

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Amendment No. 5 to FORM S-1

REGISTRATION STATEMENT
Under the Securities Act of 1933

COMSTOCK HOMEBUILDING COMPANIES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

1531
(Primary Standard Industrial
Classification Code Number)

20-1164345
(I.R.S. Employer
Identification Number)

**11465 Sunset Hills Road, Suite 510
Reston, Virginia 20190
(703) 883-1700**

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

**Christopher Clemente
Chief Executive Officer
Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 510
Reston, Virginia 20190
(703) 883-1700**

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

Copies to:

**Stephen A. Riddick, Esq.
Jason T. Simon, Esq.
Greenberg Traurig, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100**

**Randall S. Parks, Esq.
Gerald P. McCartin, Esq.
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 788-8200**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

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

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

If 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.

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

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(3)
Class A common stock, par value \$.01 per share	4,140,000	\$16	\$66,240,000	\$8,393

- (1) Includes 540,000 shares that the underwriters have the option to purchase from the registrant to cover over-allotments, if any.
(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) promulgated under the Securities Act of 1933.
(3) The registrant has previously paid \$9,502.50.

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

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The expenses (other than underwriting discounts and commissions and the underwriters' non-accountable expense allowance) payable in connection with the sale of the Class A common stock offered in this registration statement are as follows:

Securities and Exchange Commission registration fee	\$ 9,503
NASD filing fee	8,000
Nasdaq entry and application fee*	105,000
Printing and engraving expenses	310,000
Legal fees and expenses	1,120,000
Accounting fees and expenses	791,000
Blue sky fees and expenses (including legal fees)	5,000
Transfer agent and registrar fees and expenses	3,500
Miscellaneous	5,000
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Total	\$ 2,357,003
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* To be filed by amendment

All expenses are estimated except for the SEC registration fee and the NASD filing fee.

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the "DGCL") provides, in effect, that any person made a party to any action by reason of the fact that he is or was a director, officer, employee or agent of Comstock may and, in certain cases, must be indemnified by Comstock against, in the case of a non-derivative action, judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys' fees) incurred by him as a result of such action, and in the case of a derivative action, against expenses (including attorneys' fees), if in either type of action he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of Comstock. This indemnification does not apply, (i) in a derivative action, to matters as to which it is adjudged that the director, officer, employee or agent is liable to Comstock, unless upon court order it is determined that, despite such adjudication of liability, but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for expenses, and, (ii) in a non-derivative action, to any criminal proceeding in which such person had no reasonable cause to believe his conduct was unlawful.

Article VI of Comstock's certificate of incorporation provides that no director of Comstock shall be liable to Comstock or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL.

Article VII of Comstock's certificate of incorporation also provides that Comstock shall indemnify to the fullest extent permitted by Delaware law any and all of its directors and officers, or former directors and officers, or any person who may have served at Comstock's request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

Reference is made to Section 8(b) of the underwriting agreement to be filed as Exhibit 1.1 hereto, pursuant to which the underwriters have agreed to indemnify officers and directors of Comstock against certain liabilities under the Securities Act.

Comstock has entered into indemnification agreements with each director and certain officers of Comstock, a form of which is filed as Exhibit 10.10 to this registration statement. Pursuant to such agreements, Comstock will be obligated, to the extent permitted by applicable law, to indemnify such directors and officers against all expenses, judgments, fines and penalties incurred in connection with the defense or settlement of any actions brought against them by reason of the fact that they were directors or officers of Comstock or assumed certain responsibilities at the direction of Comstock. Comstock also intends to purchase directors and officers liability insurance in order to limit its exposure to liability for indemnification of directors and officers.

Item 15. Recent Sales of Unregistered Securities

Certain Sales of Securities

Except as set forth below, in the three years preceding the filing of this registration statement, the registrant has not issued any securities that were not registered under the Securities Act.

In May 2004, upon the incorporation of the registrant, the registrant issued an aggregate of 10,000 shares of common stock to Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub in exchange for an aggregate of \$100.

The foregoing sales of securities were made in reliance upon the exemption from the registration provisions of the Securities Act provided for by Section 4(2) thereof for transactions not involving a public offering. All of the foregoing securities are deemed restricted securities for the purposes of the Securities Act.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

- 1.1 Form of Underwriting Agreement.
- 3.1** Certificate of Incorporation, as amended.
- 3.2 Form of Amended and Restated Certificate of Incorporation (to be filed with the Delaware Secretary of State immediately prior to the closing of the offering covered by this registration statement).
- 3.3** Bylaws.
- 3.4 Form of Amended and Restated Bylaws (to be adopted immediately prior to the closing of the offering covered by this registration statement).
- 4.1* Specimen Class A common stock certificate.
- 5.1 Opinion of Greenberg Traurig, LLP.
- 10.1** Lease Agreement, dated as of April 30, 2002, with Comstock Partners, L.C.
- 10.2** Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
- 10.3 Lease Agreement, dated as of October 1, 2004, with Comstock Asset Management, L.C.
- 10.4** Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
- 10.5 Partial Assignment of Note, dated December 15, 2003, with Kasprowicz Family, LLC.

- 10.6 Promissory Note, dated April 30, 2004, with Kasproicz Family, LLC.
- 10.7** Disbursement and Construction Loan Agreement and Disbursement and Development Loan Agreement, each dated October 10, 2002 and as amended, with Branch Banking and Trust Company of Virginia.
- 10.8** Disbursement and Construction Loan Agreement and Acquisition, Disbursement and Development Loan Agreement, each dated July 25, 2003, with Branch Banking and Trust Company of Virginia.
- 10.9** Purchase Money Deed of Trust and Security Agreement, dated December 15, 2003, with Crescent Potomac Yard Development, LLC.
- 10.10 Form of Indemnification Agreement.
- 10.11 Form of Promissory Note to be issued to each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub by each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
- 10.12 2004 Long-Term Incentive Compensation Plan.
- 10.13 Form of Stock Option Agreement under the 2004 Long-Term Incentive Compensation Plan.
- 10.14 Employee Stock Purchase Plan.
- 10.15** Purchase and Sale Agreement, dated as of April 25, 2003, as amended, with Crescent Potomac Yard Development, LLC.
- 10.16 Form of Tax Indemnification Agreement to be entered into by each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub with each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
- 10.17 Employment Agreement with Christopher Clemente, dated December , 2004.
- 10.18 Employment Agreement with Gregory Benson, dated December , 2004.
- 10.19 Employment Agreement with Bruce Labovitz, dated December , 2004.
- 10.20 Confidentiality and Non-Competition Agreement with Christopher Clemente, dated December , 2004.
- 10.21 Confidentiality and Non-Competition Agreement with Gregory Benson, dated December , 2004.
- 10.22 Confidentiality and Non-Competition Agreement with Bruce Labovitz, dated December , 2004.
- 10.23 Trademark License Agreement, dated December , 2004.
- 21.1 List of subsidiaries.
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 23.2 Consent of Greenberg Traurig, LLP (included in Exhibit 5.1).
- 24.1** Power of Attorney (previously included in the signature page to this registration statement).
- 99.1** Consent of A. Clayton Perfall.
- 99.2** Consent of Norman D. Chirite.
- 99.3** Consent of David M. Guernsey.

99.4** Consent of James A. MacCutcheon.

99.5** Consent of Gary Martin.

* To be filed by amendment.

** Previously filed.

(b) Financial Statement Schedules

All information for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission is either included in the financial statements or is not required under the related instructions or are inapplicable, and therefore have been omitted.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the registrant pursuant to provisions described in Item 14 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 5 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Reston, Virginia on December 7, 2004.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chief Executive Officer

Know All Men By These Presents, that each person whose signature appears below constitutes and appoints Christopher Clemente and Bruce Labovitz and each of them acting alone, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and revocation, for him or her and in his or her name, place and stead, in any and all capacities, to sign (i) any and all amendments (including post-effective amendments) to this registration statement and to file the same with all exhibits thereto, and other documents in connection therewith and (ii) any registration statement and any and all amendments thereto, relating to the offer covered hereby filed pursuant to Rule 462(b) under the Securities Act of 1933, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ CHRISTOPHER CLEMENTE</u> Christopher Clemente	Chief Executive Officer and Director (Principal Executive Officer)	December 7, 2004
<u>/s/ BRUCE LABOVITZ</u> Bruce Labovitz	Chief Financial Officer (Principal Financial Officer)	December 7, 2004
<u>/s/ JASON PARIKH</u> Jason Parikh	Chief Accounting Officer (Principal Accounting Officer)	December 7, 2004
<u>/s/ GREGORY BENSON</u> Gregory Benson	President and Chief Operating Officer, Director	December 7, 2004

EXHIBIT INDEX

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** Previously filed.

QuickLinks

[PART II INFORMATION NOT REQUIRED IN PROSPECTUS](#)

[SIGNATURES](#)

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COMSTOCK HOMEBUILDING COMPANIES, INC.

3,600,000 Shares of Class A Common Stock,
\$0.01 par value per share

UNDERWRITING AGREEMENT

BB&T CAPITAL MARKETS, A Division of Scott & Stringfellow, Inc.
ROBERT W. BAIRD & CO., and
FERRIS, BAKER WATTS, INCORPORATED
As Representatives of the Several Underwriters

c/o BB&T Capital Markets, a Division of Scott & Stringfellow, Inc.
900 East Main Street
Richmond, Virginia 23219

December , 2004

Ladies and Gentlemen:

Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell to the underwriters, acting severally and not jointly, named in *Schedule I* hereto (the "Underwriters") an aggregate of 3,600,000 shares (the "Firm Shares") of Class A common stock, \$0.01 par value per share ("Common Stock"), of the Company and, at the election of the Underwriters pursuant to Section 2 hereof and acting through the Representatives, up to 540,000 additional shares of Common Stock (the "Optional Shares"). The Firm Shares and the Optional Shares are herein collectively called the "Shares." BB&T Capital Markets, A Division of Scott & Stringfellow, Inc. ("BBTCM"), Robert W. Baird & Co. and Ferris, Baker Watts, Incorporated have agreed to act as representatives of the several Underwriters (in such capacity, the "Representatives") in connection with the offering and sale of the Shares.

As part of the offering contemplated by this Agreement and at the request of the Company, the Underwriters have agreed to reserve out of the Firm Shares purchased by them under this Agreement, up to 400,000 shares of Common Stock, for sale to directors, officers, other employees, consultants, business associates and related persons (the "Participants") of the Company and its Subsidiaries (as defined herein) upon the terms and conditions set forth in the Prospectus and in accordance with all applicable laws, rules and regulations, including the rules, regulations and interpretations of the National Association of Securities Dealers, Inc. ("NASD") under a directed share program (the "Directed Share Program"). BBTCM will administer the Directed Share Program. The Firm Shares to be sold pursuant to the Directed Share Program will be sold at the public offering price. Any Directed Shares not subscribed for (or orally confirmed at the discretion of the Representatives) by the end of the business day after the date of the Prospectus may be offered to the public by the Underwriters in the same manner as all other Firm Shares. Under no circumstances will the Representatives or any Underwriter be liable to the Company or to any Participant for any action taken or omitted to be taken in good faith in connection with the Directed Share Program.

1. Representations and Warranties

(a) The Company represents and warrants to, and agrees with, each of the Underwriters that:

(i) A registration statement on Form S-1 including the financial statements, exhibits and schedules thereto (File No. 333-118193) (the "Initial Registration Statement") under the

Securities Act of 1933, as amended and including the rules and regulations thereunder (the "Act"), and as a part thereof a preliminary prospectus, in respect of the Shares has been prepared by the Company and filed with the United States Securities and Exchange Commission (the "Commission"); and such registration statement, as amended, has been declared effective by the Commission in such form; the Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information; other than a registration statement, if any, increasing the size of the offering (a "Rule 462(b) Registration Statement"), filed pursuant to Rule 462(b) under the Act, which would become effective upon filing, no other document with respect to the Initial Registration Statement has heretofore been filed with the Commission other than in accordance with Section 5(a) of this Agreement; and no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or threatened by the Commission (any preliminary prospectus included in the Initial Registration Statement or filed with the Commission pursuant to Rule 424(a) of the rules and regulations of the Commission under the Act is hereinafter called a "Preliminary Prospectus;" the various parts of the Initial Registration Statement and the Rule 462(b) Registration Statement, if any, including all exhibits thereto and including the information contained in the form of final prospectus filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof and deemed by virtue of Rule 430A under the Act to be part of the Initial Registration Statement at the time it was declared effective, each as amended at the time such part of the Initial Registration Statement became effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, are hereinafter collectively called the "Registration Statement," and such final prospectus, in the form first filed pursuant to Rule 424(b) under the Act, is hereinafter called the "Prospectus");

(ii) No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Act, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by the Underwriters through the Representatives, expressly for use therein, it being understood and agreed that the only such information furnished by the Underwriters consists of the statements set forth in the sentences of the paragraphs under the caption "Underwriting" (the "Underwriter Information");

(iii) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement or the Prospectus will conform, in all material respects to the requirements of the Act, including with respect to documents that are required to be described in the Registration Statement and the Prospectus or filed as an exhibit to the Registration Statement, and do not and will not, as of the applicable effective date as to the Registration Statement and any amendment thereto and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information; the Preliminary Prospectus was, and the Prospectus delivered to the Underwriters for use in connection with this offering will be, identical to the versions of the Preliminary

Prospectus and Prospectus transmitted to the Commission for filing via the Electronic Data Gathering Analysis and Retrieval System, except to the extent permitted by Regulation S-T;

(iv) Neither the Company nor any of its subsidiaries (as defined in Rule 405 of the Act), a complete and correct list of which is attached as *Schedule II* (the "Subsidiaries"), has sustained since the date of the latest audited financial statements included in the Prospectus any material loss or interference with its assets or business from fire, explosion, flood, natural disaster, act of terrorism or other calamity, whether or not covered by insurance, or from any labor dispute or court, arbitrator or governmental action, ruling, order or decree, except as set forth and contemplated in the Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been (a) any change in the outstanding capital stock or debt of the Company or any of the Subsidiaries (other than short term debt incurred in the ordinary course of business consistent with past practices), (b) any change, event or development of any kind that has or would prospectively result in a material adverse change in, or had or would prospectively result in a material adverse effect on, the affairs, assets, business, prospects, management, financial position, condition, stockholders' equity or results of operations of the Company and the Subsidiaries taken as a whole or on the ability of the Company to comply with the terms and conditions set forth herein ("Material Adverse Effect"), (c) any transaction outside of the ordinary course of business that is material to the Company and its Subsidiaries that has been entered into or (d) any material obligation, contingent or otherwise, incurred by the Company or any Subsidiary outside of the ordinary course of business, in each case except as set forth and contemplated in the Prospectus;

(v) This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and by general equitable principles, and except to the extent that the indemnification and contribution provisions of Section 8 hereof may be limited by federal or state securities laws and public policy considerations in respect thereof;

(vi) The Company and each of the Subsidiaries have (a) good and marketable title in fee simple to all real property, (b) good and marketable title to all real property-related interests and (c) have good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries; neither the Company nor any of its Subsidiaries owns a material interest in any capital stock of or other equity interest in any corporation, limited liability company, partnership, joint venture, trust or other entity other than as described in the Prospectus; and any real property and buildings held under lease by the Company or any of the Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or such Subsidiaries; the Company or a Subsidiary has obtained (i) an owner's title insurance policy, from a title insurance company licensed to issue such policy, on any real property owned in fee simple by the Company or any Subsidiary that is material to the Company or any Subsidiary, the title insurance insures the Company's or the Subsidiary's fee simple interest in such real property, the policy or policies include only commercially reasonable exceptions, and maintain coverages in amounts at least equal to amounts that are generally deemed in the Company's industry to be commercially reasonable in the markets where the Company's or Subsidiary's properties are located, or (ii) a lender's

title insurance policy insuring the lien of its mortgage securing the real property with coverage equal to the maximum aggregate principal amount of any indebtedness held by the Company or a Subsidiary and secured by the real property;

(vii) To the Company's knowledge, all improved real property owned or leased by the Company or the Subsidiaries is free of material structural defects and all completed home and building systems contained therein are in good working order in all material respects; the Company and the Subsidiaries have created adequate warranty reserves to effect repairs, maintenance and capital expenditures on all improved real property for which the Company or the Subsidiaries may be liable; to the knowledge of the Company and the Subsidiaries, water, storm water, sanitary sewer, electricity, cable and telephone service are all available at the property lines of such real property over duly dedicated streets or perpetual easements of record benefiting such property; except as described in the Prospectus, to the knowledge of the Company and its Subsidiaries, there is no pending or threatened special assessment, tax reduction proceeding or other action of a Governmental Agency that could reasonably be expected to materially increase the real property taxes or assessment of any real property owned by the Company or its Subsidiaries (or any real property that the Company or its Subsidiaries have an option to acquire) or otherwise result in a Material Adverse Effect;

(viii) The Company and each of its Subsidiaries have been duly incorporated or organized and are validly existing as corporations or limited liability companies in good standing under the laws of their respective jurisdictions of incorporation or organization, with power and authority (corporate and other) to own or lease their respective properties and conduct their respective businesses as described in the Prospectus, and each has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except where the failure to be so qualified or in good standing could not result in a Material Adverse Effect;

(ix) The minutes books of the Company and its Subsidiaries have been made available to the Underwriters and contain a complete summary of all meetings and other actions of the directors and shareholders of the Company and its Subsidiaries in all material respects since the time of their incorporation or organization, and reflect all transactions referred to in such minutes accurately in all respects;

(x) The Company has an authorized capitalization as set forth in the Prospectus under the caption "Capitalization" and otherwise; all of the issued and outstanding shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and nonassessable and conform to the description of the capital stock of the Company contained in the Prospectus under the caption "Capitalization" or otherwise; except as described in the Prospectus, there are no preemptive or other similar rights to subscribe for or to purchase any securities of the Company or securities that are convertible or exchangeable into securities of the Company; there are no warrants or options or similar rights to purchase any securities of the Company or securities that are convertible or exchangeable into securities of the Company and neither the filing of the Registration Statement nor the offering or sale of the Shares as contemplated by this Agreement gives rise to any rights for or relating to the registration of any securities of the Company or securities that are convertible or exchangeable into securities of the Company with respect to such filing, offering or sale; the Company has not sold or issued any securities since its formation and such issuance was exempt from registration in accordance with Section 4(2) of the Act; except as (i) described in the Prospectus or (ii) for S-corporation distributions made in the ordinary course by certain Subsidiaries of the Company, since the date of the latest audited financial statements included in the Prospectus, there has been no dividend or distribution of any kind declared, paid or made by the

Company or its Subsidiaries (except as paid or made to the Company or other Subsidiaries) on any class of its capital stock; the sole shareholders of the Company immediately prior to the consummation of the transactions contemplated by this Agreement will be Christopher Clemente, Gregory V. Benson, Lawrence Golub and James Keena;

(xi) All of the issued and outstanding shares of capital stock of each of the Subsidiaries have been duly and validly authorized and issued and are fully paid and nonassessable; and except as described in the Prospectus, all outstanding shares of capital stock of each of the Subsidiaries are owned directly by the Company free and clear of all liens, encumbrances, security interests, equities or claims;

(xii) The Shares have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued and fully paid and nonassessable and will conform to the description of the Shares contained in the Prospectus and will be evidenced by certificates that are in valid and sufficient form;

(xiii) The issue and sale of the Shares by the Company and the compliance by the Company with all of the provisions of this Agreement and the Merger Agreements (as hereinafter defined) and the consummation by the Company of the other transactions herein and therein contemplated will not (i) conflict with or result in any violation of the provisions of the Certificate of Incorporation or the Bylaws of the Company or the articles of incorporation or limited liability company operating agreements, as applicable, of any of the Subsidiaries or (ii) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is bound or to which any of the property or assets of the Company or any of the Subsidiaries is subject, (iii) result in the creation or imposition of any material lien, charge, claim or encumbrance upon any material property or assets of the Company or its Subsidiaries, or (iv) violate any statute or any order, rule or regulation of any court or tribunal or federal, state, local or foreign governmental or regulatory agency or body or self-regulatory authority or legislative body having jurisdiction over the Company or any of the Subsidiaries or any of its or their properties or assets (each, a "Governmental Agency"); and no concession, permit, license, consent, exemption, franchise, authorization, order, registration, qualification or other approval (each, an "Authorization") of or with any Governmental Agency is required for the issuance and sale of the Shares or the consummation by the Company of the transactions contemplated by this Agreement and the Merger Agreements, except such as have been obtained under the Act, listing of the Shares on the Nasdaq National Market of The Nasdaq Stock Market ("Nasdaq"), approval of the NASD, filing of certificates of merger with the State Corporation Commission of the Commonwealth of Virginia and the Delaware Secretary of State, and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters;

(xiv) Neither the Company nor any of the Subsidiaries (i) is in violation of its organizational documents or (ii) except as would not reasonably be expected to result in a Material Adverse Effect, is in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties or assets may be bound, nor has any such agreement or instrument been declared to be in default by any party thereto and such agreements and instruments are legal, valid and binding obligations of the parties thereto; except as may be required by applicable law or as disclosed in the Prospectus, the Subsidiaries are not prohibited or restricted from

paying dividends to the Company, or from making any other distribution with respect to any of their capital stock or interests, or from repaying the Company for any loans or advances to them from the Company (if any), or from transferring their property or assets to the Company;

(xv) There are no legal or governmental proceedings pending to which the Company or any of the Subsidiaries is a party or of which any property or asset of the Company or any of the Subsidiaries is the subject which, if determined adversely to the Company or any of the Subsidiaries, could, currently or prospectively, individually or in the aggregate, have a Material Adverse Effect, and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by any Governmental Agency or by others;

(xvi) The Company is not and, after giving effect to the offering and sale of the Shares, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (the "Investment Company Act");

(xvii) The Company and its Subsidiaries, and their respective directors, officers and affiliates have not taken and, during the period of the distribution of the Shares by the Underwriters (within the meaning of the Act) (the "Prospectus Delivery Period") will not take, directly or indirectly, any action which is designed to or which has constituted or which might reasonably be expected to cause or result in, under the Securities Exchange Act of 1934, as amended and including the rules and regulations thereunder (the "Exchange Act"), or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares;

(xviii) PricewaterhouseCoopers LLP, who have certified certain consolidated financial statements of the Company and the Subsidiaries, are independent public accountants as required by the Act and the Exchange Act, and were so at all times during the period covered by its report; to the knowledge of the Company, PricewaterhouseCoopers LLP is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002, as amended and including the rules and regulations thereunder (the "Sarbanes-Oxley Act");

(xix) The financial statements of the Company and the combined consolidated financial statements or the consolidated financial statements (as applicable), of the Subsidiaries, together with related notes, as set forth in the Registration Statement present fairly the consolidated financial position and the results of operations of the Company and the Subsidiaries at the indicated dates and for the indicated periods; such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied throughout the periods presented except as noted in the notes thereon, and all adjustments necessary for a fair presentation of results for such periods have been made; and the selected financial information included in the Prospectus presents fairly the information shown therein and has been compiled on a basis consistent with the financial statements presented therein; the pro forma financial statements included in the Registration Statement and Prospectus, including the notes thereto, present fairly, on the bases stated therein, the information shown therein at the indicated dates and for the indicated periods and comply as to form in all material respects with the requirements of the Act, including Regulation S-X thereunder; the pro forma financial statements, including the assumptions used in the preparation thereof as well as the presentation thereof, provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions and the pro forma columns therein reflect the proper application of those

adjustments to the corresponding historical financial statement amounts; no other pro forma financial information is required to be included in the Registration Statement;

(xx) The Company maintains a system of internal accounting controls applicable to the Company and its Subsidiaries sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(xxi) The Company has established and maintains and evaluates "disclosure controls and procedures" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) and "internal control over financial reporting" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its Subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's auditors and the Board of Directors of the Company (or its Audit Committee, if constituted on the date hereof) have been advised of: (i) any significant deficiencies in the design or operation of internal controls that could adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls; any material weaknesses or significant deficiencies in internal controls have been identified for the Company's auditors; since the date of the most recent evaluation of such disclosure controls and procedures, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses; the Company has taken all actions to ensure that the Company and its Subsidiaries and any of the officers and directors of the Company and its Subsidiaries, in their capacities as such, are in compliance (assuming compliance would be required on the date hereof) in all material respects with the provisions of the Sarbanes-Oxley Act; the Company has taken all necessary actions to ensure that the Company and its Subsidiaries and any of the officers and directors of the Company and its Subsidiaries, in their capacities as such, will, following effectiveness of the Registration Statement, be in compliance in all material respects with the provisions of the Sarbanes-Oxley Act; except as otherwise disclosed in the Prospectus, there are no outstanding loans, advances or guarantees of indebtedness of any kind by the Company or its Subsidiaries to or for the benefit of any of the officers, directors, affiliates or representatives of the Company or its Subsidiaries, or any of the members of the families of any of them; and except as otherwise disclosed in the Prospectus, the Company and its Subsidiaries have not engaged in any off-balance sheet arrangements (within the meaning of Rule 303 of Regulation S-K under the Act);

(xxii) Except as set forth in each Registration Statement and the Prospectus, there are no agreements, claims, payments, issuances, arrangements or understandings, whether oral or written, for services in the nature of finder's, consulting or origination fees with respect to the sale of the Shares or any other arrangements, agreements, understandings, payments or issuances with respect to the Company or any of its officers, directors, stockholders, partners, employees, subsidiaries or affiliates that may affect the Underwriters' compensation as determined by the NASD;

(xxiii) Except as would not reasonably be expected to result in a Material Adverse Effect, the Company and the Subsidiaries hold and are operating in compliance with all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders ("Licenses") of any Governmental Agency required for the conduct of their respective businesses as presently being conducted, and all Licenses are valid and in full force and effect and the Company has not received any notice of proceedings relating to the revocation or modification of any such Licenses and knows of no basis for any such revocation or modification; none of the Licenses held by the Company contains any material restriction that is not adequately disclosed in the Prospectus; the Company and each of the Subsidiaries are in compliance, in all material respects, with all laws, regulations, rulings, orders, judgments and decrees applicable to them and the Company has not received any notice to the contrary;

(xxiv) The Shares have been registered pursuant to Section 12(b) of the Exchange Act and have been approved for listing, subject to notice of issuance, on the Nasdaq National Market;

(xxv) The Company and each of the Subsidiaries are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company or any of the Subsidiaries would have any liability; the Company and each of the Subsidiaries have not incurred and do not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder ("Code"); each "pension plan" for which the Company and each of its Subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; the descriptions of the Company's equity incentive plans and other share plans or arrangements, if any, and the options or other rights granted or available for grant thereunder set forth in the Prospectus accurately and fairly present the information required to be disclosed with respect to such plans, arrangements, options and rights;

(xxvi) No labor dispute with the employees of the Company or any Subsidiary exists or, to the knowledge of the Company, is threatened or imminent that could have a Material Adverse Effect;

(xxvii) The Company and each of the Subsidiaries have the right to use all trademarks, trade names, trade secrets, servicemarks, inventions, patent rights, mask works, copyrights, licenses, software code, audiovisual works, formats, algorithms and underlying data required to operate its business as presently being conducted and proposed to be conducted as described in the Prospectus, and the Company and each of the Subsidiaries have all required Authorizations that are necessary for fulfillment of their respective obligations or the conduct of their respective businesses as now conducted or proposed to be conducted as described in the Prospectus; and neither the Company nor any of the Subsidiaries is infringing any trademark, trade name, patent, mask works, copyrights, licenses, trade secret, servicemarks or other similar rights of others, and there is no claim being made against the Company or any of the Subsidiaries regarding trademark, trade names, patent, mask work, copyright, license, trade secret, service marks or other infringement or assertion of intellectual property rights which could have a Material Adverse Effect; the Company has confidentiality and non-competition agreements in place with certain of its executive officers for the protection of the Company's property, including confidential information and trademarks, sufficient to enable the Company and Subsidiary to fulfill their contractual obligations and to conduct their

respective businesses as now conducted or proposed to be conducted as described in the Prospectus;

(xxviii) The Company and each of the Subsidiaries has filed all federal, state and foreign income, franchise and excise tax returns which have been required to be filed (or have received an extension with respect thereto), and have paid or made adequate reserves for, all taxes indicated by said returns and all assessments received by them to the extent that such taxes have become due and are not being contested in good faith; to the best knowledge of the Company there is no tax deficiency that has been or might be asserted against the Company that could have a Material Adverse Effect;

(xxix) Except as otherwise disclosed in the Prospectus, (i) neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any other owners of the properties at any time, or any other party has at any time, used, handled, stored, treated, transported, manufactured, spilled, leaked, released or discharged, dumped, transferred or otherwise disposed of or dealt with, Hazardous Materials (as defined below) on, in, under or affecting any real property currently leased or owned or by any means controlled by the Company or any of the Subsidiaries, or to be leased or owned or by any means to be controlled by the Company or any of the Subsidiaries, including any real property that the Company has an option to acquire (collectively, the "Real Property"), except in connection with the ordinary use in compliance with all applicable laws, including all applicable Environmental Statutes (as hereinafter defined); (ii) the Company does not intend to use the Real Property or any subsequently acquired properties for the purpose of using, handling, storing, treating, transporting, manufacturing, spilling, leaking, discharging, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials; (iii) neither the Company, nor any of the Subsidiaries has received any notice of, or has any knowledge of, any occurrence or circumstance which, with notice or passage of time or both, could give rise to a claim under or pursuant to any federal, state or local environmental statute or regulation or under common law, pertaining to Hazardous Materials on or originating from any of the Real Property or any assets described in the Prospectus (or the most recent Preliminary Prospectus) or any other real property owned or occupied by any such party or arising out of the conduct of any such party, including without limitation a claim under or pursuant to any Environmental Statute; (iv) the Real Property is not included or proposed for inclusion on the National Priorities List issued pursuant to CERCLA (as defined below) by the United States Environmental Protection Agency (the "EPA") or, to the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Statute or issued by any other Governmental Agency; and in the operation of the Company's businesses, the Company acquires before acquisition of any material parcel of Real Property an environmental assessment of the Real Property,

As used herein, "Hazardous Material" shall include, without limitation, any flammable explosive, radioactive material, hazardous substance, hazardous material, hazardous waste, toxic substance, asbestos or related material, as defined by any federal, state or local environmental law, ordinance, rule or regulation including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601-9675 ("CERCLA"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801-1819, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901-6992K, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001-11050, the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136-136y, the Clean Air Act, 42 U.S.C. Sections 7401-7642, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. Sections 1251-1387, the Safe Drinking

Water Act, 42 U.S.C. Sections 300f-300j-26, and the Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, as any of the above statutes may be amended from time to time, and in the regulations promulgated pursuant to each of the foregoing (individually, an "Environmental Statute") or by any Governmental Agency;

(xxx) There are no costs or liabilities associated with the Real Property pursuant to any Environmental Statute (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with any Environmental Statute or any Authorization, any related constraints on operating activities and any potential liabilities to third parties) which could, individually or in the aggregate, have a Material Adverse Effect; and none of the entities that prepared appraisals of any parcel of Real Property, if any, nor the entities that prepared Phase I or other environmental assessments with respect to the Real Property, if any, was employed for such purpose on a contingent basis or has any substantial interest in the Company or any of the Subsidiaries or will be permitted to participate in the Directed Share Program, and none of their directors, officers or employees is connected with the Company or any of the Subsidiaries as a promoter, selling agent, officer, director or employee;

(xxxi) Neither the Company nor any Subsidiary knows of any violation of any municipal, state or federal law, rule or regulation concerning any real property owned in fee simple, owned through a limited liability company, joint venture or other partnership or entity or leased by the Company or the Subsidiaries as of the date of this Agreement (collectively, for purposes of this subsection only, the "Properties") or any part thereof which could reasonably be expected to have a Material Adverse Effect; the Company has fairly summarized in the Prospectus all material options and rights of first refusal to purchase all or part of any material parcel of Property or any interest therein; each of the Properties complies with all applicable zoning laws, ordinances, regulations and deed restrictions or other covenants in all material respects or, if and to the extent there is a failure to comply, such failure does not materially impair the value of any of the Properties and will not result in a forfeiture or reversion of title; neither the Company nor any Subsidiary has received from any Governmental Agency any written notice of any condemnation of or zoning change affecting any material parcel of Property or any part thereof, and neither the Company nor the Subsidiaries knows of any such condemnation or zoning change which is threatened and which if consummated could reasonably be expected to have a Material Adverse Effect; all liens, charges, encumbrances, claims, or restrictions on or affecting the properties and assets (including the Properties) of the Company or any of the Subsidiaries that are required to be described in the Prospectus (or the most recent Preliminary Prospectus) are disclosed therein;

(xxxii) Neither the Company nor its Subsidiaries, nor any officer or director purporting to act on behalf of the Company or its Subsidiaries has at any time (i) made any contributions to any candidate for political office, or failed to disclose fully any such contributions, in violation of applicable law, (ii) made any payment to any local, state, federal or foreign governmental officer or official, or other person charged with similar public or quasi-public duties, other than payment required or allowed by applicable law, or (iii) engaged in any transaction, maintained any bank account or used any corporate funds except for transaction, bank accounts and funds which have been and are reflected in the normally maintained books and records of the Company and its Subsidiaries;

(xxxiii) To the best of the Company's knowledge, the industry, statistical and market related data included in the Registration Statement and Prospectus is based on or derived from the most current sources available and the Company and its Subsidiaries believe such sources are reliable and such data is accurate and complete in all material respects;

(xxxiv) The Company and its Subsidiaries have not relied upon the Underwriters, or legal counsel for the Underwriter, for any legal, tax or accounting advice in connection with the offering and sale of the Shares;

(xxxv) Except as disclosed to the Representatives in writing, to the Company's knowledge, there are no affiliations or associations between any member of the NASD and any of the Company's officers, directors or 5% or greater securityholders (or their affiliates);

(xxxvi) The Company has delivered to the Representatives three complete manually signed copies of the Registration Statement and of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits), the Preliminary Prospectus and the Prospectus, each as amended or supplemented, in such quantities and at such places as the Representatives have reasonably requested for each of the Underwriters;

(xxxvii) The Company has not distributed and will not distribute, prior to the later of the last Time of Delivery (as defined in Section 4 hereof) or the completion of the Underwriters' distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than a Preliminary Prospectus, the Prospectus and the Registration Statement;

(xxxviii) Neither the Company nor any of its affiliates (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act, or (ii) directly, or indirectly through one or more intermediaries, controls or has any other association with (within the meaning of Article I of the Bylaws of the NASD) any member firm of the NASD;

(xxxix) Any certificate signed by any officer of the Company or any Subsidiary delivered to the Representatives or to legal counsel for the Underwriters pursuant to or in connection with this Agreement shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby;

(xl) The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; there are no claims by the Company or any of the Subsidiaries under any such policies or instruments as to which any insurance company is denying liability or defending under a reservation of rights clause except as previously disclosed in writing to the Underwriters; neither the Company nor its Subsidiaries have any reason to believe that they will not be able to renew existing insurance policies in all material respects as and when such coverage expires or be able to obtain similar coverage from an equally reputable insurer on substantially similar terms;

(xli) Each of the merger agreements, dated as of December , 2004 (the "First Merger Agreements"), between Comstock Service Corp., Inc. ("Comstock Service"), Sunset Investment Corp. Inc. ("Sunset"), and Comstock Homes, Inc. ("Comstock Homes"), respectively, and Comstock Holding Company, Inc. ("Comstock Holding"), as well as the merger agreement, dated as of December , 2004 (the "Second Merger Agreement", and together with the First Merger Agreements, the "Merger Agreements") between Comstock Holding and the Company, have been duly authorized by all necessary corporate and stockholder action and have been duly executed and delivered by the respective parties thereto. Each Merger Agreement constitutes the legal, valid and binding obligation of each party thereto and is enforceable against each party thereto in accordance with its terms except as may be limited by (a) bankruptcy, insolvency, moratorium, fraudulent conveyance or similar laws affecting the rights of creditors and (b) principles of equity, whether considered at law or in equity.

(xlii) No consent, approval, authorization or order of, or qualification with, any governmental body or agency, other than those obtained, is required in connection with the offering of the Directed Shares in any jurisdiction where the Directed Shares are being offered; the Company has not offered, or caused the Representatives to offer, Shares to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company, (ii) a trade journalist or publication to write or publish favorable information about the Company or its products or (iii) any other person or entity.

The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered by counsel to the Underwriters in connection herewith, counsel to the Underwriters will rely upon the accuracy and truthfulness of the foregoing representations and warranties and the Company hereby consents to such reliance.

2. Purchase and Sale

Subject to the terms and conditions herein set forth, (a) the Company agrees to sell to each of the Underwriters, and on the basis of the representations and warranties of the Company contained herein, each of the Underwriters agrees severally and not jointly, to purchase from the Company, at a purchase price per share of \$ _____, the number of Firm Shares to be purchased by such Underwriter as set forth opposite the name of such Underwriter in *Schedule I* hereto and (b) in the event and to the extent that the Underwriters shall exercise the election, acting through the Representatives, to purchase Optional Shares as provided below, the Company agrees to sell to each of the Underwriters, and on the basis of the representations and warranties of the Company contained herein, each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the purchase price per share set forth in clause (a) of this Section 2, that portion of the number of Optional Shares as to which such election shall have been exercised (to be adjusted by you so as to eliminate fractional securities) determined by multiplying such number of Optional Shares by a fraction, the numerator of which is the maximum number of Optional Shares that such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in *Schedule I* hereto, and the denominator of which is the maximum number of the Optional Shares that all of the Underwriters are entitled to purchase hereunder.

The Company hereby grants to the Underwriters the right to purchase, at their election, the Optional Shares, at the purchase price per share set forth in the paragraph above, for the sole purpose of covering sales of Shares in excess of the number of Firm Shares. Any such election to purchase Optional Shares may be exercised, in whole or in part, only by written notice from you to the Company, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate number of Optional Shares to be purchased and the date on which such Optional Shares are to be delivered, as determined by you but in no event earlier than the First Time of Delivery (as defined in Section 4 hereof) or, unless you, otherwise agree in writing, earlier than two or later than 10 business days after the date of such notice.

3. Offering by the Underwriters

Upon the authorization by the Representatives of the release of the Firm Shares, the several Underwriters propose to offer the Firm Shares for sale upon the terms and conditions set forth in the Prospectus.

4. Delivery and Payment

(a) Certificates in definitive form for the Shares to be purchased by each Underwriter hereunder, and in such authorized denominations and registered in such names as you may request

upon at least 48 hours' prior notice to the Company shall be delivered by or on behalf of the Company to the Representatives, through the facilities of the Depository Trust Company ("DTC") for the account of each Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the accounts specified by the Company to you, at least 48 hours in advance. The Company shall cause the certificates representing the Shares to be made available for checking and packaging at least 24 hours prior to the Time of Delivery (as defined below) with respect thereto at the office of DTC or its designated custodian (the "Designated Office"). The time and date of such delivery and payment shall be, with respect to the Firm Shares, 9:30 a.m., Richmond, Virginia time, on [Date], 2004, or such other time and date as you and the Company may agree upon in writing, and, with respect to the Optional Shares, 9:30 a.m., Richmond, Virginia time, on the date specified by you, in the written notice given by you of the Underwriters' election to purchase such Optional Shares, or at such other time and date as you and the Company may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the "First Time of Delivery," such time and date for delivery of the Optional Shares, if not the First Time of Delivery, is herein called a "Second Time of Delivery," and each such time and date for delivery is herein called a "Time of Delivery."

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 7 hereof, including the cross receipt for the Shares and any additional documents requested by the Underwriters pursuant to Section 7(n) hereof, will be delivered at the offices of Hunton & Williams LLP, 951 East Byrd Street, Richmond, Virginia 23219 (the "Closing Location"), and the Shares will be delivered at the Designated Office, all at such Time of Delivery. A meeting will be held at the Closing Location at 10:00 a.m., Richmond, Virginia time, on the business day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto.

5. Agreements of the Company

The Company agrees with each of the Underwriters:

(a) To prepare the Prospectus in a form reasonably approved by you and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Act; to make no amendment or supplement to the Registration Statement or Prospectus prior to any Time of Delivery that shall be disapproved by you promptly after reasonable notice thereof; to advise you, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish you with copies thereof; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Shares; to advise you, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or prospectus, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or prospectus or suspending any such qualification, promptly to use its best efforts to obtain the withdrawal of such order.

(b) Promptly from time to time to take such action as you may reasonably request to qualify the Shares for offering and sale under the securities laws of such jurisdictions as you may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, *provided*, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction.

(c) To use its best efforts to furnish the Underwriters with written, executed and electronic copies of the Registration Statement and the Prospectus, as the case may be, prior to 10:00 a.m., Richmond, Virginia time, on the business day next succeeding the date of this Agreement and from time to time, at such locations and in such quantities as you may from time to time reasonably request during such period following the date hereof that a prospectus is required to be delivered in connection with offers or sales of Shares, and, if the delivery of a prospectus is required during this period and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary or appropriate during such period to amend or supplement the Prospectus in order to comply with the Act or the Exchange Act, to notify you and upon your request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance.

(d) To make generally available to its stockholders and to deliver to you as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement, an earnings statement of the Company and the Subsidiaries (which need not be audited) complying with Section 11(a) of the Act and Rule 158 under the Act covering a period of at least 12 months beginning after the effective date of the Registration Statement.

(e) During the period beginning from the date hereof and continuing to and including the date 180 days after the date of the Prospectus (the "Lock-Up Period"), the Company shall not, directly or indirectly, offer, sell, offer to sell, contract to sell, pledge, grant any option to purchase or otherwise sell or dispose of, except as provided hereunder, any securities of the Company that are substantially similar to the Shares, including but not limited to any shares of Common Stock or any other capital stock of the Company or any securities that are convertible into or exchangeable for, or that represent the right to receive, Common Stock or any other capital stock of the Company or any such substantially similar securities (other than (i) pursuant to the Company's benefit plans existing on, or upon the conversion or exchange of convertible or exchangeable securities outstanding as of, the date of this Agreement, *provided*, that any shares issued pursuant to the Company's benefit plans shall be subject to restrictions in form and substance reasonably satisfactory to the Representatives prohibiting their resale prior to the expiration of the Lock-Up Period, or (ii) in connection with the merger with or acquisition of another corporation or entity or the acquisition of the assets or properties of any such corporation or entity and the related entry into a merger or acquisition agreement with respect to such merger or acquisition, so long as the recipients of the Company's securities agree in writing prior to the consummation of any such transaction, pursuant to an instrument in form and substance reasonably satisfactory to the Representatives, to be bound by the provisions of this Section 5(e) for the remainder of the Lock-Up Period as if such recipients were the Company), without the prior written consent of the BBTCM; *provided, however*, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it

will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the occurrence of the material news or material event, as applicable, unless the BBTCM waive, in writing, such extension.

(f) During a period of three years from the effective date of the Registration Statement, to furnish to you copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to you (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as you may from time to time reasonably request.

(g) To apply the net proceeds from the sale of the Shares for the purposes set forth in the Prospectus under the heading "Use of Proceeds."

(h) To use its best efforts to list for quotation, subject to notice of issuance, the Shares on the Nasdaq National Market.

(i) Not to invest, or otherwise use the proceeds received by the Company from the sale of the Firm Shares or Optional Shares in such a manner as would require the Company or any of the Subsidiaries to register as an investment company under the Investment Company Act.

(j) To use its best efforts to assist the Underwriters with the enforcement of the Lock-Up Agreements, as hereinafter defined.

(k) If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 9:00 a.m., Washington, D.C. time, on the business day immediately following the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 111(b) under the Act.

(l) To comply with all of the provisions of any undertakings in the Registration Statement and with all applicable securities and other applicable laws, rules and regulations, including, without limitation, the Sarbanes-Oxley Act of 2002, and will use its best efforts to cause the Company's directors and officers, in their capacities as such, to comply with such laws, rules and regulations.

(m) If at any time during the 90 day period after the Registration Statement becomes effective, any rumor, publication or other event relating to or affecting the Company shall occur as a result of which, in the opinion of the Representatives, the market price of the Common Stock has been or is likely to be materially affected (regardless of whether such rumor, publication or event necessitates a supplement to or amendment of the Prospectus) and after written notice from the Representatives advising the Company to the effect set forth above, to forthwith prepare, consult with the Representatives concerning the substance of, and disseminate a press release or other public statement, reasonably satisfactory to the Representatives, responding to or commenting on such rumor, publication or event.

(n) To effectuate the mergers contemplated by the Merger Agreements prior to the offering contemplated by this Agreement.

6. Payment of Expenses

The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (a) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Shares under the Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any Preliminary Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (b) the cost of printing or producing any Agreement Among Underwriters, this Agreement, the Blue Sky survey (if any) and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (c) the cost of copying or distributing the Blue Sky memorandum (if any), closing documents (including any compilations thereof) and any other documents (such as underwriters' questionnaires and powers of attorney) in connection with the offering, purchase, sale and delivery of the Shares; (d) all expenses in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 5(b) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey; (e) all fees and expenses in connection with listing the Shares on Nasdaq; (f) the filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, securing any required review by the NASD of the terms of the sale of the Shares; (g) the cost of preparing stock certificates; (h) the costs or expenses of any transfer agent or registrar; (i) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Shares, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show; (j) the costs and expenses of the Directed Share Program; and (k) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that except as provided in this Section, Section 8 and Section 11 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Shares by them, and any advertising expenses connected with any offers they may make.

7. Conditions to Obligations of Underwriters

The obligations of the Underwriters hereunder, as to the Shares to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company herein are, at and as of such Time of Delivery, true and correct in all respects, and the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act within the applicable time period prescribed for such filing under the Act and in accordance with Section 5(a) hereof; if the Company has elected to rely upon Rule 462(b), the Rule 462(b) Registration Statement shall have become effective by 10:00 p.m., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to your reasonable satisfaction; and no action shall have been taken by the NASD, the effect of which would make it improper in the judgment of the Representatives to proceed with the transactions contemplated hereby;

(b) Hunton & Williams LLP, counsel for the Underwriters, shall have furnished to you such written opinion or opinions, dated such Time of Delivery, with respect to the incorporation of the

Company, the validity of the Shares being issued at such Time of Delivery, the Registration Statement, the Prospectus, and other related matters as you may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(c) Greenberg Traurig, LLP, counsel for the Company, shall have furnished to you their written opinion, dated such Time of Delivery, in form and substance reasonably satisfactory to you and in substantially the form of *Exhibit A* attached hereto.

(d) (i) On the date of the Prospectus at a time prior to the execution of this Agreement, (ii) on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also (iii) at each Time of Delivery, PricewaterhouseCoopers LLP shall have furnished to you a letter or letters, dated the respective date of delivery thereof, in form and substance satisfactory to you, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information relating to the Company and its Subsidiaries contained in the Registration Statement and Prospectus.

(e) (i) Neither the Company nor any of the Subsidiaries shall have sustained, since the date of the latest audited financial statements included in the Prospectus, any loss or interference with its assets or business taken as a whole from fire, explosion, flood, natural disaster, act of terrorism or other calamity, whether or not covered by insurance, or from any labor dispute or court, arbitrator or governmental action, ruling, order or decree, except as set forth and contemplated in the Prospectus, and (ii) since the respective dates as of which information is given in the Prospectus there shall not have been any change in the outstanding capital stock or debt of the Company or any of the Subsidiaries (other than short term debt incurred in the ordinary course of business consistent with past practices), or any change, event or development of any kind that could, currently or prospectively, have a Material Adverse Effect, the effect of which, in any such case described in clause (i) or (ii), in your judgment, makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus.

(f) On or after the date hereof there shall not have occurred any of the following: (i) any United States federal or state statute, regulation, rule or order of any court, legislative body, agency or other Governmental Agency shall have been enacted, published, decreed or promulgated or any proceeding or investigation shall have been commenced which, in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus; (ii) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or the Nasdaq National Market; (iii) a general moratorium on commercial banking activities declared by either federal or New York or Delaware authorities; (iv) the outbreak or escalation of hostilities or an act of terrorism involving or affecting the United States or the declaration by the United States of a national emergency or war, if the effect of any such event specified in this clause (iv) in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus; or (v) such a change in general economic, political, financial or international conditions affecting financial markets in the United States having such an impact on trading prices of securities in general or otherwise, as, in your judgment, makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus.

(g) The Shares at the Time of Delivery shall have been duly listed, subject to notice of issuance, on the Nasdaq National Market.

(h) The Company shall have delivered to the Underwriters executed copies of "lock-up" agreements on terms satisfactory to the Representatives from the individuals and entities specified on *Schedule II* hereof (the "Lock-Up Agreements"), *provided*, that the Company shall be obligated only to use its best efforts to deliver such a lock-up agreement from James Keena.

(i) The Company and Christopher Clemente shall have entered into (i) a Trademark License Agreement with respect to the "Comstock" trademark as described in the Preliminary Prospectus and otherwise in form and substance satisfactory to the Representatives and (ii) a Share Transfer Agreement placing certain restrictions on the ability of Mr. Clemente to transfer shares of Class B common stock owned by him to competitors of the Company in form and substance satisfactory to the Representatives.

(j) The Company and each of Christopher Clemente, Greg Benson and Bruce Labovitz shall have entered into Employment Agreements and Non-Competition Agreements having the terms described in the Preliminary Prospectus and otherwise in form and substance satisfactory to the Representatives.

(k)

(l) The Company shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses on the business day next succeeding the date of this Agreement.

(m) The parties thereto shall have effectuated the mergers contemplated by the Merger Agreements.

(n) The Company shall have furnished or caused to be furnished to you at such Time of Delivery certificates of officers of the Company satisfactory to you as to the accuracy of the representations and warranties of the Company herein at and as of such Time of Delivery, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such Time of Delivery, and as to such other matters as you may reasonably request, and the Company shall have furnished or caused to be furnished certificates as to the matters set forth in subsections (a) and (e) of this Section and as to such other matters as you may reasonably request.

(o) Without limiting the foregoing, on or before each Time of Delivery, the Representative and counsel for the Underwriters shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Shares as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 7 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representatives by notice to the Company at any time prior to the First Time of Delivery or Second Time of Delivery as the case may be.

8. Indemnification and Contribution

(a) The Company agrees to indemnify, defend and hold harmless each Underwriter, its officers, directors, employees, partners, members, agents and representatives, and any person who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, from and against any loss, liability, damage, claim (including the reasonable cost of investigation) or expenses, as incurred, which any such Underwriter or controlling person may incur under the Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected

with the written consent of the Company), insofar as such loss, expense, liability, damage or claim arises out of or is based upon (i) in whole or in part upon any breach of the Company's representations or warranties or failure on the part of the Company to perform its obligations hereunder or to comply with any applicable law, rule or regulation relating to the offering of securities being made pursuant to the Prospectus, (ii) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus or any Preliminary Prospectus (iii) any omission or alleged omission to state a material fact required to be stated in any such Registration Statement, Prospectus or Preliminary Prospectus or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, or (iv) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Shares or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clauses (i), (ii) or (iii) above, provided that the Company shall not be liable under this clause (iv) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct; and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by the Representatives) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; except insofar as any such loss, expense, liability, damage or claim arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission of a material fact in conformity with information furnished in writing by the Underwriters through the Representatives to the Company expressly for use in such Registration Statement or Prospectus, it being understood and agreed that the only such information is the Underwriter Information; provided, further, that with respect to any Preliminary Prospectus, the foregoing indemnity agreement shall not inure to the benefit of any Underwriter from whom the person asserting any loss, claim, damage, liability or expense purchased Shares, or any person controlling such Underwriter, if copies of the Prospectus were timely delivered to the Underwriter pursuant to Section 1 hereof and a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Shares to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage, liability or expense. The indemnity agreement set forth in this Section 8(a) shall be in addition to any liability which the Company might otherwise have.

If any action is brought against an Underwriter or controlling person in respect of which indemnity may be sought against the Company pursuant to subsection (a) above, such Underwriter shall promptly notify the Company in writing of the institution of such action, and the Company shall assume the defense of such action, including the employment of counsel and payment of expenses; provided, however, that any failure or delay to so notify the Company will not relieve the Company of any obligation hereunder, except to the extent that its ability to defend is actually impaired by such failure or delay or then only to the extent of such impairment. Such Underwriter or controlling person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless the employment of such counsel shall have been authorized in writing by the Company in connection with the defense of such action, or the Company shall not have employed counsel to have charge of the defense of such action within a reasonable time or the Company or such person shall have reasonably concluded (based on the advice of counsel) that

there may be defenses available to it or them which are different from or additional to those available to the Company (in which case the Company shall not have the right to assume the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the Company and paid as incurred (it being understood, however, that the Company shall not be liable for the expenses of more than one separate firm of attorneys for the Underwriters or controlling persons in any one action or series of related actions in the same jurisdiction (other than local counsel in any such jurisdiction) representing the indemnified parties who are parties to such action).

(b) Each Underwriter agrees, severally and not jointly, to indemnify, defend and hold harmless the Company, the Company's directors and the Company's officers that signed the Registration Statement and their agents and representatives, and any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, from and against any loss, liability, damage, claim (including the reasonable cost of investigation) or expense, as incurred, which the Company or any such person may incur under the Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), but only insofar as such loss, expense, liability, damage or claim arises out of or is based upon (A) any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by such Underwriter through the Representatives to the Company expressly for use in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or the Prospectus), it being understood and agreed that the only such information is the Underwriter Information, or (B) any omission or alleged omission to state a material fact in connection with such Underwriter Information required to be stated either in such Registration Statement or the Prospectus or necessary to make such information, in the light of the circumstances under which made, not misleading; and to reimburse the Company or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 8(b) shall be in addition to any liabilities that such Underwriter may otherwise have.

If any action is brought against the Company, any director, officer or any controlling person in respect of which indemnity may be sought against any Underwriter pursuant to the foregoing paragraph, the Company, director, officer or such person shall promptly notify the Representatives in writing of the institution of such action and the Representatives, on behalf of the Underwriters, shall assume the defense of such action, including the employment of counsel and payment of expenses; provided, however, that any failure or delay to notify the Representatives will not relieve the Underwriter of any obligation hereunder, except to the extent its ability to defend is actually impaired by such failure or delay and then only to the extent of such impairment. The Company, director, officer or such person shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company, director, officer or such person unless the employment of such counsel shall have been authorized in writing by the Representatives in connection with the defense of such action or the Representatives shall not have employed counsel to have charge of the defense of such action within a reasonable time or the Representatives or the Company, director, officer or such person shall have reasonably concluded (based on the advice of counsel) that there may be defenses available to it or them which are different from or additional to those available to the Underwriters (in which case the Representatives shall not have the right to assume the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by such Underwriter and paid as incurred (it being understood, however, that the Underwriters shall not be liable for the expenses of more than one separate firm of attorneys in any one action or series

of related actions in the same jurisdiction (other than local counsel in any such jurisdiction) representing the indemnified parties who are parties to such action).

(c) The indemnifying party under this Section 8 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and contains no statement as to, or admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 8 is unavailable or insufficient to hold harmless an indemnified party under this Section 8 in respect of any losses, expenses, liabilities, damages or claims referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the aggregate amount paid or payable by such indemnified party as a result of such losses, expenses, liabilities, damages or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Shares pursuant to this Agreement or (ii) if (but only if) the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, expenses, liabilities, damages or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same proportion as the total proceeds from the offering (net of the underwriting discount but before deducting expenses) received by the Company bear to the underwriting discount received by the Underwriters. The relative fault of the Company and the Underwriters shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company, on one hand, or by the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages and liabilities referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any claim or action. The provisions set forth in Sections 8(a) and (b) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 8(d); provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Sections 8(a) and 8(b) for purposes of indemnification.

(e) The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in subsection (d)(i) and, if applicable (ii), above. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the underwriting discount applicable to the Shares

purchased by such Underwriter. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 8 are several in proportion to their respective underwriting commitments and not joint. For purposes of this Section 8, each officer and employee of an Underwriter and each person, if any, who controls an Underwriter within the meaning of the Section 15 of the Act and Section 20 of the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Act and Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

(f) The Company agrees to indemnify and hold harmless each Underwriter and its affiliates and each person, if any, who controls each Underwriter and its affiliates within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (i) caused by any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) as a result of the failure of any Participant to pay for and accept delivery of Directed Shares that the Participant has agreed to purchase; or (iii) related to, arising out of, or in connection with the Directed Share Program.

9. Default of Underwriters

(a) If any Underwriter shall default in its obligation to purchase the Shares that it has agreed to purchase hereunder at a Time of Delivery, you may in your discretion arrange for you or another party or other parties to purchase such Shares on the terms contained herein. If within 48 hours after such default by any Underwriter you do not arrange for the purchase of such Shares, then the Company shall be entitled to a further period of 48 hours within which to procure another party or other parties satisfactory to you to purchase such Shares on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Shares, or the Company notifies you that they have so arranged for the purchase of such Shares, you or the Company shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments to the Registration Statement or the Prospectus which in your opinion, exercised in consultation with Hunton & Williams LLP, may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased does not exceed one-eleventh of the aggregate number of all of the Shares to be purchased at such Time of Delivery, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Shares that such Underwriter agreed to purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such

defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Shares that remains unpurchased exceeds one-eleventh of the aggregate number of all of the Shares to be purchased at such Time of Delivery, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Shares of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to the Second Time of Delivery, the obligations of the Underwriters to purchase and of the Company to sell the Optional Shares) shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 6 hereof and the indemnity and contribution agreements in Section 8 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

10. Representations and Indemnities to Survive

The respective indemnities, agreements, representations, warranties and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Shares.

11. Termination and Payment of Expenses

If this Agreement shall be terminated pursuant to Section 9 hereof, the Company shall then be under no liability to any Underwriter except as provided in Section 6 and Section 8 hereof; but if for any other reason any Shares are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Underwriters through the Representatives for all out-of-pocket expenses, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Shares not so delivered, but the Company shall then be under no further liability to any Underwriter except as provided in Section 6 and Section 8 hereof.

12. Notices

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by reliable courier, first-class mail, telex or facsimile transmission to each Underwriter at the address set forth on *Schedule I*; if to the Company shall be delivered or sent by reliable courier, first-class mail, telex, or facsimile transmission to the address of the Company set forth in the Registration Statement, Attention: Jubal R. Thompson, General Counsel and Secretary. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

13. Successors

This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters and the Company and, to the extent provided in Sections 8 and 10 hereof, the officers and directors of the Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right

under or by virtue of this Agreement. No purchaser of any of the Shares from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

14. Time of the Essence

Time shall be of the essence of this Agreement.

15. Business Day

As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

16. Applicable Law and Waiver of Trial by Jury.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. **EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OF THE OTHER UNDERWRITING DOCUMENTS OR TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.**

17. Captions

The captions included in this Agreement are included solely for convenience of reference and shall not be deemed to be a part of this Agreement.

18. Counterparts

This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

19. Interpretation

All pronouns used herein shall be deemed to refer to the masculine, feminine, or neuter gender as the text requires.

20. Sophisticated Parties

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification and contribution provisions herein, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the indemnification and contribution provisions herein fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in the Registration Statement, any preliminary prospectus and the Prospectus (and any amendments and supplements thereto), as required by the Act and the Exchange Act.

If the foregoing is in accordance with your understanding, please sign and return to us four counterparts hereof, and upon the acceptance hereof by you this letter and such acceptance hereof shall constitute a binding agreement among each of the Underwriters and the Company.

Very truly yours,

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____

Name:

Title:

Accepted as of the date hereof
at Richmond, Virginia:

BB&T CAPITAL MARKETS, A Division of Scott & Stringfellow, Inc.,

By: **BB&T CAPITAL MARKETS,**
a Division of Scott & Stringfellow, Inc.,
on behalf of each of the Underwriters

By: _____

Name:

Title:

[Others]

SCHEDULE I

Underwriter	Firm Shares to be Purchased	Optional Shares to be Purchased if Maximum Option Exercised
BB&T Capital Markets, a Division of Scott & Stringfellow, Inc. 900 East Main Street Richmond, Virginia 23219 Facsimile: (804) 649-2615		
Total		

SCHEDULE II
Subsidiaries of Comstock Homebuilding Companies, Inc.

Name of Subsidiary	State or Country of Incorporation or Organization
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SCHEDULE III

Lock-up Agreements

B-1

EXHIBIT A

Form of Opinion of Counsel for the Company

(i) The Company and each of the Subsidiaries have been duly incorporated, in the case of a corporation, and duly organized, in the case of a limited liability company, and are validly existing as corporations and limited liability companies, as the case may be, in good standing under the laws of their respective jurisdictions of incorporation or organization, with corporate or limited liability company power and authority to own or lease their respective properties and conduct their respective businesses as described in the Prospectus;

(ii) The Company and each of the Subsidiaries have been duly qualified as foreign corporations or limited liability companies for the transaction of business and are in good standing under the laws of each other jurisdiction in which they own or lease properties, or conduct any business, so as to require such qualification, except where the failure to so qualify will not result in a Material Adverse Effect (such opinion may be based solely upon certificates of authority or qualification issued in such jurisdictions to such effect);

(iii) The Company has an authorized capitalization as set forth in the Prospectus, including as set forth under the caption "Capitalization"; and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and nonassessable and conform to the description of the capital stock of the Company contained in the Prospectus, including as set forth under the caption "Capitalization"; there are no preemptive or other similar rights to subscribe for or to purchase any securities of the Company or any securities convertible or exchangeable into securities of the Company; except as described in the Prospectus, to such counsel's knowledge there are no warrants or options or similar rights to purchase any securities of the Company or any securities convertible or exchangeable into securities of the Company; neither the filing of the Registration Statement nor the offering or sale of the Shares as contemplated by the Underwriting Agreement gives rise to any rights for or relating to the registration of any securities of the Company or any securities convertible or exchangeable into securities of the Company; with respect to such filing, offering or sale; and the form of the certificates evidencing the Shares complies with all formal requirements of Delaware law; all issued and outstanding shares of capital stock and other securities of the Company were issued in compliance with all federal and state securities laws.

(iv) All of the issued and outstanding shares of capital stock or membership interests of each of the Subsidiaries have been duly and validly authorized and issued and are fully paid and nonassessable; and all outstanding shares of capital stock or membership interests of each of the Subsidiaries are directly (or indirectly through other wholly owned Subsidiaries) owned by the Company, free and clear of all security interests, claims, equities, liens or encumbrances; all issued and outstanding shares of capital stock or membership interests of each of the Subsidiaries were issued in compliance will all federal and state securities laws.

(v) The Shares have been duly and validly authorized and, when issued and delivered against payment therefor as provided in the Underwriting Agreement, the Shares being issued as of such Time of Delivery will be duly and validly issued and fully paid and nonassessable and will conform to the description of the Shares contained in the Prospectus as amended or supplemented;

(vi) To such counsel's knowledge after due inquiry, there are no legal or governmental proceedings pending to which the Company or any of the Subsidiaries is a party or of which any property of the Company or any of the Subsidiaries is the subject, which, if determined adversely to the Company or any of the Subsidiaries, would individually or in the aggregate to have a Material Adverse Effect and to such counsel's knowledge, no such proceedings are threatened or contemplated by governmental authorities or by others; further to such counsel's knowledge after due inquiry, (a) each of the Company and the Subsidiaries has all material licenses, authorizations,

consents and approvals and has made all material filings required under any federal, state or local law, regulation or rule, required to conduct their respective businesses, and (b) is not in violation of, in default under, and has not received any written notice regarding a possible violation, default or revocation of any such license, authorization, consent or approval, except as described in the Prospectus or except where the failure to acquire the same or the violation or default thereunder would not reasonably likely result in a Material Adverse Effect;

(vii) The issue and sale of the Shares by the Company and the performance of the Underwriting Agreement and the Merger Agreements and the consummation by the Company of the other transactions therein contemplated will not conflict with or result in a breach or violation of any terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is bound or to which any of the property or assets of the Company or any of the Subsidiaries is subject that is filed as an exhibit to the Registration Statement, that is identified or referenced in the Registration Statement or that is otherwise known to us after due inquiry, nor will such action result in any violation of the provisions of the Charter or By-laws of the Company or the Articles of Incorporation, Articles of Organization, bylaws or operating agreements of any of the Subsidiaries, as the case may be, or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of the Subsidiaries or any of their properties; except as disclosed in the Prospectus, nor will such action result in the creation or imposition of any material lien, charge, claim or encumbrance upon any material property or assets of the Company or its Subsidiaries; no Subsidiary is prohibited or restricted by its charter, bylaws, articles of organization or operating agreement, as the case may be, or agreements or instruments to which it is a party, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such Subsidiary's capital stock or interests or from paying the Company or any other Subsidiary, any amounts due under loans or advances to such Subsidiary from the Company or such other Subsidiary, or from transferring any such Subsidiary's property or assets to the Company or to any other Subsidiary;

(viii) No consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Shares or the consummation by the Company of the transactions contemplated by the Underwriting Agreement or the Merger Agreements, except the registration under the Act of the Shares, inclusion of the Shares in the Nasdaq National Market, approval of the NASD, filing of certificates of merger with the State Corporation Commission of the Commonwealth of Virginia in connection with the First Second Merger Agreements, filing of a certificate of merger with the Delaware Secretary of State in connection with the Second Merger Agreement, and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters;

(ix) The Registration Statement has become effective under the Act and, to our knowledge after making telephone inquiries to staff members of the Commission, no stop order proceedings with respect thereto are pending or threatened under the Act, and any required filing of the Prospectus and any supplement thereto pursuant to Rule 424 under the Act has been made in the manner and within the time period required by such Rule 424 and in the manner and within the time period required by Rule 430A under the Act;

(ix) The Registration Statement and the Prospectus and any further amendments and supplements thereto made by the Company prior to such Time of Delivery (other than the financial statements and related schedules and data, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act, and the rules and regulations thereunder; such counsel has no reason to believe that, as of the effective date of

the Registration Statement and as of such Time of Delivery, either the Registration Statement or the Prospectus (other than the financial statements and related schedules and data) (or, as of its date, any further amendment or supplement thereto made by the Company prior to such Time of Delivery) contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or, with respect to the Prospectus, necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and such counsel does not know of any contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or required to be described in the Registration Statement or the Prospectus which are not filed or described as required;

(x) The descriptions in the Registration Statement and Prospectus and any further amendments or supplements thereto of statutes, legal and governmental proceedings and contracts and other documents are accurate and fairly present in all material respects the information required to be described;

(xi) The Underwriting Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and by general equitable principles, and except to the extent that the indemnification and contribution provisions of Section 8 thereof may be limited by federal or state securities laws and public policy considerations in respect thereof;

(xii) The Company is not and, after giving effect to the offering and sale of the Shares, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act;

(xiii) Each of the mergers contemplated by the First Merger Agreements have been effectuated in accordance with the laws of the Commonwealth of Virginia;

[(xiv) Upon the filing of the certificate of merger with the Delaware Secretary of State with respect to the Second Merger Agreement in accordance with the terms thereof, the merger contemplated thereby shall be effective and (a) the separate corporate existence of Comstock Holding shall cease, (b) the Company shall continue to be governed by the laws of the State of Delaware and (c) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the merger contemplated by the Second Merger Agreement; and

(xv) The merger of Comstock Service, Sunset, and Comstock Homes with and into Comstock Holding will be a reorganization within the meaning of Section 368(a) of the Code, and each of Comstock Service, Sunset, Comstock Homes, and Comstock Holding will be a "party to a reorganization" within the meaning of Section 368(b) of the Code;

(xvi) Comstock Holding will not recognize gain or loss on the acquisition of the assets of Comstock Service, Sunset, and Comstock Homes in exchange for Comstock Holding stock and the assumption of the liabilities of Comstock Service, Sunset, and Comstock Homes;

(xvii) Each of Comstock Service, Sunset, and Comstock Homes will not recognize gain or loss (a) on the transfer of its assets to Comstock Holding in exchange for Comstock Holding stock and the assumption of the liabilities of Comstock Service, Sunset and Comstock Homes or (b) on the constructive distribution of Comstock Holding stock to the shareholders of Comstock Service, Sunset, and Comstock Homes;

(xviii) The merger of Comstock Holding with and into the Company will be a reorganization within the meaning of Section 368(a) of the Code, and each of Comstock Holding and the Company will be a "party to a reorganization" within the meaning of Section 368(b) of the Code;

(xix) The Company will not recognize gain or loss on the acquisition of the assets of Comstock Holding in exchange for the Company stock and the assumption of the liabilities of Comstock Holding; and

(xx) Comstock Holding will not recognize gain or loss (a) on the transfer of its assets to the Company in exchange for the Company stock and the assumption of Comstock Holdings' liabilities or (b) on the constructive distribution of the Company stock to the shareholders of Comstock Holding.]

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
COMSTOCK HOMEBUILDING COMPANIES, INC.**

Comstock Homebuilding Companies, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. The corporation was incorporated on May 24, 2004, under the name Comstock Companies, Inc., pursuant to the General Corporation Law of the State of Delaware. The Certificate of Incorporation was amended on June 30, 2004.
2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the corporation.
3. The text of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

**"ARTICLE I
NAME**

The name of the Corporation is Comstock Homebuilding Companies, Inc. (the "Corporation").

**ARTICLE II
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

**ARTICLE IV
CAPITAL STOCK**

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is One Hundred Million (100,000,000) shares, of which:

Seventy Seven Million Two Hundred Sixty Six Thousand and Five Hundred (77,266,500) shares, par value \$0.01 per share, shall be shares of Class A common stock (the "Class A Common Stock");

Two Million Seven Hundred Thirty Three and Five Hundred (2,733,500) shares, par value \$0.01 per share, shall be shares of Class B common stock (the "Class B Common Stock" and, together with the Class A Common Stock, the "Common Stock"); and

Twenty Million (20,000,000) shares, par value \$0.01 per share, shall be shares of preferred stock (the "Preferred Stock").

(A) *Common Stock.* Except as (i) otherwise required by law or (ii) expressly provided in this Amended and Restated Certificate of Incorporation (as amended from time to time), each share of Common Stock shall have the same powers, rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters.

(1) *Dividends.* Subject to the rights of the holders of Preferred Stock, and to the other provisions of this Amended and Restated Certificate of Incorporation (as amended from time to

time), holders of Common Stock shall be entitled to receive equally, on a per share basis, such dividends and other distributions in cash, securities or other property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor; *provided, however*, that any dividends payable in shares of Common Stock (or payable in rights to subscribe for or purchase shares of Common Stock or securities or indebtedness convertible into or exchangeable for shares of Common Stock) shall be declared and paid at the same rate on each class of Common Stock and only in shares of Class A Common Stock (or rights to subscribe for or to purchase shares of Class A Common Stock or securities or indebtedness convertible into or exchangeable for shares of Class A Common Stock) to holders of Class A Common Stock and in shares of Class B Common Stock (or rights to subscribe for or to purchase shares of Class B Common Stock or securities or indebtedness convertible into or exchangeable for shares of Class B Common Stock) to holders of Class B Common Stock.

(2) *Voting Rights.* Except as otherwise provided in this Amended and Restated Certificate of Incorporation, the holders of Class A Common Stock and Class B Common Stock shall vote together as a single class with respect to all matters submitted to a vote of holders of shares of Common Stock, subject to any voting rights which may be granted to holders of any Preferred Stock. The holders of shares of Common Stock shall have the following voting rights:

(a) Each share of Class A Common Stock shall entitle the holder thereof to one (1) vote in person or by proxy on all matters submitted to a vote of the stockholders of the Corporation; and

(b) Each share of Class B Common Stock shall entitle the holder thereof to fifteen (15) votes in person or by proxy on all matters submitted to a vote of the stockholders of the Corporation, except with respect to any Going Private Transaction (as hereinafter defined), which shall be governed by Paragraph (A)(10) of this Article IV.

(3) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the Corporation's debts and amounts payable upon shares of Preferred Stock entitled to a preference, if any, over holders of Common Stock upon such dissolution, liquidation or winding up, the remaining net assets of the Corporation shall be distributed among holders of shares of Common Stock equally on a per share basis. A merger or consolidation of the Corporation with or into any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this Paragraph (A)(3).

(4) *Voluntary Conversion of Class B Common Stock.*

(a) The holder of each share of Class B Common Stock shall have the right at any time, or from time to time, at such holder's option, to convert such share into one fully paid and nonassessable share of Class A Common Stock on and subject to the terms and conditions hereinafter set forth.

(b) In order to exercise the conversion privilege, the holder of any shares of Class B Common Stock to be converted shall present and surrender the certificate or certificates representing such shares during usual business hours at any office or agency of the Corporation maintained for the transfer of Class B Common Stock and shall deliver a written notice of the election of the holder to convert the shares represented by such certificate or any portion thereof specified in such notice. Such notice shall also state the name or names

(with address) in which the certificate or certificates for shares of Class A Common Stock issuable on such conversion shall be registered. If required by the Corporation, any certificate for shares surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Corporation, duly executed by the holder of such shares or his duly authorized representative. Each conversion of shares of Class B Common Stock shall be deemed to have been effected on the date (the "Conversion Date") on which the certificate or certificates representing such shares shall have been surrendered and such notice and any required instruments of transfer shall have been received as aforesaid, and the person or persons in whose name or names any certificate or certificates for shares of Class A Common Stock shall be issuable on such conversion shall be, for the purpose of receiving dividends and for all other corporate purposes whatsoever, deemed to have become the holder or holders of record of the shares of Class A Common Stock represented thereby on the Conversion Date.

(c) As promptly as practicable after the presentation and surrender for conversion, as herein provided, of any certificate for shares of Class B Common Stock, the Corporation shall issue and deliver at such office or agency, to or upon the written order of the holder thereof, certificates for the number of shares of Class A Common Stock issuable upon such conversion. Subject to the provisions of Paragraph (A)(5) of this Article IV, in case any certificate for shares of Class B Common Stock shall be surrendered for conversion of only a part of the shares represented thereby, the Corporation shall deliver at such office or agency, to or upon the written order of the holder thereof, a certificate or certificates for the number of shares of Class B Common Stock represented by such surrendered certificate that are not being converted.

(5) *Automatic Conversion of Class B Common Stock Upon Certain Events.*

(a) As used in this Paragraph A(5), the following terms have the following meanings:

(i) "Initial Holder" shall mean each of Christopher Clemente and Gregory V. Benson, individually.

(ii) "IPO Date" shall mean the closing date of any initial public offering of the Class A Common Stock in a firm commitment underwritten offering that is registered with the U.S. Securities and Exchange Commission.

(iii) "Permitted Transferee" shall mean:

(AA) In the case of a holder of record of the Class B Common Stock (the "Class B Holder") who is a natural person and the beneficial owner of the shares of Class B Common Stock to be transferred, Permitted Transferees shall include only the following:

(I) the spouse of such Class B Holder, any lineal descendant of a grandparent of such Class B Holder, or any spouse of such lineal descendent (herein collectively referred to as such Class B Holder's "Family Members");

(II) the trustee or trustees of a trust (including a voting trust) for the sole benefit of such Class B Holder and/or one or more of such Class B Holder's Permitted Transferees, except that such trust may also grant a general or special power of appointment to one or more of such Class B Holder's Family Members and may permit trust assets to be used to pay taxes, legacies, and other obligations of the Trust or the estates of one or more of such Class B Holder's Family Members payable by reason of the death of any of such Family Members; *provided, however*, if at any time such trust ceases to meet the requirements of this subparagraph (II), all shares of Class B Common Stock then held by such

trustee or trustees shall immediately and automatically, without further act or deed on the part of the Corporation or any person, be converted into Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent a like number of shares of Class A Common Stock;

(III) a corporation or similar entity wholly owned by such Class B Holder and/or such Class B Holder's Permitted Transferees or a partnership or similar entity in which all of the general partners are, and all of the general partnership interests are owned by, such Class B Holder and/or such Class B Holder's Permitted Transferees; *provided* that if by reason of any change in the ownership of such stock or general partners or general partnership interests, such corporation or partnership would no longer qualify as a Permitted Transferee of such Class B Holder, all shares of Class B Common Stock then held by such corporation or partnership shall immediately and automatically, without further act or deed on the part of the corporation or any other person, be converted into shares of Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent a like number of shares of Class A Common Stock;

(IV) an organization established by the Class B Holder and/or such Class B Holder's Permitted Transferees, contributions to which are deductible for federal income, estate, or gift tax purposes (a "Charitable Organization") and a majority of whose governing board at all times consists of the Class B Holder and/or one or more of the Permitted Transferees of such Class B Holder, or any successor to such Charitable Organization meeting such definition; *provided* that if by reason of any change in the composition of the governing board of such Charitable Organization, such Charitable Organization shall no longer qualify as a Permitted Transferee of such Class B Holder, all shares of Class B Common Stock then held by such Charitable Organization shall immediately and automatically, without further act or deed on the part of the Corporation or any other person, be converted into shares of Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent the like number of shares of Class A Common Stock; and

(V) the executor, administrator, or personal representative of the estate of a deceased Class B Holder or guardian or conservator of a Class B Holder adjudged disabled or incompetent by a court of competent jurisdiction, acting in his capacity as such.

(BB) In the case of a Class B Holder who is the executor or administrator of the estate of a deceased Class B Holder or guardian or conservator of the estate of a disabled or incompetent Class B Holder, Permitted Transferees shall include only a Permitted Transferee of such deceased, disabled, or incompetent Class B Holder.

(CC) In the case of a Class B Holder holding the shares of Class B Common Stock as trustee pursuant to a trust, Permitted Transferees shall include only the following:

(I) the person who contributed such shares to such trust and any Permitted Transferee of such person, determined in accordance with Paragraph (A)(5)(a)(iii)(AA) of this Article IV; and

(II) any successor trustee of such trust who is described in the immediately preceding subparagraph (CC)(I).

(DD) In the case of a Class B Holder that is a partnership or similar entity, Permitted Transferees shall include only:

(I) any partner of such partnership who was also a partner of such partnership on the IPO Date;

(II) any person transferring shares of Class B Common Stock to such partnership after the IPO Date (to the extent of the number of shares of Class B Common Stock transferred by the transferor to such partnership); and

(III) any Permitted Transferee of such person referred to in the immediately preceding subparagraphs (DD)(I) or (DD)(II) (not in excess of the number of shares that such person is entitled to receive pursuant to this subparagraph (DD)).

(EE) In the case of a Class B Holder that is a corporation or similar entity, Permitted Transferees shall include only:

(I) any stockholder of such corporation on the IPO Date who receives shares of Class B Common Stock pro rata to his stock ownership in such corporation through a dividend or a distribution on or upon redemption of the shares of such corporation;

(II) any person transferring shares of Class B Common Stock to such corporation after the IPO Date (to the extent of the number of shares of Class B Common Stock transferred by the transferor to such corporation); and

(III) any Permitted Transferee of such stockholder or person referred to in the immediately preceding subparagraphs (EE)(I) or (EE)(II) (not in excess of the number of shares that such stockholder or person is entitled to receive pursuant to this subparagraph (EE)).

(FF) An employee benefit plan sponsored by the Corporation or any of its affiliates.

(GG) Any Initial Holder.

For purposes of this Paragraph (A)(5)(a)(iii), (1) the relationship of any person that is derived by or through legal adoption shall be considered a natural one; (2) each joint owner of shares of Class B Common Stock shall be considered a Class B Holder of such shares; (3) a minor for whom shares of Class B stock are held pursuant to a Uniform Gifts to Minors Act or similar law shall be considered a Class B Holder of such shares; and (4) unless otherwise specified, the term "person" means both natural person and legal entities.

(iv) "Transfer" shall mean any sale, assignment, transfer, gift, hypothecation or other disposition, whether voluntary or involuntary, of Class B Common Stock.

(b) No record or beneficial owner of shares of Class B Common Stock may Transfer, and the Corporation shall not register the Transfer of, such shares of Class B Common Stock, whether by sale, assignment, gift, bequest, appointment, or otherwise, except to a Permitted Transferee.

(c) Any purported Transfer of shares of Class B Common Stock not permitted hereunder shall result in the conversion of the transferee's shares of Class B Common Stock into shares of Class A Common Stock, effective on the date on which certificates representing such shares are presented for transfer on the stock transfer record books of the Corporation; *provided, however*, that if the Corporation should determine that such shares were not so presented for transfer within 20 days after the date of such sale, transfer, assignment, or other disposition, the transfer date shall be the actual date of such sale, transfer, assignment, or other disposition as determined in good faith by the Board of Directors or its appointed agent. The Corporation may, as a condition to the transfer or the registration of transfer of shares of Class B Common Stock to a purported Permitted Transferee, require the furnishing of such affidavits or other proof as it deems necessary to establish that such transferee is a Permitted Transferee. If no indication to the contrary is supplied at the time shares of Class B Common Stock are presented for transfer, the transfer shall be presumed by the Corporation to be a transfer to a person other than the Permitted Transferee.

(d) Shares of Class B Common Stock shall not be registered in "street" or "nominee" names; *provided, however*, that certificates representing shares of Class B Common Stock may be registered in the name of a nominee which is a Permitted Transferee. The Corporation shall note on the certificates representing the shares of Class B Common Stock that there are restrictions on transfer and registration of transfer imposed by this Amended and Restated Certificate of Incorporation.

(e) Notwithstanding anything to the contrary set forth herein, (i) upon the death or permanent disability (as determined in good faith by the Board of Directors) of either of the Initial Holders, all shares of Class B Common Stock then held by such Initial Holder shall be converted automatically into shares of Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent a like number of shares of Class A Common Stock; (ii) if either Initial Holder ceases to beneficially own (as such term is defined under Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") at least 5% of the then-outstanding shares of Common Stock, all shares of Class B Common Stock then held by such Initial Holder shall be converted automatically into shares of Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent a like number of shares of Class A Common Stock; and (iii) upon a Permitted Transferee ceasing to qualify as a Permitted Transferee (and subject to the operation of Paragraph (A) (5)(f) of this Article IV) all shares of Class B Common Stock held by it shall be converted automatically into shares of Class A Common Stock on a share-for-share basis, and stock certificates formerly representing such shares of Class B Common Stock shall thereupon and thereafter be deemed to represent a like number of shares of Class A Common Stock.

(f) Notwithstanding the foregoing, in the event that any transferee of Class B Common Stock is not at the time of transfer or thereafter ceases to qualify as a Permitted Transferee, and within ten business days after the Corporation notifies such person that it has concluded that such person is not or has ceased to qualify as a Permitted Transferee and the bases for such conclusion, such person transfers the shares of Class B Common Stock to a Permitted Transferee, demonstrates that it is a Permitted Transferee or takes appropriate action so that it qualifies as a Permitted Transferee, then notwithstanding anything else in this Section 4.2,

the shares of Class B Common Stock held by such person that converted automatically into shares of Class A Common Stock as a result of such person not being or ceasing to qualify as a Permitted Transferee shall convert back to Class B Common Stock.

(g) No Class B Holder may pledge its Class B Common Stock to a third party for any reason, including but not limited to a pledge of such Class B Common Stock as collateral security for indebtedness or a similar obligation.

(6) *Further Provisions Regarding Conversions.*

(a) Any dividends declared and not paid on shares of Common Stock prior to their conversion as provided above shall be paid, on the payment date, to the holder or holders entitled thereto on the record date for such dividend payment, notwithstanding such conversion; *provided, however*, that such holder or holders shall not be entitled to receive the corresponding dividends declared but not paid on the shares of Common Stock issuable upon such conversion.

(b) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then a holder of Class B Common Stock shall be entitled to receive upon conversion the amount of such security that such holder would have received if such conversion had occurred immediately prior to the record date of such reclassification or other similar transaction.

(c) Shares of the Class B Common Stock converted into Class A Common Stock shall be retired and shall resume the status of authorized but unissued shares of Class B Common Stock.

(d) The issuance of certificates for shares of Class A Common Stock issuable upon the conversion of shares of Class B Common Stock by the registered holder thereof shall be made without charge to the converting holder for any tax imposed on the Corporation in respect of the issue thereof. The Corporation shall not, however, be required to pay any tax that may be payable with respect to any transfer involved in the issue and delivery of any certificate in a name other than that of the registered holder of the shares being converted, and the Corporation shall not be required to issue or deliver any such certificate unless and until the person requesting the issue thereof shall have paid to the Corporation the amount of such tax or has established to the satisfaction of the Corporation that such tax has been paid.

(7) *Reservation of Shares.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversions provided for herein, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversions provided for herein and shall take all such corporate action as may be necessary to assure that such shares of Class A Common Stock shall be validly issued, fully paid and non-assessable upon conversion of all of the outstanding shares of Class B Common Stock; moreover, if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversions provided for herein, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose.

(8) *Adjustments for Stock Splits and Stock Dividends.* The Corporation shall treat the shares of Common Stock identically in respect of any subdivisions or combinations (for example, if the Corporation effects a two-for-one stock split with respect to the Class A Common Stock, it shall at the same time effect a two-for-one stock split with respect to the Class B Common Stock).

(9) *Mergers, Consolidation, Etc.* In the event that the Corporation shall enter into any consolidation, merger, combination or other transaction in which shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then, and in such event, the shares of each class of Common Stock shall be exchanged for or changed into (i) the same amount of stock, securities, cash and/or any other property, as the case may be, into which or for which each share of any other class of Common Stock is exchanged or changed; *provided, however*, that if shares of Common Stock are exchanged for or changed into shares of capital stock, such shares so exchanged for or changed into may differ to the extent and only to the extent that the Class A Common Stock and the Class B Common Stock differ as provided herein; or (ii) if holders of each class of Common Stock are to receive different distributions of stock, securities, cash and/or any other property, either (1) holders of Class A Common Stock shall receive an amount of stock, securities, cash and/or property per share having a value, as determined by an independent investment banking firm of national reputation selected by the Board of Directors, greater than or equal to the value per share into which or for which each share of Class B Common Stock is exchanged or changed, or (2) holders of Class A Common Stock and holders of Class B Common Stock shall receive such stock, securities, cash and/or property per share as shall be provided for pursuant to a transaction approved by the holders of a majority of Class A Common Stock and by the holders of a majority Class B Common Stock, each voting separately as a class.

(10) *Going Private Transaction.* Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, with respect to any Going Private Transaction (as defined below), the holders of shares of Class A Common Stock and Class B Common Stock shall vote together as a single class, with each share of Class A Common Stock and each share of Class B Common Stock entitling the holder thereof to one (1) vote. For purposes of this Paragraph (A)(10), the term "Going Private Transaction" shall mean any transaction between the Corporation and (i) an Initial Holder, (ii) any Affiliate (as defined below) of an Initial Holder, or (iii) any group including an Initial Holder or Affiliates of an Initial Holder where the participation of such person or persons in such group would cause the transaction to be deemed a "Rule 13e-3 Transaction," as such term is defined in Rule 13e-3(a)(3), as amended from time to time, promulgated under the Exchange Act; *provided, however*, that the term "affiliate" as used in Rule 13e-3(a)(3)(i) shall be deemed to include an Affiliate, as defined herein. For purposes hereof, an "Affiliate" of a person shall mean (i) any individual or entity who or that, directly or indirectly, controls, is controlled by, or is under common control with such person, and (ii) the spouse, a child or grandchild (by blood, adoption or marriage) of such person, or any trust for the benefit of one or more of the foregoing.

(B) *Preferred Stock.* The Board of Directors is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of shares of Preferred Stock in one or more series, to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations or restrictions thereof. Irrespective of the provisions of Section 242(b)(2) of the DGCL, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote, without the separate vote of the holders of the Preferred Stock as a class.

ARTICLE V BOARD OF DIRECTORS

(A) *Management.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers

of the Corporation and do all such lawful acts and things as are not by statute or this Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

(B) *Number of Directors.* The number of directors of the Corporation shall be fixed from time to time in the manner provided in the Amended and Restated Bylaws.

(C) *Newly-Created Directorships and Vacancies.* Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause may be filled by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office until such director's successor has been duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

(D) *Removal of Directors.* Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director may be removed from office at any time for cause, at a meeting called for that purpose, and only by the affirmative vote of the holders of at least $66\frac{2}{3}\%$ of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(E) *Rights of Holders of Preferred Stock.* Notwithstanding the foregoing provisions of this Article V, whenever the holders of one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately or together by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorship shall be governed by the rights of such Preferred Stock as set forth in the certificate of designations governing such series.

(F) *Written Ballot Not Required.* Elections of directors need not be by written ballot unless the Amended and Restated Bylaws of the Corporation shall otherwise provide.

(G) *Bylaws.* The Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation. Any bylaws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders. Notwithstanding the foregoing and anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the bylaws of the Corporation shall not be amended or repealed by the stockholders, and no provision inconsistent therewith shall be adopted by the stockholders, without the affirmative vote of the holders of $66\frac{2}{3}\%$ of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(H) *Classification of Directors.* At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified; except that if any such election shall be not so held, such election shall take place at a stockholders' meeting called and held in accordance with the DGCL. The directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The term of office of the initial Class I directors shall expire at the next succeeding annual meeting of stockholders, the term of office of the initial Class II directors shall expire at the second succeeding annual meeting of stockholders and the term of office of the initial Class III directors shall expire at the third succeeding annual meeting of the stockholders. For the purposes hereof, the initial Class I, Class II and Class III directors shall be those directors elected by the stockholders of the Corporation in connection with the adoption of this Amended and Restated Certificate of Incorporation. At each annual meeting after the first annual meeting of stockholders, directors to replace those of a Class whose terms expire at such annual

meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as practicable.

ARTICLE VI LIMITATION OF LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; *provided, however*, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is hereafter amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation or otherwise shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VII INDEMNIFICATION

Each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation or of a partnership, limited liability company, joint venture, trust or other entity, including service with respect to an employee benefit plan (hereinafter an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while so serving, shall be indemnified and held harmless by the Corporation to the full extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), or by other applicable law as then in effect, against all costs, expenses, liabilities and losses (including attorneys' fees and related costs, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such Indemnitee in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, partner, member or trustee and shall inure to the benefit of his or her heirs, executors and administrators. Each person who is or was serving as a director or officer of a subsidiary of the Corporation shall be deemed to be serving, or have served, at the request of the Corporation.

(A) *Procedure.* Any indemnification (but not advancement of expenses) under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment). Such determination shall be made with respect to a person who is a director or officer at the time of such determination (a) by a majority vote of the

directors who were not parties to such proceeding (the "Disinterested Directors"), even though less than a quorum, (b) by a committee of Disinterested Directors designated by a majority vote of Disinterested Directors, even though less than a quorum, (c) if there are no such Disinterested Directors, or if such Disinterested Directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders.

(B) *Advances for Expenses.* Expenses (including attorneys' fees, costs and charges) incurred by a director or officer of the Corporation in defending a proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation as authorized in this Article VII. The majority of the Disinterested Directors may, in the manner set forth above, and upon approval of such director or officer of the Corporation, authorize the Corporation's counsel to represent such person, in any proceeding, whether or not the Corporation is a party to such proceeding.

(C) *Procedure for Indemnification.* Any indemnification or advance of expenses (including attorney's fees, costs and charges) under this Article VII shall be made promptly, and in any event within 60 days upon the written request of the director or officer (and, in the case of advance of expenses, receipt of a written undertaking by or on behalf of Indemnitee to repay such amount if it shall ultimately be determined that Indemnitee is not entitled to be indemnified therefor pursuant to the terms of this Article VII). The right to indemnification or advances as granted by this Article VII shall be enforceable by the director or officer in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 60 days. Such person's costs and expenses incurred in connection with successfully establishing his/her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses (including attorney's fees, costs and charges) under this Article VII where the required undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(D) *Other Rights; Continuation of Right to Indemnification.* The indemnification and advancement of expenses provided by this Article VII shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article VII shall be deemed to be a

contract between the Corporation and each director or officer of the Corporation who serves or served in such capacity at any time while this Article VII is in effect. Any repeal or modification of this Article VII or any repeal or modification of relevant provisions of the DGCL or any other applicable laws shall not in any way diminish any rights to indemnification of such director or officer or the obligations of the Corporation arising hereunder with respect to any proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such modification or repeal. For the purposes of this Article VII, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation, so that any person who, following such consolidation or merger, is a director or officer of such a constituent corporation or is serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other entity shall stand in the same position under the provisions of this Article VII, with respect to the resulting or surviving corporation during the period following such consolidation or merger, as he would if he/she had served the resulting or surviving corporation in the same capacity.

(E) *Insurance.* The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other entity, against any liability asserted against him and incurred by him or on his behalf in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII; *provided, however,* that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the Board of Directors.

(F) *Savings Clause.* If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each person entitled to indemnification under the first paragraph of this Article VII as to all costs, expenses, liabilities and losses (including attorneys' fees and related costs, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article VII to the full extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the full extent permitted by applicable law.

ARTICLE VIII ACTION BY WRITTEN CONSENT/SPECIAL MEETINGS OF STOCKHOLDERS

For so long as either any class of the Corporation's Common Stock is registered under Section 12 of the Exchange Act, or the Corporation is required to file periodic reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Exchange Act with respect to any class of the Corporation's Common Stock: (i) the stockholders of the Corporation may not take any action by written consent in lieu of a meeting, and must take any actions at a duly called annual or special meeting of stockholders and the power of stockholders to consent in writing without a meeting is specifically denied and (ii) special meetings of stockholders of the Corporation may be called only by either the Board of Directors pursuant to a resolution adopted by the affirmative vote of the majority of the total number of directors then in office or by the chief executive officer of the Corporation.

ARTICLE IX AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the

Amended and Restated Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Amended and Restated Certificate of Incorporation, the Amended and Restated Bylaws of the Corporation or otherwise, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock required by law, this Amended and Restated Certificate of Incorporation, the Amended and Restated Bylaws of the Corporation or otherwise, (i) the affirmative vote of the holders of at least 66²/₃% of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt any provision inconsistent with, to amend or repeal any provision of, or to adopt a bylaw inconsistent with, Articles V, VI, VII, VIII or IX of this Amended and Restated Certificate of Incorporation, and (ii) the rights of the Class B Common Stock may not be amended, altered, changed or repealed without the approval of the holders of a majority of the outstanding shares of Class B Common Stock, voting as a separate class."

* * *

4. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the Board of Directors of the corporation in accordance with the provisions of Sections 144, 242 and 245 of the General Corporation Law of the State of Delaware.

5. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the written consent of the stockholders in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President on this day of _____, 2004.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By

Name: Gregory Benson
Title: President

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**AMENDED AND RESTATED
BYLAWS OF
COMSTOCK HOMEBUILDING COMPANIES, INC.**

**ARTICLE I
Offices**

SECTION 1. *Registered Office.* The registered office of the Corporation in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address shall be Corporation Service Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

SECTION 2. *Other Offices.* The Corporation may have an office or offices other than said registered office at such place or places, either within or without the State of Delaware, as the Board of Directors shall from time to time determine or the business of the Corporation may require.

**ARTICLE II
Meetings of Stockholders**

SECTION 1. *Place of Meetings.* All meetings of the stockholders for the election of directors or for any other purpose shall be held at any such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of meeting or in a duly executed waiver thereof.

SECTION 2. *Annual Meeting.* An annual meeting of stockholders shall be held each year and stated in a notice of meeting or in a duly executed waiver thereof. The date, time and place of such meeting shall be determined by the Chief Executive Officer of the Corporation; *provided that* if the Chief Executive Officer does not act, the Board of Directors shall determine the date, time, and place of such meeting. At such annual meeting, the stockholders shall elect directors to replace those directors whose terms expire at such annual meeting and transact such other business as may properly be brought before the meeting.

SECTION 3. *Special Meetings.* Special meetings of stockholders may be called for any purpose in the manner provided in the Amended and Restated Certificate of Incorporation of the Corporation (as may be further amended or restated from time to time, the "Certificate of Incorporation") and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof.

SECTION 4. *Notice of Meetings.* Except as otherwise expressly required by statute, written notice of each annual and special meeting of stockholders stating the date, place and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder of record entitled to vote thereat not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Notice shall be given personally or by mail and, if by mail, shall be sent in a postage prepaid envelope, addressed to the stockholder at his address as it appears on the records of the Corporation. Notice by mail shall be deemed given at the time when the same shall be deposited in the United States mail, postage prepaid. Notice of any meeting shall not be required to be given to any person who attends such meeting, except when such person attends the meeting in person or by proxy for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, or who, either before or after the meeting, shall submit a signed written waiver of notice, in person or by proxy. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any written waiver of notice.

SECTION 5. *List of Stockholders.* The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 6. *Quorum; Adjournments.* The holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented by proxy at any meeting of stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented by proxy. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty (30) days, or, if after adjournment a new record date is set, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 7. *Organization.* At each meeting of stockholders, the Chairman of the Board, if one shall have been elected, or, in his absence or if one shall not have been elected, the Chief Executive Officer shall act as chairman of the meeting. The Secretary or, in his absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting shall act as secretary of the meeting and keep the minutes thereof.

SECTION 8. *Order of Business.* The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

SECTION 9. *Voting.* Except as otherwise provided by the Certificate of Incorporation (including pursuant to any duly authorized certificate of designation) or the General Corporation Law of the State of Delaware, each stockholder of the Corporation shall be entitled at each meeting of stockholders to one (1) vote for each share of capital stock of the Corporation standing in his name on the record of stockholders of the Corporation:

- (a) on the date fixed pursuant to the provisions of Section 14 of Article II of these Amended and Restated Bylaws (the "Bylaws") as the record date for the determination of the stockholders who shall be entitled to notice of and to vote at such meeting; or
- (b) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held.

Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy which is in writing or transmitted as permitted by law, including, without limitation, electronically, via telegram, internet, interactive voice response system, or other means of electronic transmission executed or authorized by such stockholder or his attorney-in-fact, but no proxy shall be voted after (3) three years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or prior to the time

designated in the order of business for so delivering such proxies. Any proxy transmitted electronically shall set forth information from which it can be determined by the secretary of the meeting that such electronic transmission was authorized by the stockholder. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereon, present and voting, in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted and the number of votes to which each share is entitled.

SECTION 10. *Inspectors.* The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

SECTION 11. *Advance Notice Provisions for Election of Directors.* Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as provided under Section 3 of this Article II, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 11 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 11.

In addition to any other applicable requirements, for a nomination to be made by a stockholder such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the date of the anniversary of the previous year's annual meeting; *provided, however*, that in the event the annual meeting is scheduled to be held on a date more than thirty (30) days prior to or delayed by more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so received not earlier than one hundred twenty (120) days prior to such annual meeting, and not later than the later of the close of business ninety (90) days prior to such annual meeting or the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the

date of the annual meeting was made and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 11. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

SECTION 12. *Advance Notice Provisions for Business to be Transacted at Annual Meeting.* No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 12 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 12.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the date of the anniversary of the previous year's annual meeting; *provided, however*, that in the event the annual meeting is scheduled to be held on a date more than thirty (30) days prior to or delayed by more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so received not earlier than one hundred twenty (120) days prior to such annual meeting, and not later than the later of the close of business ninety

(90) days prior to such annual meeting or the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 12; *provided, however*, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 12 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

SECTION 13. *Action by Written Consent.* For so long as either any class of the Corporation's capital stock is registered under Section 12 of the Exchange Act, or the Corporation is required to file periodic reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Exchange Act with respect to any class of the Corporation's capital stock: (i) the stockholders of the corporation may not take any action by written consent in lieu of a meeting, and must take any actions at a duly called annual or special meeting of stockholders and the power of stockholders to consent in writing without a meeting is specifically denied.

SECTION 14. *Fixing the Record Date.* In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE III Board of Directors

SECTION 1. *General Powers.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2. *Number, Election and Term.* Subject to any rights of the holders of any class or series of Preferred Stock to elect additional directors under specified circumstances, the number of directors which shall constitute the Board of Directors shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the total number of directors then in office. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors; provided, however, whenever the holders of any class or series of Preferred Stock of the Corporation are entitled to elect one or more directors pursuant to the provisions of the Certificate of Incorporation (including pursuant to any duly authorized certificate of designation), such directors shall be elected by a plurality of the votes of such class or series of Preferred Stock present in person or represented by proxy at the meeting and entitled to vote in the election of such directors. The directors shall be elected and shall hold office in the manner provided in the Certificate of Incorporation.

SECTION 3. *Place of Meetings.* Meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as shall be specified in the notice of any such meeting.

SECTION 4. *Annual Meetings.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such other time or place (within or without the State of Delaware) as shall be specified in a notice thereof given as hereinafter provided in Section 7 of this Article III.

SECTION 5. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors may fix. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day.

SECTION 6. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board, if one shall have been elected, or by two or more directors of the Corporation or by the Chief Executive Officer.

SECTION 7. *Notice of Meetings.* Notice of regular meetings of the Board of Directors need not be given except as otherwise required by law or these Bylaws. Notice of each special meeting of the Board of Directors, and of each regular and annual meeting of the Board of Directors for which notice shall be required, shall be given by the Secretary as hereinafter provided in this Section 7, in which notice shall be stated the time and place of the meeting. Except as otherwise required by these Bylaws, such notice need not state the purposes of such meeting. Notice of any special meeting, and of any regular or annual meeting for which notice is required, shall be given to each director at least (a) twenty-four (24) hours before the meeting if by telephone or by being personally delivered or sent by telex, telecopy, or similar means or (b) five (5) days before the meeting if delivered by mail to the director's residence or usual place of business. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid, or when transmitted if sent by telex, telecopy, or similar means. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Any director may waive notice of any meeting by a writing signed by the director entitled to the notice and filed with the minutes or corporate records.

SECTION 8. *Waiver of Notice and Presumption of Assent.* Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken

unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

SECTION 9. *Quorum and Manner of Acting.* A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and, except as otherwise expressly required by statute or the Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of the time and place of any such adjourned meeting shall be given to all of the directors unless such time and place were announced at the meeting at which the adjournment was taken, in which case such notice shall only be given to the directors who were not present thereat. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board and the individual directors shall have no power as such.

SECTION 10. *Organization.* At each meeting of the Board of Directors, the Chairman of the Board, if one shall have been elected, or, in the absence of the Chairman of the Board or if one shall not have been elected, the Chief Executive Officer (or, in his absence, another director chosen by a majority of the directors present) shall act as chairman of the meeting and preside thereat. The Secretary or, in his absence, any person appointed by the chairman, shall act as secretary of the meeting and keep the minutes thereof.

SECTION 11. *Resignations; Newly Created Directorships; Vacancies; and Removals.* Any director of the Corporation may resign at any time by giving notice in writing or by electronic transmission of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal or any other cause shall be filled in the manner provided in the Certificate of Incorporation. Any director may be removed in the manner provided in the Certificate of Incorporation.

SECTION 12. *Compensation.* The Board of Directors shall have authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 13. *Committees.* The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, including an executive committee, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Except to the extent restricted by statute or the Certificate of Incorporation, each such committee, to the extent provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors and may authorize the seal of the Corporation to be affixed to all papers which require it. Each such committee shall serve at the pleasure of the Board of Directors and have such name as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

SECTION 14. *Committee Rules.* Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 13 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 15. *Action by Written Consent.* Unless restricted by the Certificate of Incorporation, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors or such committee, as the case may be. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 16. *Telephonic and Other Meetings.* Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV Officers

SECTION 1. *Number and Qualifications.* The officers of the Corporation shall be elected by the Board of Directors and shall include the Chief Executive Officer, the President and Chief Operating Officer, the Chief Financial Officer, and the Secretary. The Corporation may also have, at the discretion of the Board of Directors, such other officers as are desired, including a Chairman of the Board, one or more Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and such other officers as may be necessary or desirable for the business of the Corporation. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. As the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, and no officer except the Chairman of the Board, if any, need be a director. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the offices of Chief Executive Officer and Secretary shall be filled as expeditiously as possible.

SECTION 2. *Election and Term of Office.* The officers of the Corporation shall be elected annually by the Board of Directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The Chairman of the Board, if any, and Chief Executive Officer shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of stockholders or as soon thereafter as is convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned or have been removed, as hereinafter provided in these Bylaws.

SECTION 3. *Resignations.* Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon receipt. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

SECTION 4. *Removal.* Any officer of the Corporation may be removed, either with or without cause, at any time, by the Board of Directors at any meeting thereof.

SECTION 5. *Vacancies.* Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term by the Board of Directors then in office.

SECTION 6. *Compensation.* The compensation of the officers of the Corporation for their services as such officers shall be fixed from time to time by the Board of Directors. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation.

SECTION 7. *Chairman of the Board.* The Chairman of the Board, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws. If there is no Chief Executive Officer, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 8 of this Article IV.

SECTION 8. *Chief Executive Officer.* The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have the powers and perform the duties incident to that position. He shall, in the absence of the Chairman of the Board, or if a Chairman of the Board shall not have been elected, preside at each meeting of the Board of Directors or the stockholders. He shall be an ex-officio member of all committees. Subject to the powers of the Board of Directors, he shall be in the general and active charge of the entire business and affairs of the Corporation, including authority over its officers, agents and employees, and shall have such other duties as may from time to time be assigned to him by the Board of Directors. The Chief Executive Officer shall see that all orders and resolutions of the Board of Directors are carried into effect, and execute bonds, mortgages and other contracts requiring a seal under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

SECTION 9. *President and Chief Operating Officer.* The President and Chief Operating Officer shall be the chief operating officer of the Corporation. He shall perform all duties incident to the office of President, and be responsible for the general direction of the operations of the business, reporting to the Chief Executive Officer, and shall have such other duties as may from time to time be assigned to him by the Board of Directors or as may be provided in these Bylaws. At the written request of the Chief Executive Officer, or in his absence or in the event of his inability to act, the President shall perform the duties of the Chief Executive Officer, and, when so acting, shall have the powers of and be subject to the restrictions placed upon the Chief Executive Officer in respect of the performance of such duties.

SECTION 10. *Vice President.* Each Vice President shall perform all such duties as from time to time may be assigned to him by the Board of Directors. At the written request of the President, or in the absence or disability of the President, the Vice Presidents, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions placed upon the President in respect of the performance of such duties.

SECTION 11. *Chief Financial Officer.* The Chief Financial Officer shall:

- (a) have charge and custody of, and be responsible for, all the funds and securities of the Corporation;
- (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation;
- (c) deposit all moneys and other valuables to the credit of the Corporation in such depositories as may be designated by the Board of Directors or pursuant to its direction;
- (d) receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;
- (e) disburse the funds of the Corporation and supervise the investments of its funds, taking proper vouchers therefore;
- (f) render to the Board of Directors, whenever the Board of Directors may require, an account of the financial condition of the Corporation; and
- (g) in general, perform all duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to him by the Board of Directors.

The Chief Financial Officer may also be the Treasurer if so determined by the Board of Directors.

SECTION 12. *Secretary.* The Secretary shall:

- (a) keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law;
- (c) be custodian of the records and the seal of the Corporation and affix and attest the seal to all certificates for shares of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal;
- (d) see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and
- (e) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 13. *The Assistant Treasurer.* The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or, if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability to act or his failure to act (in violation of a duty to act or in contravention of direction to act by the Board of Directors), perform the duties and exercise the powers of the Treasurer and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 14. *The Assistant Secretary.* The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his inability to act or his failure to act (in violation of a duty to act or in contravention of direction to act by the Board of Directors), perform the duties and exercise the powers of the Secretary and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 15. *Other Officers, Assistant Officers and Agents.* Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

SECTION 16. *Officers' Bonds or Other Security.* If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety as the Board of Directors may require.

SECTION 17. *Absence or Disability of Officers.* In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE V

Stock Certificates and Their Transfer

SECTION 1. *Stock Certificates.* The Board of Directors may issue stock certificates, or may provide by resolution or resolutions that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares of stock. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by a certificate and, upon request, every holder of uncertificated shares shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board or, the Chief Executive Officer, the President or a Vice-President and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him or her in the Corporation. A certificate representing shares issued by the Corporation shall, if the Corporation is authorized to issue more than one class or series of stock, set forth upon the face or back of the certificate, or shall state that the Corporation will furnish to any stockholder upon request and without charge, a full statement of the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. The Corporation shall furnish to any holder of uncertificated shares, upon request and without charge, a full statement of the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Any request by a holder for a certificate shall be in writing and directed to the Secretary of the Corporation.

SECTION 2. *Facsimile Signatures.* Any or all of the signatures on a certificate may be a facsimile, engraved or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

SECTION 3. *Lost Certificates.* The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum as it may direct sufficient to indemnify it against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate

SECTION 4. *Transfers of Stock.* Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to

the person entitled thereto, cancel the old certificate and record the transaction upon its records; *provided, however*, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

SECTION 5. *Transfer Agents and Registrars.* The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 6. *Regulations.* The Board of Directors may make such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

SECTION 7. *Registered Stockholders.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VI General Provisions

SECTION 1. *Dividends.* Subject to the provisions of statutes and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property or in shares of stock of the Corporation, unless otherwise provided by statute or the Certificate of Incorporation.

SECTION 2. *Reserves.* Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors may, from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors may think conducive to the interests of the Corporation. The Board of Directors may modify or abolish any such reserves in the manner in which it was created.

SECTION 3. *Seal.* The seal of the Corporation shall be in such form as shall be approved by the Board of Directors, which form may be changed by resolution of the Board of Directors.

SECTION 4. *Fiscal Year.* The fiscal year of the Corporation shall end on December 31 of each fiscal year and may thereafter be changed by resolution of the Board of Directors.

SECTION 5. *Checks, Notes, Drafts, Etc.* All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

SECTION 6. *Execution of Contracts, Deeds, Etc.* The Board of Directors may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 7. *Loans.* The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer (other than a named executive officer, as defined by the Securities and Exchange Commission) or other employee of the Corporation or of its subsidiary, including any officer

or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

SECTION 8. *Voting of Stock in Other Corporations.* Unless otherwise provided by resolution of the Board of Directors, the Chairman of the Board, or the Chief Executive Officer, from time to time, may (or may appoint one or more attorneys or agents to) cast the votes which the Corporation may be entitled to cast as a shareholder or otherwise in any other corporation, any of whose shares or securities may be held by the Corporation, at meetings of the holders of the shares or other securities of such other corporation. In the event one or more attorneys or agents are appointed, the Chairman of the Board, or the Chief Executive Officer may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent. The Chairman of the Board, or the Chief Executive Officer may, or may instruct the attorneys or agents appointed to, execute or cause to be executed in the name and on behalf of the Corporation and under its seal or otherwise, such written proxies, consents, waivers or other instruments as may be necessary or proper in the circumstances.

SECTION 9. *Inspection of Books and Records.* Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal place of business.

SECTION 10. *Inconsistency Provisions.* In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VII

Amendments

These Bylaws may be amended or repealed or new Bylaws adopted only in accordance with Article V of the Certificate of Incorporation.

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[GREENBERG TRAURIG]

December 6, 2004

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190

Ladies and Gentlemen:

Comstock Homebuilding Companies, Inc., a Delaware corporation (the "*Company*"), has filed with the Securities and Exchange Commission a Registration Statement on Form S-1, as amended (Registration No. 333-118193) (the "*Registration Statement*"), under the Securities Act of 1933, as amended (the "*Act*"). The Registration Statement relates to the sale by the Company of up to an aggregate of 4,140,000 shares of the Company's Class A common stock, \$0.01 par value per share (the "*Common Stock*"), including (i) 3,600,000 shares of Common Stock (the "*Firm Shares*") to be sold by the Company to the underwriters for whom BB&T Capital Markets, a division of Scott and Stringfellow, Inc., is acting as representative (the "*Underwriters*"); and (ii) up to 540,000 shares of Common Stock that the Underwriters will have an option to purchase solely for the purpose of covering over-allotments (the "*Option Shares*," and together with the Firm Shares, the "*Shares*"). We have acted as counsel to the Company in connection with the preparation and filing of the Registration Statement.

In connection with the preparation of the Registration Statement and this opinion letter, we have examined, considered and relied upon the following documents (collectively, the "*Documents*");

- (i) the Company's amended and restated certificate of incorporation, to be filed with the Secretary of State of the State of Delaware immediately prior to the closing of this offering (the "*Restated Charter*");
- (ii) the Company's amended and restated bylaws;
- (iii) resolutions of the board of directors of the Company;
- (iv) the Registration Statement and schedules and exhibits thereto; and
- (v) such other documents and matters of law as we have considered necessary or appropriate for the expression of the opinions contained herein.

In rendering the opinions set forth below, we have assumed without investigation the genuineness of all signatures and the authenticity of all Documents submitted to us as originals, the conformity to authentic original documents of all Documents submitted to us as copies, and the veracity of the Documents. As to questions of fact material to the opinions hereinafter expressed, we have relied upon the representations and warranties of the Company made in the Documents.

Based upon the foregoing examination, and subject to the qualifications set forth below, we are of the opinion that, following the filing with the Secretary of State of the State of Delaware of the Restated Charter, the Shares will be duly authorized and, when issued, delivered and paid for in accordance with the terms of the Underwriting Agreement filed as Exhibit 1.1 to the Registration Statement, will be validly issued, fully paid and non-assessable.

The opinions expressed above are limited to the General Corporation Law of the State of Delaware which includes the statutory provisions thereof as well as all applicable provisions of the Constitution of the State of Delaware and reported judicial decisions interpreting these laws. Our opinion is rendered only with respect to laws, and the rules, regulations and orders thereunder, which are currently in effect.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the caption "Legal Matters" in the prospectus comprising a part of the Registration Statement. In giving this consent, we do not thereby admit that we are included within the category of persons whose consent is required by Section 7 of the Act and the rules and regulations promulgated thereunder.

Very truly yours,

/s/ GREENBERG TRAURIG, LLP

GREENBERG TRAURIG, LLP

AGREEMENT OF SUBLEASE

THIS AGREEMENT OF SUBLEASE (this "Sublease") is made as of the 1st day of October, 2004 by and between COMSTOCK ASSET MANAGEMENT, L.C. ("Sublandlord"), and COMSTOCK HOMES, INC., a Virginia Limited Liability Company ("Subtenant").

WITNESSETH

WHEREAS, Sublandlord has certain rights of possession and use of real estate and improvements for which Subtenant desires to utilize a portion of such real estate and improvements; and

WHEREAS, Subtenant and Sublandlord desire to enter into this Sublease for a portion of the same premises.

NOW, THEREFORE, in consideration of the mutual covenants herein and for other valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Sublandlord and Subtenant mutually agree, and intend to be legally bound as follows:

1. **Premises.** Sublandlord leases to Subtenant all of Sublandlord's right, title and interest in that certain premise to be known as Suite 405 ("Sublease Premises"), attached as **Exhibit A**, which has been measured as approximately Twenty Thousand Six Hundred and Nine (20,609) rentable square feet. The Sublease Premises, is located on the fourth (4th) and fifth (5th) floors of the building known as 11465 Sunset Hills Road, Reston, Virginia 20190 (the "Building"). The Sublease Premises has been measured by the Sublandlord's architect, Architecture Design Associates, Inc.
 2. **Sublease Term.**
 - A. The "Sublease Term" shall commence (the "Commencement Date") on October 1st, 2004 or when the Sublandlord has secured the consent of the prime Landlord.
 - B. The Sublease Term shall expire upon the end of the Sixtieth (60th) month of the Sublease Term following the Commencement Date (i.e. September 30, 2009). Subtenant is hereby given the option to renew this Sublease for two (2) periods of three (3) years, or one (1) period of either; three (3) years, five (5) years, or seven (7) years ("Option Periods"), provided that the Lease Renewal Option has been exercised by the Sublandlord and there has been no Event of Default under any of the terms of this sublease either at the time of the giving of any such notice or at the time of commencement of any renewal. Subtenant shall give notice in writing to the Sublandlord of its exercise of such option at least six (6) months prior to the termination of the Initial Term. The Base Rent for each Option Period shall be based on the same terms, covenants and conditions as are contained in this Sublease except that the Basic Rent for the first year of the renewal period shall be at the then current market rate (for comparable buildings in the general vicinity of the Building), as agreed to by the parties hereto. In the event the parties can not agree to the current market rate as set forth above then the Sublandlord and Subtenant shall each select a licensed commercial real estate broker doing business in Northern Virginia (the "Selected Brokers"), whereupon the Selected Brokers shall select a third similarly qualified broker, who shall each then provide to the parties their expert opinion as to the then current market rate and the average of the three opinions shall be the current market rate for the purposes of this paragraph. In establishing the Basic Rent for the renewal term, the parties or the brokers who determine the Basic Rent shall consider and take into account subtenant's continuing obligation to pay Additional Charges as defined in the Lease. Notwithstanding the foregoing, in no event shall the Basic Rent for the first year of any Option Period be less than the current rate at the end of the most recent Sublease year.
 - C. Space shall be available for occupancy as of the Commencement Date. "Available for Occupancy" means that Subtenant may make use of the Sublease Premises for normal office
-

purposes, regardless of whether the Sublease Premises conform to the Subtenant's specific desired office purposes.

3. **Base Rent.** Subtenant shall pay to Sublandlord rent equal to the product of Twenty-Three and 50/100ths Dollars (\$23.50) ("Rental Rate") times the number of rentable square feet in the Sublease Premises (20,609) and shall be paid in equal monthly installments on the first (1st) of each month. If the Commencement Date is not the 1st of the month, then for the initial partial month of the sublease, Subtenant shall pay to Sublandlord a prorated amount of the Monthly Base Rent.

Accordingly, the Basic Rent during the Initial Term hereunder will be as follows:

Fourth Floor—Suite 400—4,895 SF

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent/S.F.</u>
Lease Year 1	\$ 115,032.50	\$ 9,586.04	\$ 23.50
Lease Year 2	\$ 119,633.80	\$ 9,969.48	\$ 24.44
Lease Year 3	\$ 124,419.15	\$ 10,368.26	\$ 25.42
Lease Year 4	\$ 129,395.92	\$ 10,782.99	\$ 26.43
Lease Year 5	\$ 134,571.75	\$ 11,214.31	\$ 27.49

Fifth Floor—Suite 510—15,714 SF

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent/S.F.</u>
Lease Year 1	\$ 369,279.00	\$ 30,773.25	\$ 23.50
Lease Year 2	\$ 384,050.16	\$ 32,004.18	\$ 24.44
Lease Year 3	\$ 399,412.17	\$ 33,284.35	\$ 25.42
Lease Year 4	\$ 415,388.65	\$ 34,615.72	\$ 26.43
Lease Year 5	\$ 432,004.20	\$ 36,000.35	\$ 27.49

4. **Late Payments.** Should Monthly Installments of the Base Rent not be made on or before the 5th day of a calendar month, the payment shall be considered overdue and Sublandlord may begin charging Subtenant an interest rate per annum equal to the sum of (i) the prime rate of interest established and publicly announced by The Chase Manhattan Bank, N.A., New York, plus (ii) four percent (4%), until such payment is made. In no event shall the default rate of interest be less than twelve percent (12%) nor more than eighteen percent (18%).
4. **Escalation.** The Base Rent shall increase by four percent (4%) per annum commencing on the first anniversary of the Sublease Term.
5. **Subordination.** This Sublease is in all respects subject and subordinated to the Lease between Landlord and Sublandlord, a copy of which is attached hereto and is incorporated as **Exhibit B**.
6. **Assignment.** No assignment of the Sublease nor further sublease of any portion of the Sublease Premises shall be made without the prior written consent of Sublandlord and approval of Landlord.
7. **Operating Expenses.** A pro-rata portion of any passthroughs from the prime landlord of the Sublease Premises in excess of the Base Year identified in the Lease shall result in a direct passthrough to the Subtenant.
8. **Parking.** Sublandlord shall provide Subtenant with the non-exclusive use of 3.5 parking spaces for each 1,000 square feet of leased space free of charge. Subtenant shall be provided reserved parking spaces (including covered parking spaces) as detailed on the Reserved Parking Plan attached hereto as **EXHIBIT D**.

9. **Condition, Acceptance and Use of Sublease Premises**

- A. Upon the Commencement Date, Subtenant shall accept the Subleased Premises in their existing condition and state of repair. Sublandlord and Subtenant both acknowledge that a portion of the Leased Premises currently contains certain Office Furniture and/or Equipment (**Exhibit C**) which is the property of Landlord. The Landlord agrees that, without payment of additional rent, the Subtenant shall have the right to use such Office Furniture and/or Equipment during the Lease Term. At the expiration of the Lease Term, the Office Furniture and/or Equipment shall be delivered to the Landlord in condition substantially the same as its condition as of the effective date hereof, with the exception of normal wear and tear. Subtenant acknowledges that no representations, statements or warranties, express or implied, have been made by or on behalf of the Sublandlord in respect to their condition, of the use or occupation that may be made thereof, and that Sublandlord shall in no event whatsoever be liable for any latent defects in the Subleased Premises or in the equipment therein. Sublandlord shall enforce the provisions of the Lease with regard to Landlord's obligations to provide services to the Subleased Premises and common areas.
- B. Acceptance of the Subleased Premises by Subtenant shall be construed as recognition that the Subleased Properties are in a good state of repair and in sanitary condition. Sublandlord shall not be liable for any losses or damages incurred by Subtenant due to failure of operation of the heating, cooling, or other utility equipment or due to the necessity of repair of the same.
- C. The Subleased Premises shall be used or occupied by Subtenant solely for executive and general office uses as permitted in Section 6 of the Lease and shall not be used for any other purpose. Subtenant shall not use or occupy the Subleased Premises for any unlawful purpose nor place any excessive or unreasonable demands upon the building.
- D. Subtenant shall surrender the Subleased Premises at the expiration of the term hereof, or any renewal thereof, or upon other termination hereunder, in the same condition as when Subtenant took possession, reasonable wear and tear excepted.
- E. Except as specifically provided herein, Sublandlord shall have no responsibility whatsoever with respect to the Subleased Premises, the condition thereof or Subtenant's property situated therein, except for loss, injury or damage caused by Sublandlord's gross negligence or willful misconduct. Sublandlord shall not be liable for the failure by Landlord to keep and perform, according to the terms of the Lease, Landlord's duties, covenants, agreements, obligations, restrictions, conditions and provisions, nor for any delay or interruption in Landlord's keeping and performing the same. Sublandlord hereby assigns to Subtenant, for so long as this Sublease shall be in force and effect, any and all rights of Sublandlord under the Lease with respect to the Subleased Premises and causes of action which Sublandlord may have against Landlord with respect to the Subleased Premises because of any default by Landlord under the Lease, excluding, however, any right of self-help or rent abatement. Sublandlord agrees to cooperate with and join Subtenant in any claims or suits brought by Subtenant against Landlord under the Lease, provided that such participation shall be without cost or expense to Sublandlord. Subtenant has inspected the Subleased Premises and its contents to its satisfaction and, except as specifically set forth herein, agrees to accept the Subleased Premises and its contents in its "as-is, where-is" condition without any obligations on Sublandlord to repair or modify the same.

10. **Default Under Superior Leases.**

- A. Subtenant agrees to assume and perform, according to the terms of the Lease, all of the duties, covenants, agreements and obligations of Sublandlord under the Lease, as and when required by the Lease, with respect to the Sublease Premises, except Sublandlord's duty to

make rent payments to Landlord. Subtenant further agrees to keep and obey, according to the terms of the Lease, all of the rules, restrictions, conditions and provisions which pertain to the Subleased Premises, and are imposed by the terms of the Lease upon Sublandlord with respect to the Subleased Premises or upon the use of the Subleased Premises. Subtenant agrees that it will take good care of the Subleased Premises, and will commit no waste, and will not do, suffer, or permit to be done any injury to the same. It is hereby understood and agreed that Subtenant's rights to use, possess and enjoy the Subleased Premises are subject to the terms, conditions, rules and regulations of the Lease and the rights and remedies of the Landlord thereunder. Subtenant agrees to indemnify, defend, and protect Sublandlord against, and to hold Sublandlord harmless from, any liability, damages, costs or expenses of any kind or nature, including court costs and reasonable attorneys' fees, resulting from any failure by Subtenant to perform, keep and obey the terms of this Sublease and the requirements of the Lease with respect to the Subleased Premises. Any failure by Subtenant to perform, keep and obey the same shall be a default by Subtenant hereunder.

- B. Subtenant shall not act in any manner which would cause a default under the terms of the Lease. Within five (5) business days of Sublandlord's receipt of notice of any default under the Lease which may jeopardize Subtenant's quiet enjoyment of the Sublease Premises, Sublandlord shall notify Subtenant of the nature of the default and of Sublandlord's intention to cure such default. In the event Subtenant or Sublandlord shall receive a notice of default from Landlord as a direct result of Subtenant's actions, then Subtenant shall have all the rights to cure such event of default that Sublandlord enjoys under the Lease, however, in the event Subtenant fails to timely cure any event of default within ten (10) business days, Sublandlord shall have the right to terminate the lease and Subtenant shall vacate the Subleased Premises within thirty (30) days. Further, Sublandlord shall have the right to recover all damages to which Sublandlord is entitled including reletting expenses (vacancy, commissions, improvements, etc.), and any unpaid rent up until the time of such reletting or occupancy of Sublease Premises by Sublandlord. If Sublandlord occupies less than or equal to 50% of Sublease Premises, rent shall be abated proportionately; if Sublandlord occupies greater than 50% of Sublease Premises, then space shall be considered fully occupied.
- C. Subtenant shall be in default of this Sublease to the extent that Subtenant fails to abide by the terms or conditions of this Sublease and/or the Lease, with Subtenant being afforded the rights as to notice of default and curing of default as set forth above. Furthermore, if any default under the Lease shall occur with respect to Subtenant, or if Subtenant fails to perform of any of its own covenants and obligations under this Sublease, then and in any of said cases, Subtenant shall be deemed in default, and Sublandlord shall have the right to exercise all remedies set forth in the Lease as if Sublandlord were the landlord and Subtenant were the Tenant thereunder.
- D. Subtenant hereby waives trial by jury in any action, proceeding, claim or counterclaim brought by Landlord or Sublandlord with respect to any matter whatsoever arising out of or in any way connected with this Sublease, the relationship between Sublandlord and Subtenant, and/or Subtenant's use or occupancy of the Subleased Premises. Subtenant further waives receipt of any notice to quit the Subleased Premises in the event of any default hereunder.
- E. In the event either party files suit at law or equity to enforce the terms of this Sublease, the substantially prevailing party shall recover from the substantially non-prevailing party its reasonable expenses, including, but not limited to, court costs. All such expenses shall bear interest at the highest rate allowable under the laws of the Commonwealth of Virginia until paid in full by the substantially non-prevailing party.

12. **Insurance.** During the Sublease Term, Subtenant shall maintain insurance in force with a company licensed to do business in Virginia, with policy limits of at least Two Million Dollars (\$2,000,000.00) general liability and One Million Dollars (\$1,000,000.00) property damage. Sublandlord shall be named as an additional insured thereunder and Subtenant shall provide Sublandlord with a certificate of such insurance prior to the Commencement Date. Subtenant and Sublandlord each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents, and representatives of the other, for loss of or damage to such waiving party or its property of the property of other under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage and such loss or damage has been paid by the insurance company. The insuring party shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease.
13. **Notices.** Every notice, approval, consent or other communication authorized or required by this Sublease ("Notice") shall not be effective unless same shall be in writing and sent postage prepaid by the United States registered or certified mail, return receipt requested, or delivered by hand, and a written receipt acknowledging such postal or hand delivery obtained for each designated recipient (or proof of refusal), directed to the other party at the following addresses (indicating the date and to whom delivered), or such other address as either party may designate by Notice given from time to time in accordance with this Paragraph:
- If to Subtenant: COMSTOCK HOMES, INC.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
ATTENTION: Gregory Benson
- If to Sublandlord: COMSTOCK ASSET MANAGEMENT, L.C.
11465 Sunset Hills Road
Suite 510
Reston, VA 20190
Attn: Christopher Clemente
15. **Security.** Upon full execution of the Sublease, Sublandlord shall deliver to Subtenant a reasonable number of suite entry keys for the Sublease Premises and a reasonable number of Building perimeter security access cards, at no cost to Subtenant.
16. **Identity.** Sublandlord shall obtain Landlord's consent, if necessary, for Subtenant's Building Directory strips.
17. **Landlord Approval.** In the event the Lease requires the prior written consent of the Landlord prior to an action by the Subtenant, then Sublandlord, on behalf of Subtenant, shall initiate action to gain consent from Landlord within ten (10) days of Subtenant's notice to Sublandlord concerning such proposed action. The preceding sentence notwithstanding, in the event the Lease specifies the time period in which Landlord must respond to such a request for consent, then such specified time period shall control.
18. **Quiet Enjoyment.** Subtenant shall have the peaceful and quiet use of the Sublease Premises, and all rights, servitude and privileges belonging or in anywise appertaining thereto or granted thereby, for the Term of this Sublease, without hindrance or interruption by Sublandlord. Sublandlord warrants that it has full right and authority to enter into this Lease for the full term hereof.
19. **Security Deposit.** Upon Sublease execution, Subtenant shall provide Sublandlord with a Security Deposit equal to one month's Base Rent.

20. **Renewal Option.** In the event the Subtenant does not exercise its option to renew at the end of the Sublease Term, as provided in paragraph 2 (B) then in such event this Sublease shall continue on a month to month basis until either party gives the other ninety (90) days prior written notice of their intent to terminate this Sublease.
21. **Communications.** Subtenant agrees that all communications regarding their tenancy under this Sublease shall be directed *or copied* to the Sublandlord who will in the case of property management issues contact the Landlord.
22. **Entire Agreement.** This Sublease, together with the Exhibits attached hereto, contains and embodies the entire agreement of the Parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Sublease and the Exhibits, shall be of any force and effect. This Sublease may not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by the Parties hereto.

IN WITNESS WHEREOF, this Agreement of Sublease has been executed by the parties as of the date first hereinabove written.

SUBLANDLORD:

SUBTENANT:

COMSTOCK ASSET MANAGEMENT, L.C.

COMSTOCK HOMES, INC.

By: /s/ Christopher Clemente

By: /s/ Gregory Benson

Name: Christopher Clemente

Name: Gregory Benson

Title: Managing Member

Title: President

Attachments:

Exhibit A—Floor Plan of Sublease Premises

Exhibit B—Lease

Exhibit C—Office Furniture and Equipment List

Exhibit D—Reserved Parking Plan

LANDLORD'S CONSENT AND AGREEMENT

Comstock Partners, L.C., as Landlord under the Lease, hereby consents to the foregoing Sublease between COMSTOCK ASSET MANAGEMENT, L.C. and COMSTOCK HOMES, INC. dated October 1, 2004 and the terms and conditions thereunder. Landlord's consent herein shall not modify or affect the Lease or relieve Sublandlord from any liability thereunder.

Comstock Partners, L.C.

By: /s/ Christopher Clemente

Name: Christopher Clemente

Title: Managing Member

Date: October 1, 2004

EXHIBIT A
Sublease Premises

Exhibit B
Lease

Exhibit C
Office Furniture and/or Equipment

Exhibit D
Reserved Parking Plan

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[Exhibit B Lease](#)

[Exhibit C Office Furniture and/or Equipment](#)

[Exhibit D Reserved Parking Plan](#)

PARTIAL ASSIGNMENT OF NOTE

THIS PARTIAL ASSIGNMENT of NOTE ("Assignment") is made and entered into this day of _____, 2003, by and between Comstock Capital Partners, L.C., a Virginia limited liability company ("Assignor"), The Kasproicz Family, LLC, a Virginia limited liability company ("Assignee"), and Comstock Potomac Yard, L.C., a Virginia limited liability company ("Comstock Potomac Yard").

RECITALS:

WHEREAS, Comstock Potomac Yard purchased certain property in Arlington County, Virginia to be developed into a condominium project commonly known as Potomac Yard-Land Bay F (the "Property"); and

WHEREAS, Crescent Potomac Yard Development, LLC ("Crescent") made a deferred purchase money loan to Comstock Potomac Yard in the amount of \$16,000,000.00 (the "Senior Loan"), evidenced by a deferred purchase money promissory note (the "Senior Note") and secured by a purchase money deed of trust (the "Senior Trust") in favor of Crescent; and

WHEREAS, Assignor made a junior loan to Comstock Potomac Yard, subordinate to the Senior Loan, in the amount of \$7,000,000.00 (the "Junior Loan"), evidenced by a deed of trust note (the "Junior Note") and secured by a deed of trust (the "Junior Trust") in favor of Assignor as lender (collectively, the "Junior Loan Documents") secured by the Property.

WHEREAS, Assignor owns the entire Junior Loan and is entitled to receive 100% of the proceeds of payments made by Comstock Potomac Yard under the Junior Loan and desires to assign a portion of its rights, title and interest under the Junior Note and Junior Deed of Trust to Assignee (a "Partial Assignment"); and

WHEREAS, Assignee, in exchange for Assignor's Partial Assignment of its rights, title and interest in the Junior Note and Junior Deed of Trust and right to receive the proceeds of payments under the Junior Loan as it relates to the Partial Assignment, has paid to Assignor the total amount of \$1,000,000.00 (the "Assignment Fee");

NOW, THEREFORE, for and in consideration of the mutual promises of the parties herein contained, the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:

1. Assignor hereby assigns a 14.286% interest in the Junior Note and Junior Deed of Trust to Assignee. This assignment is without warranty or recourse, except as provided in this Assignment.
 2. Comstock Potomac Yard and Assignor hereby represent and warrant to Assignee that there exists no defaults under the Junior Note or the Junior Deed of Trust. Assignor further represents and warrants to Assignee that (a) this Assignment has been duly authorized and approved by all necessary action on the part of Assignor; (ii) as of the date of this Assignment, Assignor is the sole owner of the Junior Note, except that Assignor is assigning a 85.714% interest in the Junior Note to Schar Holdings, Inc. simultaneously with the execution of this Assignment; (c) the Junior Note, including, without limitation, the interest in the Junior Note being assigned to Assignee under this Assignment, is free and clear of all liens, encumbrances, and pledges; and (d) Assignor has the absolute right, power and authority to make the assignment to Assignee provided for in this Assignment.
 3. Comstock Potomac Yard hereby expressly and unconditionally consents to this assignment, agrees to be bound by the terms and conditions of the Junior Note and Junior Deed of Trust and agrees to pay the amounts due under the Junior Note directly to Assignee in strict accordance with the terms of the Junior Note and this Assignment.
 4. Assignor hereby expressly and unconditionally consents to this assignment and agrees to be bound by the terms and conditions of the Junior Note and Junior Deed of Trust.
-

5. Assignee hereby expressly and unconditionally consents to and acknowledges the lien, operation and effect of the Senior Trust and Senior Loan documents and that the same are superior in all respects to the lien, operation and effect of the Junior Trust and Junior Loan documents.

6. This Partial Assignment may be signed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document. A facsimile transmission of this Agreement bearing the signature of one or more parties hereto shall be deemed to be an original.

7. Assignor covenants that it will, at any time and from time to time upon written request by Assignee, promptly execute and deliver to Assignee, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which Assignee, its successors and assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its successors and assigns, and protect its and/or their right, title and interest in and enjoyment of the interest in the Junior Note and Junior Trust contemplated to be assigned by this Assignment.

8. The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee, and Comstock Potomac Yard and their respective successors and assigns.

[Signature page follows]

ASSIGNOR:

COMSTOCK CAPITAL PARTNERS, L.C.
a Virginia limited liability company

By: _____
Name:
Title:
Date: 12/15/2003

COMSTOCK POTOMAC YARD:

COMSTOCK POTOMAC YARD, L.C.
a Virginia limited liability company

By: Comstock Holding Company, Inc. Manager

By: /s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chief Executive Officer
Date: 12/15/2003

ASSIGNEE:

THE KASPROWICZ FAMILY, LLC
a Virginia limited liability company

By: /s/ SCOTT KASPROWICZ _____

Name:
Title:
Date: 12/15/2003

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[PARTIAL ASSIGNMENT OF NOTE
RECITALS](#)

PROMISSORY NOTE

\$5,000,000.00

April 30, 2004
Fairfax County, Virginia

COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (the "Borrower"), for value received, hereby promises to pay to the order of **KASPROWICZ FAMILY, LLC**, (together with any subsequent holder of this Note, the "Lender") at 14800 Conference Center Drive, Suite 201, Chantilly, Virginia 20151 or at such other address as the Lender shall specify in writing to the Borrower, the principal sum of up to Five Million and no/100ths Dollars (\$5,000,000.00), or so much thereof as may be advanced and remain outstanding from time to time, together with interest on any unpaid principal balance hereof at the rate hereinafter provided (the "Note"), it being agreed the Lender shall make an advance of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) as of the date hereof and Borrower shall have the option of receiving an additional Two Million Five Hundred Thousand Dollars (\$2,500,000.00) advance of principal upon prior written notice made to Borrower within ninety (90) days from the date hereof (the "Notice") provided there is no Event of Default hereunder, it being further agreed that Borrower shall be deemed to have waived a subsequent advance if the Notice is not timely made (the "Loan"), payable as follows:

THIS NOTE CONTAINS A BALLOON FEATURE

This Note shall bear interest at a rate of twelve percent (12%) per annum (the "Loan Interest Rate").

Payments of interest on the outstanding principal amount shall be due and payable quarterly (3 calendar months) in arrears commencing three (3) calendar months following the date hereof, and continuing on the same date of each calendar quarter thereafter.

Both principal and interest are payable in lawful money of the United States and in immediately available funds. Interest shall be charged and calculated on the basis of a 360-day year, and applied to the actual number of days elapsed.

If not sooner paid, and except as hereinafter provided, the entire principal of this Note and all accrued and unpaid interest shall be due and payable on the date which is thirty six (36) calendar months from the date hereof (the "Maturity Date").

If at any time prior to the Maturity Date, the Borrower, Comstock Homes, Inc., Comstock Service Corp., Inc. and various affiliates of such entities consolidate their operations and merge into one (1) operating entity (the "Consolidation"), the outstanding principal of this Note, all accrued and unpaid interest and the Premium, as that term is hereinafter defined, shall be immediately due and payable. For the purposes of this Note, the "Premium" shall be defined as follows:

- (i) Ten percent (10%) of the total amount advanced under this Note if the effective date of the Consolidation is less than twelve (12) calendar months after the date of this Note.
- (ii) Fifteen percent (15%) of the total amount advanced under this Note if the effective date of the Consolidation is more than twelve (12) calendar months but less than thirty (30) calendar months after the date of this Note.
- (iii) There shall be no Premium due if the effective date of the Consolidation is more than thirty (30) calendar months after the date of this Note.

If the Consolidation does not take place on or before twenty four (24) calendar months after the date of this Note, the Lender, at its sole option and absolute discretion may, by written notice to the

Borrower ("Demand Notice"), to be provided no later than ten (10) calendar days after the expiration of the twenty fourth (24th) calendar month after the date of this Note, require that the Borrower pay to the Lender, within fifteen (15) days of receipt of the Demand Notice, the entire outstanding principal of this Note, all accrued and unpaid interest and a premium equal to three percent (3%) of the total amount advanced under this Note.

In the event the principal and interest or any other sum due hereunder is not paid when due, whether upon acceleration, at maturity or otherwise, the Lender may, in addition to any other remedy the Lender may exercise, charge a late penalty in an amount equal to five percent (5%) of the overdue payment of principal and/or interest. Further, in the event that the principal and interest or any other sum due hereunder is not paid when due, whether upon acceleration, at maturity or otherwise, the Lender may, in addition to any other remedy the Lender may exercise, raise the rate of interest accruing on the unpaid principal balance of this Note by three (3) percentage points above the interest rate otherwise applicable hereunder ("Default Rate").

Payments or prepayments on this Note shall be applied first to any late charges due hereunder, then to pay, or to reimburse the Lender for any costs and expenses incurred by or on behalf of the Lender, then to any applicable prepayment premium or penalty, then to accrued interest, and the remainder to reduce the principal balance hereof.

Except as set forth above, Borrower shall have no right to prepay all or any part of the outstanding balance of the Loan without Lender's express written consent, which consent Lender may withhold in its sole discretion. In the event that Borrower or any Guarantor enters into any non-bank financing transaction involving a principal amount borrowed or invested in a single transaction, or in the aggregate, in an amount between \$2,000,000 to \$5,000,000.00 with any other party prior to repayment of the Loan, Borrower shall promptly furnish written notice to Lender describing the terms of such financing transaction, and Borrower shall have the option, exercisable within thirty (30) days after receipt of such written notice, to convert the terms of this Note to the terms accepted by Borrower or any Guarantor in such other financing transaction.

Any of the following events shall constitute an "Event of Default" under the terms of this Note and the other documents evidencing or securing the Loan to Borrower (the "Loan Documents"):

- (i) any failure of Borrower to pay when due any installment or other sum described herein, whether of principal, premium, interest, late charge, or otherwise, and provided that such failure shall continue for five (5) days after payment of such sum is due;
- (ii) any breach by any of Borrower or any Guarantor of any of the terms or obligations of the Loan Documents, which breach continues for a period of thirty (30) days after delivery by Lender of written notice to Borrower specifying the nature of the breach and the failure to cure such breach;
- (iii) any assignment for the benefit of creditors is made by any of Borrower or any Guarantor, or any of them shall admit in writing its inability to pay its debts as the same become due, or any of them shall file a petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or any of them shall file a petition seeking any arrangement, composition, readjustment, or similar relief under any present or future statute, law, or regulation, or any of them shall file an answer admitting or not contesting the material allegations of a petition filed against such party in any such proceeding, or any of them shall seek or consent to or acquiesce in the appointment of a receiver or trustee;
- (iv) any filing of a petition against any of Borrower or any Guarantor seeking the involuntary appointment of a receiver, trustee or other relief in a bankruptcy or insolvency proceeding, which proceeding has not been dismissed or vacated within a period of sixty (60) days after the commencement of such proceeding;

(v) any default by any of Borrower or any Guarantor under any other loan agreement, whether secured or unsecured, with any other creditor, which shall continue beyond any applicable cure or grace period;

(vi) the failure by Borrower and Guarantors to maintain a minimum aggregate tangible net worth equal to one third (1/3) of the aggregate sum of all outstanding indebtedness to such entities (the "Debt to Equity Ratio") or such less restrictive Debt to Equity Ratio as Borrower or Guarantor's institutional lenders may require from time to time;

(vii) any sale of substantially all of the assets of any of Borrower or any Guarantor, or of Comstock Potomac Yard, L.C., or any liquidation or dissolution of Borrower, any Guarantor, or Comstock Potomac Yard, L.C. which is not in connection with a Consolidation as noted above.

Upon the occurrence of an Event of Default, the entire unpaid balance of this Note together with any and all interest, costs and fees shall, at the option of the Lender, before immediately due and payable, without further notice or demand.

The Borrower agrees to pay all expenses, including reasonable attorneys' fees, incurred by Lender in collecting this Note or in preserving or disposing of any collateral granted as security for the payment of this Note or in defending any claim arising out of the execution of this Note or the obligation which it evidences.

The Borrower and each co-maker, endorser, surety, guarantor or other party obligated on this Note (each of the foregoing, including the Borrower, being hereinafter referred to as an "Obligor") waives presentment, demand, protest and notice of dishonor, to the fullest extent permitted by law; waives all exemptions, whether homestead or otherwise, as to the obligations evidenced by this Note; waives any rights which it may have to require the Lender to proceed against any other person; and agrees that without notice to any Obligor and without affecting any Obligor's liability, the Lender, at any time or times, may grant extensions of the time for payment or other indulgences to any Obligor or permit the renewal of this Note, or permit the substitution, exchange or release of any security for this Note and may add or release any Obligor primarily or secondarily liable.

The Lender shall not be deemed to have waived any of the Lender's rights or remedies hereunder unless such waiver is express and in a writing signed by the Lender; and no delay or omission by the Lender in exercising, or failure by the Lender on any one or more occasions to exercise, any of the Lender's rights hereunder, or at law or in equity, including, without limitation, the Lender's right, after any Event of Default, to declare the entire indebtedness evidenced hereby immediately due and payable, shall be construed as a novation of this Note or shall operate as a waiver or prevent the subsequent exercise of any or all of such rights. Acceptance by the Lender of any portion or all of any sum payable hereunder whether before, on or after the due date of such payment, shall not be a waiver of the Lender's right either to require prompt payment when due of all other sums payable hereunder or to exercise any of the Lender's rights, powers and remedies hereunder, or any other document evidencing or securing the loan to Borrower (jointly with this Note, the "Loan Documents"). A waiver of any right in writing on one occasion shall not be construed as a waiver of the Lender's right to insist hereafter upon strict compliance with the terms hereof and no exercise of any right by the Lender shall constitute or be deemed to constitute an election of remedies by the Lender precluding the subsequent exercise by the Lender or any or all of the rights, powers and remedies available to it hereunder, under any other Loan Document or at law or in equity.

Noting herein shall be deemed to be a waiver of any right which Lender may have under *Sections 506(a), 506(b), 1111(b)* or any other provisions of the Bankruptcy Code to file a claim for the full amounts of the debt secured by the other Loan Documents or to require that all collateral shall continue to secure all of the debt owing to Lender in accordance with this Note and the other Loan Documents.

Lender shall not have the right at any time or from time to time to sell this Note and the loan evidenced by this Note and the other Loan Documents or participation interests therein but may otherwise assign or transfer its interest to an entity directly owned and controlled by Lender or Scott Kasproicz. Subject to the foregoing, this Note shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Note shall be governed by, and shall be construed according to, the laws of the Commonwealth of Virginia.

The Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due under this Note at a rate which could subject the Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to agree to pay. If, by the terms of this Note, Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum permissible rate, the rate of interest shall be deemed to be immediately reduced to such maximum permissible rate and the interest payable shall be computed at such maximum permissible rate, and, to the extent required for compliance with any such law, all prior interest payments in excess of such maximum permissible rate shall be applied, and shall be deemed to have been payments in reduction of, the principal of this Note.

Borrower hereby warrants, represents and covenants that no funds disbursed hereunder shall be used for personal, family or household purposes, and further that the Loan evidenced by this Note is being made for business or investment purposes only.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH INCLUDING, BUT NOT LIMITED TO THOSE RELATING TO (A) ALLEGATIONS THAT A PARTNERSHIP EXISTS BETWEEN LENDER AND BORROWER; (B) USURY OR PENALTIES OR DAMAGES THEREFOR; (C) ALLEGATIONS OF UNCONSCIONABLE ACTS, DECEPTIVE TRADE PRACTICE, LACK OF GOOD FAITH OR FAIR DEALINGS, LACK OF COMMERCIAL REASONABLENESS, OR SPECIAL RELATIONSHIPS (SUCH AS FIDUCIARY, TRUST OR CONFIDENTIAL RELATIONSHIP); (D) ALLEGATIONS OF DOMINION, CONTROL, ALTER EGO, INSTRUMENTALITY, FRAUD, REAL ESTATE FRAUD, MISREPRESENTATIONS, DURESS, COERCION, UNDUE INFLUENCE, INTERFERENCE OR NEGLIGENCE; (E) ALLEGATIONS OF TORTIOUS INTERFERENCE WITH PRESENT OR PROSPECTIVE BUSINESS RELATIONSHIPS OR OF ANTITRUST; OR (F) SLANDER, LIBEL OR DAMAGE TO REPUTATION. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

THE BORROWER REPRESENTS AND WARRANTS THAT LEGAL COUNSEL OF ITS CHOICE HAS BEEN RETAINED (OR BORROWER, BEING AWARE OF THE RIGHT TO DO SO, CHOSE NOT TO SO RETAIN COUNSEL) TO REVIEW AND INTERPRET THIS NOTE AND ALL WAIVERS AND RELEASES CONTAINED HEREIN, SAID COUNSEL HAVING EXPLAINED AND ADVISED THE BORROWER AS TO THE NOTE'S CONTENTS AND MEANING. MOREOVER, BORROWER FURTHER REPRESENTS AND WARRANTS THAT BORROWER COMPLETELY UNDERSTANDS THIS NOTE HAVING SEEN AND READ ITS CONTENTS, AND IS EXECUTING THIS NOTE VOLUNTARILY AND WITH BORROWER'S FREE CONSENT AND DESIRE. MOREOVER, THE BORROWER HAS REVIEWED AND APPROVED THE ABOVE RELEASES AND WAIVERS, AND HAS BEEN ADVISED BY COUNSEL OF THE CHOICES AVAILABLE TO BORROWER AS TO THE

MEANING AND EFFECT OF THE RELEASES AND WAIVERS AND HAS FREELY AND WITHOUT DURESS AGREED TO EXECUTE THIS NOTE.

Any capitalized term used in this Note and note specifically defined herein shall have the meaning assigned to it in any other agreement entered into between the Borrower and the Lender of even date herewith, unless context requires a different meaning.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed under seal as of the date first above written.

[SIGNATURES FOLLOW]

BORROWER:

COMSTOCK HOLDING COMPANY, INC.

A Virginia corporation

By: /s/ CHRISTOPHER CLEMENTE

Name:

Title:

The undersigned guarantors Comstock Homes, Inc. and Comstock Service Corp., Inc. (jointly and severally the "Guarantor") hereby agree to an "Absolute Guaranty" of payment, performance and completion of all terms and conditions set forth in this Note, pursuant to the terms and conditions of an Unconditional Guaranty Agreement of even date herewith.

GUARANTOR:

COMSTOCK HOMES, INC.

A Virginia corporation

By: /s/ CHRISTOPHER CLEMENTE

Name: Christopher Clemente

Title: CEO

COMSTOCK SERVICE CORP., INC.

A Virginia corporation

By: /s/ CHRISTOPHER CLEMENTE

Name: Christopher Clemente

Title: CEO

QuickLinks

[PROMISSORY NOTE](#)

[THIS NOTE CONTAINS A BALLOON FEATURE](#)

[\[SIGNATURES FOLLOW\]](#)

**COMSTOCK HOMEBUILDING COMPANIES, INC.
INDEMNIFICATION AGREEMENT**

This INDEMNIFICATION AGREEMENT (this "Agreement") is entered into as of _____, 200____, by and between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee"). Capitalized terms used and not otherwise defined in this Agreement have the meanings set forth in Section 10 hereof.

RECITALS

A. The Company and Indemnitee recognize the continued difficulty in obtaining liability insurance for the directors, officers, employees, agents and fiduciaries of the Company and its Subsidiaries, the significant periodic increases in the cost of such insurance and the general reductions in the coverage provided by such insurance.

B. The Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, agents and fiduciaries to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited.

C. Indemnitee does not regard the current protection available as adequate under the present circumstances, and Indemnitee and other directors, officers, employees, agents and fiduciaries of the Company may not be willing to continue to serve in such capacities without additional protection.

D. The Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company and/or one or more of its Subsidiaries and, in order to induce Indemnitee to provide or to continue to provide services to the Company and/or one or more of its Subsidiaries, wishes to provide for the indemnification and advancing of expenses to Indemnitee to the maximum extent permitted by law.

E. In view of the considerations set forth above, the Company desires that Indemnitee be indemnified by the Company as set forth herein.

NOW, THEREFORE, the Company and Indemnitee hereby agree as follows:

1. *Indemnification.* (a) *Indemnification of Expenses.* The Company shall indemnify Indemnitee to the fullest extent permitted by law if Indemnitee was or is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, any Proceeding, against any and all Expenses, including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses. Subject to Section 1(b) hereof, such payment of Expenses shall be made by the Company as soon as practicable but in any event no later than thirty (30) days after written demand by Indemnitee therefor is presented to the Company.

(b) *Reviewing Party.* Notwithstanding anything to the contrary in Sections 1(a) or 2(a) hereof:

(i) the indemnification obligations of the Company under Section 1(a) hereof shall be subject to the condition that the Reviewing Party shall not have determined that Indemnitee would not be permitted to be indemnified under applicable law; and

(ii) the obligation of the Company to make an advance payment of Expenses to Indemnitee pursuant to Section 2(a) hereof (an "Expense Advance") shall be subject to the condition that, if, when and to the extent that the Reviewing Party determines that Indemnitee would not be permitted to be indemnified under applicable law, the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid by Company to Indemnitee; *provided, however*, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be

indemnified under applicable law, any determination made by the Reviewing Party that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

Indemnitee's obligation to reimburse the Company for any Expense Advance shall be unsecured and no interest shall be charged thereon. If there has not been a Change in Control, or if there has been a Change in Control which has been approved by a majority of the directors of the Company who were directors immediately prior to the Change in Control (the "Incumbent Directors"), the Reviewing Party shall be selected by the Board of Directors of the Company, and if there has been a Change in Control which has not been approved by a majority of the Incumbent Directors, the Reviewing Party shall be the Independent Legal Counsel. If there has been no determination by the Reviewing Party or if the Reviewing Party determines that Indemnitee would not be permitted to be indemnified in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by the Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding. Any determination by the Reviewing Party otherwise shall be conclusive and binding on the Company and Indemnitee.

(c) *Contribution.* If the indemnification obligations of the Company under Section 1(a) hereof shall be held by a court of competent jurisdiction for any reason other than that set forth in Section 8(a) hereof to be unavailable to Indemnitee in respect of any Expense, then the Company, in lieu of indemnifying Indemnitee thereunder, shall contribute to the amount paid or payable by Indemnitee as a result of such Expense (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and Indemnitee, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and Indemnitee in connection with the action or inaction which resulted in such Expense, as well as any other relevant equitable considerations. The Company and Indemnitee agree that it would not be just and equitable if contribution pursuant to this Section 1(c) were determined by pro rata or per capita allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence.

(d) *Mandatory Payment of Expenses.* Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Proceeding or in the defense of any claim, issue or matter therein, Indemnitee shall be indemnified against all Expenses incurred by Indemnitee in connection therewith.

2. *Expenses; Indemnification Procedure.*

(a) *Advancement of Expenses.* Subject to the terms and conditions of Section 1(b) hereof and to the extent not prohibited by applicable law, the Company shall advance all Expenses incurred by Indemnitee. The advances to be made hereunder shall be paid by the Company to Indemnitee as soon as practicable but in any event no later than thirty (30) days after written demand by Indemnitee therefor to the Company.

(b) *Notice; Cooperation by Indemnitee.* Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified under this Agreement, give the Company notice in writing as soon as practicable of any Proceeding for which indemnification will or could be sought under this Agreement. In addition, Indemnitee shall give the Company such

information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) *No Presumptions; Burden of Proof.*

(i) For purposes of this Agreement, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law. In addition, neither the failure of the Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by the Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under applicable law, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief.

(ii) In connection with any determination by the Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

(d) *Notice to Insurers.* If, at the time of the receipt by the Company of a notice of a Proceeding pursuant to Section 2(b) hereof, the Company has liability insurance in effect which may cover such Proceeding, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such action, suit, proceeding, inquiry or investigation in accordance with the terms of such policies.

(e) *Selection of Counsel.* In the event the Company shall be obligated hereunder to pay the Expenses of a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld or delayed, upon the delivery to Indemnitee of written notice of its election so to do. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding; *provided* that (i) Indemnitee shall have the right to employ Indemnitee's counsel in any such Proceeding at Indemnitee's expense and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. The Company shall have the right to conduct such defense as it sees fit in its sole discretion, provided that the Company has the right to settle any claim against Indemnitee only with the consent of Indemnitee, which shall not be unreasonably withheld or delayed.

3. *Scope; Nonexclusivity.*

(a) *Scope.* It is understood that the parties to this Agreement intend for this Agreement to be interpreted and enforced so as to provide indemnification and advancement of Expenses to Indemnitee to the fullest extent now or hereafter permitted by law, subject

only to the express exceptions and limitations otherwise set forth in this Agreement. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of the Company to indemnify a member of the Board of Directors or an officer, employee, agent or fiduciary of the Company or any Subsidiary, as applicable, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change in any applicable law, statute or rule which narrows the right of the Company to indemnify a member of the Board of Directors or an officer, employee, agent or fiduciary of the Company or any Subsidiary, as applicable, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) *Nonexclusivity.* The indemnification and advancement of Expenses provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the charter documents of the Company or any Subsidiary, any agreement, any vote of stockholders or disinterested directors, the General Corporation Law of the State of Delaware, or otherwise.

4. *No Duplication of Payments.* The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, charter documents of the Company or any Subsidiary or otherwise) of the amounts otherwise indemnifiable hereunder.

5. *Partial Indemnification.* If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Proceeding, but not for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

6. *Mutual Acknowledgement.* Both the Company and Indemnitee acknowledge that in certain instances, Federal law or applicable public policy may prohibit the Company from indemnifying its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

7. *Maintenance of Liability Insurance.* The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of director and officer liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director, or of the Company's officers, if Indemnitee is not a director of the Company but is an officer. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage proved, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a parent or Subsidiary of the Company

8. *Exceptions.* Notwithstanding anything to the contrary herein other than Section 1(d) hereof, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) *Unlawful Claims.* To indemnify Indemnitee with respect to any Proceeding if a final decision by a court having jurisdiction shall have determined that such indemnification is not lawful;

(b) *Proceedings Initiated by Indemnitee.* To indemnify or advance Expenses to Indemnitee with respect to Proceedings initiated or brought voluntarily by Indemnitee and not by way of defense, except (i) with respect to any Proceeding (x) brought to establish or enforce a right to indemnification or advancement of Expenses under this Agreement, or any other agreement, or insurance policy, or the charter documents of the Company or any Subsidiary, now or hereafter in effect relating to any Proceeding, or (y) specifically authorized by the Board of Directors, or (ii) as otherwise required under Section 145 of the Delaware General Corporation Law, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance expense payment or insurance recovery, as the case may be; *provided, however,* that such indemnification or advancement of Expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate;

(c) *Claims Under Section 16(b).* To indemnify Indemnitee for Expenses, judgments, fines or penalties sustained in any Proceeding for an accounting of profits arising from the purchase and sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), rules and regulations promulgated thereunder, or any similar provisions of any federal, state or local statute; or

(d) *Lack of Good Faith.* To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any Proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding was not made in good faith or was frivolous.

9. *Period of Limitations.* No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of three (3) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such three-year period; *provided, however,* that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

10. *Construction of Certain Terms and Phrases.* As used in this Agreement, the following terms and phrases shall have the meanings set forth below:

(a) A "Change in Control" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, (A) who is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing 10% or more of the combined voting power of the Company's then outstanding Voting Securities, increases his beneficial ownership of such securities by 5% or more over the percentage so owned by such person, or (B) becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than 20% of the total voting power represented by the Company's then outstanding Voting

Securities, (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company and any new director whose election by the Board of Directors or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of transactions) all or substantially all of the Company's assets.

(b) References to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(c) "Expense" shall include any and all expenses (including attorneys' fees and all other costs, expenses and obligations incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness in or participate in, a Proceeding), judgments, fines, penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld or delayed) of a Proceeding, and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement.

(d) "Independent Legal Counsel" shall mean an attorney or firm of attorneys who shall not have otherwise performed services for the Company or Indemnitee within the last three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnity agreements). Independent Legal Counsel shall be selected as follows: (i) by a majority of the Disinterested Directors if there has not been a Change in Control or if there has been a Change in Control which has been approved by a majority of the Incumbent Directors; or (ii) by Indemnitee, subject to the approval by a majority of the Disinterested Directors (which shall not be unreasonably withheld), if there has been a Change in Control which has not been approved by a majority of the Incumbent Directors. The Company agrees to pay the reasonable fees of the Independent Legal Counsel, regardless of which party selects the Independent Legal Counsel.

(e) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes

duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries.

(f) "Proceeding" shall mean any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism, whether brought by or in the right of the Company or any Subsidiary or otherwise, and whether civil, criminal, administrative, investigative or other, in which Indemnitee was or is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant by reason of (or arising in part out of) any event or occurrence related to the fact that Indemnitee is or was a director, officer, employee, agent or fiduciary of the Company or any Subsidiary, or is or was serving at the request of the Company or any Subsidiary as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action or inaction on the part of Indemnitee while serving in such capacity.

(g) "Reviewing Party" shall mean (i) the Board of Directors acting by a majority vote of the directors who are not and were not parties to the Proceeding in respect of which indemnification is being sought (the "Disinterested Directors"), (ii) a committee of some or all of the Disinterested Directors designated by a majority vote of the Disinterested Directors, or (iii) Independent Legal Counsel.

(h) "Subsidiary" shall mean any corporation or other entity of which more than 50% of the outstanding Voting Securities is owned directly or indirectly by the Company, by the Company and one or more other Subsidiaries, or by one or more other Subsidiaries.

(i) "Voting Securities" shall mean any securities of the Company that vote generally in the election of directors.

11. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

12. *Binding Effect; Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs, and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect with respect to any Proceeding regardless of whether Indemnitee continues to serve as a director, officer, employee, agent or fiduciary of the Company, any Subsidiary or any other enterprise at the Company's request.

13. *Attorneys' Fees.* In the event that any action is instituted by Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, Indemnitee shall be entitled to be paid all expenses incurred by Indemnitee with respect to such action, regardless of whether Indemnitee is ultimately successful in such action, and shall be entitled to the advancement of such expenses with respect to such action, unless, as a part of such action, a court of competent jurisdiction over such action determines that each of the material assertions made by Indemnitee as a basis for such action was

not made in good faith or was frivolous. In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all expenses incurred by Indemnitee in defense of such action (including costs and expenses incurred with respect to Indemnitee counterclaims and cross-claims made in such action), and shall be entitled to the advancement of such expenses with respect to such action, unless, as a part of such action, a court having jurisdiction over such action determines that each of Indemnitee's material defenses to such action was not made in good faith or was frivolous.

14. *Notice.* All notices and other communications required or permitted hereunder shall be in writing, shall be effective when received, and shall in any event be deemed to be received (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by certified or registered mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid, or (d) one day after the business day of delivery by facsimile transmission, if delivered by facsimile transmission, with copy by first class mail, postage prepaid, and shall be addressed if to Indemnitee, at Indemnitee's address as set forth beneath Indemnitee's signature to this Agreement and if to the Company at the address of its principal corporate offices (attention: Secretary) or at such other address as a party may designate by ten days' advance written notice to the other party hereto.

15. *Headings.* The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

16. *Severability.* The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitations, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

17. *Choice of Law.* This Agreement shall be governed by and its provisions construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents, entered into and to be performed entirely within the State of Delaware, without regard to the conflict of laws principles thereof.

18. *Subrogation.* In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

19. *Amendment and Termination.* No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

20. *Integration and Entire Agreement.* This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto.

21. *No Construction as Employment Agreement.* Nothing contained in this Agreement shall be construed as giving Indemnitee any right to be retained in the employ of the Company or any of its Subsidiaries.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____

Name: _____

Title: _____

AGREED TO AND ACCEPTED BY:

Signature: _____

Name: _____

Address: _____

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[COMSTOCK HOMEBUILDING COMPANIES, INC. INDEMNIFICATION AGREEMENT](#)

PROMISSORY NOTE

\$ _____, 2004

1. *General.* For value received, _____, a Virginia corporation (the "*Payor*"), hereby promises to pay to the order of _____, an individual with the primary address of _____ or his assigns (the "*Payee*"), the principal amount of \$ _____ plus all accrued and unpaid interest as set forth herein. All payments hereunder shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender therein for the payment of public and private debts. Interest on the unpaid balance of the principal amount of this Promissory Note shall accrue from and after the date hereof at the rate of 3.0% per annum (compounded on a calendar quarter basis) (the "*Rate*"). The principal of, and interest on, this Promissory Note shall be payable by wire transfer of immediately available funds to the account of the Payee. All payments, including any prepayments pursuant to *Section 2* hereof, shall be applied first to costs of collection, if any, then to accrued and unpaid interest, and thereafter to principal. The principal amount herein plus all accrued and unpaid interest thereon shall be paid by Payor to Payee on the one-year anniversary of this Promissory Note (the "*Maturity Date*").

2. *Prepayment.* Prepayment of principal and interest may be made at any time without penalty.

3. *Defaults.*

3.1 *Definitions.* In each case of the happening of the following events (each of which is an "*Event of Default*"):

(a) if a default occurs in the payment of any premium, principal of, interest on, or other obligation with respect to, this Promissory Note, whether at the date an interest payment is due, the Maturity Date or upon acceleration thereof, and such default shall continue for more than ten days after written notice thereof from the Payee to Payor;

(b) if Payor shall (i) discontinue its business, (ii) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its property, (iii) admit in writing its inability to pay its debts as they mature, (iv) make a general assignment for the benefit of creditors, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation laws or statutes, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

(c) there shall be filed against either Payor an involuntary petition seeking reorganization of such Payor or the appointment of a receiver, trustee, custodian or liquidator of either Payor or a substantial part of its assets, or an involuntary petition under any bankruptcy, reorganization or insolvency law of any jurisdiction, whether now or hereafter in effect (any of the foregoing petitions being hereinafter referred to as an "*Involuntary Petition*") and such Involuntary Petition shall not have been dismissed within 60 days after it was filed; or

(d) if a default occurs in the due observance or performance of any covenant or agreement on the part of Payor to be observed or performed pursuant to the terms of this Promissory Note, and such default remains uncured for more than 15 days after written notice thereof from Payee to Payor;

then, upon each and every such Event of Default and at any time thereafter during the continuance of such Event of Default, at the election of Payee, this Promissory Note shall immediately become due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest), without presentment, demand, or protest, all of which are hereby expressly waived,

anything contained herein to the contrary notwithstanding (except in the case of an Event of Default under paragraphs (b) or (c) of this Section 3.1, in which event such indebtedness shall automatically become due and payable).

3.2 *Remedies on Default, Etc.* In case any one or more Events of Default shall occur and be continuing and acceleration of this Promissory Note shall have occurred, the Payee may, *inter alia*, proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained in this Promissory Note, or for an injunction against a violation of any of the terms hereof or in and of the exercise of any power granted hereby or by law. No right conferred upon the Payee by this Promissory Note shall be exclusive of any other right referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

4. *Replacement of Note.* Upon receipt by the Payor of evidence satisfactory to it of the loss, theft, destruction, or mutilation of this Promissory Note and (in the case of loss, theft or destruction) of an indemnity reasonably satisfactory to it, and upon surrender and cancellation of this Promissory Note, if mutilated, the Payor will deliver a new promissory note of like tenor in lieu of this Promissory Note. Any note delivered in accordance with the provisions of this Section 4 shall be dated as of the date of this Promissory Note.

5. *Extension of Maturity.* Should the principal of or interest on this Promissory Note become due and payable on other than a business day, such payment date shall be extended to the next succeeding business day, and, in the case of principal, interest shall be payable thereon at the Rate during such extension. For the purposes of the preceding sentence, a business day shall be any day that is not a Saturday, Sunday, or legal holiday in the Commonwealth of Virginia.

6. *Attorneys' and Collection Fees.* Should the indebtedness evidenced by this Promissory Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceedings, the Payor agrees to pay, in addition to principal and interest due and payable hereon, all costs of collection, including reasonable attorneys' fees and expenses, incurred by the Payee in collecting or enforcing this Promissory Note.

7. *Waivers.*

7.1 *Waivers by Payor.* The Payor hereby waives presentment, demand for payment, notice of dishonor, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance or default of this Promissory Note.

7.2 *Actions of Payee not a Waiver.* No delay by the Payee in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver whatsoever or modification of the terms hereof shall be valid unless set forth in writing by the Payee and then only to the extent set forth therein.

8. *Assignment.* This Promissory Note may not be assigned by Payor without the written consent of Payee; *provided, however*, that no such consent shall be required for an assignment of this Promissory Note by the Payor to [Comstock Holding Company, Inc., a Virginia corporation][Comstock Homebuilding Companies, Inc., a Delaware corporation] if such assignment is made in connection with a merger between the Payor and [Comstock Holding Company, Inc.] [Comstock Homebuilding Companies, Inc.].

9. *Amendments and Waivers.* No provision of this Promissory Note may be amended or waived without the express written consent of both the Payor and the Payee.

10. *Governing Law.* This Promissory Note is made and delivered in, and shall be governed by and construed in accordance with the laws of, the Commonwealth of Virginia (without giving effect to principles of conflicts of laws of the Commonwealth of Virginia or any other state). Each of Payor and Payee hereby irrevocably submits to the jurisdiction of any state or federal court sitting in the Commonwealth of Virginia for purposes of any controversy, claim or dispute arising out of or related to this Promissory Note and hereby waives any defense of an inconvenient forum and any right of jurisdiction on account of the place of residence or domicile.

IN WITNESS WHEREOF, the Payor has duly executed this Promissory Note as of the date first written above.

[Name of Payor]

By: _____
Name: _____
Title: _____

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Exhibit 10.12

COMSTOCK HOMEBUILDING COMPANIES, INC.
2004 LONG-TERM INCENTIVE COMPENSATION PLAN

2004 LONG-TERM INCENTIVE COMPENSATION PLAN

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COMSTOCK HOMEBUILDING COMPANIES, INC.
2004 LONG-TERM INCENTIVE COMPENSATION PLAN

1. *Purpose.* The purpose of this 2004 LONG-TERM INCENTIVE COMPENSATION PLAN (the "Plan") is to assist Comstock Homebuilding Companies, Inc., a Delaware corporation and its Related Entities (as hereinafter defined) in attracting, motivating, retaining and rewarding high-quality executives and other employees, officers, directors, consultants and other persons who provide services to the Company or its Related Entities by enabling such persons to acquire or increase a proprietary interest in the Company in order to strengthen the mutuality of interests between such persons and the Company's shareholders, and providing such persons with long term performance incentives to expend their maximum efforts in the creation of shareholder value.

2. *Definitions.* For purposes of the Plan, the following terms shall be defined as set forth below, in addition to such terms defined in Section 1 hereof.

(a) "Award" means any Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award, Share granted as a bonus or in lieu of another award, Dividend Equivalent, Other Stock-Based Award or Performance Award, together with any other right or interest, granted to a Participant under the Plan.

(b) "Award Agreement" means any written agreement, contract or other instrument or document evidencing any Award granted by the Committee hereunder.

(c) "Beneficiary" means the person, persons, trust or trusts that have been designated by a Participant in his or her most recent written beneficiary designation filed with the Committee to receive the benefits specified under the Plan upon such Participant's death or to which Awards or other rights are transferred if and to the extent permitted under Section 10(b) hereof. If, upon a Participant's death, there is no designated Beneficiary or surviving designated Beneficiary, then the term Beneficiary means the person, persons, trust or trusts entitled by will or the laws of descent and distribution to receive such benefits.

(d) "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 under the Exchange Act and any successor to such Rule.

(e) "Board" means the Company's Board of Directors.

(f) "Cause" shall, with respect to any Participant have the meaning specified in the Award Agreement. In the absence of any definition in the Award Agreement, "Cause" shall have the equivalent meaning or the same meaning as "cause" or "for cause" set forth in any employment, consulting, or other agreement for the performance of services between the Participant and the Company or a Related Entity or, in the absence of any such agreement or any such definition in such agreement, such term shall mean (i) the failure by the Participant to perform, in a reasonable manner, his or her duties as assigned by the Company or a Related Entity, (ii) any violation or breach by the Participant of his or her employment, consulting or other similar agreement with the Company or a Related Entity, if any, (iii) any violation or breach by the Participant of any non-competition, non-solicitation, non-disclosure and/or other similar agreement with the Company or a Related Entity, (iv) any act by the Participant of dishonesty or bad faith with respect to the Company (or a Related Entity), (v) use of alcohol, drugs or other similar substances in a manner that adversely affects the Participant's work performance, or (vi) the commission by the Participant of any act, misdemeanor, or crime reflecting unfavorably upon the Participant or the Company or any Related Entity. The good faith determination by the Committee of whether the Participant's Continuous Service was terminated by the Company for "Cause" shall be final and binding for all purposes hereunder.

(g) "Change in Control" means a Change in Control as defined with related terms in Section 9(b) of the Plan.

(h) "Code" means the Internal Revenue Code of 1986, as amended from time to time, including regulations thereunder and successor provisions and regulations thereto.

- (i) "Company" means Comstock Homebuilding Companies, Inc., a Delaware corporation, and its successors and assigns.
- (j) "Committee" means a committee designated by the Board to administer the Plan; provided, however, that if the Board fails to designate a committee or if there are no longer any members on the committee so designated by the Board, then the Board shall serve as the Committee. The Committee shall consist of at least two directors, and each member of the Committee shall be (i) a "non-employee director" within the meaning of Rule 16b-3 (or any successor rule) under the Exchange Act, unless administration of the Plan by "non-employee directors" is not then required in order for exemptions under Rule 16b-3 to apply to transactions under the Plan, (ii) an "outside director" within the meaning of Section 162(m) of the Code, and (iii) "Independent".
- (k) "Consultant" means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.
- (l) "Continuous Service" means the uninterrupted provision of services to the Company or any Related Entity in any capacity of Employee, Director, Consultant or other service provider. Continuous Service shall not be considered to be interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entities, or any successor entities, in any capacity of Employee, Director, Consultant or other service provider, or (iii) any change in status as long as the individual remains in the service of the Company or a Related Entity in any capacity of Employee, Director, Consultant or other service provider (except as otherwise provided in the Award Agreement). An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave.
- (m) "Covered Employee" means an Eligible Person who is a "covered employee" within the meaning of Section 162(m)(3) of the Code, or any successor provision thereto.
- (n) "Deferred Stock" means a right to receive Shares, including Restricted Stock, cash or a combination thereof, at the end of a specified deferral period.
- (o) "Deferred Stock Award" means an Award of Deferred Stock granted to a Participant under Section 6(e) hereof.
- (p) "Director" means a member of the Board or the board of directors of any Related Entity.
- (q) "Disability" means a permanent and total disability (within the meaning of Section 22(e) of the Code), as determined by a medical doctor satisfactory to the Committee.
- (r) "Dividend Equivalent" means a right, granted to a Participant under Section 6(g) hereof, to receive cash, Shares, other Awards or other property equal in value to dividends paid with respect to a specified number of Shares, or other periodic payments.
- (s) "Effective Date" means the effective date of the Plan, which shall be _____, 2004.
- (t) "Eligible Person" means each officer, Director, Employee, Consultant and other person who provides services to the Company or any Related Entity. The foregoing notwithstanding, only employees of the Company, or any parent corporation or subsidiary corporation of the Company (as those terms are defined in Code Sections 424(e) and (f), respectively), shall be Eligible Persons for purposes of receiving any Incentive Stock Options. An Employee on leave of absence may be considered as still in the employ of the Company or a Related Entity for purposes of eligibility for participation in the Plan.

(u) "Employee" means any person, including an officer or Director, who is an employee of the Company or any Related Entity. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute "employment" by the Company.

(v) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, including rules thereunder and successor provisions and rules thereto.

(w) "Fair Market Value" means the fair market value of Shares, Awards or other property as determined by the Committee, or under procedures established by the Committee. Unless otherwise determined by the Committee, the Fair Market Value of a Share as of any given date after which the Company is a Publicly Held Corporation shall be the closing sale price per Share reported on a consolidated basis for stock listed on the principal stock exchange or market on which Shares are traded on the date as of which such value is being determined or, if there is no sale on that date, then on the last previous day on which a sale was reported.

(x) "Good Reason" shall, with respect to any Participant, have the meaning specified in the Award Agreement. In the absence of any definition in the Award Agreement, "Good Reason" shall have the equivalent meaning or the same meaning as "good reason" or "for good reason" set forth in any employment, consulting or other agreement for the performance of services between the Participant and the Company or a Related Entity or, in the absence of any such agreement or any such definition in such agreement, such term shall mean (i) the assignment to the Participant of any duties inconsistent in any material respect with the Participant's position, duties or responsibilities as assigned by the Company or a Related Entity, or any other action by the Company or a Related Entity which results in a material diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company or a Related Entity promptly after receipt of notice thereof given by the Participant; (ii) any material failure by the Company or a Related Entity to comply with its obligations to the Participant as agreed upon, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company or a Related Entity promptly after receipt of notice thereof given by the Participant; or (iii) the Company's or Related Entity's requiring the Participant to be based at any office or location outside of fifty miles from the location of employment or service as of the date of Award, except for travel reasonably required in the performance of the Participant's responsibilities.

(y) "Incentive Stock Option" means any Option intended to be designated as an incentive stock option within the meaning of Section 422 of the Code or any successor provision thereto.

(z) "Independent", when referring to either the Board or members of the Committee, shall have the same meaning as used in the rules of the Nasdaq Stock Market or any national securities exchange on which any securities of the Company are listed for trading, and if not listed for trading, by the rules of the Nasdaq Stock Market.

(aa) "Incumbent Board" means the Incumbent Board as defined in Section 9(b)(ii) of the Plan.

(bb) "Option" means a right granted to a Participant under Section 6(b) hereof, to purchase Shares or other Awards at a specified price during specified time periods.

(cc) "Optionee" means a person to whom an Option is granted under this Plan or any person who succeeds to the rights of such person under this Plan.

(dd) "Option Proceeds" means the cash actually received by the Company for the exercise price in connection with the exercise of Options that are exercised after the Effective Date of the Plan, plus the maximum tax benefit that could be realized by the Company as a result of the exercise of such Options, which tax benefit shall be determined by multiplying (i) the amount that

is deductible for Federal income tax purposes as a result of any such option exercise (currently, equal to the amount upon which the Participant's withholding tax obligation is calculated), times (ii) the maximum Federal corporate income tax rate for the year of exercise. With respect to Options, to the extent that a Participant pays the exercise price and/or withholding taxes with Shares, Option Proceeds shall not be calculated with respect to the amounts so paid in Shares.

(ee) "Other Stock-Based Awards" means Awards granted to a Participant under Section 6(i) hereof.

(ff) "Participant" means a person who has been granted an Award under the Plan which remains outstanding, including a person who is no longer an Eligible Person.

(gg) "Performance Award" shall mean any Award of Performance Shares or Performance Units granted pursuant to Section 6(h).

(hh) "Performance Period" means that period established by the Committee at the time any Performance Award is granted or at any time thereafter during which any performance goals specified by the Committee with respect to such Award are to be measured.

(ii) "Performance Share" means any grant pursuant to Section 8 of a unit valued by reference to a designated number of Shares, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including cash, Shares, other property, or any combination thereof, upon achievement of such performance goals during the Performance Period as the Committee shall establish at the time of such grant or thereafter.

(jj) "Performance Unit" means any grant pursuant to Section 8 of a unit valued by reference to a designated amount of property (including cash) other than Shares, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including cash, Shares, other property, or any combination thereof, upon achievement of such performance goals during the Performance Period as the Committee shall establish at the time of such grant or thereafter.

(kk) "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, and shall include a "group" as defined in Section 13(d) thereof.

(ll) "Publicly Held Corporation" shall mean a publicly held corporation as that term is used under Section 162(m)(2) of the Code.

(mm) "Related Entity" means any Subsidiary, and any business, corporation, partnership, limited liability company or other entity designated by Board in which the Company or a Subsidiary holds a substantial ownership interest, directly or indirectly.

(nn) "Restricted Stock" means any Share issued with the restriction that the holder may not sell, transfer, pledge or assign such Share and with such risks of forfeiture and other restrictions as the Committee, in its sole discretion, may impose (including any restriction on the right to vote such Share and the right to receive any dividends), which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee may deem appropriate.

(oo) "Restricted Stock Award" means an Award granted to a Participant under Section 6(d) hereof.

(pp) "Rule 16b-3" means Rule 16b-3, as from time to time in effect and applicable to the Plan and Participants, promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act.

(qq) "Shares" means the shares of Class A common stock of the Company, par value \$0.01 per share, and such other securities as may be substituted (or resubstituted) for Shares pursuant to Section 10(c) hereof.

(rr) "Stock Appreciation Right" means a right granted to a Participant under Section 6(c) hereof.

(ss) "Subsidiary" means any corporation or other entity in which the Company has a direct or indirect ownership interest of 50% or more of the total combined voting power of the then outstanding securities or interests of such corporation or other entity entitled to vote generally in the election of directors or in which the Company has the right to receive 50% or more of the distribution of profits or 50% or more of the assets on liquidation or dissolution.

(tt) "Substitute Awards" shall mean Awards granted or Shares issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, by a company acquired by the Company or any Related Entity or with which the Company or any Related Entity combines.

3. Administration.

(a) *Authority of the Committee.* The Plan shall be administered by the Committee, except to the extent the Board elects to administer the Plan, in which case references herein shall be deemed to include references to the Board; provided, however that for any period during which the Company is a Publicly Held Corporation, the Plan shall be administered by only those directors who are Independent Directors and references herein to the "Committee" shall be deemed to include references to the Independent members of the Board. The Committee shall have full and final authority, subject to and consistent with the provisions of the Plan, to select Eligible Persons to become Participants, grant Awards, determine the type, number and other terms and conditions of, and all other matters relating to, Awards, prescribe Award Agreements (which need not be identical for each Participant) and rules and regulations for the administration of the Plan, construe and interpret the Plan and Award Agreements and correct defects, supply omissions or reconcile inconsistencies therein, and to make all other decisions and determinations as the Committee may deem necessary or advisable for the administration of the Plan. In exercising any discretion granted to the Committee under the Plan or pursuant to any Award, the Committee shall not be required to follow past practices, act in a manner consistent with past practices, or treat any Eligible Person or Participant in a manner consistent with the treatment of other Eligible Persons or Participants.

(b) *Manner of Exercise of Committee Authority.* Any action of the Committee shall be final, conclusive and binding on all persons, including the Company, its Related Entities, Participants, Beneficiaries, transferees under Section 10(b) hereof or other persons claiming rights from or through a Participant, and shareholders. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. The Committee may delegate to officers or managers of the Company or any Related Entity, or committees thereof, the authority, subject to such terms as the Committee shall determine to perform such functions, including administrative functions as the Committee may determine to the extent that such delegation will not result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company and will not cause Awards intended to qualify as "performance-based compensation" under Code Section 162(m) to fail to so qualify. The Committee may appoint agents to assist it in administering the Plan.

(c) *Limitation of Liability.* The Committee and the Board, and each member thereof, shall be entitled to, in good faith, rely or act upon any report or other information furnished to him or

her by any officer or Employee, the Company's independent auditors, Consultants or any other agents assisting in the administration of the Plan. Members of the Committee and the Board, and any officer or Employee acting at the direction or on behalf of the Committee or the Board, shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action or determination.

4. Shares Subject to Plan.

(a) *Limitation on Overall Number of Shares Available for Grant Under Plan.* Subject to adjustment as provided in Section 10(c) hereof, the total number of Shares reserved and available for grant under the Plan shall be 1,500,000, plus an annual increase to be added on January 1st of each year, commencing on January 1, 2005 and ending on January 1, 2013 (each such day, a "Calculation Date"), equal to the lesser of (i) three percent (3%) of the Shares outstanding on each such Calculation Date (rounded down to the nearest whole share) or (ii) 500,000 Shares. Notwithstanding the foregoing, the Board may act, prior to the first day of any fiscal year of the Company, to increase the share reserve by such number of Shares as the Board shall determine, which number shall be less than the amount described in the foregoing sentence. Any Shares delivered under the Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares.

(b) *Application of Limitation to Grants of Award.* No Award may be granted if the number of Shares to be delivered in connection with such an Award or, in the case of an Award relating to Shares but settled only in cash (such as cash-only Stock Appreciation Rights), the number of Shares to which such Award relates, exceeds the number of Shares remaining available under the Plan, minus the number of Shares deliverable in settlement of or relating to then outstanding Awards. The Committee may adopt reasonable counting procedures to ensure appropriate counting, avoid double counting (as, for example, in the case of tandem or substitute awards) and make adjustments if the number of Shares actually delivered differs from the number of Shares previously counted in connection with an Award.

(c) *Availability of Shares Not Delivered under Awards and Adjustments to Limits.*

(i) If any Shares subject to an Award are forfeited, expire or otherwise terminate without issuance of such Shares, or any Award is settled for cash or otherwise does not result in the issuance of all or a portion of the Shares subject to such Award, the Shares shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for Awards under the Plan, subject to Section 4(c)(v) below.

(ii) In the event that any Option or other Award granted hereunder is exercised through the tendering of Shares (either actually or by attestation) or by the withholding of Shares by the Company, or withholding tax liabilities arising from such Option or other Award are satisfied by the tendering of Shares (either actually or by attestation) or by the withholding of Shares by the Company, then only the number of Shares issued net of the Shares tendered or withheld shall be counted for purposes of determining the maximum number of Shares available for grant under the Plan.

(iii) Shares reacquired by the Company on the open market using Option Proceeds shall be available for Awards under the Plan. The increase in Shares available pursuant to the repurchase of Shares with Option Proceeds shall not be greater than the amount of such proceeds divided by the Fair Market Value of a Share on the date of exercise of the Option giving rise to such Option Proceeds.

(iv) Substitute Awards shall not reduce the Shares authorized for grant under the Plan or authorized for grant to a Participant in any period. Additionally, in the event that a company

acquired by the Company or any Related Entity or with which the Company or any Related Entity combines has shares available under a pre-existing plan approved by shareholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or Directors prior to such acquisition or combination.

(v) Notwithstanding anything in this Section 4(c) to the contrary and solely for purposes of determining whether Shares are available for the grant of Incentive Stock Options, the maximum aggregate number of shares that may be granted under this Plan shall be determined without regard to any Shares restored pursuant to this Section 4(c) that, if taken into account, would cause the Plan to fail the requirement under Code Section 422 that the Plan designate a maximum aggregate number of shares that may be issued.

5. *Eligibility; Per-Person Award Limitations.* Awards may be granted under the Plan only to Eligible Persons. Subject to adjustment as provided in Section 10(c), in any 12-month period during any part of which the Plan is in effect, no Participant may be granted (i) Options or Stock Appreciation Rights with respect to more than 150,000 Shares or (ii) Restricted Stock, Deferred Stock, Performance Shares and/or Other Stock-Based Awards with respect to more than 150,000 Shares. In addition, the maximum dollar value payable to any one Participant with respect to any 12-month Performance Period with respect to Performance Units is \$250,000 multiplied by the number of full years in the Performance Period.

6. *Specific Terms of Awards.*

(a) *General.* Awards may be granted on the terms and conditions set forth in this Section 6. In addition, the Committee may impose on any Award or the exercise thereof, at the date of grant or thereafter (subject to Section 10(e)), such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall determine, including terms requiring forfeiture of Awards in the event of termination of the Participant's Continuous Service and terms permitting a Participant to make elections relating to his or her Award. The Committee shall retain full power and discretion to accelerate, waive or modify, at any time, any term or condition of an Award that is not mandatory under the Plan. Except in cases in which the Committee is authorized to require other forms of consideration under the Plan, or to the extent other forms of consideration must be paid to satisfy the requirements of Delaware law, no consideration other than services may be required for the grant (but not the exercise) of any Award.

(b) *Options.* The Committee is authorized to grant Options to any Eligible Person on the following terms and conditions:

(i) *Exercise Price.* Other than in connection with Substitute Awards, the exercise price per Share purchasable under an Option shall be determined by the Committee, provided that such exercise price shall not, in the case of Incentive Stock Options, be less than 100% of the Fair Market Value of a Share on the date of grant of the Option and shall not, in any event, be less than the par value of a Share on the date of grant of the Option. If an Employee owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are

defined in Sections 424(e) and (f) of the Code, respectively) and an Incentive Stock Option is granted to such employee, the exercise price of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no less than 110% of the Fair Market Value a Share on the date such Incentive Stock Option is granted.

(ii) *Time and Method of Exercise.* The Committee shall determine the time or times at which or the circumstances under which an Option may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which Options shall cease to be or become exercisable following termination of Continuous Service or upon other conditions, the methods by which the exercise price may be paid or deemed to be paid (including in the discretion of the Committee a cashless exercise procedure), the form of such payment, including, without limitation, cash, Shares, other Awards or awards granted under other plans of the Company or a Related Entity, or other property (including notes or other contractual obligations of Participants to make payment on a deferred basis provided that such deferred payments are not in violation of the Sarbanes-Oxley Act of 2002, or any rule or regulation adopted thereunder or any other applicable law), and the methods by or forms in which Shares will be delivered or deemed to be delivered to Participants.

(iii) *Incentive Stock Options.* The terms of any Incentive Stock Option granted under the Plan shall comply in all respects with the provisions of Section 422 of the Code. Anything in the Plan to the contrary notwithstanding, no term of the Plan relating to Incentive Stock Options (including any Stock Appreciation Right issued in tandem therewith) shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify either the Plan or any Incentive Stock Option under Section 422 of the Code, unless the Participant has first requested, or consents to, the change that will result in such disqualification. Thus, if and to the extent required to comply with Section 422 of the Code, Options granted as Incentive Stock Options shall be subject to the following special terms and conditions:

(A) the Option shall not be exercisable more than ten years after the date such Incentive Stock Option is granted; provided, however, that if a Participant owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the Code, respectively) and the Incentive Stock Option is granted to such Participant, the term of the Incentive Stock Option shall be (to the extent required by the Code at the time of the grant) for no more than five years from the date of grant; and

(B) The aggregate Fair Market Value (determined as of the date the Incentive Stock Option is granted) of the Shares with respect to which Incentive Stock Options granted under the Plan and all other option plans of the Company (and any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the Code, respectively) during any calendar year exercisable for the first time by the Participant during any calendar year shall not (to the extent required by the Code at the time of the grant) exceed \$100,000.

(c) *Stock Appreciation Rights.* The Committee may grant Stock Appreciation Rights to any Eligible Person in conjunction with all or part of any Option granted under the Plan or at any subsequent time during the term of such Option (a "Tandem Stock Appreciation Right"), or without regard to any Option (a "Freestanding Stock Appreciation Right"), in each case upon such

terms and conditions as the Committee may establish in its sole discretion, not inconsistent with the provisions of the Plan, including the following:

(i) *Right to Payment.* A Stock Appreciation Right shall confer on the Participant to whom it is granted a right to receive, upon exercise thereof, the excess of (A) the Fair Market Value of one Share on the date of exercise over (B) the grant price of the Stock Appreciation Right as determined by the Committee. The grant price of a Tandem Stock Appreciation Right shall not be less than the associated Option exercise price.

(ii) *Other Terms.* The Committee shall determine at the date of grant or thereafter, the time or times at which and the circumstances under which a Stock Appreciation Right may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which Stock Appreciation Rights shall cease to be or become exercisable following termination of Continuous Service or upon other conditions, the method of exercise, method of settlement, form of consideration payable in settlement, method by or forms in which Shares will be delivered or deemed to be delivered to Participants, whether or not a Stock Appreciation Right shall be in tandem or in combination with any other Award, and any other terms and conditions of any Stock Appreciation Right.

(iii) *Tandem Stock Appreciation Rights.* Any Tandem Stock Appreciation Right may be granted at the same time as the related Option is granted or, for Options that are not Incentive Stock Options, at any time thereafter before exercise or expiration of such Option. Any Tandem Stock Appreciation Right related to an Option may be exercised only when the related Option would be exercisable and the Fair Market Value of the Shares subject to the related Option exceeds the exercise price at which Shares can be acquired pursuant to the Option. In addition, if a Tandem Stock Appreciation Right exists with respect to less than the full number of Shares covered by a related Option, then an exercise or termination of such Option shall not reduce the number of Shares to which the Tandem Stock Appreciation Right applies until the number of Shares then exercisable under such Option equals the number of Shares to which the Tandem Stock Appreciation Right applies. Any Option related to a Tandem Stock Appreciation Right shall no longer be exercisable to the extent the Tandem Stock Appreciation Right has been exercised, and any Tandem Stock Appreciation Right shall no longer be exercisable to the extent the related Option has been exercised.

(d) *Restricted Stock Awards.* The Committee is authorized to grant Restricted Stock Awards to any Eligible Person on the following terms and conditions:

(i) *Grant and Restrictions.* Restricted Stock Awards shall be subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the Committee may impose, or as otherwise provided in this Plan, covering a period of time specified by the Committee (the "Restriction Period"). The terms of any Restricted Stock Award granted under the Plan shall be set forth in a written Award Agreement which shall contain provisions determined by the Committee and not inconsistent with the Plan. The restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise, as the Committee may determine at the date of grant or thereafter. Except to the extent restricted under the terms of the Plan and any Award Agreement relating to a Restricted Stock Award, a Participant granted Restricted Stock shall have all of the rights of a shareholder, including the right to vote the Restricted Stock and the right to receive dividends thereon (subject to any mandatory reinvestment or other requirement imposed by the Committee). During the Restriction Period, subject to Section 10(b) below, the Restricted

Stock may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the Participant.

(ii) *Forfeiture.* Except as otherwise determined by the Committee, upon termination of a Participant's Continuous Service during the applicable Restriction Period, the Participant's Restricted Stock that is at that time subject to a risk of forfeiture that has not lapsed or otherwise been satisfied shall be forfeited and reacquired by the Company; provided that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that forfeiture conditions relating to Restricted Stock Awards shall be waived in whole or in part in the event of terminations resulting from specified causes.

(iii) *Certificates for Stock.* Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Participant, the Committee may require that such certificates bear an appropriate legend referring to the terms, conditions and restrictions applicable to such Restricted Stock, that the Company retain physical possession of the certificates, and that the Participant deliver a stock power to the Company, endorsed in blank, relating to the Restricted Stock.

(iv) *Dividends and Splits.* As a condition to the grant of a Restricted Stock Award, the Committee may require or permit a Participant to elect that any cash dividends paid on a Share of Restricted Stock be automatically reinvested in additional Shares of Restricted Stock or applied to the purchase of additional Awards under the Plan. Unless otherwise determined by the Committee, Shares distributed in connection with a stock split or stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such Shares or other property have been distributed.

(e) *Deferred Stock Award.* The Committee is authorized to grant Deferred Stock Awards to any Eligible Person on the following terms and conditions:

(i) *Award and Restrictions.* Satisfaction of a Deferred Stock Award shall occur upon expiration of the deferral period specified for such Deferred Stock Award by the Committee (or, if permitted by the Committee, as elected by the Participant). In addition, a Deferred Stock Award shall be subject to such restrictions (which may include a risk of forfeiture) as the Committee may impose, if any, which restrictions may lapse at the expiration of the deferral period or at earlier specified times (including based on achievement of performance goals and/or future service requirements), separately or in combination, in installments or otherwise, as the Committee may determine. A Deferred Stock Award may be satisfied by delivery of Shares, cash equal to the Fair Market Value of the specified number of Shares covered by the Deferred Stock, or a combination thereof, as determined by the Committee at the date of grant or thereafter. Prior to satisfaction of a Deferred Stock Award, a Deferred Stock Award carries no voting or dividend or other rights associated with Share ownership.

(ii) *Forfeiture.* Except as otherwise determined by the Committee, upon termination of a Participant's Continuous Service during the applicable deferral period or portion thereof to which forfeiture conditions apply (as provided in the Award Agreement evidencing the Deferred Stock Award), the Participant's Deferred Stock Award that is at that time subject to a risk of forfeiture that has not lapsed or otherwise been satisfied shall be forfeited; provided that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that forfeiture conditions relating to a Deferred Stock Award shall be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part the forfeiture of any Deferred Stock Award.

(iii) *Dividend Equivalents.* Unless otherwise determined by the Committee at date of grant, any Dividend Equivalents that are granted with respect to any Deferred Stock Award shall be either (A) paid with respect to such Deferred Stock Award at the dividend payment date in cash or in Shares of unrestricted stock having a Fair Market Value equal to the amount of such dividends, or (B) deferred with respect to such Deferred Stock Award and the amount or value thereof automatically deemed reinvested in additional Deferred Stock, other Awards or other investment vehicles, as the Committee shall determine or permit the Participant to elect.

(f) *Bonus Stock and Awards in Lieu of Obligations.* The Committee is authorized to grant Shares to any Eligible Persons as a bonus, or to grant Shares or other Awards in lieu of obligations to pay cash or deliver other property under the Plan or under other plans or compensatory arrangements, provided that, in the case of Eligible Persons subject to Section 16 of the Exchange Act, the amount of such grants remains within the discretion of the Committee to the extent necessary to ensure that acquisitions of Shares or other Awards are exempt from liability under Section 16(b) of the Exchange Act. Shares or Awards granted hereunder shall be subject to such other terms as shall be determined by the Committee.

(g) *Dividend Equivalents.* The Committee is authorized to grant Dividend Equivalents to any Eligible Person entitling the Eligible Person to receive cash, Shares, other Awards, or other property equal in value to the dividends paid with respect to a specified number of Shares, or other periodic payments. Dividend Equivalents may be awarded on a free-standing basis or in connection with another Award. The Committee may provide that Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in additional Shares, Awards, or other investment vehicles, and subject to such restrictions on transferability and risks of forfeiture, as the Committee may specify.

(h) *Performance Awards.* The Committee is authorized to grant Performance Awards to any Eligible Person payable in cash, Shares, or other Awards, on terms and conditions established by the Committee, subject to the provisions of Section 8 if and to the extent that the Committee shall, in its sole discretion, determine that an Award shall be subject to those provisions. The performance criteria to be achieved during any Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award. Except as provided in Section 9 or as may be provided in an Award Agreement, Performance Awards will be distributed only after the end of the relevant Performance Period. The performance goals to be achieved for each Performance Period shall be conclusively determined by the Committee and may be based upon the criteria set forth in Section 8, or in the case of an Award that the Committee determines shall not be subject to Section 8 hereof, any other criteria that the Committee, in its sole discretion, shall determine should be used for that purpose. The amount of the Award to be distributed shall be conclusively determined by the Committee. Performance Awards may be paid in a lump sum or in installments following the close of the Performance Period or, in accordance with procedures established by the Committee, on a deferred basis.

(i) *Other Stock-Based Awards.* The Committee is authorized, subject to limitations under applicable law, to grant to any Eligible Person such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares, as deemed by the Committee to be consistent with the purposes of the Plan. Other Stock-Based Awards may be granted to Participants either alone or in addition to other Awards granted under the Plan, and such Other Stock-Based Awards shall also be available as a form of payment in the settlement of other Awards granted under the Plan. The Committee shall determine the terms and conditions of such Awards. Shares delivered pursuant to an Award in the nature of a purchase right granted under this Section 6(i) shall

be purchased for such consideration, (including without limitation loans from the Company or a Related Entity provided that such loans are not in violation of the Sarbanes Oxley Act of 2002, or any rule or regulation adopted thereunder or any other applicable law), paid for at such times, by such methods, and in such forms, including, without limitation, cash, Shares, other Awards or other property, as the Committee shall determine.

7. *Certain Provisions Applicable to Awards.*

(a) *Stand-Alone, Additional, Tandem, and Substitute Awards.* Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Related Entity, or any business entity to be acquired by the Company or a Related Entity, or any other right of a Participant to receive payment from the Company or any Related Entity. Such additional, tandem, and substitute or exchange Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award or award, the Committee shall require the surrender of such other Award or award in consideration for the grant of the new Award. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Related Entity, in which the value of Stock subject to the Award is equivalent in value to the cash compensation (for example, Deferred Stock or Restricted Stock), or in which the exercise price, grant price or purchase price of the Award in the nature of a right that may be exercised is equal to the Fair Market Value of the underlying Stock minus the value of the cash compensation surrendered (for example, Options or Stock Appreciation Right granted with an exercise price "discounted" by the amount of the cash compensation surrendered).

(b) *Term of Awards.* The term of each Award shall be for such period as may be determined by the Committee; provided that in no event shall the term of any Option or Stock Appreciation Right exceed a period of ten years (or in the case of an Incentive Stock Option such shorter term as may be required under Section 422 of the Code).

(c) *Form and Timing of Payment Under Awards; Deferrals.* Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or a Related Entity upon the exercise of an Option or other Award or settlement of an Award may be made in such forms as the Committee shall determine, including, without limitation, cash, Shares, other Awards or other property, and may be made in a single payment or transfer, in installments, or on a deferred basis. Any installment or deferral provided for in the preceding sentence shall, however, be subject to the Company's compliance with the provisions of the Sarbanes-Oxley Act of 2002, the rules and regulations adopted by the Securities and Exchange Commission thereunder, and all applicable rules of the Nasdaq Stock Market or any national securities exchange on which the Company's securities are listed for trading and, if not listed for trading on either the Nasdaq Stock Market or a national securities exchange, then the rules of the Nasdaq Stock Market. The settlement of any Award may be accelerated, and cash paid in lieu of Stock in connection with such settlement, in the discretion of the Committee or upon occurrence of one or more specified events (in addition to a Change in Control). Installment or deferred payments may be required by the Committee (subject to Section 10(e) of the Plan, including the consent provisions thereof in the case of any deferral of an outstanding Award not provided for in the original Award Agreement) or permitted at the election of the Participant on terms and conditions established by the Committee. Payments may include, without limitation, provisions for the payment or crediting of a reasonable interest rate on installment or deferred payments or the grant or crediting of Dividend Equivalents or other amounts in respect of installment or deferred payments denominated in Shares.

(d) *Exemptions from Section 16(b) Liability.* It is the intent of the Company that the grant of any Awards to or other transaction by a Participant who is subject to Section 16 of the Exchange Act shall be exempt from Section 16 pursuant to an applicable exemption (except for transactions acknowledged in writing to be non-exempt by such Participant). Accordingly, if any provision of this Plan or any Award Agreement does not comply with the requirements of Rule 16b-3 then applicable to any such transaction, such provision shall be construed or deemed amended to the extent necessary to conform to the applicable requirements of Rule 16b-3 so that such Participant shall avoid liability under Section 16(b).

8. *Code Section 162(m) Provisions.*

(a) *Covered Employees.* The Committee, in its discretion, may determine at the time an Award is granted to an Eligible Person who is, or is likely to be, as of the end of the tax year in which the Company would claim a tax deduction in connection with such Award, a Covered Employee, that the provisions of this Section 8 shall be applicable to such Award.

(b) *Performance Criteria.* If an Award is subject to this Section 8, then the lapsing of restrictions thereon and the distribution of cash, Shares or other property pursuant thereto, as applicable, shall be contingent upon achievement of one or more objective performance goals. Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) of the Code and regulations thereunder including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being "substantially uncertain." One or more of the following business criteria for the Company, on a consolidated basis, and/or for Related Entities, or for business or geographical units of the Company and/or a Related Entity (except with respect to the total shareholder return and earnings per share criteria), shall be used by the Committee in establishing performance goals for such Awards: (1) earnings per share; (2) revenues or margins; (3) cash flow; (4) operating margin; (5) return on net assets, investment, capital, or equity; (6) economic value added; (7) direct contribution; (8) net income; pretax earnings; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings after interest expense and before extraordinary or special items; operating income; income before interest income or expense, unusual items and income taxes, local, state or federal and excluding budgeted and actual bonuses which might be paid under any ongoing bonus plans of the Company; (9) working capital; (10) management of fixed costs or variable costs; (11) identification or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans, including strategic mergers, acquisitions or divestitures; (12) total shareholder return; and (13) debt reduction. Any of the above goals may be determined on an absolute or relative basis or as compared to the performance of a published or special index deemed applicable by the Committee including, but not limited to, the Standard & Poor's 500 Stock Index or a group of companies that are comparable to the Company. The Committee may exclude the impact of an event or occurrence which the Committee determines should appropriately be excluded, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (iii) a change in accounting standards required by generally accepted accounting principles.

(c) *Performance Period; Timing For Establishing Performance Goals.* Achievement of performance goals in respect of such Performance Awards shall be measured over a Performance Period specified by the Committee. Performance goals shall be established not later than 90 days after the beginning of any Performance Period applicable to such Performance Awards, or at such other date as may be required or permitted for "performance-based compensation" under Code Section 162(m).

(d) *Adjustments.* The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with Awards subject to this Section 8, but may not exercise discretion to increase any such amount payable to a Covered Employee in respect of an Award subject to this Section 8. The Committee shall specify the circumstances in which such Awards shall be paid or forfeited in the event of termination of Continuous Service by the Participant prior to the end of a Performance Period or settlement of Awards.

(e) *Committee Certification.* No Participant shall receive any payment under the Plan unless the Committee has certified, by resolution or other appropriate action in writing, that the performance criteria and any other material terms previously established by the Committee or set forth in the Plan, have been satisfied to the extent necessary to qualify as "performance based compensation" under Code Section 162(m).

9. *Change in Control.*

(a) *Effect of "Change in Control."* Subject to Section 9(a)(iv), and if and only to the extent provided in the Award Agreement, or to the extent otherwise determined by the Committee, upon the occurrence of a "Change in Control," as defined in Section 9(b):

(i) Any Option or Stock Appreciation Right that was not previously vested and exercisable as of the time of the Change in Control, shall become immediately vested and exercisable, subject to applicable restrictions set forth in Section 10(a) hereof.

(ii) Any restrictions, deferral of settlement, and forfeiture conditions applicable to a Restricted Stock Award, Deferred Stock Award or an Other Stock-Based Award subject only to future service requirements granted under the Plan shall lapse and such Awards shall be deemed fully vested as of the time of the Change in Control, except to the extent of any waiver by the Participant and subject to applicable restrictions set forth in Section 10(a) hereof.

(iii) With respect to any outstanding Award subject to achievement of performance goals and conditions under the Plan, the Committee may, in its discretion, deem such performance goals and conditions as having been met as of the date of the Change in Control.

(iv) Notwithstanding the foregoing, if in the event of a Change in Control the successor company assumes or substitutes for an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award, then each outstanding Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award shall not be accelerated as described in Sections 9(a)(i), (ii) and (iii). For the purposes of this Section 9(a)(iv), an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award shall be considered assumed or substituted for if following the Change in Control the award confers the right to purchase or receive, for each Share subject to the Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award immediately prior to the Change in Control, the consideration (whether stock, cash or other securities or property) received in the transaction constituting a Change in Control by holders of Shares for each Share held on the effective date of such transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares); provided, however, that if such consideration received in the transaction constituting a Change in Control is not solely common stock of the successor company or its parent or subsidiary, the Committee may, with the consent of the successor company or its parent or subsidiary, provide that the consideration to be received upon the exercise or vesting of an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award, for each Share subject thereto, will be solely common stock of the successor company

or its parent of subsidiary substantially equal in fair market value to the per share consideration received by holders of Shares in the transaction constituting a Change in Control. The determination of such substantial equality of value of consideration shall be made by the Committee in its sole discretion and its determination shall be conclusive and binding.

(b) *Definition of "Change in Control"*. Unless otherwise specified in an Award Agreement, a "Change in Control" shall mean the occurrence of any of the following:

(i) The acquisition by any Person of Beneficial Ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities") (the foregoing Beneficial Ownership hereinafter being referred to as a "Controlling Interest"); provided, however, that for purposes of this Section 9(b), the following acquisitions shall not constitute or result in a Change of Control: (u) any acquisition by Chris Clemente or Gregory Benson or any of their spouses or beneficiaries, or any trusts, partnerships, corporations, or other entities in which they are the sole beneficiaries or own all of the Beneficial Interests; (v) any acquisition directly from the Company; (w) any acquisition by the Company; (x) any acquisition by any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest; (y) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary; or (z) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) below; or

(ii) During any period of two (2) consecutive years (not including any period prior to the Effective Date) individuals who constitute the Board on the Effective Date (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each a "Business Combination"), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the Beneficial Owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding

Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination or any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest) beneficially owns, directly or indirectly, fifty percent (50%) or more of, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the Board of Directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

10. *General Provisions.*

(a) *Compliance With Legal and Other Requirements.* The Company may, to the extent deemed necessary or advisable by the Committee, postpone the issuance or delivery of Shares or payment of other benefits under any Award until completion of such registration or qualification of such Shares or other required action under any federal or state law, rule or regulation, listing or other required action with respect to any stock exchange or automated quotation system upon which the Shares or other Company securities are listed or quoted, or compliance with any other obligation of the Company, as the Committee, may consider appropriate, and may require any Participant to make such representations, furnish such information and comply with or be subject to such other conditions as it may consider appropriate in connection with the issuance or delivery of Shares or payment of other benefits in compliance with applicable laws, rules, and regulations, listing requirements, or other obligations.

(b) *Limits on Transferability; Beneficiaries.* No Award or other right or interest granted under the Plan shall be pledged, hypothecated or otherwise encumbered or subject to any lien, obligation or liability of such Participant to any party, or assigned or transferred by such Participant otherwise than by will or the laws of descent and distribution or to a Beneficiary upon the death of a Participant, and such Awards or rights that may be exercisable shall be exercised during the lifetime of the Participant only by the Participant or his or her guardian or legal representative, except that Awards and other rights (other than Incentive Stock Options and Stock Appreciation Rights in tandem therewith) may be transferred to one or more Beneficiaries or other transferees during the lifetime of the Participant, and may be exercised by such transferees in accordance with the terms of such Award, but only if and to the extent such transfers are permitted by the Committee pursuant to the express terms of an Award Agreement (subject to any terms and conditions which the Committee may impose thereon). A Beneficiary, transferee, or other person claiming any rights under the Plan from or through any Participant shall be subject to all terms and conditions of the Plan and any Award Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional terms and conditions deemed necessary or appropriate by the Committee.

(c) *Adjustments.*

(i) *Adjustments to Awards.* In the event that any extraordinary dividend or other distribution (whether in the form of cash, Shares, or other property), recapitalization, forward or reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange, liquidation, dissolution or other similar corporate transaction or event affects the Shares and/or such other securities of the Company or any other issuer such that a substitution, exchange, or adjustment is determined by the Committee to be appropriate, then

the Committee shall, in such manner as it may deem equitable, substitute, exchange or adjust any or all of (A) the number and kind of Shares which may be delivered in connection with Awards granted thereafter, (B) the number and kind of Shares by which annual per-person Award limitations are measured under Section 5 hereof, (C) the number and kind of Shares subject to or deliverable in respect of outstanding Awards, (D) the exercise price, grant price or purchase price relating to any Award and/or make provision for payment of cash or other property in respect of any outstanding Award, and (E) any other aspect of any Award that the Committee determines to be appropriate.

(ii) *Adjustments in Case of Certain Corporate Transactions.* In the event of any merger, consolidation or other reorganization in which the Company does not survive, or in the event of any Change in Control, any outstanding Awards may be dealt with in accordance with any of the following approaches, as determined by the agreement effectuating the transaction or, if and to the extent not so determined, as determined by the Committee: (a) the continuation of the outstanding Awards by the Company, if the Company is a surviving corporation, (b) the assumption or substitution for, as those terms are defined in Section 9(b)(iv) hereof, the outstanding Awards by the surviving corporation or its parent or subsidiary, (c) full exercisability or vesting and accelerated expiration of the outstanding Awards, or (d) settlement of the value of the outstanding Awards in cash or cash equivalents or other property followed by cancellation of such Awards (which value, in the case of Options or Stock Appreciation Rights, shall be measured by the amount, if any, by which the Fair Market Value of a Share exceeds the exercise or grant price of the Option or Stock Appreciation Right as of the effective date of the transaction). The Committee shall give written notice of any proposed transaction referred to in this Section 10(c)(ii) a reasonable period of time prior to the closing date for such transaction (which notice may be given either before or after the approval of such transaction), in order that Participants may have a reasonable period of time prior to the closing date of such transaction within which to exercise any Awards that are then exercisable (including any Awards that may become exercisable upon the closing date of such transaction). A Participant may condition his exercise of any Awards upon the consummation of the transaction.

(iii) *Other Adjustments.* The Committee (and the Board if and only to the extent such authority is not required to be exercised by the Committee to comply with Section 162(m) of the Code) is authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards (including Performance Awards, or performance goals relating thereto) in recognition of unusual or nonrecurring events (including, without limitation, acquisitions and dispositions of businesses and assets) affecting the Company, any Related Entity or any business unit, or the financial statements of the Company or any Related Entity, or in response to changes in applicable laws, regulations, accounting principles, tax rates and regulations or business conditions or in view of the Committee's assessment of the business strategy of the Company, any Related Entity or business unit thereof, performance of comparable organizations, economic and business conditions, personal performance of a Participant, and any other circumstances deemed relevant; provided that no such adjustment shall be authorized or made if and to the extent that such authority or the making of such adjustment would cause Awards granted subject to the provisions of Section 8 hereof to Participants designated by the Committee as Covered Employees and intended to qualify as "performance-based compensation" under Code Section 162(m) and the regulations thereunder to otherwise fail to qualify as "performance-based compensation" under Code Section 162(m) and regulations thereunder.

(d) *Taxes.* The Company and any Related Entity are authorized to withhold from any Award granted, any payment relating to an Award under the Plan, including from a distribution of

Shares, or any payroll or other payment to a Participant, amounts of withholding and other taxes due or potentially payable in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company or any Related Entity and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include authority to withhold or receive Shares or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations, either on a mandatory or elective basis in the discretion of the Committee.

(e) *Changes to the Plan and Awards.* The Board may amend, alter, suspend, discontinue or terminate the Plan, or the Committee's authority to grant Awards under the Plan, without the consent of shareholders or Participants, except that any amendment or alteration to the Plan shall be subject to the approval of the Company's shareholders not later than the annual meeting next following such Board action if such shareholder approval is required by any federal or state law or regulation (including, without limitation, Rule 16b-3 or Code Section 162(m)) or the rules of any stock exchange or automated quotation system on which the Shares may then be listed or quoted, and the Board may otherwise, in its discretion, determine to submit other such changes to the Plan to shareholders for approval; provided that, without the consent of an affected Participant, no such Board action may materially and adversely affect the rights of such Participant under any previously granted and outstanding Award. The Committee may waive any conditions or rights under, or amend, alter, suspend, discontinue or terminate any Award theretofore granted and any Award Agreement relating thereto, except as otherwise provided in the Plan; provided that, without the consent of an affected Participant, no such Committee or the Board action may materially and adversely affect the rights of such Participant under such Award. Notwithstanding anything to the contrary, the Committee shall be authorized to amend any outstanding Option and/or Stock Appreciation Right to reduce the exercise price or grant price without the prior approval of the shareholders of the Company. In addition, the Committee shall be authorized to cancel outstanding Options and/or Stock Appreciate Rights replaced with Awards having a lower exercise price without the prior approval of the shareholders of the Company.

(f) *Limitation on Rights Conferred Under Plan.* Neither the Plan nor any action taken hereunder shall be construed as (i) giving any Eligible Person or Participant the right to continue as an Eligible Person or Participant or in the employ or service of the Company or a Related Entity; (ii) interfering in any way with the right of the Company or a Related Entity to terminate any Eligible Person's or Participant's Continuous Service at any time, (iii) giving an Eligible Person or Participant any claim to be granted any Award under the Plan or to be treated uniformly with other Participants and Employees, or (iv) conferring on a Participant any of the rights of a shareholder of the Company unless and until the Participant is duly issued or transferred Shares in accordance with the terms of an Award.

(g) *Unfunded Status of Awards; Creation of Trusts.* The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant or obligation to deliver Shares pursuant to an Award, nothing contained in the Plan or any Award shall give any such Participant any rights that are greater than those of a general creditor of the Company; provided that the Committee may authorize the creation of trusts and deposit therein cash, Shares, other Awards or other property, or make other arrangements to meet the Company's obligations under the Plan. Such trusts or other arrangements shall be consistent with the "unfunded" status of the Plan unless the Committee otherwise determines with the consent of each affected Participant. The trustee of such trusts may be authorized to dispose of trust assets and reinvest the proceeds in alternative investments, subject to such terms and conditions as the Committee may specify and in accordance with applicable law.

(h) *Nonexclusivity of the Plan.* Neither the adoption of the Plan by the Board nor its submission to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board or a committee thereof to adopt such other incentive arrangements as it may deem desirable including incentive arrangements and awards which do not qualify under Section 162(m) of the Code.

(i) *Payments in the Event of Forfeitures; Fractional Shares.* Unless otherwise determined by the Committee, in the event of a forfeiture of an Award with respect to which a Participant paid cash or other consideration, the Participant shall be repaid the amount of such cash or other consideration. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(j) *Governing Law.* The validity, construction and effect of the Plan, any rules and regulations under the Plan, and any Award Agreement shall be determined in accordance with the laws of the State of Delaware without giving effect to principles of conflict of laws, and applicable federal law.

(k) *Non-U.S. Laws.* The Committee shall have the authority to adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of foreign countries in which the Company or its Subsidiaries may operate to assure the viability of the benefits from Awards granted to Participants performing services in such countries and to meet the objectives of the Plan.

(l) *Plan Effective Date and Shareholder Approval; Termination of Plan.* The Plan shall become effective on the Effective Date, subject to subsequent approval, within 12 months of its adoption by the Board, by shareholders of the Company eligible to vote in the election of directors, by a vote sufficient to meet the requirements of Code Sections 162(m) (if applicable) and 422, Rule 16b-3 under the Exchange Act (if applicable), applicable requirements under the rules of any stock exchange or automated quotation system on which the Shares may be listed or quoted, and other laws, regulations, and obligations of the Company applicable to the Plan. Awards may be granted subject to shareholder approval, but may not be exercised or otherwise settled in the event the shareholder approval is not obtained. The Plan shall terminate at the earliest of (a) such time as no Shares remain available for issuance under the Plan, (b) termination of this Plan by the Board, or (c) the tenth anniversary of the Effective Date. Awards outstanding upon expiration of the Plan shall remain in effect until they have been exercised or terminated, or have expired.

QuickLinks

[COMSTOCK HOMEBUILDING COMPANIES, INC. 2004 LONG-TERM INCENTIVE COMPENSATION PLAN](#)
[COMSTOCK HOMEBUILDING COMPANIES, INC. 2004 LONG-TERM INCENTIVE COMPENSATION PLAN](#)

**COMSTOCK HOMEBUILDING COMPANIES, INC.
NON-QUALIFIED STOCK OPTION AGREEMENT
FOR
[insert name of optionee here]**

Agreement

1. *Grant of Option.* Comstock Homebuilding Companies, Inc. (the "Company") hereby grants, as of [] ("Date of Grant"), to [] (the "Optionee") an option (the "Option") to purchase up to [] shares of the Company's Class A Common Stock, \$.01 par value per share (the "Shares"), at an exercise price per share equal to \$[] (the "Exercise Price"). The Option shall be subject to the terms and conditions set forth herein. The Option was issued pursuant to the Company's 2004 Long-Term Incentive Compensation Plan (the "Plan"), which is incorporated herein for all purposes. The Option is a Non-Qualified Stock Option, and not an Incentive Stock Option. The Optionee hereby acknowledges receipt of a copy of the Plan and agrees to be bound by all of the terms and conditions hereof and thereof and all applicable laws and regulations.

2. *Definitions.* Unless otherwise provided herein, terms used herein that are defined in the Plan and not defined herein shall have the meanings attributed thereto in the Plan.

3. *Exercise Schedule.* Except as otherwise provided in Sections 6 or 9 of this Agreement, or in the Plan, the Option is exercisable in installments as provided below, which shall be cumulative. To the extent that the Option has become exercisable with respect to a percentage of Shares as provided below, the Option may thereafter be exercised by the Optionee, in whole or in part, at any time or from time to time prior to the expiration of the Option as provided herein. The following table indicates each date (the "Vesting Date") upon which the Optionee shall be entitled to exercise the Option with respect to the percentage of Shares granted as indicated beside the date, provided that the Continuous Service of the Optionee continues through and on the applicable Vesting Date:

Percentage of Shares	Vesting Date
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Except as otherwise specifically provided herein, there shall be no proportionate or partial vesting in the periods prior to each Vesting Date, and all vesting shall occur only on the appropriate Vesting Date. Upon the termination of the Optionee's Continuous Service with the Company and its Related Entities, any unvested portion of the Option shall terminate and be null and void.

4. *Method of Exercise.* The vested portion of this Option shall be exercisable in whole or in part in accordance with the exercise schedule set forth in Section 3 hereof by written notice which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by the Optionee and shall be delivered in person or by certified mail to the Secretary of the Company. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised after both (a) receipt by the Company of such written notice accompanied by the Exercise Price and (b) arrangements that are satisfactory to the Committee in its sole discretion have been made for Optionee's payment to the Company of the amount, if any, that is necessary to be withheld in accordance with applicable Federal or state withholding requirements. No Shares will be issued pursuant to the Option unless and until such issuance and such exercise shall comply with all relevant provisions of applicable law, including the requirements of any stock exchange upon which the Shares then may be traded.

5. *Method of Payment.* Payment of the Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee: (a) cash, (b) check, (c) with Shares that have been held by the Optionee for at least 6 months (or such other Shares as the Company determines will not cause the Company to recognize for financial accounting purposes a charge for compensation expense), (d) pursuant to a "cashless exercise" procedure, by delivery of a properly executed exercise notice together with such other documentation, and subject to such guidelines, as the Committee shall require to effect an exercise of the Option and delivery to the Company by a licensed broker acceptable to the Company of proceeds from the sale of Shares or a margin loan sufficient to pay the Exercise Price and any applicable income or employment taxes, or (e) such other consideration or in such other manner as may be determined by the Committee in its absolute discretion.

6. *Termination of Option.*

(a) Any unexercised portion of the Option shall automatically and without notice terminate and become null and void at the time of the earliest to occur of the following:

(i) unless the Committee otherwise determines in writing in its sole discretion, three months after the date on which the Optionee's Continuous Service with the Company and its Related Entities is terminated for any reason other than by reason of (A) by the Company or a Related Entity for Cause, (B) a Disability of the Optionee as determined by a medical doctor satisfactory to the Committee, or (C) the Optionee's death;

(ii) immediately upon the termination of the Optionee's Continuous Service with the Company and its Related Entities for Cause;

(iii) twelve months after the date on which the Optionee's Continuous Service with the Company and its Related Entities is terminated by reason of a Disability as determined by a medical doctor satisfactory to the Committee;

(iv) twelve months after the date of termination of the Optionee's Continuous Service with the Company and its Related Entities by reason of the death of the Optionee (or, if later, three months after the date on which the Optionee shall die if such death shall occur during the one year period specified in paragraph (iii) of this Section 6); [or]

(v) the tenth anniversary of the date as of which the Option is granted[.] [; or]

[(vi) immediately in the event that the Optionee shall file any lawsuit or arbitration claim against the Company or any Subsidiary, or any of their respective officers, directors or shareholders.]

(b) In the event of any merger, consolidation or other reorganization in which the Company does not survive, or in the event of any Change in Control, as defined in Section 9(b) of the Plan, the Option may be dealt with in accordance with any of the following approaches, as determined by the agreement effectuating the transaction or, if and to the extent not so determined, as determined by the Committee: (a) the continuation of the Option by the Company, if the Company is a surviving corporation, (b) the assumption or substitution for, as those terms are defined in Section 9(b)(iv) of the Plan, the outstanding Option by the surviving corporation or its parent or subsidiary, (c) full exercisability or vesting and accelerated expiration of the Option, or (d) settlement of the value of the Option in cash or cash equivalents or other property followed by cancellation of the Option (which value shall be measured by the amount, if any, by which the Fair Market Value of a Share exceeds the exercise or grant price of the Option as of the effective date of the transaction). The Committee shall give written notice of any proposed transaction referred to in this Section 6(b) a reasonable period of time prior to the closing date for such transaction (which notice may be given either before or after the approval of such transaction), in order that the Optionee may have a reasonable period of time prior to the closing date of such transaction within which to exercise the portion of the Option that is then exercisable (including any portion of the Option that may become exercisable upon the closing date of such transaction). The Optionee may condition his exercise of the Option upon the consummation of the transaction.

7. *Transferability.* Unless otherwise determined by the Committee, the Option granted hereby is not transferable otherwise than by will or under the applicable laws of descent and distribution, and during the lifetime of the Optionee the Option shall be exercisable only by the Optionee, or the Optionee's guardian or legal representative. In addition, the Option shall not be assigned, negotiated, pledged or hypothecated in any way (whether by operation of law or otherwise), and the Option shall not be subject to execution, attachment or similar process. Upon any attempt to transfer, assign, negotiate, pledge or hypothecate the Option, or in the event of any levy upon the Option by reason of any execution, attachment or similar process contrary to the provisions hereof, the Option shall immediately become null and void. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

8. *No Rights of Stockholders.* Neither the Optionee nor any personal representative (or beneficiary) shall be, or shall have any of the rights and privileges of, a stockholder of the Company with respect to any shares of Stock purchasable or issuable upon the exercise of the Option, in whole or in part, prior to the date of exercise of the Option.

9. *Acceleration of Exercisability of Option.*

(a) The exercisability of the Option shall accelerate if and to the extent provided pursuant to Section 6(b) hereof.

(b) Notwithstanding the foregoing, if, within twelve months after a Change in Control of the Company, the Optionee's Continuous Service is terminated (i) by the Company or a Related Entity without Cause, [or] (ii) by the Optionee for Good Reason, [or (iii) by reason of the Optionee's death or Disability,] then the Option (or any Substitute Award for the Option) shall be immediately fully exercisable for the applicable period following the termination of the Optionee's Continuous Service, as described in this Section 6.

10. *No Right to Continued Employment.* Neither the Option nor this Agreement shall confer upon the Optionee any right to continued employment or service with the Company.

11. *Law Governing.* This Agreement shall be governed in accordance with and governed by the internal laws of the State of Delaware.

12. *Interpretation/Provisions of Plan Control.* This Agreement is subject to all the terms, conditions and provisions of the Plan, including, without limitation, the amendment provisions thereof, and to such rules, regulations and interpretations relating to the Plan adopted by the Committee as may be in effect from time to time. If and to the extent that this Agreement conflicts or is inconsistent with the terms, conditions and provisions of the Plan, the Plan shall control, and this Agreement shall be deemed to be modified accordingly. The Optionee accepts the Option subject to all the terms and provisions of the Plan and this Agreement. The undersigned Optionee hereby accepts as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan and this Agreement, unless shown to have been made in an arbitrary and capricious manner.

13. *Notices.* Any notice under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, registered, postage prepaid, and addressed, in the case of the Company, to the Company's Secretary at [], or if the Company should move its principal office, to such principal office, and, in the case of the Optionee, to the Optionee's last permanent address as shown on the Company's records, subject to the right of either party to designate some other address at any time hereafter in a notice satisfying the requirements of this Section.

14. *Tax Consequences.* Set forth below is a brief summary as of the date of this Option Agreement of some of the federal tax consequences of exercise of this Option and disposition of the Shares. THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. THE OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

(a) The Optionee will not recognize any income on receipt of the Option.

(b) The Optionee will recognize ordinary income at the time he exercises the Option equal to the amount by which the Fair Market Value of the Shares on the date of exercise exceeds the Exercise Price paid for the Shares. The amount so recognized is subject to income tax withholding and employment taxes if the Optionee is an employee of the Company or a Related Entity.

(c) The Optionee's tax basis for the Shares received as a result of the exercise of the Option will be equal to the Fair Market Value of those Shares on the date the Option is exercised.

(d) Upon the sale of the Shares, the Optionee will recognize a capital gain or loss on the difference between the amount realized from the sale of the Shares and the Fair Market Value on the date the Option is exercised. The gain or loss would be short- or long-term depending upon whether the Shares were held for at least one year after the date of exercise of the Option.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the [] day of [], [].

COMPANY:

**COMSTOCK HOMEBUILDING COMPANIES, INC.,
a Delaware Corporation**

By: _____

[]

The Optionee acknowledges receipt of a copy of the Plan and represents that he or she has reviewed the provisions of the Plan and this Option Agreement in their entirety, is familiar with and understands their terms and provisions, and hereby accepts this Option subject to all of the terms and provisions of the Plan and the Option Agreement. The Optionee further represents that he or she has had an opportunity to obtain the advice of counsel prior to executing this Option Agreement.

Dated: _____

OPTIONEE:

By: _____

[]

QuickLinks

[COMSTOCK HOMEBUILDING COMPANIES, INC. NON-QUALIFIED STOCK OPTION AGREEMENT FOR \[insert name of optionee here\] Agreement](#)

COMSTOCK HOMEBUILDING COMPANIES, INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

COMSTOCK HOMEBUILDING COMPANIES, INC.

2004 Employee Stock Purchase Plan

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2004 Employee Stock Purchase Plan

1. *Purpose.* The purpose of the Plan is to provide an incentive for present and future employees of the Company and any Designated Subsidiary to acquire a proprietary interest (or increase an existing proprietary interest) in the Company through the purchase of Common Stock. It is the Company's intention that the Plan qualify as an "employee stock purchase plan" under Section 423 of the Code. Accordingly, the provisions of the Plan shall be administered, interpreted and construed in a manner consistent with the requirements of that section of the Code.

2. *Definitions.*

- (a) "*Applicable Percentage*" means the percentage specified in Section 7(b), subject to adjustment by the Committee as provided in Section 7(b).
 - (b) "*Board*" means the Board of Directors of the Company.
 - (c) "*Code*" means the Internal Revenue Code of 1986, as amended, and any successor thereto.
 - (d) "*Committee*" means the committee appointed by the Board to administer the Plan as described in Section 15 of the Plan or, if no such Committee is appointed, the Board.
 - (e) "*Common Stock*" means the Company's Class A common stock, par value \$0.01 per share.
 - (f) "*Company*" means Comstock Homebuilding Companies, Inc., a Delaware corporation.
 - (g) "*Compensation*" means, with respect to each Participant for each pay period, the full base salary and overtime paid to such Participant by the Company or a Designated Subsidiary. Except as otherwise determined by the Committee, "Compensation" does not include: (i) bonuses or commissions, (ii) any amounts contributed by the Company or a Designated Subsidiary to any pension plan, (iii) any automobile or relocation allowances (or reimbursement for any such expenses), (iv) any amounts paid as a starting bonus or finder's fee, (v) any amounts realized from the exercise of any stock options or incentive awards, (vi) any amounts paid by the Company or a Designated Subsidiary for other fringe benefits, such as health and welfare, hospitalization and group life insurance benefits, or perquisites, or paid in lieu of such benefits, or (vii) other similar forms of extraordinary compensation.
 - (h) "*Continuous Status as an Employee*" means the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of a leave of absence agreed to in writing by the Company or the Designated Subsidiary that employs the Employee, provided that such leave is for a period of not more than 90 days or reemployment upon the expiration of such leave is guaranteed by contract or statute.
 - (i) "*Designated Subsidiaries*" means the Subsidiaries that have been designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.
 - (j) "*Employee*" means any person, including an Officer, whose customary employment with the Company or one of its Designated Subsidiaries is at least twenty (20) hours per week and more than five months in any calendar year.
 - (k) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended.
 - (l) "*Exercise Date*" means the last Trading Day ending on or before the last day of each Offering Period.
 - (m) "*Exercise Price*" means the price per share of Common Stock offered in a given Offering Period determined as provided in Section 7(b).
-

- (n) "*Fair Market Value*" means, with respect to a share of Common Stock, the Fair Market Value as determined under Section 7(c).
- (o) "*First Offering Date*" means the commencement date of the initial public offering contemplated by the Registration Statement on Form S-1 filed by the Company with the Securities and Exchange Commission.
- (p) "*Offering Date*" means the first Trading Day of each Offering Period.
- (q) "*Offering Period*" means, subject to adjustment as provided in Section 4(b), the bi-monthly periods during which the Company's Common Stock will be offered under the Plan, beginning on the first Trading Day on or after each January 1, March 1, May 1, July 1, September 1, and November 1 and ending on the last Trading Day on or before the immediately following February 28, April 30, June 30, August 31, October 31, and December 31 of each year while the Plan is in effect. The initial Offering Period shall be the period beginning on the First Offering Date and ending on the last Trading Day on or before February 28, 2005.
- (r) "*Officer*" means a person who is an officer of the Company within the meaning of Section 16 under the Exchange Act and the rules and regulations promulgated thereunder.
- (s) "*Participant*" means an Employee automatically enrolled in the Plan pursuant to Section 5(b) hereof, or an Employee who has elected to participate in the Plan by filing an enrollment agreement with the Company as provided in Section 5(a) hereof.
- (t) "*Plan*" means this Comstock Homebuilding Companies, Inc. 2004 Employee Stock Purchase Plan.
- (u) "*Plan Contributions*" means, with respect to each Participant, the lump sum cash transfers, if any, made by the Participant to the Plan pursuant to Section 6(a) or 6(g)(ii) hereof, plus the after-tax payroll deductions, if any, withheld from the Compensation of the Participant and contributed to the Plan for the Participant as provided in Section 6 hereof, and any other amounts contributed to the Plan for the Participant in accordance with the terms of the Plan.
- (v) "*Subsidiary*" means any corporation, domestic or foreign, of which the Company owns, directly or indirectly, 50% or more of the total combined voting power of all classes of stock, and that otherwise qualifies as a "subsidiary corporation" within the meaning of Section 424(f) of the Code.
- (w) "*Trading Day*" means a day on which the national stock exchanges and the Nasdaq system are open for trading.

3. *Eligibility.*

- (a) *First Offering Date.* Any individual who is an Employee as of the First Offering Date shall be eligible to become a Participant as of the First Offering Date.
- (b) *Subsequent Offering Dates.* Any Employee who has completed at least three (3) months of employment with the Company or any Subsidiary shall be eligible to become a Participant as of any subsequent Offering Date under the Plan.

4. *Offering Periods.*

- (a) *In General.* The Plan shall generally be implemented by a series of successive Offering Periods, with purchases of Common Stock occurring on each Exercise Date.
- (b) *Changes by Committee.*

(i) The Committee shall have the power to make changes to the duration and/or the frequency of Offering Periods with respect to future offerings if such change is announced at least five days prior to the scheduled beginning of the first Offering Period to be affected.

(ii) The Committee may shorten the duration of any Offering Period then in progress, if such change is announced at least five days prior to the date on which the Committee proposes that the Offering Period terminate. The Committee may shorten the Offering Period by setting a new Exercise Date, or by terminating the Offering Period and refunding any Plan Contributions back to the Participants.

5. *Participation.*

(a) *Entry Dates.* Employees meeting the eligibility requirements of Section 3(b) hereof after the First Offering Date may elect to participate in the Plan commencing on any Offering Date by completing an enrollment agreement on the form provided by the Company and filing the enrollment agreement with the Company on or prior to such Offering Date, unless a later time for filing the enrollment agreement is set by the Committee for all eligible Employees with respect to a given offering.

(b) *Special Rule for First Offering Date.* All Employees who are eligible as of the First Offering Date shall automatically become Participants in the Plan as of the First Offering Date.

6. *Plan Contributions.*

(a) *Contribution by Payroll Deduction.* Contributions to the Plan generally shall be made only by payroll deductions. The Committee may, but need not, permit Participants to make lump sum cash transfers to the Plan at such times and subject to such terms and conditions as the Committee may in its discretion determine, and may from time to time require that all contributions with respect to an Offering Period be made solely by Participant lump sum cash transfers. All such additional contributions shall be made in a manner consistent with the provisions of Section 423 of the Code or any successor thereto, and shall be treated in the same manner as payroll deductions contributed to the Plan as provided herein.

(b) *Payroll Deduction Election on Enrollment Agreement.* At the time a Participant files the enrollment agreement with respect to an Offering Period, the Participant may authorize payroll deductions to be made on each payroll date during the portion of the Offering Period that he or she is a Participant in an amount not less than 1% and not more than 10% of the Participant's Compensation on each payroll date. The amount of payroll deductions must be a whole percentage (e.g., 1%, 2%, 3%, etc.) of the Participant's Compensation.

(c) *Commencement of Payroll Deductions.* Except as otherwise determined by the Committee under rules applicable to all Participants, payroll deductions for Participants enrolling in the Plan after the First Offering Date under Section 5(a) shall commence with the earliest administratively practicable payroll period that begins on or after the Offering Date with respect to which the Participant files an enrollment agreement in accordance with Section 5(a).

(d) *Automatic Continuation of Payroll Deductions.* Unless a Participant elects otherwise prior to the Exercise Date of any Offering Period, such Participant shall be deemed (i) to have elected to participate in the immediately succeeding Offering Period and (ii) to have authorized the same payroll deduction for the immediately succeeding Offering Period as was in effect for the Participant immediately prior to the commencement of the succeeding Offering Period.

(e) *Change of Payroll Deduction Election.* A Participant may decrease or increase the rate or amount of his or her payroll deductions during an Offering Period (within the limitations of Section 6(b) above) by completing and filing with the Company a new enrollment agreement authorizing a change in the rate or amount of payroll deductions; provided, that a Participant may

not change the rate or amount of his or her payroll deductions more than once in any Offering Period. Except as otherwise determined by the Committee under rules applicable to all Participants, the change in rate or amount shall be effective as of the earliest administratively practicable payroll period that begins on or after the date the Committee receives the new enrollment agreement. Additionally, a Participant may discontinue his or her participation in the Plan as provided in Section 13(a).

(f) *Automatic Changes in Payroll Deduction.* Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code, Section 7(a) or 7(d) hereof, or any other applicable law, a Participant's payroll deductions may be decreased, including to 0%, at such time during any Offering Period which is scheduled to end during the current calendar year that the aggregate of all payroll deductions accumulated with respect to such Offering Period and any other Offering Period ending within the same calendar year are equal to the product of \$25,000 multiplied by the Applicable Percentage for the calendar year. Payroll deductions shall recommence at the rate provided in the Participant's enrollment agreement at the beginning of the next Offering Period which is scheduled to end in the following calendar year, unless the Participant terminates participation as provided in Section 13(a).

(g) *Special Rule for Initial Offering Period.*

(i) *Prior to Effectiveness of Form S-8.* No payroll deductions shall be made (and no payroll deduction elections shall be accepted) by the Company for Participants during the initial Offering Period prior to the time that a registration statement with respect to the shares of Common Stock being offered under the Plan has been filed with the Securities and Exchange Commission on Form S-8, and is effective. Each Participant shall be eligible to purchase shares of Common Stock on the Exercise Date of such Offering Period in an amount equal to the lesser of (A) the aggregate purchase price for 400 shares of Common Stock or (B) ten (10%) percent of the Compensation that the Participant receives during such Offering Period.

(ii) *Offering Period During Which Form S-8 Becomes Effective.* Once the registration statement with respect to the shares of Common Stock being offered under the Plan has been filed with the Securities Exchange Commission on Form S-8, and is effective, the Committee may permit a Participant to make a payroll deduction election with respect to the Offering Period then in progress, by filing an enrollment agreement containing the payroll deduction election with the Company, as provided in Section 6(b) above. If the Committee so permits, a Participant may at that time elect a lower level of participation than that provided in Section 6(g)(i) above, or may withdraw from the Plan. If a payroll deduction election is made under this Section 6(g)(ii), payroll deductions may commence as early as with the first pay period beginning after the First Offering Date. Subject to the overall participation level specified in Section 6(g)(i), the rate of payroll deduction during the Offering Period during which the Form S-8 becomes effective may exceed the maximum permitted rate under Section 6(b) hereof to make up for the payroll deductions, if any, which would otherwise have been made prior to the effectiveness of the Form S-8 with respect to the Plan. If a payroll deduction election is made under this Section 6(g)(ii), payroll deductions shall continue at the rate elected by the Participant for subsequent Offering Periods, unless the Participant makes a change permitted under Section 6(e), or withdraws from the Plan under Section 13(a). Alternatively, the Committee may permit or require purchases on the Exercise Date of the initial Offering Period to be made by direct lump sum cash transfer by the Participant.

(iii) *Subsequent Offering Periods.* For all Offering Periods subsequent to the Offering Period during which the Company's Form S-8 with respect to the Plan becomes effective, purchases generally must be made via payroll deduction. Participants in the Offering Period

during which the Form S-8 becomes effective who do not make a payroll deduction election pursuant to Section 6(g)(ii) must file an enrollment agreement containing a payroll deduction election with respect to subsequent Offering Periods with the Company prior to the commencement of a subsequent Offering Period (unless a later time for filing is set by the Committee for all Participants) in order to make further purchases under the Plan. Payroll deductions for Participants required to file a payroll deduction election under this Section 6(g)(iii) shall commence, except as otherwise determined by the Committee under rules applicable to all Participants, effective as of the earliest administratively practicable payroll period that begins on or after the first day of the subsequent Offering Period. A Participant who does not timely file an enrollment agreement shall be treated as having withdrawn under Section 13(a) hereof.

7. *Grant of Option.*

(a) *Shares of Common Stock Subject to Option.* Subject to the limitations set forth in Section 7(d) and this Section 7(a), a Participant shall be granted an option on each Offering Date to purchase on the next Exercise Date (at the Exercise Price determined as provided in Section 7(b) below) up to a number of shares of Common Stock determined by dividing such Participant's Plan Contributions accumulated prior to such Exercise Date and retained in the Participant's account as of such Exercise Date by the Exercise Price; provided, that the maximum number of shares a Participant may purchase on any Exercise Date shall be 400, and that no Participant may purchase in any one calendar year Common Stock having a cumulative Fair Market Value (determined as of the time such Common Stock is purchased) of more than \$6,000.

(b) *Exercise Price.*

(i) Subject to Clause (ii) below, the Exercise Price per share of Common Stock offered to each Participant in a given Offering Period shall be the Applicable Percentage of the Fair Market Value of a share of Common Stock on the Exercise Date.

(ii) The Committee may, in its sole discretion, determine that the Exercise Price per share of Common Stock offered to each Participant in a given Offering Period shall be the lower of: (1) the Applicable Percentage of the Fair Market Value of a share of Common Stock on the Offering Date or (2) the Applicable Percentage of the Fair Market Value of a share of Common Stock on the Exercise Date, provided the Committee announces such change at least five days prior to the Offering Date thereof.

(iii) The Applicable Percentage with respect to each Offering Period shall be 85%, unless and until such Applicable Percentage is increased by the Committee, in its sole discretion, provided that any such increase in the Applicable Percentage with respect to a given Offering Period must be established not less than five days prior to the Offering Date thereof.

(c) *Fair Market Value.* The Fair Market Value of a share of Common Stock on a given date shall be determined by the Committee in its discretion; provided, that if there is a public market for the Common Stock, the Fair Market Value per share shall be either (i) the closing price of the Common Stock on such date (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date), as reported by the National Association of Securities Dealers Automated Quotation (Nasdaq) National Market System, (ii) if such price is not reported, the average of the bid and asked prices for the Common Stock on such date (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date), as reported by Nasdaq, (iii) in the event the Common Stock is listed on a stock exchange, the closing price of the Common Stock on such exchange on such date (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date), For purposes of the

First Offering Date, the Fair Market Value of a share of Common Stock shall be the Price to Public as set forth in the final prospectus filed by the Company with the Securities and Exchange Commission pursuant to Rule 424 under the Securities Act of 1933, as amended.

(d) *Limitation on Option that may be Granted.* Notwithstanding any provision of the Plan to the contrary, no Participant shall be granted an option under the Plan (i) to the extent that if, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans of the Company and its Subsidiaries intended to qualify under Section 423 of the Code accrue at a rate which exceeds \$25,000 of fair market value of stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time.

(e) *No Rights as Shareholder.* A Participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

8. *Exercise of Options.*

(a) *Automatic Exercise.* A Participant's option for the purchase of shares will be exercised automatically on each Exercise Date, and the maximum number of full shares subject to the option shall be purchased for the Participant at the applicable Exercise Price with the accumulated Plan Contributions then credited to the Participant's account under the Plan. During a Participant's lifetime, a Participant's option to purchase shares hereunder is exercisable only by the Participant.

(b) *Carryover of Excess Contributions.* Any amount remaining to the credit of a Participant's account after the purchase of shares by the Participant on an Exercise Date, or which is insufficient to purchase a full share of Common Stock, shall remain in the Participant's account, and be carried over to the next Offering Period, unless the Participant withdraws from participation in the Plan or elects to withdraw his or her account balance in accordance with Section 10(c).

9. *Issuance of Shares.*

(a) *Delivery of Shares.* As promptly as practicable after each Exercise Date, the Company shall arrange for the delivery to each Participant (or the Participant's beneficiary), as appropriate, or to a custodial account for the benefit of each Participant (or the Participant's beneficiary) as appropriate, of a certificate representing the shares purchased upon exercise of the Participant's option.

(b) *Registration of Shares.* Shares to be delivered to a Participant under the Plan will be registered in the name of the Participant or in the name of the Participant and his or her spouse, as requested by the Participant.

(c) *Compliance with Applicable Laws.* The Plan, the grant and exercise of options to purchase shares under the Plan, and the Company's obligation to sell and deliver shares upon the exercise of options to purchase shares shall be subject to compliance with all applicable federal, state and foreign laws, rules and regulations and the requirements of any stock exchange on which the shares may then be listed.

(d) *Withholding.* The Company may make such provisions as it deems appropriate for withholding by the Company pursuant to federal or state tax laws of such amounts as the Company determines it is required to withhold in connection with the purchase or sale by a Participant of any Common Stock acquired pursuant to the Plan. The Company may require a Participant to

satisfy any relevant tax requirements before authorizing any issuance of Common Stock to such Participant.

10. *Participant Accounts.*

(a) *Bookkeeping Accounts Maintained.* Individual bookkeeping accounts will be maintained for each Participant in the Plan to account for the balance of his Plan Contributions, options issued, and shares purchased under the Plan. However, all Plan Contributions made for a Participant shall be deposited in the Company's general corporate accounts, and no interest shall accrue or be credited with respect to a Participant's Plan Contributions. All Plan Contributions received or held by the Company may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate or otherwise set apart such Plan Contributions from any other corporate funds.

(b) *Participant Account Statements.* Statements of account will be given to Participants semi-annually in due course following each Exercise Date, which statements will set forth the amounts of payroll deductions, the per share purchase price, the number of shares purchased and the remaining cash balance, if any.

(c) *Withdrawal of Account Balance Following Exercise Date.* A Participant may elect at any time within the first thirty (30) days following any Exercise Date, or at such other time as the Committee may from time to time prescribe, to receive in cash any amounts carried-over in accordance with Section 8(b). An election under this Section 10(c) shall not be treated as a withdrawal from participation in the Plan under Section 13(a).

11. *Designation of Beneficiary.*

(a) *Designation.* A Participant may file a written designation of a beneficiary who is to receive any shares and cash, if any, from the Participant's account under the Plan in the event of the Participant's death subsequent to an Exercise Date on which the Participant's option hereunder is exercised but prior to delivery to the Participant of such shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of the Participant's death prior to the exercise of the option.

(b) *Change of Designation.* A Participant's beneficiary designation may be changed by the Participant at any time by written notice. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

12. *Transferability.* Neither Plan Contributions credited to a Participant's account nor any rights to exercise any option or receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will or the laws of descent and distribution, or as provided in Section 11). Any attempted assignment, transfer, pledge or other distribution shall be without effect, except that the Company may treat such act as an election to withdraw in accordance with Section 13(a).

13. *Withdrawal; Termination of Employment.*

(a) *Withdrawal.* A Participant may withdraw from the Plan at any time after the Company's registration statement on Form S-8 with respect to the Plan is effective by giving written notice to

the Company. Payroll deductions, if any have been authorized, shall cease as soon as administratively practicable after receipt of the Participant's notice of withdrawal, and, subject to administrative practicability, no further purchases shall be made for the Participant's account. All Plan Contributions credited to the Participant's account, if any, and not yet invested in Common Stock, will be paid to the Participant as soon as administratively practicable after receipt of the Participant's notice of withdrawal. The Participant's unexercised options to purchase shares pursuant to the Plan automatically will be terminated. Payroll deductions will not resume on behalf of a Participant who has withdrawn from the Plan (a "Former Participant") unless the Former Participant enrolls in a subsequent Offering Period in accordance with Section 5(a) and subject to the restriction provided in Section 13(b), below.

(b) *Effect of Withdrawal on Subsequent Participation.* A Former Participant who has withdrawn from the Plan pursuant to this Section 13(b) shall not again be eligible to participate in the Plan prior to the beginning of the Offering Period that commences at least 12 months from the date the Former Participant withdrew, and the Former Participant must submit a new enrollment agreement in order to again become a Participant as of that date.

(c) *Termination of Employment.* Upon termination of a Participant's Continuous Status as an Employee prior to any Exercise Date for any reason, including retirement or death, the Plan Contributions credited to the Participant's account and not yet invested in Common Stock will be returned to the Participant or, in the case of death, to the Participant's beneficiary as determined pursuant to Section 11, and the Participant's option to purchase shares under the Plan will automatically terminate.

14. *Common Stock Available under the Plan.*

(a) *Number of Shares.* Subject to adjustment as provided in Section 14(b) below, the maximum number of shares of the Company's Common Stock that shall be made available for sale under the Plan shall be 200,000 shares, plus an automatic annual increase on the first day of each of the Company's fiscal years beginning in 2005 and ending in 2014 equal to the lesser of (i) 100,000 shares, (ii) 1% of all shares of Common Stock outstanding on the last day of the immediately preceding fiscal year, or (iii) a lesser amount determined by the Board. Shares of Common Stock subject to the Plan may be newly issued shares or shares reacquired in private transactions or open market purchases. If and to the extent that any right to purchase reserved shares shall not be exercised by any Participant for any reason or if such right to purchase shall terminate as provided herein, shares that have not been so purchased hereunder shall again become available for the purpose of the Plan unless the Plan shall have been terminated, but all shares sold under the Plan, regardless of source, shall be counted against the limitation set forth above.

(b) *Adjustments Upon Changes in Capitalization; Corporate Transactions.*

- i. If the outstanding shares of Common Stock are increased or decreased, or are changed into or are exchanged for a different number or kind of shares, as a result of one or more reorganizations, restructurings, recapitalizations, reclassifications, stock splits, reverse stock splits, stock dividends or the like, upon authorization of the Committee, appropriate adjustments shall be made in the number and/or kind of shares, and the per-share option price thereof, which may be issued in the aggregate and to any Participant upon exercise of options granted under the Plan.
- ii. In the event of the proposed dissolution or liquidation of the Company, the Offering Period will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Committee.

- iii. In the event of a proposed sale of all or substantially all of the Company's assets, or the merger of the Company with or into another corporation (each, a "Sale Transaction"), each option under the Plan shall be assumed or an equivalent option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Committee determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Period then in progress by setting a new Exercise Date (the "New Exercise Date"). If the Committee shortens the Offering Period then in progress in lieu of assumption or substitution in the event of a Sale Transaction, the Committee shall notify each Participant in writing, at least ten (10) days prior to the New Exercise Date, that the exercise date for such Participant's option has been changed to the New Exercise Date and that such Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Plan as provided in Section 13(a). For purposes of this Section 14(b), an option granted under the Plan shall be deemed to have been assumed if, following the Sale Transaction, the option confers the right to purchase, for each share of option stock subject to the option immediately prior to the Sale Transaction, the consideration (whether stock, cash or other securities or property) received in the Sale Transaction by holders of Common Stock for each share of Common Stock held on the effective date of the Sale Transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, that if the consideration received in the Sale Transaction was not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Committee may, with the consent of the successor corporation and the Participant, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by the holders of Common Stock in the Sale Transaction.
- iv. In all cases, the Committee shall have sole discretion to exercise any of the powers and authority provided under this Section 14, and the Committee's actions hereunder shall be final and binding on all Participants. No fractional shares of stock shall be issued under the Plan pursuant to any adjustment authorized under the provisions of this Section 14.

15. *Administration.*

(a) *Committee.* The Plan shall be administered by the Committee. The Committee shall have the authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, and to make all other determinations necessary or advisable for the administration of the Plan. The administration, interpretation, or application of the Plan by the Committee shall be final, conclusive and binding upon all persons.

(b) *Requirements of Exchange Act.* Notwithstanding the provisions of Section 15(a) above, in the event that Rule 16b-3 promulgated under the Exchange Act or any successor provision thereto ("Rule 16b-3") provides specific requirements for the administrators of plans of this type, the Plan shall only be administered by such body and in such a manner as shall comply with the applicable requirements of Rule 16b-3. Unless permitted by Rule 16b-3, no discretion concerning decisions regarding the Plan shall be afforded to any person that is not "disinterested" as that term is used in Rule 16b-3.

16. *Amendment, Suspension, and Termination of the Plan.*

(a) *Amendment of the Plan.* The Board or the Committee may at any time, or from time to time, amend the Plan in any respect; provided, that (i) except as otherwise provided in Section 4(c) hereof, no such amendment may make any change in any option theretofore granted

which adversely affects the rights of any Participant and (ii) the Plan may not be amended in any way that will cause rights issued under the Plan to fail to meet the requirements for employee stock purchase plans as defined in Section 423 of the Code or any successor thereto. To the extent necessary to comply with Rule 16b-3 under the Exchange Act, Section 423 of the Code, or any other applicable law or regulation), the Company shall obtain shareholder approval of any such amendment.

(b) *Suspension of the Plan.* The Board or the Committee may, as of the close of any Exercise Date, suspend the Plan; provided, that the Board or Committee provides notice to the Participants at least five business days prior to the suspension. The Board or Committee may resume the normal operation of the Plan as of any Exercise Date; provided further, that the Board or Committee provides notice to the Participants at least 20 business days prior to the date of termination of the suspension period. A Participant shall remain a Participant in the Plan during any suspension period (unless he or she withdraws pursuant to Section 13(a)), however no options shall be granted or exercised, and no payroll deductions shall be made in respect of any Participant during the suspension period. Participants shall have the right to withdraw carryover funds provided in Section 10(c) throughout any suspension period. The Plan shall resume its normal operation upon termination of a suspension period.

(c) *Termination of the Plan.* The Plan and all rights of Employees hereunder shall terminate on the earliest of:

- i. the Exercise Date that Participants become entitled to purchase a number of shares greater than the number of reserved shares remaining available for purchase under the Plan;
- ii. such date as is determined by the Board in its discretion; or
- iii. the last Exercise Date immediately preceding the tenth (10th) anniversary of the Plan's effective date.

In the event that the Plan terminates under circumstances described in Section 16(c)(i) above, reserved shares remaining as of the termination date shall be sold to Participants on a *pro rata* basis, based on the relative value of their cash account balances in the Plan as of the termination date.

17. *Notices.* All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

18. *Expenses of the Plan.* All costs and expenses incurred in administering the Plan shall be paid by the Company, except that any stamp duties or transfer taxes applicable to participation in the Plan may be charged to the account of such Participant by the Company.

19. *No Employment Rights.* The Plan does not, directly or indirectly, create any right for the benefit of any employee or class of employees to purchase any shares under the Plan, or create in any employee or class of employees any right with respect to continuation of employment by the Company or any Subsidiary, and it shall not be deemed to interfere in any way with the right of the Company or any Subsidiary to terminate, or otherwise modify, an employee's employment at any time.

20. *Applicable Law.* The internal laws of the State of Delaware shall govern all matters relating to this Plan except to the extent (if any) superseded by the laws of the United States.

21. *Additional Restrictions of Rule 16b-3.* The terms and conditions of options granted hereunder to, and the purchase of shares by, persons subject to Section 16 of the Exchange Act shall comply with the applicable provisions of Rule 16b-3. This Plan shall be deemed to contain, and such options shall contain, and the shares issued upon exercise thereof shall be subject to, such additional conditions and

restrictions as may be required by Rule 16b-3 to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

22. *Effective Date.* Subject to adoption of the Plan by the Board and approval of the Plan by the shareholders of the Company, the Plan shall become effective on the First Offering Date. The Board shall submit the Plan to the shareholders of the Company for approval within twelve months after the date the Plan is adopted by the Board.

QuickLinks

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[COMSTOCK HOMEBUILDING COMPANIES, INC.](#)

[2004 Employee Stock Purchase Plan](#)

TAX INDEMNIFICATION AGREEMENT

TAX INDEMNIFICATION AGREEMENT, dated as of _____, 2004 (the "Agreement"), among Sunset Investment Corporation, a Virginia corporation (the "Company"), Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Parent") and Christopher Clemente ("Stockholder").

A. The Company has been an "S corporation" (as defined in section 1361 (a) (1) of the Code (as hereinafter defined)) for federal tax purposes since inception.

B. The Company and the Stockholder plan to merge the Company with and into Comstock Holding Company, Inc. ("CHCI") prior to the closing of the Public Offering (as hereinafter defined).

C. Immediately subsequent to the merger of the Company with and into CHCI, CHCI will be merged with and into Parent on the Termination Date (as hereinafter defined).

D. Parent, the Company and the Stockholder desire to address certain matters among themselves in respect of the allocation of taxable income and liability for taxes.

E. Parent, the Company and the Stockholder wish to provide for the termination of this Agreement such that it has no effect should the Public Offering not close.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. DEFINITIONS.

The following terms as used herein have the following meanings:

"Adjustment Amount" means the net increase in taxable income of one or more of the Stockholders, the Company, CHCI or Parent based on a Final Determination and that gives rise to a payment pursuant to Section 3.3 or 3.4 hereof.

"Affected Stockholder" means a Stockholder whose tax returns are adjusted in a manner which gives rise to an obligation of the Company pursuant to Section 3.3 hereof.

"Affiliated Companies" means CHCI, Comstock Homes, Inc. and Comstock Service Corp., Inc., each a Virginia corporation affiliated with the Company through common ownership by Parent.

"Closing Date" means the date on which the Public Offering closes.

"Code" means the Internal Revenue Code of 1986, as amended.

"C Short Year" means that portion of Parent's year beginning on the Termination Date.

"C Taxable Year" means any taxable year (or portion thereof) of Parent or CHCI during which the Parent or CHCI is a C corporation for federal income tax purposes, including the C Short Year.

"Final Determination" means the final resolution of any income or franchise tax liability (excluding all related interest and penalties) for a taxable period. A Final Determination shall result from the first to occur of:

- (i) the expiration of 90 days after acceptance by the Internal Revenue Service of a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment (the "Waiver") on Federal Revenue Form 870 or 870-AD (or any successor comparable form or
-

the expiration of a comparable period with respect to any comparable agreement or form under the laws of any other jurisdiction), unless, within such period, the applicable taxpayer gives notice of that taxpayer's intention to attempt to recover all or part of any amount paid pursuant to the Waiver by filing a timely claim for refund;

(ii) a decision, judgment, decree or other order by a court of competent jurisdiction that is not subject to further judicial review (by appeal or otherwise) and has become final;

(iii) the execution of a closing agreement under section 7121 of the Code or the acceptance by the Internal Revenue Service or its counsel of an offer in compromise under section 7122 of the Code or the execution of a comparable agreement under the laws of any other jurisdiction;

(iv) the expiration of the time for filing a claim for refund or for instituting suit in respect of a claim for refund disallowed in whole or part by the Internal Revenue Service or any other relevant taxing authority;

(v) any other final disposition of the tax liability for such period by reason of the expiration of the applicable statute of limitations; or

(vi) any other event that the parties hereto agree is a final and irrevocable determination of the liability at issue.

"Public Offering" means the initial offering of shares of Common Stock, \$0.01 par value per share, of Parent pursuant to the Registration Statement on Form S-1 originally filed by the Parent with the Securities and Exchange Commission on August 13, 2004.

"S Short Year" means that portion of the Company's S Termination Year beginning on the first day of such taxable year and ending on the day immediately preceding the Termination Date.

"S Taxable Year" means any taxable year (or portion thereof) of the Company during which the Company was an S corporation, including the S Short Year.

"S Termination Year" means the taxable year of the Company that includes the Termination Date.

"Taxing Authority" means the Internal Revenue Service or any comparable state or foreign taxing authority.

"Tax Benefit" means any amount by which the tax liability (including all related interest or penalties) of a Stockholder, Parent or CHCI, as applicable, in any taxable year is actually reduced by reason of claiming, on a tax return for such year, a loss, deduction or credit for tax purposes arising from the Company being determined to have been a C corporation or an Adjustment Amount in respect of which a payment was made pursuant to Section 3.3 or 3.4 after taking into account all other losses, deductions, credits or other tax attributes available to such Stockholder, Parent or the Company, as applicable.

"Tax Detriment" means any amount by which the tax liability (including all related interest or penalties) of a Stockholder, Parent or CHCI, as applicable, in any taxable year is actually increased by reason of an Adjustment Amount, on a tax return for such year, in respect of which a payment was made pursuant to Section 3.3 or 3.4 after taking into account all other items of income, gain, loss, deductions or other tax attributes of such Stockholder, Parent or CHCI, as applicable.

"Termination Date" means the date of the merger between the Company and CHCI.

ARTICLE II

TERMINATION OF S CORPORATION STATUS AND ALLOCATION OF INCOME

2.1. TERMINATION OF S CORPORATION STATUS.

The Company and the Stockholder shall take the steps reasonably necessary to cause the Company to merge into CHCI at least one day prior to the Closing Date.

2.2. ALLOCATION ELECTION.

Parent will elect to file a consolidated federal income tax return with CHCI for the taxable year beginning on the Termination Date in accordance with Treas. Reg. Section 1.1502-75(a) and the Company shall consent to such election as required by Treas. Reg. Section 1.1502-75(b).

ARTICLE III

OBLIGATIONS

3.1. LIABILITY FOR TAXES INCURRED BY STOCKHOLDER DURING THE S SHORT YEAR.

Each Stockholder shall (a) duly include, in his or its own federal and state income tax returns, all items of income, gain, loss, deduction or credit attributable to the S Short Year in a manner consistent with the Form 1120S and the schedules thereto (and the corresponding state income or franchise tax forms and schedules) to be filed by the Company with respect to such period, (b) file such returns no later than the due date (including extensions, if any) for filing such returns, and (c) pay any and all taxes required to be paid for such Stockholder's taxable year that includes the S Short Year.

3.2. LIABILITY FOR TAXES INCURRED BY THE COMPANY DURING THE S SHORT YEAR AND THE C SHORT YEAR.

Parent shall (a) be responsible for and effect the filing of all federal and state income or franchise tax returns for the Company with respect to the S Short Year, and for CHCI with respect to the C Short Tax Year (b) accurately prepare and timely file such returns, and (c) pay any and all taxes required to be paid by CHCI for the C Short Tax Year.

3.3. COMPANY'S INDEMNIFICATION OF STOCKHOLDER FOR TAX LIABILITIES.

In the event of an adjustment to one or more tax returns of the Company for an S Taxable Year based on a Final Determination that results in a net increase in taxable income of a Stockholder and a corresponding adjustment to one or more tax returns of Parent or CHCI, as applicable, for a C Taxable Year that results in a Tax Benefit to Parent, Parent shall pay to any Affected Stockholder an amount equal to the Affected Stockholder's Tax Detriment (including all related interests and penalties); provided, however, the total amount due under this Section 3.3 shall not exceed the Tax Benefit received by Parent that is attributable to the relevant adjustment. Any amount payable under this Section 3.3 shall be paid to the Affected Stockholders in the year in which any Tax Benefit is realized. Upon notification from the Affected Stockholder that a payment is due by such Affected Stockholder to a Taxing Authority, Parent, as applicable, shall determine any Tax Benefit and pay the amount due hereunder to the Affected Stockholder within thirty (30) business days of such determination; provided, however, that if the Tax Benefit results in the creation of a net operating loss carryover, Parent shall make the payment hereunder to the Affected Stockholder thirty (30) business days after the utilization by Parent, in whole or in part, of such net operating loss carryover.

3.4. STOCKHOLDER'S INDEMNIFICATION OF THE COMPANY FOR TAX LIABILITIES.

(a) Adjustments to the Company's Taxable Income. In the event of an adjustment of one or more tax returns of Parent or CHCI, as the case may be, for a C Taxable Year based on a Final Determination which results in a net increase in taxable income of Parent or CHCI, as applicable, for a C Taxable Year and a corresponding adjustment to one or more tax returns of the Company for an S Taxable Year which results in a Tax Benefit to the Company or the Stockholder for the S Taxable Year, Stockholder agrees to contribute to the capital of Parent his pro rata share (based upon the relative amount of Company stock held by Stockholder during the relevant time period) of an amount equal to the Tax Detriment (including all related interest and penalties); provided, however, the total amount due from Stockholder under this Section 3.4(a) shall not exceed such Stockholder's Tax Benefit that is attributable to the relevant adjustment. The amount payable under this Section 3.4(a) shall be paid to Parent in the year in which the Tax Benefit is realized.

(b) Adjustments Attributable to the Company's S Status. If, based on a Final Determination, the Company is deemed to have been a C corporation for federal, state or local income or franchise tax purposes during any period in which it reported (or intends to report) its taxable income as an S corporation, Stockholder, subject to the limitations contained in Section 3.4(c), shall contribute to the capital of Parent his pro rata share (based upon the relative amount of Company stock held by such Stockholder during the relevant time period) of an amount equal to the taxes, interest and penalties incurred by the Company as a result of the Company being determined to have been a C corporation.

(c) Limit on Indemnification Amount. The payments required to be made by Stockholder to the Parent pursuant to Section 3.4(b) shall not exceed the sum of (i) Stockholder's net Tax Benefit resulting from the Company being determined to have been a C corporation and (ii) with respect to the Company and/or any of the Affiliated Companies, \$750,000 in the aggregate.

(d) Time of Indemnification Payment. The Stockholder shall contribute to the capital of Parent any amounts calculated in accordance with Section 3.4(a) within 30 business days after the receipt of the refund from the appropriate Taxing Authority attributable to such adjustment. To the extent that any amounts payable pursuant to Section 3.4(c)(ii) exceed \$250,000, the Stockholder may contribute these amounts to the capital of Parent in annual installments of \$250,000 (or the remaining balance due, if less) until paid in full.

3.5 GROSS UP FOR ADDITIONAL TAX.

In all events and to the extent not otherwise reimbursed, the Parent hereby agrees that if any payment pursuant to this Article III is deemed to be taxable income to Stockholder, the amount of such payment to the Stockholder shall be increased by an amount necessary to equal the Stockholder's additional Tax Detriment resulting from the receipt of a payment pursuant to this Article III related to such amount (including, without limitation, any taxes on such additional amounts) so that the net payment, after reduction for any Tax Detriment associated with its receipt, is equal to the amount of the Tax Detriment in respect of which such payment pursuant to this Article III is made; provided, however, that such additional amount shall not exceed the sum of (i) the Tax Benefit to the Parent from such payment under this Section 3.5 and (ii) the excess of any Tax Benefit of the Parent from the Adjustment Amount over the amount of the payments under Section 3.3.

ARTICLE IV

CONTESTS/COOPERATION

4.1. CONTESTS.

Whenever the Stockholder or Parent becomes aware of an issue that they or it believe could result in a Final Determination which could give rise to a payment or indemnification obligation under

Article III, the Stockholder or Parent (as the case may be) shall promptly give notice of the issue to the other parties hereto. The Stockholder and his representatives, at their expense, shall be entitled to participate in all conferences and meetings with or proceedings before the Internal Revenue Service or any other Taxing Authority with respect to the issue. The parties shall consult and cooperate with each other in the negotiation and settlement or litigation of any adjustment that may give rise to any payment or indemnification obligation under Article III. All decisions with respect to such negotiation and settlement or litigation shall be made by the parties after full, good faith consultation or pursuant to the dispute resolution provisions of Section 4.2.

4.2. DISPUTE RESOLUTION.

(a) If the parties hereto are, after negotiation in good faith, unable to agree upon the appropriate application of the provisions of this Agreement, the controversy shall be settled by a "Big 4" (or equivalent) accounting firm, other than the independent public accountants for Parent or any of its affiliates, chosen by the Parent and both of Christopher Clemente and Gregory Benson (the "Accounting Firm"). The decision of the Accounting Firm with respect thereto shall be final, and Parent or the Stockholder, as applicable, shall pay any amounts due under this Agreement pursuant to such decision in accordance with the requirements of Sections 3.3 and 3.4 hereof. The applicable expenses of the Accounting Firm shall be borne equally by the Parent and the Stockholder unless the Accounting Firm specifies otherwise.

(b) In the event that the Stockholder or Parent receives notice, whether verbally or in writing, of any federal, state, local or foreign tax examination, claim, settlement, proposed adjustment or related matter that may affect in any way the liability of a Stockholder under this Agreement, such Stockholder or Parent, as applicable, shall within ten days notify the other parties hereto in writing thereof; provided, however, that any failure to give such notice shall not reduce a party's right to indemnification under this Agreement except to the extent of actual damage incurred by the other parties as a result of such failure. The party or parties who would be required to indemnify (the "Indemnifying Party") the other party or parties (the "Indemnified Party") shall be entitled in their reasonable discretion and at their sole expense to handle, control and compromise or settle the defense of any matter that may give rise to a liability under this Agreement; provided, however, that such Indemnifying Party from time to time provides assurances reasonably satisfactory to the Indemnified Party that (i) the Indemnifying Party is financially capable of pursuing such defense to its conclusion, and (ii) such defense is actually being pursued in a reasonable manner.

4.3. COOPERATION.

The parties shall make available to each other, as reasonably requested, and to any Taxing Authority all information, records or documents relating to any liability for taxes covered by this Agreement and shall preserve such information, records and documents until the expiration of any applicable statute of limitations or extensions thereof. The party requesting such information shall reimburse the other party for all reasonable out-of-pocket costs incurred in producing such information.

4.4. COSTS.

Except to the extent otherwise provided herein, each party shall bear his own costs in connection with this Agreement.

ARTICLE V

MISCELLANEOUS

5.1. COUNTERPARTS AND FACSIMILES.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which counterparts collectively shall constitute a single instrument representing the agreement among the parties hereto. Transmission of facsimile copies of an executed counterpart of a signature page of this Agreement will have the same effect as delivery of the manually executed counterpart of this Agreement.

5.2. CONSTRUCTION OF TERMS.

Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give any person, firm or corporation, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

5.3. GOVERNING LAW.

This Agreement and the rights and duties of the parties hereunder shall be governed by, and construed in accordance with, the law of the Commonwealth of Virginia.

5.4. AMENDMENT AND MODIFICATION.

This Agreement may be amended, modified or supplemented only by a writing executed by all the parties hereto.

5.5. ASSIGNMENT.

Except by operation of law or in connection with the sale of all or substantially all the assets of a party, this Agreement shall not be assignable, in whole or in part, directly or indirectly, by the Stockholder without the written consent of the Company and Parent or by the Company or Parent without the written consent of both of Christopher Clemente and Gregory Benson. Any attempt to assign any rights or obligations arising under this Agreement without such consent shall be void. The provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

5.6. INTERPRETATION.

The title, article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not in any way affect the meaning or interpretation of this Agreement.

5.7. SEVERABILITY.

In the event that any one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable in any respect, the same shall not in any respect affect the validity, legality or enforceability of the remainder of this Agreement, and the parties shall use their best efforts to replace such illegal, invalid or unenforceable provision with an enforceable provision approximating, to the extent possible, the original intent of the parties.

5.8. ENTIRE AGREEMENT.

This Agreement embodies the entire agreement and understanding of the parties hereto in respect to the subject matter contained herein. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

5.9. FURTHER ASSURANCES.

Subject to the provisions of this Agreement, the parties shall acknowledge such other instruments and documents and take all other actions that may be reasonably required in order to effectuate the purposes of this Agreement.

5.10. WAIVERS, ETC.

No failure or delay on the part of any party in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power preclude any other or further exercise thereof or the exercise of any other right or power. No waiver of any provision of this Agreement nor consent to any departure by the parties therefrom shall in any event be effective unless it shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given.

5.11. SET-OFF.

All payments to be made by Stockholder or by the Company or Parent under this Agreement shall be made without set-off, counterclaim or withholding, all of which are expressly waived.

5.12. CHANGE OF LAW.

If, due to any change in applicable law or regulations or the interpretation thereof by any court or other governing body having jurisdiction subsequent to the date of this Agreement, performance of any provision of this Agreement shall be impracticable or impossible, the parties shall use their best efforts to find an alternative means to achieve the same or substantially the same results as are contemplated by such provision.

5.13. NOTICES.

All notices under this Agreement shall be validly given if in writing and delivered personally or sent by registered mail, postage prepaid at the respective addresses set forth below

If to CHCI or Parent, at:

Comstock Homebuilding Companies, Inc.
Employer Headquarters Address at time of Notice

Attention: Jubal Thompson

If to Stockholder, at:

Christopher Clemente
Home Address as shown in the records of the Employer at time of Notice

or at such other address as any party may, from time to time, designate in a written notice given in a like manner. Notice given by mail shall be deemed delivered five calendar days after the date mailed.

5.14. TERMINATION OF AGREEMENT.

This Agreement shall terminate and be void, as if it never had been executed, if the Closing Date does not occur on or before March 31, 2005.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SUNSET INVESTMENT CORP

By _____

Name:

Title:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By _____

Name:

Title:

STOCKHOLDER:

CHRISTOPHER CLEMENTE

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EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is effective this day of , 2004, between Comstock Homebuilding Companies, Inc. (the "Employer") and Christopher Clemente (the "Executive").

WITNESSETH

WHEREAS, the Board of Directors of the Employer (the "Board") wishes to employ the Executive on the terms and conditions in this Agreement and in accordance with the policies established by the Employer for senior executive level employees; and

WHEREAS, the Executive desires to accept such employment;

NOW THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Those words and terms that have special meanings for purposes of this Agreement are specially defined through the use of parenthetical quotations and upper-lower case lettering. In addition, the following words and terms shall have the meanings set forth below for the purposes of this Agreement:

- 1.1. **Cause.** Termination of the Executive's employment for "Cause" shall mean termination based on any of the following: (a) conviction (or entering a plea of guilty or nolo contendere) of any felony or other crime involving misuse or misappropriation of money or other property, moral turpitude, or that results in Executive being incarcerated for more than sixty (60) consecutive days upon such conviction; or (b) conduct that is intentional in nature that materially injures the business or reputation of the Employer or that prevents the Executive from being able to adequately perform his job duties; or (c) failure of the Executive to perform to the best of his abilities a substantial portion of the Executive's duties and responsibilities assigned or delegated under this Agreement, which failure is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure; (d) any intentional and material breach by the Executive of any of the covenants set forth in the Confidentiality & Non-Competition Agreement of even date herewith; (e) gross negligence, willful gross misconduct or insubordination of the Executive; or (f) an intentional and material breach of any provision of this Agreement that is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure. Cause shall be determined in good faith by the affirmative vote of a majority of the whole Board (excluding the Executive if he is a member of the Board) after the Executive has been provided the opportunity to make a presentation to the Board (which presentation may be with counsel).
 - 1.2. **Change in Control.** "Change in Control" shall mean:
 - (i) the acquisition by any "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (other than (A) the Employer or any subsidiary thereof or (B) any employee benefit plan of the Employer or any subsidiary thereof, directly or indirectly, as "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities of the Employer representing more than fifty percent (50%) of either the then outstanding shares or the combined voting power of the then outstanding securities of the Employer;
-

- (ii) during any period of twenty-four consecutive months, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period;
- (iii) the stockholders of the Employer approve (A) a merger, consolidation or other business combination of the Employer with any other "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Exchange Act) or affiliate thereof, other than a merger or consolidation that would result in the outstanding common stock of the Employer immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into common stock of the surviving entity or a parent or affiliate thereof) more than fifty percent (50%) of the outstanding common stock of the Employer or such surviving entity or a parent or affiliate thereof outstanding immediately after such merger, consolidation or other business combination, or (B) a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of its assets (including if accomplished pursuant to the sale of shares of equity securities (including by any consolidation, merger or reorganization) of one or more subsidiaries of the Employer which collectively constitute all or substantially all of its assets); or
- (iv) any other event or circumstance that is not covered by the foregoing subsections but that the Board determines to affect control of the Employer and with respect to which the Board adopts a resolution that the event or circumstance constitutes a Change in Control for purposes of this Agreement.

1.3. Disability. Termination by the Employer of the Executive's employment based on "Disability" shall mean termination because the Executive is unable to perform the essential functions of his/her position with or without accommodation due to a disability (as such term is defined in the Americans with Disabilities Act) for nine (9) months in the aggregate during any twelve month period. This definition shall be interpreted and applied consistent with the Americans with Disabilities Act, the Family and Medical Leave Act, and other applicable law.

1.4. Good Reason. Termination by the Executive of the Executive's employment for "Good Reason" shall mean termination by the Executive based on any one of the following:

- 1.4.1 Without the Executive's express written consent, a material adverse change made by the Employer in the Executive's functions, duties or responsibilities;
- 1.4.2. Without the Executive's express written consent, a reduction by the Employer in the Executive's Base Salary and/or Bonus as the same may be increased from time to time; or, except to the extent permitted by Section 3.4.1 hereof, a substantial and significant reduction in the amount of Employer's directors' and officers' insurance coverage or a material reduction in the package of fringe benefits provided to the Executive, taken as a whole;
- 1.4.3. Without the Executive's express written consent, the Employer fails to provide the Executive with an office and administrative support or requires the Executive to work in an office which is more than ten (10) miles from the location of the Employer's current principal executive office, except for required travel on business of the Employer to an extent substantially consistent with the Executive's business travel obligations; or
- 1.4.4. The failure by the Employer to obtain the assumption of and agreement to perform this Agreement by a successor as contemplated in Section 8.1 hereof;

provided however, that any actions taken by the Employer to accommodate a disability of the Executive or pursuant to the Family and Medical Leave Act shall not be a "good reason" for purposes of this Agreement; and **provided further** that the continued employment of the Executive shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

1.5. Notice of Termination. Any purported termination of the Executive's employment by the Employer for any reason, or by the Executive for any reason shall be communicated by a written "Notice of Termination" to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a dated notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, (iii) specifies a Date of Termination; and (iv) is given in the manner specified in Section 8.2. "Date of Termination" as used in this Agreement shall mean the date specified in the Notice of Termination required by this Section.

2. EMPLOYMENT

2.1. Position and Term. The Employer hereby employs the Executive as Chief Executive Officer, reporting directly to the Board, and the Executive hereby accepts said employment and agrees to render such services to the Employer, on the terms and conditions set forth in this Agreement. Unless extended as provided in this Section 2.1, or terminated in accordance with Section 5, this Agreement shall terminate five (5) years after the date first above-written; provided, however, that, while this Agreement is in effect, beginning one year following the date first above-written and continuing on each one year anniversary of the Agreement (the "Annual Renewal Date"), this Agreement shall be automatically extended for an additional one (1) year, unless the parties have re-negotiated the Agreement or one of the parties gives written notice of non-renewal in accordance with Section 8.2 hereof to the other party at least thirty (30) days prior to an Annual Renewal Date, in which event this Agreement shall continue in effect for the remaining term of the Agreement. Reference herein to the "Term" of this Agreement shall refer both to the initial term and any successive term, as the context requires. The parties expressly agree that designation of a term and renewal provisions in this Agreement does not in any way limit the right of the parties to terminate this Agreement at any time as hereinafter provided.

2.2. Duties. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full working time and attention and agrees to use his best efforts to further the interests of the Employer and to perform such services for the Employer as is consistent with his position and as directed, from time to time, by the Board. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full time, attention and energies to the business of the Employer and shall not be employed or involved in any other business activity that prevents the Executive from performing his duties hereunder. Subject to the foregoing, the following activities are permitted activities: (i) volunteer services for or on behalf of such religious, educational or non-profit organization as Executive may wish to serve, (ii) service as a director of as many as three (3) for-profit business entities, and (iii) such other activities as may be specifically approved by the Employer, including, but not limited to, the activity described on Schedule 2.2 hereto. This restriction shall not, however, preclude the Executive (i) from owning less than five percent (5%) of the total outstanding shares of a publicly traded company or (ii) from employment in any capacity with affiliates of the Employer, nor shall any remuneration from such affiliates be considered in calculating the Base Salary (as defined in Section 3.1) due to Executive hereunder or any Bonus that may be due to Executive.

3. COMPENSATION AND BENEFITS

- 3.1. **Base Salary.** For services rendered hereunder by the Executive, the Employer shall compensate and pay Executive for his services during the Term at a minimum base salary of five hundred and fifty thousand dollars (\$550,000) per year ("Base Salary"), which may be increased from time to time in such amounts as may be determined by the Board. Said Base Salary shall be payable in accordance with the Employer's regular payroll practices.
- 3.2. **Bonus.** In addition to his Base Salary, the Executive shall be eligible during the Term to receive an annual cash bonus determined by the Board based on the Employer's financial performance goals and taking into account a recommendation by the Employer's Compensation Committee ("Bonus"). Any Bonus shall be paid within ninety (90) days of the end of the Employer's fiscal year, and, provided the Employer's goals have been met, will be not less than two hundred percent (200%) of the Executive's Base Salary. The Executive must be employed at the end of the fiscal year but need not be employed by the Employer at the time of payment in order to receive any Bonus to which the Executive is otherwise entitled pursuant to the terms of this Section 3.2. Payment of any Bonus shall be subject to the provisions of Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 hereof. The Executive is also an eligible participant in the Employer's equity incentive, employer stock purchase and any similar executive compensation plans the Employer may adopt from time to time. Any awards under such plans shall be determined by the Board, taking into account a recommendation by the Employer's Compensation Committee.
- 3.3. **Withholding.** All payments required to be made by the Employer hereunder to the Executive shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.
- 3.4. **Policies and Benefits.**
- 3.4.1 *Participation in Policies and Benefit Plans.* Except as otherwise provided herein, during the Term, the Executive's employment shall be subject to the personnel policies that apply generally to the Employer's executive employees as the same may be interpreted, adopted, revised or deleted from time to time by the Employer in its sole discretion. Except as otherwise provided herein, during the Term, the Executive shall be entitled to participate in and receive the benefits of any benefit plans, benefits and privileges given to executive level employees of the Employer, to the extent commensurate with his then duties and responsibilities ("Benefit Plans") when and if such Benefit Plans are established by the Employer. The Employer shall not make any changes in such plans, benefits or privileges that would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all executive officers of the Employer and does not result in a proportionately greater adverse change in the rights of or benefits to the Executive as compared with any other executive officer of the Employer. Nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be deemed to be in lieu of the Base Salary payable to the Executive pursuant to Section 3.1 hereof.
- 3.4.2 *Director's and Officer's Liability Insurance.* During the Term, the Employer shall provide the Executive with directors' and officers' liability insurance coverage in an amount determined by the Board to be appropriate and affordable and deemed reasonably acceptable by the Executive. In addition, after the expiration of this Agreement, the Employer shall provide the Executive with such directors' and officers' liability insurance

coverage in an amount and for a period of time determined by the Board to be appropriate and affordable and deemed reasonably acceptable by the Executive.

- 3.4.3 *Life Insurance.* During the Term, the Employer shall provide the Executive with Life Insurance in accordance with the terms of any applicable life insurance plan established by the Employer.
- 3.4.4 *Long-term Disability Insurance.* During the Term, the Employer shall provide the Executive with Long-Term Disability Insurance in accordance with the terms of any applicable long-term disability plan established by the Employer.

4. SUPPORT AND EXPENSES

- 4.1. **Office.** The Employer shall provide the Executive with secretarial and support staff and furnished offices and conference facilities in the Reston, Virginia area, and in such other location, if any, in which the Executive hereafter agrees to perform services on behalf of the Employer, all of which shall be consistent with the Executive's duties and sufficient for the efficient performance of those duties as reasonably determined by Executive.
- 4.2. **Expenses.** The Employer shall reimburse the Executive or otherwise provide for or pay for all reasonable expenses incurred by the Executive in furtherance of, or in connection with the business of the Employer, including, but not by way of limitation, traveling expenses, communication expenses (including, but not limited to, reasonable expenses relating to the acquisition, installation and maintenance of telecommunications and computer networking facilities enabling Executive to perform his duties on behalf of the Employer from any of Executive's residences), and all reasonable entertainment expenses (whether incurred at the Executive's residence, while traveling or otherwise), subject to such reasonable documentation and other limitations as may be established by policies of the Employer and/or the Board. Additionally, Employer shall reimburse Executive for legal fees and related costs, up to a maximum of fifty thousand dollars (\$50,000), incurred in connection with estate planning matters undertaken on behalf of Executive in contemplation of the Company's planned initial public offering, regardless of whether the fees and costs are incurred prior to or after closing of the initial public offering.

5. TERMINATION

- 5.1. **Termination Due to Death.** If the Executive's employment is terminated by reason of the Executive's death, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which the Executive's death occurs, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's death as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of any beneficiary of the Executive to benefits under any benefit plan shall be determined in accordance with applicable law and the provisions of such plan. In lieu of payments to the Executive's estate following the Executive's death, the Executive may designate a beneficiary or beneficiaries to whom all payments which may be due under this Agreement will be made in the event of the Executive's death. Such designation shall be made on a form delivered to the Employer. The Executive shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Employer, and no notice to any beneficiary nor consent by

any beneficiary shall be required to effect any such change or revocation. If the Executive shall fail to designate a beneficiary before the Executive's death, or if no designated beneficiary survives the Executive, any payments which may be due under this Agreement following the Executive's death will be paid to the Executive's estate.

- 5.2. **Termination Due to Disability.** If the Executive is terminated due to Disability, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which it is determined that the Executive has a Disability, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's Disability as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.
- 5.3. **Termination by Executive Other Than for Good Reason.** In the event the Executive terminates this Agreement other than for Good Reason, compensation pursuant to Section 3.1 of this Agreement shall end as of the Date of Termination and any unpaid Bonus shall be forfeited by the Executive. The entitlement of the Executive to benefits under any Benefit Plan shall be determined in accordance with applicable law and the provisions of such plan.
- 5.4. **Termination by the Employer Without Cause.** If this Agreement is terminated by the Employer Without Cause pursuant to this Section 5.4, effective the Date of Termination, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twenty four (24) months after the Date of Termination and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which such Termination Without Cause occurs, whichever is earlier, pay two (2) times one hundred percent (100%) of the Bonus the Executive would have been entitled to had he remained an employee of Employer until the end of Employer's fiscal year. Thereafter, the Employer shall have no further obligation to pay compensation to the Executive under this Agreement. *Provided however*, that upon a termination by the Employer pursuant to this Section 5.4 within the six (6) full calendar month period prior to the effective date of a Change in Control, or within the twelve (12) full calendar months following the effective date of a Change in Control, the cash payment(s) due to Executive as described in this Section 5.4 shall be due and payable in full within thirty (30) days of the effective date of a Change in Control or the effective date of the Executive's Termination Without Cause, whichever is later. The Executive shall continue to be entitled to benefits under Employer's Benefit Plans for twelve (12) months after the Date of Termination provided that a review of applicable law and the provisions of such plans does not result in a determination to the contrary.
- 5.5. **Termination for Cause.** Upon a Termination by the Employer for Cause as defined in Section 1.1 pursuant to this Section 5.5, the Employer shall have no further obligation to pay compensation (Base Salary or Bonus) to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.
- 5.6. **Termination by the Executive for Good Reason.** If the Executive terminates this Agreement for Good Reason, the Executive shall be entitled to receive the same payments and benefits

specified in Section 5.4 of this Agreement. Upon a termination for Good Reason within the six (6) full calendar month period prior to the effective date of a Change in Control or within the twelve (12) full calendar months following the effective date of a Change in Control, the Executive shall be entitled to the same expedited payments provided in Section 5.4. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

- 5.7. **Termination Due to Discontinuance of Business.** Notwithstanding anything in this Agreement to the contrary, in the event the Employer's business is discontinued because rendered impracticable by substantial financial losses, lack of funding, legal decisions, administrative rulings, declaration of war, dissolution, national or local economic depression or crisis or any reasons beyond the control of the Employer, this Agreement shall terminate as of the day the Employer determines to cease operation with the same force and effect as if such day of the month were originally set as the termination date hereof. In the event this Agreement is terminated pursuant to this Section 5.7, the Employer shall have no further obligation to pay compensation to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan. This Section 5.7 shall be void and of no effect in the event of a discontinuance that occurs within twelve (12) months after the effective date of a Change in Control.
- 5.8. **Termination by Mutual Consent.** Notwithstanding any of the foregoing provisions of this Section 5, if at any time during the course of this Agreement the parties by mutual consent decide to terminate it, they shall do so by separate agreement setting forth the terms and conditions of such termination.
- 5.9. **Cooperation with Employer After Termination of Employment.** Following termination of the Executive's employment for any reason, the Executive shall fully cooperate with the Employer in all matters relating to the winding up of his pending work on behalf of the Employer including, but not limited to, any litigation in which the Employer is involved, and the orderly transfer of any such pending work to other employees of the Employer as may be designated by the Employer. The Employer agrees to reimburse the Executive for any out-of-pocket expenses he incurs in performing any work on behalf of the Employer following the termination of his employment.
- 5.10. **Withholding.** All payments required to be made by the Employer to the Executive under Section 5 of this Agreement shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

6. CONFIDENTIALITY & NON-COMPETITION AGREEMENT

The parties hereto have entered into a Confidentiality & Non-Competition Agreement dated _____, 2004, which may be amended by the parties from time to time without regard to this Agreement. The Confidentiality & Non-Competition Agreement contains provisions that are intended by the parties to survive and do survive termination or expiration of this Agreement.

7. EXECUTIVE'S REPRESENTATIONS AND WARRANTIES

- 7.1. **No Conflict of Interest.** The Executive warrants that, subject to Schedule 2.2 attached hereto, he is not, to the best of his knowledge and belief, involved in any situation that might create,

or appear to create, a conflict of interest with his loyalty to or duties for the Employer, except as such may have been previously disclosed to Employer.

- 7.2. **Notification of Materials or Documents from Other Employers.** The Executive further warrants that he has not brought and will not bring to the Employer or use in the performance of his responsibilities at the Employer any materials or documents of a former employer that are not generally available to the public, unless he has obtained express written authorization from the former employer for their possession and use.
- 7.3. **Notification of Other Post-Employment Obligations.** The Executive also understands that, as part of his employment with the Employer, he is not to breach any obligation of confidentiality that he has to former employers, and he agrees to honor all such obligations to former employers during his employment with the Employer. The Executive warrants that he is subject to no employment agreement or restrictive covenant preventing full performance of his duties under this Agreement.
- 7.4. **Indemnification For Breach.** In addition to other remedies that the Employer might have for breach of this Agreement, the Executive agrees to indemnify and hold the Employer harmless from any breach of the provisions of this Section 7.

8. GENERAL PROVISIONS

- 8.1. **Assignment.** The Employer shall assign this Agreement and its rights and obligations hereunder in whole, but not in part, to any corporation or other entity with or into which the Employer may hereafter merge or consolidate or to which the Employer may transfer all or substantially all of its assets, if in any such case said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Employer hereunder as fully as if it had been originally made a party hereto, but may not otherwise assign this Agreement or its rights and obligations hereunder. The Executive may not assign or transfer this Agreement or any rights or obligations hereunder.
- 8.2. **Notice.** For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below:
- To the Employer: Comstock Homebuilding Companies, Inc.
Employer Headquarters Address at time of Notice
Attention: General Counsel
- To the Executive: Christopher Clemente
Home Address as shown in the records of the Employer at time of Notice
- 8.3. **Amendment and Waiver.** No amendment or modification of this Agreement shall be valid or binding upon (i) the Employer unless made in writing and signed by an officer of the Employer designated by the Board, and (ii) upon the Executive unless made in writing and signed by him.
- 8.4. **Non-Waiver of Breach.** No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.
- 8.5. **Severability.** In the event that any provision or portion of this Agreement, with the exception of Sections 2 and 3, shall be determined to be invalid or unenforceable for any reason, the

remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

- 8.6. **Governing Law.** To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined accordance with the law of the Commonwealth of Virginia.
- 8.7. **Forum Selection and Consent to Jurisdiction.** With respect to any litigation based on, arising out of, or in connection with this Agreement, the parties hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. The parties hereby expressly waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.
- 8.8. **Entire Agreement.** This Agreement contains all of the terms agreed upon by the Employer and the Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written.
- 8.9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Employer, including any corporation or entity with which the Employer may merge or consolidate.
- 8.10. **Headings.** Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.
- 8.11. **Counterparts.** This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

The Employer: COMSTOCK HOMEBUILDING COMPANIES, INC.

By:

Bruce J. Labovitz
Chief Financial Officer

The Executive:

Christopher Clemente

Schedule 2.2

Employer-Permitted Activities

In connection with the Employment Agreement, effective _____, 2004, between the Employer and the Executive, the following shall be deemed specifically permitted and approved business activities within the purview of Section 2.2(ii) of the Employment Agreement:

Executive, whether in his individual capacity, through Comstock Partners, LC or an affiliated entity ("Comstock Partners") or as a partner, collaborator or co-venturer (without regard to whether the Executive is a majority owner of any such partnership, collaboration or joint venture), may engage in the business of:

- (i) development of and/or ownership of income-producing commercial or for-rent residential (such as apartment buildings) real estate investment properties;
- (ii) ownership of and/or development (including seeking rezoning and/or other entitlements) of speculative land holdings, whether currently owned or acquired in the future, and the related development (land development only) of such speculative land holdings as residential finished building lots intended for construction of for-sale residential units or buildings, provided that in all instances where Executive has a controlling interest or decision making powers, Employer is given a right of first refusal to purchase outright any such residential land at a purchase price not greater than its fair market value as reasonably determined by Employer and authorized by the independent members of Employer's Board of Directors, and provided further that in the event Employer does not purchase any subject property, the Executive shall remain prohibited from engaging in the business of constructing and selling for-sale single-family homes, townhomes or condominiums on such property, if such property is within the Washington, D.C. or Raleigh, North Carolina metropolitan areas or any other geographic area in which Employer is conducting operations or has demonstrable plans to commence operations within six (6) months of the date on which Executive would commence such activity, as provided for in the Confidentiality and Non-Competition Agreement, effective _____, 2004, between the Employer and the Executive; and
- (iii) secured real estate lending to unrelated third parties, where Executive or an entity owned or controlled by Executive, makes loans secured by real estate, provided the making of the Loan does not entitle Executive to control of the subject borrowing entity.

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EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is effective this day of , 2004, between Comstock Homebuilding Companies, Inc. (the "Employer") and Gregory V. Benson (the "Executive").

WITNESSETH

WHEREAS, the Board of Directors of the Employer (the "Board") wishes to employ the Executive on the terms and conditions in this Agreement and in accordance with the policies established by the Employer for senior executive level employees; and

WHEREAS, the Executive desires to accept such employment;

NOW THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Those words and terms that have special meanings for purposes of this Agreement are specially defined through the use of parenthetical quotations and upper-lower case lettering. In addition, the following words and terms shall have the meanings set forth below for the purposes of this Agreement:

- 1.1. **Cause.** Termination of the Executive's employment for "Cause" shall mean termination based on any of the following: (a) conviction (or entering a plea of guilty or nolo contendere) of any felony or other crime involving misuse or misappropriation of money or other property, moral turpitude, or that results in Executive being incarcerated for more than sixty (60) consecutive days upon such conviction; or (b) conduct that is intentional in nature that materially injures the business or reputation of the Employer or that prevents the Executive from being able to adequately perform his job duties; or (c) failure of the Executive to perform to the best of his abilities a substantial portion of the Executive's duties and responsibilities assigned or delegated under this Agreement, which failure is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure; (d) any intentional and material breach by the Executive of any of the covenants set forth in the Confidentiality & Non-Competition Agreement of even date herewith; (e) gross negligence, willful gross misconduct or insubordination of the Executive; or (f) an intentional and material breach of any provision of this Agreement that is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure. Cause shall be determined in good faith by the affirmative vote of a majority of the whole Board (excluding the Executive if he is a member of the Board) after the Executive has been provided the opportunity to make a presentation to the Board (which presentation may be with counsel).
 - 1.2. **Change in Control.** "Change in Control" shall mean:
 - (i) the acquisition by any "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (other than (A) the Employer or any subsidiary thereof or (B) any employee benefit plan of the Employer or any subsidiary thereof, directly or indirectly, as "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities of the Employer representing more than fifty percent (50%) of either the then outstanding shares or the combined voting power of the then outstanding securities of the Employer;
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- (ii) during any period of twenty-four consecutive months, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period;
 - (iii) the stockholders of the Employer approve (A) a merger, consolidation or other business combination of the Employer with any other "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Exchange Act) or affiliate thereof, other than a merger or consolidation that would result in the outstanding common stock of the Employer immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into common stock of the surviving entity or a parent or affiliate thereof) more than fifty percent (50%) of the outstanding common stock of the Employer or such surviving entity or a parent or affiliate thereof outstanding immediately after such merger, consolidation or other business combination, or (B) a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of its assets (including if accomplished pursuant to the sale of shares of equity securities (including by any consolidation, merger or reorganization) of one or more subsidiaries of the Employer which collectively constitute all or substantially all of its assets); or
 - (iv) any other event or circumstance that is not covered by the foregoing subsections but that the Board determines to affect control of the Employer and with respect to which the Board adopts a resolution that the event or circumstance constitutes a Change in Control for purposes of this Agreement.
- 1.3. **Disability.** Termination by the Employer of the Executive's employment based on "Disability" shall mean termination because the Executive is unable to perform the essential functions of his/her position with or without accommodation due to a disability (as such term is defined in the Americans with Disabilities Act) for nine (9) months in the aggregate during any twelve month period. This definition shall be interpreted and applied consistent with the Americans with Disabilities Act, the Family and Medical Leave Act, and other applicable law.
- 1.4. **Good Reason.** Termination by the Executive of the Executive's employment for "Good Reason" shall mean termination by the Executive based on any one of the following:
- 1.4.1 Without the Executive's express written consent, a material adverse change made by the Employer in the Executive's functions, duties or responsibilities;
 - 1.4.2. Without the Executive's express written consent, a reduction by the Employer in the Executive's Base Salary and/or Bonus as the same may be increased from time to time; or, except to the extent permitted by Section 3.4.1 hereof, a substantial and significant reduction in the amount of Employer's directors' and officers' insurance coverage or a material reduction in the package of fringe benefits provided to the Executive, taken as a whole;
 - 1.4.3. Without the Executive's express written consent, the Employer fails to provide the Executive with an office and administrative support or requires the Executive to work in an office which is more than ten (10) miles from the location of the Employer's current principal executive office, except for required travel on business of the Employer to an extent substantially consistent with the Executive's business travel obligations; or
 - 1.4.4. The failure by the Employer to obtain the assumption of and agreement to perform this Agreement by a successor as contemplated in Section 8.1 hereof;

provided however, that any actions taken by the Employer to accommodate a disability of the Executive or pursuant to the Family and Medical Leave Act shall not be a "good reason" for purposes of this Agreement; and **provided further** that the continued employment of the Executive shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

1.5. Notice of Termination. Any purported termination of the Executive's employment by the Employer for any reason, or by the Executive for any reason shall be communicated by a written "Notice of Termination" to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a dated notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, (iii) specifies a Date of Termination; and (iv) is given in the manner specified in Section 8.2. "Date of Termination" as used in this Agreement shall mean the date specified in the Notice of Termination required by this Section.

2. EMPLOYMENT

2.1. Position and Term. The Employer hereby employs the Executive as President and Chief Operating Officer, reporting directly to the Chief Executive Officer, and the Executive hereby accepts said employment and agrees to render such services to the Employer, on the terms and conditions set forth in this Agreement. Unless extended as provided in this Section 2.1, or terminated in accordance with Section 5, this Agreement shall terminate four (4) years after the date first above-written; provided, however, that, while this Agreement is in effect, beginning one year following the date first above-written and continuing on each one year anniversary of the Agreement (the "Annual Renewal Date"), this Agreement shall be automatically extended for an additional one (1) year, unless the parties have re-negotiated the Agreement or one of the parties gives written notice of non-renewal in accordance with Section 8.2 hereof to the other party at least thirty (30) days prior to an Annual Renewal Date, in which event this Agreement shall continue in effect for the remaining term of the Agreement. Reference herein to the "Term" of this Agreement shall refer both to the initial term and any successive term, as the context requires. The parties expressly agree that designation of a term and renewal provisions in this Agreement does not in any way limit the right of the parties to terminate this Agreement at any time as hereinafter provided.

2.2. Duties. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full working time and attention and agrees to use his best efforts to further the interests of the Employer and to perform such services for the Employer as is consistent with his position and as directed, from time to time, by the Chief Executive Officer. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full time, attention and energies to the business of the Employer and shall not be employed or involved in any other business activity that prevents the Executive from performing his duties hereunder. Subject to the foregoing, the following activities are permitted activities: (i) volunteer services for or on behalf of such religious, educational or non-profit organization as Executive may wish to serve, (ii) service as a director of as many as three (3) for-profit business entities, and (iii) such other activities as may be specifically approved by the Employer, including, but not limited to, the activity described on Schedule 2.2 hereto. This restriction shall not, however, preclude the Executive (i) from owning less than five percent (5%) of the total outstanding shares of a publicly traded company or (ii) from employment in any capacity with affiliates of the Employer, nor shall any remuneration from such affiliates be considered in calculating the Base Salary (as defined in Section 3.1) due to Executive hereunder or any Bonus that may be due to Executive.

3. COMPENSATION AND BENEFITS

- 3.1. **Base Salary.** For services rendered hereunder by the Executive, the Employer shall compensate and pay Executive for his services during the Term at a minimum base salary of five hundred and fifty thousand dollars (\$550,000) per year ("Base Salary"), which may be increased from time to time in such amounts as may be determined by the Board. Said Base Salary shall be payable in accordance with the Employer's regular payroll practices.
- 3.2. **Bonus.** In addition to his Base Salary, the Executive shall be eligible during the Term to receive an annual cash bonus determined by the Board based on the Employer's financial performance goals and taking into account a recommendation by the Employer's Compensation Committee ("Bonus"). Any Bonus shall be paid within ninety (90) days of the end of the Employer's fiscal year, and, provided the Employer's goals have been met, will be not less than two hundred percent (200%) of the Executive's Base Salary. The Executive must be employed at the end of the fiscal year but need not be employed by the Employer at the time of payment in order to receive any Bonus to which the Executive is otherwise entitled pursuant to the terms of this Section 3.2. Payment of any Bonus shall be subject to the provisions of Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 hereof. The Executive is also an eligible participant in the Employer's equity incentive, employer stock purchase and any similar executive compensation plans the Employer may adopt from time to time. Any awards under such plans shall be determined by the Board, taking into account a recommendation by the Employer's Compensation Committee.
- 3.3. **Withholding.** All payments required to be made by the Employer hereunder to the Executive shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.
- 3.4. **Policies and Benefits.**
- 3.4.1 *Participation in Policies and Benefit Plans.* Except as otherwise provided herein, during the Term, the Executive's employment shall be subject to the personnel policies that apply generally to the Employer's executive employees as the same may be interpreted, adopted, revised or deleted from time to time by the Employer in its sole discretion. Except as otherwise provided herein, during the Term, the Executive shall be entitled to participate in and receive the benefits of any benefit plans, benefits and privileges given to executive level employees of the Employer, to the extent commensurate with his then duties and responsibilities ("Benefit Plans") when and if such Benefit Plans are established by the Employer. The Employer shall not make any changes in such plans, benefits or privileges that would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all executive officers of the Employer and does not result in a proportionately greater adverse change in the rights of or benefits to the Executive as compared with any other executive officer of the Employer. Nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be deemed to be in lieu of the Base Salary payable to the Executive pursuant to Section 3.1 hereof.
- 3.4.2 *Director's and Officer's Liability Insurance.* During the Term, the Employer shall provide the Executive with directors' and officers' liability insurance coverage in an amount determined by the Board to be appropriate and affordable and deemed reasonably acceptable by the Executive. In addition, after the expiration of this Agreement, the Employer shall provide the Executive with such directors' and officers' liability insurance

coverage in an amount and for a period of time determined by the Board to be appropriate and affordable and deemed reasonably acceptable by the Executive.

- 3.4.3 *Life Insurance.* During the Term, the Employer shall provide the Executive with Life Insurance in accordance with the terms of any applicable life insurance plan established by the Employer.
- 3.4.4 *Long-term Disability Insurance.* During the Term, the Employer shall provide the Executive with Long-Term Disability Insurance in accordance with the terms of any applicable long-term disability plan established by the Employer.

4. SUPPORT AND EXPENSES

- 4.1. **Office.** The Employer shall provide the Executive with secretarial and support staff and furnished offices and conference facilities in the Reston, Virginia area, and in such other location, if any, in which the Executive hereafter agrees to perform services on behalf of the Employer, all of which shall be consistent with the Executive's duties and sufficient for the efficient performance of those duties as reasonably determined by Executive.
- 4.2. **Expenses.** The Employer shall reimburse the Executive or otherwise provide for or pay for all reasonable expenses incurred by the Executive in furtherance of, or in connection with the business of the Employer, including, but not by way of limitation, traveling expenses, communication expenses (including, but not limited to, reasonable expenses relating to the acquisition, installation and maintenance of telecommunications and computer networking facilities enabling Executive to perform his duties on behalf of the Employer from any of Executive's residences), and all reasonable entertainment expenses (whether incurred at the Executive's residence, while traveling or otherwise), subject to such reasonable documentation and other limitations as may be established by policies of the Employer and/or the Board. Additionally, Employer shall reimburse Executive for legal fees and related costs, up to a maximum of fifty thousand dollars (\$50,000), incurred in connection with estate planning matters undertaken on behalf of Executive in contemplation of the Company's planned initial public offering, regardless of whether the fees and costs are incurred prior to or after closing of the initial public offering.

5. TERMINATION

- 5.1. **Termination Due to Death.** If the Executive's employment is terminated by reason of the Executive's death, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which the Executive's death occurs, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's death as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of any beneficiary of the Executive to benefits under any benefit plan shall be determined in accordance with applicable law and the provisions of such plan. In lieu of payments to the Executive's estate following the Executive's death, the Executive may designate a beneficiary or beneficiaries to whom all payments which may be due under this Agreement will be made in the event of the Executive's death. Such designation shall be made on a form delivered to the Employer. The Executive shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Employer, and no notice to any beneficiary nor consent by

any beneficiary shall be required to effect any such change or revocation. If the Executive shall fail to designate a beneficiary before the Executive's death, or if no designated beneficiary survives the Executive, any payments which may be due under this Agreement following the Executive's death will be paid to the Executive's estate.

- 5.2. **Termination Due to Disability.** If the Executive is terminated due to Disability, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which it is determined that the Executive has a Disability, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's Disability as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.
- 5.3. **Termination by Executive Other Than for Good Reason.** In the event the Executive terminates this Agreement other than for Good Reason, compensation pursuant to Section 3.1 of this Agreement shall end as of the Date of Termination and any unpaid Bonus shall be forfeited by the Executive. The entitlement of the Executive to benefits under any Benefit Plan shall be determined in accordance with applicable law and the provisions of such plan.
- 5.4. **Termination by the Employer Without Cause.** If this Agreement is terminated by the Employer Without Cause pursuant to this Section 5.4, effective the Date of Termination, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of eighteen (18) months after the Date of Termination and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which such Termination Without Cause occurs, whichever is earlier, pay two (2) times one hundred percent (100%) of the Bonus the Executive would have been entitled to had he remained an employee of Employer until the end of Employer's fiscal year. Thereafter, the Employer shall have no further obligation to pay compensation to the Executive under this Agreement. *Provided however*, that upon a termination by the Employer pursuant to this Section 5.4 within the six (6) full calendar month period prior to the effective date of a Change in Control, or within the twelve (12) full calendar months following the effective date of a Change in Control, the cash payment(s) due to Executive as described in this Section 5.4 shall be due and payable in full within thirty (30) days of the effective date of a Change in Control or the effective date of the Executive's Termination Without Cause, whichever is later. The Executive shall continue to be entitled to benefits under Employer's Benefit Plans for twelve (12) months after the Date of Termination provided that a review of applicable law and the provisions of such plans does not result in a determination to the contrary.
- 5.5. **Termination for Cause.** Upon a Termination by the Employer for Cause as defined in Section 1.1 pursuant to this Section 5.5, the Employer shall have no further obligation to pay compensation (Base Salary or Bonus) to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.
- 5.6. **Termination by the Executive for Good Reason.** If the Executive terminates this Agreement for Good Reason, the Executive shall be entitled to receive the same payments and benefits

specified in Section 5.4 of this Agreement. Upon a termination for Good Reason within the six (6) full calendar month period prior to the effective date of a Change in Control or within the twelve (12) full calendar months following the effective date of a Change in Control, the Executive shall be entitled to the same expedited payments provided in Section 5.4. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

- 5.7. **Termination Due to Discontinuance of Business.** Notwithstanding anything in this Agreement to the contrary, in the event the Employer's business is discontinued because rendered impracticable by substantial financial losses, lack of funding, legal decisions, administrative rulings, declaration of war, dissolution, national or local economic depression or crisis or any reasons beyond the control of the Employer, this Agreement shall terminate as of the day the Employer determines to cease operation with the same force and effect as if such day of the month were originally set as the termination date hereof. In the event this Agreement is terminated pursuant to this Section 5.7, the Employer shall have no further obligation to pay compensation to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan. This Section 5.7 shall be void and of no effect in the event of a discontinuance that occurs within twelve (12) months after the effective date of a Change in Control.
- 5.8. **Termination by Mutual Consent.** Notwithstanding any of the foregoing provisions of this Section 5, if at any time during the course of this Agreement the parties by mutual consent decide to terminate it, they shall do so by separate agreement setting forth the terms and conditions of such termination.
- 5.9. **Cooperation with Employer After Termination of Employment.** Following termination of the Executive's employment for any reason, the Executive shall fully cooperate with the Employer in all matters relating to the winding up of his pending work on behalf of the Employer including, but not limited to, any litigation in which the Employer is involved, and the orderly transfer of any such pending work to other employees of the Employer as may be designated by the Employer. The Employer agrees to reimburse the Executive for any out-of-pocket expenses he incurs in performing any work on behalf of the Employer following the termination of his employment.
- 5.10. **Withholding.** All payments required to be made by the Employer to the Executive under Section 5 of this Agreement shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

6. CONFIDENTIALITY & NON-COMPETITION AGREEMENT

The parties hereto have entered into a Confidentiality & Non-Competition Agreement dated _____, 2004, which may be amended by the parties from time to time without regard to this Agreement. The Confidentiality & Non-Competition Agreement contains provisions that are intended by the parties to survive and do survive termination or expiration of this Agreement.

7. EXECUTIVE'S REPRESENTATIONS AND WARRANTIES

- 7.1. **No Conflict of Interest.** The Executive warrants that, subject to Schedule 2.2 hereof, he is not, to the best of his knowledge and belief, involved in any situation that might create, or appear

to create, a conflict of interest with his loyalty to or duties for the Employer, except as such may have been previously disclosed to Employer.

- 7.2. **Notification of Materials or Documents from Other Employers.** The Executive further warrants that he has not brought and will not bring to the Employer or use in the performance of his responsibilities at the Employer any materials or documents of a former employer that are not generally available to the public, unless he has obtained express written authorization from the former employer for their possession and use.
- 7.3. **Notification of Other Post-Employment Obligations.** The Executive also understands that, as part of his employment with the Employer, he is not to breach any obligation of confidentiality that he has to former employers, and he agrees to honor all such obligations to former employers during his employment with the Employer. The Executive warrants that he is subject to no employment agreement or restrictive covenant preventing full performance of his duties under this Agreement.
- 7.4. **Indemnification For Breach.** In addition to other remedies that the Employer might have for breach of this Agreement, the Executive agrees to indemnify and hold the Employer harmless from any breach of the provisions of this Section 7.

8. GENERAL PROVISIONS

- 8.1. **Assignment.** The Employer shall assign this Agreement and its rights and obligations hereunder in whole, but not in part, to any corporation or other entity with or into which the Employer may hereafter merge or consolidate or to which the Employer may transfer all or substantially all of its assets, if in any such case said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Employer hereunder as fully as if it had been originally made a party hereto, but may not otherwise assign this Agreement or its rights and obligations hereunder. The Executive may not assign or transfer this Agreement or any rights or obligations hereunder.
- 8.2. **Notice.** For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below:
- To the Employer: Comstock Homebuilding Companies, Inc.
Employer Headquarters Address at time of Notice
Attention: General Counsel
- To the Executive: Gregory V. Benson
Home Address as shown in the records of the Employer at time of Notice
- 8.3. **Amendment and Waiver.** No amendment or modification of this Agreement shall be valid or binding upon (i) the Employer unless made in writing and signed by an officer of the Employer designated by the Board, and (ii) upon the Executive unless made in writing and signed by him.
- 8.4. **Non-Waiver of Breach.** No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.
- 8.5. **Severability.** In the event that any provision or portion of this Agreement, with the exception of Sections 2 and 3, shall be determined to be invalid or unenforceable for any reason, the

remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

- 8.6. **Governing Law.** To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined accordance with the law of the Commonwealth of Virginia.
- 8.7. **Forum Selection and Consent to Jurisdiction.** With respect to any litigation based on, arising out of, or in connection with this Agreement, the parties hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. The parties hereby expressly waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.
- 8.8. **Entire Agreement.** This Agreement contains all of the terms agreed upon by the Employer and the Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written.
- 8.9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Employer, including any corporation or entity with which the Employer may merge or consolidate.
- 8.10. **Headings.** Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.
- 8.11. **Counterparts.** This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

The Employer: COMSTOCK HOMEBUILDING COMPANIES, INC.

By:

Bruce J. Labovitz
Chief Financial Officer

The Executive:

Gregory V. Benson

Schedule 2.2

Employer-Permitted Activities

In connection with the Employment Agreement, effective _____, 2004, between the Employer and the Executive, the following shall be deemed specifically permitted and approved business activities within the purview of Section 2.2(ii) of the Employment Agreement:

Executive, whether in his individual capacity, through Comstock Partners, LC or an affiliated entity ("Comstock Partners") or as a partner, collaborator or co-venturer (without regard to whether the Executive is a majority owner of any such partnership, collaboration or joint venture), may engage in the business of:

- (i) development of and/or ownership of income-producing commercial or for-rent residential (such as apartment buildings) real estate investment properties;
- (ii) ownership of and/or development (including seeking rezoning and/or other entitlements) of speculative land holdings, whether currently owned or acquired in the future, and the related development (land development only) of such speculative land holdings as residential finished building lots intended for construction of for-sale residential units or buildings, provided that in all instances where Executive has a controlling interest or decision making powers, Employer is given a right of first refusal to purchase outright any such residential land at a purchase price not greater than its fair market value as reasonably determined by Employer and authorized by the independent members of Employer's Board of Directors, and provided further that in the event Employer does not purchase any subject property, the Executive shall remain prohibited from engaging in the business of constructing and selling for-sale single-family homes, townhomes or condominiums on such property, if such property is within the Washington, D.C. or Raleigh, North Carolina metropolitan areas or any other geographic area in which Employer is conducting operations or has demonstrable plans to commence operations within six (6) months of the date on which Executive would commence such activity, as provided for in the Confidentiality and Non-Competition Agreement, effective _____, 2004, between the Employer and the Executive; and
- (iii) secured real estate lending to unrelated third parties, where Executive or an entity owned or controlled by Executive, makes loans secured by real estate, provided the making of the Loan does not entitle Executive to control of the subject borrowing entity.

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EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is effective this day of , 2004, between Comstock Homebuilding Companies, Inc. (the "Employer") and Bruce J. Labovitz (the "Executive").

WITNESSETH

WHEREAS, the Board of Directors of the Employer (the "Board") wishes to employ the Executive on the terms and conditions in this Agreement and in accordance with the policies established by the Employer for senior executive level employees; and

WHEREAS, the Executive desires to accept such employment;

NOW THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Those words and terms that have special meanings for purposes of this Agreement are specially defined through the use of parenthetical quotations and upper-lower case lettering. In addition, the following words and terms shall have the meanings set forth below for the purposes of this Agreement:

1.1. Cause. Termination of the Executive's employment for "Cause" shall mean termination based on any of the following: (a) conviction (or entering a plea of guilty or nolo contendere) of any felony or other crime involving misuse or misappropriation of money or other property, moral turpitude, or that results in Executive being incarcerated for more than sixty (60) consecutive days upon such conviction; or (b) conduct that is intentional in nature that materially injures the business or reputation of the Employer or that prevents the Executive from being able to adequately perform his job duties; or (c) failure of the Executive to perform to the best of his abilities a substantial portion of the Executive's duties and responsibilities assigned or delegated under this Agreement, which failure is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure; (d) any intentional and material breach by the Executive of any of the covenants set forth in the Confidentiality & Non-Competition Agreement of even date herewith; (e) gross negligence, willful gross misconduct or insubordination of the Executive; or (f) an intentional and material breach of any provision of this Agreement that is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure. Cause shall be determined in good faith by the affirmative vote of a majority of the whole Board (excluding the Executive if he is a member of the Board) after the Executive has been provided the opportunity to make a presentation to the Board (which presentation may be with counsel).

1.2. Change in Control. "Change in Control" shall mean:

(i) the acquisition by any "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (other than (A) the Employer or any subsidiary thereof or (B) any employee benefit plan of the Employer or any subsidiary thereof, directly or indirectly, as "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities of the Employer representing more than fifty percent (50%) of either the then outstanding shares or the combined voting power of the then outstanding securities of the Employer;

(ii) during any period of twenty-four consecutive months, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period;

(iii) the stockholders of the Employer approve (A) a merger, consolidation or other business combination of the Employer with any other "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Exchange Act) or affiliate thereof, other than a merger or consolidation that would result in the outstanding common stock of the Employer immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into common stock of the surviving entity or a parent or affiliate thereof) more than fifty percent (50%) of the outstanding common stock of the Employer or such surviving entity or a parent or affiliate thereof outstanding immediately after such merger, consolidation or other business combination, or (B) a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of its assets (including if accomplished pursuant to the sale of shares of equity securities (including by any consolidation, merger or reorganization) of one or more subsidiaries of the Employer which collectively constitute all or substantially all of its assets); or

(iv) any other event or circumstance that is not covered by the foregoing subsections but that the Board determines to affect control of the Employer and with respect to which the Board adopts a resolution that the event or circumstance constitutes a Change in Control for purposes of this Agreement.

1.3. Disability. Termination by the Employer of the Executive's employment based on "Disability" shall mean termination because the Executive is unable to perform the essential functions of his/her position with or without accommodation due to a disability (as such term is defined in the Americans with Disabilities Act) for nine (9) months in the aggregate during any twelve month period. This definition shall be interpreted and applied consistent with the Americans with Disabilities Act, the Family and Medical Leave Act, and other applicable law.

1.4. Good Reason. Termination by the Executive of the Executive's employment for "Good Reason" shall mean termination by the Executive based on any one of the following:

1.4.1 Without the Executive's express written consent, a material adverse change made by the Employer in the Executive's functions, duties or responsibilities;

1.4.2 Without the Executive's express written consent, a reduction by the Employer in the Executive's Base Salary as the same may be increased from time to time; or, except to the extent permitted by Section 3.4.1 hereof, a material reduction in the package of fringe benefits provided to the Executive, taken as a whole;

1.4.3 Without the Executive's express written consent, the Employer fails to provide the Executive with an office and administrative support or requires the Executive to work in an office which is more than thirty (30) miles from the location of the Employer's current principal executive office, except for required travel on business of the Employer to an extent substantially consistent with the Executive's business travel obligations; or

1.4.4 The failure by the Employer to obtain the assumption of and agreement to perform this Agreement by a successor as contemplated in Section 8.1 hereof;

provided however, that any actions taken by the Employer to accommodate a disability of the Executive or pursuant to the Family and Medical Leave Act shall not be a "good reason" for purposes of this

Agreement; and **provided further** that the continued employment of the Executive shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

1.5. Notice of Termination. Any purported termination of the Executive's employment by the Employer for any reason, or by the Executive for any reason shall be communicated by a written "Notice of Termination" to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a dated notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, (iii) specifies a Date of Termination; and (iv) is given in the manner specified in Section 8.2. "Date of Termination" as used in this Agreement shall mean the date specified in the Notice of Termination required by this Section.

2. EMPLOYMENT

2.1. Position and Term. The Employer hereby employs the Executive as Chief Financial Officer, reporting directly to the Chief Executive Officer, and the Executive hereby accepts said employment and agrees to render such services to the Employer, on the terms and conditions set forth in this Agreement. Unless extended as provided in this Section 2.1, or terminated in accordance with Section 5, this Agreement shall terminate three (3) years after the date first above-written; provided, however, that, while this Agreement is in effect, beginning one year following the date first above-written and continuing on each one year anniversary of the Agreement (the "Annual Renewal Date"), this Agreement shall be automatically extended for an additional one (1) year, unless the parties have re-negotiated the Agreement or one of the parties gives written notice of non-renewal in accordance with Section 8.2 hereof to the other party at least thirty (30) days prior to an Annual Renewal Date, in which event this Agreement shall continue in effect for the remaining term of the Agreement. Reference herein to the "Term" of this Agreement shall refer both to the initial term and any successive term, as the context requires. The parties expressly agree that designation of a term and renewal provisions in this Agreement does not in any way limit the right of the parties to terminate this Agreement at any time as hereinafter provided.

2.2. Duties. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full working time and attention and agrees to use his best efforts to further the interests of the Employer and to perform such services for the Employer as is consistent with his position and as directed, from time to time, by the Board. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full time, attention and energies to the business of the Employer and shall not be employed or involved in any other business activity that prevents the Executive from performing his duties hereunder. Notwithstanding the foregoing, the following activities are permitted activities: (i) volunteer services for or on behalf of such religious, educational or non-profit organization as Executive may wish to serve, and (ii) such other activities as may be specifically approved by the Employer.

3. COMPENSATION AND BENEFITS

3.1. Base Salary. For services rendered hereunder by the Executive, the Employer shall compensate and pay Executive for his services during the Term at a minimum base salary of three hundred thousand dollars (\$300,000) per year ("Base Salary"), which may be increased from time to time in such amounts as may be determined by the Board. Said Base Salary shall be payable in accordance with the Employer's regular payroll practices.

3.2. Bonus. In addition to his Base Salary, the Executive shall be eligible during the Term to receive an annual cash bonus determined by the Board based on the Employer's financial performance goals and taking into account a recommendation by the Employer's Compensation Committee ("Bonus"). Any Bonus shall be paid within ninety (90) days of the end of the

Employer's fiscal year, and, provided the Employer's goals have been met, will be up to one hundred percent (100%) of the Executive's Base Salary. The Executive must be employed at the end of the fiscal year but need not be employed by the Employer at the time of payment in order to receive any Bonus to which the Executive is otherwise entitled pursuant to the terms of this Section 3.2. Payment of any Bonus shall be subject to the provisions of Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 hereof. The Executive is also an eligible participant in the Employer's equity incentive, employer stock purchase and any similar executive compensation plans the Employer may adopt from time to time. Any awards under such plans shall be determined by the Board, taking into account a recommendation by the Employer's Compensation Committee.

3.3. Withholding. All payments required to be made by the Employer hereunder to the Executive shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

3.4. Policies and Benefits.

3.4.1 *Participation in Policies and Benefit Plans.* Except as otherwise provided herein, during the Term, the Executive's employment shall be subject to the personnel policies that apply generally to the Employer's executive employees as the same may be interpreted, adopted, revised or deleted from time to time by the Employer in its sole discretion. Except as otherwise provided herein, during the Term, the Executive shall be entitled to participate in and receive the benefits of any benefit plans, benefits and privileges given to executive level employees of the Employer, to the extent commensurate with his then duties and responsibilities ("Benefit Plans") when and if such Benefit Plans are established by the Employer. The Employer shall not make any changes in such plans, benefits or privileges that would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all executive officers of the Employer and does not result in a proportionately greater adverse change in the rights of or benefits to the Executive as compared with any other executive officer of the Employer. Nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be deemed to be in lieu of the Base Salary payable to the Executive pursuant to Section 3.1 hereof.

3.4.2 *Director's and Officer's Liability Insurance.* During the Term, the Employer shall provide the Executive with directors' and officers' liability insurance coverage in an amount determined by the Board to be appropriate and affordable.

3.4.3 *Life Insurance.* During the Term, the Employer shall provide the Executive with Life Insurance in accordance with the terms of any applicable life insurance plan established by the Employer.

3.4.4 *Long-term Disability Insurance.* During the Term, the Employer shall provide the Executive with Long-Term Disability Insurance in accordance with the terms of any applicable long-term disability plan established by the Employer.

4. SUPPORT AND EXPENSES

4.1. Office. The Employer shall provide the Executive with secretarial and support staff and furnished offices and conference facilities in the Reston, Virginia area, and in such other location, if any, in which the Executive hereafter agrees to perform services on behalf of the Employer, all of which shall be consistent with the Executive's duties and sufficient for the efficient performance of those duties.

4.2. Expenses. The Employer shall reimburse the Executive or otherwise provide for or pay for all reasonable expenses incurred by the Executive in furtherance of, or in connection with the business of the Employer, including, but not by way of limitation, traveling expenses, communication expenses (including, but not limited to, reasonable expenses relating to the acquisition, installation and maintenance of telecommunications and computer networking facilities enabling Executive to perform his duties on behalf of the Employer from Executive's primary residence), and all reasonable entertainment expenses (whether incurred at the Executive's residence, while traveling or otherwise), subject to such reasonable documentation and other limitations as may be established by policies of the Employer and/or the Board.

5. TERMINATION

5.1. Termination Due to Death. If the Executive's employment is terminated by reason of the Executive's death, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which the Executive's death occurs, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's death as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of any beneficiary of the Executive to benefits under any benefit plan shall be determined in accordance with applicable law and the provisions of such plan. In lieu of payments to the Executive's estate following the Executive's death, the Executive may designate a beneficiary or beneficiaries to whom all payments which may be due under this Agreement will be made in the event of the Executive's death. Such designation shall be made on a form delivered to the Employer. The Executive shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Employer, and no notice to any beneficiary nor consent by any beneficiary shall be required to effect any such change or revocation. If the Executive shall fail to designate a beneficiary before the Executive's death, or if no designated beneficiary survives the Executive, any payments which may be due under this Agreement following the Executive's death will be paid to the Executive's estate.

5.2. Termination Due to Disability. If the Executive is terminated due to Disability, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which it is determined that the Executive has a Disability, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's Disability as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.3. Termination by Executive Other Than for Good Reason. In the event the Executive terminates this Agreement other than for Good Reason, compensation pursuant to Section 3.1 of this Agreement shall end as of the Date of Termination and any unpaid Bonus shall be forfeited by the Executive. The entitlement of the Executive to benefits under any Benefit Plan shall be determined in accordance with applicable law and the provisions of such plan.

5.4. Termination by the Employer Without Cause. If this Agreement is terminated by the Employer Without Cause pursuant to this Section 5.4, effective the Date of Termination, the

Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which such Termination Without Cause occurs, whichever is earlier, pay () times percent (%) of the Bonus the Executive would have been entitled to had he remained an employee of Employer until the end of Employer's fiscal year. Thereafter, the Employer shall have no further obligation to pay compensation to the Executive under this Agreement. *Provided however*, that upon a termination by the Employer pursuant to this Section 5.4 within the six (6) full calendar month period prior to the effective date of a Change in Control, or within the twelve (12) full calendar months following the effective date of a Change in Control, the cash payment(s) due to Executive as described in this Section 5.4 shall be due and payable in full within thirty (30) days of the effective date of a Change in Control or the effective date of the Executive's Termination Without Cause, whichever is later. The Executive shall continue to be entitled to benefits under Employer's Benefit Plans for twelve (12) months after the Date of Termination provided that a review of applicable law and the provisions of such plans does not result in a determination to the contrary.

5.5. Termination for Cause. Upon a Termination by the Employer for Cause as defined in Section 1.1 pursuant to this Section 5.5, the Employer shall have no further obligation to pay compensation (Base Salary or Bonus) to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.6. Termination by the Executive for Good Reason. If the Executive terminates this Agreement for Good Reason, the Executive shall be entitled to receive the same payments and benefits specified in Section 5.4 of this Agreement. Upon a termination for Good Reason within the six (6) full calendar month period prior to the effective date of a Change in Control or within the twelve (12) full calendar months following the effective date of a Change in Control, the Executive shall be entitled to the same expedited payments provided in Section 5.4. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.7. Termination Due to Discontinuance of Business. Notwithstanding anything in this Agreement to the contrary, in the event the Employer's business is discontinued because rendered impracticable by substantial financial losses, lack of funding, legal decisions, administrative rulings, declaration of war, dissolution, national or local economic depression or crisis or any reasons beyond the control of the Employer, this Agreement shall terminate as of the day the Employer determines to cease operation with the same force and effect as if such day of the month were originally set as the termination date hereof. In the event this Agreement is terminated pursuant to this Section 5.7, the Employer shall have no further obligation to pay compensation to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan. This Section 5.7 shall be void and of no effect in the event of a discontinuance that occurs within twelve (12) months after the effective date of a Change in Control.

5.8. Termination by Mutual Consent. Notwithstanding any of the foregoing provisions of this Section 5, if at any time during the course of this Agreement the parties by mutual consent decide to terminate it, they shall do so by separate agreement setting forth the terms and conditions of such termination.

5.9. Cooperation with Employer After Termination of Employment. Following termination of the Executive's employment for any reason, the Executive shall fully cooperate with the

Employer in all matters relating to the winding up of his pending work on behalf of the Employer including, but not limited to, any litigation in which the Employer is involved, and the orderly transfer of any such pending work to other employees of the Employer as may be designated by the Employer. The Employer agrees to reimburse the Executive for any out-of-pocket expenses he incurs in performing any work on behalf of the Employer following the termination of his employment.

5.10. Withholding. All payments required to be made by the Employer to the Executive under Section 5 of this Agreement shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

6. CONFIDENTIALITY & NON-COMPETITION AGREEMENT

The parties hereto have entered into a Confidentiality & Non-Competition Agreement dated _____, 2004, which may be amended by the parties from time to time without regard to this Agreement. The Confidentiality & Non-Competition Agreement contains provisions that are intended by the parties to survive and do survive termination or expiration of this Agreement.

7. EXECUTIVE'S REPRESENTATIONS AND WARRANTIES

7.1. No Conflict of Interest. The Executive warrants that he is not, to the best of his knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with his loyalty to or duties for the Employer, except as such may have been previously disclosed to Employer.

7.2. Notification of Materials or Documents from Other Employers. The Executive further warrants that he has not brought and will not bring to the Employer or use in the performance of his responsibilities at the Employer any materials or documents of a former employer that are not generally available to the public, unless he has obtained express written authorization from the former employer for their possession and use.

7.3. Notification of Other Post-Employment Obligations. The Executive also understands that, as part of his employment with the Employer, he is not to breach any obligation of confidentiality that he has to former employers, and he agrees to honor all such obligations to former employers during his employment with the Employer. The Executive warrants that he is subject to no employment agreement or restrictive covenant preventing full performance of his duties under this Agreement.

7.4. Indemnification For Breach. In addition to other remedies that the Employer might have for breach of this Agreement, the Executive agrees to indemnify and hold the Employer harmless from any breach of the provisions of this Section 7.

8. GENERAL PROVISIONS

8.1. Assignment. The Employer shall assign this Agreement and its rights and obligations hereunder in whole, but not in part, to any corporation or other entity with or into which the Employer may hereafter merge or consolidate or to which the Employer may transfer all or substantially all of its assets, if in any such case said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Employer hereunder as fully as if it had been originally made a party hereto, but may not otherwise assign this Agreement or its rights and obligations hereunder. The Executive may not assign or transfer this Agreement or any rights or obligations hereunder.

8.2. Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below:

To the Employer: Comstock Homebuilding Companies, Inc.
Employer Headquarters Address at time of Notice

Attention: General Counsel

To the Executive: Bruce J. Labovitz
Home Address as shown in the records of the Employer at time of Notice

8.3. Amendment and Waiver. No amendment or modification of this Agreement shall be valid or binding upon (i) the Employer unless made in writing and signed by an officer of the Employer designated by the Board, and (ii) upon the Executive unless made in writing and signed by him.

8.4. Non-Waiver of Breach. No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.

8.5. Severability. In the event that any provision or portion of this Agreement, with the exception of Sections 2 and 3, shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

8.6. Governing Law. To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined accordance with the law of the Commonwealth of Virginia.

8.7. Forum Selection and Consent to Jurisdiction. With respect to any litigation based on, arising out of, or in connection with this Agreement, the parties hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. The parties hereby expressly waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.

8.8. Entire Agreement. This Agreement contains all of the terms agreed upon by the Employer and the Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written.

8.9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Employer, including any corporation or entity with which the Employer may merge or consolidate.

8.10. Headings. Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

8.11. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

The Employer:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By:

Christopher Clemente
Chief Executive Officer

The Executive:

Bruce J. Labovitz

QuickLinks

[EMPLOYMENT AGREEMENT](#)

CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Agreement is between Christopher Clemente (hereafter "You") and Comstock Homebuilding Companies, Inc., its affiliates, successors, assigns, parents and subsidiaries (hereafter "the Company"), effective this day of , 2004. You are entering into this Agreement based on the provision of consideration to You from the Company, including the grant of equity in the Company to You in connection with the Company's initial public offering (the "IPO Grant"), Your employment and continued employment with the Company, and such other benefits that You acknowledge to be sufficient consideration for this Agreement.

1. NATURE OF AGREEMENT. You and the Company intend this Agreement to be an Agreement concerning confidentiality and non-competition/non-solicitation. This Agreement does not limit in any way the right of either You or the Company to terminate the employment relationship at any time. This Agreement contains obligations that survive termination of the employment relationship between You and the Company. You agree that neither the provisions set forth in this Agreement nor any other written or oral communications between the Company and You about the subject matter of this Agreement as of the date of this Agreement has created or is intended to create a contract of employment or a promise to provide any benefits. If You and the Company enter into or have entered into an Employment Agreement, this Agreement is to be read and applied consistently with that Agreement.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

2.1 **"Business Partner"** means each and every person and/or entity who or that, at any time during the one (1) year period prior to termination of Your employment: (i) was either a customer, supplier or subcontractor of or to the Company; (ii) was in contact with You or in contact with any other employee, owner, or agent of the Company, of which contact You either were involved or were or should have been aware, concerning receiving or providing any product or service from the Company; or (iii) was solicited by the Company, or in consideration or planning to be solicited by the Company, in an effort in which You were involved or of which You were or should have been aware. Notwithstanding the foregoing, the following shall be excluded from the definition of Business Partner; (a) any member of Your immediate family (including Your spouse, children, siblings, parents and parents-in-law) unless such person is a full time salaried employee of the Company or (b) any customer, lender, supplier, or subcontractor that has a relationship with you, Comstock Partners, LC ("Comstock Partners") or its affiliated entities or any other entity you are associated with, was solicited by you, Comstock Partners or its affiliated entities or any other entity you are associated with, or you, Comstock Partners or its affiliated entities or any other entity your are associated with is considering soliciting.

2.2 **"Conflicting Services"** means any service or process of any person or organization other than the Company which directly competes with the Company in the business of (i) assembling, acquiring, developing or making available for-sale raw or developed land for residential purposes or (ii) designing, constructing and selling for-sale single-family homes, townhomes or condominiums within the Washington, D.C. and Raleigh, N.C. metropolitan areas or any other geographic area in which the Company is conducting operations or has demonstrable plans to commence operations within six (6) months of the earlier of (i) the date on which Your employment by the Company terminates and (ii) the date on which You commence providing Conflicting Services during employment by the Company or about which You acquire **Confidential Information** during Your employment by the Company. The acts of designing, constructing and selling Your personal residence(s) (primary or otherwise) shall not be covered by this Agreement.

Notwithstanding the foregoing, You, whether in your individual capacity, through Comstock Partners or an affiliated entity or as a partner, collaborator or co-venturer (without regard to whether You are a majority owner of any such partnership, collaboration or joint venture), may engage in the **Permitted Activities** as described in Schedule 2.2 attached to the Employment Agreement, effective _____, 2004, between You and the Company.

2.3 "**Confidential Information**" means material knowledge or information not generally known to the public or in the home construction industry (including information conceived, discovered or developed by You while performing your routine duties for the Company), that You learn of, possess, or to which You have access through Your employment by the Company, related to the Company or its Business Partners, including but not limited to the information listed on Schedule B to this Agreement. **Confidential Information** shall not include information that is or becomes publicly known through no breach of this Agreement or other act or omission of the Employee. The phrase "publicly known" shall mean readily accessible to the public in a written publication or on the internet (whether in hard copy or in electronic format), and shall not include information that is only available by a substantial searching (not including routine searches on the internet) of the published literature, and information the substance of which must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not **Confidential Information** shall be on the party asserting such exclusion.

3. RETURN OF COMPANY PROPERTY. You agree that upon termination of Your employment with the Company for any reason, You will promptly deliver to the Company all property and materials in any form belonging to the Company, or relating to its business, including the property listed on Schedule A to this Agreement. Notwithstanding the foregoing, this provision shall be effective only with respect to Company property and obtained by you after the effective date of this Agreement.

4. RESTRICTIONS.

4.1 You agree that while You are employed by the Company, You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company, except as otherwise stated herein.

4.2 At any time during and for twenty-four (24) months after Your employment with the Company You agree:

4.2.1 You will not disclose **Confidential Information** to any person or entity without first obtaining the Company's consent, and will take reasonable precautions to prevent inadvertent disclosure of such **Confidential Information**. You agree to make reasonable efforts to ensure that persons working in any capacity for the Company, including without limitation employees, officers, directors, vendors, sub-contractors, attorneys, and agents, subsidiary or parent entities (and the employees, officers, directors, vendors, contractors, attorneys, and agents, thereof) are permitted access to **Confidential Information** on a strictly "need to know" basis. This prohibition against Your disclosure of **Confidential Information** includes, but is not limited to, disclosing the fact that any similarity exists between **Confidential Information** and information independently developed by another person or entity. You understand that the existence of such a similarity does not excuse You from honoring Your obligations under this Agreement.

4.2.2 Except with respect to Your actions in connection with **Permitted Activities**, You will not use any **Confidential Information** for Your personal benefit or for the benefit of any person or entity other than the Company. You will not use, copy or transfer **Confidential Information** other than as necessary in carrying out Your duties on behalf of the Company or in connection with **Permitted Activities**, without first obtaining the Company's written

consent, and will take reasonable precautions to prevent inadvertent use, copying or transfer of **Confidential Information**. This prohibition against Your use, copying, or transfer of **Confidential Information** includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) which embody or are derived from **Confidential Information**, or exercising judgment in performing analysis based upon knowledge of **Confidential Information**. Without in any way limiting the generality of this subsection, You agree not to directly or indirectly circumvent or compete with the Company with regard to any **Confidential Information**.

- 4.2.3 You will not make any written use of or reference to the Company's name or trademarks (or any name under which the Company does business) for any marketing, public relations, advertising, display or other business purpose unrelated to the express business purposes and interests of the Company or make any use of the Company's facilities for any activity unrelated to the express business purposes and interests of the Company, without the prior written consent of the Company, which consent may be withheld or granted in the Company's sole and absolute discretion.
 - 4.2.4 Notwithstanding the foregoing, it is understood that certain companies and entities that are active in real estate development activities (other than those relating to for-sale residential homebuilding) and that are owned and controlled by You are authorized to use the name Comstock, and it is agreed that the Company benefits from such dual use of the name "Comstock." Further, it is agreed that it is in the best interest of the Company for You to share Confidential Information with Comstock Partners, and its affiliated entities.
 - 4.2.5 In the event that You receive a subpoena or order of a court, or other body having jurisdiction over a matter, in which You are compelled to produce any information relevant to the Company, whether confidential or not, You will immediately provide the Company with written notice of this subpoena or order so that the Company may timely move to quash if appropriate, at no cost to You. If the Company fails to take such action, this Section 4.2.5 shall be null and void and of no effect as it relates to the specific matter covered by the subject subpoena or court order.
 - 4.2.6 If a court decides that Section 4.2 or any of its restrictions is unenforceable for lack of reasonable temporal limitation and the Agreement or restriction(s) cannot otherwise be enforced, You and the Company agree that twenty-four (24) months shall be the temporal limitation relevant to the contested restriction; provided, however, that this Section 4.2.5 shall not apply to trade secrets protected without temporal limitation under applicable law.
- 4.3 For the twenty-four (24) months immediately following the termination of Your employment with the Company for any reason You agree, that except as otherwise provided herein:
- 4.3.1 You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company.
 - 4.3.2 You will not solicit, perform or offer to perform any **Conflicting Services** for a **Business Partner**.
 - 4.3.3 You will not request, induce, or attempt to induce any **Business Partner** to terminate its relationship with the Company;
 - 4.3.4 You will not attempt to hire, employ or associate in business with any person employed by the Company or who has left the employment of the Company within the preceding six (6) months and You will not make, extend or facilitate offers or promises of any potential

5. REASONABLENESS OF RESTRICTIONS AND SEVERABILITY.

- 5.1. You represent and agree that You have read this entire Agreement, and understand it. You agree that this Agreement does not prevent You from earning a living or pursuing Your career. You agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. You agree that the restrictions placed on You under this Agreement are reasonable given the nature of the compensation (including the IPO Grant) that you have received and may continue to receive from the Company. You represent and agree that You are entering into this Agreement freely and with knowledge of its content and with the intent to be bound by the Agreement and the restrictions contained in it.
- 5.2. In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, You and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.
- 5.3. If the Court declines to enforce this Agreement in the manner provided in subparagraph 5.2, You and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and You agree to be bound by this Agreement as modified.
- 5.4. You and the Company agree that the geographic market for the Company's products and services is the Washington, D.C. and Raleigh, N.C. metropolitan areas or any other geographic area in which the Company is conducting operations or has demonstrable plans to commence operations within six (6) months of the earlier of (i) the date on which Your employment terminates and (ii) the date on which You commence providing Conflicting Services during employment by the Company, so that this Agreement applies to Your activities throughout those geographic areas. If, however, after applying the provisions of subparagraphs 5.2 and 5.3, a court still decides that this Agreement or any of its restrictions is unenforceable for lack of reasonable geographic limitation and the Agreement or restriction(s) cannot otherwise be enforced You and the Company agree that the fifty (50) mile radius from the Company's current principal executive office or other division office where You are employed during the two years immediately preceding termination of Your employment with the Company shall be the geographic limitation relevant to the contested restriction.
- 5.5. If any provision of this Agreement is declared to be ambiguous, unenforceable or invalid, the remainder of this Agreement shall remain in full force and effect, and the Agreement shall be read as if the ambiguous, unenforceable or invalid provision was not contained in the Agreement.

6. INJUNCTIVE RELIEF AND REMEDIES.

- 6.1. You acknowledge that it may be impossible to assess the damages caused by Your violation of this Agreement, or any of its terms. You agree that any threatened or actual violation or breach of this Agreement, or any of its terms, will constitute immediate and irreparable injury to the Company.
- 6.2. You agree that in addition to any and all other damages and remedies available to the Company if You breach this Agreement, the Company shall be entitled to temporary injunctive relief, without being required to post a bond, and permanent injunctive relief,

without the necessity of proving actual damage, to prevent You from violating or breaching this Agreement or any of its terms.

- 6.3. In the event that the Company enforces this Agreement through a court order, You agree that the restrictions contained in Section 4.3 of this Agreement shall remain in effect for a period of twenty-four (24) months from the effective date of the Order enforcing the Agreement.
- 6.4. You agree that if the Company is successful in whole or part in any legal or equitable action against You under this Agreement, the Company shall be entitled to payment of all costs, including reasonable attorneys' fees, from You.

7. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYERS OR BUSINESS ASSOCIATES OF EMPLOYEE.

- 7.1. If You are offered employment or the opportunity to enter into any business venture (as owner, partner, consultant or other capacity) with a person or entity which provides or is planning to provide *Conflicting Services* while the restrictions described in paragraph 4.3 of this Agreement are in effect, You agree to inform Your potential employer, partner, co-owner and/or others involved in managing the business which You have an opportunity to join of Your obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.
- 7.2. You also authorize the Company to provide copies of this Agreement to any of the persons or entities described in subparagraph 7.1 and to make such persons aware of Your obligations under this Agreement.

8. MISCELLANEOUS.

- 8.1. This Agreement and the restrictions and obligations in it survive the employment relationship and are binding regardless of the reason for termination of employment. Notwithstanding the foregoing, this Agreement shall be void and of no effect in the event of a breach by the Company of any of its payment obligations with respect to the compensation (salary or bonus) of You, subject to a thirty (30) day cure period following the Company's receipt of written notice of such breach by Your or Your representative.
- 8.2. The Agreement is for the benefit of You and of the Company, its successor, assigns, parent corporations, subsidiaries, and/or purchasers.
- 8.3. This Agreement is governed by the laws of the Commonwealth of Virginia without regard to the conflicts of laws or principles thereof. With respect to any litigation based on, arising out of, or in connection with this Agreement, You hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. You hereby expressly waive, to the fullest extent permitted by law, any objection that You may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.
- 8.4. No waiver by the Company of any breach of any of the provisions of this Agreement is a waiver of any preceding or succeeding breach of the same or any other provisions of this Agreement. No waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

- 8.5. Except as expressly provided otherwise in this Agreement, nothing in this Agreement grants a license or permission to use any intellectual property of Company, whether owned, pending, currently under development, or developed hereafter.
- 8.6. This Agreement may be amended by a writing signed by both parties; **provided, however**, that Schedules A and B to this Agreement may be amended by the Company at any time and the amended schedules attached to this Agreement and made a part of it.
- 8.7. You agree that on the subjects covered in this Agreement, it is the entire Agreement between You and the Company, superseding any previous oral or written communications, representations, understanding, or agreements with the Company or with any representative of the Company.

By signing this Agreement You represent that You have read and understand this Agreement, You have had an opportunity to consult legal counsel concerning this Agreement and that You sign it voluntarily.

Comstock Homebuilding Companies, Inc.

Employee

By:

Bruce Labovitz
Chief Financial Officer

Christopher Clemente

SCHEDULE A

COMPANY PROPERTY

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Christopher Clemente dated _____, 2004, effective _____, 2004, Company Property shall include but not be limited to items that are important to the ongoing operations of the Company:

1. Any **Confidential Information** of the Company that is in your possession.
2. All notes, files, correspondence (including copies of e-mail or voice mail messages) and memoranda prepared or received in the course of employment.
3. All manuals, reports, records, notebooks, plans, photographs, specifications, technical data and drawings prepared or received in the course of employment.
4. All computers, printers, computer hardware and software, computer programs, program listings, diskettes, CD's, DVD's, audio and videotapes; downloads and source/object codes.

Notwithstanding the foregoing, the Company Property shall not include (i) any items or materials that You obtained prior to the effective date of this Agreement and (ii) any list or information that also relates to the **Permitted Activities**.

SCHEDULE B

CONFIDENTIAL INFORMATION

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Christopher Clemente dated , 2004, effective , 2004, **Confidential Information** shall include but not be limited to the following information where it is not generally known to the public or in the home construction industry (including information conceived, discovered or developed by Employee while in the employ of the Company):

1. Information relating to the Company's proprietary rights prior to any public disclosure thereof, including but not limited to the nature of the proprietary rights, discoveries, inventions, works of authorship, techniques, improvements and ideas (whether patentable or not), hardware, software, computer programs, source or object codes, documentation, processes, design, concept, development, methods, codes, formulas, production data, technical and engineering data, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).
2. Work product resulting from or related to work or projects performed or to be performed by or for the Company or by or for clients of the Company, including but not limited to the methods, processes, procedures, analyses, techniques and audits used in connection therewith.
3. Information relating to the Company's efforts to acquire real property (developed or undeveloped) or interests in real property in connection with the Company's ongoing operations. This information will cease being deemed Confidential Information upon the later to occur of one year after (i) the Company's abandonment of the effort to acquire the real property or interests in real property in question or (ii) the termination of any applicable option or other purchase rights with respect to the real property or interests in real property.
4. Marketing and development plans, marketing strategies, product descriptions and program descriptions, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Company which have been or are being discussed.
5. Computer software of any type or form in any stage of actual or anticipated research and development, including but not limited to programs and program modules, processes, algorithms, design concepts, design specifications, source code, object code and load modules, programming, program patches, data models and systems plans, design, application and documentation.
6. Internal Company personnel information, employee lists, compensation data, non-public financial information, financial projections and business plans and strategy, operational plans, financing and capital-raising plans, activities, and agreements, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Company's business.
7. Non-public information pertaining to any **Business Partner** and its needs or desires with respect to the products and services offered by the Company, including, but not limited to, names of **Business Partner** and their representatives, proposals, bids, contracts and their contents and parties, data provided to the Company by **Business Partner**, the type, quantity and specifications of products and services purchased, leased, licensed or provided or received by **Business Partner** and other non-public information.
8. Any information that a competitor of the Company could use to the competitive disadvantage of the Company.

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CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Agreement is between Gregory V. Benson (hereafter "You") and Comstock Homebuilding Companies, Inc., its affiliates, successors, assigns, parents and subsidiaries (hereafter "the Company"), effective this day of , 2004. You are entering into this Agreement based on the provision of consideration to You from the Company, including the grant of equity in the Company to You in connection with the Company's initial public offering (the "IPO Grant"), Your employment and continued employment with the Company, and such other benefits that You acknowledge to be sufficient consideration for this Agreement.

1. NATURE OF AGREEMENT. You and the Company intend this Agreement to be an Agreement concerning confidentiality and non-competition/non-solicitation. This Agreement does not limit in any way the right of either You or the Company to terminate the employment relationship at any time. This Agreement contains obligations that survive termination of the employment relationship between You and the Company. You agree that neither the provisions set forth in this Agreement nor any other written or oral communications between the Company and You about the subject matter of this Agreement as of the date of this Agreement has created or is intended to create a contract of employment or a promise to provide any benefits. If You and the Company enter into or have entered into an Employment Agreement, this Agreement is to be read and applied consistently with that Agreement.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

2.1 **"Business Partner"** means each and every person and/or entity who or that, at any time during the one (1) year period prior to termination of Your employment: (i) was either a customer, supplier or subcontractor of or to the Company; (ii) was in contact with You or in contact with any other employee, owner, or agent of the Company, of which contact You either were involved or were or should have been aware, concerning receiving or providing any product or service from the Company; or (iii) was solicited by the Company, or in consideration or planning to be solicited by the Company, in an effort in which You were involved or of which You were or should have been aware. Notwithstanding the foregoing, the following shall be excluded from the definition of Business Partner; (a) any member of Your immediate family (including Your spouse, children, siblings, parents and parents-in-law) unless such person is a full time salaried employee of the Company or (b) any customer, lender, supplier, or subcontractor that has a relationship with you, Comstock Partners, LC ("Comstock Partners") or its affiliated entities or any other entity you are associated with, was solicited by you, Comstock Partners or its affiliated entities or any other entity you are associated with, or you, Comstock Partners or its affiliated entities or any other entity your are associated with is considering soliciting.

2.2 **"Conflicting Services"** means any service or process of any person or organization other than the Company which directly competes with the Company in the business of (i) assembling, acquiring, developing or making available for-sale raw or developed land for residential purposes or (ii) designing, constructing and selling for-sale single-family homes, townhomes or condominiums within the Washington, D.C. and Raleigh, N.C. metropolitan areas or any other geographic area in which the Company is conducting operations or has demonstrable plans to commence operations within six (6) months of the earlier of (i) the date on which Your employment by the Company terminates and (ii) the date on which You commence providing Conflicting Services during employment by the Company or about which You acquire **Confidential Information** during Your employment by the Company. The acts of designing, constructing and selling Your personal residence(s) (primary or otherwise) shall not be covered by this Agreement.

Notwithstanding the foregoing, You, whether in your individual capacity, through Comstock Partners or an affiliated entity or as a partner, collaborator or co-venturer (without regard to

whether You are a majority owner of any such partnership, collaboration or joint venture), may engage in the **Permitted Activities** as described in Schedule 2.2 attached to the Employment Agreement, effective _____, 2004, between You and the Company.

2.3 "**Confidential Information**" means material knowledge or information not generally known to the public or in the home construction industry (including information conceived, discovered or developed by You while performing your routine duties for the Company), that You learn of, possess, or to which You have access through Your employment by the Company, related to the Company or its Business Partners, including but not limited to the information listed on Schedule B to this Agreement. **Confidential Information** shall not include information that is or becomes publicly known through no breach of this Agreement or other act or omission of the Employee. The phrase "publicly known" shall mean readily accessible to the public in a written publication or on the internet (whether in hard copy or in electronic format), and shall not include information that is only available by a substantial searching (not including routine searches on the internet) of the published literature, and information the substance of which must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not **Confidential Information** shall be on the party asserting such exclusion.

3. **RETURN OF COMPANY PROPERTY.** You agree that upon termination of Your employment with the Company for any reason, You will promptly deliver to the Company all property and materials in any form belonging to the Company, or relating to its business, including the property listed on Schedule A to this Agreement. Notwithstanding the foregoing, this provision shall be effective only with respect to Company property and obtained by you after the effective date of this Agreement.

4. RESTRICTIONS.

4.1 You agree that while You are employed by the Company, You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company, except as otherwise stated herein.

4.2 At any time during and for eighteen (18) months after Your employment with the Company You agree:

4.2.1 You will not disclose **Confidential Information** to any person or entity without first obtaining the Company's consent, and will take reasonable precautions to prevent inadvertent disclosure of such **Confidential Information**. You agree to make reasonable efforts to ensure that persons working in any capacity for the Company, including without limitation employees, officers, directors, vendors, sub-contractors, attorneys, and agents, subsidiary or parent entities (and the employees, officers, directors, vendors, contractors, attorneys, and agents, thereof) are permitted access to **Confidential Information** on a strictly "need to know" basis. This prohibition against Your disclosure of **Confidential Information** includes, but is not limited to, disclosing the fact that any similarity exists between **Confidential Information** and information independently developed by another person or entity. You understand that the existence of such a similarity does not excuse You from honoring Your obligations under this Agreement.

- 4.2.2 Except with respect to Your actions in connection with **Permitted Activities**, You will not use any **Confidential Information** for Your personal benefit or for the benefit of any person or entity other than the Company. You will not use, copy or transfer **Confidential Information** other than as necessary in carrying out Your duties on behalf of the Company or in connection with **Permitted Activities**, without first obtaining the Company's written consent, and will take reasonable precautions to prevent inadvertent use, copying or transfer of **Confidential Information**. This prohibition against Your use, copying, or transfer of **Confidential Information** includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) which embody or are derived from **Confidential Information**, or exercising judgment in performing analysis based upon knowledge of **Confidential Information**. Without in any way limiting the generality of this subsection, You agree not to directly or indirectly circumvent or compete with the Company with regard to any **Confidential Information**.
- 4.2.3 You will not make any written use of or reference to the Company's name or trademarks (or any name under which the Company does business) for any marketing, public relations, advertising, display or other business purpose unrelated to the express business purposes and interests of the Company or make any use of the Company's facilities for any activity unrelated to the express business purposes and interests of the Company, without the prior written consent of the Company, which consent may be withheld or granted in the Company's sole and absolute discretion.
- 4.2.4 Notwithstanding the foregoing, it is understood that certain companies and entities that are active in real estate development activities (other than those relating to for-sale residential homebuilding) and that are owned and controlled by You are authorized to use the name Comstock, and it is agreed that the Company benefits from such dual use of the name "Comstock." Further, it is agreed that it is in the best interest of the Company for You to share Confidential Information with Comstock Partners, and its affiliated entities.
- 4.2.5 In the event that You receive a subpoena or order of a court, or other body having jurisdiction over a matter, in which You are compelled to produce any information relevant to the Company, whether confidential or not, You will immediately provide the Company with written notice of this subpoena or order so that the Company may timely move to quash if appropriate, at no cost to You. If the Company fails to take such action, this Section 4.2.5 shall be null and void and of no effect as it relates to the specific matter covered by the subject subpoena or court order.
- 4.2.6. If a court decides that Section 4.2 or any of its restrictions is unenforceable for lack of reasonable temporal limitation and the Agreement or restriction(s) cannot otherwise be enforced, You and the Company agree that twenty-four (24) months shall be the temporal limitation relevant to the contested restriction; provided, however, that this Section 4.2.5 shall not apply to trade secrets protected without temporal limitation under applicable law.
- 4.3 For the eighteen (18) months immediately following the termination of Your employment with the Company for any reason You agree, that except as otherwise provided herein:
- 4.3.1. You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company.

- 4.3.2. You will not solicit, perform or offer to perform any **Conflicting Services** for a **Business Partner**.
- 4.3.3. You will not request, induce, or attempt to induce any **Business Partner** to terminate its relationship with the Company;
- 4.3.4. You will not attempt to hire, employ or associate in business with any person employed by the Company or who has left the employment of the Company within the preceding six (6) months and You will not make, extend or facilitate offers or promises of any potential employment or business association with such person, even if You did not initiate the discussion or seek out the contact.

5. REASONABLENESS OF RESTRICTIONS AND SEVERABILITY.

- 5.1. You represent and agree that You have read this entire Agreement, and understand it. You agree that this Agreement does not prevent You from earning a living or pursuing Your career. You agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. You agree that the restrictions placed on You under this Agreement are reasonable given the nature of the compensation (including the IPO Grant) that you have received and may continue to receive from the Company. You represent and agree that You are entering into this Agreement freely and with knowledge of its content and with the intent to be bound by the Agreement and the restrictions contained in it.
- 5.2. In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, You and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.
- 5.3. If the Court declines to enforce this Agreement in the manner provided in subparagraph 5.2, You and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and You agree to be bound by this Agreement as modified.
- 5.4. You and the Company agree that the geographic market for the Company's products and services is the Washington, D.C. and Raleigh, N.C. metropolitan areas or any other geographic area in which the Company is conducting operations or has demonstrable plans to commence operations within six (6) months of the earlier of (i) the date on which Your employment terminates and (ii) the date on which You commence providing Conflicting Services during employment by the Company, so that this Agreement applies to Your activities throughout those geographic areas. If, however, after applying the provisions of subparagraphs 5.2 and 5.3, a court still decides that this Agreement or any of its restrictions is unenforceable for lack of reasonable geographic limitation and the Agreement or restriction(s) cannot otherwise be enforced You and the Company agree that the fifty (50) mile radius from the Company's current principal executive office or other division office where You are employed during the two years immediately preceding termination of Your employment with the Company shall be the geographic limitation relevant to the contested restriction.
- 5.5. If any provision of this Agreement is declared to be ambiguous, unenforceable or invalid, the remainder of this Agreement shall remain in full force and effect, and the Agreement shall be read as if the ambiguous, unenforceable or invalid provision was not contained in the Agreement.

6. INJUNCTIVE RELIEF AND REMEDIES.

- 6.1. You acknowledge that it may be impossible to assess the damages caused by Your violation of this Agreement, or any of its terms. You agree that any threatened or actual violation or breach of this Agreement, or any of its terms, will constitute immediate and irreparable injury to the Company.
- 6.2. You agree that in addition to any and all other damages and remedies available to the Company if You breach this Agreement, the Company shall be entitled to temporary injunctive relief, without being required to post a bond, and permanent injunctive relief, without the necessity of proving actual damage, to prevent You from violating or breaching this Agreement or any of its terms.
- 6.3. In the event that the Company enforces this Agreement through a court order, You agree that the restrictions contained in Section 4.3 of this Agreement shall remain in effect for a period of eighteen (18) months from the effective date of the Order enforcing the Agreement.
- 6.4. You agree that if the Company is successful in whole or part in any legal or equitable action against You under this Agreement, the Company shall be entitled to payment of all costs, including reasonable attorneys' fees, from You.

7. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYERS OR BUSINESS ASSOCIATES OF EMPLOYEE.

- 7.1. If You are offered employment or the opportunity to enter into any business venture (as owner, partner, consultant or other capacity) with a person or entity which provides or is planning to provide **Conflicting Services** while the restrictions described in paragraph 4.3 of this Agreement are in effect, You agree to inform Your potential employer, partner, co-owner and/or others involved in managing the business which You have an opportunity to join of Your obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.
- 7.2. You also authorize the Company to provide copies of this Agreement to any of the persons or entities described in subparagraph 7.1 and to make such persons aware of Your obligations under this Agreement.

8. MISCELLANEOUS.

- 8.1. This Agreement and the restrictions and obligations in it survive the employment relationship and are binding regardless of the reason for termination of employment. Notwithstanding the foregoing, this Agreement shall be void and of no effect in the event of a breach by the Company of any of its payment obligations with respect to the compensation (salary or bonus) of You, subject to a thirty (30) day cure period following the Company's receipt of written notice of such breach by Your or Your representative.
- 8.2. The Agreement is for the benefit of You and of the Company, its successor, assigns, parent corporations, subsidiaries, and/or purchasers.
- 8.3. This Agreement is governed by the laws of the Commonwealth of Virginia without regard to the conflicts of laws or principles thereof. With respect to any litigation based on, arising out of, or in connection with this Agreement, You hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. You hereby expressly waive, to the fullest extent permitted by law, any objection that You may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above,

including without limitation any claim that any such litigation has been brought in an inconvenient forum.

- 8.4. No waiver by the Company of any breach of any of the provisions of this Agreement is a waiver of any preceding or succeeding breach of the same or any other provisions of this Agreement. No waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.
- 8.5. Except as expressly provided otherwise in this Agreement, nothing in this Agreement grants a license or permission to use any intellectual property of Company, whether owned, pending, currently under development, or developed hereafter.
- 8.6. This Agreement may be amended by a writing signed by both parties; **provided, however**, that Schedules A and B to this Agreement may be amended by the Company at any time and the amended schedules attached to this Agreement and made a part of it.
- 8.7. You agree that on the subjects covered in this Agreement, it is the entire Agreement between You and the Company, superseding any previous oral or written communications, representations, understanding, or agreements with the Company or with any representative of the Company.

By signing this Agreement You represent that You have read and understand this Agreement, You have had an opportunity to consult legal counsel concerning this Agreement and that You sign it voluntarily.

Comstock Homebuilding Companies, Inc.

Employee

By:

Bruce Labovitz
Chief Financial Officer

Gregory V. Benson

SCHEDULE A

COMPANY PROPERTY

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Gregory V. Benson dated , 2004, effective , 2004, Company Property shall include but not be limited to items that are important to the ongoing operations of the Company:

1. Any **Confidential Information** of the Company that is in your possession.
2. All notes, files, correspondence (including copies of e-mail or voice mail messages) and memoranda prepared or received in the course of employment.
3. All manuals, reports, records, notebooks, plans, photographs, specifications, technical data and drawings prepared or received in the course of employment.
4. All computers, printers, computer hardware and software, computer programs, program listings, diskettes, CD's, DVD's, audio and videotapes; downloads and source/object codes.

Notwithstanding the foregoing, the Company Property shall not include (i) any items or materials that You obtained prior to the effective date of this Agreement and (ii) any list or information that also relates to the **Permitted Activities**.

SCHEDULE B

CONFIDENTIAL INFORMATION

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Gregory V. Benson dated , 2004, effective , 2004, **Confidential Information** shall include but not be limited to the following information where it is not generally known to the public or in the home construction industry (including information conceived, discovered or developed by Employee while in the employ of the Company):

1. Information relating to the Company's proprietary rights prior to any public disclosure thereof, including but not limited to the nature of the proprietary rights, discoveries, inventions, works of authorship, techniques, improvements and ideas (whether patentable or not), hardware, software, computer programs, source or object codes, documentation, processes, design, concept, development, methods, codes, formulas, production data, technical and engineering data, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).
2. Work product resulting from or related to work or projects performed or to be performed by or for the Company or by or for clients of the Company, including but not limited to the methods, processes, procedures, analyses, techniques and audits used in connection therewith.
3. Information relating to the Company's efforts to acquire real property (developed or undeveloped) or interests in real property in connection with the Company's ongoing operations. This information will cease being deemed Confidential Information upon the later to occur of one year after (i) the Company's abandonment of the effort to acquire the real property or interests in real property in question or (ii) the termination of any applicable option or other purchase rights with respect to the real property or interests in real property.
4. Marketing and development plans, marketing strategies, product descriptions and program descriptions, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Company which have been or are being discussed.
5. Computer software of any type or form in any stage of actual or anticipated research and development, including but not limited to programs and program modules, processes, algorithms, design concepts, design specifications, source code, object code and load modules, programming, program patches, data models and systems plans, design, application and documentation.
6. Internal Company personnel information, employee lists, compensation data, non-public financial information, financial projections and business plans and strategy, operational plans, financing and capital-raising plans, activities, and agreements, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Company's business.
7. Non-public information pertaining to any **Business Partner** and its needs or desires with respect to the products and services offered by the Company, including, but not limited to, names of **Business Partner** and their representatives, proposals, bids, contracts and their contents and parties, data provided to the Company by **Business Partner**, the type, quantity and specifications of products and services purchased, leased, licensed or provided or received by **Business Partner** and other non-public information.
8. Any information that a competitor of the Company could use to the competitive disadvantage of the Company.

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CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Agreement is between Bruce J. Labovitz (hereafter "You") and Comstock Homebuilding Companies, Inc., its affiliates, successors, assigns, parents and subsidiaries (hereafter "the Company"), effective this day of , 2004. You are entering into this Agreement based on consideration to You from the Company, including the grant of equity in the Company to You, Your employment and continued employment with the Company, and such other benefits that You acknowledge to be sufficient consideration for this Agreement.

1. NATURE OF AGREEMENT. You and the Company intend this Agreement to be an Agreement concerning confidentiality and non-competition/non-solicitation. This Agreement does not limit in any way the right of either You or the Company to terminate the employment relationship at any time. This Agreement contains obligations that survive termination of the employment relationship between You and the Company. You agree that neither the provisions set forth in this Agreement nor any other written or oral communications between the Company and You about the subject matter of this Agreement as of the date of this Agreement has created or is intended to create a contract of employment or a promise to provide any benefits. If You and the Company enter into or have entered into an Employment Agreement, this Agreement is to be read and applied consistently with that Agreement.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

- 2.1 "**Business Partner**" means each and every person and/or entity who or that, at any time during the two (2) years prior to termination of Your employment: (i) was either a customer, lender, supplier or subcontractor of or to the Company; (ii) was in contact with You or in contact with any other employee, owner, or agent of the Company, of which contact You either were involved or were or should have been aware, concerning receiving or providing any product or service from the Company; or (iii) was solicited by the Company, or in consideration or planning to be solicited by the Company, in an effort in which You were involved or of which You were or should have been aware.
- 2.2 "**Conflicting Services**" means any service or process of any person or organization other than the Company which directly competes with the Company in the business of (i) acquiring, assembling, developing or making available for-sale raw or developed land for residential purposes or (ii) designing, constructing and selling for-sale single-family homes, townhomes and condominiums within the Washington, D.C. and Raleigh, N.C. metropolitan areas during employment by the Company or about which You acquire **Confidential Information** during Your employment by the Company.
- 2.3 "**Confidential Information**" means knowledge or information not generally known to the public or in the home construction industry (including information conceived, discovered or developed by You), that You learn of, possess, or to which You have access through Your employment by the Company, related to the Company or its Business Partners, including but not limited to the information listed on Schedule B to this Agreement. **Confidential Information** shall not include information that is or becomes publicly known through no breach of this Agreement or other act or omission of the Employee. The phrase "publicly known" shall mean readily accessible to the public in a written publication, and shall not include information that is only available by a substantial searching of the published literature, and information the substance of which must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not **Confidential Information** shall be on the party asserting such exclusion.

3. RETURN OF COMPANY PROPERTY. You agree that at any time requested by the Company and/or at termination of Your employment with the Company for any reason, You will

promptly deliver to the Company all property and materials in any form belonging to or relating to the Company, its business and the business of any **Business Partner**, including but not limited to, the property listed on Schedule A to this Agreement. You agree not to download or keep copies of company property in any hard or soft format. You agree that You have no ownership or interest in any Company property.

4. RESTRICTIONS.

- 4.1. You agree that while You are employed by the Company, You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company.
- 4.2. At any time during and after Your employment with the Company You agree:
 - 4.2.1 You will not disclose **Confidential Information** to any person or entity without first obtaining the Company's consent, and will take all reasonable precautions to prevent inadvertent disclosure of such **Confidential Information**. You agree to make every effort to ensure that persons working in any capacity for the Company, including without limitation employees, officers, directors, vendors, sub-contractors, attorneys, and agents, subsidiary or parent entities (and the employees, officers, directors, vendors, contractors, attorneys, and agents, thereof) are permitted access to **Confidential Information** on a strictly "need to know" basis. This prohibition against Your disclosure of **Confidential Information** includes, but is not limited to, disclosing the fact that any similarity exists between **Confidential Information** and information independently developed by another person or entity. You understand that the existence of such a similarity does not excuse You from honoring Your obligations under this Agreement.
 - 4.2.2 You will not use any **Confidential Information** for Your personal benefit or for the benefit of any person or entity other than the Company. You will not use, copy or transfer **Confidential Information** other than as necessary in carrying out Your duties on behalf of the Company, without first obtaining the Company's written consent, and will take all reasonable precautions to prevent inadvertent use, copying or transfer of **Confidential Information**. This prohibition against Your use, copying, or transfer of **Confidential Information** includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) which embody or are derived from **Confidential Information**, or exercising judgment in performing analysis based upon knowledge of **Confidential Information**. Without in any way limiting the generality of this subsection, You agree not to directly or indirectly circumvent or compete with the Company with regard to any **Confidential Information**.
 - 4.2.3 You will not make any written use of or reference to the Company's name or trademarks (or any name under which the Company does business) for any marketing, public relations, advertising, display or other business purpose unrelated to the express business purposes and interests of the Company or make any use of the Company's facilities for any activity unrelated to the express business purposes and interests of the Company, without the prior written consent of the Company, which consent may be withheld or granted in the Company's sole and absolute discretion.
 - 4.2.4 In the event that You receive a subpoena or order of a court, or other body having jurisdiction over a matter, in which You are compelled to produce any information relevant to the Company, whether confidential or not, You will immediately provide

the Company with written notice of this subpoena or order so that the Company may timely move to quash if appropriate.

- 4.2.5. If a court decides that Section 4.2 or any of its restrictions is unenforceable for lack of reasonable temporal limitation and the Agreement or restriction(s) cannot otherwise be enforced, You and the Company agree that twelve (12) months shall be the temporal limitation relevant to the contested restriction; provided, however, that this Section 4.2.5 shall not apply to trade secrets protected without temporal limitation under applicable law.
- 4.3 For the twelve (12) months immediately following the termination of Your employment with the Company for any reason You agree:
- 4.3.1. You will not solicit or provide **Conflicting Services** except on behalf of or at the direction of the Company.
- 4.3.2. You will not solicit, perform or offer to perform any **Conflicting Services** for a **Business Partner**.
- 4.3.3. You will not request, induce, or attempt to induce any **Business Partner** to terminate its relationship with the Company;
- 4.3.4 You will not attempt to hire, employ or associate in business with any person employed by the Company or who has left the employment of the Company within the preceding six (6) months and You will not discuss any potential employment or business association with such person, even if You did not initiate the discussion or seek out the contact.

5. REASONABLENESS OF RESTRICTIONS AND SEVERABILITY.

- 5.1. You represent and agree that You have read this entire Agreement, and understand it. You agree that this Agreement does not prevent You from earning a living or pursuing Your career. You agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. You agree that the restrictions placed on You under this Agreement are reasonable given the nature of the compensation (including the IPO Grant) that you have received and may continue to receive from the Company. You represent and agree that You are entering into this Agreement freely and with knowledge of its content and with the intent to be bound by the Agreement and the restrictions contained in it.
- 5.2. In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, You and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.
- 5.3. If the Court declines to enforce this Agreement in the manner provided in subparagraph 5.2, You and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and You agree to be bound by this Agreement as modified.
- 5.4. You and the Company agree that the geographic market for the Company's products and services is the Washington, D.C. and Raleigh, N.C. metropolitan areas, so that this Agreement applies to Your activities throughout those geographic areas. If, however, after applying the provisions of subparagraphs 5.2 and 5.3, a court still decides that this Agreement or any of its restrictions is unenforceable for lack of reasonable geographic limitation and the Agreement or restriction(s) cannot otherwise be enforced You and the Company agree that the fifty (50) miles radius from any office at which You worked for

the Company on either a regular or occasional basis during the two years immediately preceding termination of Your employment with the Company shall be the geographic limitation relevant to the contested restriction.

- 5.5 If any provision of this Agreement is declared to be ambiguous, unenforceable or invalid, the remainder of this Agreement shall remain in full force and effect, and the Agreement shall be read as if the ambiguous, unenforceable or invalid provision was not contained in the Agreement.

6. INJUNCTIVE RELIEF AND REMEDIES.

- 6.1. You acknowledge that it may be impossible to assess the damages caused by Your violation of this Agreement, or any of its terms. You agree that any threatened or actual violation or breach of this Agreement, or any of its terms, will constitute immediate and irreparable injury to the Company.
- 6.2. You agree that in addition to any and all other damages and remedies available to the Company if You breach this Agreement, the Company shall be entitled to temporary injunctive relief, without being required to post a bond, and permanent injunctive relief, without the necessity of proving actual damage, to prevent You from violating or breaching this Agreement or any of its terms.
- 6.3. In the event that the Company enforces this Agreement through a court order, You agree that the restrictions contained in Section 4.3 of this Agreement shall remain in effect for a period of twelve (12) months from the effective date of the Order enforcing the Agreement.
- 6.4. You agree that if the Company is successful in whole or part in any legal or equitable action against You under this Agreement, the Company shall be entitled to payment of all costs, including reasonable attorneys' fees, from You.

7. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYERS OR BUSINESS ASSOCIATES OF EMPLOYEE.

- 7.1. If You are offered employment or the opportunity to enter into any business venture (as owner, partner, consultant or other capacity) with a person or entity which provides or is planning to provide **Conflicting Services** while the restrictions described in paragraph 4.3 of this Agreement are in effect, You agree to inform Your potential employer, partner, co-owner and/or others involved in managing the business which You have an opportunity to join of Your obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.
- 7.2. You also authorize the Company to provide copies of this Agreement to any of the persons or entities described in subparagraph 7.1 and to make such persons aware of Your obligations under this Agreement.

8. MISCELLANEOUS.

- 8.1. This Agreement and the restrictions and obligations in it survive the employment relationship and are binding regardless of the reason for termination of employment.
- 8.2. The Agreement is for the benefit of You and of the Company, its successor, assigns, parent corporations, subsidiaries, and/or purchasers.
- 8.3. This Agreement is governed by the laws of the Commonwealth of Virginia without regard to the conflicts of laws or principles thereof. With respect to any litigation based on, arising out of, or in connection with this Agreement, You hereby expressly submit to the

personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. You hereby expressly waive, to the fullest extent permitted by law, any objection that You may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.

- 8.4. No waiver by the Company of any breach of any of the provisions of this Agreement is a waiver of any preceding or succeeding breach of the same or any other provisions of this Agreement. No waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.
- 8.5. Except as expressly provided otherwise in this Agreement, nothing in this Agreement grants a license or permission to use any intellectual property of Company, whether owned, pending, or currently under development.
- 8.6. This Agreement may be amended by a writing signed by both parties; **provided, however**, that Schedules A and B to this Agreement may be amended by the Company at any time and the amended schedules attached to this Agreement and made a part of it.
- 8.7. You agree that on the subjects covered in this Agreement, it is the entire Agreement between You and the Company, superseding any previous oral or written communications, representations, understanding, or agreements with the Company or with any representative of the Company.

By signing this Agreement You represent that You have read and understand this Agreement, You have had an opportunity to consult legal counsel concerning this Agreement and that You sign it voluntarily.

Comstock Homebuilding Companies, Inc.

Employee

By:

[NAME & TITLE]

Bruce J. Labovitz

SCHEDULE A

COMPANY PROPERTY

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Bruce J. Labovitz dated , 2004, effective , 2004, Company Property shall include but not be limited to:

1. All lists of and information pertaining to any **Business Partner**.
 2. All **Confidential Information** of the Company.
 3. All notes, files, correspondence (including copies of e-mail or voice mail messages) and memoranda prepared or received in the course of employment.
 4. All manuals reports, records, notebooks, plans, photographs, specifications, technical data and drawings prepared or received in the course of employment.
 5. All computers, printers, computer hardware and software, computer programs, program listings, diskettes, CD's, DVD's, audio and videotapes; downloads and source/object codes.
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SCHEDULE B

CONFIDENTIAL INFORMATION

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Bruce J. Labovitz dated , 2004, effective , 2004, **Confidential Information** shall include but not be limited to the following information where it is not generally known to the public or in the home construction industry (including information conceived, discovered or developed by Employee):

1. Information relating to the Company's proprietary rights prior to any public disclosure thereof, including but not limited to the nature of the proprietary rights, discoveries, inventions, works of authorship, techniques, improvements and ideas (whether patentable or not), hardware, software, computer programs, source or object codes, documentation, processes, design, concept, development, methods, codes, formulas, production data, technical and engineering data, test data and test results, knowledge of codes for data fields, documentation manuals (including data dictionaries), the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).
 2. Work product resulting from or related to work or projects performed or to be performed for the Company or for clients of the Company, including but not limited to the interim and final lines of inquiry, hypotheses, research and conclusions related thereto and the methods, processes, procedures, analyses, techniques and audits used in connection therewith.
 3. Marketing and development plans, marketing strategies, product descriptions and program descriptions, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Company which have been or are being discussed.
 4. Computer software of any type or form in any stage of actual or anticipated research and development, including but not limited to programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, data models and systems plans, design, application and documentation.
 5. Internal Company personnel information, employee lists, compensation data, non-public financial information, financial projections and business plans and strategy, operational plans, financing and capital-raising plans, activities, and agreements, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Company's business.
 6. Non-public information pertaining to any **Business Partner** and its needs or desires with respect to the products and services offered by the Company, including, but not limited to, names of **Business Partner** and their representatives, proposals, bids, contracts and their contents and parties, data provided to the Company by **Business Partner**, the type, quantity and specifications of products and services purchased, leased, licensed or provided or received by **Business Partner** and other non-public information.
 7. Any information that a competitor of the Company could use to the competitive disadvantage of the Company.
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[CONFIDENTIALITY AND NON-COMPETITION AGREEMENT](#)
[SCHEDULE B CONFIDENTIAL INFORMATION](#)

PERPETUAL TRADEMARK LICENSE

WHEREAS, Christopher Clemente, an individual resident of the Commonwealth of Virginia (hereinafter "Licensor"), is the owner of the Mark "COMSTOCK" (the "Mark") used in and associated with the offering of construction services, namely, planning, laying out and custom construction of residential and commercial real estate, which has been continuously used in this manner since at least as early as December 31, 1991 and owns a federal application for registration for the Mark for the aforesaid goods and services, U.S. Trademark Application Serial No. 78/416,396 which registration is presently pending at the U.S. Patent and Trademark Office; and

WHEREAS, Comstock Homebuilding Companies, Inc., a Delaware corporation with a principal place of business located at 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190 (hereinafter "Licensee"), desires and Licensor is willing to grant Licensee a license to use the Mark for the following goods and services: Residential real estate development, marketing and construction services including the sale of single family, townhome and condominium products ("Goods and Services").

WHEREAS, Licensor has for over a decade allowed Licensee to make use of the Mark and has allowed Licensee to develop goodwill in connection with such use and the parties desire to formalize all such rights and relationship;

NOW, THEREFORE, the parties agree as follows:

Licensor hereby grants Licensee the non-exclusive right to use the Mark on and in connection with the offering and sale of the Goods and Services, in all designs, logos, marketing materials or other documents or materials owned or used by Licensee. Licensor further grants Licensee the right to make applications and registrations and otherwise formally claim and hold rights in and to the Mark, provided such rights are not inconsistent with this Agreement, and, at Licensee's sole expense, to prosecute and defend the rights of Licensee and those of Licensor (to the extent Licensee may have a direct or indirect interest therein) with respect to the Mark, including the right to institute proceedings in the name and on behalf of Licensor as may be necessary in connection with such prosecution or defense. Licensee is expressly authorized to pursue formal recognition of all of its rights both under this License and in connection with any new trademark rights it establishes and all such applications or claims do not need to reference this License. Licensor expressly acknowledges that Licensee is presently pursuing, exclusively in its own name and title, certain trademark rights related to the Mark. Licensor acknowledges that Licensee has applied for and received U.S. Trademark Application Serial Nos. 78/428,535 and 78/466,986 which applications are presently pending at the U.S. Patent and Trademark Office ("PTO") and Licensor fully consents to this and all similar applications for trademark rights which Licensee may deem to pursue. In the event that Licensee's applications are rejected by the PTO in light of Licensor's pending application, both parties agree to execute a Co-Existence Agreement for submission to the PTO, whereby each party shall acknowledge and agree that its rights and uses in and to all pending applications and/or trademarks may co-exist with the other party's pending applications and/or trademarks without causing consumer confusion.

Licensee shall use the Mark in connection with its offering of the Goods and Services manufactured, offered and sold by or for Licensee. Licensee hereby grants Licensor the right to inspect Licensee's use of the Mark for quality-control purposes and the parties agree that the standards which will be inspected and maintained in connection with all uses of the Mark are the levels of production quality, customer service and business professionalism established and maintained by Comstock Homes, Inc. (itself a licensed user of the Mark and an affiliate of Licensee) measured as of the date of entry into this License, which use and quality is consistent with the goodwill established and market identity represented by the Mark as originally established by Licensor. Both parties to this license agree to maintain appropriate standards of quality and to generally ensure that all uses of the Mark are of this appropriate quality and character. Further, both parties agree not to take any action which will damage, diminish or otherwise impair the goodwill associated with the Mark.

Absent Licensee's prior written approval, Licensor agrees not to use, or license or authorize others to use, the Mark in connection with any good or service in direct or indirect competition with the Licensee's Goods and Services, except in connection with the activities of Comstock Partners, LC, permitted under the terms of the Employment Agreement dated December , 2004 between Licensee and Licensor and the Confidentiality and Non-Competition Agreement dated December , 2004 between Licensee and Licensor.

In consideration for this license, Licensee agrees to pay to Licensor a one-time license fee of \$1.00 and no ongoing royalty or other payments shall be owed, it being the intent of the parties that Licensee be able to independently use and promote the Mark with no further financial obligations of any kind to Licensor. Licensor further understands that Licensee has in the past made and will continue to make substantial investments in promoting the Mark which investments will or may create new trademark rights relating to the Mark for services and goods offered by and uniquely associated with Licensee and Licensor consents to all such use and creation of new trademark rights. To the fullest extent authorized by law, Licensor authorizes Licensee to claim and exclusively own all new and non-existing trademark rights which Licensee creates by virtue of its use of the Mark and Licensee shall exclusively own all any and all goodwill which arises from, inures to or is associated uses of the Mark by Licensee.

Licensee recognizes and acknowledges that the Mark and all rights therein and all goodwill originally pertaining thereto belong exclusively to Licensor, that as provided in the foregoing section, Licensee shall enjoy the legal rights arising from its use of the Mark which uses shall inure to the benefit of Licensee, and that Licensor retains the right to use the Mark for other goods or services different than the Goods and Services.

Licensor warrants that it is the owner of rights in the Mark and that to Licensee's knowledge the rights licensed herein do not violate any other party's rights or interests. Licensee agrees that Licensor shall have no liability, and Licensee shall indemnify, defend, and hold Licensor harmless against any and all damages, liabilities, attorneys' fees or costs incurred by Licensor in defending against any third-party claims or threats of claims under trademark or unfair competition or deceptive trade practices acts arising from Licensee's use of the Mark. Licensor may, at its own expense, appear through counsel of its own choosing.

The term of this License shall be perpetual and may not be terminated unless one of the following events occurs: Licensee ceases to do business or either party fails to meet any of the material terms of this Agreement, provided that such party shall have thirty days after the receipt of written notice of such failure from the other party in which to correct any such failure.

Notwithstanding the foregoing, upon the occurrence of any of the following events, Licensor hereby agrees to immediately assign, in writing, all right, title and interest in and to the Mark, including any goodwill associated therewith, to Licensee: (i) Licensor ceases, agrees to cease or is required by operation of law to cease, using the Mark in commerce; (ii) Licensor abandons or agrees to abandon the Mark; (iii) Licensor fails to maintain adequate quality control over the Mark, including any goodwill associated therewith; (iv) Licensor attempts or agrees to transfer the Mark to any third party not under the control of Licensor (for purposes of this Paragraph, "control" shall refer to the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest if not a corporation) of such third party); (v) the death of Licensor; or (vi) Licensor materially breaches a term or condition of this License Agreement. Upon the occurrence of any of the foregoing events, Licensor agrees to cooperate as reasonably requested by Licensee with respect to any necessary filings, prosecutions, and maintenance, such cooperation to include: (i) executing without additional compensation (but at Licensee's sole expense) all papers and other instruments deemed appropriate by Licensee for such filings, prosecutions, and maintenance; (ii) providing specimens of use of the Mark as necessary or desirable for such filings, prosecutions and maintenance; and (iii) taking all other actions reasonably requested by Licensee, in each case to perfect, maintain, protect and enforce Licensee's sole, complete and exclusive rights in, and ownership of, the Mark. In furtherance of the foregoing, and applicable only upon the occurrence of one of the foregoing events recited in this paragraph, Licensor hereby irrevocably appoints Licensee as Licensor's

attorney-in-fact, with full authorization to take such actions on behalf of Licensor, including the execution of any documents associated therewith, as set forth in this paragraph. Licensee will reimburse Licensor for any reasonable out-of-pocket costs actually incurred in performing Licensor's obligations under this paragraph. Licensee may assign, transfer, or sublicense this Agreement without the prior written consent of Licensor.

Licensee may assign, transfer, or sublicense this Agreement without the prior written consent of Licensor. Should Licensor assign, transfer or sublicense the Mark as authorized by this Agreement, any and all rights offered by Licensor to any such assignee or licensee shall be fully subject to all terms and rights established by this Perpetual Trademark License.

This License contains the entire agreement between the parties relating to the subject matter hereof, and all prior proposals, discussions or writings are superseded hereby. The terms of this License shall be binding upon and shall inure to the benefit of the parties and their successors, heirs and assigns.

This License shall be effective as of the last date of its signing as indicated below and shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Virginia

Agreed to by:

CHRISTOPHER CLEMENTE

Dated:

By:

Name:

Title:

Dated:

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[PERPETUAL TRADEMARK LICENSE](#)

List of Subsidiaries

Name	State of incorporation or organization
1. Comstock Holding Company, Inc.	Virginia
2. Comstock Homes, Inc.	Virginia
3. Comstock Service Corp., Inc.	Virginia
4. Sunset Investment Corp., Inc.	Virginia
5. Comstock Ashland III, L.C.	Virginia
6. Comstock Acquisitions, L.C.	Virginia
7. Comstock Barrington Park, L.C.	Virginia
8. Comstock Belmont Bay 5, L.C.	Virginia
9. Comstock Belmont Bay 89, L.C.	Virginia
10. Comstock Blooms Mill II, L.C.	Virginia
11. Comstock Brandy Station, L.C.	Virginia
12. Comstock Capital Partners, L.C.	Virginia
13. Comstock Cascades, L.C.	Virginia
14. Comstock Communities, L.C.	Virginia
15. Comstock Culpepper, L.C.	Virginia
16. Comstock Delta Lake, LLC	North Carolina
17. Comstock Delta Ridge II, L.L.C.	Virginia
18. Comstock Emerald Farm, L.C.	Virginia
19. Comstock Fairfax I, L.C.	Virginia
20. Comstock Flynn's Crossing, L.C.	Virginia
21. Comstock Hamlets of Blue Ridge, L.C.	Virginia
22. Comstock Haverhill, L.C.	Virginia
23. Comstock Homes of North Carolina, L.L.C.	North Carolina
24. Comstock Homes of Raleigh, L.L.C.	North Carolina
25. Comstock Investors II, L.P.	Virginia
26. Comstock Investors III, L.P.	Virginia
27. Comstock Investors Limited Partnership	Virginia
28. Comstock Investors V, L.C.	Virginia
29. Comstock Investors VI, L.C.	Virginia
30. Comstock Kelton II, L.C.	Virginia
31. Comstock Landing, L.L.C.	Virginia
32. Comstock Loudoun Station, L.C.	Virginia
33. Comstock North Carolina, L.L.C.	North Carolina
34. Comstock Operations, L.P.	Virginia
35. Comstock Potomac Yard, L.C.	Virginia
36. Comstock Riverbrooke, L.L.C.	Virginia
37. Comstock Riverside, L.C.	Virginia
38. Comstock Sherbrooke, L.C.	Virginia
39. Comstock Summerland, L.C.	Virginia
40. Comstock Ventures X, L.C.	Virginia
41. Comstock Ventures XI, L.C.	Virginia
42. Comstock Ventures XII, L.C.	Virginia
43. Comstock Wakefield, L.L.C.	Virginia
44. Comstock Wellington 17A, L.C.	Virginia
45. Comstock Wellington III, L.L.C.	Virginia
46. North Shore Investors, L.L.C.	Virginia
47. North Shore Raleigh, L.L.C.	Virginia
48. Settlement Title Services, L.L.C.	Virginia
49. TCG Fund I, L.C.	Virginia
50. TCG Debt Fund II, L.C.	Virginia

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[List of Subsidiaries](#)

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Amendment No. 5 to the Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of Comstock Homebuilding Companies, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
December 7, 2004

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Amendment No. 5 of Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of The Comstock Companies, which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
December 7, 2004

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Amendment No. 5 to the Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of Comstock Service Corp., Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
December 7, 2004

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