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

FORM 10-Q

☑ **Quarterly Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended March 31, 2007

o **Transition Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from _____ to _____

Commission File Number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**20-1164345**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

11465 Sunset Hills Road
5th Floor
Reston, Virginia 20190
(703) 883-1700

(Address including zip code, and telephone number, including area code, of principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
YES ☑ NO o

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

Large accelerated filer o Accelerated filer ☑ Non-accelerated filer o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES o NO ☑

As of May 10 , 2007, 13,749,349 shares of the Class A common stock, par value $.01 per share, and 2,733,500 shares of Class B common stock, par value $0.01, of the Registrant were outstanding.

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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
UNAUDITED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	March 31, 2007	December 31, 2006
ASSETS		
Cash and cash equivalents	$ 17,680	$ 21,263
Restricted cash	14,077	12,326
Receivables	1,431	4,555
Due from related parties	3,475	4,053
Real estate held for development and sale	393,999	405,144
Inventory not owned — variable interest entities	38,458	43,234
Property, plant and equipment, net	2,533	2,723
Investment in real estate partnership	—	(171)
Deferred income tax	9,761	10,188
Other assets	15,499	14,114
TOTAL ASSETS	496,913	517,429
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	41,961	55,680
Due to related parties	106	1,140
Obligations related to inventory not owned	36,524	40,950
Notes payable	263,456	265,403
Senior unsecured debt	30,000	30,000
TOTAL LIABILITIES	372,047	393,173
Commitments and contingencies (Note 11)		
Minority interest	369	371
SHAREHOLDERS' EQUITY		
Class A common stock, $0.01 par value, 77,266,500 shares authorized, 14,661,360 and 14,129,081 issued and outstanding, respectively	147	141
Class B common stock, $0.01 par value, 2,733,500 shares authorized, 2,733,500 issued and outstanding	27	27
Additional paid-in capital	148,140	147,528
Treasury stock, at cost (391,400 Class A common stock)	(2,439)	(2,439)
Accumulated deficit	(21,378)	(21,372)
TOTAL SHAREHOLDERS' EQUITY	124,497	123,885
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 496,913	$ 517,429

The accompanying notes are an integral part of these consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
UNAUDITED CONSOLIDATED STATEMENT OF OPERATIONS
(Amounts in thousands, except per share data)

	Three Months Ended March 31,	
	2007	2006
Revenues		
Revenue — homebuilding	$ 43,025	$ 36,365
Revenue — other	3,698	230
Total revenue	46,723	36,595
Expenses		
Cost of sales — homebuilding	36,867	27,161
Cost of sales — other	3,624	10
Impairments and write-offs	891	—
Selling, general and administrative	8,225	7,646
Operating (loss) income	(2,884)	1,778
Other (income) expense, net	(344)	(233)
(Loss) income before minority interest and equity in losses of real estate partnership	(2,540)	2,011
Minority interest	(1)	(7)
(Loss) income before equity in losses of real estate partnership	(2,539)	2,018
Equity in losses of real estate partnership	—	(27)
Total pre tax (loss) income	(2,539)	1,991
Income tax (benefit) expense	(870)	751
Net (loss) income	$ (1,669)	$ 1,240
Basic (loss) earnings per share	$ (0.11)	$ 0.09
Basic weighted average shares outstanding	15,888	13,981
Diluted (loss) earnings per share	$ (0.11)	$ 0.09
Diluted weighted average shares outstanding	15,888	14,071

The accompanying notes are an integral part of these consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands, except per share data)

	Three Months Ended March 31	
	2007	2006
Cash flows from operating activities:		
Net (loss) income	$ (1,669)	$ 1,240
Adjustment to reconcile net (loss) income to net cash used in operating activities		
Amortization and depreciation	224	73
Impairments and write-offs	891	—
Loss on disposal of assets	11	—
Minority interest	(1)	(7)
Equity in losses of real estate partnership	—	27
Amortization of stock compensation	591	540
Deferred income tax	896	(170)
Changes in operating assets and liabilities:		
Restricted cash	(1,751)	(2,041)
Receivables	3,124	1,935
Note receivable	—	1,250
Due from related parties	50	(239)
Real estate held for development and sale	11,725	(66,589)
Other assets	159	5,256
Accounts payable and accrued liabilities	(13,691)	(15,095)
Due to related parties	(1,062)	—
Net cash used in operating activities	(504)	(73,820)
Cash flows from investing activities:		
Purchase of property, plant and equipment	(46)	(747)
Business aquisitions, net of cash acquired	—	(9,937)
Net cash used in investing activities	(46)	(10,684)
Cash flows from financing activities:		
Proceeds from notes payable	43,353	95,607
Proceeds from senior unsecured debt	30,000	—
Payments on notes payable	(46,412)	(34,455)
Payments on junior subordinated debt	(30,000)	—
Proceeds from shares issued under employee stock purchase plan	27	38
Purchase of treasury stock	—	(678)
Net cash (used in) provided by financing activities	(3,033)	60,512
Net decrease in cash and cash equivalents	(3,583)	(23,992)
Cash and cash equivalents, beginning of period	21,263	42,167
Cash and cash equivalents, end of period	$ 17,680	$ 18,175
Supplemental cash flow information:		
Interest paid (net of interest capitalized)	$ —	$ —
Income taxes paid	$ —	$ —
Supplemental disclosure for non-cash activity:		
Interest incurred but not paid in cash	$ 1,114	$ 2,341

The accompanying notes are an integral part of these consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except per share data)

1. ORGANIZATION AND BASIS OF PRESENTATION

Comstock Companies, Inc. (the "Company") was incorporated on May 24, 2004 as a Delaware corporation. On June 30, 2004, the Company changed its name to Comstock Homebuilding Companies, Inc.

On December 17, 2004, as a result of completing its initial public offering ("IPO") of its Class A common stock, the Company acquired 100% of the outstanding capital stock of Comstock Holding Company, Inc. and subsidiaries ("Comstock Holdings") by merger, which followed a consolidation that took place immediately prior to the closing of the IPO (the "Consolidation"). The Consolidation was effected through the mergers of Sunset Investment Corp., Inc. and subsidiaries and Comstock Homes, Inc. and subsidiaries and Comstock Service Corp., Inc. and subsidiaries ("Comstock Service") with and into Comstock Holdings. Pursuant to the terms of the merger agreement, shares of Comstock Holdings were canceled and replaced by 4,333 and 2,734 shares Class A and B common stock of the Company, respectively. Both Class A and B common stock shares bear the same economic rights. However, for voting purposes, Class A stock holders are entitled to one vote for each share held while Class B stock holders are entitled to fifteen votes for each share held.

The mergers of Sunset Investment Corp., Inc. and subsidiaries and Comstock Homes, Inc. and subsidiaries with and into Comstock Holdings (collectively the "Comstock Companies" or "Predecessor") and the Company's acquisition of Comstock Holdings was accounted for using the Comstock Companies' historical carrying values of accounting as these mergers were not deemed to be substantive exchanges. The merger of Comstock Service was accounted for using the purchase method of accounting (see Note 2) as this was deemed to be a substantive exchange due to the disparity in ownership.

Our Class A common stock is traded on the NASDAQ National market under the symbol "CHCI." We have no public trading history prior to December 17, 2004.

The Company develops, builds and markets single-family homes, townhouses and condominiums in the Washington D.C., Raleigh, North Carolina and Atlanta, Georgia metropolitan markets. The Company also provides certain management and administrative support services to certain related parties.

The interim financial statements of the Company included herein have not been audited by an independent registered public accounting firm. The statements include all adjustments, including normal recurring accruals, which management considers necessary for a fair presentation of the financial position and operating results of the Company for the periods presented. The statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in conformity with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. The operating results for interim periods are not necessarily indicative of results to be expected for an entire year.

For further information, refer to the financial statements of the Company and footnotes thereto included in the annual report on Form 10-K of the Company for the year ended December 31, 2006.

2. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

Real estate held for development and sale includes land, land development costs, interest and other construction costs and is stated at cost or, when circumstances or events indicate that the real estate held for development or sale is impaired, at estimated fair value. Land, land development and indirect land development costs are accumulated by specific area and allocated to various lots or housing units using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to housing units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of prepaid local government fees and capitalized interest and real estate taxes. Selling costs are expensed as incurred.

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances which may affect fair value including management's plans for the property. Due to the large acreage of certain land holdings, disposition in the normal course of business is expected to extend over a number of years. A write-down to estimated fair value is recorded when the carrying value of the property exceeds its estimated fair value. These evaluations are made on a property- by- property basis as seen fit by management whenever events or changes in circumstances indicate that the net book value may not be recoverable. For the three months ended March 31, 2007, the Company determined there was no impairment related to real estate held for development and sale.

(Amounts in thousands, except per share data)

Real estate held for development and sale consists of the following:

	March 31, 2007	December 31, 2006
Land and land development costs	$ 179,023	$ 232,693
Cost of construction (including capitalized interest and real estate taxes)	214,976	172,451
	$ 393,999	$ 405,144

3. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

The Company typically acquires land for development at market prices from various entities under fixed price purchase agreements. The purchase agreements require deposits that may be forfeited if the Company fails to perform under the agreements. The deposits required under the purchase agreements are in the form of cash or letters of credit in varying amounts. The Company may, at its option, choose for any reason and at any time not to perform under these purchase agreements by delivering notice of its intent not to acquire the land under contract. The Company's sole legal obligation and economic loss for failure to perform under these purchase agreements is typically limited to the amount of the deposit pursuant to the liquidated damages provision contained within the purchase agreement. As a result, none of the creditors of any of the entities with which the Company enters into forward fixed price purchase agreements have recourse to the general credit of the Company.

The Company also does not share in an allocation of either the profit earned or loss incurred by any of these entities with which the Company has fixed price purchase agreements. The Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit as described above, a variable interest entity is created under the provisions of Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, " Consolidation of Variable Interest Entities," or FIN 46. This is because the Company has been deemed to have provided subordinated financial support, which creates a variable interest which limits the equity holder's returns and may absorb some or all of an entity's expected theoretical losses if they occur. The Company, therefore, examines the entities with which it has fixed price purchase agreements for possible consolidation by the Company under FIN 46-R. This requires the Company to compute expected losses and expected residual returns based on the probability of future cash flows as outlined in FIN 46-R. This calculation requires substantial management judgments and estimates. In addition, because the Company does not have any contractual or ownership interests in the entities with which it contracts to buy the land, the Company does not have the ability to compel these development entities to provide financial or other data to assist the Company in the performance of the primary beneficiary evaluation.

The Company has evaluated all of its fixed price purchase agreements and has determined that it is the primary beneficiary of some of those entities. As a result, for the three months ended March 31, 2007, the Company consolidated four entities in the accompanying consolidated balance sheets. The effect of the consolidation at March 31, 2007 was the inclusion of $35,458 in "Inventory not owned-variable interest entities" with a corresponding inclusion of $33,524 (net of land deposits paid of $1,934) to "Obligations related to inventory not owned." At December 31, 2006 the Company has consolidated nine entities in the accompanying consolidated balance sheets. The effect of the consolidation at December 31, 2006 was the inclusion of $43,234 in "Inventory not owned-variable interest entities" with a corresponding inclusion of $40,950 (net of land deposits paid of $2,284) to "Obligations related to inventory not owned." Creditors, if any, of these variable interest entities have no recourse against the Company.

During December of 2006 the Company's executive vice president voluntarily resigned from the Company. As part his voluntary resignation, the former executive vice president negotiated the purchase of the remaining 30 condominium units in the Company's Countryside development for a purchase price of $4,200. Simultaneously with the purchase, the Company entered into a marketing and sale agreement with the special purpose entity created by the former executive vice president that purchased the units ("SPE"), whereby the Company would bear the cost associated with marketing and selling the units and pay the SPE a monthly option payment that allows the Company to share in the revenue of the units as they settle. The monthly option payments have created a variable interest in the SPE, and as such the Company has performed an analysis under the provisions of FIN46(R) and has determined that the entity is a variable interest entity and the Company is the primary beneficiary of this entity. As a result, the Company has consolidated the SPE. The SPE had $3,000 and $3,600 of assets, which are included in inventory not owned-variable interest entities $3,000 and $3,600 of third party debt, which is included in obligations related to inventory not owned in the accompanying consolidated balance sheets as of March 31, 2007 and December 31, 2006, respectively. The third party lender does not have recourse against the Company as the debt is collateralized by the units purchased by the SPE.

4. WARRANTY RESERVE

Warranty reserves for houses sold are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by the Company or within the five-year statutorily mandated structural warranty period. Since the Company subcontracts its homebuilding work, subcontractors are required to provide the Company with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of

(Amounts in thousands, except per share data)

closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Warranty claims are directly charged to the reserve as they arise. The following table is a summary of warranty reserve activity which is included in accounts payable and accrued liabilities:

	Three Months Ended March 31,	
	2007	2006
Balance at beginning of period	$ 1,669	$ 1,206
Additions	232	300
Releases and/or charges incurred	(209)	(196)
Balance at end of period	$ 1,692	$ 1,310

5. CAPITALIZED INTEREST AND REAL ESTATE TAXES

Interest and real estate taxes incurred relating to the development of lots and parcels are capitalized to real estate held for development and sale during the active development period, which generally commences when borrowings are used to acquire real estate assets and ends when the properties are substantially complete. Interest is capitalized based on the interest rate applicable to specific borrowings or the weighted average of the rates applicable to other borrowings during the period. Interest and real estate taxes capitalized to real estate held for development and sale are expensed as a component of cost of sales as related units are sold. The following table is a summary of interest incurred and capitalized:

	Three Months Ended March 31,	
	2007	2006
Total interest incurred	$ 6,430	$ 4,769
Beginning interest capitalized	$ 27,254	$ 11,590
Plus: interest incurred on notes payable and senior unsecured debt	6,430	4,749
Plus: interest incurred on related party notes payable	—	20
Less: interest expensed as a component of cost of sales	(4,014)	(797)
Ending interest capitalized	$ 29,670	$ 15,562

(Amounts in thousands, except per share data)

6. (LOSS) EARNINGS PER SHARE

The following weighted average shares and share equivalents are used to calculate basic and diluted (loss) earnings per share for the three months ended March 31, 2007 and 2006:

	Three Months Ended March 31, 2007	2006
Basic (loss) earnings per share		
Net (loss) income	$ (1,669)	$ 1,240
Basic weighted-average shares outstanding	15,888	13,981
Per share amounts	$ (0.11)	$ 0.09
Dilutive (loss) earnings per share		
Net (loss) income	$ (1,669)	$ 1,240
Basic weighted-average shares outstanding	15,888	13,981
Stock options and restricted stock grants	—	90
Dilutive weighted-average shares outstanding	15,888	14,071
Per share amounts	$ (0.11)	$ 0.09

Comprehensive income

For the three months ended March 31, 2007 and 2006, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

7. INVESTMENT IN REAL ESTATE PARTNERSHIP

In 2001, prior to the Company's acquisition of Comstock Service in December of 2004, Comstock Service had invested $41 in North Shore Investors, LLC ("North Shore") for a 50% ownership interest. North Shore was formed to acquire and develop residential lots and construct single family and townhouse units. In 2002, as a result of recognizing its share of net losses incurred by North Shore, Comstock Service reduced its investment in North Shore to $0. As part of the acquisition of Comstock Service the Company recorded this investment in North Shore at $0.

On June 28, 2005 the Company received a capital call from North Shore in the amount of $719 so that North Shore could comply with certain debt repayments. Since the Company was potentially obligated to provide future financial support to cover certain debt repayments, the Company continued recording its share of losses incurred by North Shore through December 31, 2006 in the amount of ($171).

During the third quarter of 2005, the Company, as manager of an affiliated entity, exercised its option rights to purchase the projects acquisition, development and construction loan made for the benefit of North Shore. The Company finalized the purchase of the loan on or about September 8, 2005 and issued a notice of default under the acquisition, development and construction loan at maturity on September 30, 2005. The Company then filed suit for collection of the loan against one of the individual guarantors under the loan on or about October 21, 2005 and initiated foreclosure proceedings on or about November 18, 2005. On or about December 22, 2005, the individual guarantor subject to the earlier suit filed a countersuit against two of the officers of the Company who were also individual guarantors under the acquisition, development and construction loan. The Company has agreed to indemnify these officers.

The Company, as manager of an affiliated entity, set and held a foreclosure sale on March 24, 2006 in which it was the high bidder. However, transfer of title to the property was delayed pending judicial resolution of a suit filed on March 24, 2006 by the non-affiliated 50% owner of North Shore. On June 30, 2006, the Company, on its own behalf and on behalf of affiliates, filed an additional lawsuit expanding the number of party defendants, demanding equitable relief, and demanding $33,000 in damages.

On April 10, 2007, the parties executed a settlement agreement whereby a company associated with the non-affiliated 50% owner of the North Shore project purchased CHCI's development rights to North Shore for approximately $3,750 to settle all claims against CHCI and its investors. All litigation has been dismissed with prejudice and the Company received the proceeds from the settlement in April 2007. As a result of the settlement, for the three months ended March 31, 2007, the Company recorded a charge of approximately $357 to write off its investment in North Shore and reduce amounts due from North Shore to the net realizable value. This charge is included in the accompanying statement of operations as a component of impairments and write-offs.

8. ACQUISITIONS

On January 19, 2006, the Company acquired all of the issued and outstanding capital stock of Parker Chandler Homes, Inc., a homebuilder in the Atlanta, Georgia metropolitan market, for a cash purchase price of $10,400 (including transaction costs) and the assumption of $63,800 in liabilities. The results of Parker Chandler Homes are included in the accompanying financial statements starting January 19, 2006. The Company accounted for this transaction in accordance with Statement of Financial Accounting Standards No. 141, Business Combinations or SFAS 141. Approximately $700 of the purchase price was allocated to intangibles with a weighted average life of 4.6 years. The intangibles are related to the Parker Chandler trade name, employment and non-compete agreements entered into with certain selling shareholders. The remainder of the purchase price was allocated to real estate held for development and sale and land option agreements. There was no goodwill associated with the transaction.

On May 5, 2006, the Company acquired all of the issued and outstanding capital stock of Capitol Homes, Inc., a homebuilder in Raleigh, North Carolina, for a cash purchase price of $7,500 (including transaction costs) and the assumption of $20,600 in liabilities. The results of Capitol Homes are included in the accompanying financial statements starting May 5, 2006. The Company accounted for this transaction in accordance with SFAS 141. Approximately $251 of the purchase price was allocated to intangibles with a weighted average life of 2.7 years. The intangibles are related to the Capitol Homes trade name, employment and non-compete agreements entered into with certain selling shareholders. The remainder of the purchase price was allocated to real estate held for development and sale and land option agreements. There was no goodwill associated with the transaction.

Subsequent to each acquisition, as a result of the Company releasing the restrictive terms under the employment and non-complete agreements and the decision to no longer to use the respective trade names, all amounts assigned to intangibles were written off during the fourth quarter of 2006.

(Amounts in thousands, except per share data)

9. INCOME TAX

The Company's income tax (benefit) expense consists of the following as of March 31:

	2007	2006
Current:		
Federal	$ (1,490)	$ 802
State	(277)	150
	(1,767)	952
Deferred:		
Federal	640	(170)
State	121	(31)
	761	(201)
Other		
Tax shortfall related to the vesting of certain equity awards	136	—
Total income tax (benefit) expense	$ (870)	$ 751

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Components of the Company's deferred tax assets and liabilities at March 31, 2007 and December 31, 2006 were as follows:

	2007	2006
Deferred tax assets:		
Inventory	$ 8,779	$ 9,642
Warranty	621	612
Deferred rent	25	25
Accrued expenses	1,197	1,213
Stock based compensation	856	762
	11,478	12,254
Less — valuation allowance	—	(470)
Net deferred tax assets	11,478	11,784
Deferred tax liabilities:		
Depreciation and amortization	(1,717)	(1,596)
Net deferred tax liabilities	(1,717)	(1,596)
Net deferred tax assets	$ 9,761	$ 10,188

In June 2006, the Financial Accounting Standards Board issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in accordance with SFAS No. 109, *Accounting for Income Taxes*, and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return.

Prior to the adoption of FIN 48, the Company provided for contingencies related to income taxes in accordance with SFAS No. 5. At December 31, 2006, the Company recorded $1,194 in income tax reserves. This tax reserve relates to a potential dispute by taxing authorities over tax benefits resulting from additional income tax basis in certain residential housing development projects. The Company recorded a valuation allowance of approximately $470 as of December 31, 2006, related to a deferred tax asset resulting from additional tax basis in residential real estate development projects. In analyzing the need for the provision of tax contingency reserves and the valuation allowance, management reviewed applicable statutes, rules, regulations and interpretations and established these reserves based on past experiences and judgments about potential actions by taxing jurisdictions. In January 2007, upon the adoption of FIN 48, the Company recorded a benefit to the opening retained accumulated deficit in the amount of $1,663. The Company's federal income tax returns for 2004 through 2006 are open tax years. The Company files in various state and local jurisdictions, with varying statutes of limitation.

10. STOCK REPURCHASE PROGRAM

In February 2006 the Company's Board of Directors authorized the Company to purchase up to 1,000,000 shares of the Company's Class A common stock in the open market or in privately negotiated transactions. The authorization did not include a specified time period in which the shares repurchase would remain in effect. During the three months ended March 31, 2006, the Company repurchased an aggregate of 70,300 shares of Class A common stock for a total of $678 or $9.65 per share. There were no shares repurchased for the three months ended March 31, 2007 and the Company has no immediate plans to repurchase any additional shares under the existing authorization.

11. COMMITMENTS AND CONTINGENCIES

Litigation

The Company, as manager of an affiliated entity, exercised its option rights to purchase the project acquisition, development and construction loans made for the benefit of North Shore. The Company subsequently issued a notice of default under the acquisition and development loan at maturity on September 30, 2005, thereafter filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005. The Company, as manager of an affiliated entity, set and held a foreclosure sale on March 24, 2006 in which it was the high bidder. However, transfer of title to the property has been delayed pending judicial resolution of a suit filed on March 24, 2006 by the non-affiliated 50% owner of North Shore. On June 30, 2006, the Company, on its own behalf and on behalf of affiliates, filed an additional lawsuit expanding the number of party defendants, demanding equitable relief and demanding $33,000 in damages.

On April 10, 2007, the parties executed a settlement agreement whereby a company associated with the non-affiliated 50% owner of the North Shore project purchased the Company's rights to North Shore for approximately $3,750 to settle all claims against the Company and its investors. All litigation has been dismissed with prejudice and the Company received the proceeds from the settlement in April 2007.

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a $147,000 project loan for the Eclipse at Potomac Yard project. The claim in the base amount of $2,000 plus interest and costs is based on breach of contract and equitable remedies of unjust enrichment and quantum meruit. In February 2007 the Company received a ruling by a panel of arbiters to pay $3.0 million under these claims. The Company has filed an appeal which is pending.

Other than the foregoing, we are not currently subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions currently pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows. We believe that we have obtained adequate insurance coverage or rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

Letters of credit and performance bonds

The Company has commitments as a result of contracts entered into with certain third parties to meet certain performance criteria as outlined in such contracts. The Company is required to issue letters of credit and performance bonds to these third parties as a way of ensuring that such commitments entered into are met by the

(Amounts in thousands, except per share data)

Company. At March 31, 2007 the Company has outstanding $3,143 in letters of credit and $20,123 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

Operating leases

The Company leases office space under non-cancelable operating leases. Minimum annual lease payments under these leases at March 31, 2007 approximate:

Year Ended:	Amount
2007	836
2008	951
2009	802
2010	164
2011	5
Thereafter	—

Operating lease rental expense aggregated $289 and $248, respectively, for three months ended March 31, 2007 and 2006.

12. RELATED PARTY TRANSACTIONS

In April 2002 and January 2004, the Predecessor entered into lease agreements for approximately 7.7 and 8.8 square feet, respectively, for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia from Comstock Partners, L.C., an affiliate of our Predecessor in which executive officers of the Company, Christopher Clemente, Gregory Benson, and others are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 5% interest, an entity which is owned or controlled by Christopher Clemente's father-in-law, Dwight Schar, owns a 45% interest, and an unrelated third party owns a 5% interest in Comstock Partners. On September 30, 2004, the lease agreements were canceled and replaced with new leases for a total of 20.6 square feet with Comstock Asset Management, L.C., an entity wholly owned by Christopher Clemente. Total payments made under this lease agreement were $142 as of December 31, 2004. On August 1, 2005, the lease agreement was amended for an additional 8.4 square feet. For the three months ended March 31, 2007 and 2006, total payments made under this lease agreement were $192 and $185, respectively.

In May 2003, the Predecessor hired a construction company, in which Christopher Clemente's brother, Louis Clemente, serves as the President and is a significant shareholder, to provide construction services and act as a general contractor at two of the Company's developments. The Company paid $1,897 and $748 to this construction company during the three months ended March 31, 2007 and 2006, respectively.

During 2003, the Predecessor entered into agreements with I-Connect, L.C., a company in which Investors Management, LLC, an entity wholly owned by Gregory Benson, holds a 25% interest, for information technology consulting services and the right to use certain customized enterprise software developed with input from the Company. The intellectual property rights associated with the software solution developed by I-Connect, along with any improvements made thereto by the Company, remain the property of I-Connect. During the three months ended March 31, 2007 and 2006, the Company paid $206 and $86, respectively, to I-Connect.

In October 2004, the Predecessor entered into an agreement with Comstock Asset Management, L.C. (CAM), where CAM assigned the Company first refusal rights to purchase a portion of their Loudoun Station Properties. In partial consideration for the performance of which the Company would provide management services for a fee of $20 per month. This agreement was terminated effective December 31, 2006. For the three months ended March 31, 2007 and 2006 the Company recorded $0 and $60 in revenue, respectively. The Predecessor recorded a receivable for $0 and $40, at March 31, 2007 and 2006, respectively, from this entity.

In addition, the Company, in November 2004, entered into an agreement with Comstock Asset Management (CAM) to sell certain retail condominium units at Potomac Yard for a total purchase price of $14,500. In connection with this sale, the Company received a non-refundable deposit of $8,000 upon execution of the agreement. The agreement was modified in 2005, which reduced the deposit amount to $6,000. During the year ended December 31, 2006, the Company incurred $579 in costs associated with the retail units and recorded a receivable of $377 which is reimbursable by CAM and still outstanding as of March 31, 2007.

In August 2004, the Predecessor entered into a $2,400 promissory note agreement with Belmont Models I, L.L.C., an unrelated entity managed by Investors Management. The note had an interest rate of 12%, which was payable monthly and originally matured in August 2006. However the company exercised its right to a three-month extension, and therefore the note matured November 5, 2006. In March 2004, the Company sold four condominium units to Belmont Models I, L.C. under a sale and leaseback arrangement. The four condominium units were delivered for a total purchase price of $2,000 and leased back at a rate of $20 per month. The Company expects the lease to continue for a period of twenty-four months and has extension options available at its discretion. As a result of the deliveries, the promissory note was reduced by the total purchase price. As of December 31, 2006, the promissory note agreement with Belmont Models I, L.L.C., was paid in full. Accrued interest on this note totaled $0 and $0 respectively, as of March 31, 2007 and December 31, 2006.

During the three months ended March 31, 2007 and 2006, the Company entered into sales contracts to sell homes to certain employees of the Company. The Company, in order to attract, retain, and motivate employees maintains a home ownership benefit program. Under the home ownership benefits, an employee receives certain cost benefits provided by us when purchasing a home or having one built by us. Sales of homes to employees for investment purposes are conducted at market prices.

In September 2005, Comstock Foundation, Inc., was created. Comstock Foundation is a not-for-profit organization organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and is an affiliate of the Company. The affairs of Comstock Foundation are managed by a five-person board of directors with Christopher Clemente, Gregory Benson, Bruce Labovitz and Tracy Schar (employee of the Company and spouse of Christopher Clemente) being four of the five. The Company also provides bookkeeping services to Comstock Foundation at no charge. During the three months ended March 31, 2007 and 2006 the Company donated $0 and $25, respectively, to Comstock Foundation.

13. SEGMENT REPORTING

Statement of Financial Accounting Standards No. 131, *Disclosures about Segments of an Enterprise and Related Information* (“SFAS 131”) establishes standards for the manner in which companies report information about operating segments. The Company determined it provides one single type of business activity, homebuilding, which

operates in multiple geographic or economic environments. In addition, as a result of the Company's acquisitions in Georgia and North Carolina, which became fully integrated in the fourth quarter of 2006, the Company modified how it analyzes its business during the fourth quarter of 2006. As such, the Company has determined that its homebuilding operations now primarily involve three reportable geographic segments: Washington DC Metropolitan Area, North Carolina, and Georgia. The aggregation criteria is based on the similar economic characteristics of the projects located in each of these regions.

The table below summarizes revenue and income (loss) before income taxes for each of the Company's geographic segments (amounts in thousands):

	Three Months Ended March 31,	
	2007	**2006**
Revenues:		
Washington DC Metropolitan Area	33,862	29,869
North Carolina	8,590	1,991
Georgia	4,271	4,735
Total revenue	46,723	36,595
Operating income (loss)		
Washington DC Metropolitan Area	3,195	6,715
North Carolina	(189)	(242)
Georgia	(1,516)	(510)
Segment operating income	1,490	5,963
Corporate expenses unallocated	4,374	4,185
Total operating (loss) income	(2,884)	1,778
Other income (expense)	344	233
Equity loss	—	(27)
Minority interest	1	7
(Loss) income before income taxes	$ (2,539)	$ 1,991

Corporate expenses and other income is comprised principally of general corporate expenses such as the Offices of the Chief Executive Officer and President, and the corporate finance, accounting, audit, tax, human resources, marketing and legal groups, offset in part by interest income.

The table below summarizes total assets for each of the Company's segments at March 31, 2007 and December 31, 2006:

Total Assets	**2007**	**2006**
Washington DC Metropolitan Area	$ 299,867	$ 317,349
North Carolina	54,762	61,617
Georgia	90,590	94,133
Corporate	51,694	44,330
Total Assets	$ 496,913	$ 517,429

14. SUBSEQUENT EVENTS

As discussed in Note 7, in the accompanying notes to the consolidated financial statements, the Company in April 2007 sold its interest in North Shore for $3.75 million.

In April 2007, the Company entered into a loan modification with Corus Bank by which the Company increased the maximum funding under it non-recourse Eclipse construction loan by approximately $15.0 million including an additional $5.0 million interest reserve and extended the maturity date of the loan to January 2008.

On April 11, 2007 one of our two loans with Key Bank, in the amount of approximately $5.3 million, reached maturity. On May 1, 2007 the other loan with Key Bank, in the amount of approximately $2.8 million reached maturity. We are in the process of negotiating to extend both of these loans to February 2008. We expect to complete this process during May 2008.

On May 7, 2007, the Company received a notice of default and acceleration demand letter from Regions Bank covering all loans of the Company with Regions Bank which totaled approximately $10.5 million. On May 10, 2007, the Company and Regions Bank entered into a formal commitment letter outlining certain mutually agreed upon loan modifications and maturity extensions on all the Regions Bank loans to be documented on or before May 18, 2007. The letter provides for a rescission of the issued notice of default and acceleration demand letter.

In April 2007, Company received a notice of default on a $1.6 million loan related to, but not secured by, our Beacon Park at Belmont Bay project. The Company is working on a resolution to this default with the lender, who is also the land seller and the developer of Belmont Bay.

In March 2007, the Company entered into a loan modification agreement with BB&T which extended the maturity date of our Atlanta revolver by 12 months to March 2008. The Atlanta revolver covers three projects with a cumulative outstanding balance of approximately $10.0 million.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS AND FACTORS THAT MAY AFFECT RESULTS

The following discussion of our financial condition and results of operations should be read in conjunction with the accompanying unaudited consolidated interim financial statements and the notes thereto appearing elsewhere in the this report and our audited consolidated and combined financial statements and the notes thereto for the year ended December 31, 2006, appearing in our Annual Report on Form 10-K for the year then ended (the "2006 Form 10-K").

This report includes forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by the use of words such as "anticipate," "believe," "estimate," "may," "intend," "expect," "will," "should," "seeks" or other similar expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties, many of which are beyond our control. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include, without limitation: general economic and market conditions, including interest rate levels; our ability to service our substantial debt; inherent risks in investment in real estate; our ability to compete in the Washington, D.C. and Raleigh, North Carolina and Atlanta, Georgia real estate and home building markets; regulatory actions; fluctuations in operating results; our anticipated growth strategies; shortages and increased costs of labor or building materials; the availability and cost of land in desirable areas; natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis; and our continuing relationships with affiliates. Additional information concerning these and other important risk and uncertainties can be found under the heading "Risk Factors" in our Form 10-K filed for the fiscal year ended December 31, 2006. Our actual results could differ materially from these projected or suggested by the forward-looking statements.

Overview

We engage in the business of residential land development, production home building, high-rise condominium development, condominium conversion and land sales in the greater Washington, D.C., Raleigh, North Carolina, and Atlanta, Georgia markets. Our business was founded in 1985 by Christopher Clemente, our Chief Executive Officer, as a residential land developer and home builder focused on the luxury home market in the northern Virginia suburbs of Washington, D.C. In 1992, we repositioned ourselves as a production home builder focused on moderately priced homes in areas where we could more readily purchase finished building lots through option contracts. In the late 1990s, we diversified our product base to include multiple product types and home designs and we rebuilt our in-house land development department to include significant experience in both land development operations and land entitlement expertise. In 1997, we entered the Raleigh, North Carolina market. In 2005 we became involved in the business of converting existing rental apartment properties to for-sale condominium projects. In 2006, we entered the Charlotte, North Carolina, Myrtle Beach, South Carolina and Atlanta, Georgia markets through the acquisition of Parker Chandler Homes, Inc. In late 2006 we exited the Myrtle Beach, South Carolina market and in 2007 we plan to exit the Charlotte, North Carolina market.

Our general business strategy is to focus on for-sale residential real estate development opportunities in the southeastern United States that afford us the ability to produce products at price points where we believe there is significant and consistent long-term demand for new housing. We believe the housing industry is cyclical in nature. We recognize that current market conditions are extremely challenging. Accordingly, we have adapted our business plan and strategy with the goal of protecting liquidity, enhancing our balance sheet and positioning the Company for future growth when market conditions improve. In order to protect our liquidity we have adopted a conservative approach to land acquisition and investment and have taken a patient approach with respect to market expansion. We believe that by doing so we are enhancing our ability to take advantage of attractive real estate investment opportunities in our core markets as market conditions improve. At March 31, 2007, we either owned or controlled under option agreements approximately 5,000 building lots.

The following table summarizes certain information related to new orders, settlements, and backlog for the three month period ended March 31, 2007 and 2006:

	Three Months Ended March 31, 2007			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	79	32	34	145
Cancellations	58	7	9	74
Net new orders	21	25	25	71
Gross new order revenue	$ 25,137	$ 7,956	$ 10,751	$ 43,845
Cancellation revenue	$ 23,076	$ 2,127	$ 2,570	$ 27,773
Net new order revenue	$ 2,061	$ 5,830	$ 8,183	$ 16,072
Average gross new order price	$ 318	$ 249	$ 316	$ 302
Settlements	95	22	14	131
Settlement revenue — homebuilding	$ 33,740	$ 5,039	$ 4,246	$ 43,025
Average settlement price	$ 355	$ 229	$ 303	$ 328
Backlog units	211	49	25	285
Backlog revenue	$ 92,957	$ 15,438	$ 8,656	$ 117,060
Average backlog price	$ 441	$ 315	$ 346	$ 410

	Three Months Ended March 31, 2006			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	134	15	79	228
Cancellations	38	0	11	49
Net new orders	96	15	68	179
Gross new order revenue	$ 48,780	$ 6,009	$ 20,419	$ 75,208
Cancellation revenue	$ 14,418	$ —	$ 1,960	$ 16,378
Net new order revenue	$ 34,362	$ 6,009	$ 18,4599	$ 58,830
Average gross new order price	$ 364	$ 401	$ 258	$ 330
Settlements	83	8	21	112
Settlement revenue — homebuilding	$ 29,701	$ 1,991	$ 4,673	$ 36,365
Average settlement price	$ 358	$ 249	$ 223	$ 325
Backlog units	477	16	47	540
Backlog revenue	$ 190,655	$ 7,530	$ 13,786	$ 211,971
Average backlog price	$ 400	$ 471	$ 293	$ 393

We currently have communities under development in multiple counties throughout the markets we serve. The following table summarizes certain information for our current and planned communities as of March 31, 2007:

			As of March 31, 2007					
Project	State	Product Type (2)	Estimated Units at Completion	Units Settled	Backlog (3)	Lots Owned Unsold	Lots Under Option Agreement Unsold	Average New Order Revenue to Date
Status: Active (1)								
Allen Creek	GA	SF	26	18	3	5	—	$ 208,257
Arcanum	GA	SF	34	11	5	18	—	$ 388,675
Brentwood Estates	GA	SF	31	21	—	10	—	$ 138,311
Falling Water	GA	SF	22	11	2	9	—	$ 423,726
Gates of Luberon	GA	SF	31	—	2	29	—	$ 655,874
Glenn Ivey	GA	SF	65	7	3	55	—	$ 238,590
Highland Station	GA	SF	105	26	1	78	—	$ 294,989
Maristone	GA	SF	40	3	6	31	—	$ 309,713
Senators Ridge	GA	SF	60	17	2	41	—	$ 250,878
Traditions	GA	SF	4	1	1	2	—	$ 520,000
Wyngate	GA	SF	28	—	—	28	—	n/a
Sub-Total / Weighted Average (4)			446	115	25	306	—	$ 280,440

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENTS DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

			As of March 31, 2007					
Project	State	Product Type (2)	Estimated Units at Completion	Units Settled	Backlog (3)	Lots Owned Unsold	Lots Under Option Agreement Unsold	Average New Order Revenue to Date
Emerald Farm	MD	SF	84	78	—	6	—	$ 452,347
Sub-Total / Weighted Average (4)			84	78	—	6	—	$ 452,347
Allyn's Landing	NC	TH	116	49	14	53	—	$ 231,333
Brookefield Station	NC	SF	130	—	—	30	100	n/a
Haddon Hall	NC	Condo	90	—	2	88	—	$ 198,700
Holland Road	NC	SF	81	—	17	64	—	$ 419,779
Kelton at Preston	NC	TH	56	42	5	9	—	$ 311,175
North Farms	NC	SF	138	33	1	12	92	$ 178,672
Pine Hollow	NC	SF	10	3	1	6	—	$ 176,681
Providence-SF	NC	SF	148	—	4	30	114	$ 202,234
Riverbrooke	NC	SF	66	32	1	33	—	$ 168,090
Wakefield Plantation	NC	TH	77	40	2	35	—	$ 491,158
Wheatleigh Preserve	NC	SF	28	14	2	12	—	$ 282,014
Sub-Total / Weighted Average (4)			940	213	49	372	306	$ 286,302
Barrington Park	VA	Condo	148	—	—	148	—	n/a
Beacon Park at Belmont Bay	VA	Condo	600	—	—	112	488	n/a
Commons at Bellemeade	VA	Condo	316	58	—	258	—	$ 218,981
Commons on Potomac Sq	VA	Condo	192	48	7	137	—	$ 264,983
Commons on Williams Sq	VA	Condo	180	107	6	67	—	$ 350,107
Penderbrook	VA	Condo	424	254	8	162	—	$ 258,944
River Club at Belmont Bay 5	VA	Condo	84	83	1	—	—	$ 447,873
The Eclipse on Center Park	VA	Condo	465	192	185	88	—	$ 411,938
Woodlands at Round Hill	VA	SF	46	24	—	22	—	$ 757,118
Sub-Total / Weighted Average (4)			2,455	766	207	994	488	$ 355,368
Total Active			**3,925**	**1,172**	**281**	**1,678**	**794**	**$ 340,901**
Status: Development (1)								
East Capitol	DC	Condo	130	—	—	130	—	n/a
Sub-Total / Weighted Average (4)			130	—	—	130	—	n/a
Cedars Road	GA	SF	109	—	—	—	109	n/a
Highland Avenue	GA	SF	28	—	—	28	—	n/a
James Road	GA	SF	49	—	—	49	—	n/a
Kelly Mill Road	GA	SF	28	—	—	—	28	n/a
Post Road	GA	SF	60	—	—	60	—	n/a
Post Road II	GA	TH	54	—	—	54	—	n/a
Settingdown Circle	GA	SF	162	—	—	162	—	n/a
Shiloh Road I	GA	SF	60	—	—	60	—	n/a
Tribble Lakes	GA	SF	200	—	—	200	—	n/a
Sub-Total / Weighted Average (4)			750	—	—	613	137	n/a
Massey Preserve	NC	SF	242	—	—	242	—	n/a
Providence-TH	NC	TH	80	—	—	—	80	n/a
Sub-Total / Weighted Average (4)			322	—	—	242	80	n/a
Aldie Singles	VA	SF	15	—	—	—	15	n/a
Blake Crossing	VA	TH	130	—	—	130	—	n/a
Brandy Station	VA	SF	350	—	—	—	350	n/a
Loudoun Station	VA	Condo	484	—	—	—	484	n/a
Station View	VA	TH	47	—	—	47	—	n/a
Sub-Total / Weighted Average (4)			1,026	—	—	177	849	n/a
Total Development			**2,228**	**—**	**—**	**1,162**	**1,066**	**n/a**
Total Active & Development			**6,153**	**1,172**	**281**	**2,840**	**1,860**	**$ 340,901**

Status: Joint Venture									
North Shore Condominiums (5)	NC	Condo	196	—	7	189	—	$	286,361
North Shore Townhomes (5)	NC	TH	163	33	7	123	—	$	239,107
Countryside (6)	VA	Condo	30	13	4	—	13	$	260,537
Total Joint Venture			**389**	**46**	**18**	**312**	**13**	**$**	**249,968**

(1) “Active” communities are open for sales. “Development” communities are in the development process and have not yet opened for sales.
(2) “SF” means single family home, “TH” means townhouse and “Condo” means condominium.
(3) “Backlog” means we have an executed order with a buyer but the settlement has not yet taken place.
(4) “Weighted Average” means the weighted average new order sale price.
(5) Not consolidated; joint venture sold in 2Q 2007.
(6) Consolidated under FIN 46.

Results of Operations

Three months ended March 31, 2007 compared to three months ended March 31, 2006

Orders, cancellations and backlog

Gross new order revenue for the three months ended March 31, 2007 decreased $31.4 million, or 41.8%, to $43.8 million on 145 homes as compared to $75.2 million on 228 homes for the three months ended March 31, 2006. The 83 unit decrease in new orders was attributable to current market conditions in the homebuilding industry, which is currently characterized by excess supply of homes available for sale and reduced buyer confidence.

The average sale price per new order for the three months ended March 31, 2007 decreased by $28,000 to $302,000 as compared to $330,000 for the three months ended March 31, 2006. The decrease in average sales price per new order is attributable to a shift in inventory available for sale along with general base price decreases and price concessions offered in response to slower demand throughout our markets as compared to 2006.

For the three months ended March 31, 2007 the Company experienced 74 unit cancellations totaling $27.8 million as compared to 49 units totaling $16.4 million for the comparable period in 2006. Cancellations were most prevalent in the greater Washington, DC market where we experienced 58 cancellations which included 12 Company-initiated cancellations for approximately $3.8 million of cancellation revenue at Barrington Park Condominiums where the Company decided to temporarily manage the project as a rental condominium community while it determines the highest and best use for the property. At the Eclipse project, in the Washington, DC market, the Company experienced 36 cancellations which were mostly related to contracts entered into in 2004. Of these 36 cancellations, eight were cancellations where the contract buyer cancelled an existing contract in connection with entering into a new contract for a different unit at the Eclipse.

Our backlog at March 31, 2007 decreased $94.9 million, or 44.8%, to $117.1 million on 285 homes as compared to our backlog at March 31, 2006 of $211.9 million on 540 homes. Of the Company’s March 31, 2007 backlog, approximately $85.4 million is derived from 185 orders at the Company’s Eclipse on Center Park at Potomac Yard project. The reported backlog does not include pending land sales of which there was approximately $3.6 million of backlog at March 31, 2007 on 56 finished lots at Massey Preserve.

Revenues

Homebuilding revenues increased by $6.6 million, or 18.1%, to $43.0 million for the three months ended March 31, 2007 as compared to $36.4 million for the three months ended March 31, 2006. The number of homes delivered in the three months ended March 31, 2007 increased by 17.0%, or 19 homes, to 131 from 112 homes in the three months ended March 31, 2006. The increase in revenue and the number of units delivered is primarily attributable to the Company’s Eclipse project which delivered $23.8 million of revenue on 58 settled units and the Company’s expansion in the Raleigh, North Carolina market as a result of the acquisition of Capitol Homes Inc. on May 5, 2006. During the three months ended March 31, 2007 the Company delivered 22 homes in Raleigh as compared to eight homes for the three months ended March 31, 2006.

Average revenue per home delivered increased by approximately $3,000 or 1.0% to $328,000 for the three months ended March 31, 2007 as compared to $325,000 for the three months ended March 31, 2006. The $3,000 increase in average sales price per home is attributable to increased settlements from new projects coming to market in our Atlanta, Georgia division where our average revenue per settlement has increased approximately $81,000, or 35.9%, as compared to 2006. Average prices in the Washington, DC market were relatively consistent in spite of a shift in deliveries from higher priced single family and townhouse communities to condominiums.

Other Revenue

Other revenue for the three months ended March 31, 2007 increased by $3.5 million to $3.7 million, as compared to $200,000 for the three months ended March 31, 2006. Other revenue for the three months ended March 31, 2007 consists of lot sales made to third parties and revenue associated with the Company's Settlement Title Services division. The net increase is primarily attributable to $3.5 million of revenue recognized on the sale of 55 finished lots from our Massey Preserve project in North Carolina. The Company considers revenue to be from homebuilding when there is a structure built on the lot when it is delivered. Sales of lots occur, and are included in other revenues, when the Company sells raw land or finished home sites in advance of any substantial home construction.

Cost of Sales and Cost of Sales Other

Cost of sales for the three months ended March 31, 2007 increased $9.7 million, or 35.7%, to $36.9 million, or 85.7% of homebuilding revenue, as compared to $27.2 million, or 74.7% of revenue, for the three months ended March 31, 2006. The 11.1 percentage point increase in cost of sales as a percentage of homebuilding revenue for the three months ended March 31, 2007 is primarily attributable to the completion in 2006, of projects in which rapid price appreciation created higher profit margins as a result of fixed low land costs relative to pricing and the impact in 2007 of the Company's Eclipse project which accounted for approximately 55% of the Company's total revenues and total cost of sales. For the three moths ended March 31, 2007, cost of sales as a percentage of revenue for the Company's Eclipse project was approximately 82.6%. Additionally, due to weakening market conditions, we have extended the sales cycle of many of our projects, which in turn has increased direct costs per unit by increasing the amount of real estate tax, interest and overhead capitalized to the project. In many cases, since we relieve our capitalized costs pro-rata to the individual lots, fewer remaining lots must absorb increased costs. In addition, we have experienced increases in material and labor costs throughout our market along with the need to provide pricing concessions to stimulate sales. Due to the factors stated above, the Company expects costs of sales as a percentage of revenue to continue to face additional upward pressure as compared to 2006 until general market conditions improve, costs of materials moderate and new inventory is acquired.

Cost of sales other for the three months ended March 31, 2007 was $3.6 million as compared to $10 for the three months ended March 31, 2006. Cost of sales other for the three months ended March 31, 2007 primarily includes land cost associated with lot sales at Massey Preserve where the Company sold 55 finished lots to a third party.

Impairments and write-offs

As discussed in Note 2 in the accompanying notes to the financial statements, the Company, recorded impairment charges of $0 and $0 for the three months ended March 31, 2007 and 2006, respectively. For the three months ended March 31, 2007 the Company wrote-off $534 related to deposits on forfeited option contacts and related feasibility costs. Based on management's assessment of current market conditions and estimates for the future, the Company believes there are no additional impairments warranted at this time. However, if market conditions deteriorate or actual costs are higher than budgeted, the Company would be required to re-evaluate the recoverability of its real estate held for development and sale and may incur additional impairment charges. In addition, as discussed in Note 7 in the accompanying notes to the financial statements, the Company wrote off $357 as a result of selling its interest in North Shore and adjusting amounts owed to net realizable value.

Selling, general and administrative

Selling general and administrative expenses for the three months ended March 31, 2007 increased $600 or 7.9% to $8.2 million, as compared to $7.6 million for the three months ended March 31, 2006. Selling general and administrative expenses represented 17.6 % and 20.8 % of total revenue for the three months ended March 31, 2006 and 2007.

For the three months ended March 31, 2006, selling, general and administrative expenses included $900 related to the abandonment of corporate financing and acquisition transactions. Excluding the effect of the abandonments in 2006, the increase of $1.5 million was attributable to additional sales and marketing costs resulting from increased homebuilding revenues of $6.6 million and the acquisition of Capitol Homes Inc., in May of 2006. These increases were offset by cost reduction initiatives undertaken by the Company to align our fixed cost structure with current revenue and market trends.

Operating(income) loss

Operating income for the three months ended March 31, 2007 decreased $ 4.7 million to an operating loss of ($ 2.9) million as compared to $ 1.8 million in operating income for the three months ended March 31, 2006. Operating margin for the three months ended March 31, 2007 was (6.2%) as compared to 4.9% for the three months ended March 31, 2006. The decrease in operating margin is attributable to increases in cost of goods sold and write-offs as discussed above. A breakdown of operating margin by segment is provided in Note 13 in the accompanying notes to financial statements.

Other (income) expense, net

Other income for the three months ended March 31, 2007 increased by $111 to $344 as compared to $233 for the three months ended March 31, 2006. The increase in other income is attributable to increased interest income and additional income resulting from buyers canceling sales contracts and forfeiting their earnest money deposits.

Income taxes

Income tax (benefit) expense for the three months ended March 31, 2007 was ($870) compared to $751 for the three months ended March 31, 2006. Our combined effective tax rate including both current and deferred provisions for the three months ended March 31, 2007 and 2006 was (34.3%) and 37.8%, respectively. As discussed in Note 9, in the accompanying notes to financial statements, the Company recorded a charge to income tax expense in the amount of $136,000 as a result of tax shortfalls related to the non realization of certain tax assets recorded in conjunction with employee stock grants.

Liquidity and Capital Resources

We require capital to post deposits on new deals, to purchase and develop land, to construct homes, to fund related carrying costs and overhead and to fund various advertising and marketing programs to facilitate sales. These expenditures include engineering, entitlement, architecture, site preparation, roads, water and sewer lines, impact fees and earthwork, as well as the construction costs of the homes and amenities. Our sources of capital include, and we anticipate will continue to include, funds derived from various secured and unsecured borrowings, operations which include the sale of constructed homes and finished lots, and the sale of equity securities. Our currently owned and controlled inventory of home sites will require substantial capital to develop and construct.

In production home building, it is common for builders such as us to employ revolving credit facilities whereby the maximum funding available under the facility exceeds the maximum outstanding balance allowed at any given time. Our overall borrowing capacity may be constrained by loan covenants which limit the ratio of our total liabilities to our total equity. This revolving debt will typically provide for funding of an amount up to a pre-determined percentage of the cost of each asset funded. The balance of the funding for that asset is provided for by us as equity. The efficiency of revolving debt in production home building allows us to operate with less overall debt capital than would be required if we built each project with long-term amortizing debt. At March 31, 2007 we had approximately $293.5 million of outstanding indebtedness and $17.7 million of unrestricted cash. While we believe that internally generated cash, advances available under our credit facilities and access to public debt and equity markets will provide us with sufficient capital to meet our existing and expected capital needs.

Our subsidiaries have a significant amount of secured debt which matures during 2007. In our industry it is customary for lenders to renew and extend project facilities until the project is complete. Since we are the guarantor of our subsidiaries' debt, any significant failure to negotiate renewals and extensions to this debt would severely compromise our liquidity and could jeopardize our ability to satisfy our capital requirements. Our recently reported and cured loan covenant violations, may impact our ability to renew and extend our debt.

Credit Facilities

A majority of our debt is variable rate, based on LIBOR or the prime rate plus a specified number of basis points, typically ranging from 190 to 600 basis points over the LIBOR rate and from 25 to 100 basis points over the prime rate. As a result, we are exposed to market risk in the area of interest rate changes. At March 31, 2007, the one-month LIBOR and prime rates of interest were 5.32% and 8.25%, respectively, and the interest rates in effect under our existing secured revolving development and construction credit facilities ranged from 7.22% to 11.36%. For information regarding risks associated with our level of debt and changes in interest rates, see Item 3 "Quantitative and Qualitative Disclosures about Market Risk."

We have generally financed our development and construction activities on a project basis so that, for each project we develop and build, we have a separate credit facility. Accordingly, we have numerous credit facilities.

On May 26, 2006 we entered into $40 million Secured Revolving Borrowing Base Credit Facility for the financing of entitled land, land under development, construction and letters of credit. All letters of credit issued will also be secured by collateral in the facility. Funding availability will be limited to compliance with a borrowing base and facility covenants. As of March 31, 2007, $37.6 million was outstanding with this facility. In February 2007 we entered into a Forbearance Agreement with the lender which reduced the covenants and eliminated the ability of the lender to claim an event of default as a result of non-compliance with the financial covenants of the original loan. The Forbearance Agreement runs through March 2008.

On May 4, 2006 we closed on a $30 million Junior Subordinated Note Offering. The term of the note was thirty years and it could be retired after five years with no penalty. The rate was fixed at 9.72% the first five years and LIBOR plus 420 basis points the remaining twenty-five years. In March 2007 we retired the original notes and entered into a new 10-year $30 million Senior Secured Note Offering with the same lender at the same interest rate. We are in compliance with all covenants associated with the new notes.

As of March 31, 2007, we had $8.2 million outstanding to Key Bank. Under the terms of the loan agreements, we are required to maintain certain financial covenants. In January 2007 we entered into loan modification agreements to lower the interest coverage ratio covenant. We are in compliance with the loans

as modified.

As of March 31, 2007 we had $11.3 million outstanding to M&T Bank. Under the terms of the loan agreements, we are required to maintain certain financial covenants. In March 2007 we entered into loan modification agreements lowering the interest coverage ratio and the tangible net worth covenants. We are in compliance with the loans as modified.

In December 2005 the Company entered into a $147 million secured, limited recourse loan with Corus Bank related to our Eclipse project. Under the terms of the loan there is a single deed of trust covering two loan traunches. The two traunches have varying interest rates with Traunche A at LIBOR plus 375 basis points and Traunche B at 16.0%. At March 31, 2007 our outstanding balance under this loan was $72.6 million.

In February 2007 we entered into a $28 million secured, three-year limited recourse loan with Guggenheim Capital Partners related to our Penderbrook project. Under the terms of the loan the borrower (Comstock Penderbrook, LLC) distributed $11.0 million to the Company and established a $2.0 million interest escrow to provide for interest costs in excess of the net operating income being generated by the temporary rental operations at the project. The loan bears an interest rate of LIBOR plus 500 basis points. Under the terms of the loan there are two traunches, traunche A at three month LIBOR plus 400 basis points and traunche B at three month LIBOR plus 600 basis points. As of March 31, 2007, our outstanding balance under the loan was $25.3 million.

At March 31, 2007 we had approximately $11.0 million outstanding with Regions Bank under five separate master loan agreements. These loans contain cross-default provisions with each other. The loans carried varying maturities starting on April 28, 2007.

From time to time, we employ subordinated and unsecured credit facilities to supplement our capital resources or a particular project or group of projects. Our lenders under these credit facilities will typically charge interest rates that are substantially higher than those charged by the lenders under our senior and secured credit facilities. These credit facilities will vary with respect to terms and costs. As of March 31, 2007, only one unsecured credit facility remained in place, the annual variable interest rate on the facility was 7.52% and $5.0 million was outstanding under the facility. We intend to continue to use these types of facilities on a selected basis to supplement our capital resources.

Many of our loan facilities contain Material Adverse Effect clauses which if invoked could create an event of default under the loan. In the event all our loans were deemed to be in default as a result of a Material Adverse Effect, our ability to meet our capital and debt obligations would be compromised.

Cash Flow

Net cash used in operations decreased by $ 73.3 million to $504 for the three months ended March 31, 2006 as compared to $73.8 million for the three months ended March 31, 2006. The decrease is attributable to limited investment in real estate held for development and sale, in 2007 as compared to 2006.

Net cash used in investing activities decreased by $10.7 million to $46 for the three months ended March 31, 2007 as compared to $10.7 million for the three months ended March 31, 2006. The decrease is attributable to the Company’s acquisition in 2006 of Parker Chandler Homes. Inc. and less expenditures for property, plant and equipment.

Net cash (used in) provided by financing activities decreased by $63.0 million to ($3.0) million for the three months ended March 31, 2007 as compared to $60.5 million for the three months ended March 31, 2006. The decrease is attributable to lower borrowings required as a result of less investment in real estate held for investment.

Recent Acquisitions

In May 2006, we completed the acquisition of Capitol Homes, Inc., in the Raleigh, North Carolina area. The acquisition price was approximately $7.5 million plus the assumption of approximately $20.6 million in liabilities. The results of Capitol Homes, Inc. are included in the accompanying financial statements from the period May 5, 2006 to March 31, 2007. The acquisition added approximately 1,350 lots in 13 communities to our inventory of controlled land.

In January 2006, we completed the acquisition of Parker Chandler Homes, Inc. in the Atlanta, Georgia area. The acquisition price was approximately $10.4 million plus the assumption of approximately $63.8 million in debt. The results of Parker Chandler, Inc. are included in the accompanying financial statements from the period January 19, 2006 to March 31, 2007. The acquisition added over 1,500 lots to our inventory of controlled land.

Subsequent Events

As discussed in Note 7, in the accompanying notes to the consolidated financial statements, the Company in April 2007 sold its interest in North Shore for $3.75 million.

In April 2007, the Company entered into a loan modification with Corus Bank by which the Company increased the maximum funding under it non-recourse Eclipse construction loan by approximately $15.0 million including an additional $5.0 million interest reserve and extended the maturity date of the loan to January 2008.

On April 11, 2007 one of our two loans with Key Bank, in the amount of approximately $5.3 million, reached maturity. On May 1, 2007 the other loan with Key Bank, in the amount of approximately $2.8 million reached maturity. We are in the process of negotiating to extend both of these loans to February 2008. We expect to complete this process during May 2008.

On May 7, 2007, the Company received a notice of default and acceleration demand letter from Regions Bank covering all loans of the Company with Regions Bank which totaled approximately $10.5 million. On May 10, 2007, the Company and Regions Bank entered into a formal commitment letter outlining certain mutually agreed upon loan modifications and maturity extensions on all the Regions Bank loans to be documented on or before May 18, 2007. The letter provides for a rescission of the issued notice of default and acceleration demand letter.

In April 2007, Company received a notice of default on a $1.6 million loan related to, but not secured by, our Beacon Park at Belmont Bay project. The Company is working on a resolution to this default with the lender, who is also the land seller and the developer of Belmont Bay.

In March 2007, the Company entered into a loan modification agreement with BB&T which extended the maturity date of our Atlanta revolver by 12 months to March 2008. The Atlanta revolver covers three projects with a cumulative outstanding balance of approximately $10.0 million.

Recent Accounting Pronouncements

In September 2006, the FASB issued Statement of Financial Accounting Standard No. 157, *Fair Value Measurements* (“SFAS 157”), which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company is currently reviewing the effect of SFAS 157 on its consolidated financial statements.

In June 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109, Accounting for Income Taxes* (“FIN 48”), to create a single model to address accounting for uncertainty in tax positions. FIN 48 clarifies the accounting for income taxes, by prescribing a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. FIN 48 also provides guidance on de-recognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company adopted the provisions of FIN 48 on January 1, 2007, as required. The cumulative effect of adopting FIN 48 will be recorded as an adjustment to the opening balance of retained earnings and is not expected to have a significant impact on the Company’s consolidated financial position. The adoption of FIN 48 may cause greater volatility in the effective tax rate going forward. The Company expects to record a benefit of approximately $1,194 as a benefit to opening retained earnings as a result of the adoption of FIN 48.

Critical Accounting Policies and Estimates

There have been no significant changes to our critical accounting policies and estimates during the three months ended March 31, 2007 compared with those disclosed in Item 7, *Management’s Discussion and Analysis of Financial Condition and Results of Operations* included in our annual report on Form 10-K for the year ended December 31, 2006.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. A majority of our debt is variable rate based on LIBOR and prime rate, and, therefore, affected by changes in market interest rates. Based on current operations, as of March 31, 2007, an increase/decrease in interest rates of 100 basis points on our variable rate debt would have resulted in a corresponding increase/decrease in interest actually incurred by us of approximately $2.3 million in a fiscal year, a significant portion of which would be capitalized and included in cost of sales as homes are delivered. As a result, the effect on net income would be deferred until the underlying units settled and the interest was released to cost of goods sold. Changes in the prices of commodities that are a significant component of home construction costs, particularly lumber and concrete, may result in unexpected short-term increases in construction costs. Because the sales price of our homes is fixed at the time a buyer enters into a contract to acquire a home and we generally contract to sell our homes before construction begins, any increase in costs in excess of those anticipated at the time of each sale may result in lower consolidated operating income for the homes in our backlog. We attempt to mitigate the market risks of the price fluctuation of commodities by entering into fixed price contracts with our subcontractors and material suppliers for a specified period of time, generally commensurate with the building cycle. These contracts afford us the option to purchase materials at fixed prices but do not obligate us to any specified level of purchasing.

ITEM 4. CONTROLS AND PROCEDURES

As of the end of the period covered by this report, our Chairman and Chief Executive Officer and Chief Financial Officer have reviewed and evaluated the effectiveness of our disclosure controls and procedures, which included inquiries made to certain other employees. Based on their evaluation, our Chairman and Chief Executive Officer and Chief Financial Officer have each concluded that our disclosure controls and procedures are effective and sufficient to ensure that we record, process, summarize, and report information required to be disclosed by us in our periodic reports filed under the Securities Exchange Act within the time periods specified by the Securities and Exchange Commission’s rules and forms and are also effective to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive and Chief Financial Officers, to allow timely decisions regarding required disclosure.

During the quarter ended March 31, 2007, the Company completed its implementation of the JD Edwards EnterpriseOne (JDE) software package. The JDE system is an Enterprise Resource Planning (ERP) suite of integrated operational and financial modules that supports the Company’s current and future operational needs and enhances its internal control over financial reporting. The implementation of the JDE system has affected the Company’s internal controls over financial reporting by, among other things, improving user access security and automating a number of accounting, back office, and reporting processes and activities. Other than the JDE software package implementation, there have been no changes in the Company’s internal controls over financial reporting identified in connection with this evaluation that occurred during the period covered by this report and that have materially affected, or are reasonably likely to materially affect, the Company’s internal controls over financial reporting.

We do not expect that our disclosure controls and internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, with the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

The Company, as manager of an affiliated entity, exercised its option rights to purchase the project acquisition, development and construction loans made for the benefit of North Shore. The Company subsequently issued a notice of default under the acquisition and development loan at maturity on September 30, 2005, thereafter filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005. The Company, as manager of an affiliated entity, set and held a foreclosure sale on March 24, 2006 in which it was the high bidder. However, transfer of title to the property has been delayed pending judicial resolution of a suit filed on March 24, 2006 by the non-affiliated 50% owner of North Shore. On June 30, 2006, the Company, on its own behalf and on behalf of affiliates, filed an additional lawsuit expanding the number of party defendants, demanding equitable relief and demanding $33,000 in damages. On April 10, 2007, the parties executed a settlement agreement whereby a company associated with the non-affiliated 50% owner of the North Shore project purchased the Company's rights to North Shore for approximately $3.75 million to settle all claims against the Company and its investors. All litigation has been dismissed with prejudice.

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a $147,000 project loan for the Eclipse at Potomac Yard project. The claim in the base amount of $2,000 plus interest and costs is based on breach of contract and equitable remedies of unjust enrichment and quantum meruit. The claims have been denied by the Company.

Other than the foregoing, we are not currently subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions currently pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows. We believe that we have obtained adequate insurance coverage or rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

ITEM 1A. RISK FACTORS

The Company previously disclosed risk factors under "Item 1A. Risk Factors" in its Annual Report on Form 10-K for the year ended December 31, 2006. There have been no material changes these risk factors.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

None.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004)
3.2	Amended and Restated Bylaws (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004)
10.1	Senior Note Purchase and Redemption Agreement between the Registrant and Kodiak Warehouse JPM LLC, dated March 15, 2007
10.2	Indenture between the Registrant and Wells Fargo Bank, N.A., dated March 15, 2007
10.3	Notice of Default and Acceleration of Indebtedness, dated May 3, 2007 from Burr and Forman LLP to the Registrant.
31.1	Certification of Chairman and Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Act of 1934, as amended
32.1	Certification of Chairman and Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

COMSTOCK HOMEBUILDING COMPANIES, INC.

Date: May 10, 2007

By: /s/ Christopher Clemente
Christopher Clemente
Chairman and Chief Executive Officer

By: /s/ Bruce J. Labovitz
Bruce J. Labovitz
Chief Financial Officer

Execution Version

Exhibit 10.1

SENIOR NOTE PURCHASE
AND REDEMPTION AGREEMENT

by and between

COMSTOCK HOMEBUILDING COMPANIES, INC.,

and

KODIAK WAREHOUSE JPM LLC

Dated as of March 15, 2007

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Exhibit B	—	Form of General Counsel Opinion or Officers' Certificate Pursuant to Section 3(b)(ii)
Exhibit C	—	Form of Tax Counsel Opinion Pursuant to Section 3(c)
Exhibit D	—	Form of Trustee Counsel Opinion Pursuant to Section 3(d)
Exhibit E	—	Form of Officer's Financial Certificate Pursuant to Section 6(h)
Exhibit F	—	Form of Control Agreement

SENIOR NOTE PURCHASE AND REDEMPTION AGREEMENT

This SENIOR NOTE PURCHASE AND REDEMPTION AGREEMENT, dated as of March 15, 2007 (this "Purchase Agreement"), is entered into by and among Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Kodiak Warehouse JPM LLC, a Delaware limited liability company, or its assignee (the "Purchaser").

WITNESSETH:

WHEREAS, pursuant to that certain Note Purchase Agreement, dated as of May 4, 2006, the Company issued and sold to Kodiak Warehouse LLC (the "Initial Purchaser") Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Company's junior subordinated notes, bearing interest at a fixed rate of 9.72% per annum through the interest payment date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR (as defined in the Junior Subordinated Indenture, dated as of May 4, 2006 (the "Original Indenture") between the Company and Wells Fargo Bank, N.A. (the "Original Trustee")) plus 4.20% per annum (the "Original Notes");

WHEREAS, the Initial Purchaser sold, transferred and assigned its rights, title and interests in and to the Original Notes to the Purchaser;

WHEREAS, the Purchaser and the Company desire to provide for the redemption of the Original Notes and for the Company's issuance and sale to the Purchaser of Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Company's senior unsecured notes, bearing interest at a fixed rate of 9.72% per annum through the interest payment date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR (as defined in the Indenture (as defined below)) plus 4.20% per annum (the "Senior Notes");

WHEREAS, the Company, as of the date of this Purchase Agreement, is not insolvent, nor upon consummation of the transactions contemplated hereby will it be rendered insolvent, and the sum of the Company's debts is less than the value of all of the Company's property at a fair valuation;

WHEREAS, the sale of the Senior Notes to the Purchaser constitutes an extension of new credit to the Company and is not a substitution for any existing obligation; and

WHEREAS, the Senior Notes will be issued pursuant to an Indenture, dated as of the Closing Date (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as indenture trustee (in such capacity, the "Trustee").

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1. Definitions. This Purchase Agreement, the Control Agreement (as defined herein), the Indenture and the Senior Notes are collectively referred to herein as the "Operative Documents." All other capitalized terms used but not defined in this Purchase Agreement shall have the respective meanings ascribed thereto in the Indenture.

2. Redemption of the Original Notes and Purchase and Sale of the Senior Notes.

(a) Notwithstanding any restrictions in the Original Indenture relating to the redemption of the Original Notes, the Company agrees to redeem the Original Notes, and the Purchaser agrees to accept the redemption of the Original Notes (the "Redemption"), on the Closing Date (as defined below) at a redemption price equal to Thirty Million Six Hundred Seven Thousand Five Hundred Dollars ($30,607,500) (collectively the sum of (i) one hundred percent (100%) of the principal amount thereof, and (ii) all accrued and unpaid interest including Additional Interest (as defined in the Original Indenture) thereon as of March 15, 2007 (the "Redemption Price").

(b) On the Closing Date, the Redemption Price will become due and payable and any interest on the Original Notes shall cease to accrue on and after said date.

(c) The Company agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Company, Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Senior Notes for an amount (the "Purchase Price") equal to Thirty Million Dollars ($30,000,000). The Purchaser shall be responsible for the rating agency costs and expenses.

(d) Delivery or transfer of, and payment for, the Original Notes and the Senior Notes shall be made at 10:00 A.M. Chicago time (11:00 A.M. New York City time), on March 15, 2007 (such date and time of delivery and payment for the Original Notes and the Senior Notes being herein called the "Closing Date"). The Original Notes shall be redeemed and delivered to the Company upon receipt by the Purchaser of the Redemption Price by wire transfer in immediately available funds on the Closing Date to a U.S. account designated by the Purchaser at least two Business Days prior to the Closing Date. The Senior Notes shall be transferred and delivered to the Purchaser against the payment of the Purchase Price to the Company made by wire transfer in immediately available funds on the Closing Date to a U.S. account designated in writing by the Company at least two Business Days prior to the Closing Date.

(e) Delivery of the Senior Notes shall be made at such location, and in such names and denominations, as the Purchaser shall designate at least two Business Days in advance of the Closing Date and surrender of the Original Notes shall occur at the same location. The Company agrees to have the Senior Notes available for inspection and checking by the Purchaser in Chicago, Illinois, not later than 1:00 P.M., Chicago time (2:00 P.M. New York City time), on the Business Day prior to the Closing Date. The closing for the purchase and sale of the Senior Notes (the "Closing") shall occur at the offices of Winston & Strawn LLP, 35 West Wacker Drive, Chicago, Illinois 60601, or such other place as the parties hereto shall agree.

3. Conditions. The obligations of the parties under this Purchase Agreement are subject to the following conditions:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Senior Notes.

(b) (i) Greenberg Traurig LLP, counsel for the Company (the "Company Counsel"), shall have delivered an opinion, dated the Closing Date, addressed to the Purchaser, its successors and assigns and the Trustee, in substantially the form set out in Exhibit A hereto and (ii) the Company shall have furnished to the Purchaser the opinion of the Company's General Counsel or a certificate signed by the Company's Chief Executive Officer, President or an Executive Vice President and the Company's Chief Financial Officer, Treasurer or Assistant Treasurer, dated the Closing Date, addressed to the Purchaser, in substantially the form set out in Exhibit B hereto. In rendering their opinion, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers and directors of the Company and by government officials (provided, however, that copies of any such certificates or documents are delivered to the Purchaser) and by and upon such other documents as such counsel may, in their reasonable opinion, deem appropriate as a basis for the Company Counsel's opinion. The Company Counsel may specify the jurisdictions in which they are admitted to practice and that they are not admitted to practice in any other jurisdiction and are not experts in the law of any other jurisdiction. Such Company Counsel opinions shall not state that they are to be governed or qualified by, or that they are otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991).

(c) The Purchaser shall have been furnished the opinion of Winston & Strawn LLP, special tax counsel for the Purchaser, dated the Closing Date, addressed to the Purchaser and the Trustee, addressing the matters set out in Exhibit C hereto (subject to customary assumptions and qualifications).

(d) The Purchaser shall have received the opinion of Potter Anderson & Corroon LLP, special counsel for the Trustee, dated the Closing Date, addressed to the Purchaser and its successors and assigns, in substantially the form set out in Exhibit D hereto.

(e) The Company shall have furnished to the Purchaser a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer or Treasurer of the Company, dated the Closing Date, as to clauses (i) and (ii) below:

(i) the representations and warranties of the Company in this Purchase Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) except as set forth in the Company's 1934 Act Reports (as defined below), since the date of the Financial Statements (as defined in Section 4 (r)), there has been no occurrence that has had or is reasonably expected to result in a material adverse change in or effect on the condition (financial or otherwise), earnings, business, liabilities

or assets of the Company and its subsidiaries, whether or not arising from transactions occurring in the ordinary course of business (a "Material Adverse Effect").

(f) Subsequent to the execution of this Purchase Agreement, with the exception of matters disclosed by the Company to Purchaser in the Company's 1934 Act Reports, there shall not have been any change in or affecting the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries, whether or not occurring in the ordinary course of business, the effect of which is, in the Purchaser's judgment, so material and adverse as to make it impractical or inadvisable to proceed with the purchase of the Senior Notes.

(g) The redemption of the Original Notes and the purchase of and payment for the Senior Notes as described in this Purchase Agreement shall (a) not be prohibited by any applicable law or governmental regulation, (b) not subject the Purchaser to any penalty or, in the reasonable judgment of the Purchaser, other onerous conditions under or pursuant to any applicable law or governmental regulation and (c) be permitted by the laws and regulations of the jurisdictions to which the Purchaser is subject.

(h) The Company shall have received all consents, permits and other authorizations, and made all such filings and declarations, as may be required on or before the Closing Date from any person or entity pursuant to any law, statute, regulation or rule (federal, state, local and foreign), or pursuant to any agreement, order or decree to which the Company is a party or to which it is subject, in connection with the transactions contemplated by this Purchase Agreement.

(i) The Purchaser and the Trustee shall have received a fully executed copy of a Control Agreement in the form of Exhibit F hereto.

(j) The Purchaser and the Original Trustee shall have received (i) a copy of the resolution of the board of directors of the Company authorizing the transactions contemplated by this Purchase Agreement, including the redemption of the Original Notes, and (ii) an officers' certificate and opinion of counsel, in each case in accordance with the terms Section 11.3 of the Original Indenture.

(k) Prior to the Closing Date, the Company shall have furnished to the Purchaser and its counsel such further information, certificates and documents as the Purchaser or its counsel may reasonably request.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as required by this Purchase Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Purchase Agreement shall not be reasonably satisfactory in form and substance to the Purchaser or its counsel, this Purchase Agreement and all the Purchaser's obligations hereunder may be canceled at, or at any time prior to, the Closing Date by the Purchaser. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

Each certificate signed by any officer of the Company and delivered to the Purchaser or its counsel in connection with the Operative Documents and the transactions

contemplated hereby and thereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with the Purchaser, as of the date hereof and as of the Closing Date, as follows:

(a) Neither the Company nor any of its "Affiliates" (as defined in Rule 501(b) of Regulation D ("Regulation D") under the Securities Act (as defined below)), nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of any of the Senior Notes under the Securities Act of 1933, as amended (the "Securities Act").

(b) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has (i) offered for sale or solicited offers to purchase the Senior Notes or (ii) engaged in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D) in connection with any offer or sale of any of the Senior Notes.

(c) The Senior Notes (i) are not and have not been listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or quoted on a U.S. automated inter-dealer quotation system and (ii) are not of an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "Investment Company Act"), and the Senior Notes otherwise satisfy the eligibility requirements of Rule 144A(d)(3) promulgated pursuant to the Securities Act ("Rule 144A(d)(3)").

(d) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Senior Notes.

(e) The Company is not, and, immediately following consummation of the transactions contemplated hereby and the other Operative Documents and the application of the net proceeds from the purchase and sale of the Senior Notes, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

(f) The Company has not paid or agreed to pay to any person or entity, directly or indirectly, any fees or other compensation for soliciting another to purchase any of the Senior Notes.

(g) The Indenture has been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery thereof by the Trustee, will be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (the "Enforceability Exceptions").

(h) The Senior Notes have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered to the Trustee for authentication in accordance with the Indenture and, when authenticated in the manner provided for in the Indenture and delivered to the Purchaser against payment therefor in accordance with this Purchase Agreement, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture, enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions.

(i) This Purchase Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions and the effect of any applicable public policy against the enforcement of the indemnification provisions of this Purchase Agreement set forth in Section 8.

(j) The Control Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions and the effect of any applicable public policy against the enforcement of the indemnification provisions of the Control Agreement.

(k) Neither the redemption of the Original Notes, nor the issuance and sale of the Senior Notes, nor the execution and delivery of and compliance with the Operative Documents by the Company, nor the consummation of the transactions contemplated hereby or thereby, or the use of the proceeds therefrom, (i) will conflict with or constitute a violation or breach of the charter or bylaws or similar organizational documents of the Company or any subsidiary of the Company or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign (collectively, the "Governmental Entities"), or of any arbitrator, in each case having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets, (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event (as defined below) under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "Lien") upon any property or assets of the Company or any of its subsidiaries (other than to the extent of the amounts subject to the Lien of the Control Agreement) pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or (B) any of the property or assets of the Company or any of its subsidiaries is subject, except, in the case of this clause (ii), for such conflicts, violations, breaches, defaults, Repayment Events or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents and (Y) would not, singly or in the aggregate, have a Material Adverse Effect or (iii) require the consent, approval, authorization or order of any court or Governmental Entity. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries prior to its scheduled maturity.

(l) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws Delaware, with all requisite corporate power and authority to own, lease and operate its properties and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing as a foreign corporation in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(m) The Company has no subsidiaries that are material to its business, financial condition or earnings other than those subsidiaries listed in Schedule 4(1) hereto (collectively, the "Significant Subsidiaries"). Each Significant Subsidiary has been duly organized and is validly existing as a corporation, limited liability company, limited partnership or statutory trust in good standing under the laws of the jurisdiction in which it is chartered, organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts and proposes to transact. Each Significant Subsidiary is duly qualified to transact business and is in good standing as a foreign corporation, limited liability company, limited partnership or statutory trust in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 4(1) hereto, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(n) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "Governmental Licenses") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of the Company's subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(o) All of the issued and outstanding Equity Interests of the Company and each of its subsidiaries are validly issued, fully paid and nonassessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company is owned by the Company, directly or through subsidiaries, free and clear of any Lien, claim or equitable right; and none of the issued and outstanding Equity Interests of the Company or any subsidiary of the

Company was issued in violation of any preemptive or similar rights arising by operation of law, under the charter, by-laws, certificate of formation, limited liability company agreement, certificate of limited partnership, agreement of limited partnership or similar organizational document of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(p) Except as otherwise disclosed to the Purchaser in writing, neither the Company nor any of its subsidiaries is (i) in violation of its respective charter, by-laws, certificate of formation, limited liability company agreement, certificate of limited partnership, agreement of limited partnership or similar organizational document, (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument relating to Debt or (iii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject,, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect. No default by the Company has occurred and is continuing in the payment of any principal of or premium or interest on any Senior Debt (as such term is defined in the Original Indenture).

(q) Except as set forth on Schedule 4(p) hereto, there is no action, suit or proceeding before or by any Governmental Entity or arbitrator, now pending or, to the knowledge of the Company, threatened against or affecting the Company or any of the Company's subsidiaries, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents or have a Material Adverse Effect; and the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the Company's and its subsidiaries' business, are not expected to result in a Material Adverse Effect.

(r) The accountants of the Company who certified the Financial Statements are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "Commission") thereunder.

(s) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the three (3) fiscal years ended December 31, 2005 (the "Financial Statements") and the interim unaudited consolidated financial statements of the Company and its consolidated subsidiaries for the three and nine months periods ended September 30, 2006 (the "Interim Financial Statements") provided to the Purchaser are the most recent available audited and unaudited consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods

therein specified subject, in the case of the Interim Financial Statements, to year-end adjustments (which are expected to consist solely of recurring adjustments in the normal course of business). Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(t) Neither the Company nor any of its subsidiaries has any material liability, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes (and there is no past or present fact, situation, circumstance, condition or other basis for any present or future action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or its subsidiaries that could give rise to any such liability), except for (i) liabilities set forth in the Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and its subsidiaries since the date of the most recent balance sheet included in such Financial Statements.

(u) Except as set forth in the Company's 1934 Act Reports, since the respective dates of the Financial Statements and the Interim Financial Statements, there has been (A) no occurrence that is reasonably expected to result in a Material Adverse Effect and (B) no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(v) The documents of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were or hereafter are filed by the Company with the Commission (collectively, the "1934 Act Reports"), complied and will comply in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the "1934 Act Regulations"), and, at the date of this Purchase Agreement and on the Closing Date, do not and will not include 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 the light of the circumstances under which they were made, not misleading; and other than such instruments, agreements, contracts and other documents as are filed as exhibits to the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, there are no instruments, agreements, contracts or other documents of a character described in Item 601 of Regulation S-K promulgated by the Commission to which the Company or any of its subsidiaries is a party, and which the Company is required to file, other than such as are permitted to be filed with the Company's next periodic report under the 1934 Act Regulations, and set forth on Schedule 4(u) attached hereto. The Company is in compliance with all currently applicable requirements of the Exchange Act and the currently applicable rules and regulations promulgated thereunder that were added by or resulted from the Sarbanes-Oxley Act of 2002.

(w) No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the executive officers of the Company, is imminent, except those which would not, singly or in the aggregate, have a Material Adverse Effect.

(x) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under the Operative Documents or the consummation by the Company of the transactions contemplated by the Operative Documents.

(y) Except as set forth on Schedule 4(x), the Company and each Significant Subsidiary have (a) good and marketable title in fee simple to all real property owned by them, (b) good and marketable title to all real property-related interests owned by them and (c) good and marketable title to all personal property owned by them, in each case free and clear of all Liens and defects, except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made by the Company and the Significant Subsidiaries; and all of the leases and subleases under which the Company or any subsidiary of the Company holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and none of the Company or any subsidiary of the Company has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary of the Company under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(z) The Company and each of the Significant Subsidiaries have timely and duly filed all Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each of the Significant Subsidiaries have timely and duly paid in full all material Taxes required to be paid by them (whether or not such amounts are shown as due on any Tax Return). To the knowledge of the Company, there are no federal, state or other Tax audits or deficiency assessments proposed or pending with respect to the Company or any of the Significant Subsidiaries. As used herein, the terms "Tax" or "Taxes" mean (i) all federal, state, local and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax or penalties applicable thereto imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "Tax Returns" means all federal, state, local and foreign Tax returns, declarations, statements, reports, schedules, forms and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(aa) Interest payable by the Company on the Senior Notes is deductible by the Company for United States federal income tax purposes. There are no rulemaking or similar proceedings before the United States Internal Revenue Service or comparable federal, state, local or foreign government bodies which involve or affect the Company or any of its subsidiaries, which, if the subject of an action unfavorable to the Company or any such subsidiary, could result in a Material Adverse Effect.

(bb) The books, records and accounts of the Company and its subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances 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 accordance with GAAP and to maintain asset accountability, (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.

(cc) The Company and the Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged. All policies of insurance and fidelity or surety bonds insuring the Company or any of the Significant Subsidiaries or the Company's or Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage in all material respects as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(dd) The Company and its subsidiaries or any person acting on behalf of the Company and its subsidiaries including, without limitation, any director, officer, agent or employee of the Company or its subsidiaries has not, directly or indirectly, while acting on behalf of the Company and its subsidiaries (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds, (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any other unlawful payment.

(ee) The information provided by the Company pursuant to this Purchase Agreement, the other Operative Documents and the transactions contemplated hereby and thereby does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(ff) Except as set forth on Schedule 4(ee) hereto, (i) the Company and its subsidiaries have been and are in material compliance with applicable Environmental Laws (as defined below), (ii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, any other owners of any of the real properties currently or previously owned, leased or operated by the Company or any of its subsidiaries (collectively, the

"Properties") at any time or any other party, has at any time "released" (as such term is defined in CERCLA (as defined below)) or otherwise disposed of a material quantity of Hazardous Materials (as defined below) on, to, in, under or from the Properties, (iii) neither the Company nor any of its subsidiaries has used or intends to use the Properties or any subsequently acquired properties, other than in material compliance with applicable Environmental Laws, (iv) neither the Company nor any of its subsidiaries has received any notice of, or has any knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to a material claim under or pursuant to any Environmental Law with respect to the Properties or their respective assets or arising out of the conduct of the Company or its subsidiaries, (v) none of the Properties are included or, to the best of the Company's knowledge, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency or, to the best of the Company's knowledge, proposed for inclusion on any similar list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Entity, (vi) none of the Company, any of its subsidiaries or agents or, to the best of the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous Material at any of the Properties, except in material compliance with all applicable Environmental Laws, and has not transported or arranged for the transport of any Hazardous Material from the Properties to another property, except in material compliance with all applicable Environmental Laws, (vii) no lien has been imposed on the Properties by any Governmental Entity in connection with the presence on or off such Property of any Hazardous Material or with respect to an Environmental Law, and (viii) none of the Company, any of its subsidiaries or, to the best of the Company's knowledge, any other person or entity for whose conduct any of them is or may be held responsible, has entered into or been subject to any consent decree, compliance order, or administrative order with respect to material liabilities or violations at the Properties or any facilities or improvements or any operations or activities thereon.

As used herein, "Hazardous Material" shall include, without limitation, any flammable materials, explosives, radioactive materials, hazardous materials, hazardous substances, hazardous wastes, toxic substances or related materials, asbestos, petroleum, petroleum products and any hazardous material as defined by any federal , state or local environmental law, statute, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101-5127, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, the Emergency Planning and Community Right -to-Know Act of 1986, as amended, 42 U.S. C. §§ 11001-11050 , the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601-2692, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§ 136-136y, the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7642, the Clean Water Act, as amended (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387 , the Safe Drinking Water Act, as amended , 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651-678, and any analogous state laws, as any of the above may be amended from time to time and in the regulations promulgated pursuant to each of the foregoing (including environmental statutes and laws not specifically defined herein)

(individually, an "Environmental Law" and collectively, the "Environmental Laws") or by any Governmental Entity.

(gg) In the ordinary course of its business, the Company periodically reviews the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, and periodically identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such reviews and the amount of its established reserves, the Company has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, result in a Material Adverse Effect.

(hh) The Company has not filed any voluntary petition in bankruptcy or been adjudicated a bankrupt or insolvent, or filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy or insolvency laws, or other relief for debtors, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its respective properties. No Proceeding (as such term is defined in the Original Indenture) has occurred and is continuing. The Company is solvent and, upon consummation of the transactions contemplated hereby, will be solvent. The Company is not engaged in, or about to engage in, a business or a transaction for which the remaining assets of the Company are unreasonably small in relation to the business or transaction, and the Company does not intend to incur, nor believes that it will incur, debts beyond its ability to pay such debts as they become due. The Company has negotiated in good faith and has entered into the transactions contemplated by this Purchase Agreement in good faith.

5. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to, and agrees with, the Company as follows:

(a) The Purchaser is aware that the Senior Notes have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(b) The Purchaser is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D under the Securities Act.

(c) Neither the Purchaser, nor any of the Purchaser's Affiliates, nor any person acting on the Purchaser's or the Purchaser's Affiliate's behalf has engaged, or will engage, in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D promulgated under the Securities Act) in connection with any offer or sale of the Senior Notes.

(d) The Purchaser understands and acknowledges that (i) no public market exists for any of the Senior Notes and that it is unlikely that a public market will ever exist for

the Senior Notes, (ii) the Purchaser is purchasing the Senior Notes for its own account, for investment and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Senior Notes pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and the Purchaser agrees to the legends and transfer restrictions applicable to the Senior Notes contained in the Indenture, and (iii) the Purchaser has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Senior Notes.

(e) The Purchaser is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware with all requisite limited liability company power and authority to execute, deliver and perform the Operative Documents to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated herein.

(f) This Purchase Agreement has been duly authorized , executed and delivered by the Purchaser and no filing with , or authorization, approval, consent, license, order, registration, qualification or decree of, any governmental body, agency or court having jurisdiction over the Purchaser, other than those that have been made or obtained, is necessary or required for the performance by the Purchaser of its obligations under this Purchase Agreement or to consummate the transactions contemplated herein.

(g) The execution and delivery of this Purchase Agreement by the Purchaser does not, and the consummation by the Purchaser of the transactions contemplated hereby (including the Redemption) will not: (i) violate or conflict with or constitute a breach or default (or an event that with notice or lapse of time, or both, would become a breach or default) under or will result in the termination of, or accelerate the performance required under any contract or agreement to which the Purchaser is a party or by which it is bound, or result in the creation of any Lien on the Original Notes; or (ii) violate any law applicable to the Purchaser.

(h) The Purchaser is the record and beneficial owner of all of the Original Notes as set forth in the Recitals hereto and is conveying and transferring to the Company all of its legal and beneficial ownership in the Original Notes, free and clear of any Liens.

6. Covenants and Agreements of the Company. The Company covenants and agrees with the Purchaser as follows:

(a) During the period from the date of this Purchase Agreement to the Closing Date, the Company shall use its best efforts and take all action necessary or appropriate to cause its representations and warranties contained in Section 4 to be true as of the Closing Date, after giving effect to the transactions contemplated by this Purchase Agreement, as if made on and as of the Closing Date.

(b) The Company will arrange for the qualification of the Senior Notes for sale under the laws of such jurisdictions as the Purchaser may designate and will maintain such qualifications in effect so long as required for the sale of the Senior Notes. The Company will promptly advise the Purchaser of the receipt by the Company of any notification with respect to the suspension of the qualification of the Senior Notes for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) The Company will not, nor will it permit any of its Affiliates to, nor will the Company permit any person acting on its behalf (other than the Purchaser and its Affiliates) to, directly or indirectly, resell any Senior Notes that have been acquired by any of them.

(d) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf (other than the Purchaser and its Affiliates) to, engage in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Senior Notes.

(e) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf to, directly or indirectly, (i) sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) that would or could be integrated with the sale of the Senior Notes in any manner that would require the registration of the Senior Notes under the Securities Act or (ii) make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of any of the Senior Notes under the Securities Act.

(f) The Company will not, nor will it permit any of its Affiliates or any person acting on its behalf (other than the Purchaser and its Affiliates) to, engage in any form of "general solicitation" or "general advertising" (within the meaning of Regulation D) in connection with any offer or sale of the any of the Senior Notes.

(g) So long as any of the Senior Notes are outstanding, (i) the Senior Notes shall not be listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system, (ii) the Company shall not be an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act, and, the Senior Notes shall otherwise satisfy the eligibility requirements of Rule 144A(d)(3) and (iii) the Company shall not engage, nor permit any of its subsidiaries to engage, in any activity that would cause it or any such subsidiary to be an "investment company" under the provisions of the Investment Company Act.

(h) The Company shall furnish to (i) the holder, and subsequent holders, of the Senior Notes, (ii) Kodiak Capital Management Company LLC, 2107 Wilson Boulevard, Suite 450, Arlington, Virginia 22201, Attention: Robert M. Hurley, or such other address as designated by Kodiak Capital Management Company LLC) and (iii) any beneficial owner of the Senior Notes reasonably identified to the Company (which identification may be made by either such beneficial owner or by Kodiak Capital Management Company LLC), a duly completed and executed officer's financial certificate in the form attached hereto as Exhibit E,

including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, or, if applicable, such shorter respective periods as may then be required by the Commission for the filing by the Company of Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K.

(i) During any period in which the Company is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or the Company is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, the Company shall provide to each holder of the Senior Notes and to each prospective purchaser (as designated by such holder) of the Senior Notes, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act, if applicable. Any information provided by the Company pursuant to this Section 6(i) will not, at the date thereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company is required to register under the Exchange Act, such reports filed in compliance with Rule 12g3-2(b) shall be sufficient information as required above. This covenant is intended to be for the benefit of the Purchaser, the holders of the Senior Notes, and the prospective purchasers designated by the Purchaser and such holders, from time to time, of the Senior Notes.

(j) The Company covenants and agrees with Purchaser that the Company will not, without the prior written consent of Purchaser, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, any Debt (as such term is defined in the Indenture) unless (i) the Company shall be in compliance with each of the covenants contained herein and in the Indenture immediately after the closing of any transaction relating to such offer, sale, contract to sell, grant, purchase or other dispositions, (ii) such Debt is Permitted Debt (as such term is defined in the Indenture) or (iii) such Debt (x) shall be expressly subordinate by its terms to the Senior Notes and (y) shall not contain any covenants of the Company which are more restrictive than the financial covenants contained in the Indenture.

(k) The Company will not identify any of Indemnified Parties (as defined below) in a press release or any other public statement without the consent of such Indemnified Party.

(l) The Purchaser shall have the right under this Purchase Agreement and the Indenture to request the substitution of new Senior Notes for all or a portion of the Senior Notes held by the Purchaser (the "Replacement Senior Notes"). The Replacement Senior Notes shall bear terms identical to the Senior Notes with the sole exception of interest payment dates (and corresponding redemption date and maturity date), which will be specified by the Purchaser. In no event will the interest payment dates (and corresponding redemption date and maturity date) on the Replacement Senior Notes vary by more than sixty (60) calendar days from the original interest payment dates (and corresponding redemption date and maturity date) under the Senior Notes. The Company agrees to cooperate with all reasonable requests of the Purchaser in connection with any of the foregoing; provided, that no

action requested of the Company in connection with such cooperation shall materially increase the obligations or materially decrease the rights of the Company pursuant to such documents.

(m) Notwithstanding anything to the contrary otherwise contained herein or in any other Operative Document, prior to earlier of (i) the date eighteen (18) months from the date hereof and (ii) the occurrence of a Change-of-Control (as defined in the Indenture), the Company shall not offer to issue any other unsecured Debt (as such term is defined in the Indenture) which ranks *pari passu* with the Senior Notes (including the Senior Notes or securities convertible into, or exercisable or exchangeable for the same) to any other Person, unless the Company shall first offer to Purchaser the opportunity to purchase such unsecured Debt, and shall first provide to Purchaser a written notice thereof stating the proposed terms and conditions (the "Offered Terms"). The Purchaser shall have the right to accept the Offered Terms by written notice to the Company given within ten (10) days after the Purchaser's receipt of the Offered Terms. If the Purchaser does not accept the Offered Terms within such period, the Purchaser shall be deemed to have rejected the Offered Terms and the Company may consummate such issuance of unsecured Debt during the sixty (60) month period beginning on the date of the expiration of the applicable period; provided, that such issuance of unsecured Debt shall be consummated on substantially the same terms as the Offered Terms and shall otherwise be in accordance with the terms hereof, including Section 6(j). If such issuance of unsecured Debt is not consummated within such sixty (60) month period, the provisions of this Section 6(m) shall again apply in respect of any issuance of unsecured Debt which ranks *pari passu* with the Senior Notes whether made during such sixty (60) month period or thereafter.

(n) On each of March 30, 2007, June 30, 2007 and either, at the Company's option, September 30, 2007 or December 30, 2007, the Company shall deposit into the Interest Reserve Account an amount equal to the amount of interest paid with respect to the Senior Notes on such Interest Payment Date pursuant to Section 3.1(a) of the Indenture. The amounts on deposit in the Interest Reserve Account shall not be released to the Company until such time as the Company shall (i) have maintained a Fixed Charge Coverage Ratio (as defined in the Indenture) of not less than 2.0 to 1.0 as of the four (4) immediately preceding fiscal quarters in each case for, collectively, such quarter together with the preceding three (3) quarters and (ii) be in compliance with all other covenants contained herein and in the Indenture.

7. Payment of Expenses. The Company agrees to pay all costs and expenses incident to the performance of the obligations of the Company under this Purchase Agreement, whether or not the transactions contemplated herein are consummated or this Purchase Agreement is terminated, including all costs and expenses incident to (i) the fees and expenses of qualifying the Senior Notes under the securities laws of the several jurisdictions as provided in Section 6(b), (iii) the fees and expenses of the counsel, the accountants and any other experts or advisors retained by the Company, (iv) the fees and all reasonable expenses of the Trustee and any other trustee or paying agent appointed under the Operative Documents, including the fees and disbursements of counsel for such trustees or paying agent, which fees shall not exceed a $2,000 acceptance fee, $4,000 in administrative fees annually and the fees and expenses of Potter Anderson & Corroon LLP, (v) the reasonable fees and expenses of Winston & Strawn LLP, special counsel retained by the Purchaser and (vi) the reasonable fees and expenses of the

Original Trustee, including the reasonable fees and disbursements of counsel for the Original Trustee; provided, that with respect to (v) and (vi) above, such fees and expenses shall be paid on the Closing Date.

If the sale of the Senior Notes provided for in this Purchase Agreement is not consummated because any condition set forth in Section 3 to be satisfied by the Company is not satisfied, because this Purchase Agreement is terminated pursuant to Section 9 or because of any failure, refusal or inability on the part of the Company to perform all obligations and satisfy all conditions on its part to be performed or satisfied hereunder other than by reason of a default by the Purchaser, the Company will reimburse the Purchaser upon demand for all reasonable out-of-pocket expenses (including the fees and expenses of the Purchaser's counsel specified in clause (v) of the immediately preceding paragraph) that shall have been incurred by the Purchaser in connection with the Redemption and the proposed purchase and sale of the Senior Notes.

8. Indemnification. (a) The Company agrees to indemnify and hold harmless the Purchaser, the Purchaser's Affiliates and Kodiak Capital Management Company LLC (collectively, the "Indemnified Parties"), each person, if any, who "controls" any of the Indemnified Parties within the meaning of either the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents, against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties or any of them may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of, are based upon or connected with (i) any untrue statement or alleged untrue statement of a material fact contained in any information or documents furnished or made available to the Purchaser by or on behalf of the Company, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the breach or alleged breach of any representation, warranty or agreement of the Company contained herein or (iv) the execution and delivery by the Company of this Purchase Agreement or any of the other Operative Documents and/or the consummation of the transactions contemplated hereby and thereby, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action. The indemnity agreements contained in this Section 8 are in addition to any liability which the Company may otherwise have.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the Company under this Section 8, promptly notify the Company in writing of the commencement thereof, but the failure so to notify the Company (i) will not relieve the Company from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the Company of material rights and defenses and (ii) will not, in any event, relieve the Company from any obligations to any Indemnified Party other than the indemnification obligation provided in paragraph (a) above. The Purchaser shall be entitled to appoint counsel to represent the Indemnified Party in any action for which indemnification is sought. The Company may participate at its own expense in the defense of any such action; provided, that counsel to the Company shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the

Company be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, unless an Indemnified Party believes that his, her or its interests are not aligned with the interests of another Indemnified Party or that a conflict of interest might result. The Company will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. Termination; Representations and Indemnities to Survive. This Purchase Agreement shall be subject to termination in the absolute discretion of the Purchaser, by notice given to the Company prior to delivery of and payment for the Senior Notes, if prior to such time (i) a downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization," as that term is used by the Commission in Rule 153-1(c)(2)(vi)(F) under the Exchange Act, or such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of the Company's debt securities, (ii) the Company shall be unable to sell and deliver to the Purchaser at least Thirty Million Dollars ($30,000,000) in aggregate principal amount of the Senior Notes, (iii) a suspension or material limitation in trading in securities generally shall have occurred on the New York Stock Exchange, (iv) a suspension or material limitation in trading in any of the Company's securities shall have occurred on the exchange or quotation system upon which the Company' securities are traded, if any, (v) a general moratorium on commercial business activities shall have been declared either by federal or Delaware authorities, (vi) there shall have occurred any outbreak or escalation of hostilities, or declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the Purchaser's judgment, impracticable or inadvisable to proceed with the offering or purchase of the Senior Notes or (vii) the Company shall be unable to cause the Redemption to occur, including, without limitation, the payment of the Redemption Price. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers or trustees and of the Purchaser set forth in or made pursuant to this Purchase Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Purchaser or the Company or any of the their respective officers, directors or controlling persons, and will survive delivery of and payment for the Senior Notes. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Purchase Agreement.

10. Amendments . This Purchase Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

11. Notices. All communications hereunder shall be in writing and effective only on receipt, and shall be mailed, delivered by hand or courier or sent by facsimile and confirmed:

If to the Purchaser, to:

c/o Kodiak Capital Management Company, LLC
2107 Wilson Boulevard
Suite 400
Arlington, Virginia 22201
Attention: Robert M. Hurley
Facsimile: (703) 351-7901

with a copy to:

Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
Attention: Wayne D. Boberg
Facsimile: (312) 558-5700

if to the Company, to:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
Facsimile: (703) 760-1520
Attention: Bruce Labovitz, Chief Financial Officer

with a copy to:

Greenberg Traurig, LLP
800 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20006
Facsimile: (202) 331-3101
Attention: Stephen A. Riddick, Esq.

All such notices and communications shall be deemed to have been duly given (i) at the time delivered by hand, if personally delivered, (ii) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed, (iii) the next Business Day after being telecopied or (iv) the next Business Day after timely delivery to a courier, if sent by overnight air courier guaranteeing next-day delivery. From and after the Closing, the foregoing notice provisions shall be superseded by any notice provisions of the Operative Documents under which notice is given. The Purchaser and the Company, and their respective counsel, may change their respective notice addresses, from time to time, by written notice to all of the foregoing persons.

12. Parties in Interest; Successors and Assigns. This Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing expressed or mentioned in this Purchase Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 and their successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Purchase Agreement may be assigned, whether by operation of law or otherwise, without the Purchaser's prior written consent. The rights and obligations of the Purchaser under this Purchase Agreement may be assigned by the Purchaser without the Company's consent; provided, that the assignee assumes the obligations of the Purchaser under this Purchase Agreement.

13. Applicable Law. **This Purchase Agreement will be governed by and construed and enforced in accordance with the law of the State of New York without reference to principles of conflicts of law (other than Section 5-1401 of the General Obligations Law).**

14. Submission to Jurisdiction. ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS PURCHASE AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS PURCHASE AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS PURCHASE AGREEMENT.

15. Counterparts and Facsimile. This Purchase 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. This Purchase Agreement may be executed by any one or more of the parties hereto by facsimile.

16. Notice of Intended Transfer. The Purchaser covenants and agrees with the Company that the Purchaser shall provide thirty (30) days prior written notice to the Company of Purchaser's intent to consummate a transfer, sale or assignment of the Senior Notes to a subsequent purchaser (including to any entity issuing or proposing to issue collateralized debt obligations) other than an Affiliate of the Purchaser. In such event the Company shall have the right without restriction to redeem the Senior Notes at a redemption price equal to (i) the sum of 100% of the principal amount thereof, (ii) all accrued and unpaid interest including Additional Interest thereon and (iii) any and all Breakage Costs incurred by the Purchaser in connection with such redemption. The Purchaser will be obligated to accept the redemption of the Senior Notes provided the Company is prepared to consummate the redemption on or before the date on which the Purchaser's transfer, sale or assignment of the Senior Notes is scheduled for closing.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Note Purchase Agreement as of the day and year first written above.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ Christopher Clemente
Name: Christopher Clemente
Title: Chairman and Chief Executive Officer

KODIAK WAREHOUSE JPM LLC

By: Kodiak Funding, LP
Its: Sole Member

By: Kodiak Funding Company, Inc.
Its: General Partner

By: /s/ Robert M. Hurley
Name: Robert M. Hurley
Title: Chief Financial Officer

Execution Version

Exhibit 10.2

INDENTURE

between

COMSTOCK HOMEBUILDING COMPANIES, INC.

and

WELLS FARGO BANK, N.A.,
as Trustee

Dated as of March 15, 2007

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INDENTURE

This INDENTURE, dated as of March 15, 2007, is between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its senior unsecured notes, and to provide the terms and conditions upon which such senior unsecured notes are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Senior Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Senior Notes, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article I have the meanings assigned to them in this Article I;

(b) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(c) all accounting terms used but not defined herein have the meanings assigned to them in accordance with GAAP;

(d) unless the context otherwise requires, any reference to an "Article," a "Section," a "Schedule" or an "Exhibit" refers to an Article, a Section, a Schedule or an Exhibit, as the case may be, of or to this Indenture;

(e) the words "hereby," "herein," "hereof and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

"Acceptable Repurchase" has the meaning specified in Section 10.5(g).

"Acceptable Repurchase Mandatory Redemption Price" has the meaning set forth in Section 11.1(d).

"Act" when used with respect to any Holder, has the meaning specified in Section 1.4(a).

"Additional Interest" means the interest, if any, that shall accrue on any amounts payable on the Senior Notes, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Senior Note, in each case to the extent legally enforceable.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Depositary Procedures" means, with respect to any transfer or transaction involving a Global Senior Note or beneficial interest therein, the rules and procedures of the Depositary for such Senior Note, in each case to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Senior Notes.

"Board of Directors" means the board of directors of the Company or any duly authorized committee of that board.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"Breakage Costs" means any and all reasonable costs and fees of any Holder of Senior Notes (including, without limitation, the reasonable fees and expenses of any counsel engaged by such Holder to enforce the obligations of the Company hereunder) (as determined by such Holder), directly associated or incurred in connection with unwinding, terminating, modifying or otherwise breaking of any interest rate swap or other interest rate hedging arrangement entered into with respect to the interest rate on the Senior Notes prior to the expiration of the Fixed Rate Period where such unwinding, termination, modification or breaking is caused by the payment or defeasance of principal on the Senior Notes prior to the expiration of the Fixed Rate Period in connection with a Change-of-Control Election.

"Breakage Gains" means the amount of gain actually realized by any Holder of Senior Notes (as determined by such Holder), directly associated or incurred in connection with unwinding, terminating, modifying or otherwise breaking any interest rate swap or other interest rate hedging arrangement entered into with respect to the interest rate on the Senior Notes prior to the expiration of the Fixed Rate Period where such unwinding, termination, modification or breaking is caused by the payment or defeasance of principal on the Senior Notes prior to the expiration of the Fixed Rate Period in connection with a Change-of-Control Election.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

"Calculation Agent" has the meaning specified in Section 10.4(a).

"Capital Lease" means lease of (or other agreement conveying the right to use) any real or personal property by a Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person

"Change-of-Control" means (i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), including a "group" as defined in Section 13(d)(3) of the Exchange Act (but excluding a director or other fiduciary holding securities under an employee benefit plan of the Company), becomes the beneficial owner of Equity Interests of the Company having at least fifty percent (50%) of the total number of votes that may be cast for the election of directors of the Company; (ii) the merger or other business combination of the Company, sale of all or substantially all of the Company's assets or combination of the foregoing transactions (a "Transaction"), other than a Transaction immediately following which the shareholders of the Company immediately prior to the Transaction continue to have a majority of the voting power in the resulting entity (excluding for this purpose any shareholder owning directly or indirectly more than ten percent (10%) of the shares of the other company involved in the Transaction); or (iii) the persons who were directors of the Company on the date hereof (the "Incumbent Directors") shall cease to constitute at least a majority of the Board or a majority of the board of directors of any successor to the Company; provided, that, any director who was not a director as of the date hereof shall be deemed to be an Incumbent Director if such director was elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of this provision, unless such election, recommendation or approval was the result of an actual or threatened election contest of the type contemplated by Regulation 14a-11 promulgated under the Exchange Act or any successor provision.

"Change-of-Control Election" has the meaning specified in Section 10.5(b).

"Change-of-Control Event" means the occurrence of (i) a Change-of-Control and (ii) a Ratings Downgrade.

"Change-of-Control Event Notice" has the meaning specified in Section 10.5(b).

"Change-of-Control Mandatory Redemption Price" has the meaning set forth in Section 11.1(b).

"Change-of-Control Notice" has the meaning specified in Section 10.5(b).

"Code" means the Internal Revenue Code of 1986 or any successor statute thereto, in each case as amended from time to time.

"Commission" has the meaning specified in Section 7.3(c).

"Company" means the Person named as the "Company" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" and "Company Order" mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its Chief Executive Officer, President or a Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Consolidated Tangible Net Worth" means (i) the consolidated net worth of the Company and its consolidated subsidiaries minus (ii) the consolidated intangibles of the Company and its consolidated subsidiaries including, without limitation, goodwill, trademarks, trade names, copyrights, patents, patent applications, licenses, and rights in any of the foregoing and other items treated as intangibles in accordance with generally accepted accounting principles.

"Control Agreement" means that certain Interest Reserve Account Control Agreement dated the date hereof wherein the Company grants a security interest in the Interest Reserve Account to the Trustee, as security trustee for the benefit of the Holders.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 919 North Market Street, Suite 1600, Wilmington, Delaware 19801.

"Debt" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of

another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the types referred to in clauses (i) through (vii).

"Defaulted Interest" has the meaning specified in Section 3.1(c).

"Defeasance" has the meaning specified in Section 13.1.

"Defeasance Maturity Date" has the meaning specified in Section 13.2.

"Defeasance Senior Notes" has the meaning specified in Section 13.1.

"Depositary" means an organization registered as a clearing agency under the Exchange Act that is designated as Depositary by the Company or any successor thereto. DTC will be the initial Depositary.

"Depositary Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depositary effects book-entry transfers and pledges of securities deposited with the Depositary.

"Dollar" or "$" means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

"DTC" means The Depository Trust Company, a New York corporation, or any successor thereto.

"EBITDA" means, for any period, the net income (or loss) of the Company and its Subsidiaries for such period, excluding (a) any gains from the sale, lease, assignment or other transfer for value (each, a "Disposition") by the Company or any Subsidiary to any Person (other than the Company or any Subsidiary) of any asset or right of the Company or such Subsidiary (including, the loss, destruction or damage of any thereof or any actual or threatened (in writing to the Company or any Subsidiary) condemnation, confiscation, requisition, seizure or taking thereof) other than (i) the Disposition of any asset which is to be replaced, and is in fact replaced, within thirty (30) days with another asset performing the same or a similar function, (ii) the sale or lease of inventory in the ordinary course of business and (iii) other Dispositions in any fiscal year the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance or by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by the Company or any Subsidiary pursuant to such Disposition net of (A) the direct costs relating to such sale, transfer or other disposition (including sales commissions and legal, accounting and investment banking fees), (B) taxes paid or reasonably estimated by the Company to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and (C) amounts required to be applied to the repayment of any Debt secured by a Lien on the asset subject to such Disposition (other than the Senior Notes) do not in the aggregate exceed $1,000,000, (b) any extraordinary gains not related to the extinguishment of debt, (c) any gains from discontinued operations and (d) with respect to calculating the Fixed Charge Coverage Ratio in connection with Section 10.5(e)(i), (ii) and (iii) only, the aggregate amount of all other

non-cash items reducing net income (including any non-cash charge incurred as a result of a permanent write-down or impairment of an asset) for such period, plus, to the extent deducted in determining such net income (or loss), Interest Expense, income tax expense, depreciation and amortization and non-cash management compensation expense for such period.

"EDGAR" has the meaning specified in Section 7.3(c).

"Equity Interests" means (a) the partnership interests (both common and preferred partnership interests) in a partnership (whether a general or limited partnership), (b) the membership interests in a limited liability company (both common and preferred membership interests) and (c) the shares or stock interest (both common stock and preferred stock) in a corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974 or any successor statute thereto, in each case as amended from time to time.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the Securities Exchange Act of 1934 or any successor statute thereto, in each case as amended from time to time.

"Expiration Date" has the meaning specified in Section 1.4(h).

"Fixed Rate Period" shall have the meaning specified in the form of Senior Note set forth in Section 2.1.

"Fixed Charge Coverage Ratio" means, for each period of determination, which period shall be either the four consecutive fiscal quarters or the one fiscal quarter ending on the last day of a particular fiscal quarter as otherwise indicated herein, the ratio of (a) the total for such period of EBITDA minus the sum of (i) net income taxes paid in cash by the Company and each of its Subsidiaries and (ii) all unfinanced expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Company, including expenditures in respect of any Capital Lease to (b) the sum for such period of (i) cash Interest Expense plus (ii) required payments of principal of all Debt of the Company and its Subsidiaries that matures more than one year from the date of its creation (or is renewable or extendible, at the option of such Person, to a date more than one year from such date) (including the Senior Notes) plus (iii) management fees paid in cash.

"GAAP" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"Global Senior Note" means a Senior Note that evidences all or part of the Senior Notes, the ownership and transfers of which shall be made through book entries by a Depositary.

"Government Obligation" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally

guaranteed as a full faith and credit obligation by the United States of America, which, in either case of clause (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a "bank" (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation that is so specified and held; provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

"Holder" means a Person in whose name a Senior Note is registered in the Securities Register.

"Indenture" means this Indenture as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Interest Expense" means consolidated interest expense of the Company and its Subsidiaries for such period (including all imputed interest on Capital Leases)

"Interest Payment Date" means March 30, June 30, September 30 and December 30 of each year, commencing on March 30, 2007 during the term of this Indenture.

"Interest Reserve Account" means an account of the Company at Wells Fargo Bank, N.A. subject to the limitations set forth in Section 10.5(f) and subject to the lien of the Control Agreement.

"Investment Company Act" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"Investment Company Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Senior Notes.

"Leverage Ratio" means at any time, the ratio of Debt of the Company (excluding obligations related to inventory not owned resulting from consolidations required pursuant to Financial Accounting Standards Board Interpretation No. 46 entitled "Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin (ARB) No. 51" issued in January 2003 and revised December 2003, as the same may be revised and amended from time to time) at such time to Consolidated Tangible Net Worth (as reported in the Company's balance

sheet contained in the most recent periodic report filed with the Commission) for the most recently ended four fiscal quarters of the Company.

"LIBOR" has the meaning specified in Schedule A.

"LIBOR Business Day" has the meaning specified in Schedule A.

"LIBOR Determination Date" has the meaning specified in Schedule A.

"Maturity," when used with respect to any Senior Note, means the date on which the principal of such Senior Note or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Notice of Default" means a written notice of the kind specified in Section 5.1(c).

"Officers' Certificate" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"Optional Redemption Price" has the meaning set forth in Section 11.1.

"Original Issue Date" means the date of original issuance of each Senior Note.

"Outstanding" means, when used in reference to any Senior Notes, as of the date of determination, all Senior Notes theretofore authenticated and delivered under this Indenture, except:

(i) Senior Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Senior Notes for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company and/or its Affiliate shall act as its own Paying Agent) for the Holders of such Senior Notes; provided, that if the Company is acting as Paying Agent, Senior Notes for which payment or redemption money has been so deposited in trust with the Paying Agent shall be considered to remain Outstanding until such time as such payment or redemption money has actually been paid in full to the Holders of such Senior Notes; and provided, further, that, if such Senior Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Senior Notes that have been paid or in substitution for or in lieu of which other Senior Notes have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Senior Notes are held by Holders in whose hands such Senior Notes are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Senior Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Senior Notes owned by the Company or any other obligor upon the Senior Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Senior Notes, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Senior Notes that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Senior Notes so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Senior Notes and that the pledgee is not the Company or any other obligor upon the Senior Notes or any Affiliate of the Company or such other obligor.

"Paying Agent" means the Trustee or any Person authorized by the Company to pay the principal of or any premium or interest on, or other amounts in respect of, any Senior Notes on behalf of the Company.

"Permitted Debt" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, to the extent such Debt is (i) secured by (or has provisions in the loan documentation of such Debt permitting, upon the occurrence of an "event of default" (as defined in such loan documentation), such debt to become secured by) real property or membership interests of Subsidiaries of the Company the assets of which primarily consist of real property or, (ii) Debt of a Subsidiary of the Company which is secured by real property and which the Company has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise, (iii) "working capital" or "revolving" lines of credit with terms of three (3) years or less.

"Person" means a legal person, including any individual, corporation, estate, partnership (general or limited), joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association or government, or any agency or political subdivision thereof, or any other entity of whatever nature.

"Place of Payment" means, with respect to the Senior Notes, the Corporate Trust Office of the Trustee.

"Predecessor Senior Note" of any particular Senior Note means every previous Senior Note evidencing all or a portion of the same debt as that evidenced by such particular Senior Note. For the purposes of this definition, any security authenticated and delivered under Section

3.6 in lieu of a mutilated, destroyed, lost or stolen Senior Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Senior Note.

"Proceeding" has the meaning specified in Section 12.2(b).

"Purchase Agreement" means the Senior Note Purchase and Redemption Agreement, dated as of the date hereof, between the Company, Kodiak Warehouse LLC and the Purchaser.

"Purchaser" means Kodiak Warehouse JPM LLC, a Delaware limited liability company.

"Put Election Notice" means written notice delivered to the Company and the Trustee by the Purchaser (or any Affiliate transferee thereof) after September 30, 2007, pursuant to which the Purchaser or such Affiliate transferee elects to cause the Company to redeem a portion of the Senior Notes held by the Purchaser or such Affiliate transferee in an aggregate principal amount not to exceed Two Million Dollars ($2,000,000).

"Put Mandatory Redemption Price" has the meaning set forth in Section 11.1(c).

"Rating Agencies" shall mean (i) Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., (ii) Moody's Investor Services, Inc. and (iii) Fitch/IBCA, or, in each case its respective successor.

"Ratings Downgrade" means a downgrading in or withdrawal of the Company's general corporate rating or the rating accorded to the Company's debt securities or preferred stock, if any, by any two of the Rating Agencies as a result of a Change-of-Control.

"Redemption Date" means, when used with respect to any Senior Note to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" means, when used with respect to any Senior Note to be redeemed, in whole or in part, the Special Redemption Price, the Acceptable Repurchase Mandatory Redemption Price, the Put Mandatory Redemption Price, the Change-of-Control Mandatory Redemption Price or the Optional Redemption Price, as applicable, at which such Senior Note or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"Reference Banks" has the meaning specified in Schedule A.

"Regular Record Date" for the interest payable on any Interest Payment Date with respect to the Senior Notes means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"Responsible Officer" means, when used with respect to the Trustee, the officer in the corporate trust department of the Trustee having direct responsibility for the administration of this Indenture.

"Rights Plan" means a plan of the Company providing for the issuance by the Company to all holders of its common Equity Interests of rights entitling the holders thereof to subscribe for or purchase shares or units of any class or series of Equity Interests in the Company which

rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"Securities Act" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"Securities Register" and "Securities Registrar" have the respective meanings specified in Section 3.5(a).

"Senior Notes" or "Senior Note" means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"Special Event" means the occurrence of an Investment Company Event or a Tax Event.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.1(c).

"Special Redemption Price" has the meaning set forth in Section 11.2.

"Stated Maturity" means March 30, 2017.

"Subsidiary" means a Person more than fifty percent (50%) of the outstanding voting stock or other voting interests of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For purposes of this definition, "voting stock" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Tax Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "Administrative Action"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Senior Notes, there is more than an insubstantial risk that interest payable by the Company on the Senior Notes is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"Trust Indenture Act" means the Trust Indenture Act of 1939 or any successor statute thereto, in each case as amended from time to time.

Section 1.2 Compliance Certificate and Opinions.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with, except that, in the case of any application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such condition or covenant and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition or covenant has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

Section 1.3 Forms of Documents Delivered to Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to

factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Senior Notes issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Senior Notes.

Section 1.4 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of Senior Notes shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Senior Note shall bind every future Holder of the same Senior Note and the Holder of every Senior Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Senior Note.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Senior Note may do so with regard to all or any part of the principal amount of such Senior Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Senior Notes entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Senior Notes. If any record date is set pursuant to this paragraph, the Holders of Outstanding Senior Notes on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Senior Notes on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Senior Notes in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Senior Notes entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Senior Notes on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Senior Notes on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Senior Notes in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Senior Notes in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

Section 1.5 Notices, Etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office; or

(b) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190 or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 1.7 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

Section 1.8 Successors and Assigns.

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

Section 1.9 Separability.

If any provision in this Indenture or in the Senior Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

Section 1.10 Benefits of Indenture.

Nothing in this Indenture or in the Senior Notes, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the Holders of the Senior Notes and, solely to the extent set forth herein, the holders of Permitted Debt, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.11 Governing Law.

This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).

Section 1.12 Submission to Jurisdiction.

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

Section 1.13 Non-Business Days.

If any Interest Payment Date, Redemption Date or Stated Maturity of any Senior Note shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Senior Notes) payment of interest, premium, if any, or principal or other amounts in respect of such Senior Note shall not be made on such date, but shall be made on the next succeeding Business Day (and interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

Section 1.14 Counterparts.

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

ARTICLE II

SENIOR NOTE FORMS

Section 2.1 Form of Senior Note.

Any Senior Note issued hereunder shall be in substantially the following form:

COMSTOCK HOMEBUILDING COMPANIES, INC.

Senior Note due 2017

No. _____ $ _____

Comstock Homebuilding Companies, Inc., a corporation organized and existing under the laws of Delaware (hereinafter called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to [_____], or registered assigns, the principal sum of **[PRINCIPAL AMOUNT] ($[_____]) [IF THE SECURITY IS A GLOBAL SECURITY, THEN INSERT: or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture]** on March 30, 2017. The Company further promises to pay interest on said principal sum from and including March 15, 2007, or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly in arrears, to but excluding the succeeding Interest Payment Date, on March 30, June 30, September 30 and December 30 of each year, commencing March 30, 2007, or if any such day is not a Business Day, on the next succeeding Business Day (and interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that,

if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 ("Fixed Rate Period") and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum, until the principal hereof is paid or duly provided for or made available for payment; provided, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to 9.72% per annum through the interest payment date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from and including the dates such amounts are due to but excluding the dates such amounts are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Senior Note (or one or more Predecessor Senior Notes) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Senior Note (or one or more Predecessor Senior Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Senior Notes not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Senior Notes may be listed, traded or quoted and upon such notice as may be required by such exchange or automated quotation system, all as more fully provided in the Indenture.

During an Event of Default, the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise) or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any Debt of the Company other than Permitted Debt (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or Equity Interests purchase plan or (3) the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration

in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for, of or with any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks *pari passu* with or junior to such Equity Interest).

Payment of principal of, premium, if any, and interest on this Senior Note shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Senior Note shall be made at the Place of Payment upon surrender of such Senior Notes to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Senior Note is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Permitted Debt, and this Senior Note is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Senior Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his, her or its behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his, her or its attorney-in-fact for any and all such purposes. Each Holder hereof, by his, her or its acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Permitted Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Senior Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[FORM OF REVERSE OF SECURITY]

This Senior Note is one of a duly authorized issue of securities of the Company (the "Senior Notes") issued under the Indenture, dated as of March 15, 2007 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee,"

which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Senior Notes, and of the terms upon which the Senior Notes are, and are to be, authenticated and delivered. All terms used in this Senior Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Senior Notes (unless a shorter notice period shall be satisfactory to the Trustee) (i) on or after June 30, 2011, (ii) upon receipt of thirty (30) days prior written notice from the Purchaser of Purchaser's intent to consummate a sale, assignment or transfer of this Senior Note to a subsequent purchaser (including to any entity issuing or proposing to issue collateralized debt obligations) other than an Affiliate of the Purchaser, or (iii) to the extent the Purchaser has not consummated one of the transactions in subsection (ii) hereof and subject to the terms and conditions of Article XI of the Indenture, redeem this Senior Note in whole at any time or, subject to the consent of the Purchaser (or any Affiliate transferee thereof), in part from time to time in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof (or of the redeemed portion hereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs. Notwithstanding the foregoing, in the event of a redemption of this Senior Note by the Company pursuant to (ii) of this paragraph above, the Company shall (y) provide not less than five (5) days' nor more than ten (10) days' written notice to the Holders of the Senior Notes and (z) the redemption will not be required to occur on an Interest Payment Date.

In addition, prior to June 30, 2011, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Senior Notes (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Senior Note, in whole but not in part and subject to the terms and conditions of Article XI of the Indenture, at a Redemption Price equal to one hundred seven and one-half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date.

Further, the Company shall, upon receipt of a Change-of-Control Election after June 30, 2011, redeem the Senior Notes in whole on a date no more than thirty (30) days after receipt of the Change-of-Control Election, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date. The Company shall in connection with the receipt of a Put Election Notice, redeem the portion of the Senior Notes elected to be caused to be redeemed pursuant to such Put Election Notice on a date no more than thirty (30) days after receipt of the Put Election Notice, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date, and plus all Breakage Costs. The Company shall in connection with an Acceptable Repurchase, redeem a

portion of the Senior Notes at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date, and plus all Breakage Costs.

In the event of redemption of this Senior Note in part only, a new Senior Note or Senior Notes for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Senior Notes are to be redeemed, the particular Senior Notes to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Senior Notes not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Senior Note.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Senior Notes, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Senior Notes. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Senior Notes, on behalf of the Holders of all Senior Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Senior Note shall be conclusive and binding upon such Holder and upon all future Holders of this Senior Note and of any Senior Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Senior Note.

No reference herein to the Indenture and no provision of this Senior Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Senior Note at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Senior Note is restricted to transfers to “Qualified Purchasers” (as such term is defined in the Investment Company Act of 1940, as amended) and is registrable in the Senior Notes Register, upon surrender of this Senior Note for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder’s attorney duly authorized in writing, and thereupon one or more new Senior Notes, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Senior Notes are issuable only in registered form without coupons in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Senior Notes are exchangeable for a like aggregate principal amount of Senior Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Senior Note is registered as the owner hereof for all purposes, whether or not this Senior Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Senior Note or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Senior Note agree that, for United States federal, state and local tax purposes, it is intended that this Senior Note constitute indebtedness.

This Senior Note shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this **[DAY]** day of **[MONTH], [YEAR].**

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name: _____
Title: _____

Section 2.2 Restrictive Legend.

(a) Any Senior Note issued hereunder shall bear a legend in substantially the following form:

IF THIS SECURITY IS A GLOBAL SECURITY INSERT: "THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A

NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY, (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS (a) A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND (b) A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED) OR (III) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED PURCHASER " (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED) AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN $100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN $100,000 AND MULTIPLES OF $1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT

PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR SIMILAR LAW (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Senior Note unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law. Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Senior Note that does not bear the legend.

Section 2.3 Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Senior Notes referred to in the within-mentioned Indenture.

Dated:

WELLS FARGO BANK, N.A., not in its individual capacity, but solely as Trustee

By: _____
Name:
Title:

Section 2.4 Temporary Senior Notes.

(a) Pending the preparation of definitive Senior Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Senior Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Senior Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Senior Notes may determine, as evidenced by their execution of such Senior Notes.

(b) If temporary Senior Notes are issued, the Company will cause definitive Senior Notes to be prepared without unreasonable delay. After the preparation of definitive Senior Notes, the temporary Senior Notes shall be exchangeable for definitive Senior Notes upon surrender of the temporary Senior Notes at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Senior Notes, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Senior Notes of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Senior Notes. Until so exchanged, the temporary Senior Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Senior Notes.

Section 2.5 Definitive Senior Notes.

The definitive Senior Notes shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Senior Notes may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Senior Notes may be listed, all as determined by the officers executing such Senior Notes, as evidenced by their execution of such Senior Notes.

ARTICLE III

THE SENIOR NOTES

Section 3.1 Payment of Principal and Interest.

(a) The unpaid principal amount of the Senior Notes shall bear interest at a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 and thereafter at a variable rate equal to LIBOR plus 4.20% per annum until paid or duly provided for, such interest to accrue from and including the Original Issue Date or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for to but excluding the succeeding Interest Payment Date, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the rate equal to a fixed rate equal to 9.72% per annum through the Interest Payment Date in June 2011 and thereafter at a variable rate, reset quarterly, equal to LIBOR plus 4.20% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly from and including the dates such amounts are due to but excluding the dates such amounts are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Senior Note that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Senior Note (or one or more Predecessor Senior Notes) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Senior Note or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Senior Note that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Senior Note.

(c) Any interest on any Senior Note that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Senior Notes (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Senior Notes (or their respective Predecessor Senior Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Senior Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date

for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Senior Note at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Senior Notes (or their respective Predecessor Senior Notes) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Senior Notes may be listed, traded or quoted and, upon such notice as may be required by such exchange or automated quotation system (or by the Trustee if the Senior Notes are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Senior Notes shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period.

(e) Payment of principal of, premium, if any, and interest on the Senior Notes shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Senior Notes shall be made at the Place of Payment upon surrender of such Senior Notes to the Paying Agent and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) The parties hereto acknowledge and agree that the Holders have certain rights to direct the Company to modify the Interest Payment Dates and corresponding Redemption Date and Stated Maturity of the Senior Notes or a portion of the Senior Notes pursuant to the Purchase Agreement. In the event any such modifications are made to the Senior Notes or a portion of the

Senior Notes, appropriate changes to the form of Senior Note set forth in Article II hereof shall be made prior to the issuance and authentication of new or replacement Senior Notes. Any such modification of the Interest Payment Dates and corresponding Redemption Date and Stated Maturity with respect to any Senior Notes or tranche of Senior Notes shall not require or be subject to the consent of the Trustee.

(g) Subject to the foregoing provisions of this Section 3.1, each Senior Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Senior Note shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Senior Note.

(h) The Senior Notes will rank pari passu with each other and the Company's other senior unsecured obligations, other than such senior unsecured obligations constituting Permitted Debt to the extent set forth in Article XII, from time to time outstanding.

Section 3.2 Denominations.

The Senior Notes shall be in registered form without coupons and shall be issuable in minimum denominations of $100,000 and any integral multiple of $1,000 in excess thereof.

Section 3.3 Execution, Authentication, Delivery and Dating.

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Senior Notes in an aggregate principal amount (including all then Outstanding Senior Notes) not in excess of Thirty Million Dollars ($30,000,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Senior Notes, and the Trustee in accordance with the Company Order shall authenticate and deliver such Senior Notes. In authenticating such Senior Notes, and accepting the additional responsibilities under this Indenture in relation to such Senior Notes, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Senior Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Senior Notes have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Senior Notes are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Senior Notes shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Senior Notes may be manual or

facsimile. Senior Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Senior Notes or did not hold such offices at the date of such Senior Notes.

(c) No Senior Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Senior Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Senior Note shall be conclusive evidence, and the only evidence, that such Senior Note has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Senior Note shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall have delivered such Senior Note to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Senior Note shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Senior Note shall be dated the date of its authentication.

Section 3.4 Global Senior Notes.

(a) The Senior Notes issued on the Original Issue Date shall be in the form of Global Senior Notes. Upon the election of any Holder holding a definitive Senior Note after the Original Issue Date, which election need not be in writing, the Senior Notes owned by such Holder shall be issued in the form of one or more Global Senior Notes registered in the name of the Depositary or its nominee. Each Global Senior Note issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Senior Note or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor (which may be the Trustee), and each such Global Senior Note shall constitute a single Senior Note for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Senior Note may be exchanged in whole or in part for registered Senior Notes, and no transfer of a Global Senior Note in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Senior Note or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Senior Note, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above in this Section 3.4(b), the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Senior Note of the occurrence of such event and of the availability of Senior Notes to such owners of beneficial interests requesting the same. The Trustee may

conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Senior Notes and the registration in the Securities Register of such Senior Notes in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Senior Note is to be exchanged for other Senior Notes or canceled in part, or if another Senior Note is to be exchanged in whole or in part for a beneficial interest in any Global Senior Note, then either (i) such Global Senior Note shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled or (y) the principal amount of such other Senior Note to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Senior Note by the Depositary, accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Senior Notes issuable in exchange for such Global Senior Note (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Senior Note executed, authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Senior Note or any portion thereof shall be executed, authenticated and delivered in the form of, and shall be, a Global Senior Note, unless such Senior Note is registered in the name of a Person other than the Depositary for such Global Senior Note or a nominee thereof.

(e) The Depositary or its nominee, as the registered owner of a Global Senior Note, shall be the Holder of such Global Senior Note for all purposes under this Indenture and the Senior Notes, and owners of beneficial interests in a Global Senior Note shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Senior Note shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Senior Note (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Senior Note and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(f) The rights of owners of beneficial interests in a Global Senior Note shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(g) No holder of any beneficial interest in any Global Senior Note held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Senior Note, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Senior Note for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Senior Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Senior Note.

Section 3.5 Registration, Transfer and Exchange Generally.

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "Securities Register") in which the registrar and transfer agent with respect to the Senior Notes (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Senior Notes and of transfers and exchanges of Senior Notes. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Senior Note at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Senior Notes of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Senior Notes may be exchanged for other Senior Notes of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Senior Notes to be exchanged at such office or agency. Whenever any Senior Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Senior Notes that the Holder making the exchange is entitled to receive.

(d) All Senior Notes issued upon any transfer or exchange of Senior Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Senior Notes surrendered upon such transfer or exchange.

(e) Every Senior Note presented or surrendered for transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Senior Notes, but the Company may require payment of a sum sufficient to cover any tax or

other governmental charge that may be imposed in connection with any transfer or exchange of Senior Notes.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5: (i) to issue, register the transfer of or exchange any Senior Note during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Senior Notes pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Senior Note so selected for redemption in whole or in part, except, in the case of any such Senior Note to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Senior Notes may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Senior Notes may only be transferred to a "Qualified Purchaser" as such term is defined in Section 2(a)(51) of the Investment Company Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the Code or the Investment Company Act; provided, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Senior Note, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Senior Notes.

(a) If any mutilated Senior Note is surrendered to the Trustee together with such security or indemnity as may be required by the Company or the Trustee to save each of them harmless, the Company shall execute and upon receipt thereof the Trustee shall authenticate and deliver in exchange therefor a new Senior Note of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Senior Note and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Senior Note has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Senior Note, a new Senior Note of like tenor and aggregate principal amount as such destroyed, lost or stolen Senior Note, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Senior Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Senior Note, pay such Senior Note.

(d) Upon the issuance of any new Senior Note under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Senior Note issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Senior Note shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Senior Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Senior Notes duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Senior Notes.

Section 3.7 Persons Deemed Owners.

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Senior Note is registered as the owner of such Senior Note for the purpose of receiving payment of principal of and any interest on such Senior Note and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.8 Cancellation.

All Senior Notes surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Senior Notes and Senior Notes surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Senior Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Senior Notes so delivered shall be promptly canceled by the Trustee. No Senior Notes shall be authenticated in lieu of or in exchange for any Senior Notes canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Senior Notes shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

Section 3.9 Agreed Tax Treatment.

Each Senior Note issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Senior Note or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Senior Note, intend and agree to treat such Senior Note as indebtedness of the Company for United States federal, state and local tax

purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

Section 3.10 CUSIP Numbers.

The Company in issuing the Senior Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; provided, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Senior Notes or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Senior Notes, and any such redemption shall not be affected by any defect in or omission of such numbers.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Senior Notes herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on written demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Senior Notes theretofore authenticated and delivered (other than (A) Senior Notes that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Senior Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Senior Notes not theretofore delivered to the Trustee for cancellation

(A) have become due and payable; or

(B) will become due and payable at their Stated Maturity within one (1) year of the date of deposit; or

(C) are to be called for redemption within one (1) year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Senior Notes are payable, (y)

Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Senior Notes not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Senior Notes that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

Section 4.2 Application of Trust Money.

Subject to the provisions of Section 10.2(e), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Senior Notes and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee.

ARTICLE V

REMEDIES

Section 5.1 Events of Default.

"Event of Default" means, wherever used herein with respect to the Senior Notes, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Senior Note, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days; or

(b) default in the payment of the principal of or any premium on any Senior Note at its Maturity; or

(c) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Purchase Agreement and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty-five percent (25%) in aggregate principal amount of the Outstanding Senior Notes a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder (a "Notice of Default"); provided, that any default in the performance or breach of the covenant set forth in Section 10.8 shall constitute an Event of Default immediately upon such default or breach (without any obligation of the Trustee or the Holders to deliver a Notice of Default) and the Holders shall have the immediate right to exercise all remedies granted to the Holders under this Indenture; or

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Senior Notes may declare the principal amount of all the Senior Notes to be immediately due and payable, by a notice in writing to the Company (and to the Trustee if given by Holders).

(b) At any time after such a declaration of acceleration with respect to Senior Notes has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article V, the Holders of a majority in aggregate principal amount of the Outstanding Senior Notes, by written notice to the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Senior Notes;

(B) any accrued Additional Interest on all Senior Notes;

(C) the principal of and any premium on any Senior Notes that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Senior Notes;

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel;

(E) all sums paid or advanced by the Holders hereunder and the reasonable fees, expenses, disbursements and advances of the Holders and their agents and counsel in connection with the relevant default; and

(ii) all Events of Default with respect to Senior Notes, other than the non-payment of the principal of Senior Notes that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Senior Note when such interest becomes due and payable and such default continues for a period of thirty (30) days; or

(ii) default is made in the payment of the principal of and any premium on any Senior Note at the Maturity thereof;

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Senior Notes, the whole amount then due and payable on such Senior Notes for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6 and all sums paid or advanced by the Holders hereunder and the reasonable fees, expenses, disbursements and advances of the Holders and their agents and counsel in connection with such default.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Senior Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Senior Notes, wherever situated.

(c) If an Event of Default with respect to Senior Notes occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Senior Notes by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4 Trustee May File Proofs of Claim.

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Senior Notes), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

Section 5.5 Trustee May Enforce Claim Without Possession of Senior Notes.

All rights of action and claims under this Indenture or the Senior Notes may be prosecuted and enforced by the Trustee without the possession of any of the Senior Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Senior Notes in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected.

Any money or property collected or to be applied by the Trustee with respect to the Senior Notes pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of

the Senior Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of the amounts then due and unpaid upon the Senior Notes for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Senior Notes for principal and any premium and interest (including any Additional Interest), respectively; and

THIRD: The balance, if any, to the Person or Persons entitled thereto pursuant to the terms hereof.

Section 5.7 Limitation on Suits.

Subject to Section 5.8, no Holder of any Senior Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Senior Notes;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Senior Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Senior Notes;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Senior Notes, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Senior Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, on such Senior Note at its Maturity and payment of interest (including any Additional Interest) on such Senior Note when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder, then and in every such case the Company, the Trustee and such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or any Holder of any Senior Notes to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Holders, as the case may be.

Section 5.12 Control by Holders.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Senior Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults.

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Senior Notes may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of, premium, if any, or interest (including any Additional Interest) on any Outstanding Senior Note (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and premium, if any, on all Senior Notes due otherwise than by acceleration); or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Senior Note.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Senior Notes.

(c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Senior Note by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Senior Notes, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or premium, if any, on the Senior Note after the Stated Maturity or any interest (including any Additional Interest) on any Senior Note after it is due and payable.

Section 5.15 Waiver of Usury, Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

Section 6.1 Corporate Trustee Required.

There shall at all times be a Trustee hereunder with respect to the Senior Notes. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and having an office within the United States. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 6.1, the combined capital and surplus of such entity shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

Section 6.2 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Senior Notes, exercise such of the rights and

powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Senior Notes (or such other percentage as may be required by the terms hereof) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee under this Indenture; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

Section 6.3 Notice of Defaults.

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or any premium or interest on any Senior Notes, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until

at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Section 6.4 Certain Rights of Trustee.

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; provided, that if the Trustee does not receive such instructions from the Company within ten (10) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request,

direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustees (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Senior Notes as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default specified in Section 5.1, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent or Securities Registrar.

Section 6.5 May Hold Senior Notes.

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Senior Notes and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

Section 6.6 Compensation; Reimbursement; Indemnity.

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee (including in its individual capacity) and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to clause (i) or (ii) of this Section 6.6(a)), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Senior Notes on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Senior Notes. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

Section 6.7 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) Unless an Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Company by a Board Resolution. If an Event of Default shall have occurred and be continuing, the Trustee may be removed by Act of the Holders of a majority in aggregate principal amount of the Outstanding Senior Notes, delivered to the Trustee and to the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when no Event of Default shall have occurred and be continuing, the Company, by a Board Resolution, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when an Event of Default shall have occurred and be continuing, the Holders, by Act of the Holders of a majority in aggregate principal amount of the Outstanding Senior Notes, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a *bona fide* Holder of a Senior Note for at least six (6) months may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) The Company shall give notice to all Holders in the manner provided in Section 1.6 of each resignation and each removal of the Trustee and each appointment of a successor Trustee. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 6.8 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring

Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; provided, that on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

Section 6.9 Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Senior Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Senior Notes so authenticated, and in case any Senior Notes shall not have been authenticated, any successor to the Trustee may authenticate such Senior Notes either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Senior Notes or in this Indenture that the certificate of the Trustee shall have.

Section 6.10 Not Responsible for Recitals or Issuance of Senior Notes.

The recitals contained herein and in the Senior Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Senior Notes. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Senior Notes or the proceeds thereof.

Section 6.11 Appointment of Authenticating Agent.

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Senior Notes, which shall be authorized to act on behalf of the Trustee to authenticate Senior Notes issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Senior Notes so authenticated shall be entitled

to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Senior Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be an entity organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder; provided, that such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Senior Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Senior Notes referred to in the within mentioned Indenture.

Dated:

WELLS FARGO BANK, N.A., not in its
individual capacity, but solely as Trustee

By: _____
Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, on or before June 30 and December 31 of each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof; and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished;

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

Section 7.2 Preservation of Information, Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Senior Notes, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Senior Notes, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Company.

(a) The Company shall furnish to the Holders and to prospective purchasers of Senior Notes, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b).

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Senior Notes, (iii) Kodiak Capital Management Company LLC, 2107 Wilson Boulevard, Suite 400, Arlington, Virginia 22201, Attention: Robert M. Hurley or such other address as designated by Kodiak Capital Management Company LLC) and (iv) any beneficial owner of the Senior Notes reasonably identified to the Company (which identification may be made either by such beneficial owner or by Kodiak Capital Management Company LLC), a duly completed and executed officer's financial certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, or, if applicable, such shorter respective periods as may then be required by the Commission for the filing by the Company of quarterly reports on Form 10-Q and annual reports on Form 10-K.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "Commission") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act, and shall not relieve the Company of the requirement to deliver the certificate referred to in Section 7.3(b). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.1 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Senior Notes and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture, comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

Section 8.2 Successor Company Substituted.

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1 (a), the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Senior Notes.

(b) Such successor Person to the Company may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Senior Notes issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Senior Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Senior Notes that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Senior Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Senior Notes theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Senior Notes thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Senior Notes; or

(b) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or

(c) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture; provided, that such action pursuant to this clause (c) shall not be effected unless the Company has delivered a written notice of such amendment to the Holders at least twenty (20) days prior to the effective date of such amendment; provided, further, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders; or

(d) to comply with the rules and regulations of any securities exchange or automated quotation system on which any of the Senior Notes may be listed, traded or quoted; or

(e) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default; provided, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders; or

(f) to modify, eliminate or add to any provisions of the Indenture or the Senior Notes to such extent as shall be necessary to ensure that the Senior Notes are treated as indebtedness of the Company for United States federal income tax purposes; provided, that such action pursuant to this clause (f) shall not adversely affect in any material respect the interests of any Holders.

Section 9.2 Supplemental Indentures with Consent of Holders.

(a) Subject to Section 9.1, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Senior Notes, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Senior Notes under this Indenture; provided, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Senior Note:

(i) except as set forth in Section 3.1(f), change the Stated Maturity of the principal or any premium of any Senior Note or change the date of payment of any installment of interest (including any Additional Interest) on any Senior Note, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Senior Note or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date; or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Senior Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture; or

(iii) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.6, except to increase any percentage in aggregate principal amount of the Outstanding Senior Notes, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Senior Note.

(b) It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may,

but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder promptly after the execution thereof.

Section 9.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Senior Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.5 Reference in Senior Notes to Supplemental Indentures.

Senior Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Senior Notes so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Senior Notes.

ARTICLE X

COVENANTS

Section 10.1 Payment of Principal, Premium, if any, and Interest.

The Company covenants and agrees for the benefit of the Holders of the Senior Notes that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Senior Notes in accordance with the terms of the Senior Notes and this Indenture.

Section 10.2 Money for Senior Note Payments to be Held in Trust.

(a) If the Company shall at any time act as its own Paying Agent with respect to the Senior Notes, it will, on or before each due date of the principal of and any premium or interest (including any Additional Interest) on the Senior Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee in writing of its failure so to act.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 A.M., New York City time, on each due date of the principal of and any premium or interest (including any Additional Interest) on any Senior Notes, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act

and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Senior Notes other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.2, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Senior Notes) in the making of any payment in respect of the Senior Notes, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Senior Notes.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of and any premium or interest (including any Additional Interest) on any Senior Note and remaining unclaimed for two (2) years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Senior Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.3 Statement as to Compliance.

The Company shall deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate (substantially in the form attached hereto as Exhibit B) covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the

Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.4 Calculation Agent.

(a) The Company hereby agrees that for so long as any of the Senior Notes remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "Calculation Agent"). The Company has initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. Notwithstanding the foregoing, so long as the Senior Notes are Outstanding, the Calculation Agent shall be the Trustee. If the Calculation Agent is unable or unwilling to act as such or is removed by the Company, the Company will promptly appoint as a replacement Calculation Agent the London office of a leading bank which is engaged in transactions in three (3)-month Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Company or its Affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 A.M. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 A.M. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the interest payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Trustee, each Paying Agent and the Depositary. The Calculation Agent will also specify to the Company the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company before 5:00 P.M. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Senior Notes, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

Section 10.5 Additional Covenants.

(a) The Company covenants and agrees with each Holder of Senior Notes that if an Event of Default shall have occurred and be continuing, it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise), or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any Debt of the Company other than Permitted Debt (other than (A)

repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or Equity Interests purchase plan or in connection with the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks *pari passu* with or junior to such Equity Interest).

(b) The Company shall notify in writing, within five (5) Business Days of the occurrence thereof, the Trustee and each Holder of Senior Notes of the occurrence of a Change-of-Control (the "Change-of-Control Notice"). Within thirty (30) days of the occurrence of a Change-of-Control, the Depositor shall initiate a ratings affirmation process with the Ratings Agencies to determine if a Ratings Downgrade has occurred as a result of such Change-of- Control. Within five (5) Business Days of the completions of such ratings affirmation process, the Company shall notify in writing the Trustee and each holder of Senior Notes of the occurrence of a Change-of-Control Event (the "Change-of-Control Event Notice"). If the Company shall have received, within thirty (30) days from the Holders of Senior Notes' receipt of the Change-of-Control Event Notice, written notice from any Holder of Senior Notes of such Holder's election to cause the Defeasance or redemption, as applicable, of the Senior Notes as provided in this Section 10.5(b) (the "Change-of-Control Election"), then the Company shall (i) if such Change-of-Control Election is received on or prior to June 30, 2011, cause Article XIII to be applied to the Outstanding Senior Notes or (ii) if such Change-of-Control Election is received after June 30, 2011, redeem the Senior Notes pursuant to Section 11.1(b).

(c) The Company hereby covenants and agrees that the Company shall maintain, (i) as of the end of each fiscal quarter during 2007, a Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission) in excess of $110,000,000 and (ii) as of the end of each fiscal quarter thereafter commencing with the Company's first fiscal quarter during 2008, a Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission) in excess of $120,000,000.

(d) The Company will not permit the Leverage Ratio, as of the end of each fiscal quarter, to be greater than 3.00 to 1.00.

(e) The Company will not permit the Fixed Charge Coverage Ratio, (i) as of the end of each fiscal quarter ending March 31, 2007 and June 30, 2007, to be less than 1.0 to 1.00 in each case for such quarter or, collectively, such quarter together with the preceding three (3) quarters, (ii) as of the end of the fiscal quarter ending September 30, 2007 to be less than 1.50 to 1.00 for such quarter or, collectively, such quarter together with the preceding three (3) quarters, (iii) as of the end of December 31, 2007 to be less than 2.0 to 1.00 for such quarter or, collectively, such quarter together with the preceding three (3) quarters and (iv) each fiscal quarter thereafter, to be less than 2.00 to 1.00 for, collectively, such quarter together with the preceding three (3) quarters.

(f) On each of March 30, 2007, June 30, 2007 and either, at the Company's option, September 30, 2007 or December 30, 2007, the Company shall deposit into the Interest Reserve Account an amount equal to the amount of interest paid with respect to the Senior Notes on such Interest Payment Date pursuant to Section 3.1 (a). The amounts on deposit in the Interest Reserve Account shall not be released to the Company until such time as the Company shall (i) have maintained a Fixed Charge Coverage Ratio of not less than 2.0 to 1.0 as of the four (4) immediately preceding fiscal quarters in each case for, collectively, such quarter together with the preceding three (3) quarters and (ii) be in compliance with all other covenants contained herein.

(g) Until such time as the Company shall (x) have maintained a Fixed Charge Coverage Ratio of not less than 2.0 to 1.0 as of the two (2) immediately preceding fiscal quarters, in each case, for, collectively, such quarter together with the preceding three (3) quarters and (y) be in compliance with all other covenants contained herein, the Company shall not repurchase any Equity Interests of the Company unless in connection with such repurchase of Equity Interests (an "Acceptable Repurchase") (i) the Company will redeem pursuant to Section 11.1 (d) an amount of Senior Notes having an outstanding principal amount equal to the purchase price of such Equity Interests to be repurchased up to a maximum of $10,000,000, (ii) the redemption and defeasance of such Senior Notes shall be in increments of $1,000,000 and (iii) the redemption and defeasance, if any, of such Senior Notes shall be consummated and all payments or deposits made with respect thereto shall be made prior to the consummation of the repurchase of any Equity Interests.

Section 10.6 Waiver of Covenants.

The Company may omit in any particular instance to comply with any covenant or condition contained in Section 10.5 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Senior Notes shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

Section 10.7 Treatment of Senior Notes.

The Company will treat the Senior Notes as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Senior Notes as interest, for all U.S. federal income tax purposes. All payments in respect of the Senior Notes will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

Section 10.8 Limitation on Issuance of Debt.

The Company hereby agrees not to, without the prior written consent of Holders of a majority of outstanding principal amount of the Senior Notes, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, any other Debt unless (i) the Company shall be in compliance with each of the covenants contained herein after taking into account such offer, sale, contract to sell, grant, purchase or other disposition, (ii) such Debt is Permitted Debt or (iii) such Debt (A) shall be expressly subordinate by its terms to the Senior Notes and (B) shall not contain any covenants of the Company which are more restrictive than the covenants contained in this Indenture.

ARTICLE XI

REDEMPTION OF SENIOR NOTES

Section 11.1 Optional Redemption and Mandatory Redemptions.

(a) The Company may, at its option, (i) on any Interest Payment Date on or after June 30, 2011, (ii) upon receipt of thirty (30) days prior written notice from the Purchaser of Purchaser's intent to consummate a sale, assignment or transfer of the Senior Notes to a subsequent purchaser (including to any entity issuing or proposing to issue collateralized debt obligations) other than an Affiliate of the Purchaser or (iii) to the extent the Purchaser has not consummated one of the transactions in subsection (ii) hereof, redeem such Senior Notes in whole at any time or, subject to the consent of the Purchaser (or any Affiliate transferee thereof), in part from time to time, in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs (the "Optional Redemption Price"). In the event of a redemption pursuant to (ii) of this Section 11.1 (a), the redemption will not be required to occur on an Interest Payment Date.

(b) The Company shall, upon receipt of a Change-of-Control Election after June 30 2011, redeem the Senior Notes in whole on a date no more than thirty (30) days after receipt of the Change-of-Control Election, at a Redemption Price equal to one hundred percent (100%) of the outstanding principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (the "Change of Control Mandatory Redemption Price").

(c) The Company shall, in the event it receives a Put Election Notice, redeem the portion of the Senior Notes the Purchaser elects to require the Company to redeem pursuant to such Put Election Notice, at a Redemption Price equal to one hundred percent (100%) of the principal amount of the redeemed portion of the Senior Notes, together with, in the case of any such redemption, any accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs (the "Put Mandatory Redemption Price").

(d) The Company shall, in connection with an Acceptable Repurchase, redeem the portion of Senior Notes required to be redeemed pursuant to Section 10.5(g), at a Redemption Price equal to one hundred percent (100%) of the principal amount of the redeemed portion of the Securities, together with, in the case of any such redemption, any accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs (the "Acceptable Repurchase Mandatory Redemption Price").

Section 11.2 Special Event Redemption.

Prior to June 30, 2011, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Senior Notes, in whole but not in part, at a Redemption Price equal to one hundred seven and one-half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (the "Special Redemption Price").

Section 11.3 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Senior Notes, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. With the exception of any redemption pursuant to Section 11.1(a)(ii), in case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Senior Notes to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the event of a redemption pursuant to Section 11.1(a)(ii) above, the applicable Trustee notice period shall be not less than ten (10) days nor more than twenty (20) days. In the case of any redemption of Senior Notes, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Senior Notes or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Senior Notes, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

Section 11.4 Selection of Senior Notes to be Redeemed.

(a) If less than all the Senior Notes are to be redeemed, the particular Senior Notes to be redeemed shall be selected and redeemed on a *pro rata* basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Senior Notes not previously called for redemption; provided, that the unredeemed portion of the principal amount of any

Senior Note shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Senior Note.

(b) The Trustee shall promptly notify the Company in writing of the Senior Notes selected for redemption and, in the case of any Senior Notes selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Senior Notes shall relate, in the case of any Senior Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Senior Note that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Senior Note, whether such Senior Note is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Senior Note shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Senior Note.

Section 11.5 Notice of Redemption.

(a) With the exception of any redemption pursuant to Section 11.1(a)(ii), notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60th) day, prior to the Redemption Date to each Holder of Senior Notes to be redeemed, in whole or in part. In the event of a redemption pursuant to Section 11.1(a)(ii) above, the applicable Holder notice period shall be not less than five (5) days nor more than ten (10) days.

(b) With respect to Senior Notes to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Senior Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Senior Notes to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Senior Note or portion thereof, and that any interest (including any Additional Interest) on such Senior Note or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Senior Notes are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Senior Notes to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Senior Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Senior Note.

Section 11.6 Deposit of Redemption Price.

Prior to 10:00 A.M., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.2) an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Senior Notes (or portions thereof) that are to be redeemed on that date.

Section 11.7 Payment of Senior Notes Called for Redemption.

(a) If any notice of redemption has been given as provided in Section 11.5, the Senior Notes or portion of Senior Notes with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price. On presentation and surrender of such Senior Notes at a Place of Payment specified in such notice, the Senior Notes or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Upon presentation of any Senior Note redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Senior Note or Senior Notes, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Senior Note so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Senior Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Senior Note shall, until paid, bear interest from and including the Redemption Date at the rate prescribed therefor in the Senior Note.

ARTICLE XII

SUBORDINATION OF SECURITIES

Section 12.1 Senior Notes Subordinate to Permitted Debt.

The Company covenants and agrees, and each Holder of a Senior Note, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Senior Notes is hereby expressly made subordinate

and subject in right of payment to the prior payment in full of all Permitted Debt, other than to the extent of amounts subject to the lien of the Control Agreement.

Section 12.2 No Payment When Permitted Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.

(a) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default specified in Section 5.1 (each such event, if any, herein sometimes referred to as a "Proceeding"), all Permitted Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Senior Notes on account thereof, other than payments made pursuant to the terms of the Control Agreement. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Senior Notes, to the payment of all Permitted Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions and in no event including amounts subject to the lien of the Control Agreement) be payable or deliverable in respect of the Senior Notes shall be paid or delivered directly to the holders of Permitted Debt in accordance with the priorities then existing among such holders until all Permitted Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(b) In the event of any Proceeding, after payment in full of all sums owing with respect to Permitted Debt, the Holders of the Senior Notes, together with the holders of any obligations of the Company ranking on a parity with the Senior Notes, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Senior Notes and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Senior Notes and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Senior Notes, to the payment of all Permitted Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Permitted Debt shall have been paid in full (other than with respect to amounts subject to the lien of the Control Agreement and paid pursuant to the terms thereof), such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Permitted Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Permitted Debt remaining unpaid, to the extent necessary to pay all such Permitted Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign

any such payment, distribution or security, each holder of Permitted Debt is hereby irrevocably authorized to endorse or assign the same.

(c) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Permitted Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Permitted Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(d) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture, including the rights, interests, remedies or powers of the Trustee or the Holders of the Senior Notes with respect to the amounts subject to the lien of the Control Agreement.

(e) The securing of any obligations of the Company, otherwise ranking on a parity with the Senior Notes or ranking junior to the Senior Notes, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Senior Notes or ranking junior to the Senior Notes.

Section 12.3 Payment Permitted if No Proceeding.

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Senior Notes shall prevent (a) the Company, at any time, except during the pendency of any Proceeding referred to in Section 12.2, from making payments at any time of principal of, premium, if any, or interest (including any Additional Interest) on the Senior Notes or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of, premium, if any, or interest (including any Additional Interest) on the Senior Notes or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

Section 12.4 Subrogation to Rights of Holders of Permitted Debt.

Subject to the payment in full of all amounts due or to become due on all Permitted Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Permitted Debt, the Holders of the Senior Notes shall be subrogated to the extent of the payments or distributions made to the holders of such Permitted Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Permitted Debt of the Company to substantially the same extent as the Senior Notes are subordinated to the Permitted Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Permitted Debt) to the rights of the holders of such Permitted Debt to receive payments and distributions of cash, property and securities applicable to the Permitted Debt until the principal of and any premium and interest (including any Additional Interest) on the Senior

Notes shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Permitted Debt of any cash, property or securities to which the Holders of the Senior Notes or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Permitted Debt by Holders of the Senior Notes or the Trustee, shall, as among the Company, its creditors other than holders of Permitted Debt, and the Holders of the Senior Notes, be deemed to be a payment or distribution by the Company to or on account of the Permitted Debt.

Section 12.5 Provisions Solely to Define Relative Rights.

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Senior Notes on the one hand and the holders of Permitted Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Senior Notes is intended to or shall (a) impair, as between the Company and the Holders of the Senior Notes, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Senior Notes the principal of and any premium and interest (including any Additional Interest) on the Senior Notes as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Senior Notes and creditors of the Company other than their rights in relation to the holders of Permitted Debt or (c) prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Permitted Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 12.6 Trustee to Effectuate Subordination.

Each Holder of a Senior Note by his, her or its acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his, her or its attorney-in-fact for any and all such purposes.

Section 12.7 No Waiver of Subordination Provisions.

(a) No right of any present or future holder of any Permitted Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Permitted Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Senior Notes, without incurring responsibility to such Holders of the Senior Notes and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of such Holders of the Senior Notes to the holders of Permitted Debt, do any one or more of the following, so long as such Permitted Debt shall

remain Permitted Debt thereafter: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Permitted Debt, or otherwise amend or supplement in any manner Permitted Debt or any instrument evidencing the same or any agreement under which Permitted Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Permitted Debt, (iii) release any Person liable in any manner for the payment of Permitted Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 12.8 Notice to Trustee.

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Senior Notes. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Senior Notes, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Permitted Debt or from any trustee, agent or representative therefor; provided, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Senior Note), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself, herself or itself to be a holder of Permitted Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Permitted Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Permitted Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Permitted Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 12.9 Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article XII. the Trustee and the Holders of the Senior Notes shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Senior Notes, for the purpose of ascertaining the

Persons entitled to participate in such payment or distribution, the holders of the Permitted Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

Section 12.10 Trustee Not Fiduciary for Holders of Permitted Debt.

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Permitted Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Senior Notes or to the Company or to any other Person cash, property or securities to which any holders of Permitted Debt shall be entitled by virtue of this Article XII or otherwise.

Section 12.11 Rights of Trustee as Holder of Permitted Debt: Preservation of Trustee' s Rights.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Permitted Debt that may at any time be held by it, to the same extent as any other holder of Permitted Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Section 12.12 Article Applicable to Paying Agents.

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article XII in addition to or in place of the Trustee; provided, that Sections 12.8 and 12.11 shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.

ARTICLE XIII

DEFEASANCE

Section 13.1 Defeasance and Discharge.

In the event of the exercise of the option provided in Section 10.5(b) by a Holder of the Senior Notes as a result of the receipt of a Change-of-Control Election on or prior to June 30, 2011, and the result that this Section 13.1 shall be applied to the Outstanding Senior Notes (the "Defeasance Senior Notes"), the Company shall, within thirty (30) days following its receipt of the Change-of-Control Election, satisfy the conditions set forth in Section 13.2. The Company shall be deemed to have been discharged from its obligations with respect to the Defeasance Senior Notes as provided in this Section 13.1 on and after the date the conditions set forth in the Section 13.2 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Defeasance Senior Notes and to have satisfied all of its other obligations under the Defeasance Senior Notes and this Indenture insofar as the Defeasance Senior Notes are concerned (and the Trustee, upon written request and at the expense of the

Company, shall execute proper instruments acknowledging the same), subject to the following, which shall survive until otherwise terminated or discharged hereunder (1) the rights of Holders of the Defeasance Senior Notes to receive, solely from the trust fund described in Section 13.2 and as more fully set forth in such Section 13.2, payments in respect of the principal of, premium, if any, and interest on the Defeasance Senior Notes when payments are due, (2) the Company's obligations with respect to the Defeasance Senior Notes under Sections 2.4, 3.5, 3.6, and 10.2, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article XIII.

Section 13.2 Conditions to Defeasance.

The following shall be the conditions to application of Section 13.1 to the Defeasance Senior Notes:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee that satisfies the requirements contemplated by Section 6.1 and agree to comply with the provisions of this Article XIII applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Defeasance Senior Notes, (A) money in an amount in Dollars, (B) Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount in Dollars, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying Trustee) to pay and discharge, one hundred percent (100%) of the principal amount of the Defeasance Senior Notes on June 30, 2011 (the "Defeasance Maturity Date") plus interest on the Defeasance Senior Notes due and payable on the Interest Payment Dates occurring prior to and including the Defeasance Maturity Date and Breakage Costs, if any, less Breakage Gains, if any, in accordance with the terms of this Indenture and the Defeasance Senior Notes.

(2) Such Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act.

(3) Such Defeasance shall not result in the trust arising from such deposit constituting an "investment company" within the meaning of the Investment Company Act of 1940, unless such trust shall be qualified or exempt from regulation thereunder.

(4) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance have been complied with.

Section 13.3 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

Subject to the provisions of Section 10.2(e), all money and Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 13.3 and Section 13.4, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 13.2 in respect of the Defeasance Senior Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of the Defeasance Senior Notes and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of the Defeasance Senior Notes, of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 13.2 or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of Defeasance Senior Notes.

Anything in this Article XIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations held by it as provided in Section 13.2 with respect to the Defeasance Senior Notes that, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Defeasance with respect to the Defeasance Senior Notes.

Section 13.4 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article XIII with respect to the Defeasance Senior Notes by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Defeasance Senior Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIII with respect to the Defeasance Senior Notes until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.3 with respect to the Defeasance Senior Notes in accordance with this Article XIII; provided, however, that if the Company makes any payment of principal of, premium, if any, or interest on any Defeasance Senior Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of Defeasance Senior Notes to receive such payment from the money so held in trust.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ Christopher Clemente
Name: Christopher Clemente
Title: Chairman and Chief Executive Officer

WELLS FARGO BANK, N.A., as Trustee

By: /s/ Tracy M. McLamb
Name: Tracy M. McLamb
Title: Vice President

Schedule A

DETERMINATION OF LIBOR

With respect to the Senior Notes, the London interbank offered rate ("LIBOR") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date occurring after the expiration of the Fixed Rate Period (each such day, a "LIBOR Determination Date"), LIBOR for any given security shall for the following interest payment period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three (3)-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 2000 Interest Rate and Currency Exchange Definitions, as the same may be amended from time to time), or such other page as may replace such Page 3750 (as any such replacement may be amended from time to time), as of 11:00 A.M. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three (3)-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 A.M. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three (3)-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; provided, that if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above or adequate and fair means do not exist for ascertaining the applicable interest rate on the basis set forth above (due to changes arising in the interbank Eurocurrency market or otherwise), then the Senior Notes shall not bear interest in respect of LIBOR but shall instead bear interest with reference to a floating rate equal to the Base Rate (as defined below).

(3) As used herein: "Reference Banks" means four (4) major banks in the London interbank market selected by the Calculation Agent; "LIBOR Business Day" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London; the "Base Rate" on any day shall equal the greater of the arithmetic mean of (i) the "prime rate" for dollar denominated loans quoted by leading banks in the City of New York selected by the Calculation Agent and (ii) the Federal Funds Rate (as defined below) plus 0.50% per annum; and the "Federal Funds Rate" on any day equals the rate per annum equal to the weighted average (rounded upwards to the nearest 0.000001) of the rate on overnight federal funds transactions with members of the Federal Reserve System only arranged by federal funds brokers, as published as of such day by the Federal Reserve Bank of New York.

Exhibit 10.3

Gary W. Farris
Direct Dial: (404) 685-4250
Direct Fax: (404)214-7388
Email: gfairis@lmrr.com

BURR & FORMAN LLP
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www.burr.com

May 3, 2007

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND VIA FIRST CLASS, U.S. MAIL

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

Comstock Homes of Atlanta, LLC
5400 Laurel Springs Pkwy
Suwanee, Georgia 30024

Comstock James Road, LLC
5400 Laurel Springs Pkwy #201
Suwanee, Georgia 30024

Highland Station Partners, LLC
5400 Laurel Springs Pkwy #201
Suwanee, Georgia 30024

Re: Notice of Default, Acceleration of Indebtedness, and Intent to Collect Attorneys' Fees Pursuant to O.C.G.A. § 13-1-11

Ladies and Gentlemen:

This firm represents Regions Bank **("Regions Bank"** or the **"Lender")** in connection with the following loans payable by Comstock Homes of Atlanta, LLC **("Comstock Atlanta"),** Comstock James Road, LLC **("Comstock James Road"),** and Highland Station Partners, LLC **("Highland Station"** and together with Comstock Atlanta and Comstock James Road, the **"Borrowers"),**

(1) Loan in the stated principal amount of $1,544,700.00 (the **"Traditions of Braselton Loan"),** which is (i) evidenced, together with any and all modifications and amendments, by that certain Construction Loan Note dated December 2, 2004, payable by Comstock Atlanta in said principal amount, (ii) secured by that certain Deed to Secure Debt and Security Agreement dated December 2, 2004, and recorded on December 22, 2004, in Deed Book 37C, Page 589, Jackson County, Georgia records, encumbering Lots 17, 18, 34, and 35, Pod

N, of the Traditions of Braselton Subdivision, and (iii) unconditionally guaranteed by Comstock Homebuilding Companies, Inc. (the **"Guarantor")** pursuant to that certain Guaranty dated December 2, 2004;

(2) Loan in the stated principal amount of $956,250.00 (the **"Post Road Loan"),** which is (i) evidenced by that certain Note dated April 28, 2006, payable by Comstock Atlanta in said principal amount, (ii) secured by that certain Deed to Secure Debt and Security Agreement dated April 28, 2006 and recorded on May 2, 2006, in Deed Book 4256, Page 681, Forsyth County, Georgia records, encumbering Land Lot 402 of the 2nd District, 1st Section (said property containing 8.50 acres), and (iii) unconditionally guaranteed by Guarantor pursuant to that certain Guaranty dated April 28 2006;

(3) Loan secured by all of the property shown on that certain Final Plat for Highland Station Subdivision (the **"Highland Station Loan"),** as evidenced by:

(a) Loan in the stated principal amount of $5,337,000.00 (the **"2004 Highland Station Loan")** which is (i) evidenced by that certain Construction Loan Note dated November 16, 2004, payable by Highland Station in said principal amount, (ii) secured by that certain Deed to Secure Debt and Security Agreement dated November 16, 2004, recorded on November 22, 2004 in Deed Book 40666, Page 0047, Gwinnett County, Georgia records, and re-recorded to correct the Lender's address as shown on Page 3 on March 9, 2005 in Deed Book 41903, Page 0031, Gwinnett County, Georgia records, encumbering Land Lot 193 and 194 of the 7th Land District, Gwinnett County, Georgia, and (iii) unconditionally guaranteed by Guarantor pursuant to that certain Modification Agreement dated May 31, 2006;

(b) Loan in the stated principal amount of $12,000,000.00 (the **"2006 Highland Station Loan")** which is (i) evidenced by that certain Line of Credit Note dated July 28, 2006, payable by Highland Station in said principal amount, (ii) secured by that certain Deed to Secure Debt, Assignment and Security Agreement dated July 28, 2006 and recorded on August 7, 2006 in Deed Book 46852, Page 0436, Gwinnett County, Georgia records, encumbering Land Lots 193 and 194 of the 7th District, City of Suwanee, Gwinnett County, Georgia and being all of the property shown on that certain Final Plat for Highland Station Subdivision, (iii) unconditionally guaranteed by Guarantor pursuant to that certain Guaranty dated July 28, 2006.

(c) The 2004 Highland Station Loan and the 2006 Highland Station Loan were cross defaulted by that certain Cross Default Agreement dated July 28, 2006 between Highland Station and Regions; and

(4) Loan in the stated principal amount of $3,300,000.00 (the **"James Road Loan")** which is (i) evidenced by that certain Construction Loan Note dated September 28, 2006, payable by Comstock James Road in said principal amount, (ii) secured by that certain Deed to Secure Debt and Security Agreement dated September 28, 2006 and recorded on October 9, 2006 in Deed Book 4477, Page 317, Forsyth County, Georgia records, encumbering Land Lot 753 of the 2nd District, 1st Section of Forsyth County (said tract containing 15.029 acres), and (iii) unconditionally guaranteed by Guarantor pursuant to that certain Guaranty dated September 28, 2006.

The loans described above are collectively referred to herein as the **"Loans"** and the documents described above are collectively referred to as the **"Loan Documents."**

This letter is to serve notice that the Loans are **IN DEFAULT** and hereby declared in default by virtue of the Borrowers' failure to perform its obligations owed to Regions Bank under the Loan Documents, including, without limitation, the Borrowers' failure to pay the indebtedness as and when due and in the manner specified in the Loan Documents.

Pursuant to its rights and remedies under the Loan Documents, Regions Bank has declared all indebtedness outstanding under the Loans immediately due and payable in full. Regions Bank hereby demands that the Borrowers pay the Loans immediately, including all principal, interest, and other sums payable under the Loan Documents. Regions Bank also demands that the Guarantor, as guarantor of the Loans, honor its obligations to the Bank to pay the Loans upon the default of the Borrowers.

As of May 1, 2007, the indebtedness due and owing under the Loan Documents is as follows:

(1)	**Traditions of Braselton Loan:**	
	(a) Principal	$ 1,010,557.44
	(b) Accrued but unpaid interest	$ 3,929.95
	(c) Accrued but unpaid late fees	$ 0.00
Total:		$ 1,014,487.39
(2)	**Post Road Loan:**	
	(a) Principal	$ 956,250.00
	(b) Accrued but unpaid interest	$ 3,718.75
	(c) Accrued but unpaid late fees	$ 0.00
Total:		$ 959,968.75
(3)	**Highland Station Loan:**	
	(a) Principal	$ 6,184,665.46
	(b) Accrued but unpaid interest	$ 20,974.17
	(c) Accrued but unpaid late fees	$ 0.00
Total		$ 6,205,639.63
(4)	**James Road Loan:**	
	(a) Principal	$ 2,960,145.10
	(b) Accrued but unpaid interest	$ 10,617.06
	(c) Accrued but unpaid late fees	$ 0.00
Total		$ 2,970,762.16
Amount Due:		**$11,150,857.93**

In addition to the amounts shown above, the "Amount Due" under the Loans will also include (i) interest that accrues on the Loans after the date of this notice at the default rate of interest set forth in the Loan Documents and (ii) any attorneys' fees and expenses incurred by Lender with respect to the collection, enforcement, and preservation of the Loans and the Loan Documents. These additional amounts will be provided to you at your request.

Please be on notice that the provisions of the Loan Documents relative to the payment of attorney's fees shall be enforced, and you have ten (10) days from the date of receipt of this notice to pay the Amount Due (exclusive of the attorneys' fees) without incurring liability for the attorney's fees. This notice is provided pursuant to O.C.G.A. § 13-1-11.

A copy of this letter is being sent to you by regular mail. Refusal of delivery is deemed, under applicable law, to be equivalent of notice.

Regions Bank hereby reserves all of its rights and remedies under the Loan Documents and any other loan documents or agreements between the parties, at law, and in equity, including without limitation, the right to take any and all action deemed necessary to protect the interests of Regions Bank. Voluntary forbearance by Regions Bank in the exercise of such rights shall not waive or limit the subsequent exercise of such rights.

This letter is an attempt to collect a debt and any information obtained by virtue of it will be used for that purpose.

Please govern yourself accordingly.

Sincerely,

Gary W. Farris

GWF/alp

cc: Mr. William Teegarden

EXHIBIT 31.1

CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

I, Christopher Clemente, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the period presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others within that entity, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2007

/s/ Christopher Clemente

Christopher Clemente
Chairman and Chief Executive Officer
(Principal executive officer)

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Bruce J. Labovitz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the period presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others within that entity, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2007

/s/ Bruce J. Labovitz
Bruce J. Labovitz
Chief Financial Officer
(Principal financial officer)

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Comstock Homebuilding Companies, Inc. (the "Company") for the quarter ended March 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Christopher Clemente, Chairman and Chief Executive Officer of the Company and Bruce Labovitz, Chief Financial Officer of the Company, certify, to our best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2007

/s/ Christopher Clemente
Christopher Clemente
Chairman and Chief Executive Officer

Date: May 10, 2007

/s/ Bruce J. Labovitz
Bruce J. Labovitz
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.