan proposal; and (ii) have received from such person making a customarily restrictive confidentiality agreement; and

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all such nonpublic information has previously been provided to the CD&R Fund or is provided to the CD&R Fund prior to or substantially contemporaneously with the time it is provided to the person making such contingency plan proposal or to whom such contingency plan proposal has been made.

We have agreed (1) to promptly advise the CD&R Fund of the receipt of any request for nonpublic information relating to the Company or any of our subsidiaries other than requests for information not reasonably expected to be related to a company transaction proposal and (2) to keep the CD&R Fund fully informed of the status of any company transaction proposal or contingency plan proposal in connection with which we have provided nonpublic information.

A company transaction proposal means any inquiry, proposal or offer from any person or group of persons other than the CD&R Fund or its affiliates relating to any (1) direct or indirect acquisition or purchase of a business that constitutes 20% or more of the net revenues, net income or assets of the Company and our subsidiaries, taken as a whole, or 20% or more of any class or series of equity securities (or any indebtedness or other obligation that is exchangeable for or convertible into any such security, or any other right to acquire any such security, contingent or otherwise) of the Company, or (2) any tender offer or exchange offer, merger, reorganization, restructuring, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution, equity infusion or similar transaction involving the Company (or any of our subsidiaries whose business constitutes 20% or more of the net revenues, net income or assets of the Company and our subsidiaries, taken as a whole) that if consummated would result in any person or group of persons beneficially owning 20% or more of the voting rights of any class or series of capital stock of the Company.

A contingency plan proposal means any proposal relating to any merger, restructuring, reorganization, recapitalization, liquidation, dissolution or similar transaction involving us or any of our subsidiaries that our board of directors in good faith determines does not constitute a superior proposal or a superior lender proposal and is not reasonably likely to result in a superior proposal or a superior lender proposal, which determination is made after consultation with outside counsel and our independent financial advisor and assumes consummation of the restructuring.

A superior lender proposal means any proposal involving any person making more than a *de minimis* investment or commitment (other than a person who is as of the date hereof a holder of convertible notes or a lender under our existing credit agreement) relating to a restructuring, reorganization, liquidation, dissolution or similar transaction pursuant to which (1) holders of convertible notes would receive consideration in respect of the convertible notes that is of equal or greater total market value than such holders would receive pursuant to the restructuring, or (2) the lenders under our existing credit agreement would receive cash in repayment of the outstanding borrowings under our existing credit agreement in an amount equal to or greater than pursuant to the term loan refinancing, or would receive consideration in respect of their rights under our existing credit agreement and related credit documents that are of equal or greater total market value and security than such lenders under our existing credit agreement would receive pursuant to the term loan refinancing and that does not include any equity security.

A superior proposal means a bona fide written proposal or offer from any person or group of persons other than the CD&R Fund or its affiliates not solicited in violation of the investment agreement relating to any direct or indirect acquisition or purchase of a business that constitutes 50% or more of our net revenues, net income or assets, or 50% or more of any class or series of our securities, any tender offer or exchange offer that if consummated would result in any person or group of persons beneficially owning 50% or more of the voting rights of any class or series of our capital stock, any merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution, equity infusion or similar transaction involving us (or our subsidiaries whose business constitutes 50% or more of our net revenues, net income or assets) or any restructuring or reorganization of us, in each

case, that our board of directors in good faith determines, would, if consummated, result in a transaction that is more favorable to us and our existing stockholders than the restructuring, which determination is made (1) after receiving the advice of our independent financial advisor, (2) after taking into account the likelihood (and likely timing) of consummation of such transaction on the terms set forth therein (as compared to the terms in the transaction documents) and (3) after taking into account all relevant legal (with the advice of outside counsel), financial (including the financing terms of any such proposal, the additional transaction costs and the effect of any

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termination fee, expenses or amounts payable under the investment agreement), regulatory or other aspects of such proposal and any other relevant factors permitted by applicable law.

***Acceptance of Superior Proposal***

At any time prior to the closing, if we receive a superior proposal, our board of directors may terminate the investment agreement to enter into a definitive agreement with respect to such superior proposal, so long as:

we have provided prior written notice to the CD&R Fund at least five calendar days in advance of our intention to take such actions and providing disclosure of the terms and conditions of such superior proposal;

during such notice period, we and our independent financial advisor and outside counsel have negotiated with the CD&R Fund in good faith (to the extent the CD&R Fund desires to negotiate) to make such adjustments in the terms and conditions of the investment agreement so that such company transaction proposal ceases to constitute a superior proposal; and

at or prior to the time of termination of the investment agreement, we have paid the termination fee (see Termination Fees; Transaction Expenses Following Termination above).

In the event of any material revisions to the superior proposal, we have agreed to deliver a new written notice to the CD&R Fund and comply with the above enumerated requirements with respect to such new written notice, except that the new notice period will be two calendar days instead of four calendar days.

***Regulatory Filings and Third-Party Consents Covenant***

We and the CD&R Fund have each agreed to cooperate and consult with the other and use our respective best efforts to take all actions, to file all documents, to do and to help the other party to do, all things necessary, proper or advisable to cause the conditions to this exchange offer and the closing to be satisfied as promptly as practicable and to consummate the restructuring, including (1) preparing and filing as promptly as practicable all documentation, effecting all necessary applications, notices, petitions, filings and other documents and obtaining all necessary permits, consents, waivers, clearances, approvals, authorizations, permits, orders, consents of, or any exemptions by, all governmental entities, (2) seeking all necessary or advisable consents of third parties to the restructuring and (3) using best efforts to cause the satisfaction, but not waiver, of the conditions to closing with respect to the expiration or termination of any waiting period require to consummate the CD&R investment under the HSR Act and the Austrian Act. In particular, we and the CD&R Fund have each agreed to use our respective best efforts to obtain, and use our respective best efforts to help the other obtain, as promptly as practicable, all approvals, authorizations, consents, clearances, expirations or terminations of waiting periods or exemptions required from all necessary governmental entities for the restructuring, including, but not limited to, filings and notifications with respect to, and expiration or termination of any applicable waiting period under, the HSR Act and any other applicable competition or merger control laws.

On August 28, 2009, each of the Company and the CD&R Fund made an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the CD&R investment and the CD&R Fund made an appropriate filing under the Austrian Act. The waiting period under the HSR Act was terminated on September 8, 2009. The review period under the Austrian Act expired on September 26, 2009.

Each party specifically agreed not to agree or commit to contest the enforceability of the investment agreement under the Bankruptcy Code, or, except as otherwise provided in the investment agreement, agree or commit to delay or not to close any of the transactions contemplated by the investment agreement, without the express written consent of the

other party.

Each party agreed to cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry and to promptly (1) furnish to the other such necessary information and reasonable assistance as the other party may request in connection with the matters described in this section, (2) inform the other party of any communication from any governmental entity regarding the restructuring and of any communication received or given in connection with any legal, administrative or other proceeding by a private party or any investigation, proceeding or other action by the NYSE, in each case regarding the restructuring

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and (3) provide counsel for the other party with copies of all filings made by such party, and all correspondence between such party (and its advisors) with any governmental entity or the NYSE, and any other information supplied by such party and such party's subsidiaries to a governmental entity or the NYSE, in connection with the restructuring, subject to certain redactions. Each party also agreed to permit counsel for the other party to review in advance, and consider in good faith the views of the other parties in connection with, any proposed written communication to any governmental entity or the NYSE in connection with the restructuring. The parties agreed not to participate in any meeting or discussion with any governmental entity or the NYSE in connection with the restructuring unless it consults with the other party in advance and, to the extent not prohibited by such governmental entity or the NYSE, to give the other party the opportunity to attend and participate.

Each party agreed not to acquire or agree to acquire by merger or consolidation, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets that would delay or make materially more difficult the obtaining of any approvals, authorizations, consents, clearances, expirations or terminations of waiting periods or exemptions approval or authorization required under the HSR Act for the CD&R investment.

***Representations and Warranties***

The investment agreement contains representations and warranties made by the Company to the CD&R Fund and representations and warranties made by the CD&R Fund to the Company.

We made customary representations and warranties in the investment agreement, which are, in some cases, subject to specified exceptions and qualifications (including qualifications that subject certain representations and warranties to a material adverse effect or materiality standard). Our representations and warranties relate to, among other things:

our and our subsidiaries' proper organization, good standing and existence and corporate power to operate our and their properties and conduct our and their businesses;

our ownership of certain subsidiaries;

our capitalization;

the lack of registration rights or voting agreements with respect to our securities;

our corporate power and authority to enter into the transaction documents and to consummate the restructuring;

the enforceability of the transaction documents;

the absence of any violation of or conflict with or defaults under our and our subsidiaries' organizational documents, certain convertible notes and instruments, or applicable law as a result of entering into the transaction documents and consummating the restructuring;

the absence of any violation of law or order applicable to us or our subsidiaries or any of our and their properties or assets;

the lack of any requirements for notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity or any other person under any provision of any material agreement or other instrument to which we are a party in connection with the execution and delivery of the transaction

documents and consummating the restructuring;

certain of our SEC filings and the consolidated financial statements included therein;

the absence of undisclosed liabilities;

our disclosure controls and procedures and internal controls over financial reporting;

the absence of any material complaints, allegations, assertions or claims regarding our accounting or auditing practices;



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the absence of any change, condition, event or development since the date of the investment agreement that would have, individually or in the aggregate, a material adverse effect on the Company;

the lack of action, claim, suit, proceeding or investigation against us or any of our subsidiaries;

our compliance with laws;

our possession of all licenses and permits necessary to own or lease our properties and carry on our business;

the due authorization of the Series B convertible preferred stock and other matters relating to the Series B convertible preferred stock;

tax matters;

our employee benefit plans;

our employees and compliance with labor laws;

our intellectual property;

our real property;

our title to assets;

environmental matters;

certain of our material contracts;

the absence of undisclosed brokers or finders fees;

our compliance with the continued listing requirements of the NYSE;

our insurance policies;

our actions relating to certain state anti-takeover statutes and provisions in our restated certificate of incorporation;

approval by our board of directors of the transaction documents including the transactions contemplated thereby, including this exchange offer;

this prospectus/disclosure statement, the related registration statement and the Schedule TO filed in connection with this exchange offer;

our receipt of a fairness opinion from Greenhill;

the ABL agreement and other related credit documents contemplated by the ABL financing (including with respect to (1) the absence of any amendment or modification of such documents from and after execution and delivery thereof, (2) the validity and binding effect of such documents on the Company and each of our

subsidiaries that is a party thereto, (3) the absence of default or breach (or allegations thereof) in any material respect under the terms of the ABL agreement or the other related documents, and (4) the absence of any default or event or circumstance that, with or without notice or lapse of time or both, would constitute a breach, default or event of default thereunder);

our existing credit agreement and the related credit documents (including with respect to our payment of any and all fees, expenses and other obligations that are due and payable in connection with our existing credit agreement and other related documents and the lack of revolving loans outstanding under our existing credit agreement);

the amended credit agreement and other related documents contemplated by the term loan refinancing (including with respect to (1) the absence of any amendment or modification of such documents from and after execution and delivery thereof, (2) the validity and binding effect of such documents on the Company and each of our subsidiary that are parties thereto, (3) the absence of default or breach in any material respect under (or allegations thereof) the terms of the amended credit agreement or the other related documents, and

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(4) the absence of any default or event or circumstance that, with or without notice or lapse of time or both, would constitute a breach, default or event of default thereunder); and

the solvency of the Company and our subsidiaries after giving effect to the closing.

In the investment agreement, the CD&R Fund makes customary representations and warranties, which are, in some cases, subject to specified exceptions and qualifications. The CD&R Fund's representations and warranties relate to, among other things:

its status and certain acknowledgements relating to the CD&R investment, which representations and warranties we refer to as the private placement representations, including:

its status as an accredited investor within the meaning of Rule 501 of Regulation D promulgated under the Securities Act;

its awareness that the sale of the Series B convertible preferred stock and the common stock issuable upon conversion of the Series B convertible preferred stock is being made in reliance on a private placement exemption from registration under the Securities Act;

its acquisition of the Series B convertible preferred stock and common stock issuable upon conversion of the Series B convertible preferred stock is for its own account;

that the Series B convertible preferred stock and common stock issuable upon conversion of the Series B convertible preferred stock are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that there are transfer restrictions on the Series B convertible preferred stock and common stock issuable upon conversion of the Series B convertible preferred stock;

that the Series B convertible preferred stock and common stock issuable upon conversion of the Series B convertible preferred stock may bear a legend or other restriction; and

that it (1) is able to fend for itself in the transactions contemplated by the investment agreement; (2) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Series B convertible preferred stock and the common stock issuable upon conversion of the Series B convertible preferred stock; (3) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment; (4) acknowledges that it (a) has conducted its own investigation of the Company and the terms of the Series B convertible preferred stock and the common stock issuable upon conversion of the Series B convertible preferred stock, (b) has had access to the Company's public filings and to such financial and other information as it deems necessary to make its decision to purchase the Series B convertible preferred stock and the common stock issuable upon conversion of the Series B convertible preferred stock, and (c) has been offered the opportunity to ask questions of the Company and received answers thereto, as it deemed necessary in connection with the decision to purchase the Series B convertible preferred stock and common stock issuable upon conversion of the Series B convertible preferred stock; and (5) understands that the Company is relying upon the truth and accuracy of its representations, acknowledgements and agreements;

that the common stock is listed on the NYSE and the Company is required to file reports containing certain business and financial information with the SEC pursuant to the reporting requirements of the Exchange Act of 1934, as amended, or the Exchange Act, and that it is able to obtain copies of such reports;

its corporate or other power and authority to enter into the investment agreement and related agreements (including the stockholders agreement and the registration rights agreement) and to consummate the CD&R investment;

the lack of any requirements for notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity or any other person under any provision of any material agreement or other instrument to which we are a party in connection with the execution and delivery of the CD&R investment and related agreements (including the stockholders agreement and the registration rights agreement) and consummating the CD&R investment;

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its lack of ownership of our capital stock;

its access to and the availability of funds in an amount equal to the Cash Proceeds;

information supplied by the CD&R Fund for this prospectus/disclosure statement, the related registration statement and the Schedule TO filed in connection with this exchange offer; and

its lack of competitive businesses.

For the purposes of the investment agreement, material adverse effect means any event, change, development, effect or occurrence that:

is material and adverse to the business, assets, results of operations or financial condition of the Company and our subsidiaries, taken as a whole; or

would materially impair the ability of the Company to perform our obligations under the transaction documents or to consummate the restructuring.

In determining whether a material adverse effect has occurred, any effect to the extent resulting from the following is excluded:

any change, development, occurrence or event affecting the businesses or industries in which the Company and its subsidiaries operate including general pricing changes (except to the extent that the effects of such changes have a disproportionate impact on the Company and its subsidiaries, taken as a whole, relative to other businesses supplying to the non-residential construction industry);

changes in general domestic economic conditions, including changes in the financial, securities or credit markets, or changes in such conditions in any area in which the Company or its subsidiaries operate (except to the extent that the effects of such changes have a disproportionate impact on the Company and its subsidiaries, taken as a whole, relative to other businesses supplying to the non-residential construction industry);

changes in global or national political conditions, including any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism (except to the extent that the effects of such changes have a disproportionate impact on the Company and its subsidiaries, taken as a whole, relative to other businesses supplying to the non-residential construction industry);

the announcement of the transaction documents and the transactions contemplated thereby;

the failure of the Company to meet any internal or published projections, forecasts or revenue or earning predictions for any period (provided that the underlying causes of such failure may be considered in determining whether there is a material adverse effect on the Company);

any change in the trading prices of the common stock on the NYSE or of the convertible notes (provided that the underlying causes of such change may be considered in determining whether there is a material adverse effect on the Company); or

the announcement or commencement of the prepackaged plan proceeding.

***Indemnity***

We have agreed to indemnify, defend and hold harmless the CD&R Fund and its affiliates and each of their respective officers, directors, partners, employees and agents, and each person who controls the CD&R Fund, which we refer to collectively as the CD&R indemnified parties, from and against, and pay or reimburse such persons for:

CD&R losses for NCI breaches of representations and warranties, which means any and all losses, liabilities, damages and expenses arising from or relating to any inaccuracy in or breach of any representation or warranty when made or deemed made by us in or pursuant to the investment agreement;

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CD&R losses for NCI breaches of covenants, which means any and all losses, liabilities, damages and expenses arising from or relating to our failure to perform any covenant or agreement under the investment agreement; or

CD&R losses for execution and performance of the investment agreement, which means any and all losses, liabilities, damages and expenses arising out of or resulting from our authorization and approval and our and/or the CD&R Fund's execution, delivery, performance or termination of the investment agreement or the transactions contemplated thereby (other than any losses, liabilities, damages and expenses attributable to acts, errors or omissions in violation of the investment agreement on the part of the CD&R Fund or any CD&R Indemnified Parties and other than any losses, liabilities, damages and expenses attributable to the economic risks of the CD&R Fund's investment decision) that the CD&R Fund or the CD&R Indemnified Parties are subject to, named in or made party to any litigation by any person other than us.

Our obligation to indemnify the CD&R indemnified parties is effective from and after the closing with respect to the CD&R losses for NCI breaches of representations and warranties and the CD&R losses for NCI breaches of covenants and is effective from and after the execution of the investment agreement with respect to the CD&R losses for execution and performance of the investment agreement.

Our obligation to indemnify the CD&R indemnified parties is subject to:

a *de minimis* exception of \$50,000, under which we are not required to pay any amounts in respect of losses, liabilities, damages and expenses in connection with or related to any individual claim (or any series of related claims (including any class action)) unless such losses exceed \$50,000;

a basket of \$5.0 million, under which we are not required to pay any amounts in respect of losses, liabilities, damages or expenses (other than losses, liabilities, damages or expenses excluded because they do not meet the *de minimis* exception described in the immediately preceding bullet point) until such losses exceed \$5.0 million, following which time all losses above such amount will be subject to indemnification; and

a cap of \$75.0 million.

Notwithstanding the foregoing, CD&R losses for NCI breaches of representations and warranties in respect of certain enumerated fundamental representations, CD&R losses for NCI breaches of covenants and CD&R losses for execution and performance of the investment agreement will be payable without regard to the \$75.0 million cap described above (however, CD&R losses for NCI breaches of representations and warranties in respect of certain enumerated fundamental representations and CD&R losses for NCI breaches of covenants will be taken into account in determining whether such \$75.0 million cap has been reached) and CD&R losses for execution and performance of the investment agreement are payable without regard to the \$5.0 million basket described above and are not taken into account in determining whether the \$5.0 million basket has been reached. We will not be required to pay more than \$250.0 million to the CD&R Fund under the investment agreement, inclusive of all fees, expense reimbursements or amounts payable under our indemnification obligation.

The CD&R Fund has agreed to indemnify, defend and hold harmless us and our affiliates and each of our and their respective officers, directors, partners, employees and agents, which collectively we refer to as the NCI indemnified parties, from and against, and pay or reimburse us or such persons for:

NCI losses for CD&R breaches of representations and warranties, which means any and all losses, liabilities, damages or expenses arising from or relating to any inaccuracy in or breach of any representation or warranty

when made or deemed made by the CD&R Fund in or pursuant to the investment agreement; or

NCI losses for CD&R breaches of covenants, which means any and all losses, liabilities, damages or expenses arising from or relating to the failure of the CD&R Fund to perform any covenant or agreement under the investment agreement.

The CD&R Fund's obligation to indemnify the NCI indemnified parties is effective from and after the closing.

The CD&R Fund's obligation to indemnify the NCI indemnified parties is subject to a parallel *de minimis* exception, basket and cap as described above with respect to our obligation to indemnify the CD&R indemnified parties.



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Notwithstanding the foregoing, the NCI losses for CD&R breaches of representations and warranties in respect of certain enumerated fundamental representations or NCI losses for CD&R breaches of covenants will be payable without regard to the \$75.0 million cap (however, NCI losses for CD&R breaches of representations and warranties with respect to an inaccuracy or breach of certain enumerated fundamental representations and NCI losses for CD&R breaches of covenants will be taken into account in determining whether such \$75.0 million cap has been reached). The CD&R Fund will not be required to pay more than \$250.0 million to us or our affiliates pursuant to its indemnity or otherwise.

## ***Governance Matters***

We have agreed to take all actions necessary:

to cause all directors serving on our board of directors immediately prior to the closing (other than our Chief Executive Officer and, to the extent such individuals are chosen to serve as unaffiliated shareholder directors, two other directors (see *The Restructuring Description of the CD&R Investment The Stockholders Agreement Board Representation and Other Related Matters* )) to resign from our board, effective as of the closing;

to cause vacancies on our board of directors to be filled, effective as of the closing, by persons nominated or designated by the CD&R Fund no later than three business days prior to the closing, with the directors nominated or designated by the CD&R Fund divided as nearly evenly as possible among each class of our board of directors, and to cause the representation of the directors nominated or designated by the CD&R Fund, effective as of the closing, on each committee of our board of directors to be proportionate to the membership of the directors nominated or designated by the CD&R Fund on our board of directors;

to ensure that the by-laws, the charters of the committees of our board of directors and any of our corporate guidelines, effective as of the closing, are consistent with the provisions of the stockholders agreement and the transactions contemplated by that agreement (see *The Restructuring Description of the CD&R Investment The Stockholders Agreement* ); and

to elect, effective as of the closing, to take advantage of the exemptions to the requirements of sections 303A.01, 303A.04 and 303A.05 of the NYSE Listed Company Manual (which exemptions would exempt us from compliance with the NYSE's requirements for companies listed on the NYSE to have (1) a majority of independent directors, (2) a nominating/corporate governance committee and a compensation committee, in each case, composed entirely of independent directors, and (3) charters for the nominating/corporate governance committee and the compensation committee, in each case, addressing certain specified matters).

## ***Employee Benefit Matters***

The investment agreement requires the Company to secure, prior to completion of the CD&R investment, amendments to the Company's deferred compensation plan, the Rabbi trust that funds the deferred compensation plan, the Company's severance plan, employment agreements with ten of the Company's senior executives and restricted stock award agreements with three of the Company's senior executives. Below is a brief description of the required amendments.

The amendment to the Company's deferred compensation plan would eliminate the right to appoint a third-party administrator of the plan after the closing. Similarly, the Rabbi trust that is a source of funding for obligations under the deferred compensation plan must be amended so that certain administrative protections that go into effect

following a change in control will not apply as a result of the CD&R investment. In addition, as a result of the amendment, the requirement to fully fund the Rabbi trust upon a change of control will not apply as a result of the CD&R investment.

The Company maintains a change of control severance policy, in which 49 employees currently participate. The Company has agreed that it will not add any new participants to the policy between signing and closing without the consent of the CD&R Fund. In addition, the policy will be amended so that after the CD&R investment new participants may be added to the policy only with approval of the Company's board of directors. The policy also will be amended so that a change in duties will no longer permit a participant to resign and collect benefits under the

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policy. Finally, the policy will be amended so that, following the CD&R investment, with respect to any future change in control, any material amendment or termination of the policy will not be effective until 12 months after adoption.

The Company is a party to employment agreements with ten of its senior executives, including Norman C. Chambers (Chairman of the Board, President and Chief Executive Officer), Mark E. Johnson (Executive Vice President, Chief Financial Officer and Treasurer), Mark W. Dobbins (Executive Vice President and Chief Operating Officer), Charles W. Dickinson (President of Metal Components Division) and Keith E. Fischer (President of Robertson-Ceco Division). The Company and these senior executives have entered into amendment agreements with respect to these employment agreements. In general, the amendment agreements modify the good reason definition in each executive's employment agreement. In addition, the amendment agreement for Mr. Chambers revises Mr. Chambers' employment agreement to provide that he will be entitled to a cash severance payment equal to the greater of (1) two times his base salary and (2) his base salary through April 30, 2014, upon a termination of his employment without cause or for good reason. (Mr. Chambers is currently entitled to receive his base salary through April 30, 2014 upon a termination of his employment without cause or for good reason.) In addition, pursuant to the amendment agreements, each of Messrs. Chambers, Dobbins and Dickinson has waived his right to accelerated vesting of 64,516, 25,000 and 25,000 Company restricted shares, respectively, as a result of the CD&R investment, and the Company has agreed that the Company restricted shares will continue to vest in accordance with their terms or, if earlier, upon a termination of the executive's employment without cause or for good reason.

*Liability Limitations.* Each of the Company and the CD&R Fund agreed that no former current or future director, officer, employee, incorporator, shareholder, managing member, member, manager, general partner, limited partner, stockholder, principal agent, other representative or affiliate, which collectively we refer to as the representatives, of any of the CD&R Fund or the Company and no former, current, or future Representative of any of such Representatives will have any liability for any obligations of the CD&R Fund or the Company, as applicable, under the investment agreement or for any claim based on, in respect of, or by reason of, the performance of the respective obligations of the CD&R Fund or the Company under the investment agreement or the negotiation, execution or delivery of the investment agreement whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law or otherwise. Each of the Company and the CD&R Fund waived and released all such liability.

We have agreed that (1) in no event will the CD&R Fund's aggregate liability under the investment agreement in connection with a failure by the CD&R Fund to close on the CD&R investment in violation of the investment agreement exceed \$250.0 million and (2) in no event will the CD&R Fund be liable for any consequential, incidental, indirect or punitive damages. In addition, the CD&R Fund will not be liable for diminution of value, loss of business opportunity or loss of future revenue, income or profits (except to the extent that such items constitute direct damages sought by the Company for breach of contract rather than indirect or consequential damages, which amounts payable with respect thereto will be subject to a cap of \$250.0 million).

***Additional Rights of Executive Officers and Directors***

The consummation of the CD&R investment will constitute a change of control or change in control, as applicable, for purposes of the agreements and plans described below, which may entitle the Company's executive officers and directors to additional or accelerated payments and benefits under these agreements and plans.

***Equity Compensation Awards***

All outstanding options to acquire shares of our common stock will vest in full as of the consummation of the CD&R investment and, except with respect to the special long term restricted stock awards granted to Messrs. Chambers, Dobbins and Dickinson, each of whom has, as described above (see Employee Benefits Matters), waived his right to

accelerated vesting of 64,516, 25,000 and 25,000 Company restricted shares, respectively, all restricted shares of our stock will vest in full as of the consummation of the CD&R investment. Based on their NCI equity compensation holdings as of September 18, 2009, and assuming a consummation of the CD&R investment on November 2, 2009, upon consummation of the CD&R investment, (1) the number of unvested NCI stock options (each, with an exercise price of \$44.00 per share) held by each of Messrs. Dobbins, Dickinson

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and Fischer (who are our only named executive officers with unvested options), the three other NCI executive officers who hold unvested options (as a group), and the one non-employee director who holds unvested options that would vest are 341, 341, 341, 896 and 142, respectively; and (2) the number of unvested shares of restricted NCI common stock held by each of Messrs. Chambers, Johnson, Dobbins, Dickinson and Fischer, the six other NCI executive officers (as a group), and the nine non-employee directors (as a group) that would vest and become free of restrictions are 51,423, 14,108, 13,387, 12,833, 12,833, 53,281, and 46,030, respectively.

*Employment Agreements and Severance Pay Plan*

The Company is party to employment agreements with each of its executive officers, other than Mr. Allen, who is covered by the Company's Change in Control Severance Policy. As described above, the Company and each of these executives (other than Mr. Allen) have entered into amendment agreements with respect to these employment agreements and the Company has agreed to amend the Change in Control Severance Policy effective upon the consummation of the CD&R investment. The descriptions below reflect these amendments.

*Employment Agreement with Mr. Chambers:* The Company is a party to an employment agreement with Norman C. Chambers. Mr. Chambers' employment agreement provides for payment of certain severance benefits in the event of a termination of his employment by Mr. Chambers for good reason (as defined in the agreement) or by the Company without cause (as defined in the agreement) (we refer to such terminations as qualifying terminations). As described above, the Company and Mr. Chambers have entered into an amendment agreement with respect to Mr. Chambers' employment agreement which will become effective upon the consummation of the CD&R investment.

In the event of a qualifying termination, Mr. Chambers is entitled to receive certain accrued or earned benefits and a severance payment equal to the greater of (i) the base salary he would have been entitled to receive through April 30, 2014 and (ii) two times his base salary, in each case paid through April 30, 2014 (we refer to such amount as the severance payment). In the event of a qualifying termination within two years of certain change in control events (including the CD&R investment), the Company is required to pay Mr. Chambers the present value of the severance payment in a lump sum within seven days of his termination, rather than in installments through April 30, 2014. Assuming that the CD&R investment is consummated on November 2, 2009 and Mr. Chambers experiences a qualifying termination immediately thereafter, the amount of cash severance to which he will be entitled is approximately \$2.7 million

*Employment Agreements with Messrs. Johnson, Dobbins, Dickinson, Fischer and Other Executive Officers (other than Mr. Allen):* The Company is a party to substantially similar employment agreements with Messrs. Johnson, Dobbins, Dickinson, Fischer and each of its other executive officers, other than Mr. Allen. Upon a qualifying termination within 24 months after a change in control or during a potential change in control period, the executive will be entitled to (i) certain accrued amounts, (ii) a lump sum cash payment, equal to two times the executive's annual base salary at the highest annualized rate in effect during the one year period immediately preceding the date of the change in control or potential change in control, as applicable (in the case of Messrs. Dobbins and Dickinson, this payment is reduced by the market value of the vested portion of the 25,000 restricted shares granted to each of them on August 26, 2004) and (iii) continued medical and dental coverage at the active employee rate for up to 18 months. Assuming that the CD&R investment is consummated on November 2, 2009, and the executive has a qualifying termination immediately thereafter, the amount of cash severance that would be payable to each of Messrs. Johnson, Dobbins, Dickinson, Fischer and the other executive officers (other than Mr. Allen) (as a group), respectively, is approximately \$664,000, \$630,000, \$581,000, \$581,000 and \$2,421,000.

*Severance Pay Plan*

Mr. Allen is eligible for severance benefits under the Company's Change in Control Severance Policy. Upon Mr. Allen's qualifying termination within 24 months after a change in control, subject to his execution and non-revocation of a release of claims, Mr. Allen is entitled to (i) a lump sum cash payment equal to the participant's annual base salary at the highest annualized rate in effect during the one year period immediately preceding the date of the change in control and (ii) continued medical and dental coverage at the active employee rate for up to

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18 months. Assuming that the CD&R investment is consummated on November 2, 2009, and Mr. Allen has a qualifying termination immediately thereafter, the amount of cash severance that would be payable to Mr. Allen is approximately \$165,000.

### *Nonqualified Deferred Compensation Plan*

The Company maintains the NCI Building Systems, Inc. Deferred Compensation Plan, which we refer to as the DCP, in which all of its executive officers participate.

Pursuant to the terms of the DCP, participants are generally fully vested in amounts credited to their DCP accounts, except for Company Contribution Amounts and Company Restoration Matching Amounts (each, as defined in the DCP). Any unvested Company Contribution Amounts and Company Restoration Matching Amounts in participants DCP accounts will immediately become vested upon consummation of the CD&R investment. Assuming that the CD&R investment is completed on November 2, 2009, based on unvested Company Restoration Matching Amounts under their DCP accounts as of September 18, 2009, Messrs. Chambers, Johnson and the three other executive officers with unvested Company Restoration Matching Amounts (as a group) will vest, respectively, in approximately \$28,034, \$19,234 and \$7,223 of Company Restoration Matching Amounts. The Company has not made any Company Contribution Amounts to participants DCP accounts. The DCP also permits participants to elect to have their account balances paid out upon a change in control. Messrs. Dobbins, Dickinson, Robeson, Moore, Brown and Golladay have each elected to have their account balances paid out upon a change in control and, as such, their account balances under the DCP will be paid out upon consummation of the CD&R investment.

### **Certain Terms of the Series B Convertible Preferred Stock**

*The following is a summary of the preferences, limitations, voting powers and relative rights of the Series B convertible preferred stock as contained in the form of certificate of designations, preferences and rights of the Series B Cumulative Convertible Participating Preferred Stock. While we believe this summary covers the material preferences, limitations, voting powers and relative rights of the Series B convertible preferred stock contained in the form of certificate of designation, preferences and rights of the Series B Cumulative Convertible Participating Preferred Stock, it may not contain all of the information that is important to you and is qualified in its entirety by reference to the form of Certificate of Designation, Preferences and Rights of the Series B Cumulative Convertible Participating Preferred Stock, which is included as Annex G and which we incorporate by reference into this document. We encourage you to read carefully the form of certificate of designations, preferences and rights of the Series B Cumulative Convertible Participating Preferred Stock in its entirety.*

In connection with the consummation of the CD&R investment, we have agreed to file a certificate of designations, preferences and rights of the Series B Cumulative Convertible Participating Preferred Stock substantially in the form of the form of certificate of designations, preferences and rights of the Series B Cumulative Convertible Participating Preferred Stock attached hereto as Annex G, which certificate of designations, preferences and rights to be filed with the Secretary of State of the State of Delaware prior to closing we refer to as the certificate of designations, setting forth the terms, rights, obligations, and preferences of the Series B convertible preferred stock, including those material terms summarized below.

### ***Rank***

The Series B convertible preferred stock will, with respect to payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding up of the affairs of the Company, or otherwise:

rank senior and prior to the common stock and each other class or series of equity securities of the Company, whether currently issued or to be issued in the future, that by its terms ranks junior to the Series B convertible preferred stock; and

rank junior to each class or series of equity securities of the Company, whether currently issued or issued in the future, that by its terms ranks senior to the Series B convertible preferred stock.



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At the time of the initial issuance of the Series B convertible preferred stock or at any time in the future during which shares of Series B convertible preferred stock are outstanding, we have agreed to have no other class or series of equity securities of the Company that ranks on parity with the Series B convertible preferred stock.

We have no outstanding senior securities and we have agreed that at the time of the initial issuance of the Series B convertible preferred stock there will be no senior securities outstanding. Following the initial issuance of the Series B convertible preferred stock, (1) pursuant to the terms of the certificate of designations, the issuance of senior securities will require the approval of the holders of a majority of the outstanding shares of Series B convertible preferred stock and, additionally, (2) pursuant to the terms of the stockholders agreement, subject to certain qualifications and exceptions contained therein, we will agree not to issue shares of our capital stock, ownership interests or voting securities without the prior consent of the CD&R Investors (as described in The Restructuring Description of the CD&R Investment The Stockholders Agreement Board Representation and Other Related Matters ). See Voting Rights Class Voting Rights below and see The Restructuring Description of the CD&R Investment Stockholders Agreement Consent Rights.

### ***Liquidation***

Each share of Series B convertible preferred stock will have an initial liquidation preference of \$1,000 per share. In the event of any liquidation of the Company, each holder of Series B convertible preferred stock will be entitled to receive liquidating distributions out of the assets of the Company legally available for distribution to its stockholders, before any payment or distribution of any assets of the Company will be made or set apart for holders of any junior securities, including, without limitation, the common stock, for such holder's shares of Series B convertible preferred stock in an amount equal to the greater of:

the sum of (a) the aggregate liquidation preference of such holder's shares of Series B convertible preferred stock and (b) the aggregate accrued dividends of such shares as of the date of such liquidation; and

the amount such holder would have received had such holder, immediately prior to such liquidation, converted such shares of Series B convertible preferred stock into shares of common stock in accordance with the certificate of designations (but without taking into account any limitations on convertibility that may then be applicable).

### ***Dividends***

*Participating Dividends* Holders of shares of Series B convertible preferred stock will be entitled to participate equally and ratably with the holders of shares of common stock in all cash dividends paid on the shares of common stock as if all shares of Series B convertible preferred stock issued and outstanding on the record date for the payment of dividends to the holders of shares of common stock were converted into shares of common stock (without taking into account any limitations on convertibility that may then be applicable). Such dividends or distributions payable to the holders of the Series B convertible preferred stock will be payable on the same date that the dividends or distributions are payable to holders of shares of common stock. Holders of shares of Series B convertible preferred stock will not be entitled to participate in dividends or distributions of any nature paid on or in respect of the common stock or to holders of common stock other than as described above; however, holders of Series B convertible preferred stock will be entitled to certain anti-dilution adjustments to the conversion price in the event of such dividends or distributions (see Convertibility and Anti-Dilution Adjustments below).

*Series B Preferred Dividends* The Company will pay, if, as and when declared by our board of directors, out of funds legally available therefor, on March 15, June 15, September 15 and December 15 of each year, dividends on each

issued and outstanding share of Series B convertible preferred stock (1) if paid in kind, at a rate *per annum* equal to 12.00% of the then applicable liquidation preference and accrued but unpaid dividends with respect to such share, or (2) if paid in cash, at a rate *per annum* of 8.00% of the then applicable liquidation preference and accrued but unpaid dividends with respect to such share, Series B preferred dividends on each share of Series B convertible preferred stock will accrue and accumulate on a daily basis from the issuance date of such share, whether or not declared and whether or not the Company has funds legally available for the payment of such dividends, will compound quarterly on March 15, June 15, September 15 and December 15 of each year and will be payable quarterly in arrears, if, as and when so authorized and declared by our board of directors, on March 15, June 15,

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September 15 and December 15 of each year, starting on the first of such dates following the issuance date of such share. In the event that the Series B preferred dividends are not paid in cash on the applicable quarterly dividend payment date on which such Series B preferred dividends would otherwise compound, such Series B preferred dividends will compound at a rate *per annum* equal to 12.00%, regardless of whether such accrued and unpaid dividends are paid in cash thereafter.

The Series B preferred dividends may, at the option of the Company (to be determined by a majority of the directors of the Company who are (1) not nominated by the CD&R Investors (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Board Representation and Other Related matters ) or (2) if nominated by the CD&R Investors, independent of both the Company and the CD&R Investors (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Certain Limitations on Participation by Directors Nominated or Designated by the CD&R Investors )), be paid in cash or in kind by issuing shares of Series B convertible preferred stock.

We have agreed not to pay in kind by issuing shares of Series B convertible preferred stock any Series B preferred dividends accumulating prior to the date following the first date on which there are no longer any outstanding convertible notes, but must pay such Series B preferred dividends on the applicable date, if at all, in cash.

### *Default Dividend Rate*

Upon the occurrence of a default (see Default below), the dividend rate with respect to the Series B convertible preferred stock will increase (starting on the date on which the default occurs and ending immediately prior to the date on which all then occurring defaults are no longer continuing) by:

6.00% *per annum*, if the default is the result of a failure by us at any time after June 30, 2011 to reserve and keep available for issuance a number of shares of common stock equal to 110% of the number of shares of common stock issuable upon conversion of all outstanding shares of Series B convertible preferred stock; or

3.00% *per annum*, for all other defaults.

Only one 3.00% *per annum* dividend rate increase will be applicable at any time; however, if at a time when a 3.00% *per annum* default dividend rate is in effect after June 30, 2011, we fail to reserve and keep available for issuance the requisite number of shares of common stock to satisfy our obligations under the certificate of designations, the dividend rate will be increased an additional 3.00% *per annum* until such default is no longer continuing.

After giving effect to the restructuring, at the closing, we do not expect to have sufficient authorized but unissued shares of common stock to enable the conversion of all 250,000 shares of Series B convertible preferred stock to be issued to the CD&R Fund pursuant to the CD&R investment. Pursuant to the stockholders agreement, from and after the closing of the restructuring, we will use our best efforts and take all corporate actions necessary to obtain approval from holders of our common stock of an amendment to Article FOURTH, section 1 of our restated certificate of incorporation to increase the number of authorized shares of common stock (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek Amendments to our Restated Certificate of Incorporation ). In the event that we do not obtain such approval prior to June 30, 2010, the dividend rate with respect to the Series B convertible preferred stock will increase by 3.00% *per annum* (and, if such approval is not obtained by June 30, 2011, by an additional 3.00% *per annum*, for an aggregate increase of 6.00% *per annum*) as described in this section.

### *Dividend Reduction*

If, at any time after the 30-month anniversary of the closing, the trading price per share of common stock equals or exceeds two times a specified target price for each trading day during any period of 20 consecutive trading days, the dividend rate will become 0.00% commencing on the day immediately following the last trading day of such period of 20-consecutive trading days and for all days thereafter. The applicable default dividend rate will still apply, however, in the event of a default. The initial specified target price is \$1.2748 and is subject to adjustment for any stock dividends, splits, combination or similar events.

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*Restrictions with Respect to Junior Securities Dividends*

Subject to certain limited exceptions, at any time during which a default is occurring, we have agreed not to declare or pay or set apart for payment any dividend or other distribution with respect to any junior securities, or redeem, purchase or otherwise acquire for any consideration any junior securities. In addition, at all times during which shares of Series B convertible preferred stock are issued and outstanding, we have agreed that neither we nor any of our subsidiaries will (1) declare, pay or set aside for payment any dividends or distributions upon any junior securities, except for certain limited exceptions or for such ordinary cash dividends declared, paid or set aside for payment after the dividend has become 0.00% (see *Dividend Reduction* above) on shares of common stock in which the shares of Series B convertible preferred stock participate or (2) repurchase, redeem or otherwise acquire any junior securities for any consideration or pay any moneys or make available for a sinking fund for the redemption of any shares of such junior securities, except for certain limited exceptions, unless, in each case, the Company has access to sufficient lawful funds immediately following such action such that the Company would be legally permitted to redeem in full all shares of the Series B convertible preferred stock then issued and outstanding for an amount equal to the sum of (A) the aggregate liquidation preference and (B) the aggregate accrued dividends of such shares as of such date.

***Default***

The occurrence of one of the following events described below will constitute a default for purposes of the certificate of designations:

the Company fails to pay any participating dividend (see *Participating Dividends* above);

following the date on which there are no convertible notes outstanding, the Company fails to pay, in cash or in kind, any Series B preferred dividend on the applicable quarterly dividend payment date;

the Company fails at any time after June 30, 2010 to reserve and keep available for issuance the number of shares of common stock equal to 110% of the number of shares of common stock issuable upon conversion of all outstanding shares of Series B convertible preferred stock;

the Company fails to maintain the listing of the common stock on the NYSE or another U.S. national securities exchange;

the Company violates any dividend payment restrictions with respect to junior securities dividends described in *Restrictions with Respect to Junior Securities Dividends* above;

the Company fails to comply with our obligations to convert Series B convertible preferred stock in accordance with our obligations under the certificate of designations; or

the Company fails to redeem Series B convertible preferred stock in compliance with the certificate of designations.

The foregoing notwithstanding, unless the circumstances described in the next paragraph apply, no default will be deemed to have occurred or deemed to be continuing in connection with a failure of the type described above, if:

our board of directors can take a cure action which could reasonably be expected to prevent or to cure such failure;

our board of directors does not promptly take such cure action; and

at any time when our board of directors could have taken a cure action and it fails to take such cure action, the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast constitute a majority of the total number of votes that can be cast by all directors then on our board of directors or, if the failure to take such cure action was with the approval of our board of directors, the aggregate number of votes that were cast by the directors nominated or designated by the CD&R Investors constituted a majority of the total number of votes that could be cast by the directors constituting the quorum that granted such approval.

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The preceding limitation on the occurrence of a default will not be applicable in circumstances where taking a cure action with respect to default (1) would result in a cross default (as described below), (2) would be adverse to the best interests of the Company in the good faith judgment of a majority of the unaffiliated shareholder directors (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Board Representation and Other Related Matters ) or (3) if the failure to take the cure action was with the approval of our board of directors, a majority of the number of votes that were cast by the directors who are independent of both the CD&R Investors and the Company were not cast in favor of taking the cure action.

A cross default means a circumstance in which the taking of a cure action will:

result in a breach of any provision of applicable law or our restated certificate of incorporation;

result in, with notice or lapse of time or both, an event of default under, or result in the termination of, or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit under any agreement, arrangement, commitment, plan or other instrument or obligation to which the Company, or any of our subsidiaries, is a party or by which the Company or any of our subsidiaries may be bound, or to which the Company or any of our subsidiaries or any of the properties, assets, or rights of the Company or any of our subsidiaries may be subject, and such result (except with respect to any agreement, arrangement, commitment, plan or other instrument relating to indebtedness that is material to the Corporation and its Subsidiaries, taken as a whole) would reasonably be expected to materially and adversely affect the business, assets, results of operations or financial condition of the Company and our subsidiaries, taken as a whole;

result in a breach of any injunction, judgment, decree or other order of any court or governmental agency and such breach would reasonably be expected to materially and adversely affect the business, assets, results of operations or financial condition of the Company and our subsidiaries, taken as a whole; or

requires the consent of our stockholders or any other person (other than the CD&R Investors) and (1) if there is reasonably sufficient time to obtain such consent and our board of directors has timely authorized the seeking of such consent, (a) such consent is not obtained prior to the applicable failure and (b) if the consent required is of our stockholders, the CD&R Investors beneficially own in the aggregate less than 45% of the voting power of each group of voting securities of the Company which vote or consent is required to approve such cure action or the CD&R Investors have voted all shares of voting securities of the Company beneficially owned by it entitled to vote with respect to such cure action to approve such cure action; or (2) there is not reasonably sufficient time to obtain such consent.

## ***Convertibility and Anti-Dilution Adjustments***

To the extent that there is a sufficient number of authorized and unissued (or issued and included in treasury) and otherwise unreserved shares of common stock (or, if approved by the holders of Series B convertible preferred stock, other capital stock of the Company that is generally identical to the common stock), each holder of shares of Series B convertible preferred stock will have a conversion right, at any time and from time to time, at such holder's option, to convert all or any portion of such holder's shares of Series B convertible preferred stock into shares of common stock (or such other capital stock). Upon a holder's election to exercise the conversion right, each share of Series B convertible preferred stock will be converted into a number of shares of common stock equal to the quotient of (1) the sum of (a) the liquidation preference and (b) the accrued dividends of such share as of the date of conversion, *divided* by (2) the conversion price of such share in effect at the time of conversion.

To the extent and for so long as any shares of Series B convertible preferred stock are issued and outstanding, the Company has agreed to at all times reserve and keep available an amount of authorized and unissued common stock equal to 110% of the number of shares of common stock issuable upon conversion of the then issued and outstanding shares of Series B convertible preferred stock. If at any time the Company does not have such sufficient amount of authorized and unissued shares of common stock, the Company must take any and all actions, which, in the event such consent is required, have been consented to by CD&R, to increase the number of shares of authorized and unissued and unreserved shares of common stock, including, without limitation, calling meetings of the Company's stockholders to amend the Company's charter and causing a reclassification of its shares of common



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stock or authorizing and obtaining stockholder approval for the creation of a new class of common stock (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek Amendment to our Restated Certificate of Incorporation ).

The initial conversion price (1) with respect to each share of Series B convertible preferred stock issued on the date of the closing, is \$1.2748 and (2) with respect to each share of Series B convertible preferred stock issued as payment in kind in respect of a share of Series B convertible preferred stock, is the conversion price in effect immediately prior to the issuance of such share. The conversion price is subject to certain anti-dilution adjustments. Specifically, the conversion price will be adjusted in accordance with the formulas set forth in the certificate of designations:

if the Company declares a dividend or makes a distribution on the common stock payable in shares of common stock;

if the Company subdivides, splits or combines the shares of common stock;

if the Company effects a below market price issuance, which means an issuance or sale of any common stock, convertible securities or options (subject to certain limited exceptions) without consideration or for consideration per share less than the then-current market price of the common stock;

if the Company effects a distribution of certain assets or securities, which means a distribution to all holders of shares of common stock evidences of indebtedness, shares of capital stock, securities, cash or other assets, subject to certain limited exceptions;

in a spin-off, where the Company makes a distribution to all holders of shares of common stock consisting of capital stock of any class or series, or similar equity interests of, or relating to, a subsidiary of the Company or other business unit;

if the Company effects an above market *pro rata* repurchase, which means a *pro rata* repurchase of common stock that involves the payment by the Company of consideration per share of common stock that exceeds the then-current average market price per share of common stock on the trading day next succeeding the effective date of such *pro rata* repurchase; or

if, during the three-year period immediately following the closing, the Company effects a below conversion price issuance, which means the issuance or sale of any common stock, convertible securities or options (subject to certain limited exceptions) without consideration or for consideration per share less than the conversion price in effect immediately prior to such issuance or sale at a time when such conversion price is greater than the then-current market price.

With respect to an adjustment of the conversion price as a result of a below market price issuance, a distribution of certain assets or securities, a spin-off, or an above market *pro rata* repurchase, the conversion price will only be adjusted if at the time the relevant event is approved, or recommended to our stockholders by our board of directors either:

the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast do not constitute a majority of the total number of votes that can be cast by all directors on our board of directors or the aggregate number of votes that are cast by directors nominated or designated by the CD&R Investors do not constitute a majority of the total number of votes that could be cast by the directors constituting the quorum granting such approval or recommendation; or

if the condition in the immediately preceding bullet point is not met, then (A) so long as at least one unaffiliated shareholder director was part of the quorum granting such approval or recommendation, either (1) a majority of the unaffiliated shareholder directors voting with respect to such approval or recommendation vote in favor of such approval or recommendation or (2) each unaffiliated shareholder director that was a part of the quorum granting such approval or recommendation abstains from voting with respect thereto or (B) a majority of the directors who are independent of both the Company and the CD&R Fund does not in good faith oppose such approval or recommendation on the merits (without regard to the impact of such approval or recommendation, or the withholding thereof, on the CD&R Investors).

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With respect to an adjustment as a result of a below conversion price issuance, the conversion price will only be adjusted if at the time the below conversion price issuance is approved, or recommended to our stockholders by our board of directors either:

the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast do not constitute a majority of the total number of votes that can be cast by all directors on our board of directors or the aggregate number of votes that are cast by directors nominated or designated by the CD&R Investors do not constitute a majority of the total number of votes that could be cast by the directors constituting the quorum granting such approval or recommendation; or

if the condition in the immediately preceding bullet point is not met, either (1) a majority of the unaffiliated shareholder directors votes in favor of such approval or recommendation or (2) a majority of the directors who are independent of both the CD&R Investors and the Company does not in good faith oppose such approval or recommendation on the merits (without regard to the impact of such approval or recommendation, or the withholding thereof, on the CD&R Investors) and the unaffiliated shareholder directors receive a certificate of a majority of the directors who are officers of CD&R or the CD&R Investors or otherwise not deemed independent of the CD&R Investors under the stockholders agreement certifying that, in the good faith judgment of a majority of such directors, such issuance or sale is in the best interests of the Company.

### ***Milestone Redemption***

Each holder of shares of Series B convertible preferred stock will have the right to require, at any time on or after the tenth anniversary of the closing, at such holder's option and in accordance with the procedures set forth in the certificate of designations, that the Company redeem all, but not less than all, of such holder's shares of Series B convertible preferred stock, out of funds legally available therefor, at a purchase price for each share of Series B convertible preferred stock equal to the sum of (A) the liquidation preference and (B) the accrued dividends of such share as of the date on which the redemption of such share occurs.

The Company will have the right, at any time on or after the tenth anniversary of the closing, at the Company's option in accordance with the procedures set forth in the certificate of designations, to redeem all, but not less than all, of the then issued and outstanding shares of Series B convertible preferred stock, out of funds legally available therefor, at a purchase price for each share of Series B convertible preferred stock equal to the sum of (A) the liquidation preference and (B) the accrued dividends of such share as of the date on which the redemption of such share occurs.

### ***Change of Control Redemption Right***

In connection with a business combination change of control (as described below), each holder of Series B convertible preferred stock will have the right (exercisable at such holder's option) to require that the Company redeem (or that the acquiring or surviving person in such business combination change of control, if not the Company, redeem) such holder's shares of Series B convertible preferred stock, out of funds legally available therefor, at a purchase price per share equal to (1) if the redemption date of such share is prior to the fourth anniversary of the date of the closing, the sum of (a) the liquidation preference plus the accrued dividends of such share as of such redemption date and (b) an amount equal to the net present value of the sum of all Series B convertible preferred stock dividends that would otherwise be payable on such share from such redemption date until the fourth anniversary of the date of the closing (calculated based on a dividend rate of 8% *per annum*), or (2) if the redemption date of such share is on or after the fourth anniversary of the date of the closing, the sum of (x) the liquidation preference and (y) the accrued dividends of such share as of such redemption date.

In connection with a board level change of control (as described below), each holder of Series B convertible preferred stock will have the right (exercisable at such holder's option) to require that the Company redeem each of such holder's shares of Series B convertible preferred stock, out of funds legally available therefor, at a purchase price per share of Series B convertible preferred stock equal to (1) if the redemption date of such share is prior to the fourth anniversary of the date of the closing, the sum of (a) the liquidation preference plus the accrued dividends of such share as of such redemption date and (b) an amount equal to the net present value of the sum of all Series B convertible preferred stock dividends that would otherwise be payable on such share from such redemption date

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until the fourth anniversary of the date of the closing (calculated based on a dividend rate of 8% *per annum*), or (2) if the redemption date of such share is on or after the fourth anniversary of the date of the closing, the sum of (x) the liquidation preference and (y) the accrued dividends of such share as of such redemption date.

In connection with a change of control under debt instruments (as described below), each holder of Series B convertible preferred stock will have the right (exercisable at such holder's option) to require that the Company redeem each of such holder's shares of Series B convertible preferred stock, out of funds legally available therefor, at a purchase price per share equal to 101% of the sum of (1) the liquidation preference and (2) the accrued dividends of such share as of the redemption date of such share.

A business combination change of control means, unless the circumstances described in the following paragraph apply, the consummation of a business combination transaction by the Company where immediately following such transaction, which we refer to as a non-qualified business combination:

the individuals and entities that beneficially owned the outstanding voting stock of the Company immediately prior to such business combination do not beneficially own, directly or indirectly, more than 50% of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of the entity resulting from such business combination in substantially the same proportions as their ownership immediately prior to such business combination of the voting power of the outstanding voting stock of the Company; or

any person (excluding the CD&R Investors and their affiliates) either (1) beneficially owns more of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity than the CD&R Investors and their affiliates so beneficially own (unless the CD&R Investors and their affiliates beneficially own more than 17.5% of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity) or (2) beneficially owns 25% or more of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity.

The consummation of a non-qualified business combination will not constitute a business combination change of control if at the time such business combination is approved, or recommended to our stockholders by our board of directors (if so approved or recommended) and at the time immediately prior to the consummation of such business combination (1) the CD&R Investors beneficially own 45% or more of the combined voting power of the outstanding voting stock of the Company or (2) the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast constitutes a majority of the total number of votes that can be cast by all directors then on our board of directors or the aggregate number of votes that are cast by directors nominated or designated by the CD&R Investors constitutes a majority of the total number of votes that could be cast by the directors constituting the quorum granting such approval or recommendation.

A board level change of control means any person (other than any CD&R Investor or any of their affiliates) acquiring beneficial ownership of 50% or more of the combined voting power of the outstanding voting stock of the Company, if at the time immediately prior to the consummation of such acquisition and, if such acquisition (or any transaction or series of transactions leading to such acquisition) is approved, or recommended to our stockholders by our board of directors, at the time such acquisition is approved or recommended by our board of directors, (1) the CD&R Investors do not beneficially own 45% or more of the combined voting power of the outstanding voting stock of the Company and (2) the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast do not constitute a majority of the total number of votes that can be cast by all directors then on our board of directors or the aggregate number of votes that are cast by directors nominated or designated by the CD&R Investors do not constitute a majority of the total number of votes that could be cast by the directors constituting the quorum

granting such approval or recommendation.

A change of control under debt instruments means any event that would constitute a change of control for purposes of the amended credit agreement or the ABL agreement, or any subsequent amendment, restatement, refinancing, replacement or other modification of such agreements or any successor contract to any such agreements (assuming that the events constituting a change of control under any such successor or amended debt agreement are the same as were in effect in the amended credit agreement or the ABL agreement, as applicable,

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as of the closing), so long as at the time such change of control is approved, or recommended to our stockholders by our board of directors (if so approved or recommended) and at the time immediately prior to the consummation of such change of control (1) the CD&R Investors do not beneficially own 45% or more of the combined voting power of the outstanding voting stock of the Company and (2) the aggregate number of votes that the directors nominated or designated by the CD&R Investors are entitled to cast do not constitute a majority of the total number of votes that can be cast by all directors then on our board of directors or the aggregate number of votes that are cast by directors nominated or designated by the CD&R Investors do not constitute a majority of the total number of votes that could be cast by the directors constituting the quorum granting such approval or recommendation.

The change of control redemption right described in this section will not be triggered by either the out-of-court recapitalization plan or the in-court prepackaged plan.

### ***Automatic Conversion upon Certain Business Combinations***

If a non-qualified business combination is consummated pursuant to which the common stock is to be converted into the right to receive cash, securities or other property of an entity other than the Company, then upon the consummation of such non-qualified business combination, all shares of Series B convertible preferred stock (other than those with respect to which the redemption rights described above in Change of Control Redemption Right has been exercised) will automatically convert into the right to receive the kind and amount of cash, securities or other property, if any, receivable in such non-qualified business combination by a holder of common stock holding that number of shares of common stock into which shares of Series B convertible preferred stock would have been convertible (without taking into account any limitations on convertibility) immediately prior to the consummation of such non-qualified business combination. In the event that holders of shares of common stock have the opportunity to elect the form of consideration to be received in a non-qualified business combination, each holder of Series B convertible preferred stock will also have the same opportunity to elect the form of consideration that each such holder is entitled to receive.

### ***Voting Rights***

*General.* The holders of Series B convertible preferred stock will be entitled to vote on an as-converted basis with the holders of the common stock on all matters submitted to a vote of our stockholders, except as otherwise provided in the certificate of designations or as required by applicable law, voting together with the holders of common stock as a single class.

*Class Voting Rights.* So long as any shares of Series B convertible preferred stock are outstanding, in addition to any other vote required by applicable law, the Company may not take any of the following actions without the prior affirmative vote or written consent of the holders representing at least a majority of the then-outstanding shares of Series B convertible preferred stock, voting together as a separate class:

any amendment, alteration, repeal or other modification of any provision of our restated certificate of incorporation, the certificate of designations or the by-laws that would alter or change the terms or the powers, preferences, rights or privileges of the Series B convertible preferred stock so as to affect them adversely;

any authorization, creation, increase in the authorized amount of, or issuance of any class or series of senior securities or any security convertible into, or exchangeable or exercisable for, shares of senior securities; and

any increase or decrease in the authorized number of shares of Series B convertible preferred stock or the issuance of additional shares of Series B convertible preferred stock, subject to certain limited exceptions.

*Special Contingent Voting Rights.* In addition to any other vote required by applicable law, during any period:

beginning on a redemption date in respect of a redemption described above in Milestone Redemption, if the Company fails to deposit on or prior to such date money in immediately available funds sufficient to pay the aggregate purchase price as of such date for all shares of Series B convertible preferred stock to be redeemed on such date or at any time on or after a redemption date in respect of a redemption described above in

Milestone Redemption that the Company fails to pay the applicable full redemption price for any share of Series B convertible preferred stock to be redeemed on such date and ending at such time when



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the applicable full redemption price for all shares of Series B convertible preferred stock to be so redeemed has been paid; or

beginning at any time that the Company fails to pay the applicable full redemption price in respect of a redemption in connection with a business combination change of control, a board level change of control or a change of control under debt instruments (see Change of Control Redemption Right above) for any share of Series B convertible preferred stock that a holder of Series B convertible preferred stock has requested be redeemed and ending at such time when the full applicable redemption price for all shares of Series B convertible preferred stock so requested to be redeemed is paid,

we may not, without the consent of holders representing at least a majority of the then-outstanding shares of Series B convertible preferred stock, voting together as a separate class:

take any of, commit, resolve or agree to take any of, or authorize or otherwise facilitate any of the actions described in The Restructuring Description of the CD&R Investment The Stockholders Agreement Consent Rights ;

take any action that would result in an adjustment to the conversion price (see Convertibility and Anti-Dilution Adjustments above);

enter into any agreement or understanding, or commit, resolve or agree to enter into any agreement or understanding with respect to a business combination;

hire, terminate or change the compensation of any executive officer except for ordinary raises consistent with past practices, subject to certain conditions; or

adopt an annual budget.

See also Certain Additional Covenants Debt Agreements below.

***Certain Additional Covenants***

*Merger.* We will agree not to merge with or into or consolidate with or into, or sell, transfer, exchange or lease all or substantially all of our property to, any other entity, or permit consummation of any other business combination, unless the surviving successor, transferee or lessee entity, as the case may be, (1) expressly assumes the due and punctual performance and observance of each and every covenant and condition of the certificate of designations to be performed and observed by the Company and (2) if such business combination is a not a non-qualified business combination, expressly agrees, as part of the terms of such business combination, to exchange, at the holders' option, shares of Series B convertible preferred stock for shares of the surviving entity's capital stock having terms, preferences, rights (including, without limitation, as to dividends, voting, redemption at the option of the holder, and rights to assets upon liquidation, dissolution or winding-up of the entity), privileges and powers no less favorable (individually and in the aggregate) than the terms, preferences, rights, privileges and powers under the certificate of designations, in each case, such that the rights of the holders of Series B convertible preferred stock are protected against dilution or other impairment.

*Debt Agreements.* In addition to any other vote required by applicable law, the Company will not, without the consent of the holders of a majority of the Series B convertible preferred stock outstanding, enter into any debt agreement or other financing agreement which by its terms would restrict the payment of dividends pursuant to the certificate of designations or the payment of any amounts due upon the redemption of Series B convertible preferred stock pursuant

to the certificate of designations.

### **Stockholders Agreement**

*The following is a summary of the material terms and provisions of the form of stockholders agreement. While we believe this summary covers the material terms and provisions of the form of stockholders agreement, it may not contain all of the information that is important to you. The form of stockholders agreement is included as Annex F hereto, which we incorporate by reference into this document. We encourage you to read carefully the form of stockholders agreement in its entirety.*

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In connection with, and as a condition to, the issuance of the Series B convertible preferred stock pursuant to the investment agreement, the Company, the CD&R Fund and any parallel or co-investment vehicles under common control or management with the CD&R Fund which purchased shares of Series B convertible preferred stock at the closing, which, collectively with the CD&R Fund, we refer to as the initial CD&R Investors, will enter into a stockholders agreement substantially in the form of the form of stockholders agreement attached hereto as Annex F, which stockholders agreement to be entered into at the closing we refer to as the stockholders agreement, setting forth certain terms and conditions regarding the CD&R investment and the ownership of the shares of the Series B convertible preferred stock, including certain restrictions on the transfer of the Series B convertible preferred stock and the common stock issuable upon conversion thereof and on certain actions of the CD&R Fund and its affiliates with respect to the Company, and to provide for, among other things, subscription rights, corporate governance rights and consent rights and other obligations and rights, including the material terms described below.

***Board Representation and Other Related Matters***

Under the stockholders agreement, from and after the closing and for so long as the CD&R Fund, the initial CD&R Investors and their affiliates that are permitted transferees under the stockholders agreement (see Transfer Restrictions below), which we collectively refer to as the CD&R Investors, hold voting power of the Company equal in the aggregate to at least 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, the CD&R Investors will be entitled to nominate or designate to serve on the Company's board of directors (and to nominate or designate the replacements of such directors) a number of individuals proportionate to their percentage of the voting power of the Company at the relevant time, subject to any applicable legal and regulatory limitations. At each annual meeting or special meeting of stockholders at which any directors of the Company are to be elected during the time from and after the closing when the CD&R Investors are entitled to nominate or designate directors, the Company will take all corporate and other actions necessary to cause the applicable CD&R nominees or designees to be nominated for election as directors on our board of directors, and the Company will use our reasonable best efforts to solicit proxies in favor of the election of such nominees or designees to be elected at such meeting.

In addition, upon the occurrence of certain events relating to our failure to cause the CD&R Investors' nominees or designees to be elected to our board of directors or the removal of such persons without cause other than by action or request from the CD&R Investors, the CD&R Investors will have the right to designate a board observer to attend (without voting rights) each meeting of our board of directors or any committee thereof (and to receive from us, copies of all notices, information and other material we provide to our board of directors and committees) until such time as such event is cured.

For so long as the CD&R Investors hold in the aggregate at least 20% of the voting power of the Company, the CD&R Investors will be entitled to appoint one of its designees to our board of directors as Lead Director or as Chairman of the Executive Committee of our board of directors.

The foregoing notwithstanding, for so long as stockholders unaffiliated with the CD&R Investors own in the aggregate at least 5% of the voting power of the Company, the Company's board of directors will include (1) at least two directors who will not be appointed or designated by the CD&R Investors and will be independent of both the CD&R Investors and the Company, which we refer to as the unaffiliated shareholder directors, and (2) the Chief Executive Officer of the Company. A vacancy with respect to an unaffiliated shareholder director must be filled by the remaining unaffiliated shareholder director or, if no such director exists, the directors not nominated or designated by the CD&R Investors who are independent of both the Company and the CD&R Investors, or if no such directors exist, all directors who are independent of both the Company and the CD&R Investors. In addition, for so long as the stockholders unaffiliated with the CD&R Investors own in the aggregate at least 5% of the voting power of the Company, an unaffiliated shareholder director may not be removed except by the affirmative vote (including by written consent) of stockholders unaffiliated with the CD&R Investors holding 80% of all of the voting power held by

stockholders unaffiliated with the CD&R Investors.

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### ***Committees***

Subject to any applicable legal and regulatory limitations, the CD&R Investors will also be entitled to representation on all committees of our board of directors proportionate to their percentage of the voting power of the Company at the relevant time. The foregoing notwithstanding, on each committee of our board of directors, there will be at least one CD&R Investors nominee or designee and one unaffiliated shareholder director, provided that (1) where a director nominated or designated by the CD&R Investors is in a conflict position, such director may not serve on a special committee of our board of directors, and (2) where the CD&R Investors are in a conflict position, none of their nominees or designees (except those who are independent of both the Company and the CD&R Investors) may serve on the relevant special committee of our board of directors.

From and after the closing, our board of directors will maintain an Affiliate Transactions Committee, which will be comprised of (1) the unaffiliated shareholder directors then in office and (2) one director nominated or designated by the CD&R Investors who is independent of both the Company and the CD&R Investors if there is such a director on our board of directors, and otherwise, the Chief Executive Officer. The Affiliate Transactions Committee will review, consider and approve all affiliate transactions (subject to customary exceptions) and no such affiliate transaction can be effected without the prior approval of a majority of the directors on the Affiliate Transactions Committee; however, for so long as the provisions in Article TENTH of our restated certificate of incorporation are still in effect, an affiliate transaction that is subject to Article TENTH may be effected in accordance therewith, in lieu of the review, consideration or approval of the Affiliate Transactions Committee.

The foregoing rights and restrictions described in this section will terminate on the first date on which the CD&R Investors hold voting power of the Company equal in the aggregate to less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing.

### ***Agreement with Respect to Controlled Company Status***

Effective upon the closing, we will have taken all corporate action and filed all election notices or other documentation with the NYSE necessary to elect to take advantage of the exemptions to the requirements of sections 303A.01, 303A.04 and 303A.05 of the NYSE Listed Company Manual. In addition, for so long as we qualify as a controlled company within the meaning set forth in the NYSE Listed Company Manual or any similar provision in the rules of a stock exchange on which the securities of the Company are quoted or listed for trading, we have agreed to use our reasonable best efforts to take advantage of the related exemptions therein. Such exemptions would exempt us from compliance with the NYSE's requirements for companies listed on the NYSE to have (1) a majority of independent directors, (2) a nominating/corporate governance committee and a compensation committee, in each case, composed entirely of independent directors, and (3) charters for the nominating/corporate governance committee and the compensation committee, in each case, addressing certain specified matters.

### ***Certain Limitations on Participation of Directors Nominated or Designated by the CD&R Investors***

*Series B Preferred Dividends.* With respect to action to be taken, or any determination to be made, regarding whether dividends payable on the outstanding shares of Series B convertible preferred stock are to be paid in cash or in kind by issuing shares of Series B convertible preferred stock pursuant to the certificate of designations, such action will be taken or determination will be made by a majority of the directors of the Company who are (1) not nominated by the CD&R Investors or (2) if nominated by the CD&R Investors, independent of both the Company and the CD&R Investors. The remaining directors will not have any right to vote upon, and may be excluded from participating in any discussion of, such action or determination.

The directors taking the action or making any determination with respect to whether dividends payable on the outstanding shares of Series B convertible preferred stock are to be paid in cash or in kind must reasonably believe that such action or determination will not (1) constitute a default under any of the terms, conditions or provisions of any of the credit agreements and related documents contemplated by the term loan refinancing or the ABL financing or any other material financing or loan agreement, contract or other instrument or obligation to which the Company or any of our subsidiaries is a party or by which the Company or any of our subsidiaries are bound, or to which the Company or any of our subsidiaries or any of the properties, assets, or rights of the Company or any of our

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subsidiaries may be subject or (2) result in the Company having insufficient liquidity to operate our business in the ordinary course, consistent with past practice.

*Amendment or Waiver under the Stockholders Agreement.* With respect to any action by the Company to amend, waive, or enforce or comply with any provision of the stockholders agreement, or to make any determination pursuant to the stockholders agreement, in which the CD&R Investors have or may have interests different from the Company or its stockholders (other than the CD&R Investors), such action must be taken or determination must be made on behalf of the Company solely by a majority of the directors who are either (1) independent of both the Company and the CD&R Investors and not nominated by the CD&R Investors or (2) the Chief Executive Officer of the Company. Any action to amend, waive, enforce or comply with any provision of the stockholders agreement, or any determination to be made pursuant to the stockholders agreement, which either (a) relates to the qualifications for, selection, nomination or election of, or to the powers, rights or privileges of the unaffiliated shareholder directors or (b) requires the consent or approval of the unaffiliated shareholder directors must be taken, or must be made, on behalf of the Company solely by the unaffiliated shareholder directors. No director nominated or designated by the CD&R Investors will have any right to vote upon, and by a decision of the remaining directors may be excluded from participating in, any discussion of any such action or determination referenced in this paragraph.

***Consent Rights***

Pursuant to the stockholders agreement, for so long as the CD&R Investors hold at least 25% of the voting power of the Company, subject to certain customary exceptions and specified baskets, the Company will agree not to take certain actions without the consent of the CD&R Fund, including:

acquiring any business organizations or divisions of a business organization or any assets outside the ordinary course of business;

selling or disposing of any business organizations or divisions of a business organization or any assets outside of the ordinary course of business;

authorizing, issuing, delivering, selling, pledging, disposing of, granting, awarding or encumbering any shares (or options, warrants, convertible securities or rights of any kind to acquire or receive any shares) of capital stock, ownership interests or voting securities;

redeeming, repurchasing or acquiring any shares of capital stock or securities convertible into or exercisable for shares of the capital stock;

declaring or paying any extraordinary dividend or distribution;

incurring or guaranteeing any material indebtedness;

engaging to a material extent in any business in which the Company is not currently engaged on the date of the closing or any business related, ancillary or complementary to such business;

adopting a plan or agreement of complete or partial liquidation or dissolution or commencing a bankruptcy proceeding;

increasing the size of the Company's board of directors; or

amending, altering or repealing the Company's charter or by-laws.

In addition, until such time as the CD&R Investors hold less than 20% of the voting power of the Company, without the prior consent of the CD&R Investors in their sole discretion, the Company will be prohibited from issuing any stock or security (other than common stock, Series B convertible preferred stock and, with respect to the foregoing, options, restricted stock units, restricted stock and stock appreciation rights issued by the Company pursuant to any employment contract, employee or benefit plan, stock purchase plan, stock ownership plan, stock option or equity compensation plan or other similar plan, to or for the benefit of any employees (including new employees), officers or directors of the Company or any of our subsidiaries), including, without limitation, non-participating preferred stock or debt securities that are convertible into shares of capital stock or capital stock



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equivalents by their terms, that gives rise, in the good faith belief of the CD&R Investors based on advice of counsel, to a not insubstantial risk that distributions (or deemed distributions) on the shares of Series B convertible preferred stock that are paid (or deemed paid) in shares of such stock would not be governed by the general rule of section 305(a) of the Internal Revenue Code of 1986, as amended.

***Voting Agreement***

At any time following the closing and prior to the earlier of (1) a change of control, (2) the six-month anniversary of the first date on which the CD&R Investors hold in the aggregate less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing and (3) the 30-month anniversary of the closing, during which the CD&R Investors hold less than 50% of the voting power of the Company, at any and all meetings of stockholders of the Company, the CD&R Investors will cause each share of common stock and Series B convertible preferred stock owned by it and certain of its affiliates to be present in person or represented by proxy at all meetings of stockholders of the Company and:

to vote in favor of all director nominees nominated by our board of directors for election by the stockholders in accordance with the terms of the stockholders agreement and our by-laws, and

as recommended by our board of directors on:

proposals relating to or concerning compensation or equity incentives for directors, officers or employees of the Company adopted in the ordinary course of business consistent with past practice,

proposals the subject matter of which is described under **Consent Rights** above; and

proposals by stockholders of the Company (including under Rule 14a-8 of the Exchange Act);

provided, in respect of the first two proposals described above, that our board of director's recommendation is consistent with the CD&R Investors' exercise of their consent rights and the submission of such proposal occurred in a reasonably timely manner and such proposals have not failed to receive the requisite number of affirmative votes for the adoption of such proposals since the CD&R Investors' exercise of their consent right in connection therewith.

***Subscription Rights***

From and after the closing until such time as the CD&R Investors hold in the aggregate less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, if the Company offers to sell equity securities or equity security equivalents of the Company (other than certain excluded securities), the CD&R Investors will have the opportunity to acquire from the Company, for the same price and on the same terms as such equity securities or equity security equivalents are offered to others, up to the amount of equity securities or equity security equivalents required to enable the CD&R Investors to maintain, in the aggregate, (1) with respect to offers to sell common stock, other voting stock or equity security equivalents convertible or exchangeable for common stock or other voting stock, the CD&R Investors' then-current percentage of the Company's voting power and (2) with respect to offers to sell equity securities or equity security equivalents consisting of non-voting equity of the Company or equity security equivalents convertible or exchangeable for non-voting equity, the CD&R Investors' then-current percentage of the Company's economic interest.

***Standstill***

The restrictions described below in **Acquisition of Equity Securities** will terminate upon the occurrence of a change of control, and will not apply at any time during which stockholders unaffiliated with the CD&R Investors own less than 5% of the voting power of the Company.

The restrictions described below in **Acquisition of Debt Securities** and in **Acquisition of Equity Securities** will terminate upon the occurrence of certain events relating to our failure to cause the CD&R Investors' nominees or designees to be elected to our board of directors or the removal of such persons without cause other than by action or request from the CD&R Investors.

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*Acquisition of Equity Securities* During the period from the closing until the earlier of (1) the 30-month anniversary of the closing and (2) the six-month anniversary of the first date on which the CD&R Investors hold less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, the CD&R Investors and certain of their affiliates will be prohibited from:

acquiring, offering or proposing to acquire, or agreeing to acquire, in any manner, beneficial ownership of any securities of the Company or our subsidiaries (including convertible securities) if immediately following such acquisition or agreement, the CD&R Investors and such affiliates would beneficially own in the aggregate more than 80% of the voting power or economic interest of the Company, other than acquisitions of (1) term loans advanced pursuant to, or outstanding under, the amended credit agreement contemplated by the term loan refinancing, or (2) securities of the Company or our subsidiaries resulting from (a) the payment of dividends in kind in additional shares of Series B convertible preferred stock pursuant to the certificate of designations (see *The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Dividends* ), (b) the exercise of subscription rights granted under the stockholders agreement (see *Subscription Rights* above), (c) the adjustment of the conversion price pursuant to the terms of the certificate of designations (see *The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti-Dilution Adjustments* ), (d) any repurchase or redemption of securities by the Company or (e) any other right of the CD&R Investors or transaction contemplated by the transaction documents; or

seeking, directly or indirectly, any amendment, waiver, or release of, or to contest the validity of, any of the restrictions described in the immediately preceding bullet point.

If the six-month anniversary of the first date on which the CD&R Investors hold less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing has not occurred prior to the 30-month anniversary of the closing, during the period from the 30-month anniversary of the closing until such six-month anniversary, the CD&R Investors and certain of its affiliates will be restricted from engaging in the actions described above.

The CD&R Investors and their affiliates will not be prohibited under the stockholder agreement from taking the restricted actions described above (1) with respect to an exchange for equity securities of the Company of term loans advanced pursuant to, or outstanding under, the amended credit agreement contemplated by the term loan financing, if the terms and conditions of such exchange are approved by the prior written consent of a majority of directors of the Company who are independent of both the Company and the CD&R Investors or (2) from and after the 30-month anniversary of the closing, if a majority of the unaffiliated shareholder directors approve such action.

*Acquisition of Indebtedness*

During the period from the closing until the later of (1) the 30-month anniversary of the closing and (2) the first date on which the CD&R Investors hold less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, without the prior written consent of a majority of the directors who are independent of both the Company and the CD&R Investors, the CD&R Investors and certain of their affiliates will be prohibited from:

acquiring, offering or proposing to acquire or agreeing to acquire, directly or indirectly, in any manner, beneficial ownership of any indebtedness or debt securities of the Company other than term loans advanced pursuant to, or outstanding under, the amended credit agreement contemplated by the term loan refinancing; or

seeking, directly or indirectly, any amendment, waiver, or release of, or to contest the validity of, any of the restrictions described in the bullet point above by the Company.

***Transfer Restrictions***

The restrictions described in this section entitled Transfer Restrictions (1) do not apply at any time during which stockholders unaffiliated with the CD&R Investors own less than 5% of the voting power of the Company and (2) terminate upon the occurrence of a change of control.

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Prior to the expiration of the transfer limitation period (as described below), without the approval of a majority of the directors who are independent of both the Company and the CD&R Investors, the CD&R Investors are prohibited from transferring, selling, pledging, assigning or otherwise disposing of (including by merger or otherwise by operation of law) any of the shares of Series B convertible preferred stock or common stock held by them, except:

to certain of its affiliates that agree to be bound by the provisions of the stockholders agreement;

to the Company;

in a qualified business combination (as described below) that is approved, or recommended to the stockholders of the Company, by our board of directors in which:

the consideration received by the CD&R Investors (other than with respect to any Series B convertible preferred stock that is exchangeable for, or convertible into, preferred stock of the resulting entity of the qualified business combination in accordance with the sub-bullet point below, if applicable), on an as-converted basis, is equal to, and in the same form as, the per-share consideration received by all holders of common stock; and/or

the shares of Series B convertible preferred stock are exchangeable for, or convertible into, shares of the resulting entity of the qualified business combination having terms, preferences, rights, privileges and powers substantially similar to and no more favorable than the terms, preferences, rights, privileges and powers under the certificate of designations, and the number of shares of such preferred stock of the resulting entity are convertible in the aggregate into the same amount and form of consideration that would have been receivable in the qualified business combination if the shares of Series B convertible preferred stock had been fully converted into the underlying common stock immediately prior to such qualified business combination; or

in a business combination (other than a qualified business combination) that is approved, or recommended to the stockholders of the Company, by our board of directors in which the consideration received by the CD&R Investors, on an as-converted basis, is equal to, and in the same form as, the per-share consideration received by all holders of common stock.

We refer to the transfers, sales, pledges, assignments and other disposals described in the immediately preceding four bullet points as the transfer restriction exceptions.

Following the transfer limitation period, the CD&R Investors are prohibited from transferring, selling, pledging, assigning or otherwise disposing of (including by merger or otherwise by operation of law) any of the shares of Series B convertible preferred stock or common stock held by them, except:

the common stock held by it may be transferred, sold, pledged, assigned or otherwise disposed of (including by merger or otherwise by operation of law) by the CD&R Investors:

in a privately negotiated transaction, provided that the transferee represents that (1) it is not a competitor of the Company, (2) it is not and will not be, after giving effect to the transfer, a holder of 10% or more of the voting power of the Company or any affiliate of such a holder and (3) it is not proposing to effect a change of control of the Company without the prior written consent of a majority of the directors who are independent of both the Company and the CD&R Investors;

in public market trades, provided that the CD&R Investors or their affiliates transferring such shares have no reason to believe that any transferee does not meet the requirements described in clauses (1) through (3) described in the sub-bullet point immediately above and the CD&R Investors or their affiliates transferring such shares have instructed their underwriters or brokers, if any, of such requirements;

in a traditional underwritten public offering in accordance with the registration rights agreement; and

such shares of Series B convertible preferred stock or common stock may be transferred, sold, pledged, assigned or otherwise disposed of (including by merger or otherwise by operation of law) in the transfer restriction exceptions described in the paragraph above.

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The transfer limitation period means any time during the period from the closing until the later of (1) the 30-month anniversary of the closing and (2) the occurrence of certain events relating to our failure to cause the CD&R Investors nominees or designees to be elected to our board of directors or the removal of such persons without cause other than by action or request from the CD&R Investors.

A qualified business combination means a business combination immediately following which:

the individuals and entities that were the beneficial owners of all classes and series of voting stock outstanding immediately prior to such business combination beneficially own more than 50% of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of the entity resulting from such business combination in substantially the same proportions as their ownership immediately prior to such business combination; and

no person or group (excluding the CD&R Investors and their affiliates) either:

beneficially owns more of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity than the CD&R Investors and their affiliates so beneficially own, and the CD&R Investors and their affiliates beneficially own more than 17.5% of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity; or

beneficially owns 25% or more of the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity.

### ***Hedging Restrictions***

During the period from the closing until the later of (1) the 30-month anniversary of the closing and (2) the first date on which the CD&R Investors hold in the aggregate less than 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, the CD&R Investors and certain of their affiliates will be prohibited from hedging its or their direct or indirect exposure to the common stock and the Series B convertible preferred stock, except in transactions involving an index-based portfolio of securities that includes common stock (provided that the value of such common stock in such portfolio is not more than 5% of the total value of the portfolio of securities).

### ***Agreement to Keep the CD&R Investors Informed***

From and after the closing and so long as the CD&R Investors hold voting power of the Company equal in the aggregate to at least 10% of the aggregate voting power held by the initial CD&R Investors immediately following the closing, we will keep the CD&R Investors informed of any events, discussions, notices or changes with respect to any tax, criminal or regulatory investigation or action involving us or any of our subsidiaries that have been brought to the attention of our board of directors, and we will reasonably cooperate with the CD&R Investors and their affiliates in an effort to avoid or mitigate any cost or regulatory consequences to them that might arise from such investigation or action (including by reviewing written submissions in advance, attending meetings with authorities and coordinating and providing assistance in meeting with regulators).

### ***Agreement to Seek Amendments to our Restated Certificate of Incorporation***

As contemplated by the stockholders agreement, our board of directors have adopted and declared advisable, and unanimously approved and recommended to our stockholders each of the amendments to our restated certificate of incorporation described below:

amendment to Article FOURTH, section 1 of our restated certificate of incorporation to increase the number of authorized shares of common stock;

amendment to Article FOURTH, section 1 of our restated certificate of incorporation to enable holders of a majority of the capital stock of the Company entitled to vote generally in the election of directors to vote on proposals affecting the number of authorized shares of any class or classes of stock may be increased or decreased;



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amendment to Article FIFTH, section 4 of our restated certificate of incorporation to provide for the removal of directors with or without cause by the affirmative vote of the holder or holders of 80% of the outstanding voting power of the Company;

amendment to Article FIFTH, section 5 of our restated certificate of incorporation to provide for the calling of special meetings of stockholders by the Chief Executive Officer, by our board of directors pursuant to a resolution approved by a majority of the entire board of directors, or by the Secretary of the Company at the written request of the holder or holders of 25% of the outstanding voting power of the Company;

deletion of Article FIFTH, section 6 of our restated certificate of incorporation that prohibited stockholder action by written consent;

deletion of Article SEVENTH of our restated certificate of incorporation that prohibited preemptive or preferential right;

deletion of Article TENTH of our restated certificate of incorporation relating to approval of certain business combinations; and

addition of a new article to our restated certificate of incorporation relating to the number of votes that may be held by certain directors to give effect to the provisions in the stockholders agreement.

From and after the closing, we will use our best efforts and take all corporate actions necessary to obtain stockholder approval of each of the amendments described above promptly following the closing.

In the event that stockholder approval of the amendment to Article FOURTH, section 1 of our restated certificate of incorporation has not been obtained by the date that is 18 months following the closing, or at any time thereafter the number of shares of authorized but unissued and unreserved shares of common stock is less than 110% of the number of shares of common stock required to permit the conversion of all then-outstanding shares of Series B convertible preferred stock into shares of common stock in accordance with the applicable terms of conversion as set forth in the certificate of designations, the Company has agreed to take all actions permitted by law and consented to by the CD&R Investors (if such consent is required under the terms of the stockholders agreement), to increase the number of shares of authorized but unissued and unreserved shares of common stock, including, without limitation, at the option of the CD&R Investors (in their sole discretion), taking actions to effect a reclassification or to create a new class of capital stock generally identical to the common stock.

**Registration Rights Agreement**

*The following is a summary of the material terms and provisions of the form of registration rights agreement. While we believe this summary covers the material terms and provisions of the form of registration rights agreement, it may not contain all of the information that is important to you. The form of registration rights agreement is included as Annex H hereto, which we incorporate by reference into this document. We encourage you to read carefully the form of registration rights agreement in its entirety.*

In connection with, and as a condition to, the issuance of the Series B convertible preferred stock pursuant to the investment agreement, at the closing, we and the initial CD&R Investors will enter into a registration rights agreement substantially in the form of the form of registration rights agreement attached hereto as Annex H, which registration rights agreement to be entered into at the closing, we refer to as the registration rights agreement, under which the Company will grant the CD&R Investors customary demand and piggyback registration rights, including the material

terms described below.

***Demand Registration***

At any time and from time to time on or after the earlier of (i) the 30-month anniversary of the closing (ii) a Company default event or (iii) a change of control event, the CD&R Fund may make a demand request in writing that the Company effect the registration under, and in accordance with, the provisions of the Securities Act of all or any part of the shares of common stock and all shares of capital stock of the Company as may be created as described under

The Restructuring Description of the CD&R Investment The Stockholders Agreement Agreement to Seek Amendments to Our Restated Certificate of Incorporation held by the CD&R Investors that were acquired by the CD&R

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Investors on, from and after the date of the registration rights agreement, including, without limitation, shares of common stock or such new class of capital stock, if any, issued or issuable upon conversion of shares of Series B convertible preferred stock, and any shares of capital stock or other equity interests issued or issuable by the Company, directly or indirectly, by way of conversion or exchange thereof or stock dividends, stock splits or in connection with a combination of shares, reclassification, recapitalization, merger or other reorganization, which we refer to as the registrable shares (see The Restructuring Description of the CD&R Investment Certain Terms of the Series B Convertible Preferred Stock Convertibility and Anti Dilution Adjustments for a description of convertibility of shares of Series B convertible preferred stock), held by the CD&R Investors. Promptly after its receipt of any demand request, the Company will give timely written notice of such request to all holders of registrable shares, and will use its reasonable best efforts to file, as promptly as reasonably practicable, a registration statement covering all registrable shares that have been requested to be registered (1) in the demand request and (2) by any holder of registrable shares by written notice to the Company, in accordance with the method or methods of disposition of the applicable registrable shares elected by the CD&R Fund.

Subject to certain limited exceptions, the CD&R Fund is entitled to initiate no more than five demand registrations (other than short-form registrations that are not underwritten offerings) and underwritten offerings included in a shelf registration statement as described below in Shelf Underwritten Offerings in the aggregate, provided, however, that (1) in respect of four out of the five such demand registrations to which holders of registrable shares are entitled under the registration rights agreement, the Company will not be obligated to effect such demand registration unless the amount of registrable shares requested to be registered by the CD&R Fund is reasonably expected to result in aggregate gross proceeds (prior to deducting underwriting discounts and commissions and offering expenses) of at least \$50.0 million and (2) the Company will not be obligated to effect such demand registration during the four-month period following the effective date of a registration statement pursuant to any other registration initiated pursuant to a demand request.

We will agree to use our reasonable best efforts to qualify for registration on Form S-3 or any comparable or successor form or forms or any similar short-form registration at all times after the earlier of (i) the 30-month anniversary of the closing, (ii) a Company default event or (iii) a change of control event. If requested by the CD&R Fund and available to the Company, such short-form registration will be a shelf registration statement providing for the registration of, and the sale on a continuous or delayed basis of the registrable shares, pursuant to Rule 415 of the Securities Act or otherwise.

At any time and from time to time on or after the earlier of (i) the 30-month anniversary of the closing (ii) a Company default event or (iii) a change of control event, the CD&R Fund will be entitled to request an unlimited number of short-form registrations, if available to the Company, with respect to the registrable shares held by the CD&R Investors, provided that the Company will not be obligated to effect any short-form registration (1) within 90 days after the effective date of any registration statement of the Company under the registration rights agreement and (2) unless the amount of registrable shares requested to be registered by the CD&R Investors is reasonably expected to result in aggregate gross proceeds (prior to deducting underwriting discounts and commissions and offering expenses) of at least \$50.0 million. In no event will the Company be obligated to effect any shelf registration other than pursuant to a short-form registration.

Upon filing any short-form registration, we have agreed to use our reasonable best efforts to keep such short-form registration effective with the SEC at all times and to re-file such short-form registration upon its expiration, and to cooperate in any shelf take-down, whether or not underwritten, by amending or supplementing the prospectus related to such short-form registration as may be reasonably requested by the CD&R Fund, or as otherwise required, until such time as all registrable shares that could be sold in such short-form registration have been sold or are no longer outstanding.

To the extent the Company is a well-known seasoned issuer (as defined in Rule 405 of the Securities Act) at the time any demand request for a short-form registration is submitted to the Company and such demand request requests that the Company file a shelf registration statement, the Company will file an automatic shelf registration statement (as defined in Rule 405 of the Securities Act) on Form S-3 in accordance with the requirements of the Securities Act and the rules and regulations of the SEC thereunder, which covers those registrable shares which are requested to be registered. The Company will use its reasonable best efforts to remain a well-known seasoned issuer (and not to become an ineligible issuer (as defined in Rule 405 of the Securities Act)) during the period during

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which any automatic shelf registration statement is effective. If at any time following the filing of an automatic shelf registration statement when the Company is required to re-evaluate its well-known seasoned issuer status the Company determines that it is not a well-known seasoned issuer, the Company will use its reasonable best efforts to post-effectively amend the automatic shelf registration statement to a shelf registration statement on Form S-3 or file a new shelf registration statement on Form S-3 or, if such form is not available, Form S-1, have such shelf registration statement declared effective by the SEC and keep such Registration Statement effective during the period during which such short-form registration is required to be kept effective as described below.

If the filing, initial effectiveness or continued use of a registration statement, including a shelf registration statement, initiated with respect to a demand request, would require the Company to make a public disclosure of material nonpublic information, which disclosure in the good faith judgment of our board of directors (after consultation with external legal counsel) (1) would be required to be made in any registration statement so that such registration statement would not be materially misleading, (2) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement or (3) would reasonably be expected to have a material adverse effect on the Company or our business or on the Company's ability to effect a bona fide and reasonably imminent material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction, then the Company may, upon giving prompt written notice of such action to holders of registrable shares participating in such registration, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement, provided that the Company will not be permitted to do so (a) more than once in any six-month period or (b) for any single period of time in excess of 60 days, or for periods exceeding, in the aggregate, 90 days during any 12-month period. In the event that the Company exercises its rights under the preceding sentence, such holders of registrable shares will agree to suspend, promptly upon receipt of the notice referred to above, the use of any prospectus relating to such registration in connection with any sale or offer to sell registrable shares. If the Company so postpones the filing of a prospectus or the effectiveness of a registration statement, the CD&R Fund will be entitled to withdraw such request.

If the CD&R Fund intends that the registrable shares covered by its demand request be distributed by means of an underwritten offering, the CD&R Fund will advise the Company of that as a part of the demand request, and the Company will advise the other holders of registrable shares with respect to such demand request. The CD&R Fund has the right to choose the lead underwriter, subject to the prior written consent, not to be unreasonably withheld or delayed, of the Company for an underwritten demand request.

The Company may not include in any underwritten demand registration any securities that are not registrable shares without the prior written consent of the CD&R Fund.

If any of the registrable shares registered pursuant to a demand registration are to be sold in a firm commitment underwritten offering, and the managing underwriter(s) of such underwritten offering advises holders of registrable shares participating in the registration that, in its good faith opinion, the total number or dollar amount of registrable shares (and, if permitted by the registration rights agreement, securities other than registrable shares requested to be included in such offering) exceeds the largest number or dollar amount of securities that can be sold in such offering without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the good faith opinion of such underwriter can be included without adversely affecting the marketability of the offering, in the following order of priority: (i) registrable shares of the CD&R Investors, *pro rata* (if applicable) on the basis of the aggregate number of registrable shares owned by each such CD&R Investor; (ii) registrable shares of other holders of registrable shares, *pro rata* (if applicable) on the basis of the aggregate number of registrable shares owned by each such holder; and (iii) any securities other than registrable shares requested to be included in the registration by any other person (including the securities to be sold for the account of the Company) allocated among such persons in such manner as the Company may determine.

***Piggyback Registration***

If, at any time on or after (i) the 30-month anniversary of the closing, (ii) a Company default event or (iii) a change of control event, the Company proposes or is required to file a registration statement under the Securities Act with respect to an offering of securities of the Company, but excluding a registration statement that is (1) solely in

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connection with the registration of (a) equity securities and/or options or other rights in respect thereof solely registered on Form S-4, Form S-8 or any successor forms thereto or (b) shares of equity securities and/or options or other rights in respect thereof to be offered solely in connection with an employee benefit or dividend reinvestment plan or (2) pursuant to a demand registration, the Company will give written notice as promptly as practicable to all holders of registrable shares of its intention to effect such registration and will include in such registration all registrable shares with respect to which the Company has received timely written notice from such persons for inclusion therein.

If the securities that the Company proposes to register are to be sold in an underwritten primary offering on behalf of the Company, the holders of registrable shares are entitled to include all of their registrable shares on the same terms and conditions as provided to any securities other than registrable shares that are included therein. However, if the proposed offering includes a firm commitment underwritten offering, and the managing underwriter advises the Company and the holders of registrable shares that, in its good faith opinion, the number or dollar amount of registrable shares exceeds the largest number or dollar amount of securities that can be sold without adversely affecting the marketability of the offering, the Company will include in the registration or prospectus only the number of securities that, in the good faith opinion of the managing underwriter, will not adversely affect such marketability, in the following order of priority: (i) the securities other than registrable shares that the Company proposes to sell, (ii) the registrable shares requested to be included by all holders of registrable shares, *pro rata* (if applicable) on the basis of the aggregate number of shares held by each such holder, and (iii) any securities other than registrable shares requested to be included by any other person (other than the Company), allocated among such persons as determined by the Company.

If the securities proposed to be registered by the Company are to be sold in an underwritten secondary offering on behalf of holders of securities other than registrable shares, the holders of registrable shares are entitled to include all of their registrable shares on the same terms and conditions as provided to any securities other than registrable shares that are included therein. However, if the managing underwriter advises the Company and the holders of registrable shares that, in its good faith opinion, the number or dollar amount of registrable shares proposed to be included exceeds the largest number or dollar amount of securities that can be sold without adversely affecting the marketability of the offering, the Company will include in the registration only the number of securities that, in the reasonable opinion of the managing underwriter, will not adversely affect such marketability, in the following order of priority: (i) (x) the securities other than registrable shares requested to be included pursuant to contractual rights of the holders of such securities and (y) the registrable shares, each *pro rata* (if applicable) on the basis of the aggregate number of securities requested to be included by each holder; and (ii) any securities other than registrable shares requested to be included by the Company or any other person not exercising a contractual right, allocated as determined by the Company.

### ***Shelf Underwritten Offering***

At any time that a shelf registration statement covering registrable shares is effective, if the CD&R Fund delivers a take-down notice to the Company stating that it or the CD&R Investors intend to effect an underwritten offering of all or part of its or the CD&R Investors' registrable shares, in each case included by it or them on the shelf registration statement, the Company will amend or supplement the shelf registration statement or related prospectus as may be necessary in order to enable such registrable shares to be distributed pursuant to the underwritten offering included in the shelf registration statement. The CD&R Fund is not entitled to deliver more than three take-down notices in any 12-month period and the CD&R Fund may not deliver any take-down notice within 30 days after the effective date of any registration statement of the Company.

In connection with any underwritten offerings included on a shelf registration statement, in the event that the managing underwriter advises the Company in its good faith opinion that marketing factors require a limitation on the

number of shares which would otherwise be included in such take-down, the managing underwriter may limit the number of shares which would otherwise be included in such take-down offering in the same manner as is described under Demand Registration above with respect to a limitation of shares to be included in a registration.



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### ***Expenses***

Each holder of registrable shares will bear the *pro rata* cost of underwriting discounts, selling commissions and transfer taxes associated with any sale of registrable shares.

All expenses incidental to the Company's obligations under the registration rights agreement, including registration and filing fees, fees and expenses with respect to compliance with securities and blue sky laws, certain expenses of counsel to holders of registrable shares, expenses associated with listing the securities to be registered, fees and disbursements of experts, counsel to and advisors engaged by the Company, and other internal expenses of the Company will be paid by the Company, other than expenses incurred in connection with certain withdrawn demands and shelf registrations and the underwriting discounts, selling commissions and transfer taxes associated with any sale of registrable shares.

### ***Termination***

The registration rights agreement will terminate when no registrable shares remain outstanding. Certain of the Company's obligations survive termination, as do the parties' indemnification obligations.

### ***Lock-up and Holdback***

The initial CD&R Investors may not transfer shares of Series B convertible preferred stock and their ability to transfer shares of common stock is limited (see The Restructuring Description of the CD&R Investment The Stockholders Agreement Transfer Restrictions ). All holders of registrable shares are subject to holdback restrictions that are applicable to offerings in which they participate. The Company is also subject to holdback restrictions with regards to the public sale or distribution or the filing of any registration statement covering any equity securities, subject to limited exceptions, or securities convertible into equity.

### ***Limitations on Other Registration Rights***

Until such time as the initial CD&R Investors own less than 25% of the voting power of the Company, the Company may not grant registration rights to any other holder or prospective holder of securities without the prior written consent of the CD&R Fund. For the term of the registration rights agreement, the Company will not take any action or permit any change to occur with respect to its securities which would adversely affect the right of any holder of registrable shares to participate in a registration undertaken pursuant to the registration rights agreement.

### ***Indemnification Agreement***

*The following is a summary of the material terms and provisions of the form of indemnification agreement. While we believe this summary covers the material terms and provisions of the form of indemnification agreement, it may not contain all of the information that is important to you. The form of indemnification agreement is included as Annex I hereto, which we incorporate by reference into this document. We encourage you to read carefully the form of indemnification agreement in its entirety.*

In connection with, and as a condition to, the issuance of the Series B convertible preferred stock pursuant to the investment agreement, at the closing, we and our wholly owned subsidiaries, NCI Group, Inc., and Robertson-Ceco II Corporation, which we collectively refer to as the NCI entities, will enter into an indemnification agreement substantially in the form of the form of indemnification agreement attached hereto as Annex I, which indemnification agreement to be entered into at the closing we refer to as the indemnification agreement, with the initial CD&R Investors and CD&R.

Pursuant to the indemnification agreement, and subject to the terms and conditions contained therein, each of the NCI entities will agree, jointly and severally, to indemnify, defend and hold harmless CD&R, the initial CD&R Investors and their general partners, the special limited partner of the CD&R Fund and any other investment vehicle that is a stockholder of the Company and is managed by CD&R or CD&R's affiliates, their respective affiliates, their respective successors and assigns, and the respective directors, officers, partners, members, employees, agents, advisors, consultants, representatives and controlling persons of each of them, or of their partners, members and controlling persons, and each other person who is or becomes a director or an officer of any of the Company or its

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subsidiaries, in each case irrespective of the capacity in which such person acts, from and against any and all claims, losses, liabilities, damages expenses or obligations:

resulting from third-party claims resulting from, arising out of or in connection with, based upon or relating to the Securities Act, the Exchange Act or any other applicable securities or other laws, in connection with any future securities offering of the Company, the term loan refinancing, the ABL financing, this exchange offer or any documents relating to any of these actions;

whether incurred with respect to third parties or otherwise, resulting from, arising out of, or in connection with, based upon or relating to the performance by CD&R or its affiliates of certain transaction services;

resulting from third-party claims against an indemnitee in its capacity as an affiliate (within the meaning of the Exchange Act) or controlling person (within the meaning of the Exchange Act) of the Company or any of our subsidiaries, resulting from, arising out of or in connection with, based upon or relating to any action or inaction by the Company or any of our subsidiaries, provided that such action or inaction was not proximately caused by such indemnitee;

whether incurred with respect to third parties or otherwise, resulting from, arising out of, or in connection with, based upon or relating to any payment or reimbursement by an indemnitee pursuant to indemnification arrangements to an indemnitee acting as a director or an officer of the Company or any of our subsidiaries or having served at the request of or for the benefit of the Company or any of our subsidiaries as a director, officer, member, employee or agent of or advisor or consultant to another corporation, partnership, joint venture, trust or other enterprise, including with respect to any breach or alleged breach by an indemnitee of his or her fiduciary duty as a director or an officer of the Company or any of our subsidiaries; or

in each case including but not limited to any and all fees, costs and expenses (including without limitation fees and disbursements of attorneys and other professional advisers) incurred by or on behalf of any indemnitee in asserting, exercising or enforcing any of its rights, powers, privileges or remedies in respect of the indemnification agreement. The foregoing notwithstanding, none of the NCI entities are obligated to indemnify and hold harmless any indemnitee in respect of (1) any claim made against the indemnitee by any of its related persons, including its own directors, officers, shareholders, partners, members, employees, agents, advisors, consultants, representatives and controlling persons to the extent arising from any obligation of such indemnitee to such related person (whether arising from contract, by law or otherwise), other than to the extent such claim arises out of any indemnification obligation by such indemnitee to such related person as a result of such related person's service as a director or an officer of the Company or any of our subsidiaries or (2) any fraud or intentional misconduct by such indemnitee.

**Retirement of Convertible Notes**

We are proposing to effect the retirement of the convertible notes through the recapitalization plan, or, in the alternative, through the prepackaged plan.

***Retirement of Convertible Notes in the Recapitalization Plan***

As part of the recapitalization plan, in this exchange offer, we are offering to acquire any and all of the convertible notes for cash and shares of common stock, in accordance with the terms and subject to the conditions set forth in this prospectus/disclosure statement and in the letter of transmittal.

For each \$1,000 principal amount of convertible notes that you tender and that we accept in this exchange offer, you will, upon the terms and subject to the conditions set forth in this prospectus/disclosure statement and the letter of transmittal, receive \$500 in cash and 390 shares of common stock. The cash payment and the shares of common stock to be issued pursuant to this exchange offer will be in full satisfaction of the principal amount of, and any accrued but unpaid interest through the consummation of this exchange offer on, the convertible notes so tendered and accepted.

The closing of the exchange offer is conditioned on the satisfaction or, with the consent of the CD&R Fund, waiver of the minimum tender condition, which requires that at least 95% of the aggregate principal amount of

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outstanding convertible notes are validly tendered and not withdrawn in this exchange offer. We intend, but are not required, to retire any convertible notes outstanding after the consummation of this exchange offer by exercising our redemption right under the convertible notes indenture on or after November 20, 2009; if we do not so exercise our redemption, right such remaining convertible notes will otherwise be retired pursuant to the terms of the convertible notes indenture.

For a more detailed description of this exchange offer, see The Exchange Offer.

### ***Retirement of Convertible Notes in the Prepackaged Plan***

As an alternative to the recapitalization plan, we have prepared the prepackaged plan for accomplishing the restructuring, including the retirement of the convertible notes. If the conditions to completion of the recapitalization plan are not satisfied or waived, including, for example, the minimum tender condition, not satisfied or waived, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, we may elect and, under the terms of the investment agreement, we may be required, to seek confirmation of the prepackaged plan in a chapter 11 proceeding to effect the retirement of the convertible notes.

Under the prepackaged plan, holders of convertible notes would receive the same treatment with respect to their claims as they would in this exchange offer. See The Prepackaged Plan.

### **Description of the Term Loan Refinancing and the ABL Financing**

*The debt financing arrangements described below with respect to the term loan refinancing and the ABL financing are subject to change (whether as a result of market conditions or otherwise), and the debt financings described below (or any other debt financings that may be obtained if one or both of the debt financings described below are not available to us) remain subject to negotiation and completion of definitive documentation.*

*There can be no assurances as to when, or if, we will be successful with respect to the consummation of any transactions contemplated by the restructuring and no assurances as to the exact terms and conditions of each of the term loan refinancing and the ABL financing.*

### **The Term Loan Refinancing**

#### ***Overview***

As part of the restructuring, we expect to enter into an amendment to our existing credit agreement under which we would repay approximately \$143.3 million of the \$293.3 million in principal amount of term loans outstanding under our existing credit facility and modify the terms and maturity of the remaining \$150.0 million balance.

Pursuant to the investment agreement, we have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use reasonable best efforts to cooperate with us in such efforts) to take all reasonable actions and to do all things reasonably necessary, proper or advisable, to enter into an amended credit agreement under the term loan refinancing, which will amend our existing credit agreement on the terms and conditions provided in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K and described below or otherwise contemplated thereby.

CD&R Fund may make such additions, modifications, alterations, corrections or other changes to the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K as it deems advisable in its sole discretion (exercised in good faith) to:

add, provide or complete any schedule, annex, exhibit, numerical amount or other information that is omitted, missing or incomplete, or modify, alter, correct or change (including without limitation by deleting or replacing) any wording that is in brackets;

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cure any ambiguity, mistake, omission or defect;

cure any inconsistency, including with any other provision of the same agreement or of the ABL agreement or any other transaction document or other agreement entered into in connection therewith;

address a material risk that (1) we will be unable to comply with the terms or conditions of the agreement or (2) by complying with the terms and conditions of the agreement we will be subject to a material risk of not complying with the terms and conditions of the ABL agreement or any other transaction document or other agreement entered into in connection therewith;

effect the intent evidenced by the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K; or

avoid adverse tax consequences to us or any of our subsidiaries.

If, for whatever reason, we cannot amend our existing credit agreement under the term loan refinancing on the terms and conditions contemplated in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, (with such changes thereto deemed advisable by the CD&R Fund in its sole discretion (exercised in good faith), we have agreed to use our reasonable best efforts (and the CD&R Fund has agreed to use commercially reasonable efforts to cooperate with us in such efforts, including by actively assisting us in negotiation of related definitive documentation) to amend the terms of our existing credit agreement (1) on terms and conditions that are, in the CD&R Fund's sole discretion (exercised in good faith), (x) no less favorable (as to each item (other than immaterial items) and in the aggregate) to the Company and the CD&R Fund (as a prospective stockholder of the Company) than the terms and conditions contemplated in the form of the amended credit agreement attached hereto as Annex J, or (y) otherwise acceptable to the CD&R Fund, and (2) to extend the maturity of \$150.0 million in principal amount of term loans outstanding under our existing credit agreement, as promptly as practicable but in any event no later than the outside date (which is described in The Restructuring Description of the CD&R Investment The Investment Agreement Termination of the Investment Agreement ).

The closing of the term loan refinancing through the recapitalization plan requires the approval of all of the lenders under our existing credit agreement. We have not yet obtained such approval and it is uncertain if such approval will be obtained.

As an alternative, in the event that the conditions to completion of the recapitalization plan are not satisfied, including, for example, if we do not get the approval of all of the lenders under our existing credit agreement to amend our existing credit agreement, but we receive acceptances from a sufficient number of holders of impaired claims in an impaired class of claims to allow the prepackaged plan to be confirmed under the Bankruptcy Code, including confirmation through the nonconsensual cram-down provisions of section 1129(b) of the Bankruptcy Code with respect to non-accepting impaired claims classes, we may elect and, under the terms of the investment agreement, we may be required, to seek confirmation of the prepackaged plan in a chapter 11 proceeding to effect the term loan refinancing (see The Restructuring Description of the CD&R Investment The Investment Agreement Commencement of a Reorganization Case in Connection with the Prepackaged Plan Covenant ). Under the prepackaged plan, the lenders under our existing credit agreement would receive the same treatment with respect to their claims as they would receive in the recapitalization plan (see The Prepackaged Plan ).

Pursuant to the lock-up agreements, holders of obligations under our existing credit agreement that executed a lock-up agreement have agreed, subject to the terms contained in the applicable lock-up agreement, (1) to support the term loan refinancing by accepting a portion of the repayment contemplated thereby and by executing an amendment to our

existing credit agreement in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K and (2) to vote all their obligations under the existing credit agreement in favor of the prepackaged plan, among other things. In addition, pursuant to the lock-up agreements, we have agreed, subject to the terms and conditions of the lock-up agreements, that certain holders of outstanding obligations that execute an amendment and restatement of the existing credit agreement substantially in the form of the form of amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K to give effect to the term loan refinancing will receive a consent fee equal to 2.0% of the aggregate principal amount of term loans held by such lender prior to giving effect to such term loan refinancing. See The Restructuring The Lock-Up Agreements. Including the holders of obligations under our existing credit



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agreement, we have commitments or confirmation of intent from lenders under our existing credit agreement holding more than two-thirds (2/3) of the outstanding principal amount of the obligations under existing credit agreement to consummate the term loan refinancing by executing the form of amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K.

### ***Form of Amended Credit Agreement***

*The following is a summary of the material terms and provisions of the form of amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K if it is executed at the closing of the restructuring. While we believe this summary covers the material terms and provisions of the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, it may not contain all of the information that is important to you. We incorporate by reference into this document the form of the amended credit agreement attached hereto as Annex J and the matters set forth on Annex K. We encourage you to read carefully the form of the amended credit agreement attached hereto as Annex J and the matters set forth in Annex K in their entirety.*

*For reasons noted above, these terms and conditions may be subject to change. The form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K described below also remains subject to final negotiation of various items and completion of definitive ancillary documentation.*

*Maturity; Prepayments.* The term loans under the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K would mature on the fifth anniversary of the closing date thereof and, prior to such date, would amortize in nominal quarterly installments equal to one percent of the aggregate principal amount thereof *per annum*.

The term loans under the form of the amended credit agreement attached hereto as Annex J would be prepayable at our option at any time without premium or penalty (other than customary breakage costs). We would also have the ability to repurchase a portion of the term loans under the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K subject to certain terms and conditions set forth in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K.

Subject to certain exceptions, the term loans under form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K would be subject to mandatory prepayment and reduction in an amount equal to:

the net cash proceeds of (1) certain asset sales, (2) certain debt offerings and (3) certain insurance recovery and condemnation events;

50% of annual excess cash flow (as defined in the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K) for any fiscal year ending on or after October 31, 2010, unless a specified leverage ratio target is met; and

the greater of \$10.0 million and 50% of certain 2009 tax refunds (as defined in the form of amended credit agreement attached hereto as Annex J after giving effect to the matters specified in Annex K) received by the Company.

*Guarantees; Security.* Our obligations under the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K and any interest rate protection agreements or other permitted

hedging agreement entered into with any lender under the amended credit agreement would be irrevocably and unconditionally guaranteed on a joint and several basis by substantially the same guarantors as under our existing credit agreement.

In addition, the term loans under the form of the amended credit agreement attached hereto as Annex J after giving effect to the matters set forth on Annex K, the permitted hedging agreements and the guarantees thereof would be secured by security interests on substantially all of the tangible and intangible assets of NCI and the guarantors, including liens on material real property and pledges of all the capital stock of all direct domestic subsidiaries owned by NCI and the guarantors and of up to 65% of the capital stock of certain direct foreign subsidiaries owned by NCI or any guarantor. The security and pledges would be subject to certain exceptions.

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