

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

Form 10-K

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

For the fiscal year ended December 31, 2005

Commission file number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

20-1164345

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

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

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

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Class A common stock, par value \$.01 per share

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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 Accelerated filer Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of The Act). Yes No

The aggregate market value of voting and non-voting common equity held by nonaffiliates of the registrant (shares) based on the last reported sale price of the registrant's common equity on the Nasdaq National Market on June 30, 2005, which was the last business day of the registrant's most recently completed second fiscal quarter, was \$24.22. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

As of March 15, 2006, there were outstanding 11,260,642 shares of the registrant's Class A common stock, par value \$.01 per share, and 2,733,500 shares of the registrant's Class B common stock, par value \$.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2006 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

COMSTOCK HOMEBUILDING COMPANIES, INC.

ANNUAL REPORT ON FORM 10-K
For the Fiscal Year Ended December 31, 2005

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PART I

Item 1. Business

Overview

We are a residential real estate developer that has substantial experience building a diverse range of for-sale products including single-family homes, townhouses, mid- and high-rise condominiums and mixed-use developments in suburban communities and high density urban infill areas. We focus on geographic areas, products and price points where we believe there is significant demand for new housing and potential for above average returns. We currently operate in the Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia markets where we target a diverse range of buyers, including first-time, early move-up, secondary move-up, empty nester move-down and active adult home buyers. We believe that these buyers represent a significant and stable segment of the home buyers in our markets. Since our founding in 1985, we have built and delivered over 3,000 homes valued at over \$800.0 million.

Over the past several years we have successfully expanded our business model to include the development of land for our home building operations as a complement to the purchasing of finished building lots developed by others. Over the past several years, our markets have generally been characterized by strong population and economic growth trends that have led to strong demand for housing. In addition, we have recently expanded into the development, redevelopment and construction of residential mid- and high-rise condominium complexes in our core market of the Washington, D.C. area. We believe that these markets provide attractive long-term growth opportunities.

We were incorporated in Delaware in May 2004. Our business was started in 1985 by Christopher Clemente, our current Chief Executive Officer, as a residential land developer and home builder focused on the upscale home market in the northern Virginia suburbs of Washington, D.C. Prior to our initial public offering in December 2004, we operated our business through four primary holding companies. In connection with our initial public offering, these primary holding companies were consolidated and ultimately merged into Comstock Homebuilding Companies, Inc. Our principal executive offices are located at 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190, and our telephone number is (703) 883-1700. Our Web site is www.comstockhomebuilding.com. References to "Comstock," "we," "our" and "us" refer to Comstock Homebuilding Companies, Inc. together in each case with our subsidiaries and any predecessor entities unless the context suggests otherwise.

Recent Developments

In January 2006, we acquired Parker Chandler Homes, Inc., or Parker Chandler, a private homebuilder with operations in the Atlanta, Georgia, Charlotte, North Carolina and Myrtle Beach, South Carolina metropolitan areas.

Our Markets

As of December 31, 2005, we operated in the Washington, D.C. and Raleigh, North Carolina markets. We believe that the new home markets in Washington, D.C. and Raleigh, North Carolina are characterized by consistent demand and a limited supply of available housing. Based on our experience, we believe that in the home building industry, local economic trends and influences have a more significant impact on supply and demand, and therefore on profitability, than national economic trends and influences. According to the National Association of Home Builders, the Washington, D.C. and Raleigh, North Carolina metropolitan areas are each ranked in the top 25 housing markets in the country based upon single-family residential building permits issued in 2005 and the Washington, D.C. metropolitan area is ranked in the top 10 housing markets in the country based upon multi-family building permits issued in 2005.

Greater Washington, D.C. Metropolitan Market

Our current and anticipated projects for the Washington, D.C. market are in Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William and Stafford counties in Virginia, and Anne Arundel, Frederick, Howard, Montgomery, Prince Georges counties in Maryland and in the District of Columbia. Since our inception, the Washington, D.C. metropolitan area has experienced strong population and economic growth. The strength of this employment market coupled with the stability and resilience of the local economy is primarily due to the size and diversity of the federal government workforce. The presence of the federal government historically has served as a cushion for the local economy against downturns in the private sector. Recently, the Washington, D.C. market has been characterized by strong demand due to population growth, low unemployment rates and a concentration of white-collar, high-income jobs. According to the Bureau of Labor Statistics, in 2004 the professional and business services sector employed about 21.5% of the Washington, D.C. metropolitan workforce. The U.S. Chamber of Commerce found that in 2004, the Washington, D.C. market enjoyed the second highest median household income among metropolitan areas within the United States — 63% above the national median household income.

Raleigh, North Carolina Market

Our current and anticipated projects for the Raleigh, North Carolina market are in Durham, Franklin, Johnston and Wake counties, which includes the city of Raleigh. From 1990 to 2000, the Raleigh, North Carolina market was the 12th fastest growing metropolitan area in the United States and was the second fastest growing area in the Southeast in terms of population growth, according to the U.S. Census Bureau. The area experienced growth of 38.9% during that period, according to the U.S. Census Bureau. Similar to the Washington, D.C. market, the local economy in the Raleigh, North Carolina market is generally stable and less sensitive to national economic trends because of large public sector employment. Raleigh is the state capital of North Carolina. According to the Bureau of Labor Statistics, the state and local governments constitute 19.1% of the area's aggregate employment in 2005. The area is home to Research Triangle Park, a public/private, planned research park containing over nine million square feet of office space, and the headquarters of multiple technology and research companies. Duke University, the University of North Carolina-Chapel Hill and North Carolina State University are also located in the Raleigh, North Carolina market. According to the U.S. Department of Commerce, the Raleigh, North Carolina market ranked 40th among 361 metropolitan areas in 2003 in terms of per capita income, or 106.8% of the national per capita income.

Our Competitive Strengths

We believe we possess the following competitive strengths:

Committed and experienced management. We have been developing land and building for-sale residential housing since 1985 under the leadership of our current Chairman and Chief Executive Officer. Our current President and Chief Operating Officer joined us in 1991. Many of our senior executives and managers have extensive experience in the home building industry with some having over 30 years of experience and most of our senior executives having been with us for at least five years.

Public company status. As a publicly traded company we enjoy many competitive advantages over our privately held peer group. In particular, it is our belief that as a public company our access to capital affords us a pricing advantage when competing for the types of land opportunities we feel are most consistent with our primary target market segments. In addition, our public company status enhances our existing brand recognition and engenders confidence in our prospective buyers.

Attractive land position. At December 31, 2005, we owned or controlled over 4,200 lots in our markets including our backlog. In our business we define lots as individually saleable housing units. We believe that restrictions on the development of new lots in our markets have increased, and will continue to increase, the market value of our land position. Our land planning, processing and development expertise allows us to acquire land positions in various stages of the entitlement process, which we believe provides us greater

opportunities than many of our competitors. We intend to continue to utilize our land acquisition and development process to further develop an attractive land inventory.

Creative approach to land acquisition and development. We have developed a specialized, selective approach to land acquisition and development, focused on maximizing the value of each parcel. We have extensive knowledge regarding all aspects of the site selection, land planning, entitlement and development processes relative to all types of new home developments, from suburban single-family homes, townhouses and low-rise condominiums to high-rise, mixed-use urban condominium developments. We have significant experience in dealing with the governmental and regulatory authorities that govern the site development and entitlement processes. We leverage this knowledge and experience to manage development risk and create more value from the land that we acquire. Our knowledge and experience also allow us to be active in the development of urban mixed-use projects, which puts us in the position of acquiring and developing parcels of land that many of our competitors are not able to pursue.

Broad customer base and a diversified product mix. By offering a wide variety of affordably-priced products in distinctly different types of locations we serve a broad customer base including first-time, early move-up, secondary move-up, empty nester move-down and active adult home buyers. First-time and early move-up home buyers make up a significant percentage of home buyers. The ownership of a home is a high priority for a large percentage of the population in the United States. In addition, we believe the large “baby boom” population in the United States is aging and is increasing demand for secondary move-up, empty nester move-down and active adult new homes. Active adult refers to age-restricted developments that require at least one of the primary owners of the homes in the development to be at least 55 years old. As the baby boom generation ages, we believe that housing developments focused on this segment of the population will garner a larger share of the market. Our products range from traditional single-family homes, townhouses and low-rise condominiums designed for suburban settings, to contemporary townhouses and high-rise condominiums designed for urban settings, and highly amenitized buildings targeting the active adult home buyer. This product mix allows us to diversify our risks in fluctuating market conditions by ensuring that we are positioned to attract a broad segment of the home buying population. We design all of our products to be attractively priced and value oriented.

Superior quality control and customer service. We strive to provide a high level of customer service during the sales and construction process as well as after a Comstock home is sold. Our sales representatives, on-site construction supervisors and post-closing customer service personnel work as a team in an attempt to ensure a high level of customer satisfaction. Our sales staff receives extensive training in understanding the needs of the customer and assisting them in the selection of a Comstock home and mortgage program that meets their requirements. As part of our commitment to quality assurance, each Comstock home is subject to a series of 25 stringent construction quality inspections covering virtually every aspect of the construction process. Our customer service personnel are trained to promptly and thoroughly address any concerns that our customers may have and also provide our home buyers with home maintenance training and advice. We believe this high level of attention to quality assurance in the construction process and focus on our customers’ post-closing experience has earned Comstock a reputation for delivering high-quality products and excellent customer service. We believe this ultimately leads to enhanced customer satisfaction and additional sales through referrals.

Our Growth Strategy

Our business strategy is to focus on geographic areas, products and price points where we believe there is a significant demand for new housing and high profit potential. Our strategy has the following key elements:

Build in and expand with the strong growth markets within the Mid-Atlantic and Southeast regions. We believe there are significant opportunities for growth in our existing markets. We plan to maintain our business in Washington, D.C. and Raleigh, North Carolina and expand into Atlanta, Georgia to capitalize on the robust economies and continued population growth of these areas. We expect the growth in these markets to continue. We plan to utilize our strong regional presence and our extensive experience in these markets to expand our operations in both markets through acquisition of additional land, and we may acquire local home

builders whose operations would complement ours and enhance our competitive position in the marketplace. We intend to continue to expand into selected new geographic markets in the Mid-Atlantic and Southeast United States through acquisitions of other home builders that have strategic land positions, strong local management teams and sound operating principles. We expect to target new markets that have favorable demographic and economic trends where we believe we will be able to achieve sufficient scale to successfully implement our business strategy. We are currently evaluating several expansion opportunities.

Acquire and develop a land inventory with potential for above-average margins or returns. We believe that our market knowledge and experience in land entitlement and development enable us to successfully identify attractive land acquisition opportunities, efficiently manage the process of obtaining development rights and maximize land value. We have the expertise to acquire land positions in various stages of the entitlement and development process, which we believe provides us more opportunities to build land inventory than many of our competitors. We intend to continue to utilize our land acquisition and development process to further develop an attractive land inventory. As a complement to our development strategy, we will continue to grow our land inventory through acquisition of finished lots from other developers. We believe our network of relationships and broad recognition in our core markets gives us an advantage over some of our competitors in acquiring finished lots. In addition, since we can often acquire options on large numbers of finished lots with minimal deposits, this strategy allows us to cost-effectively control significant land positions with reduced risk. As such, we intend to continue to option land positions whenever possible.

Create opportunities in areas overlooked by our competitors. We believe there is a significant market opportunity for well-designed, quality homes and condominiums in urban and suburban areas in close proximity to transportation facilities. Local governments in our markets, especially the Washington, D.C. market, have modified zoning codes in response to mounting traffic concerns to allow for high-density residential development near transportation improvements. In our experience, buyers place a premium on new homes in developments within these areas. We believe that our townhouse and condominium products, along with our substantial experience in dealing with both the market and regulatory requirements of urban mixed-use developments, enable us to identify and create value in land parcels often overlooked by larger production home builders. As a result, we believe we can achieve better returns on our products than larger production home builders who are only focused on volume. We plan to continue to focus on developing and creating these opportunities within our core markets.

Focus on a broad segment of the home buying market. Our single-family homes, townhouses and condominiums are designed and priced to appeal to a wide segment of the home buying market. We serve a broad customer base including first-time, early move-up, secondary move-up, empty nester move-down and active adult home buyers. We believe first-time and early move-up home buyers are a significant portion of home buyers and have in the past, we believe, been more resistant to market downturns. We believe that the aging of the American population makes it more likely that a significant percentage of the population will continue to be attracted to secondary move-up, empty nester move-down and active adult products as well. We expect our diversified product offerings to position us to benefit from the projected population growth in our core markets and provide a degree of protection against market fluctuations.

Expand into the growing active adult market. Many localities are adopting zoning rules that encourage construction of mixed-use and active adult developments. We expect the large and aging baby boom population in the United States to fuel growth in the active adult market of the home building industry. As the baby boom generation ages, we anticipate that housing developments focused on this population will capture a larger share of the market. We believe this growing segment of the population will also likely be attracted to the urban convenience and activities available in upscale urban active adult developments. Active adult developments are often favored by local governments because they increase the tax base while requiring fewer government-funded services and infrastructure, such as schools and summer programs, as compared to traditional developments that attract families. We believe that we are well positioned to take advantage of this growing demand.

Maximize our economies of scale. We apply a production home builder approach to all of our product categories. In many instances, we utilize plans we have built numerous times which allows us to minimize cost

through value engineering resulting from previous field experience. We are also able to coordinate labor and material purchasing under bulk contracts thereby reducing unit costs. As a result, we are able to realize economies of scale in the purchase of raw materials, supplies, manufactured inputs and labor. As we expand, we will seek to maximize these benefits through purchasing arrangements with national and regional vendors.

Our Operations

We integrate the process of building a home by carefully controlling each phase of the process from land acquisition to the construction, marketing and sale of a home. During every stage of the process we manage risk and focus on products, geographic areas and price points that maximize our revenue and profit opportunities.

Land Identification and Acquisition

We believe that by controlling and managing a significant portion of our land inventory we are better able to manage our growth in accordance with our business plan.

We acquire land for our home building operations both as finished building lots and as raw land that we develop. We primarily acquire land that has vested development rights. Often we contract to purchase land from land developers that will maintain ownership of the land through the entitlement process. Similarly we often will contract to purchase finished building lots from land developers that will maintain ownership of the land through the land development process. When we purchase land in this manner we typically will provide our home building expertise to the seller in order to ensure the land is developed in a manner consistent with our plans for the project. By contracting to purchase land that is owned by the land developer during the entitlement and development process we minimize the risks associated with seeking entitlements and performing land development.

We also buy land that we develop into building lots ourselves. We generally buy undeveloped land when we are developing high-density projects because the product design is often integrated into the site development operations. We also buy land that we develop into traditional building lots when we believe the additional risk associated with developing the land is manageable and the return on investment will likely be enhanced. We routinely purchase these sites after the development rights have been secured, which eliminates or substantially reduces risks associated with seeking entitlements.

We have also engaged in the business of converting existing rental apartment properties to for-sale condominium projects. This process involves the purchase of existing structures which may be new and never occupied or may be occupied by tenants with leases of varying duration. When we purchase these properties we subdivide the units and form a condominium association. In these projects we will usually invest capital in the improvement of the common areas and exteriors. If the properties are occupied, then as the tenants' leases expire we will renovate the interiors of the apartments and then sell each apartment as an individual condominium unit. These conversion projects typically produce lower profit margins than our standard real estate development projects. However, since they take significantly less time to complete than our real estate development projects, they tend to generate higher returns on invested capital. We expect to continue to acquire condominium conversion and similar projects to the extent quality opportunities present themselves.

Our land acquisition and development process is managed by our executive land committee that includes representatives from our various business departments. This committee meets regularly to evaluate prospective land acquisitions and evaluates several factors that could affect the outcome of a project under consideration. These factors include:

- supply and absorption rates of similar new home projects;
- supply and absorption rates of existing homes in the area;
- projected equity requirements;
- projected return on invested capital;
- status of land development entitlements;
- projected net margins of homes to be sold by us;

- projected absorption rates;
- demographics, school districts, transportation facilities and other locational factors; and
- competitive market positioning.

We focus on opportunities that we believe have the potential to generate revenue on home sales as well as appreciation in land value through the application of our expertise. Many of the sites we select may be overlooked by large, national competitors due to the complexity of zoning and entitlement issues or other development characteristics of the site. Our acquisition due diligence process involves a high level of scrutiny which includes a variety of analyses, including land title examination, applicable zoning evaluations, environmental analysis, soil analysis, utility availability studies, and marketing studies that review population and employment trends, school districts, access to regional transportation facilities, prospective home buyer profiles, sales forecasts, projected construction costs, labor and material availability, assessment of political risks and other factors.

Land Entitlement and Development

We manage development opportunities and risks through our entitlement process.

We have extensive knowledge and experience in all aspects of the site selection, land planning, entitlement and land development processes. Specifically, we have significant experience in dealing with the governmental and regulatory authorities that govern the site selection, development and zoning processes. Entitlement is the process by which a local government determines the density it will permit to be developed on a particular property. Entitlements and development permits are often obtained through negotiations with local governmental authorities. This process often involves consultation with various parties, including the local homeowner associations, federal governmental agencies and environmental protection groups. Infrastructure improvements, such as sewers, roads, utilities and transportation improvements are often required to be built in connection with the development of a parcel of land.

Our experience and knowledge allow us to effectively negotiate with all concerned parties in an attempt to ensure the costs of the improvements associated with obtaining entitlements are commensurate with the development potential of the subject property. We can quickly assess the likely approvals on a particular property in the early stages of our due diligence process. As a result, we can control the details of development, from the design of each community entryway to the placement of streets, utilities and amenities, in order to efficiently design a development that we expect will improve our ability to maximize the potential return on our investment in the property. We seek to manage development risk by acquiring options to purchase properties after the approval of the necessary entitlements, while assuming control of their entitlement process, thereby deferring acquisition of the property until all necessary entitlements are obtained.

At times, we may sell lots and parcels within our developments to other home builders. This enables us to create a more well-rounded community. As of December 31, 2005, we controlled over 4,200 building lots in our market. With respect to our inventory, we strive to own approximately 50% of the building lots and controlled the balance of the building lots through option or deferred settlement contracts. Accordingly, we are able to reduce the risk associated with ownership of the land in our inventory. We expect to expand our inventory of building lots through additional acquisitions of finished building lots and development sites.

Sales, Marketing and Production

We have a wide variety of product lines and custom options for our products that enable us to meet the specific needs of each of our markets and each of our home buyers. We believe that our diversified product strategy enables us to best serve a wide range of home buyers and adapt quickly to changing market conditions. We continually reevaluate and improve upon our existing product designs and develop new product offerings to keep up with changing consumer demands and emerging market trends.

Our single-family homes range in size from approximately 2,000 square feet to over 6,000 square feet with target pricing from the \$200,000s to the \$900,000s. Our townhouses range in size from approximately 1,200 square feet to over 4,500 square feet and are typically priced from the \$200,000s to the \$600,000s.

Unlike many of our traditional home building competitors, we also design, sell and build mid-rise and high-rise condominiums. We believe that our condominium products are particularly well-suited to the high-density, infill and active adult home buyer market. Our condominiums range in size from approximately 400 square feet to over 2,400 square feet and are priced from the \$100,000s to the \$800,000s. Our average new order price overall product types, for the year ended December 31, 2004 was \$369,000 and \$359,000 for the year ended December 31, 2005.

We typically act as the general contractor in the construction of our single-family homes, townhouses and mid-rise condominium buildings. On projects where we offer these product lines our employees provide land development management, construction management, material purchasing and quality control supervision on the homes we build. Substantially all construction work on these types of projects is done by subcontractors that contract directly with us and with whom we typically have an established relationship. On our high-rise and mixed-use developments where we typically build concrete structures, we engage a general contractor for the site preparation and construction management, and typically we have a fixed price or a gross maximum price contract with the selected bonded general contractor. In these instances the subcontractors that perform the construction work are typically contracted directly with the general contractor that we select. On projects where we offer these product lines our employees provide land development oversight management, construction quality supervision and construction management services. In all instances we follow generally accepted management procedures and construction techniques which are consistent with local market practices. We believe that we comply with local and state building codes on all of our developments.

We seek to obtain favorable purchasing arrangements with our vendors and subcontractors using our leverage as a production home builder. We typically enter into forward contracts with our vendors for the construction materials used in building our homes. This process allows us to manage the pricing risk associated with fluctuating prices for the materials, such as lumber. We do not have long-term contracts with our subcontractors but in general we have contracts that fix the price of work being provided on homes that have been sold.

We primarily build our single-family homes after contracts are signed and mortgage approval has been obtained by the home buyer. We generally begin construction of our townhouses and condominiums after we have obtained customer commitments for a significant percentage of the units in the building. Depending on the market conditions and the specific community, we may also build speculative homes. Most of these homes are sold while under construction or are used as model homes during the marketing phase of the project. We closely monitor our inventory of speculative units applying a measured approach to unit production in keeping with sales absorption. On occasion we will sell a completed model home to a third party investor purchaser who is willing to lease back the home to us for use during the marketing phase of a project.

To facilitate the sale of our products, we normally build, decorate, furnish and landscape model homes for each product line and maintain onsite sales offices. In most cases, we employ in-house commissioned sales personnel to sell our homes. On occasion we will contract for marketing services with a third party brokerage firm. All personnel engaged in the sale of Comstock homes receive extensive training in the sales process. We strive to provide a high level of customer service during the sales process. Through relationships that we have created with our preferred mortgage lenders and utilization of a proprietary custom marketing program, we are able to help our customers prepare for home ownership and obtain a mortgage tailored to their specific needs.

Our NextHome™ programs are designed to assist our customers in many aspects of purchasing a Comstock home, as follows:

- DownRight™ — a program designed to help identify ways to meet the down payment requirements of a new home purchase;
- Tailor Made™ — a program with unique financing products and agreements with major lenders that tailor a monthly payment in order to make home ownership affordable in any interest rate climate;
- Get It Sold™ — a program designed to help our customers sell their current home quickly and efficiently in order to facilitate their purchase of a new Comstock home;

- All@Home™ — a program enabling our customers to design technology solutions for their new Comstock home to meet their individual specifications;
- Built Right™ — a quality assurance program incorporating quality assurance inspections with high-quality materials; and
- Home Style™ — an optional upgrade program providing hundreds of options to choose from to customize a new Comstock home to suit the specific desires of our customers.

All personnel involved in the sale of our homes receive extensive training on the product they are selling. In addition, our sales professionals are trained on the specialized programs offered by us in connection with the purchasing, customizing and financing of a Comstock home and the warranty we provide. We employ in-house commissioned sales personnel to sell our homes. We employ our sales personnel on a long-term basis, rather than a project-by-project basis, which we believe results in a more committed and motivated sales force with better product knowledge. We believe that this has a positive impact on sales and conversion.

Division managers are responsible for developing marketing objectives, sales strategies, and advertising and public relations programs for their assigned communities. These objectives, strategies and home pricing decisions are subject to approval by senior management. We typically build, decorate, furnish and landscape model homes for each product line and maintain onsite sales offices, which are open seven days a week. We believe that model homes play a critical role in our marketing efforts.

Our homes are typically sold before or during construction through sales contracts that are accompanied by a cash deposit. Such sales contracts are usually subject to certain contingencies such as the home buyer's ability to qualify for financing. Cancellation rates are subject to a variety of factors beyond our control such as adverse economic conditions and increases in mortgage interest rates.

In late 2005 we began design and build-out on an innovative and unique sales center located in Reston, Virginia. Unlike the typical builder design center, this facility is designed to support cross-product and cross-community shopping in one central location. In the Comstock Sales Center, slated to open in April 2006, prospects will be able to see multiple Comstock home sites, arrange for financing and shop for options all in one location. While this location will not replace on-site models, it will provide a permanent location where projects can be previewed and prospects can be introduced to the Comstock experience.

Our Communities

We currently have communities under development in Arlington, Fairfax, Loudoun and Prince William counties in Virginia. In Maryland we are currently active in Frederick County. In North Carolina we have

active communities in Wake County. The following chart summarizes certain information for our current and planned communities at December 31, 2005:

As of December 31, 2005								
Project	Status(1)	Estimated Units at Completion	Units Settled	Backlog(2)	Lots Owned Unsold	Lots under Option Agreement Unsold	Average Sales Price	
Virginia								
Barrington Park	Active	148	—	2	146	—	\$	279,900
Commons at Bellemeade	Active	316	21	8	287	—	\$	211,096
Blooms Mill TH 22'	Active	113	83	3	27	—	\$	421,875
Blooms Mill Carriage	Active	91	75	10	6	—	\$	453,926
Commons on Potomac Sq	Active	192	—	19	173	—	\$	233,708
Commons on Williams Sq	Active	180	56	12	112	—	\$	356,269
Countryside	Active	102	53	5	44	—	\$	288,471
The Eclipse on Center Park	Active	465	—	390	75	—	\$	399,723
Penderbrook	Active	424	180	3	241	—	\$	251,893
River Club at Belmont Bay 5	Active	84	70	3	11	—	\$	461,451
Woodlands at Round Hill	Active	46	17	8	21	—	\$	747,921
Total VA Active and Completed		2,161	555	463	1,143	—	\$	373,294
Total VA Active and Completed Weighted Avg(3)							\$	324,560
Aldie Singles	Development	15	—	—	—	15		n/a
Blakes Crossing	Development	130	—	—	130	—		n/a
Brandy Station	Development	350	—	—	—	350		n/a
Commons on The Park	Development	258	—	—	—	258		n/a
Lake Pelham	Development	185	—	—	—	185		n/a
Loudoun Station Condominiums	Development	484	—	—	—	484		n/a
Beacon Park at Belmont Bay	Development	600	—	—	—	600		n/a
Total VA Development		2,022	—	—	130	1,892		
Total Virginia		4,183	555	463	1,273	1,892		
Maryland								
Emerald Farm	Active	84	67	3	14	—	\$	447,291
Total Maryland		84	67	3	14	—		
North Carolina								
Allyn's Landing	Active	117	12	3	102	—	\$	212,685
Beckett Crossing	Completed	115	115	—	—	—	\$	315,024
Delta Rdge II Townhomes	Completed	41	41	—	—	—	\$	173,906
Kelton at Preston	Active	56	28	2	26	—	\$	307,536
Wakefield Plantation	Active	77	31	3	43	—	\$	474,955
Total North Carolina Active		406	227	8	171	—	\$	296,821
Total North Carolina Active Weighted Average(3)							\$	300,580
Holland Road	Development	81	—	—	—	81		n/a
Total North Carolina Development		81	—	—	—	81		
Total North Carolina		487	227	8	171	81		
TOTAL ACTIVE AND COMPLETED		2,651	849	474	1,328	—		
TOTAL DEVELOPMENT		2,103	—	—	130	1,973		
TOTAL		4,754	849	474	1,458	1,973		
Joint Ventures								
North Shore Condominiums	Active	196	—	7	189	—	\$	286,361
North Shore Townhomes	Active	163	33	7	123	—	\$	239,107
Total Joint Ventures		359	33	14	312	—		
GRAND TOTAL		5,113	882	488	1,770	1,973		

Key — for purposes of this chart:

- (1) “Active” communities are open for sales. “Development” communities are in the development process and have not yet opened for sales.
- (2) “Backlog” means we have an executed order with a buyer, inclusive of lot sales, but the settlement has not yet taken place.
- (3) Weighted average is calculated as total estimated homes at completion for projects with average sales prices multiplied by average sales price divided by total of estimated homes at completion (i.e.: $S (\text{estimated homes at completion} \times \text{average sales price}) \div S \text{ estimated homes at completion}$).

Virginia

Barrington Park is a 148-unit mid-rise, walk-up, garden style condominium development in Manassas Park, Virginia. We completed the acquisition of the land in late 2005. The project opened for sales in late 2005 with settlements expected to begin in late 2006 and continue into 2008.

Commons at Bellemeade is a 316-unit condominium conversion located in Leesburg, Virginia. We acquired the property in September 2005 and immediately began the process of sub-dividing the units into condominiums. We have begun the process of renovating the common areas and the unit interiors. We opened the project for sales to existing tenants in October 2005 and to the general public in November 2005. The project began settling units in late 2005 and is expected to continue settling units into 2007.

Blooms Mill is a 377-unit development in Manassas, Virginia. This development offered a mix of single-family homes, attached carriage homes and townhouses. The development offers amenities that include a community club, swimming pool and “family friendly” street plan all in a traditional village setting. At December 31, 2005, the single family homes were sold out and delivered. This project is expected to continue settling townhouses and carriage homes into the first half of 2006 and be completed by the end of 2006.

Commons on Potomac Square is a 192-unit mid-rise condominium complex in Loudoun County, Virginia. The complex will consist of up to four buildings. The project is positioned for first-time homeowners and is intended to offer significant appeal to renters in the market seeking to move up to home ownership. Sales opened in late 2004 with the first settlements expected in 2006 and the balance of the settlements expected in late 2006 or 2007.

Commons on William Square is a 180-unit two-over-two townhouse condominium development in Prince William County, Virginia. The project was originally designed to accommodate a mid-size apartment complex. Based on our understanding of zoning and our creative approach to land use, our land development group redesigned the project to maximize available density using a unique, stacked townhouse product. Sales opened in the fourth quarter of 2004 and settlements began in the second half of 2005 and will continue throughout 2006 and into 2007.

Countryside is a 102-unit apartment complex in Sterling, Virginia that we are converting to condominiums. We acquired the property in March 2005. We have completed improvements to the common areas and exteriors of the buildings. Sales opened during the third quarter of 2005 with settlements beginning in the fourth quarter 2005 and continuing throughout 2006.

The Eclipse on Center Park is a 465-unit high-rise condominium complex in Arlington County, Virginia. Located at Potomac Yard, just minutes from downtown Washington, D.C., the Pentagon and Reagan National Airport, the Eclipse is designed as an upscale, urban-style mixed-use complex with residential condominiums being built above an 80,000 square foot retail complex that will host a grocery store and other convenience oriented retailers. Upper floors will have views of the Potomac River and the monuments in Washington, D.C. Sales for Phase I opened in the second quarter of 2004. Sales for Phase II are planned for February 2006. Settlements are projected to begin in the second half of 2006 continuing into the first half of 2007.

Penderbrook Square is a 424-unit rental apartment complex which we are converting to condominiums in the Fair Oaks area of Fairfax County, Virginia. We acquired the property in February 2005. We are making a significant investment in renovations at this project including common areas, building exteriors and units heating systems. Sales opened in April 2005 with settlements beginning in June 2005 and continuing throughout 2006 and 2007.

River Club at Belmont Bay 5 is a three-building, 84-unit condominium development located at the convergence of the Potomac and Occoquan Rivers at Belmont Bay in Woodbridge, Virginia. The project has an 18-hole golf course, full-service marina and a Virginia Rail Express commuter train station on site. The project consists of three 28-unit upscale mid-rise concrete condominium buildings with open rooftop decks overlooking the water and the golf course. Settlements began in 2005 and will continue throughout 2006 and possibly into 2007.

Woodlands at Round Hill is located in western Loudoun County, Virginia, one of the fastest growing counties in the United States. This large lot single-family home development had 65 lots of three or more acres each. We are acting as the developer of the site, and we are currently building road and utility infrastructure for the home sites. This project opened for sales in 2004. Settlements began in early 2005 and will continue into 2007. In September 2005, we sold 19 lots to another homebuilder.

Aldie Singles is currently a 15-unit in development in Aldie, Virginia. The community was planned to have 15 single family homes on 3 acre and above home sites. At December 31, 2004 the project was under contract. The project is expected to be ready to open for sales in 2007 with settlements expected to begin in late 2007.

Blakes Crossing is a parcel we own in Culpeper, Virginia designed for 130-unit townhouses. We are currently evaluating the possibility of selling the parcel for commercial development. If retained, the project is scheduled to open for sales in late 2008 or early 2009.

Brandy Station is a 350-unit single-family home development in Culpeper, Virginia. The project is currently under contract while we manage it through the entitlement process. We will close on the property when approvals have been received. We expect to open for sales in 2007.

Commons on the Park (formerly Carter Lake) is a 258-unit condominium conversion project in Reston, Virginia. At September 30, 2005 the project was under contract. We settled on the project in January 2006 with sales to commence in the second quarter of 2006 and settlements to commence in the second half of 2006 continuing in late 2007 or early 2008.

Lake Pelham is a single family home community in Culpeper, Virginia. We are acting as the land developer and homebuilder for the community. We expect to settle on the land in 2006 with sales opening in late 2006. Settlements are projected to commence in 2007 and continue through 2009.

Loudoun Station Condominiums is a being planned as an up to 484 unit mid-rise condominium complex located in Ashburn, Virginia. The project is part of a high-density, transit-oriented, mixed-use development which is modeled after the successful Reston Town Center in Reston, Virginia. When completed, Loudoun Station will be at the terminus of the planned Metro extension past Washington Dulles International Airport and will have an approximately 1,500 for-sale and rental residential units. Loudoun Station will also have over one million square feet of retail and commercial space. Sales of our condominiums are expected to begin in early 2007.

Beacon Park at Belmont Bay is planned as a 600-unit active adult condominium community located at the convergence of the Potomac and Occoquan Rivers at Belmont Bay in Woodbridge, Virginia. This development is designed as a combination of nine- and five-story buildings with open rooftop decks overlooking the water and golf course. The project will be deed-restricted such that one of the buyers for each unit must be 55 years of age or older and will include active adult lifestyle amenities, such as a health and wellness center, a business center, guest accommodations and swimming pools. Sales are expected to begin in 2006 and continue through 2009.

Maryland

Emerald Farm is an 84-unit development of single-family homes in Frederick, Maryland. The development is conveniently located near major transportation routes. Frederick, Maryland recently abated a water moratorium that had shut down development in the area. Since the abatement, the demand for new housing in Frederick is extremely strong. The project has been open for sales since 2000 and is expected to be completed in late 2006 or early 2007.

North Carolina

Allyn's Landing is a 117-unit townhouse development located in the heart of Raleigh, North Carolina near Research Triangle Park and the Raleigh-Durham International Airport. The project overlooks an eight-acre lake and includes amenities such as a fountain, gazebo, walking trails and canoe rack. The project is currently open for sales and is delivering homes. Deliveries are expected to continue into 2008.

Beckett Crossing is a 115-unit development located in Apex, North Carolina consisting of single-family homes situated on large wooded lots. The project is sold out and has delivered all homes.

Delta Ridge II is a 41-unit townhouse development located in Raleigh, North Carolina. The development is close to Research Triangle Park and the trails of Umstead State Park. The project is sold out and has delivered all homes.

Kelton at Preston is a 56-unit upscale townhouse development in the prestigious Kelton golf course community of Cary, North Carolina. This community has three 18-hole courses, a swimming complex and a clubhouse with fitness, tennis and dining facilities. Many of our home sites have golf course views. This project is currently open for sales and is delivering homes. Deliveries are expected to continue into 2008.

Wakefield Plantation is a 77-unit development in Raleigh, North Carolina consisting of townhouses and carriage homes. Our unique carriage homes at Wakefield are attached homes with as much as 5,300 square feet of finished living space in three-and four-unit configurations with two-car garages and interior court yards. Many of the homes are lakefront and with golf course views. Home buyers at Wakefield qualify for social membership in the Wakefield Country Club, which offers amenities such as fine dining, swimming pools, tennis and golf. This project is currently open for sales and is delivering homes. Deliveries are expected to continue into late 2007 or early 2008.

Holland Road is a 81-unit development in Raleigh, North Carolina which is expected to close in April 2006. The project will offer single family homes and is scheduled to open for sales in 2006 with deliveries beginning in late 2006.

North Shore is a unique community located on the Centennial Campus of North Carolina State University. It consists of 163 townhouses and 196 mid-rise condominium units. The mid-rise condominium residences are five-story elevator buildings with structured garage parking. The townhouse residences feature four finished levels, private garages, a rear deck and a rooftop terrace. Designed as an urban-style neighborhood with rear alleys, North Shore, which is minutes from downtown Raleigh and Research Triangle Park, is situated on the shore of Lake Raleigh. This project is currently open for sales. This project is owned through a 50/50 joint venture with Raleigh Property Group II, LLC and as such is reported through the equity method and excluded from our home building revenue and backlog. (See Note 7 of notes to our consolidated and combined financial statements as of December 31, 2005).

Warranty

We provide our single-family and townhouse home buyers with a one-year limited warranty covering workmanship and materials. The limited warranty is transferable to subsequent buyers not under direct contract with us and requires that home buyers agree to the definitions and procedures set forth in the warranty. Our condominium home buyers typically have a statutory two-year warranty on their purchases. In addition, we provide a five-year structural warranty pursuant to statutory requirements. From time to time, we

assess the appropriateness of our warranty reserves and adjust future accruals as necessary. When deemed appropriate by us, we will accrue additional warranty reserves. We self-insure all of our warranties.

Competition

The real estate development and home building industries are highly competitive and fragmented. Competitive overbuilding in local markets, among other competitive factors, could materially adversely affect home builders in those markets. Home builders compete for financing, raw materials and skilled labor, as well as for the sale of homes. Additionally, competition for prime properties is intense and the acquisition of such properties may become more expensive in the future to the extent demand and competition increase. We compete with other local, regional and national real estate companies and home builders. Some of our competitors have greater financial, marketing, sales and other resources than we have.

The principal competition we faced in each of our markets, as of December 31, 2005, was as follows:

- *Washington, D.C.* In the greater Washington, D.C. metropolitan market we compete against approximately 15 to 20 publicly-traded national home builders, approximately 10 to 15 privately-owned regional home builders, and many local home builders, some of whom are very small and may build as few as five to 25 homes per year.
- *Raleigh, North Carolina.* In the Raleigh, North Carolina market we compete against approximately 10 to 15 publicly-traded national home builders, approximately 10 to 15 privately-owned regional home builders, and a large number of small, local home builders.

We do not compete against all of the builders in our geographic markets in all of our product types or submarkets, as some builders focus on particular types of projects within those markets, such as large estate homes, that are not in competition with our communities. We believe the factors that home buyers consider in deciding whether to purchase from us include the location, value and design of our products. We believe that we typically build attractive, innovative products in sought-after locations that are perceived as good values by customers. Accordingly, we believe that we compare favorably on these factors.

Regulation

We and our competitors are subject to various local, state and federal statutes, ordinances, rules and regulations concerning zoning, building design, construction and similar matters, including local regulation, which imposes restrictive zoning and density requirements in order to limit the number of homes that can ultimately be built within the boundaries of a particular project. We and our competitors may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or “slow-growth” or “no-growth” initiatives that could be implemented in the future in the states in which we operate. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction.

We and our competitors are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning protection of the environment. Some of the laws to which we and our properties are subject may impose requirements concerning development in waters of the United States, including wetlands, the closure of water supply wells, management of asbestos-containing materials, exposure to radon, and similar issues. The particular environmental laws that apply to any given community vary greatly according to the community site, the site’s environmental conditions and the present and former uses of the site. These environmental laws may result in delays, may cause us and our competitors to incur substantial compliance and other costs, and may prohibit or severely restrict development in certain environmentally sensitive regions or areas. However, environmental laws have not, to date, had a material adverse impact on our operations.

We also compete with resale of existing homes and condominiums and available rental housing.

Technology

We are committed to the use of Internet-based technology for managing our business and communicating with our customers. For customer relationship management, we use Builder's Co-Pilot™, a management information system that was custom developed in accordance with our needs and requirements. This system allows us to integrate our field and office operations as well as to track the progress of construction on each of our projects. In addition, this system allows online and collaborative efforts between our sales and marketing functions. We believe real-time access to our construction progress and our sales and marketing data and documents through our systems increases the effectiveness of our sales and marketing efforts as well as management's ability to monitor our business. Through our Web site, www.comstockhomebuilding.com, our prospects receive automatic electronic communications from us on a regular basis. We believe this application of technology has greatly enhanced our conversion rates.

In February 2006 we contracted to license JD Edwards software from Oracle to manage our accounting and purchasing. We expect the conversion to the JD Edwards software to be completed during 2006.

Intellectual Property and Other Proprietary Rights

We rely primarily on a combination of copyright, trade secret and trademark laws to protect our proprietary rights. We do not own the "Comstock" brand or trademark. Christopher Clemente owns the "Comstock" brand and trademark and has licensed them to us under a perpetual, royalty-free license agreement. We have filed a U.S. federal trademark application with respect to "Comstock Homes Worthy of the Investment" and we will file a U.S. federal trademark application with respect to "Comstock Homebuilding Companies." We believe the strength of these trademarks benefits our business.

Employees

At December 31, 2005, we had approximately 130 full-time and part-time employees. Our employees are not represented by any collective bargaining agreement and we have never experienced a work stoppage. We believe we have good relations with our employees.

Executive Officers

Our executive officers and other management employees and their respective ages and positions as of December 31, 2005 are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Christopher Clemente*	45	Chairman and Chief Executive Officer
Gregory V. Benson*	51	President, Chief Operating Officer and Director
Bruce J. Labovitz*	37	Chief Financial Officer
William P. Bensten	58	Senior Vice President
Jason Parikh*	34	Chief Accounting Officer
David D. Howell	55	Vice President — Market Development
Jubal R. Thompson	36	General Counsel and Secretary

* Section 16 officers.

Executive Officers and Key Employees

Christopher Clemente founded Comstock in 1985 and has been director since May 2004. Since 1992, Mr. Clemente has served as our Chairman and Chief Executive Officer. Mr. Clemente has over 20 years of experience in all aspects of real estate development and home building, and 25 years of experience as an entrepreneur.

Gregory V. Benson joined us in 1991 as President and Chief Operating Officer and has been director since May 2004. Mr. Benson is also a member of our board of directors. Mr. Benson has over 30 years of home

building experience including over 13 years at national home builders, including NVHomes, Ryan Homes and Centex Homes.

Bruce J. Labovitz has served as our Chief Financial Officer since January 2004, after serving as our Vice President — Finance from April 2002 to January 2004 and Vice President — Investment Finance from January 2002 to April 2002. From June 2001 to January 2002, Mr. Labovitz was a Vice President of Viking Communications, a telecommunications company. From November 2000 to June 2001, Mr. Labovitz was the President, Marketing & Services of Inlec Communications, a telecommunications company. Prior to that, from May 1996 to November 2000, Mr. Labovitz was Executive Vice President/ Chief Operating Officer of BMK Advertising, an advertising agency.

William P. Bensten has served as our Senior Vice President since November 2004 and as our Vice President — Business Development from December 2003 to November 2004, after serving as our Vice President — Land Acquisition from 1995 to 2003. During 1997 and 1998 Mr. Bensten served as our division manager of our Raleigh, North Carolina division and was responsible for opening the division. Mr. Bensten has over 30 years of experience in the home building industry, including serving in various positions with Centex Homes, a national home builder, and Charter Communities.

Jason Parikh has served as our Chief Accounting Officer since April 2004. Mr. Parikh was Chief Financial Officer and Secretary of On-Site Sourcing, Inc. from May 2000 to April 2004 and Controller from July 1997 to May 2000. From July 1994 until July 1997, Mr. Parikh was Controller of Shirt Explosion Inc., a clothing manufacturer.

David D. Howell has served as our Vice President — Market Development since August 2004. Prior to that, from July 2000 to July 2004, Mr. Howell served as Vice President — Comstock Homes of Washington. From 1995 to March 2000, Mr. Howell was a Division President with M/ I Homes, Inc., a national home builder. Prior to that Mr. Howell spent several years as division manager at Ryan Homes.

Jubal R. Thompson has served as our General Counsel since October 1998 and our Secretary as of December 2004. From April 2002 to April 2003, Mr. Thompson also served as our Vice President — Finance. From 1995 to 1998, Mr. Thompson was associated with Robert Weed & Associates, PLLC, a law firm.

Other Information

We file annual, quarterly, and current reports, proxy statements, and other documents with the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934 (the “Exchange Act”). The public may read and copy any materials that we file with the SEC at the SEC’s Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

We also make available, free of charge, at our Internet website located at www.comstockhomebuilding.com, our annual reports on Form 10-K, our proxy statements, our quarterly reports on Form 10-Q, and our current reports on Form 8-K as well as Form 3, Form 4, and Form 5 Reports for our directors, officers, and principal stockholders, together with amendments to those reports filed or furnished pursuant to Section 13(a), 15(d), or 16 under the Exchange Act. These reports are available as soon as reasonably practicable after their electronic filing with the Securities and Exchange Commission.

CAUTIONARY NOTES REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements contained in this report include forward-looking statements. 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 including certain risks described

in this report. When considering those forward-looking statements, you should keep in mind the risks, uncertainties and other cautionary statements made in this report. 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 markets in which we operate; 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.

Many of these factors are beyond our control. For a discussion of factors that could cause actual results to differ, please see the discussion in this report under the heading "Risk Factors" in Item 1A.

Item 1A. Risk Factors

Risks Relating to Our Business

We engage in construction and real estate activities which are speculative and involve a high degree of risk.

The home building industry is speculative and is significantly affected by changes in economic and other conditions, such as:

- employment levels;
- availability of financing;
- interest rates; and
- consumer confidence.

These factors can negatively affect the demand for and pricing of our homes and our margin on sale. We are also subject to a number of risks, many of which are beyond our control, including:

- delays in construction schedules;
- cost overruns;
- changes in governmental regulations (such as slow- or no-growth initiatives);
- increases in real estate taxes and other local government fees;
- labor strikes;
- transportation costs for delivery of materials; and
- increases and/or shortages in raw materials and labor costs.

Fluctuations in market conditions may affect our ability to sell our land and home inventories at expected prices, if at all, which could adversely affect our revenues, earnings and cash flows.

We are subject to the potential for significant fluctuations in the market value of our land and home inventories. We must constantly locate and acquire new tracts of undeveloped and developed land to support our home building operations. There is a lag between the time we acquire control of undeveloped land or developed home sites and the time that we can bring the communities built on that land to market and deliver our homes. This lag time varies from site to site as it is impossible to determine in advance the length of time it will take to obtain governmental approvals and building permits. The risk of owning undeveloped land, developed land and homes can be substantial. The market value of undeveloped land, buildable lots and housing inventories can fluctuate significantly as a result of changing economic and market conditions.

Inventory carrying costs can be significant and can result in losses in a poorly performing development or market. Material write-downs of the estimated value of our land and home inventories could occur if market conditions deteriorate or if we purchase land or build home inventories at higher prices during stronger economic periods and the value of those land or home inventories subsequently declines during weaker economic periods. We could also be forced to sell homes, land or lots for prices that generate lower profit than we anticipate, or at a loss, and may not be able to dispose of an investment in a timely manner when we find dispositions advantageous or necessary. Furthermore, a decline in the market value of our land or home inventories may give rise to a breach of financial covenants contained in one or more of our credit facilities, which could cause a default under those credit facilities.

Home prices and sales activities in the Washington, D.C. and Raleigh, North Carolina geographic markets have a large impact on our profitability because we conduct substantially all of our business in these markets.

Home prices and sales activities in the Washington, D.C. and Raleigh, North Carolina geographic markets have a large impact on our profitability because we conduct substantially all of our business in these markets. Recently these markets have begun to exhibit signs of decreasing consumer demand. Although demand in these geographic areas historically has been strong, increased rates of home price appreciation may reduce the likelihood of consumers seeking to purchase new homes which would likely have a negative impact on the pace at which we receive orders for new homes. This could adversely affect our results of operations and cash flows.

Because our business depends on the acquisition of new land, the potential limitations on the supply of land could reduce our revenues or negatively impact our results of operations and cash flows.

Due to increased demand for new homes, we have experienced an increase in competition for available land and developed home sites in the Washington, D.C. and Raleigh, North Carolina markets. In these markets, we have experienced competition for home sites from other, sometimes better capitalized, home builders. In the Raleigh, North Carolina market, we have recently experienced competition from large, national home builders entering the market. Our ability to continue our home building activities over the long term depends upon our ability to locate and acquire suitable parcels of land or developed home sites to support our home building operations. As competition for land increases, the cost of acquiring it may rise, and the availability of suitable parcels at acceptable prices may decline. The increased cost of land requires us to increase the prices of our homes. This increased pricing could reduce demand for our homes and, consequently, reduce the number of homes we sell and lead to a decrease in our revenues, earnings and cash flows.

Our business is subject to governmental regulations that may delay, increase the cost of, prohibit or severely restrict our development and home building projects and reduce our revenues and cash flows.

We are subject to extensive and complex laws and regulations that affect the land development and home building process, including laws and regulations related to zoning, permitted land uses, levels of density (number of dwelling units per acre), building design, access to water and other utilities, water and waste disposal and use of open spaces. In addition, we and our subcontractors are subject to laws and regulations relating to worker health and safety. We also are subject to a variety of local, state and federal laws and regulations concerning the protection of health and the environment. In some of our markets, we are required to pay environmental impact fees, use energy saving construction materials and give commitments to provide certain infrastructure such as roads and sewage systems. We must also obtain permits and approvals from local authorities to complete residential development or home construction. The laws and regulations under which we and our subcontractors operate, and our and their obligations to comply with them, may result in delays in construction and development, cause us to incur substantial compliance and other increased costs, and prohibit or severely restrict development and home building activity in certain areas in which we operate. If we are unable to continue to develop communities and build and deliver homes as a result of these restrictions or if our compliance costs increase substantially, our revenues, earnings and cash flows may be reduced.

Cities and counties in which we operate have adopted, or may adopt, slow or no-growth initiatives that would reduce our ability to build and sell homes in these areas and could adversely affect our revenues, earnings and cash flows.

From time to time, certain cities and counties in which we operate have approved, and others in which we operate may approve, various “slow-growth” or “no-growth” initiatives and other similar ballot measures. Such initiatives restrict development within localities by, for example, limiting the number of building permits available in a given year. Approval of slow- or no-growth measures could reduce our ability to acquire land, obtain building permits and build and sell homes in the affected markets and could create additional costs and administration requirements, which in turn could have an adverse effect on our revenues, earnings and cash flows.

Increased regulation in the housing industry increases the time required to obtain the necessary approvals to begin construction and has prolonged the time between the initial acquisition of land or land options and the commencement and completion of construction. These delays increase our costs, decrease our profitability and increase the risks associated with the land inventories we maintain.

Municipalities may restrict or place moratoriums on the availability of utilities, such as water and sewer taps. If municipalities in which we operate take actions like these, it could have an adverse effect on our business by causing delays, increasing our costs or limiting our ability to build in those municipalities. This, in turn, could reduce the number of homes we sell and decrease our revenues, earnings and cash flows.

Our ability to sell homes, and, accordingly, our results of operations, will be affected by the availability of financing to potential home buyers.

Most home buyers finance their purchases through third-party mortgage financing. Real estate demand is generally adversely affected by:

- increases in interest rates and/or related fees;
- increases in real estate transaction closing costs;
- decreases in the availability of mortgage financing;
- increasing housing costs;
- unemployment; and
- changes in federally sponsored financing programs.

Increases in interest rates or decreases in the availability of mortgage financing could depress the market for new homes because of the increased monthly mortgage costs or the unavailability of financing to potential home buyers. Even if potential home buyers do not need financing, increases in interest rates and decreased mortgage availability could make it harder for them to sell their homes. This could adversely affect our operating results and financial condition.

The competitive conditions in the home building industry could increase our costs, reduce our revenues and earnings and otherwise adversely affect our results of operations and cash flows.

The home building industry is highly competitive and fragmented. We compete in each of our markets with a number of national, regional and local builders for customers, undeveloped land and home sites, raw materials and labor. For example, in the Washington, D.C. market, we compete against approximately 15 to 20 publicly-traded national home builders, approximately 10 to 15 privately-owned regional home builders, and many local home builders, some of whom are very small and may build as few as five to 25 homes per year. We do not compete against all of the builders in our geographic markets in all of our product types or submarkets, as some builders focus on particular types of projects within those markets, such as large estate homes, that are not in competition with our projects.

We compete primarily on the basis of price, location, design, quality, service and reputation. Some of our competitors have greater financial resources, more established market positions and better opportunities for land and home site acquisitions than we do and have lower costs of capital, labor and material than us. The competitive conditions in the home building industry could, among other things:

- make it difficult for us to acquire suitable land or home sites in desirable locations at acceptable prices and terms, which could adversely affect our ability to build homes;
- require us to increase selling commissions and other incentives, which could reduce our profit margins;
- result in delays in construction if we experience delays in procuring materials or hiring trades people or laborers;
- result in lower sales volume and revenues; and
- increase our costs and reduce our earnings.

We also compete with resales of existing homes and condominiums and available rental housing. An oversupply of competitively priced resale or rental homes in our markets could adversely affect our ability to sell homes profitably.

Our business is concentrated in a few geographic areas which increases our exposure to localized risks.

We currently develop and sell homes principally in the Washington, D.C. and Raleigh, North Carolina. Our limited geographic diversity means that adverse general economic, weather or other conditions in either of these markets could adversely affect our results of operations and cash flows or our ability to grow our business.

Our growth strategy to expand into new geographic areas poses risks.

We may expand our business into new geographic areas outside of the Washington, D.C. and Raleigh, North Carolina markets. We will face additional risks if we develop communities in geographic areas or climates in which we do not have experience or if we develop a different size or style of community than those currently being developed, including:

- adjusting our construction methods to different geographies and climates;
- obtaining the necessary construction materials and labor in sufficient amounts and on acceptable terms;
- obtaining necessary entitlements and permits under unfamiliar regulatory regimes;
- attracting potential customers in a market in which we do not have significant experience; and
- the cost of hiring new employees and increased infrastructure costs.

We may not be able to successfully manage the risks of such an expansion, which could have a material adverse effect on our revenues, earnings, cash flows and financial condition.

We may not be able to successfully identify, complete or integrate acquisitions.

As part of our business strategy, we expect to continue to review acquisition prospects in our existing markets and in new markets in the Mid-Atlantic region or elsewhere that would complement our existing business, or that might otherwise offer growth opportunities. The identification, underwriting and negotiation of such deals is an ongoing process. We are currently engaged in either discussions, negotiation or due diligence with several other homebuilders but we have not yet entered into any binding obligations to acquire any of those operations. To the extent we complete acquisitions, we may be unable to realize the anticipated

benefits because of operational factors or difficulties in integrating the acquisitions with our existing business. Acquisitions entail numerous risks, including, but not limited to:

- difficulties in assimilating acquired management and operations;
- risks associated with investing the necessary resources in order to achieve profitability;
- the incurrence of significant due diligence expenses relating to acquisitions that are not completed;
- unforeseen expenses and liabilities;
- risks associated with entering new markets or sub-markets in which we have limited or no prior experience;
- the diversion of our management's attention from our current business;
- the potential loss of key employees, including senior executives, of acquired organizations; and
- risks associated with transferred assets and liabilities.

We may not be able to acquire or manage profitably additional businesses, or to integrate successfully any acquired businesses, properties or personnel into our business, without substantial costs, delays or other operational or financial difficulties. Our failure to do so could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We are dependent on the services of certain key employees and the loss of their services could harm our business.

Our success largely depends on the continuing services of certain key employees, including our Chairman and Chief Executive Officer, Christopher Clemente, Gregory Benson, our President and Chief Operating Officer, and Bruce Labovitz, our Chief Financial Officer. Our continued success also depends on our ability to attract and retain qualified personnel. We believe that Messrs. Clemente, Benson and Labovitz each possesses valuable industry knowledge, experience and leadership abilities that would be difficult in the short term to replicate. The loss of these or other key employees could harm our operations, business plans and cash flows.

Our growth requires additional capital, which may not be available.

The real estate development industry is capital intensive and requires significant expenditures for land purchases, land development and construction as well as potential acquisitions of other homebuilders. In order to execute our growth strategy, we anticipate that we will need to obtain additional financing as we expand our operations. These funds may be obtained through public or private debt or equity financings, additional bank borrowings or from strategic alliances or joint ventures. We may not be successful in obtaining additional funds in a timely manner, on favorable terms or at all. Moreover, certain of our bank financing agreements contain provisions that limit the type and amount of debt we may incur in the future without our lenders' consent. In addition, the availability of borrowed funds, especially for land acquisition and construction financing, may be greatly reduced, and lenders may require us to invest increased amounts of equity in a project in connection with both new loans and the extension of existing loans. If we do not have access to additional capital, we may be required to delay, scale back or abandon some or all of our acquisition plans or growth strategies or reduce capital expenditures and the size of our operations and as a result may experience a material adverse affect on our business, results of operations and cash flows.

Our growth depends on the availability of construction, acquisition and development loans.

Currently, we have multiple construction, acquisition and development loans. We are considering replacing these credit facilities with one or more larger facilities, which may reduce our aggregate debt financing costs. If we are unable to obtain a larger facility, we will need to continue to rely on our smaller credit facilities. These smaller credit facilities generally have higher costs and require significant management time to administer them. Additionally, if financial institutions decide to discontinue providing these facilities to us, we would lose our primary source of financing our operations or the cost of retaining or replacing these

credit facilities could increase dramatically. Further, this type of financing is typically characterized by short-term loans which are subject to call. If our primary financing becomes unavailable or accelerated repayment is demanded, we may not be able to meet our obligations.

A significant portion of our business plan involves construction of mixed-use developments and high-rise projects with which we have less experience.

We expect to increase our construction and development of mixed-use and high-rise residential projects. Our experience is largely based on smaller wood-framed structures that are less complex than high-rise construction or the development of mixed-use projects. A mixed-use project is one that integrates residential and non-residential uses in the same structure or in close proximity to each other, on the same land. As we expand into these new product types, we expect to encounter operating, marketing, customer service, warranty and management challenges with which we have less familiarity. Although we have expanded our management team to include individuals with significant experience in this type of real estate development, we have not completed any projects managed by these persons. If we are unable to successfully manage the challenges of this portion of our business, we may incur additional costs and our results of operations and cash flows could be adversely affected.

If we experience shortages of labor or supplies or other circumstances beyond our control, there could be delays or increased costs in developing our projects, which would adversely affect our operating results and cash flows.

We and the home building industry from time to time may be affected by circumstances beyond our control, including:

- work stoppages, labor disputes and shortages of qualified trades people, such as carpenters, roofers, electricians and plumbers;
- lack of availability of adequate utility infrastructure and services;
- transportation cost increases;
- our need to rely on local subcontractors who may not be adequately capitalized or insured; and
- shortages or fluctuations in prices of building materials.

These difficulties have caused and likely will cause unexpected construction delays and short-term increases in construction costs. In an attempt to protect the margins on our projects, we often purchase certain building materials with commitments that lock in the prices of these materials for 90 to 120 days or more. However, once the supply of building materials subject to these commitments is exhausted, we are again subject to market fluctuations and shortages. We may not be able to recover unexpected increases in construction or materials costs by raising our home prices because, typically, the price of each home is established at the time a customer executes a home sale contract. Furthermore, sustained increases in construction costs may, over time, erode our profit margins and may adversely affect our results of operations and cash flows.

We depend on the availability and skill of subcontractors.

Substantially all of our construction work is done by subcontractors with us acting as the general contractor or by subcontractors working for a general contractor we select for a particular project. Accordingly, the timing and quality of our construction depends on the availability and skill of those subcontractors. We do not have long-term contractual commitments with subcontractors or suppliers. Although we believe that our relationships with our suppliers and subcontractors are good, we cannot assure that skilled subcontractors will continue to be available at reasonable rates and in the areas in which we conduct our operations. The inability to contract with skilled subcontractors or general contractors at reasonable costs on a timely basis could limit our ability to build and deliver homes and could erode our profit margins and adversely affect our results of operations and cash flows.

Product liability litigation and claims that arise in the ordinary course of business may be costly or negatively impact sales, which could adversely affect our results of operations and cash flows.

Our home building business is subject to construction defect and product liability claims arising in the ordinary course of business. These claims are common in the home building industry and can be costly. Among the claims for which developers and builders have financial exposure are property damage, environmental claims and bodily injury claims. Damages awarded under these suits may include the costs of remediation, loss of property and health-related bodily injury. In response to increased litigation, insurance underwriters have attempted to limit their risk by excluding coverage for certain claims associated with environmental conditions, pollution and product and workmanship defects. As a developer and a home builder, we may be at risk of loss for mold-related property, bodily injury and other claims in amounts that exceed available limits on our comprehensive general liability policies. In addition, the costs of insuring against construction defect and product liability claims are high and the amount of coverage offered by insurance companies is limited. Uninsured product liability and similar claims, claims in excess of the limits under our insurance policies and the costs of obtaining insurance to cover such claims could have a material adverse effect on our revenues, earnings and cash flows.

Increased insurance risk could negatively affect our business, results of operations and cash flows.

Insurance and surety companies have reassessed many aspects of their business and, as a result, may take actions that could negatively affect our business. These actions could include increasing insurance premiums, requiring higher self-insured retentions and deductibles, requiring additional collateral on surety bonds, reducing limits, restricting coverages, imposing exclusions, and refusing to underwrite certain risks and classes of business. Any of these actions may adversely affect our ability to obtain appropriate insurance coverage at reasonable costs, which could have a material adverse effect on our business. Additionally, coverage for certain types of claims, such as claims relating to mold, is generally unavailable. Further, we rely on surety bonds, typically provided by insurance companies, as a means of limiting the amount of capital utilized in connection with the public improvement sureties that we are required to post with governmental authorities in connection with land development and construction activities. The cost of obtaining these surety bonds is, from time to time, unpredictable and on occasion these surety bonds are unavailable. These factors can delay commencement of development projects and adversely affect revenue, earnings and cash flows.

We are subject to warranty claims arising in the ordinary course of business that could be costly.

We provide service warranties on our homes for a period of one year or more post closing and a structural warranty for five years post closing. We self-insure all of our warranties and reserve an amount we believe will be sufficient to satisfy any warranty claims on homes we sell. We also attempt to pass much of the risk associated with potential defects in materials and workmanship on to the subcontractors performing the work and the suppliers and manufacturers of the materials. In such cases, we still may incur unanticipated costs if a subcontractor, supplier or manufacturer fails to honor its obligations regarding the work or materials it supplies to our projects. If the amount of actual claims materially exceeds our aggregate warranty reserves and/or the amounts we can recover from our subcontractors and suppliers, our operating results and cash flows would be adversely affected.

Our business, revenues, earnings and cash flows may be adversely affected by adverse weather conditions or natural disasters.

Adverse weather conditions, such as extended periods of rain, snow or cold temperatures, and natural disasters, such as hurricanes, tornadoes, floods and fires, can delay completion and sale of homes, damage partially complete or other unsold homes in our inventory and/or decrease the demand for homes or increase the cost of building homes. To the extent that natural disasters or adverse weather events occur, our business and results may be adversely affected. To the extent our insurance is not adequate to cover business interruption losses or repair costs resulting from these events, our revenues, earnings and cash flows may be adversely affected.

We are subject to certain environmental laws and the cost of compliance could adversely affect our business, results of operations and cash flows.

As a current or previous owner or operator of real property, we may be liable under federal, state, and local environmental laws, ordinances and regulations for the costs of removal or remediation of hazardous or toxic substances on, under or in the properties or in the proximity of the properties we develop. These laws often impose liability whether or not we knew of, or were responsible for, the presence of such hazardous or toxic substances. The cost of investigating, remediating or removing such hazardous or toxic substances may be substantial. The presence of any such substance, or the failure promptly to remediate any such substance, may adversely affect our ability to sell the property, to use the property for our intended purpose, or to borrow funds using the property as collateral. In addition, the construction process involves the use of hazardous and toxic materials. We could be held liable under environmental laws for the costs of removal or remediation of such materials. In addition, our existing credit facilities also restrict our access to the loan proceeds if the properties that are used to collateralize the loans are contaminated by hazardous substances and require us to indemnify the bank against losses resulting from such occurrence for significant periods of time, even after the loan is fully repaid.

Our Eclipse project is part of a larger development located at Potomac Yard in northern Virginia. Potomac Yard was formerly part of a railroad switching yard contaminated by rail-related activities. Remediation of the property was conducted under supervision of the U.S. Environmental Protection Agency, or EPA, in coordination with state and local authorities. In 1998, federal, state and local government agencies authorized redevelopment of the property. Our plans for development of our portion of the project are consistent with those authorizations. Although concentrations of contaminants remain on the property under the EPA-approved remediation work plan, the EPA has determined that they do not present an unacceptable risk to human health or the environment. However, it is possible that we could incur some costs to defend against any claims that might be brought in the future relating to any such contaminants.

If we are not able to develop our communities successfully, our earnings and cash flows could be diminished.

Before a community generates any revenues, material expenditures are required to acquire land, to obtain development approvals and to construct significant portions of project infrastructure, amenities, model homes and sales facilities. It can take a year or more for a community development to achieve cumulative positive cash flow. Our inability to develop and market our communities successfully and to generate positive cash flows from these operations in a timely manner would have a material adverse effect on our ability to service our debt and to meet our working capital requirements.

Our operating results may vary.

We expect to experience variability in our revenues and net income. Factors expected to contribute to this variability include, among other things:

- the uncertain timing of real estate closings;
- our ability to continue to acquire additional land or options thereon on acceptable terms and the timing of all necessary regulatory approvals required for development;
- the condition of the real estate market and the general economy in the markets in which we operate;
- the cyclical nature of the home building industry;
- the changing regulatory environment concerning real estate development and home building;
- changes in prevailing interest rates and the availability of mortgage financing; and
- costs of material and labor and delays in construction schedules.

The volume of sales contracts and closings typically varies from month to month and from quarter to quarter depending on several factors, including the stages of development of our projects, weather and other

factors beyond our control. In the early stages of a project's development, we incur significant start-up costs associated with, among other things, project design, land acquisition and development, construction and marketing expenses. Since revenues from sales of properties are generally recognized only upon the transfer of title at the closing of a sale, no revenue is recognized during the early stages of a project unless land parcels or residential homesites are sold to other developers. Periodic sales of properties may be insufficient to fund operating expenses. Further, if sales and other revenues are not adequate to cover operating expenses, we will be required to seek sources of additional operating funds. Accordingly, our financial results will vary from community to community and from time to time.

Acts of war or terrorism may seriously harm our business.

Acts of war, any outbreak or escalation of hostilities between the United States and any foreign power or acts of terrorism, may cause disruption to the U.S. economy, or the local economies of the markets in which we operate, cause shortages of building materials, increase costs associated with obtaining building materials, result in building code changes that could increase costs of construction, affect job growth and consumer confidence, or cause economic changes that we cannot anticipate, all of which could reduce demand for our homes and adversely impact our revenues, earnings and cash flows.

Being a public company increases our administrative costs.

We completed our initial public offering in December 2004 and a follow-on offering in June 2005. As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the Securities and Exchange Commission, have required changes in corporate governance practices of public companies. In addition to final rules and rule proposals already made by the Securities and Exchange Commission, the National Association of Securities Dealers, or NASD, has adopted revisions to its requirements for companies that are listed on the Nasdaq National Market. We expect these new rules and regulations to increase our legal and financial compliance costs, and to make some activities more time consuming and/or costly. For example, in anticipation of becoming a public company we added personnel, particularly accounting staff, added independent directors, created board committees, adopted additional internal controls and disclosure controls and procedures, retained a transfer agent and a financial printer, adopted an insider trading policy and other corporate governance policies, and will have all of the internal and external costs of preparing and distributing periodic public reports in compliance with our obligations under the securities laws. We also expect these new rules and regulations to make it more expensive for us to obtain director and officer liability insurance. These new rules and regulations could also make it more difficult for us to attract and retain qualified members of our board of directors and qualified executive officers.

We do not own the Comstock brand or trademark, but use the brand and trademark pursuant to the terms of a perpetual license granted by Christopher Clemente, our Chief Executive Officer and Chairman of the Board.

Our Chief Executive Officer and Chairman of the Board, Christopher Clemente, has licensed the "Comstock" brand and trademark to us in perpetuity and free of charge. We do not own the brand or the trademark and may be unable to protect it against infringement from third parties. However, Mr. Clemente retains the right to continue using the "Comstock" brand and trademark individually and through affiliates, including in real estate development projects in our current or future markets. We will be unable to control the quality of projects undertaken by Mr. Clemente or others using the "Comstock" brand and trademark and therefore will be unable to prevent any damage to its goodwill that may occur. We will further be unable to preclude Mr. Clemente from licensing or transferring the ownership of the "Comstock" trademark to third parties, some of whom may compete against us. Consequently, we are at risk that our brand could be damaged which could have a material adverse effect on our business, operations and cash flows.

Risks Related to our Common Stock and the Securities Markets

Volatility of our stock price could adversely affect stockholders.

The market price of our Class A common stock could fluctuate significantly as a result of:

- quarterly variations in our operating results;
- general conditions in the home building industry;
- interest rate changes;
- changes in the market's expectations about our operating results;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning our Company or the home building industry in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- news reports relating to trends in our markets;
- changes in laws and regulations affecting our business;
- material announcements by us or our competitors;
- material announcements by our construction lenders or the manufacturers and suppliers we use;
- sales of substantial amounts of Class A common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions and acts of war or terrorism.

Investors may not be able to resell their shares of our Class A common stock following periods of volatility because of the market's adverse reaction to that volatility. Our Class A common stock may not trade at the same levels as the stock of other homebuilders, and the market in general may not sustain its current prices.

Investors in our Class A common stock may experience dilution with the future exercise of stock options, the grant of restricted stock and issuance of stock in connection with our acquisitions of other homebuilders.

From time to time, we have issued and we will continue to issue stock options or restricted stock grants to employees and non-employee directors pursuant to our equity incentive plan. We expect that these options or restricted stock grants will generally vest commencing one year from the date of grant and continue vesting over a three-year period. Investors may experience dilution as the options vest and are exercised by their holders and the restrictions lapse on the restricted stock grants. In addition, we may issue stock in connection with acquisitions of other homebuilders, which may result in investors experiencing dilution.

Substantial sales of our Class A common stock, or the perception that such sales might occur, could depress the market price of our Class A common stock.

A substantial amount of the shares of our Class A common stock are eligible for immediate resale in the public market. Any sales of substantial amounts of our Class A common stock in the public market, or the perception that such sales might occur, could depress the market price of our Class A common stock.

The holders of our Class B common stock exert control over us and thus limit the ability of other stockholders to influence corporate matters.

Messrs. Clemente and Benson own 100% of our outstanding Class B common stock, which, together with their shares of Class A common stock, represent approximately 78.5% of the combined voting power of all classes of our voting stock. As a result, Messrs. Clemente and Benson, acting together, have control over us, the election of our board of directors and our management and policies. Messrs. Clemente and Benson, acting together, also have control over all matters requiring stockholder approval, including the amendment of certain provisions of our certificate of incorporation and bylaws, the approval of any equity-based employee compensation plans and the approval of fundamental corporate transactions, including mergers. In light of this control, other companies could be discouraged from initiating a potential merger, takeover or any other transaction resulting in a change of control. Such a transaction potentially could be beneficial to our business or to our stockholders. This may in turn reduce the price that investors are willing to pay in the future for shares of our Class A common stock.

The limited voting rights of our Class A common stock could impact its attractiveness to investors and its liquidity and, as a result, its market value.

The holders of our Class A and Class B common stock generally have identical rights, except that holders of our Class A common stock are entitled to one vote per share and holders of our Class B common stock are entitled to 15 votes per share on all matters to be voted on by stockholders. The difference in the voting rights of the Class A and Class B common stock could diminish the value of the Class A common stock to the extent that investors or any potential future purchasers of our Class A common stock ascribe value to the superior voting rights of the Class B common stock.

It may be difficult for a third party to acquire us, which could inhibit stockholders from realizing a premium on their stock price.

We are subject to the Delaware anti-takeover laws regulating corporate takeovers. These anti-takeover laws prevent Delaware corporations from engaging in business combinations with any stockholder, including all affiliates and employees of the stockholder, who owns 15% or more of the corporation's outstanding voting stock, for three years following the date that the stockholder acquired 15% or more of the corporation's voting stock unless specified conditions are met.

Our amended and restated certificate of incorporation and bylaws contain provisions that have the effect of delaying, deferring or preventing a change in control of us that stockholders may consider favorable or beneficial. These provisions could discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions include:

- a staggered board of directors, so that it would take three successive annual meetings to replace all directors;
- a prohibition of stockholder action by written consent; and
- advance notice requirements for the submission by stockholders of nominations for election to the board of directors and for proposing matters that can be acted upon by stockholders at a meeting.

Our issuance of shares of preferred stock could delay or prevent a change of control of us.

Our board of directors has the authority to cause us to issue, without any further vote or action by the stockholders, up to 20,000,000 shares of preferred stock, par value \$.01 per share, in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. The issuance of shares of preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by the stockholders, even where stockholders are offered a premium for their shares. The issuance of shares of preferred stock with

voting and conversion rights may adversely affect the voting power of the holders of Class A common stock, including the loss of voting control. We have no present plans to issue any shares of preferred stock.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our principal administrative, sales and marketing facilities are located at our headquarters in Reston, Virginia. We currently lease 29,033 square feet of office space in the Reston facility from Comstock Asset Management, L.C., an affiliate wholly-owned by Christopher Clemente. Pursuant to this five-year headquarters lease which we entered into on October 1, 2004 and modified on August 1, 2005 for an additional 8,424 square feet, we pay annual rental rates of \$709,567, subject to a 4% annual increase. We also lease office space in Raleigh, North Carolina where we occupy approximately 3,300 square feet of office space. On October 1, 2005 we entered into a five-year lease agreement for a new sales office in Reston, Virginia, which we occupy approximately 4,351 square feet of office space. We believe these facilities are suitable and provide the appropriate level of capacity for our current operations.

Item 3. Legal Proceedings

As manager of an affiliated entity, we exercised our option rights to purchase the project acquisition, development and construction loans made for the benefit of North Shore project located in Raleigh, North Carolina. We subsequently issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and thereafter filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005 for a claim amount of \$1.8 million as of the date of the filing. The Company finalized the purchase of the loans on or about September 8, 2005, issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and subsequently filed suit for collection of the loans 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 loans. The Company has set a foreclosure sale for March 23, 2006.

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 \$147.0 million project loan for the Potomac Yard project. The claim in the base amount of \$2.0 million plus interest and costs is based on breach of contract and equitable remedies of unjust enrichment and quantum meruit. The Company has denied the claims.

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 4. Submission of Matters to a Vote of Security Holders.

None.

PART II**Item 5. Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market for Common Stock**

Our Class A common stock has been traded on the Nasdaq National Market under the symbol "CHCI" since our initial public offering on December 14, 2004. The following table sets forth the high and low sale prices of our Class A common stock, as reported on Nasdaq, for the periods indicated:

	<u>High</u>	<u>Low</u>
Fiscal Year Ended 2004		
Fourth quarter	\$ 22.10	\$ 16.00
Fiscal Year Ended 2005		
First quarter	\$ 31.00	\$ 18.39
Second quarter	\$ 27.03	\$ 18.80
Third quarter	\$ 29.42	\$ 17.76
Fourth quarter	\$ 19.97	\$ 13.34

On March 10, 2006, there were approximately 18 record holders and approximately 3,620 beneficial owners of our Class A common stock. On March 10, 2006 there were two holders of our Class B common stock.

Dividends

We have never paid any cash dividends on our common stock. From time to time, our board of directors evaluates the desirability of paying cash dividends. The further payment and amount of cash dividends will depend upon our financial condition and results of operations, applicable loan covenants and other factors deemed relevant by our board of directors.

Item 6. Selected Financial Data

The following table contains selected consolidated and combined financial information and is supplemented by the more detailed financial statements and notes thereto included elsewhere in this report. We derived the selected historical financial data shown below for 2005, 2004, 2003, 2002 and 2001 from our audited financial statements. You should read the following financial information in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations,"

Service, Inc., under which entity we previously conducted our Raleigh, North Carolina operations before the merger of Comstock Service, Inc. into Comstock Homebuilding Companies, Inc. The merger of Comstock Service, Inc. was treated as an acquisition for accounting purposes. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see “Cautionary Notes Regarding Forward-looking Statements” for more information. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including, but not limited to, those discussed below and elsewhere in this report, particularly under the headings “Risk Factors” and “Cautionary Notes Regarding Forward-looking Statements.”

Overview

We engage in the business of residential land development, production home building and high-rise condominium development in the greater Washington, D.C. and Raleigh, North Carolina markets. Our business was started 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 1997, we entered the Raleigh, North Carolina market.

In the late 1990s, in response to increasing competition for finished lots, 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. Our strategic goal was to secure and control a pipeline of diversified land inventory at various stages of entitlement, thus reducing our dependence on other land developers for finished building lots and improving our ability to control our growth.

We have recently begun to engage in the business of converting existing rental apartment properties to for-sale condominium projects. This process involves the purchase of existing structures which may be new and never occupied or may be occupied by tenants with leases of varying duration. When we purchase these properties we subdivide the units and form a condominium association. In these projects we will usually invest capital in the improvement of the common areas and exteriors. If the properties are occupied, then as the tenants’ leases expire we will renovate the interiors of the apartments and then sell each apartment as an individual condominium unit. These conversion projects typically produce lower net profit margins than our standard real estate development projects but not necessarily less than a typical finished lot option project. However, since they take significantly less time to complete than our real estate development projects, they tend to generate higher internal rates of return on invested capital. We expect to continue to acquire condominium conversion and similar projects to the extent quality opportunities present themselves.

In recent years, our financial results have been influenced significantly by the availability of building lots, the timing of entitlement processes, the mix of products available for sale and the timing of settlements.

The amount of time that it takes to bring a new development to market varies greatly depending on, among other things, the location and jurisdiction, governmental zoning and permitting processes, site development conditions, weather conditions, and the type of product to be constructed on the subject site. There can be a six- to 36-month lag time between the time we contract to purchase a site and the time we begin developing and/or delivering homes on the site. For example, a site that requires entitlement processing takes longer than a site where we purchase finished building lots. Additionally, condominium homes take longer to construct than townhouses and single-family homes and high-rise developments take longer to construct than low-rise developments. As a result of this lag, it has been our experience that an increasing lot inventory in one period does not necessarily correlate to increasing sales in the immediately following periods. Thus, there are both market risks and benefits associated with the lag time between controlling a property and realizing revenue from the property.

We can experience significant variation from one period to the next with respect to average price per new order and average settlement revenue. This variation often results from shifts in the mix of products being sold during the period. While it is most typical that single-family homes are priced higher than townhouses or

condominiums, it is possible that during a given period, orders and deliveries may include townhouses, based on location, that price higher than single-family homes. Likewise, in any project in any period, condominium units may produce higher average per unit sales prices and/or settlement revenues. Lower average per unit orders or settlements do not necessarily indicate that margins have been eroded or that profits have been reduced. Average settlement revenue can be both higher and lower than average price per new order in the prior period based on the mix of available product for sale.

For the 12 month periods ended December 31, the approximate average order prices for our market rate homes (which excludes county government mandated affordable housing program units required to be sold at a discount) were as follows:

SUMMARY	12-month period ended December 31,		
	2003	2004	2005
Townhouse	\$ 271,430	\$ 342,457	\$ 438,845
Single Family	\$ 443,400	\$ 460,066	\$ 548,750
Condominium	\$ 343,560	\$ 380,548	\$ 309,378

We have made significant investments over the past three years to become a fully integrated and diversified home building operation with a wide spectrum of skills and a substantial pipeline of building lot inventory. The costs of our expansion and diversification were most evident in 2002 and 2003 as we experienced delays developing our inventory of land due to entitlement delays and extreme weather conditions. In 2002, these delays were principally caused by demand for development and construction entitlements and permitting at a pace that exceeded the ability of the local municipalities to respond. Severe weather exacerbated these delays. The result was a temporary shortage of building lot inventory from which we could sell homes and an increase in our land position and backlog. Consequently, we posted negative growth in 2002 and slower than expected growth in 2003. Towards the end of 2003 we began to realize the benefits of a replenished and diversified building lot inventory. At December 31, 2005, we either owned or controlled under option agreements over 4,200 building lots.

Recent accounting pronouncements

In December 2004, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payments, ("SFAS 123R"). SFAS 123R is a revision of SFAS 123 and supersedes APB No. 25. SFAS 123R requires that the cost resulting from all share-based payment transactions be recognized in the financial statements and establishes fair value as the measurement objective in accounting for share-based payment arrangements. SFAS 123R is effective as of the beginning of the first interim or annual reporting period that begins after June 15, 2005, and applies to all awards granted, modified, repurchased or cancelled after the effective date, and all outstanding portions of awards granted prior to the effective date which are unvested as the effective date of the pronouncement. Entities may adopt the provisions of SFAS 123R using either the modified prospective or modified retrospective application. Under the modified prospective method, compensation cost is recognized on or after the required effective date for the portion of outstanding awards for which the requisite service has not yet been rendered, based on the grant-date fair value of those awards calculated under SFAS 123 for either recognition or pro forma disclosure. For periods before the required effective date, the modified retrospective application may be applied to either (a) all prior years for which SFAS 123 was effective or (b) only to prior interim periods in the year of initial adoption, on a basis consistent with the pro forma disclosures required for those periods by SFAS 123. The Company adopted SFAS 123R prospectively on January 1, 2004. Prior to December 17, 2004 the Company had no share based payment transactions.

On June 29, 2005, the Emerging Issues Task Force ("EITF") reached a consensus on EITF Issue No. 04-05, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("EITF 04-05"). The scope of EITF 04-05 is limited to limited partnerships or similar entities (such as limited liability companies that have governing provisions that are the functional equivalent of a limited partnership) that are not variable interest entities under FIN 46 and provides a new framework for addressing when a general partner in a

limited partnership, or managing member in the case of a limited liability company, controls the entity. Under EITF 04-05, we may be required to consolidate certain investments that are not variable interest entities, in which we hold a general partner or managing member interest. EITF 04-05 is effective after June 29, 2005 for new entities formed after such date and for existing entities for which the agreements are subsequently modified and is effective for our fiscal year beginning January 1, 2006 for all other entities. The adoption of EITF 04-05 did not have any impact on our financial statements as of December 31, 2005.

FAS 154 Accounting Changes and Error Corrections replaces APB Opinion No. 20, and FASB Statement No. 3. Opinion 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This Statement requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. When it is impracticable to determine the period-specific effects of an accounting change on one or more individual prior periods presented, this Statement requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings (or other appropriate components of equity or net assets in the statement of financial position) for that period rather than being reported in an income statement. When it is impracticable to determine the cumulative effect of applying a change in accounting principle to all prior periods, this Statement requires that the new accounting principle be applied as if it were adopted prospectively from the earliest date practicable.

Critical Accounting Policies and Estimates

Our consolidated and combined financial statements are prepared in accordance with generally accepted accounting principles, which require us to make certain estimates and judgments that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates, including those related to the consolidation of variable interest entities, revenue recognition, impairment of real estate held for development and sale, warranty reserve and our environmental liability exposure. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates.

A summary of significant accounting policies is provided in Note 2 to our audited consolidated and combined financial statements. The following section is a summary of certain aspects of those accounting policies that require our most difficult, subjective or complex judgments and estimates.

Consolidation of Variable Interest Entities

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, "Consolidation of Variable Interest Entities," or FIN 46. FIN 46 requires the primary beneficiary of a variable interest entity to consolidate that entity. A variable interest entity is created when (i) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur. The primary beneficiary of a variable interest entity is the party that absorbs a majority of the variable interest entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Expected losses are the expected negative variability of an entity's net assets exclusive of its variable interests, and expected residual returns are the expected positive variability in the fair value of an entity's assets, exclusive of variable interests. Prior to the issuance of FIN 46, an enterprise generally consolidated an entity when the enterprise had a controlling financial interest in the entity through ownership of a majority voting interest.

In December 2003, the FASB issued a revision of FIN 46 (“FIN 46-R”), clarifying certain provisions of FIN 46. We adopted the provisions of FIN 46-R on February 1, 2003 to the extent that they related to variable interest entities created on or after that date. For variable interest entities created before January 31, 2003, FIN 46-R was deferred to the end of the first interim or annual period ending after March 15, 2004. We fully adopted FIN 46-R effective March 31, 2004. Based on the provisions of FIN 46-R, we have concluded that whenever we option land or lots from an entity and pay a significant nonrefundable deposit, a variable interest entity is created under condition (ii) (b) of the previous paragraph. This is because we have been deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity’s expected theoretical losses if they occur. Therefore, for each variable interest entity created, we compute the expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46 to determine if we are deemed to be the primary beneficiary of the variable interest entity.

The methodology used to evaluate our primary beneficiary status requires substantial management judgment and estimation. These judgments and estimates involve assigning probabilities to various estimated cash flow possibilities relative to the selling entity’s expected profits and losses and the cash flows associated with changes in the fair value of the land under contract. Because we do not have any ownership interests in the entities with which we contract to buy land (such as LLCs), we may not have the ability to compel these entities to provide financial or other data to assist us in the performance of the primary beneficiary evaluation. This lack of direct information from the contracting entities may result in our evaluation being conducted solely based on the aforementioned management judgments and estimates. Further, where we deem ourselves to be the primary beneficiary of such an entity created after December 31, 2003 and that entity refuses to provide financial statements, we utilize estimation techniques to perform the consolidation. While management believes that our estimation techniques provide a reasonable basis for determining the financial condition of an entity that refuses to provide financial statements, the actual financial condition of the entity could differ from that reported. In addition, although management believes that our accounting policy is designed to properly assess our primary beneficiary status relative to our involvement with the entities from which we acquire land, changes to the probabilities and the cash flow possibilities used in our evaluation could produce different conclusions regarding our primary beneficiary status.

Revenue Recognition

We primarily derive our earned revenues from the sale of residential property. We recognize residential revenue and all related costs and expenses when full payment has been received, title and possession of the property has been conveyed and risks and rewards of ownership transfer to the buyer and other sale and profit recognition criteria are satisfied. Management estimates of future costs to be incurred after the completion of each sale are included in cost of sales. A change in circumstances that causes these estimates of future costs to increase or revenues to decrease would significantly affect the profit recognized on these sales.

Impairment of 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. Circumstances or events we consider important which could trigger an impairment review include the following:

- significant negative industry or economic trends;
- a significant underperformance relative to historical or projected future operating results;
- a significant change in the manner in which an asset is used; and
- an accumulation of costs significantly in excess of the amount originally expected to construct an asset.

Real estate is stated at the lower of cost or estimated fair value using the methodology described as follows. A write-down to estimated fair value is recorded when we determine that the net book value exceeds the estimated selling prices less cost to sell. These evaluations are made on a property-by-property basis. When we determine that the net book value of an asset may not be recoverable based upon the estimated

undiscounted cash flow, an impairment write-down is recorded. The evaluation of future cash flows and fair value of individual properties requires significant judgment and assumptions, including estimates regarding expected sales prices, development absorption and remaining development costs. Significant adverse changes in circumstances affecting these judgments and assumptions in future periods could cause a significant impairment adjustment to be recorded. As discussed in Note 5 in the accompanying financial statements, the Company recorded an impairment charge of \$1.2 million during the fourth quarter of 2005.

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 us or within the five-year statutorily mandated structural warranty period. Since we generally subcontract our home building work, subcontractors are required to provide us 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 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. Although management considers the warranty reserve to be adequate, there can be no assurance that this reserve will prove to be adequate over time to cover losses due to increased costs for material and labor, the inability or refusal of manufacturers or subcontractors to financially participate in corrective action, unanticipated adverse legal settlements, or other unanticipated changes to the assumptions used to estimate the warranty reserve.

Environmental Liability Exposure

Development and sale of real property creates a potential for environmental liability on our part as owner and developer, for our own acts as well as the acts of prior owners of the subject property or owners or past owners of adjacent parcels. If hazardous substances are discovered on or emanating from any of our properties, we and prior owners may be held liable for costs and liabilities relating to those hazardous substances. We generally undertake environmental studies in connection with our property acquisitions, when warranted. If we incur environmental remediation costs in connection with properties we previously sold, including clean up costs, consulting fees for environmental studies and investigations, monitoring costs, and legal costs relating to clean up, litigation defense and the pursuit of responsible third parties, they are expensed. We capitalize costs relating to land under development and undeveloped land as part of development costs. Costs incurred for properties to be sold are deferred and charged to cost of sales when the properties are sold. Should a previously undetected, substantial environmental hazard be found on our properties, significant liquidity could be consumed by the resulting clean up requirements and a material expense may be recorded. Further, governmental regulation on environmental matters affecting residential development could impose substantial additional expense on us, which could adversely affect our results of operations or the value of properties owned under contract, or purchased by us. For additional information regarding risks associated with environmental hazards and environmental regulation, see "Business — Risk Factors — We are Subject to Certain Environmental Laws and the Cost of Compliance Could Adversely Affect our Business."

Results of Operations

Year ended December 31, 2005 compared to year ended December 31, 2004

Orders and Backlog.

New orders for the year ended December 31, 2005 increased \$5.9 million, or 2.7%, to \$230.3 million on 631 homes as compared to \$224.2 million on 608 homes for the year ended December 31, 2004. This increase in new orders was primarily attributable to an increase in saleable inventory resulting from the opening of new projects including Penderbrook (183 sales), Villas at Countryside (58 sales) and Commons on Potomac Square (19 sales).

The average sale price per new order for the year ended December 31, 2005 decreased by \$4,000 to \$365,000 as compared to \$369,000 for the year ended December 31, 2004. The decrease was a result of significant amount of unit sales at our Penderbrook, Villas at Countryside and Bellemeade Farms condominium conversion projects, in which existing apartment units are being converted to condominiums. By design, sales prices tend to be lower in these conversion projects as compared to our new construction projects. Our strategy with respect to conversion projects is to identify assets where we can offer lower priced, affordable product to first time home buyers. We focus on older assets where we can add value while maintaining price points which are more attractive to our target buyers. Because we tend to be buying, renovating, and selling older assets that are in prime locations we are able to position the assets to be more affordable, and therefore, average new order prices are lower. On average, the sale price of our townhouses increased by approximately \$81,900 during the year ended December 31, 2005 to \$443,600 from \$361,700 at December 31, 2004. On average, the sale price of our single-family homes increased by approximately \$89,500 during the year ended December 31, 2005 to \$598,200 from \$508,700 at December 31, 2004. The average sale price of our condominiums increased by \$32,100 to \$413,100 for the period ending December 31, 2005 as compared to \$381,000 for the period ended December 31, 2004.

Our backlog at December 31, 2005 increased \$15.8 million, or 9.1%, to \$190.4 million on 475 homes as compared to our backlog at December 31, 2004 of \$174.6 million on 329 homes. Of the Company's December 31, 2005 backlog, approximately \$157.6 million is derived from 390 sold units at the Company's Eclipse on Center Park at Potomac Yard project.

Revenues.

The number of homes delivered in the year ended December 31, 2005 increased by 129.3.0% to 603 from 263 homes in the year ended December 31, 2004. Average revenue per home delivered increased by approximately \$28,000 to \$359,000 for the year ended December 31, 2005 as compared to \$331,000 for the year ended December 31, 2004. Homebuilding revenues increased by \$129.3 million, or 148.6%, to \$216.3 million for the year ended December 31, 2005 as compared to \$87.0 million for the year ended December 31, 2004. The increase in deliveries and revenues from December 31, 2004 to December 31, 2005 is primarily attributable to settlements from the opening of new communities and the release of inventory for sale at projects such as Penderbrook (180 units), Villas at Countryside (53 units), Bellemeade Farms (21 units), Woodlands at Round Hill (17 units) and Commons on William Square (56 units). In addition, the Company generated 33 settlements in 2005, as a result of its merger with Comstock Service in December 2004.

Other Revenue.

Other revenue for the year ended December 31, 2005 decreased by \$1.0 million, or 11% to \$8.0 million, as compared to \$9.0 million for the year ended December 31, 2004. Other revenue for the year ended December 31, 2005 and 2004 includes lot sales made to third parties, revenue associated with the Company's Settlement Title Services division, management fees received from Comstock Asset Management Inc. (as discussed in Note 12), and revenue received from a marketing services alliance. For the year ended December 31, 2004, other revenue included revenues associated with the management of Comstock Service. The decrease in other revenue was primarily the result of not recording management revenues from Comstock Service, which was merged into Comstock Homebuilding on December 17, 2004.

Cost of sales and selling, general and administrative expenses.

Cost of sales for the year ended December 31, 2005 increased \$96.7 million, or 168.8%, to \$154.1 million, or 71.3% of homebuilding revenue, as compared to \$57.3 million, or 65.9% of revenue, for the year ended December 31, 2004. The 5.4 percentage point increase in cost of sales for the year ended December 31, 2005 is primarily attributable to lower margins on sales in the North Carolina market and the increase in settlements from the opening of the Company's condominium conversion projects.

As discussed above, Comstock Service, the Company's North Carolina division, was merged into Comstock Homebuilding on December 17, 2004. Due to current market conditions in the North Carolina market, which have caused extended hold and carry periods between acquisition and delivery, the Company experienced lower margins on its North Carolina settlements, as compared to margins in the Washington, DC market, primarily due to increasing interest and overhead carrying costs and modest revenue concessions. In addition, as discussed in Note 5 in the accompanying financial statements, the Company recorded a \$1.2 million impairment charge on the carrying value of real estate held for development and sale at Kelton II, a townhouse community in Raleigh, North Carolina. For 2005, the Company's North Carolina's projects accounted for 5.5% of our total settlements and 5.2% of total homebuilding revenues. Cost of sales as a percentage of revenue for our North Carolina division was approximately 84.2%

In addition, the Company's newly opened condo conversion projects experienced lower margins than the Company's traditional homebuilding projects due to the nature of a conversion project in which the Company buys an existing structure, adds value through upgrades and sells the renovated units with a focus on affordability. As a result, costs of sales tend to be higher as a percentage of revenue than our new construction projects. For 2005, the Company's condo conversion projects accounted for 42.1% of our total settlements and 30.1% of total homebuilding revenues. Cost of sales as a percentage of revenue for our condo conversion projects was approximately 86.1%.

Cost of sales other for the year ended December 31, 2005 decreased by \$3.1 million, or 45.8% to \$3.6 million, as compared to \$6.7 million for the year ended December 31, 2004. Cost of sales for the year ended December 2005 and 2004 includes expenses associated with lot sales made to third parties and expenses associated with the management of the Company's Settlement Title Services division. For the year ended December 2004, cost of sales other also included expenses associated with the management of Comstock Service, which was merged into Comstock Homebuilding on December 17, 2004. The decrease for the year ended December 31, 2005, as compared to 2004, was primarily the result not recording costs associated with the management of Comstock Service.

Selling, general and administrative costs for the year ended December 31, 2005 increased \$12.3 million to \$24.1 million from \$11.9 million for the year ended December 31, 2004. As a percentage of revenue, selling, general and administrative expenses represented 10.8% and 12.4% of total revenue during the year ended December 31, 2005 and 2004, respectively. This increase was the result of additional staffing costs and compensation of \$5.5 million to support our growth, increased advertising expenses of \$740,000, board fees and stock compensation of \$2.0 million, office and model rent of \$1.2 million, consulting fees of \$928,000, legal and computer expenses of \$458,000, insurance costs of \$268,000 and other miscellaneous expenses associated with our growth in staffing and land acquisition efforts of \$1.1 million.

Operating income.

Operating income for the year ended December 31, 2005 increased \$22.3 million to \$42.4 million as compared to \$20.1 million for the year ended December 31, 2004. Operating margin for the year ended December 31, 2005 was 18.9% compared to 20.9% for the year ended December 31, 2004. The decrease in operating margin is primarily attributable to an increase in cost of sales as a percentage of revenue as discussed above.

Other (income) expense, net.

Other (income) expense, net increased by \$2.4 million to net other income of \$1.5 million for the year ended December 31, 2005 as compared to net other expense of 908,000 for the year ended December 31, 2004. The increase in other (income) expense is primarily attributable to interest earned on the Company's cash balances generated as a result of the proceeds from the Company's initial and follow on public offering.

Income before minority interest.

Our income before minority interest increased by \$24.7 million, or 228%, to \$43.9 million for the year ended December 31, 2005 as compared to \$19.2 million for the year ended December 31, 2004. Net margins

as a percentage of revenues remained consistent at approximately 20% for the year ended December 31, 2005 and 2004.

Minority interest.

Minority interest expense decreased by \$5.2 million to \$30,000 for the year ended December 31, 2005 as compared to \$5.3 million for the year ended December 31, 2004. This decrease is the result of our repurchase or redemption of substantially all of the minority interests in four of our limited liability company subsidiaries including Comstock Investors V, L.C., Comstock Investors VI, L.C., Comstock Potomac Yard, L.C. and Comstock North Carolina, L.L.C. subsequent to our initial public offering in December 2004.

Income taxes.

On December 17, 2004, the Company reorganized from a group of S-corporations to a C-corporation. As a result of the Company being subject to income taxes for only 14 days during 2004. Income tax expense for the year ended December 31, 2005 was \$16.4 million compared to \$(241,000) for the year ended December 31, 2004. The Company's combined effective tax rate including both current and deferred provisions for the year ended December 31, 2005 was 37.3%.

Year ended December 31, 2004 compared to year ended December 31, 2003

Orders and Backlog.

New orders for the year ended December 31, 2004 increased \$155 million, or 224.6%, to \$224.2 million on 608 homes as compared to \$69.1 million on 208 homes for the year ended December 31, 2003. This increase in new orders was primarily attributable to the opening of our Eclipse at Potomac Yard project during the second half of the year. Including Comstock Service, which was acquired on December 17, 2004, the value of new orders for the year ended December 31, 2004 was \$241.0 million on 665 units.

The average sale price per new order for the year ended December 31, 2004 increased by \$49,000 to \$369,000 as compared to \$320,000 for the year ended December 31, 2003. This change was attributable to both a shift in product mix that included a significant number of higher-priced condominiums sales derived from the opening of our Eclipse at Potomac Yard project during the year ended December 31, 2003 and general price appreciation in the Washington, DC area. On average, the sale price of townhouses increased \$90,300 to \$361,700 for the year ended December 31, 2004 as compared to the year ended December 31, 2003. On average, the sale price of our single-family homes increased by approximately \$65,300 during the year ended December 31, 2004 to \$508,700 from \$443,400 at December 31, 2003. The average sale price of our condominiums increased by \$37,400 to \$381,000 for the period ending December 31, 2004 as compared to \$343,600 for the period ended December 31, 2003. Including Comstock Service, the changes for the year ended December 31, 2004 were a \$71,000 increase in the average sale price of a townhouse to approximately \$342,500; a \$16,700 increase in the average sale price of a single family home to approximately \$460,100; and a \$37,000 increase in the sales price of a condominium to approximately \$380,500.

Our backlog at December 31, 2004, which includes Comstock Service, increased \$138.2 million, or 438.4%, to \$174.6 million on 329 homes compared to our backlog at December 31, 2003 of \$31.5 million on 93 homes. This increase in backlog is primarily attributable to sales at the Eclipse project in Arlington, Virginia which represented approximately \$105 million of the backlog at December 31, 2004.

Revenues.

The number of homes delivered in the year ended December 31, 2004 increased by 62.3% to 263 from 162 homes in the year ended December 31, 2003. Average per settlement revenue increased by approximately \$28,000 to \$331,000 for the year ended December 31, 2004 as compared to \$303,000 for the year ended December 31, 2003. Home building revenues increased by \$37.9 million, or 77.3%, to \$87.0 million for the year ended December 31, 2004 as compared to \$49.1 million for the year ended December 31, 2003. Total revenue increased \$40.5 million to \$96.0 million for the year ended December 31, 2004 as compared to

\$55.5 million in the year ended December 31, 2003. The increase in deliveries and revenue from December 31, 2003 to December 31, 2004 are in large part attributable to the opening of new communities and the release of inventory for sale in late 2003 at projects such as Blooms Mill (137 deliveries in 2004) and Emerald Farm (20 deliveries in 2004). In addition, the beginning of deliveries in the first building at Belmont Bay 5 (11 deliveries in 2004) and the completion of Flynn's Crossing (49 deliveries in 2004) contributed to the increase. The \$25,000 increase in average per settlement revenue also contributed to the increase. Total revenue increased in part due to the delivery of 30 lots at Blooms Mill to another homebuilder during the year ended December 31, 2004 for \$3.9 million of Other Revenue which was an increase of 13 units and \$1.7 million from the year ended December 31, 2003.

Cost of sales and selling, general and administrative expenses.

Cost of sales for the year ended December 31, 2004 increased \$22.2 million, or 53.3%, to \$64.0 million, or 66.6% of revenue, as compared to \$41.8 million, or 75.2% of revenue, for the year ended December 31, 2003. The increase in cost of goods sold during the year ended December 31, 2004 as compared to the year ended December 31, 2003 is directly attributable to the increase in deliveries. The reduction of 8.6 percentage points in cost of goods sold as a percentage of revenue is primarily attributable to the cost basis in the land which was settled during the year ended December 31, 2004 which represented a lower percentage of revenue as compared to the cost basis of the land settled during the year ended December 31, 2003. For the year ended December 31, 2004, land costs for units settled represented 17% of total revenue as compared to 20% for the year ended December 31, 2003. The increase in gross margin was also partially attributable to price increases in the market which in general outpaced increases in costs of goods sold.

Selling, general and administrative costs for the year ended December 31, 2004 increased \$6.2 million to \$11.9 million from \$5.7 million for the year ended December 31, 2003. This increase was the result of additional staffing costs of \$3.6 million to support our growth and to provide the staffing required of a public company, increased marketing expenses of \$1.2 million, and increased audit fees of \$1.4 million associated with historical periods presented in our initial public offering. As a percentage of revenue, and as a result of expenses associated with preparation for our initial public offering selling, general and administrative expenses increased by 1.1 percentage points to 12.4% during the year ended December 31, 2003 from 10.3% during the year ended December 31, 2002.

Operating income.

Our operating income for the year ended December 31, 2004 increased \$12.1 million to \$20.1 million as compared to \$8.1 million for the year ended December 31, 2003. Our operating margin for the year ended December 31, 2004 was 20.9% compared with 14.5% for the year ended December 31, 2003. The increase in operating margin is attributable to an increased gross margin that outpaced the increase in sales, general and administrative expenses as a percentage of revenue. The increase in margin resulted in large part from reductions in land and house costs as a percentage of revenue.

Other (income) expense, net.

Other (income) expense, net increased by \$1.0 million to a net expense of \$0.9 million for the year ended December 31, 2004 as compared to net income of \$44,000 for the year ended December 31, 2003. The increase in Other (income) expense net is primarily attributable to interest from a corporate working capital line of credit (\$0.4 million) and a pre-payment premium associated with the early retirement of \$2.5 million of the facility (\$0.5 million).

Income before minority interest.

Our income before minority interest increased by \$11.1 million, or 137.2%, to \$19.2 million for the year ended December 31, 2004 as compared to \$8.1 million for the year ended December 31, 2003. Net margins as a percentage of revenues increased by 5.4% to 20.0% for the year ended December 31, 2004 from 14.6% for the year ended December 31, 2003. The increase in net income before minority interests was a result of the

increase in deliveries (101 units) and corresponding gross profit generated by those settlements (\$18.3 million). This increase was offset by the increase in sales, general and administrative expenses (\$6.2 million).

Minority interest.

Minority interest increased by \$3.0 million, or 129.0%, to \$5.3 million for the year ended December 31, 2004 as compared to \$2.3 million for the year ended December 31, 2003. This increase is primarily the result of increased income earned by Comstock Investors, VI a limited partnership in which the minority interest partners have been subsequently redeemed.

Income taxes

On December 17, 2004, the Company reorganized from an S corporation to a C corporation. For the period December 17, 2004 to December 31, 2004 the Company recorded a net income tax benefit of \$241,000. Of this amount, \$290,000 represents the current year income tax expense on earnings from December 17, 2004 to December 31, 2004 and \$531,000 represents a deferred tax benefit arising from the reorganization. The Company's effective tax rate net of deferred income taxes for this period was 38.9% (1.71%). In future periods the Company expects its effective tax rate to be higher and the Company expects income tax expense to be a more significant expense which will have a material impact on our net income. We do expect to receive tax rate relief as a result of the American Jobs Creation Act of 2004.

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 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 December 31, 2005, we had approximately \$143.7 million of debt financing and \$42.2 million of cash. We believe that internally generated cash, borrowings 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.

Credit Facilities

At December 31, 2005, we had approximately \$178 million available under existing secured revolving development and construction loans for planned construction and development expenditures. 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 375 basis points over the LIBOR rate and 50 basis points over the prime rate. As a result, we are exposed to market risk in the area of interest rate changes. At December 31, 2005, the one-month LIBOR and prime rates of interest were 4.39% and 7.25%, respectively, and the interest rates in effect under our existing secured revolving development and construction credit facilities ranged from 6.29% to 8.29%. For information regarding risks associated with our level of debt and changes in interest rates, see "Business-Risk Factors" and "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. While the loan agreements relating to these various facilities contain certain covenants, they generally contain few, if any, material financial covenants. Typically, our loan agreements contain covenants requiring us to: (1) maintain a minimum tangible net worth, adjusted for certain items, in the amount of \$65.0 million and (2) maintain a debt to tangible net worth below 3.5:1. As of December 31, 2005, we were in compliance with the financial covenants set forth in our loan agreements.

We are considering replacing our credit facilities with one or more larger facilities, which may reduce our aggregate debt financing costs. We would be the borrower and primary obligor under this larger facility or facilities, and we anticipate the indebtedness will be secured, nonrecourse and based on an available borrowing base.

Cash Flow

Net cash provided by/(used in) operating activities was \$(131.1 million) for the year ended December 31, 2005, \$11.1 million for the year ended December 31, 2004 and \$(32.4 million) for the year ended December 31, 2003. In 2005, the primary source for the increase in cash used in operating activities was attributable to increased investments in real estate held for development and sale. In 2004, the primary source of the increase in cash from operating activities was attributable to increases in net income and accounts payable which were only partially offset by increased investments in real estate held for development and sale. In 2003, the primary source of the decrease in cash from operating activities was attributable to increased investment in real estate held for development and sale which was offset by minority interest investment and an increase in accounts payable and accrued liabilities.

Net cash provided by/(used in) investing activities was \$0.7 million for the year ended December 31, 2005, \$0.8 million for the year ended December 31, 2004 and (\$90,000) for the year ended December 31, 2003. In 2005, the primary source of the increase in cash from investing activities was attributable to the return of capital in the amount of \$1.0 million upon the redemption of the Company's investment in TCG Fund I. In 2004, the primary source of the increase in cash from investing activities was attributable to cash received from the acquisition of Comstock Service (as discussed in Note 2 and Note 4 of the accompanying consolidated financial statements).

Net cash provided by/(used in) by financing activities was \$104.9 million for the year ended December 31, 2005, \$38.3 million for the year ended December 31, 2004 and \$40.8 million for the year ended December 31, 2003. The primary source of the increases in cash from financing activities for the period ended December 31, 2005 was attributable to net proceeds from the Company's follow on public offering and increased borrowings from the Company's credit facilities. The primary source of the increases in cash from financing activities for the period ended December 31, 2004 was attributable to net proceeds received from the Company's initial public offering which were partially offset by distributions paid to stockholders. The primary source of the increases in cash from financing activities for the periods ended December 31, 2003 and December 31, 2002 were the proceeds from notes payable and contributions from minority interest shareholders.

Recent Acquisitions

In January 2006, the Company completed the acquisition of Parker Chandler Homes, Inc. in the Atlanta, Georgia area. The acquisition price was approximately \$10.0 million plus the assumption of approximately \$43 million in debt and the retirement of approximately \$12 million in mezzanine and shareholder debt. The acquisition added over 1,500 lots to the Company's inventory of controlled land.

In January 2006, the Company closed on the Commons on the Park, a 258-unit condominium conversion project in Reston, Virginia, formerly known as Carter Lake. The \$36.0 million acquisition was funded by a \$26 million, six-month acquisition loan facility from Bank of America.

Contractual Obligations and Commercial Commitments

In addition to the above financing arrangements, we have commitments under certain contractual arrangements to make future payments for goods and services. These commitments secure the future rights to various assets and services to be used in the normal course of operations. For example, we are contractually committed to make certain minimum lease payments for the use of property under operating lease agreements. In accordance with current accounting rules, the future rights and obligations pertaining to such firm commitments are not reflected as assets or liabilities on the consolidated balance sheet. The following table summarizes our contractual and other obligations at December 31, 2005, and the effect such obligations are expected to have on liquidity and cash flow in future periods:

	Payments due by period				
	Total	Less than 1 Year	1-3 Years (In thousands)	3-5 Years	More than 5 Years
Notes payable(1)	\$ 163,888	\$ 36,270	\$ 125,059	\$ 2,559	—
Operating leases	\$ 3,996	\$ 978	\$ 2,909	\$ 109	—
Total	<u>\$ 167,884</u>	<u>\$ 37,248</u>	<u>\$ 127,968</u>	<u>\$ 2,668</u>	<u>—</u>

(1) Notes payable includes estimated interest payments based on interest rates in effect at December 31, 2005.

Notes payable have an undefined repayment due date and are typically due and payable as homes are settled.

We are not an obligor under, or guarantor of, any indebtedness of any party other than for obligations entered into by the subsidiaries of one of the now-consolidated primary holding companies.

We have no off-balance sheet arrangements except for the operating leases described above.

As discussed in Note 3 in the accompanying consolidated financial statements as of December 31, 2005, the Company has posted aggregate non-refundable deposits of \$6.9 million on \$83 million worth of land purchase options.

Seasonality and Weather

Our business is affected by seasonality with respect to orders and deliveries. In the markets in which we operate, the primary selling seasons are from January through May as well as September and October. Orders in other months typically are lower. In addition, the markets in which we operate are four-season markets that experience significant periods of rain and snow. Construction cycles and efforts are often adversely affected by severe weather.

Inflation

Inflation can have a significant impact on our business performance and the home building industry in general. Rising costs of land, transportation costs, utility costs, materials, labor, overhead, administrative costs and interest rates on floating credit facilities can adversely affect our business performance. In addition, rising costs of certain items, such as lumber, can adversely affect the expected profitability of our backlog. Generally, we have been able to recover any increases in costs through increased selling prices. However, there is no assurance we will be able to increase selling prices in the future to cover the effects of inflation and other cost increases.

Item 7A. 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 December 31, 2005, 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 \$1.1 million in a fiscal year, 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, 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 option 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 8. Financial Statements and Supplementary Data

Reference is made to the financial statements, the notes thereto, and the report thereon, commencing on page F-1 of this report, which financial statements, notes, and report are incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have evaluated, with the participation of our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act") as of December 31, 2005. Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer have each concluded that our disclosure controls and procedures are effective to ensure that we record, process, summarize, and report information required to be disclosed by us in our quarterly reports filed under the Exchange Act within the time periods specified by the Securities and Exchange Commission's rules and forms and were effective as of December 31, 2005 to ensure that information required to be disclosed by the Company issuer in the reports that it files or submits under the Securities Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Limitations on the Effectiveness of Controls

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.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Comstock Building Companies Inc.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2005, based on criteria set forth in the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Our management determined that, as of December 31, 2005, our internal control over financial reporting is effective.

PricewaterhouseCoopers LLP, an independent registered public accounting firm, has issued an audit report on management's assessment of the Company's internal control over financial reporting as of December 31, 2005, which is included herein.

Item 9B. Other Information

Not applicable.

PART III

Item 10. Directors and Executive Officers of the Registrant

The information required by this Item relating to our directors is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2006 Annual Meeting of Stockholders. The information required by this Item relating to our executive officers is included in Item 1, "Business — Executive Officers" of this report.

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2006 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2006 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2006 Annual Meeting of Stockholders.

Item 14. Principal Accountant Fees and Services

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2006 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibit and Financial Statement Schedules

(a) Financial Statements

- (1) Financial Statements are listed in the Index to Financial Statements on page F-1 of this report.
- (2) Schedules have been omitted because they are not applicable or because the information required to be set forth therein is included in the consolidated and combined financial statements or notes thereto.

(b) Exhibits

Exhibit Number	Exhibit
3.1(2)	Amended and Restated Certificate of Incorporation
3.2(2)	Amended and Restated Bylaws
4.1(1)	Specimen Stock Certificate
10.1(1)	Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
10.2(1)	Agreement of Sublease, dated as of October 1, 2004, with Comstock Asset Management, L.C.
10.3(1)	Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
10.4(1)	Disbursement and Construction Loan Agreement and Disbursement and Development Loan Agreement, each dated October 10, 2002 and as amended, with Branch Banking and Trust Company of Virginia
10.5(1)	Disbursement and Construction Loan Agreement and Acquisition, Disbursement and Development Loan Agreement, each dated July 25, 2003, with Branch Banking and Trust Company of Virginia
10.6(2)	Loan Agreement, dated January 25, 2005, with Corus Bank, N.A.
10.7(2)	Completion Guaranty, dated January 25, 2005 in favor of Corus Bank, N.A.
10.8(2)	Carve-Out Guaranty, dated January 25, 2005, in favor of Corus Bank, N.A.
10.9(1)	Form of Indemnification Agreement
10.10(1)	Form of Promissory Note to be issued to each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub by each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.11(1)	Form of Tax Indemnification Agreement to be entered into by each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub with each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.12(1)	2004 Long-Term Incentive Compensation Plan
10.13(1)	Form of Stock Option Agreement under the 2004 Long-Term Incentive Compensation Plan
10.14(2)	Form of Restricted Stock Grant Agreement under the 2004 Long-Term Incentive Compensation Plan
10.15(1)	Employee Stock Purchase Plan
10.16(1)	Purchase and Sale Agreement, dated as of April 25, 2003, as amended, with Crescent Potomac Yard Development, LLC
10.17(2)	Purchase and Sale Agreement, dated as of November 9, 2004, as amended, with Fair Oaks Penderbrook Apartments L.L.C.
10.18(2)	Real Estate Purchase Contract, dated as of February 4, 2005, with Westwick Apartments LLC
10.19(2)	Services Agreement, dated March 4, 2005, with Comstock Asset Management, L.C.
10.20(1)	Employment Agreement with Christopher Clemente
10.21(1)	Employment Agreement with Gregory Benson
10.22(1)	Employment Agreement with Bruce Labovitz
10.23(1)	Confidentiality and Non-Competition Agreement with Christopher Clemente
10.24(1)	Confidentiality and Non-Competition Agreement with Gregory Benson
10.25(1)	Confidentiality and Non-Competition Agreement with Bruce Labovitz

Exhibit Number	Exhibit
10.26(2)	Description of Arrangements with William Bensten
10.27(2)	Description of Arrangements with David Howell
10.28(1)	Trademark License Agreement
10.29(2)	Purchase Agreement, dated as of November 12, 2004 with Comstock Asset Management, L.C.
10.30(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.31(3)	Agreement of Purchase and Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.32(3)	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.
10.33(3)	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
10.34(4)	Life Insurance Reimbursement Agreement with William P. Bensten
10.35(4)	Life Insurance Reimbursement Agreement with Bruce Labovitz
10.36(4)	Description of Reimbursement and Indemnification Arrangement with Christopher Clemente and Gregory Benson
10.37(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.38*	Stock Purchase Agreement with Parker-Chandler Homes, Inc. and the Selling Stockholders identified therein, dated as of January 19, 2006
10.39*	Loan Agreement, dated January 31, 2006, by and between Comstock Carter Lake, L.C. and Bank of America, N.A.
10.40*	Guaranty Agreement, dated January 31, 2006m by the Registrant in favor of Bank of America, N.A.
14.1(2)	Code of Ethics
21.1*	List of subsidiaries
23.1*	Consent of PricewaterhouseCoopers LLP
24.1	Power of Attorney (see signature page to this Annual Report on Form 10-K.)
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

* Filed herewith.

- (1) Incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193).
- (2) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005.
- (3) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2005.
- (4) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2005.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Comstock Homebuilding Companies, Inc.

We have completed an integrated audit of Comstock Homebuilding Companies, Inc.'s 2005 consolidated financial statements and of its internal control over financial reporting as of December 31, 2005 and audits of its 2004 and 2003 consolidated and combined financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

Consolidated financial statements

In our opinion, the consolidated and combined financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Comstock Homebuilding Companies, Inc. at December 31, 2005 and 2004, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2005 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

Internal control over financial reporting

Also, in our opinion, management's assessment, included in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A, that the Company maintained effective internal control over financial reporting as of December 31, 2005 based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on criteria established in *Internal Control — Integrated Framework* issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the

company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
March 15, 2006

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share data)

	December 31, 2005	December 31, 2004
ASSETS		
Cash and cash equivalents	\$ 42,167	\$ 67,559
Restricted cash	10,800	7,500
Receivables	6,365	239
Note receivables	1,250	—
Due from related parties	2,899	1,447
Real estate held for development and sale	263,802	104,326
Inventory not owned — variable interest entities	89,890	118,558
Property, plant and equipment	605	488
Investment in real estate partnerships	(35)	1,029
Deferred income tax	2,545	821
Other assets	11,031	2,540
TOTAL ASSETS	\$ 431,319	\$ 304,507
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	59,131	\$ 35,532
Income taxes payable	—	290
Due to related parties	40	148
Obligations related to inventory not owned	83,015	114,333
Notes payable	142,994	65,684
Notes payable — related parties	663	10,944
Distribution payable	—	12,655
TOTAL LIABILITIES	285,843	239,586
Commitments and contingencies (Note 15)		
Minority interest	400	2,695
SHAREHOLDERS' EQUITY		
Class A common stock, \$0.01 par value, 77,266,500 shares authorized, 11,532,442 and 9,160,608 issued and outstanding	115	92
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	126,461	71,196
Retained earnings (accumulated deficit)	18,473	(9,089)
TOTAL SHAREHOLDERS' EQUITY	145,076	62,226
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 431,319	\$ 304,507

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

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

	Twelve Months Ended December 31,		
	2005	2004	2003
Revenues			
Sale of real estate — Homes	\$ 216,265	\$ 87,003	\$ 49,081
Other revenue	8,040	9,042	6,440
Total revenue	224,305	96,045	55,521
Expenses			
Cost of sales of real estate	154,102	57,339	36,620
Cost of sales of other	3,604	6,654	5,136
Selling, general and administrative	24,190	11,940	5,712
Operating income	42,409	20,112	8,053
Other (income) expense, net	(1,450)	908	(44)
Income before minority interest and equity in earnings of real estate partnerships	43,859	19,204	8,097
Minority interest	30	5,260	2,297
Income before equity in earnings of real estate partnerships	43,829	13,944	5,800
Equity in earnings of real estate partnerships	99	118	139
Total pre tax income	43,928	14,062	5,939
Income Taxes	16,366	(241)	—
Net Income	\$ 27,562	\$ 14,303	\$ 5,939
Basic earnings per share	2.14	1.95	0.84
Basic weighted average shares outstanding	12,870	7,347	7,067
Diluted earnings per share	2.12	1.95	0.84
Diluted weighted average shares outstanding	13,022	7,351	7,067

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

CONSOLIDATED AND COMBINED STATEMENT OF CHANGES IN
SHAREHOLDERS' EQUITY

(Amounts in thousands, except share data)

	Comstock Homebuilding Companies, Inc.								
	The Comstock Companies Common stock						Additional Paid-In Capital	Retained earnings (deficit)	Total
	Class A		Class B		Shares	Amount			
	Shares	Amount	Shares	Amount					
Balance at December 31, 2002	3,558	\$ 3	—	\$ —	—	\$ —	\$ 1,493	\$ 2,111	\$ 3,607
Distributions	—	—	—	—	—	—	—	(2,521)	(2,521)
Net Income	—	—	—	—	—	—	—	5,939	5,939
Balance at December 31, 2003	3,558	3	—	—	—	—	1,493	5,529	7,025
Distributions	—	—	—	—	—	—	—	(5,668)	(5,668)
Issuance of common stock in Homebuilding on June 7, 2004	—	—	—	—	—	—	—	—	—
Recapitalization by virtue of merger	(3,558)	(3)	4,333	43	2,733	27	4	—	71
Acquisition of Service on December 17, 2004	—	—	—	—	—	—	4,756	—	4,756
Issuance of common stock of Homebuilding on December 17, 2004 (less transaction costs)	—	—	3,960	40	—	—	56,012	—	56,052
Issuance of common stock — over allotment	—	—	594	6	—	—	8,833	—	8,839
Distribution following IPO	—	—	—	—	—	—	—	(23,253)	(23,253)
Issuance of restricted common stock	—	—	275	3	—	—	(3)	—	—
Stock-based compensation	—	—	—	—	—	—	101	—	101
Net income	—	—	—	—	—	—	—	14,303	14,303
Balance at December 31, 2004	—	—	9,162	92	2,733	27	71,196	(9,089)	62,226
Net Income	—	—	—	—	—	—	—	27,562	27,562
Stock compensation and issuances	—	—	3	0	—	—	2,346	—	2,346
Issuance of common stock under employee stock purchase plans	—	—	8	0	—	—	133	—	133
Issuances of common stock in follow on offering on June 22, 2005 (less transactions costs)	—	—	2,360	23	—	—	52,786	—	52,809
Balance at December 31, 2005	—	\$ —	11,533	\$ 115	2,733	\$ 27	\$ 126,461	\$ 18,473	\$ 145,076

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

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

	Twelve Months Ended December 30,		
	2005	2004	2003
Cash flows from operating activities:			
Net income	\$ 27,562	\$ 14,303	\$ 5,939
Adjustment to reconcile net income to net cash provided by operating activities			
Depreciation	172	106	67
Loss on disposal of assets	9	1	—
Minority interest	30	5,260	2,297
Equity in earnings of real estate partnerships	(99)	(118)	(139)
Distributions from investment in real estate partnerships	163	120	157
Amortization of stock compensation	2,346	101	—
Deferred income tax	(1,724)	(531)	—
Changes in operating assets and liabilities:			
Restricted Cash	(3,300)	(7,500)	—
Receivables	(6,126)	2,107	(1,736)
Note Receivables	(1,250)	—	—
Due from related parties	(1,452)	1,693	(1,832)
Real estate held for development and sale	(159,476)	(23,081)	(44,260)
Other assets	(11,141)	(5,428)	1,005
Accounts payable and accrued liabilities	23,599	24,025	6,237
Income tax payable	(290)	290	—
Due to related parties	(108)	(82)	(24)
Net cash (used in) provided by operating activities	<u>(131,085)</u>	<u>11,266</u>	<u>(32,289)</u>
Cash flows from investing activities:			
Purchase of property, plant, and equipment	(298)	(372)	(90)
Distributions of capital from investments in real estate partnerships	1,000	—	—
Acquisition of Comstock Service	—	1,215	—
Net cash provided by investing activities	<u>702</u>	<u>843</u>	<u>(90)</u>
Cash flows from financing activities:			
Proceeds from notes payable	212,408	81,747	74,521
Proceeds from related party notes payable	444	4,646	6,300
Payments on notes payable	(135,098)	(78,716)	(37,782)
Payments on related party notes payable	(10,725)	(6,000)	—
Contribution from minority shareholders	87	—	2,000
Payment of distribution payable	(12,655)	—	—
Distributions paid to minority shareholders	(2,412)	(14,181)	(1,674)
Distributions paid to shareholders	—	(14,168)	(2,521)
Proceeds from shares issued under employee stock purchase plan	133	—	—
Net proceeds from offerings	52,809	64,962	—
Net cash provided by financing activities	<u>104,991</u>	<u>38,290</u>	<u>40,844</u>
Net (decrease) increase in cash and cash equivalents	(25,392)	50,399	8,465
Cash and cash equivalents, beginning of period	67,559	17,160	8,695
Cash and cash equivalents, end of period	<u>\$ 42,167</u>	<u>\$ 67,559</u>	<u>\$ 17,160</u>
Supplemental disclosures of cash flow information:			
Income taxes paid	<u>\$ 23,044</u>	<u>\$ —</u>	<u>\$ —</u>

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS
(Amounts in thousands, unless otherwise indicated)

1. ORGANIZATION

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 using the purchase method of accounting (see Note 2) as this was deemed to be a substantive exchange due to the disparity in ownership.

The Predecessor is not a legal entity but rather a combination of entities that have a high degree of common ownership, common management, and common corporate governance that resulted in substantially the same ownership as the Comstock Companies before and after the transaction, and therefore these combined financial statements present the combined historical operations of the Company.

As a result of the IPO, the Company sold 3,960 Class A Common Shares at \$16.00 per share, raising proceeds, net of the underwriting discount, of approximately \$56.0 million. On December 28, 2004, pursuant to the underwriters' exercise of their over-allotment option, the Company sold an additional 594 shares resulting in additional proceeds, net of underwriting discount, of approximately \$8.8 million.

On June 22, 2005 the Company completed a follow-on offering in which 2,360 shares of Class A Common stock were sold to the public at a price of \$23.90 per share. The offering resulted in total proceeds to the Company, net of underwriting discounts, of approximately \$52.8 million.

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 14, 2004.

For purposes of identification and description, we are referred to as the "Predecessor" for the period prior to the IPO, the Company for the period subsequent to the IPO, and "we," "us," and "our" for both periods.

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

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting principles and practices used in the preparation of the consolidated and combined financial statements is as follows:

Basis of Presentation

As discussed in Note 1, the Company and the Predecessor effected the Consolidation on December 17, 2004. The Company and the Predecessor were entities that had a high degree of common ownership, common management, and common corporate governance as they were owned by the same individuals each holding substantially the same ownership. As a result, the Company has determined that, based on the high degree of common ownership that resulted in substantially the same ownership interests before and after the transaction, the common nature of the businesses, the long-term business relationships between the companies and other related factors, the exchange lacked substance and therefore, they accounted for the Consolidation on a historical cost basis in accordance with FASB Technical Bulletin (FTB 85-5, "Issues Related to Accounting of Business Combination.") Further, SFAS 141 "Business Combinations" states that, in transactions between parties under common control, the receiving entity should account for the assets and liabilities received at their historical carrying values. Additionally, such transfers should be accounted for by the receiving entity as of the beginning of the period in which the transaction occurs. Accordingly, the Company has reflected the assets and liabilities acquired in the transaction at their historical carrying values and the results of operations are presented as if the transaction occurred on January 1, 2004. The accompanying combined statements of operations, changes in stockholders' equity and cash flows for the year ended December 31, 2003 are those of the Predecessor.

As further discussed in Note 4, the Predecessor merged with Comstock Service on December 17, 2004. Due to a disparity in ownership as compared to the other entities which comprised the Predecessor, Comstock Service was not under common control with the Predecessor and as such the consolidation transaction was considered a substantive exchange. Accordingly, the Company has accounted for the consolidation of Comstock Service as an acquisition using the purchase method of accounting as required by SFAS 141. As a result, the assets and liabilities acquired have been recorded at the fair values in the accompanying financial statements on the date of the transaction. No goodwill was recognized in connection with this transaction.

Principles of consolidation

The consolidated and combined financial statements include all controlled subsidiaries. In addition, the Company reviews its relationships with other entities to assess whether the Company is the primary beneficiary of a variable interest entity. If the determination is made that the Company is the primary beneficiary, then that entity is consolidated. See the "Recent accounting pronouncements" section of this Note and Note 3 for additional discussion on the consolidation of variable interest entities. All material inter-company balances and transactions are eliminated in consolidation.

Cash and cash equivalents

Cash and cash equivalents are comprised of cash and short-term investments with maturities when purchased of three months or less. At times, the Company may have deposits with institutions in excess of federally insured limits. Banking institutions with which the Company does business are considered credit worthy; therefore, credit risk associated with cash and cash equivalents is considered low. At December 31, 2005, the Company had restricted cash of \$10,800, which primarily includes certain customer deposits related to home sales.

Receivables

Receivables include amounts in transit or due from title and settlement companies for residential property closings. The Company has determined that no allowance for uncollectibility is required at December 31, 2005 and 2004 based on a review of the individual accounts.

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. The Company assesses the impairment of real estate assets whenever events or changes in circumstances indicate that the net book value may not be recoverable. As discussed in Note 5 the Company recorded an impairment charge of \$1.2 million during the fourth quarter of 2005.

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:

	Years Ended December 31,		
	2005	2004	2003
Total interest incurred	12,272	\$ 4,686	\$ 1,944
Beginning interest capitalized	\$ 4,524	\$ 1,428	\$ 586
Plus: Interest incurred on notes payable	11,752	2,847	1,782
Plus: Interest incurred on related party notes payable	310	1,461	154
Less: Interest expensed as a component of cost of sales	(4,996)	(1,212)	(1,094)
Ending interest capitalized	\$ 11,590	\$ 4,524	\$ 1,428

Environmental remediation costs

Development and sale of real estate property creates a potential for environmental liability. Environmental costs relating to land and properties under development are capitalized and charged to cost of sales when sold. Environmental costs incurred in connection with properties previously sold are expensed in the period when identified.

Property, plant, and equipment

Property, plant, and equipment are carried at cost less accumulated depreciation and are depreciated on the straight-line method over their estimated useful lives as follows:

Furniture and equipment	7 years
Computer equipment	3 years
Office equipment	7 years

Provisions for impairment are recorded when estimated future cash flows from operations and projected sales proceeds are less than the net carrying value. When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from their separate accounts and any gain or loss on sale is reflected in operations. Expenditures for maintenance and repairs are charged to expense as incurred.

Investment in real estate partnerships

Real estate partnerships in which the Company has significant influence and is not the primary beneficiary under FIN 46, but less than a controlling interest, are accounted for under the equity method. Under the equity method, the Company's initial investment is recorded at cost and is subsequently adjusted to recognize its share of earnings and losses. Distributions received reduce the carrying amount of the investment.

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 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:

	Years Ended December 31,		
	2005	2004	2003
Balance at beginning of period	\$ 916	\$ 541	\$ 460
Additions	888	823	344
Releases and/or charges incurred	(598)	(448)	(263)
Balance at end of period	<u>\$ 1,206</u>	<u>\$ 916</u>	<u>\$ 541</u>

Minority interest

Minority interest reflects third parties' ownership interest in entities the Company has consolidated.

Revenue recognition

The Company recognizes revenues and related profits from the sale of residential properties and finished lots when closing has occurred, full payment has been received, title and possession of the property transfer to the buyer and the Company has no significant continuing involvement in the property.

Other revenues are derived from management and administrative support services provided to related parties, which are recognized as the services are provided.

Advertising costs

The total amount of advertising costs charged to general, selling and administrative expense was \$1,602, \$863, and \$391 for the years ended December 31, 2005, 2004 and 2003, respectively.

Stock compensation

As discussed in Note 14, the Company currently sponsors stock option plans and restricted stock award plans. Prior to December 14, 2004, the Company did not sponsor any such plans. Effective January 1, 2004, the Company prospectively adopted SFAS No. 123R (revised 2004), "Share-Based Payment" ("SFAS 123R"), which replaces SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and supercedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements over the vesting period based on their fair values at the date of grant. A portion of the costs associated with stock-based compensation is capitalized to real estate held for development and sale, with the remainder allocated to selling, general and administrative expenses.

Income taxes

Prior to December 17, 2004 the Predecessor Company had elected to be treated as an S corporation under Subchapter S of the Internal Revenue Code and therefore was not subject to income taxes. Taxable income or loss was passed through and reported by the individual shareholders. Subsequent to the Consolidation the company was reorganized as a C corporation under which income taxes are accounted for under the asset and liability method in accordance with SFAS 109 "Accounting for Income Taxes". Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Earnings per share

The following weighted average shares and share equivalents are used to calculate basic and diluted EPS for the years ended December 31, 2005, 2004 and 2003:

	Year Ended December 31,		
	2005	2004	2003
Basic earnings per share			
Net Income	\$ 27,562	\$ 14,303	\$ 5,939
Basic weighted-average shares outstanding	12,870	7,347	7,067
Per share amounts	\$ 2.14	\$ 1.95	\$ 0.84
Dilutive Earnings Per Share			
Net Income	\$ 27,562	\$ 14,303	\$ 5,939
Basic weighted-average shares outstanding	12,870	7,347	7,067
Stock options and restricted stock grants	152	4	—
Dilutive weighted-average shares outstanding	13,022	7,351	7,067
Per share amounts	\$ 2.12	\$ 1.95	\$ 0.84

Shares issued to the owners of the Predecessor in exchange for their interests in connection with the Consolidation have been reflected in weighted average shares as of the beginning of the earliest period presented.

Comprehensive income

For the years ended December 31, 2005, 2004, and 2003, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying combined consolidated financial statements.

Segment reporting

Since the Company operates primarily in a single extended geographical market with similar products at its various development projects, it is considered to represent a single reportable segment for financial reporting purposes.

Use of estimates

The preparation of the financial statements, in conformity with accounting principles generally accepted in the United States of America, requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes amounts. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate held for development and sale, capitalization of costs, consolidation of variable interest entities and warranty reserves.

Recent accounting pronouncements

On June 29, 2005, the Emerging Issues Task Force ("EITF") reached a consensus on EITF Issue No. 04-05, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("EITF 04-05"). The scope of EITF 04-05 is limited to limited partnerships or similar entities (such as limited liability companies that have governing provisions that are the functional equivalent of a limited partnership) that are not variable interest entities under FIN 46 and provides a new framework for addressing when a general partner in a limited partnership, or managing member in the case of a limited liability company, controls the entity. Under EITF 04-05, we may be required to consolidate certain investments, that are not variable interest entities, in which we hold a general partner or managing member interest. EITF 04-05 is effective after June 29, 2005 for new entities formed after such date and for existing entities for which the agreements are subsequently modified and is effective for our fiscal year beginning January 1, 2006 for all other entities. The adoption of EITF 04-05 did not have any impact on our financial statements as of December 31, 2005.

FAS 154 "Accounting Changes and Error Corrections" replace APB Opinion No. 20, and FASB Statement No. 3. Opinion 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This Statement requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. When it is impracticable to determine the period-specific effects of an accounting change on one or more individual prior periods presented, this Statement requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings (or other appropriate components of equity or net assets in the statement of financial position) for that period rather than being reported in an income statement. When it is impracticable to determine the cumulative effect of applying a change in accounting principle to all prior periods, this Statement requires that the new accounting principle be applied as if it were adopted prospectively from the earliest date practicable.

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 agreement. 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 enters 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 FIN 46-R. This is because the Company has been deemed to have provided subordinated financial support, which refers to variable interest that will absorb some or all of an entity's expected theoretical losses if they occur. The Company therefore examines the entities with which the Company enters into 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, at December 31, 2005 and 2004 the Company has consolidated five entities each year in the accompanying consolidated balance sheet. The effect of the consolidation at December 31, 2005 and 2004 was the inclusion of \$89,890 and \$118,558, respectively, in "Inventory not owned — Variable Interest Entities" with a corresponding inclusion of \$83,015 (net of land deposits paid of \$6,875) and \$114,333 (net of land deposits paid of \$4,225), respectively, to "Obligations related to inventory not owned." Creditors, if any, of these Variable Interest Entities have no recourse against the Company.

4. ACQUISITIONS

As discussed in Note 1, the Company on December 17, 2004, merged Comstock Service into Comstock Holdings. The acquisition was accounted for under the purchase method and, accordingly, the purchase price was allocated to assets acquired and liabilities assumed based on their estimated fair value on the acquisition date.

Pursuant to the terms of the purchase agreement, shares of Comstock Service were canceled and replaced by shares of Comstock Holding. (As discussed in Note 1)

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

Cash	\$ 1,216
Notes receivable	2,506
Real estate held for development and sale	19,338
Other assets	25
Total assets acquired	23,085
Less: Accounts payable	(1,052)
Less: Notes payable	(13,889)
Less: Minority interest	(2,717)
Less: Other liabilities	(671)
Net assets acquired	\$ 4,756

Additionally, in 2004, the Company purchased certain noncontrolling minority interests in its consolidated subsidiaries for a total of \$900. The net excess of the fair value over the book value of \$226 was allocated to the related subsidiary's assets, primarily work in process.

The selected unaudited pro forma consolidated information for the years ended December 31, 2004 and 2003, determined as if the acquisition, described above, had occurred on January 1, of each year as follows:

	Proforma (unaudited)	
	Years Ended	
	December 31,	
	2004	2003
Revenues	\$ 102,135	\$ 62,359
Operating income	19,456	8,695
Other (income) expense, net	1,018	(70)
Income before minority interest and equity in earnings of real estate partnerships	18,438	8,765
Minority interest	5,157	3,713
Income before equity in earnings of real estate partnerships	13,281	5,052
Equity in earnings of real estate partnerships	118	139
Net Income before income taxes	\$ 13,399	\$ 5,191

The selected unaudited pro forma information is presented for illustrative purposes only and is not necessarily indicative of results of operations in future periods or results that would have been achieved had the Company and the acquired business been combined during the specified periods.

5. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

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

	December 31,	
	2005	2004
Land and land development costs	\$ 119,530	\$ 65,545
Cost of construction (including capitalized interest and real estate taxes)	144,272	38,781
	\$ 263,802	\$ 104,326

The Company performs an evaluation for impairment whenever events or changes in circumstances indicate that the carrying amount of long-lived assets or intangible assets with finite lives may not be recoverable. These assets are written down to fair value if the sum of the expected future undiscounted cash

flows is less than the carrying amounts. During the fourth quarter of 2005 the Company experienced lower than expected absorption and sales traffic rates, which resulted in increased carrying costs, in certain projects in North Carolina. The Company considered this a “triggering event” as defined by FAS 144 and evaluated its carrying amounts related to its projects in North Carolina. As a result, the Company recorded a \$1.2 million impairment charge on the carrying value of real estate held for development and sale at Kelton II, a townhouse community in Raleigh, North Carolina. The charge is included as a component of cost of sales on the accompanying statement of operations. The impairment was calculated using a discounted cash flow analysis model. This analysis is dependent on many subjective factors, including the selection of appropriate discount and absorption rates. The cash flow estimates used by the Company are based on the best information available at the time the estimates are made. Significant adverse changes in circumstances affecting these estimates and assumptions in future periods could cause a significant impairment adjustment to be recorded.

6. PROPERTY, PLANT, AND EQUIPMENT, NET

Property, plant, and equipment consist of the following:

	December 31,	
	2005	2004
Computer equipment	\$ 540	\$ 498
Furniture and fixtures	296	152
Office equipment	243	271
	<u>1,079</u>	<u>921</u>
Less: accumulated depreciation	474	433
	<u>\$ 605</u>	<u>\$ 488</u>

Depreciation expense, included in “selling, general, and administrative” in the consolidated and combined financial statements of operations, amounted to \$172, \$106 and \$67 for the years ended December 31, 2005, 2004 and 2003, respectively.

7. INVESTMENTS IN REAL ESTATE PARTNERSHIPS

Investments in real estate partnerships accounted for using the equity method are comprised of the following:

	December 31,	
	2005	2004
TCG Fund I, L.C.(1)	\$ —	\$ 1,029
North Shore Investors, LLC(2)	(35)	—
	<u>\$ (35)</u>	<u>\$ 1,029</u>

- (1) TCG Fund I, L.C. (“Fund I”) — During 2002, the Predecessor had made a \$1,000 investment in Fund I. Under the terms of the investment, the Company had a 9.58% member interest in Fund I and a 33.18% interest in the Loan Class of Fund I. Fund I provided funds for real estate projects being developed, managed or built by entities in which the Company had an interest. For the years ended December 31, 2005, 2004, and 2003 the Company recorded earnings of \$135, \$120, \$120 respectively. The Company received its share of distribution of profits in the amount of \$164, \$120 and \$156 during the year ended December 31, 2005, 2004, 2003 respectively. During September 2005, the fund ceased operations and the Company received its initial investment of \$1,000 as a final distribution.
- (2) Prior to the Company’s acquisition of Comstock Service as discussed in Note 1, Comstock Service in 2001 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. The Company, as part of the acquisition of Comstock Service on December 17, 2004 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 may comply with certain debt repayments. Because the Company may be obligated to provide future financial support, the Company, during the twelve months ended December 31, 2005 recorded its share of losses incurred by North Shore in the accompanying financial statements in the amount of \$35.

During the third quarter of 2005, 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 finalized the purchase of the loans on or about September 8, 2005, issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and subsequently filed suit for collection of the loans 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 and development loan. The Company has set a foreclosure sale for March 23, 2006.

As of December 31, 2005 the Company carried the following amounts in its financial statements related to North Shore:

Investment in real estate partnerships	\$	(35)
Due from affiliates	\$	1,272
Development and construction loan receivable	\$	1,563

The Company has evaluated the carrying value of its investment in and receivables from North Shore. At this time the Company does not believe an impairment reserve is warranted. However, it is possible this may change in future periods. In addition, based on results of negotiations, the Company may, in the future be required to consolidate the North Shore entity.

The condensed combined balance sheets and the statements of operations for the real estate property partnerships accounted for using the equity method are as follows:

Condensed Combined Balance Sheets

	December 31,	
	2005	2004
Real estate held for development and sale	\$ 11,263	\$ 10,556
Other assets	75	4,037
Total assets	\$ 11,338	\$ 14,593
Mortgage notes payable	\$ 10,921	\$ 10,659
Notes payable to related parties	1,547	1,432
Other liabilities	143	181
Total liabilities	12,611	12,272
Partners' capital	(1,273)	2,321
Total liabilities and partners' capital	\$ 11,338	\$ 14,593

Condensed Combined Statements of Operations

	Years Ended December 31,		
	2005	2004	2003
Revenues	\$ 3,920	\$ 22,157	\$ 11,349
Operating income (loss)	\$ 111	4,573	1,691
Other (income) and expense	7	99	21
Net income (loss)	\$ 104	\$ 4,474	\$ 1,670
Company's share of net income (loss)	\$ 99	\$ 118	\$ 139

8. OTHER ASSETS

Other assets consist of the following:

	December 31,	
	2005	2004
Contract land deposits	\$ 2,825	\$ 630
Restricted escrow deposits	1,915	776
Prepaid income taxes(1)	4,708	—
Other	1,583	1,134
	\$ 11,031	\$ 2,540

- (1) Prepaid income taxes represent an overpayment of federal and state income taxes due to lower actual taxable income than originally estimated. The Company expects to apply these overpayments against 2006 taxable income.

9. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following:

	December 31,	
	2005	2004
Trade payables	\$ 35,163	\$ 15,318
Warranty	1,206	916
Customer deposits	17,817	16,678
Other	4,945	2,620
	\$ 59,131	\$ 35,532

10. NOTES PAYABLE

The Company has outstanding borrowings with various financial institutions and other lenders which have been used to finance the acquisition, development, and construction of real estate property. Notes payable consist of the following:

	2005	2004
Notes payable to non-related parties		
Shared construction and development loans with approximately \$178,499 available to be drawn for planned development expenditures, with monthly interest payments ranging from prime + 0.5% to 16% or 30 day libor + 1.9% to 90 day libor + 3.75% (the prime rate at December 31, 2005 and 2004, was 7.25% and 5.25%, respectively; the 30/90 day libor rate at December 31, 2005 and 2004, 4.39%/4.54% and 2.40%/2.56%, respectively)	\$ 140,143	\$ 63,071
Interest bearing deferred purchase money deed of trust note issued in exchange for land, with interest at a rate of 5.39%. The note matured in December 2005	—	1,512
Subordinated second trust loan of \$2,500 and \$228 with quarterly interest only payments of 7% and monthly interest only payments of 14%, respectively. The remaining note matures March 2010. At December 31, 2005 the accrued interest on the note is \$15	2,515	228
Non-interest bearing deferred purchase money notes issued in exchange for land	336	873
	<u>142,994</u>	<u>65,684</u>
Notes payable to related parties		
Subordinated second trust loan of \$300 with monthly interest only payments of 14%. The note was paid in full in April 2005	—	300
Note payable of up to \$5,000 with quarterly interest only payments of 12% per annum. The note was paid in full in June 2005	—	2,500
Note payable of \$2,400 with monthly interest only payments of 12% per annum maturing in August 2006	663	2,400
Note payable to TCG Fund I LC, an equity method investee for a loan up to \$4,000 with interest only payments at 12% per annum. The note was paid in full in June 2005. At December 31, 2004 the accrued interest on the note is \$106	—	3,323
Note payable to TCG Debt Fund II LC, a related party due to common ownership, for a loan up to \$2,600 with interest only payments at 12% per annum. The note was paid in full in November 2005. At December 31, 2004 the accrued interest on the note is \$49	—	2,421
	<u>\$ 143,657</u>	<u>\$ 76,628</u>

Maturities with respect to all notes payable as of December 31, 2005 are as follows:

<u>Years ending December 31,</u>	
2006	\$ 24,610
2007	116,533
2008 and thereafter	2,514
	<u>\$ 143,657</u>

For the years ended December 31, 2005, 2004 and 2003, aggregate debt had a weighted average annual effective interest rate of 9.2%, 6.9%, and 6.6%, respectively.

Upon settlement of each home or lot, principal is curtailed based upon a specific release payment to the lender. The loans are collateralized by first liens on the land held for development and the construction in progress of the respective developments. In addition, borrowings at the project entity level are guaranteed by the Company and in most cases some of its shareholders. The Company must comply with certain restrictive covenants, which include maintenance of a total debt-to-tangible net worth ratio and a minimum tangible net worth level. As of December 31, 2005 the Company was in compliance with all covenants as required.

The second trust loans are collateralized by subordinate liens on the land held for development and the construction in progress of the respective developments. These subordinate liens are subject to inter-creditor agreements with the senior lenders and are used by the Company to satisfy all or a portion of the equity requirements of the senior lenders. As such, these subordinated facilities are considered higher risk investments and as a result they command premium interest rates.

11. COMMON STOCK

As discussed in Note 1, the Company immediately prior to the IPO as a result of its merger with Comstock Holdings, had 4,333 and 2,734 shares Class A and B Common Stock outstanding. 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.

As a result of the IPO, the Company sold 3,960 Class A shares of Common Stock. The Company also sold an additional 594 shares of Class A Common Stock pursuant to the underwriters' exercise of their over-allotment option.

On June 22, 2005 the Company completed a follow-on offering in which 2,360 shares of Class A Common stock were sold to the public.

During the fourth quarter of 2005 the Company's Board of Directors authorized a \$1,000 share buyback initiative. As of December 31, 2005 no shares have been repurchased.

12. RELATED PARTY TRANSACTIONS

In June 2002, the Predecessor entered into a promissory note agreement with TCG Fund I, LC to fund development projects. TCG Fund I, LC, is a related party in which the Company has an equity investment. The promissory note agreement allows for the Company to borrow up to \$4 million. The note bears interest at 12% per annum and was paid in full during June 2005. As of December 31, 2004 and 2003 the amount owed to TCG Fund I amounted to approximately \$3.3 Million. Accrued interest on this note totaled \$106 and \$90 at December 31, 2004 and 2003, respectively.

In September 2004, the Predecessor entered into a promissory note agreement with TCG Fund II, LC to fund development projects. TCG Fund II, LC is a related party which the company manages as a non-member. The promissory note agreement allows the Company to borrow up to \$10 million. The note bears interest at 12% per annum and was paid in full during November 2005. As of December 31, 2004 the Company owed \$2.4 million under this promissory agreement. Accrued interest on this note totaled \$49 at December 31, 2004.

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. For nine months ended September 30, 2004, total payments made under this lease agreement were \$231. 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 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. Total payments made under this lease agreement were \$629 as of December 31, 2005.

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 one of the Company's developments. The Company paid \$10,038, \$4,352, and \$829 to this construction company during the year ended December 31, 2005, 2004 and 2003, respectively, to this company.

In May 2003, the Predecessor entered into a lot purchase agreement to sell 47 developed lots to an entity in which Christopher Clemente's father-in-law, Dwight Schar, serves as the chief executive officer and chairman of the board of directors and is a shareholder. During the year ended December 31, 2004 and 2003, the Company delivered 30 and 17 lots, respectively, to this entity for \$3,910 and \$2,193, respectively.

In December 2003, the Predecessor entered into a \$7,000 second trust loan agreement, accruing interest at 18% per annum, with Comstock Capital Partners, L.C., a related entity equally owned by Christopher Clemente and Gregory Benson. Immediately upon execution, Comstock Capital Partners assigned 100% of the second trust loan to other parties. An assignment was made covering \$6 million of the principal under the second trust loan to an entity owned or controlled by Christopher Clemente's father-in-law, Dwight Schar, at 15% per annum. At December 31, 2003 the principal owed was \$7,000. Accrued interest at December 31, 2003 amounted to \$55. The remaining \$1.0 million of principal under the loan was assigned to an entity controlled by Scott Kasprovicz who became a related party on June 1, 2004 upon the hiring of his son, Reid Kasprovicz. This \$7,000 second trust loan matured in November 2004 and was paid in full.

In April 2004, the Predecessor entered into an additional three year \$5,000 promissory note agreement, with an entity controlled by Scott Kasprovicz, bearing interest at a rate of 12%. Under the terms of the note, the Predecessor was advanced \$2,500 in April 2004 and an additional \$2,500 in June 2004. Due to the a consolidation of The Comstock Companies, the lender was entitled to a premium of up to 10% of the outstanding principal balance which was paid December 2004. As of December 31, 2004 the amount owed to Scott Kasprovicz was \$2,500. Accrued interest and premium at December 31, 2004 totaled \$598. This note was paid in full during June 2005.

At December 31, 2004, the Company had an outstanding note receivable from Investors Management, LLC of \$163, which accrues interest at a rate of 10% per annum. Investors Management, LLC is a related party, which is owned partially by Christopher Clemente, Gregory Benson and Bruce Labovitz (executive officers and/or shareholders of the Company). At December 31, 2004 accrued interest receivable on this note totaled \$5. During February 2005 the Company received payment in full on this note.

Christopher Clemente's mother-in-law, Janice Schar, and Gary Martin each invested \$100 as minority shareholders in one of our subsidiaries, and Judah and Deborah Labovitz, the parents of Bruce Labovitz, loaned approximately \$300 to another of our subsidiaries. During the first quarter 2005, the Company repurchased the minority interests of Janice Schar and Gary Martin for an approximate purchase price of \$136. In April 2005, the Company paid the \$300 loan to Judah and Deborah Labovitz in full.

During 2003, the Predecessor entered into agreements with I-Connect, L.C., a company in which Investors Management, LLC 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 that was developed by I-Connect along with any improvements made thereto by the Company remained the property of I-Connect. During the years ended December 31, 2005, 2004 and 2003, the Company paid \$485, \$434 and \$471, respectively, to I-Connect. Also, in March 2003, the Predecessor entered into a space sharing agreement with I-Connect, L.C. to occupy and use 3,342 square feet of office space subleased by I-Connect, L.C. from a third party in Reston, Virginia. The Predecessor paid \$4 and \$40, respectively, under this agreement for the years ended December 31, 2004 and 2003. On June 24, 2003, the I-Connect, L.C. sublease was assigned to Comstock Partners, L.C. (as landlord). The space sharing agreement with I-Connect ended on September 30, 2004.

At the end of December 31, 2004 and 2003, the Predecessor received revenue of approximately \$3,280 and \$2,908, respectively, by providing administrative and sales support to Comstock Service Corp., Inc., a related party previously owned by Christopher Clemente and Gregory Benson. At December 31, 2003 the Company had a receivable of approximately \$2,690 from this entity.

For the years ended December 31, 2005, 2004 and 2003, the Predecessor received revenue of approximately \$0, \$157 and \$121, respectively, by providing administrative and sales support to Loudoun Station a related party in which Christopher Clemente, Gregory Benson and Christopher Clemente's father-in-law, Dwight Schar, are shareholders. During March 2005 all members assigned their membership rights to Greg Benson giving him 100% ownership of Investors Management.

From October 31, 2003 to December 31, 2003, the Predecessor granted interest-free loans totaling \$38 to an employee of the Company. As of December 31, 2003 and June 30, 2004 the employee owed the Company \$38 and \$39, respectively. The loan was repaid in July of 2004.

In October 2004, the Predecessor entered into an agreement with Comstock Asset Management Inc.(CAM), where CAM assigned the Company first refusal rights to purchase a portion of their Loudoun Station Properties. In partial consideration for the performance in which the Company would provide management services for a fee of \$20 a month. For the years ended December 31, 2005 and 2004 the Company recorded \$240 and \$60, respectively, in revenue. At December 31, 2005 and 2004 the Predecessor recorded a receivable for \$0 and \$60, respectively, from this entity. In addition, the Company in November 2004, entered into an agreement with Comstock Asset Management 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 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 course of the years ended December 31, 2005 and 2004 the Company provided bookkeeping services to related party entities at no charge.

In August 2004, the Predecessor entered into a \$2,400 promissory note agreement with Belmont Models I, L.C., an entity managed by Investors Management. The note bears an interest rate of 12%, which is payable monthly and matured July 2005. In March 2005, 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. As a result of the deliveries, the promissory note was reduced by the total purchase price. At December 31, 2005 and 2004 the Company owed \$663 and \$2,400, respectively. Accrued interest payable on this note totaled \$6 and \$49, respectively, at December 31, 2005 and 2004.

During 2005 and 2004 the Predecessor 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 homes 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., an affiliate, 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. 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 will also provide bookkeeping services to the affiliate. In October 2005 the Company donated \$100 cash and the right to use 27 units at our Penderbrook condo conversion project in Fairfax, VA for a period of six months. The Foundation is providing these units to the victims of Hurricane Katrina. The fair market value of the rental units donated is \$237.

13. EMPLOYEE BENEFIT PLANS

The Company maintains a defined contribution retirement savings plan pursuant to Section 401(k) of the Internal Revenue Code (the "Code"). Eligible participants may contribute a portion of their compensation to their respective retirement accounts in an amount not to exceed the maximum allowed under the Code. The plan provides for matching Company contributions at the sole discretion of the board of directors. The Company and the Predecessor made no contributions to the plan during the years ended December 31, 2005, 2004 and 2003.

The Company maintains an Employee Stock Purchase Plan in which eligible employees have the opportunity to purchase common stock of the Company at a discounted price of 85% of the fair market value of the stock on the designated dates of purchase. Under the terms of the plan, the total fair market value of the common stock that an eligible employee may purchase each year is limited to the lesser of 15% of the employee's annual compensation or \$12,750. Under the plan, employees of the Company purchased 7,817 shares of Class A common stock.

14. RESTRICTED STOCK, STOCK OPTIONS AND OTHER STOCK PLANS

Effective January 1, 2004, the Company adopted the fair value recognition provisions of SFAS No. 123(R). Prior to December 14, 2004 the Company did not sponsor any stock based plans. Accordingly, no stock based compensation was included for the year ended December 2003.

On December 14, 2004 the Company adopted the 2004 Long-Term Compensation Plan ("The Plan"). The plan provides for the issuance of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, dividend equivalents, bonus stock and awards in lieu of cash compensation, other stock-based awards and performance awards. Any shares issued under the Plan vest typically over service periods that range from one to five years. Stock options issued under the plan expire 10 years from the date they are granted.

The Plan provided for an initial authorization of 1,550 shares of Class A Common stock for issuance thereunder, plus an additional annual authorization effective January 1, 2006 equal to the lesser of (i) 3% of the Class A Common Stock outstanding on the date of determination, (ii) 500,000 shares or (iii) such lesser amount as may be determined by the Company's Board of Directors.

The following equity awards were outstanding at December 31,

	<u>2005</u>	<u>2004</u>
Stock options	213,993	107,144
Restricted stock grants	273,891	275,317
Total outstanding equity awards	487,884	382,461

On December 31, 2005 the following amounts were available for issuance under the plan:

Shares Available for issuance at December 14, 2004	1,550
Adjustments:	
Restricted stock grants — Issued	(275)
Options — issued	(107)
Shares available for issuance at December 31, 2004	1,168
Adjustments:	
Restricted stock Grants — issued	(16)
Options — issued	(107)
Restricted stock grants — forfeited	14
Shares available for issuance at December 31, 2005	1,059

The fair value of each option award is calculated on the date of grant using the Black-Scholes option pricing model that uses the assumptions noted in the following table. Because the Company does not have sufficient trading history, expected volatilities are based historical volatilities of comparable companies within our industry. We estimate forfeitures using a weighted average historical forfeiture rate. Our estimates of forfeitures will be adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from their estimate. Due to lack of history, expected lives based on management's best estimates at the time of grant. The risk-free rate for periods is based on the U.S. Treasury rates in effect at the time of grant.

	2005	2004
Weighted average fair value of options granted	\$ 7.61	\$ 6.58
Dividend yields	N/A	N/A
Expected volatility	41-48%	48%
Weighted average expected volatility	45%	48%
Risk free interest rates	3.56- 3.63%	3.35%
Weighted average expected lives (in years)	2.5	4

The following table summarizes information about stock options activity:

	Shares	Weighted Average Exercise Price
Outstanding at December 14, 2004	—	—
Granted	107,144	\$ 16.00
Outstanding at December 31, 2004	107,144	16.00
Granted	106,849	23.90
Exercised	—	—
Forfeited or expired	—	—
Outstanding at December 31, 2005	213,993	\$ 19.94
Exercisable at December 31, 2005	—	\$ —

At December 31, 2005 there were no options which were fully vested.

A summary of the Company's restricted share activity is presented below:

	Shares	Weighted average fair value at date of grant
Restricted shares outstanding at December 14, 2004	—	—
Granted	275,317	\$ 16.00
Restricted shares outstanding at December 31, 2004	275,317	16.00
Granted	16,188	24.55
Vested	(4,068)	18.12
Forfeited	(13,545)	16.28
Restricted shares outstanding at December 31, 2005	273,891	\$ 16.46

As of December 31, 2005, there was \$2,548 of total unrecognized compensation cost related to nonvested restricted stock issuances granted under the Plan. This cost is expected to be recognized over a weighted-average period of 1.6 years.

Total compensation expense for share based payment arrangements for the year ended December 31, 2005 and 2004 was \$2,322 and \$101 respectively, of which \$407 and \$0 was capitalized to real estate held for development and sale. The total deferred tax benefit related to stock compensation, recorded on the balance sheet as of December 31, 2005 and 2004 amounted to \$790 and \$39 respectively.

The Company intends to issue new shares of its common stock upon vesting of restricted stock grants or the exercise of stock options.

15. COMMITMENTS AND CONTINGENCIES

Litigation

As manager of an affiliated entity, we exercised our option rights to purchase the project acquisition, development and construction loans made for the benefit of North Shore project located in Raleigh, North Carolina. We subsequently issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and thereafter filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005 for a claim amount of \$1.8 million as of the date of the filing. The Company finalized the purchase of the loans on or about September 8, 2005, issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and subsequently filed suit for collection of the loans 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 loans. The Company has set a foreclosure sale for March 23, 2006.

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 \$147.0 million project loan for the Potomac Yard project. The claim in the base amount of \$2.0 million plus interest and costs is based on breach of contract and equitable remedies of unjust enrichment and quantum meruit. The Company has denied the claims.

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.

Lot purchase agreements

On December 26, 2001, the Predecessor entered into a purchase commitment agreement to purchase developed residential lots. The purchase commitment agreement provides for fixed purchase prices per lot subject to escalation throughout the build-out period for each project. At December 31, 2005, the Company had commitments to purchase seventeen lots at an average minimum purchase price of approximately \$20 per lot, under non-specific performance agreements.

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 Company. At December 31, 2005, the Company has issued \$5,042 in letters of credit and \$16,670 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 December 31, 2005 approximate:

Year Ended:	Amount
2006	\$ 978
2007	1,029
2008	1,030
2009	850
2010	109
Thereafter	0
Total	<u>\$ 3,996</u>

Operating lease rental expense aggregated \$728 and \$347, respectively, for years ended December 31, 2005 and 2004.

16. FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts reported in the combined consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities and floating rate debt approximate fair value.

The carrying amount and fair value of fixed rate debt at December 31, 2004 and 2003 were as follows:

	December 31,	
	2005	2004
Carrying amount	\$ 31,609	\$ 11,172
Fair value	\$ 36,233	\$ 12,789

Fair value estimates are made at a specific point in time, based on relevant market information about the financial instruments. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore, cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

17. INCOME TAXES

Prior to December 17, 2004 the Predecessor had elected to be treated as an S corporation under Subchapter S of the Internal Revenue Code and therefore was not subject to income taxes. Taxable income or loss was passed through and reported by the individual shareholders. Subsequent to the consolidation the company was reorganized as a C corporation under which income taxes are accounted for under the asset and liability method in accordance with SFAS 109 "Accounting for Income Taxes".

Income Tax provision consists of the following as of December 31,:

	2005	2004
Current:		
Federal	\$ 15,160	\$ 242
State	2,885	48
	<u>18,045</u>	<u>290</u>
Deferred:		
Federal	(1,417)	(472)
State	(262)	(59)
	<u>(1,679)</u>	<u>(531)</u>
Total Income Tax Expense	<u>\$ 16,366</u>	<u>\$ (241)</u>

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 December 31, 2005 and 2004 were as follows:

	<u>2005</u>	<u>2004</u>
Deferred tax assets:		
Inventory	\$ 2,246	\$ 2,067
Warranty	417	293
Deferred rent	27	8
Accrued expenses	73	96
Stock based compensation	790	39
	<u>3,552</u>	<u>2,503</u>
Less — valuation allowance	(840)	(1,508)
Net deferred tax assets	2,712	995
Deferred tax liabilities:		
Investment in Affiliates	(8)	—
Depreciation and amortization	(159)	(174)
Net deferred tax liabilities	(167)	(174)
Net deferred tax assets	\$ 2,545	\$ 821

The Company has adequately provided for contingencies related to income taxes in accordance with SFAS No. 5. At December 31, 2005 and 2004, the Company recorded \$802 and \$68, respectively in income tax reserves. This tax reserve relates predominately to a potential dispute by taxing authorities over tax benefits resulting from additional income tax basis in certain residential housing development projects. The Company has also determined that a valuation allowance of approximately \$840 and \$1,508 as of December 31, 2005 and 2004 respectively related to a deferred tax asset of approximately \$840 and \$1,508 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.

A reconciliation of the statutory rate and the effective tax rate follows:

	<u>2005</u>	<u>2004</u>
Statutory Rate	35.00%	34.00%
Income attributable to period during which the Predecessor was under S Corporation status	0.00%	(37.19)%
State income taxes — net of federal benefit	3.95%	4.26%
Permanent differences	(1.75)%	0.02%
Change in effective tax rate	(0.03)%	
Tax reserve	1.67%	0.35%
Deferred tax assets resulting from a change in tax status, net	0.00%	(10.96)%
Change in valuation allowance	(1.58)%	7.81%
	<u>37.26%</u>	<u>(1.71)%</u>

18. QUARTERLY RESULTS (unaudited)

Quarterly results for the years ended December 31, 2005 and 2004 follow (in thousands, except per share amounts):

	Three months ended			
	March 31, 2005	June 30, 2005	September 30, 2005	December 31, 2005
Revenues	\$ 28,729	\$ 39,911	\$ 78,437	\$ 77,228
Operating income	6,075	4,636	17,919	13,779
Pretax income	6,140	4,787	18,424	14,578
Net Income	3,809	3,066	11,483	9,204
Basic earnings per share	0.33	0.26	0.82	0.66
Diluted earnings per share	0.32	0.26	0.81	0.65

	Three months ended			
	March 31, 2004	June 30, 2004	September 30, 2004	December 31, 2004
Revenues	\$ 17,881	\$ 30,947	\$ 25,739	\$ 21,478
Operating income	3,110	4,553	7,503	4,946
Pretax income	2,106	3,002	5,508	3,446
Net Income	2,106	3,002	5,508	3,687
Basic earnings per share	0.30	0.42	0.78	0.45
Diluted earnings per share	0.30	0.42	0.78	0.45

Quarterly and year-to-date computations of per share amounts are made independently. Therefore, the sum of per share amounts for the quarters may not agree with per share amounts for the year.

19. SUBSEQUENT EVENTS

On January 19, 2006 the Company acquired all of the issued and outstanding shares of capital stock of Parker-Chandler Homes, Inc. Pursuant to the purchase agreement, the Company paid \$10 million in cash, and paid off approximately \$12.3 million in indebtedness and other obligations of PCH, and assumed approximately \$45.9 million of indebtedness of PCH in consideration for the stock of PCH. Also in accordance with the terms of the purchase agreement, the Company granted, pursuant to its existing long-term incentive compensation plan, an aggregate of 214,286 shares of restricted stock of the Company to two of the Sellers, subject to vesting over a two-year period based on such Sellers' continued employment with the Company and the settlement by PCH and its subsidiaries of a specified number of homes during that period.

On January 31, 2006 the Company, via its wholly owned subsidiary, Comstock Carter Lake, L.C., purchased a 259-apartment unit property to be converted to condominiums for a purchase price of approximately \$36.2 million. In conjunction with the purchase the Company, via its wholly owned subsidiary, Comstock Carter Lake, L.C., entered into a loan agreement, for approximately \$26 million to acquire the condominium conversion project in Reston, Virginia called Carter Lake. Under the loan agreement, the Company is a guarantor of the subsidiaries obligations.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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: March 15, 2006

By: /s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

On March 15, 2006, we, the undersigned officers and directors of Comstock Homebuilding Companies, Inc., hereby, severally and individually, constitute and appoint Christopher Clemente and Bruce J. Labovitz, the true and lawful attorneys-in-fact and agents (with full power of substitution in each case) of each of us to execute, in the name, place and stead of each of us (individually and in any capacity stated below), any and all amendments to this Annual Report on Form 10-K and all instruments necessary or advisable in connection therewith, and to file the same with the SEC, said attorneys-in-fact and agents to have power to act and to have full power and authority to do and perform, in the name and on behalf of each of the undersigned, every act whatsoever necessary or advisable to be done in the premises as fully and to all intents and purposes as any of the undersigned might or could do in person and we hereby ratify and confirm our signatures as they may be signed by or said attorneys-in-fact and agents to any and all such amendments and instruments.

Signature	Capacity	Date
<hr/> <i>/s/ CHRISTOPHER CLEMENTE</i> Christopher Clemente	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	March 15, 2006
<hr/> <i>/s/ GREGORY V. BENSON</i> Gregory V. Benson	President, Chief Operating Officer and Director	March 15, 2006
<hr/> <i>/s/ BRUCE J. LABOVITZ</i> Bruce J. Labovitz	Chief Financial Officer (Principal Financial Officer)	March 15, 2006
<hr/> <i>/s/ JASON PARIKH</i> Jason Parikh	Chief Accounting Officer (Principal Accounting Officer)	March 15, 2006
<hr/> <i>/s/ A. CLAYTON PERFALL</i> A. Clayton Perfall	Director	March 15, 2006
<hr/> <i>/s/ DAVID M. GUERNSEY</i> David M. Guernsey	Director	March 15, 2006
<hr/> <i>/s/ JAMES A. MACCUTCHEON</i> James A. MacCutcheon	Director	March 15, 2006
<hr/> <i>/s/ NORMAN D. CHIRITE</i> Norman D. Chirite	Director	March 15, 2006

Signature

Capacity

Date

Robert P. Pincus

Director

/s/ SOCRATES VERSES

Director

March 15, 2006

Socrates Verses

**Exhibit
Number****Exhibit**

3.1(2)	Amended and Restated Certificate of Incorporation
3.2(2)	Amended and Restated Bylaws
4.1(1)	Specimen Stock Certificate
10.1(1)	Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
10.2(1)	Agreement of Sublease, dated as of October 1, 2004, with Comstock Asset Management, L.C.
10.3(1)	Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
10.4(1)	Disbursement and Construction Loan Agreement and Disbursement and Development Loan Agreement, each dated October 10, 2002 and as amended, with Branch Banking and Trust Company of Virginia
10.5(1)	Disbursement and Construction Loan Agreement and Acquisition, Disbursement and Development Loan Agreement, each dated July 25, 2003, with Branch Banking and Trust Company of Virginia
10.6(2)	Loan Agreement, dated January 25, 2005, with Corus Bank, N.A.
10.7(2)	Completion Guaranty, dated January 25, 2005 in favor of Corus Bank, N.A.
10.8(2)	Carve-Out Guaranty, dated January 25, 2005, in favor of Corus Bank, N.A.
10.9(1)	Form of Indemnification Agreement
10.10(1)	Form of Promissory Note to be issued to each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub by each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.11(1)	Form of Tax Indemnification Agreement to be entered into by each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub with each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.12(1)	2004 Long-Term Incentive Compensation Plan
10.13(1)	Form of Stock Option Agreement under the 2004 Long-Term Incentive Compensation Plan
10.14(2)	Form of Restricted Stock Grant Agreement under the 2004 Long-Term Incentive Compensation Plan
10.15(1)	Employee Stock Purchase Plan
10.16(1)	Purchase and Sale Agreement, dated as of April 25, 2003, as amended, with Crescent Potomac Yard Development, LLC
10.17(2)	Purchase and Sale Agreement, dated as of November 9, 2004, as amended, with Fair Oaks Penderbrook Apartments L.L.C.
10.18(2)	Real Estate Purchase Contract, dated as of February 4, 2005, with Westwick Apartments LLC
10.19(2)	Services Agreement, dated March 4, 2005, with Comstock Asset Management, L.C.
10.20(1)	Employment Agreement with Christopher Clemente
10.21(1)	Employment Agreement with Gregory Benson
10.22(1)	Employment Agreement with Bruce Labovitz
10.23(1)	Confidentiality and Non-Competition Agreement with Christopher Clemente
10.24(1)	Confidentiality and Non-Competition Agreement with Gregory Benson
10.25(1)	Confidentiality and Non-Competition Agreement with Bruce Labovitz
10.26(2)	Description of Arrangements with William Bensten
10.27(2)	Description of Arrangements with David Howell
10.28(1)	Trademark License Agreement
10.29(2)	Purchase Agreement, dated as of November 12, 2004 with Comstock Asset Management, L.C.
10.30(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.31(3)	Agreement of Purchase and Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.32(3)	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.

Exhibit Number	Exhibit
10.33(3)	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
10.34(4)	Life Insurance Reimbursement Agreement with William P. Bensten
10.35(4)	Life Insurance Reimbursement Agreement with Bruce Labovitz
10.36(4)	Description of Reimbursement and Indemnification Arrangement with Christopher Clemente and Gregory Benson
10.37(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.38*	Stock Purchase Agreement with Parker-Chandler Homes, Inc. and the Selling Stockholders identified therein, dated as of January 19, 2006
10.39*	Loan Agreement, dated January 31, 2006, by and between Comstock Carter Lake, L.C. and Bank of America, N.A.
10.40*	Guaranty Agreement, dated January 31, 2006m by the Registrant in favor of Bank of America, N.A.
14.1(2)	Code of Ethics
21.1*	List of subsidiaries
23.1*	Consent of PricewaterhouseCoopers LLP
24.1	Power of Attorney (see signature page to this Annual Report on Form 10-K.)
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

* Filed herewith.

- (1) Incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1 filed with the Commission on August 13, 2004 (No. 333-118193).
- (2) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005.
- (3) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2005.
- (4) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2005.

**STOCK PURCHASE AGREEMENT
DATED AS OF JANUARY 19, 2006
BY AND AMONG
COMSTOCK HOMEBUILDING COMPANIES, INC.
PARKER-CHANDLER HOMES, INC.,
AND
EACH OF THE SELLING SHAREHOLDERS IDENTIFIED HEREIN**

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EXHIBITS

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- Exhibit B - Form of Noncompetition Agreement
- Exhibit C - Form of Escrow Agreement
- Exhibit D - Form of Seller Release
- Exhibit E - Form of Company Release
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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "**Agreement**") is made as of January 19, 2006, by and among COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation ("**Purchaser**"), PARKER-CHANDLER HOMES, INC., a Georgia corporation (the "**Company**"), and each of the following individuals who are all of the shareholders of the Company on the date hereof, owning in the aggregate 1,429 shares (the "**Shares**") of the Company's common stock, par value \$1.00 per share (the "**Common Stock**"), which Shares constitute all of the issued and outstanding capital stock of the Company: JAMES B. PARKER, JR., ANDREW H. CHANDLER, JR., SUNDERRAJ M. KAMALESON, ROBERT A. FORSTER, RICHARD DOBKIN, EUGENE E. PEARSON, JOHN D. PEARSON, DONALD SCHROELUCKE and JAMES SHIRAH (each a "**Seller**" and collectively, the "**Sellers**").

RECITALS

Purchaser's primary business is residential homebuilding in the Washington, D.C. and Raleigh, North Carolina metropolitan areas. The Company is similarly engaged in the business of residential homebuilding in the metropolitan Atlanta, Georgia area, with additional operations in Myrtle Beach, South Carolina and Charlotte, North Carolina.

The parties hereto have determined that it is in their best interests for Purchaser to acquire all of the Shares. The Sellers have therefore agreed to sell, and Purchaser has agreed to purchase, all such Shares on the terms, and subject to the conditions, contained in this Agreement.

AGREEMENTS

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms have the meanings set forth below.

"**Accounts Receivable**" means all of the Company's and the Subsidiaries' respective accounts receivable, notes receivable, negotiable instruments and chattel paper.

"**Affiliate**" with respect to any Person means any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with such Person including in the case of any Person who is an individual, his or her spouse, any of his or her descendants (lineal or adopted) or ancestors, and any of their spouses.

"**Agreement**" shall have the meaning ascribed to it in the Preamble.

“**Appurtenances**” means all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of any Real Property, including all easements appurtenant to and for the benefit of any Real Property for, and as the primary means of access between, such Real Property and a public way, or for any other use upon which lawful use of the Real Property for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

“**Benefit Plan**” means any pension, retirement, 401(K), bonus, deferred compensation, stock option, severance, salary continuation, vacation, sick leave, fringe benefit, incentive, insurance, welfare or similar plan.

“**Business Day**” means a day other than Saturday, Sunday or any day on which banks located in the Commonwealth of Virginia are authorized or obligated to close.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“**Claims**” means all rights, claims, security interests, encumbrances, liens, options, judgments, pledges, charges, rights of first refusal or first offer, mortgages, and indentures, of every kind and nature whatsoever, and, to the extent applicable, any and all proxies, voting trusts, voting agreements, escrows, transfer and other restrictions and equities, in each case whether arising by agreement, operation of law or otherwise.

“**Closing**” means the consummation of the transactions contemplated by this Agreement.

“**Closing Date**” means the date on which the Closing occurs, which shall be the date of execution of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Common Stock**” shall have the meaning ascribed to it in the Preamble.

“**Company**” shall have the meaning ascribed to it in the Preamble.

“**Company Accountants**” means Dixon Hughes, PLLC.

“**Contract**” means any contract, agreement, arrangement, understanding or instrument, whether oral or written.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of securities, by Contract or otherwise.

“**Controlling Sellers**” means James B. Parker, Jr. and Andrew H. Chandler, Jr.

“**Damages**” means all actions, lawsuits, proceedings, hearings, investigations, charges, complaints, Third Party Claims, demands, injunctions, judgments, orders, decrees, rulings, dues,

Liabilities, obligations, Taxes, liens, assessments, levies, losses, fines, penalties, damages, costs, fees and expenses, including reasonable attorneys', accountants', investigators', and experts' fees and expenses incurred in investigating or defending any of the foregoing.

"Disclosure Schedule" means the schedules delivered by the Company and the Sellers to the Purchaser concurrently herewith and identified by the parties as the Disclosure Schedule.

"Employment Agreement" means an Employment Agreement (including all documentation relating to the grant of contingent restricted stock of Purchaser) to be entered into with each of James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively, in the form of Exhibit A attached hereto.

"Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, investigations, proceedings or notices of noncompliance or violation (written or oral) by any Person alleging potential liability (including potential liability for enforcement, investigation costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from: (1) the presence or Release into the environment of any Hazardous Substance at any location, whether or not owned by the Company; (2) circumstances forming the basis of any violation or alleged violation of any Environmental Law; or (3) any and all claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence or Release of any Hazardous Substances.

"Environmental Laws" means all federal, state or local statutes, laws, rules, ordinances, codes, rule of common law, regulations, judgments and orders in effect on the Closing Date and relating to protection of human health or the environment (including ambient air, surface water, ground water, drinking water, wildlife, plants, land surface or subsurface strata), including laws and regulations relating to Releases or threatened Releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" means all environmental, health and safety permits, licenses, registrations, and governmental approvals and authorizations.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Financial Statements" means, collectively, the Unaudited Financial Statements and the Interim Financial Statements.

"Fully Developed and Buildable Land" means, with respect to any tract, parcel or lot of Real Property, that (1) the parcel or tract of land conforms to all applicable Laws so that the Company or Purchaser is eligible to obtain, on a timely basis, all Permits necessary for building an attached or detached home or homes thereon in compliance with all applicable Laws upon the proper application by the Company or Purchaser and the Company's or Purchaser's payment of permit fees and any utility connection or tap fees; (2) on each such lot within each such Real Property there is or could be a home upon proper application; (3) all currently required subdivision entitlements have been obtained; and (4) all off-site Improvements have been

constructed or bonded, to the extent such Improvements are required by any applicable Governmental or Regulatory Authority for such parcel or tract of land.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America.

“Governmental or Regulatory Authority” means any court, tribunal, arbitrator, authority, agency, bureau, board, commission, department, official or other instrumentality of the United States, any state thereof, any foreign country or any domestic or foreign state, county, city or other political subdivision, and shall include all self regulatory organizations and insurance authorities.

“Ground Lease Property” means any Real Property, Improvements and Appurtenances subject to a ground lease in favor of the Company or its Subsidiaries, used or usable in the conduct of the Company’s or the Subsidiary’s business.

“Hazardous Substances” means: (1) any petroleum or petroleum products, radioactive materials, asbestos in any form, mold, mildew, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls (PCBs) and radon gas; and (2) any chemicals, materials or substances which are now or ever have been defined as or included in the definition of “medical wastes,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or other words of similar import; in all cases as set forth in any Environmental Law.

“Improvements” means all buildings, structures, fixtures, site improvements, or other improvements located on Real Property, including those under construction.

“Indebtedness” of any Person means all obligations of such Person (1) for borrowed money evidenced by notes, bonds, debentures or similar instruments, (2) for the deferred purchase price of goods or services, (3) under capital leases, and (4) in the nature of guarantees of the obligations described in clauses (1) through (3) above of any other Person.

“Indemnified Party” means, with respect to a particular matter, a Person who is entitled to indemnification from another party hereto pursuant to ARTICLE IX.

“Indemnifying Party” means, with respect to a particular matter, a party hereto who is required to provide indemnification under ARTICLE IX to another Person.

“Intellectual Property” means all intellectual property rights, including all patents, trademarks, service marks, copyrights, designs, Internet domain names and websites, trade or business names, trade dress and slogans (and all registrations of, and all applications for registration of, any of the foregoing), Software, and all goodwill associated with such intellectual property rights.

“Intellectual Property Licenses” means all Contracts (other than Contracts with respect to Software that have been purchased “off the shelf”) between the Company or any Subsidiary, on the one hand, and any other Person, on the other hand, granting any right to use or practice

any rights under any of the Intellectual Property owned by the Company, any Subsidiary or any other Person.

“Interim Financial Statement Date” means November 30, 2005.

“Interim Financial Statements” means the consolidated balance sheets, statements of income and retained earnings and statements of cash flows of the Company and the Subsidiaries, as of and for the eleven-month period ended on the Interim Financial Statement Date.

“IRS” means the Internal Revenue Service.

“Knowledge of the Company” means (a) the actual knowledge of the Controlling Sellers on the date of this Agreement and (b) the constructive knowledge of facts, circumstances, events or other matters the Controlling Sellers could be expected to discover or otherwise become aware of in the normal discharge of their respective assigned duties and responsibilities, or after a reasonable inquiry of any employees of and advisors to the Company and/or the Subsidiaries who have principal responsibility for the matter in question.

“Law” means any law, statute, order, decree, consent decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law, whether in the United States, any foreign country, or any domestic or foreign state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

“Leased Real Estate” means all real property leased or subleased by the Company or any Subsidiary.

“Liabilities” means all Indebtedness, obligations and other liabilities of the Company or any Subsidiary of any nature whatsoever, whether direct or indirect, matured or unmatured, absolute, accrued, contingent (or based on any contingency), known or unknown, fixed or otherwise, or whether due or to become due.

“Material Adverse Effect” means any event, change, condition or matter that individually or in the aggregate results in or could reasonably be expected to result in a material adverse change in the (1) business, operations (including results of operations), assets, Liabilities, financial condition, properties or prospects of the Company or any Subsidiary, or (2) the ability of any party hereto to consummate the transactions contemplated hereby.

“Noncompetition Agreement” means a Confidentiality and Noncompetition Agreement, to be entered into with each of James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively, in the form of Exhibit B attached hereto.

“Participating Sellers” shall mean the Sellers other than the Controlling Sellers.

“Permits” means all licenses, permits, franchises, authorizations, registrations and government approvals other than the Environmental Permits.

“Permitted Liens” means all (1) statutory liens for Taxes not yet due or being contested in good faith and for which there are adequate reserves on the books; (2) statutory liens of

landlords, carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due; (3) mortgages, trust deeds, chattel mortgages, security agreements, financing statements or other instruments encumbering any of the assets of the Company, including the Real Property, that have been recorded and filed with the appropriate jurisdiction and which have been disclosed in the Disclosure Schedule; and (4) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust or other entity, whether or not legal entities, or any governmental entity, agency or political subdivision.

“**Proprietary Software**” means Software which is owned by the Company or any Subsidiary.

“**Purchaser**” shall have the meaning ascribed to it in the Preamble.

“**Purchaser Indemnitees**” means Purchaser and its Affiliates, and their respective directors, managers, officers, members, shareholders, partners, agents, representatives, successors and assigns.

“**Real Property**” means (1) all parcels and tracts of land (including any land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of, or abutting or adjoining, such parcels and tracts of land) owned by the Company, its Subsidiaries or Affiliates, including Fully Developed Land and Buildable Land or Undeveloped Land and (2) any Ground Lease Property used or usable in the conduct of the Company's business and all Improvements and Appurtenances thereto.

“**Related Parties**” means (1) Sellers; (2) the Company's present directors, officers and shareholders; (3) any Affiliates of any of the foregoing; and (4) any Person of which any Seller or the spouse or any lineal descendant or ancestor of any Seller is an officer, director, member, partner, trustee, beneficiary or shareholder (other than, with respect to any Person which has equity securities listed on a national securities exchange or traded in the over-the-counter market, as a holder of not more than 2% of such Person's outstanding equity securities).

“**Release**” means any intentional or unintentional release, spill, emission, emptying, leaking, injection, deposit, disposal, discharge, dispersal, dumping, leaching, pumping, pouring, or migration into the environment, atmosphere, soil, surface water, groundwater or property.

“**Returns**” means all returns, declarations, reports, statements and other documents required to be filed in respect of Taxes.

“**Seller**” shall have the meaning ascribed to it in the Preamble.

“**Seller Indemnitees**” means each Seller and his respective successors and assigns.

“**Sellers' Representatives**” means the Sellers' attorneys-in-fact and agents in connection with the execution and performance of this Agreement.

“**Shares**” shall have the meaning ascribed to it in the Preamble.

“**Software**” means any and all: (1) computer programs, including any and all software implementation of algorithms, models and methodologies whether in source code or object code; (2) databases and computations, including any and all data and collections of data; (3) documentation, including user manuals and training materials, relating to any of the foregoing; and (4) content and information contained in any website.

“**Subsidiaries**” means all of the entities in which the Company holds or beneficially owns any direct or indirect interest, as such entities are specifically set forth on Schedule 3.3.8 of the Disclosure Schedule.

“**Tax**” or “**Taxes**” means all federal, state, local, foreign and other income, sales, use, ad valorem, transfer or other taxes, fees, assessments or charges of any kind, together with any interest and any penalties with respect thereto.

“**Third Party Claim**” means any action, lawsuit, proceeding, investigation, hearing, or like matter which is asserted or overtly threatened by a Person other than the parties hereto, their successors and permitted assigns, against any Indemnified Party or to which any Indemnified Party is subject.

“**Unaudited Financial Statements**” means the consolidated balance sheets, statements of income and retained earnings, statements of cash flows and notes to financial statements (together with any supplementary information thereto) of the Company and the Subsidiaries as of and for the years ended December 31, 2004 and December 31, 2003.

“**Undeveloped Land**” means each parcel or tract of Real Property that is not Fully Developed and Buildable Land.

1.2 Other Defined Terms. Other capitalized terms used in this Agreement which are not defined in this ARTICLE I shall have the meanings contained elsewhere in this Agreement.

1.3 Accounting Principles. The classification, character and amount of all assets, liabilities, capital accounts and reserves and of all items of income and expense to be determined, and any consolidation or other accounting computations to be made, and the interpretation of any definition containing any financial term, pursuant to this Agreement shall be determined and made in accordance with GAAP. All references to “dollars” or “\$” in this Agreement shall mean United States dollars.

1.4 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) references to Sections and Articles refer to the applicable Sections and Articles of this Agreement, (d) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” and (e) the predicate of any noun or pronoun shall be the immediately preceding prior noun.

ARTICLE II
PURCHASE AND SALE OF SHARES

2.1 The Acquisition. Each Seller hereby sells and delivers to Purchaser or a subsidiary of Purchaser, and Purchaser or such subsidiary hereby purchases and accepts from each Seller, all of the Sellers' rights, title, interest in and to the Shares, free and clear of any Claims.

2.2 Purchase Price and Other Payments.

2.2.1 As consideration for the purchase of the Shares, Purchaser shall pay to Sellers the sum of \$10,000,000.00 (the "**Purchase Price**") in addition to other consideration as follows:

(a) The sum of \$9,000,000.00 being paid simultaneously with the execution of this Agreement and delivery of the Shares (the "**Closing Payment**"), which shall be paid by wire transfer of immediately available funds, in proportion to each Sellers' respective percentage allocation as set forth on Schedule 2.2.1(a) hereto (each such Seller's "**Percentage Interest**");

(b) Assumption of all of the existing debt of the Company to institutional lenders, as set forth on Schedule 2.2.1(b) of the Disclosure Schedule (the "**Assumed Institutional Debt**"); and

(c) Assumption and pay-off of all of the existing debt of the Company (but not of any Subsidiary) owed to the Company's shareholders as set forth in Schedule 2.2.1(c) of the Disclosure Schedule (the "**Assumed Shareholder Debt**");

2.2.2 The sum of \$1,000,000 (the "**Escrow Amount**") shall be paid to U.S. Bank, National Association (the "**Escrow Agent**", to be held in an account in accordance with the Escrow Agreement attached hereto as Exhibit C (the "**Escrow Agreement**"). The Escrow Amount shall be used to secure the Sellers' indemnification obligations described under Article IX hereof. Subsequent distribution of the Escrow Amount to the Sellers shall be made, pro rata, in accordance with respect to their respective percentage allocation set forth on Schedule 2.2.1(a) hereof subject to the terms and conditions provided in Section 9.9 and the Escrow Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 General Statement. The parties make the representations and warranties to each other which are set forth in this ARTICLE III. All such representations and warranties and all representations and warranties which are set forth elsewhere in this Agreement and in any financial statement, exhibit, certificate or other document delivered by a party hereto to any other party pursuant to this Agreement or in connection herewith shall survive the execution of this Agreement (and none shall merge into any instrument of conveyance), regardless of any investigation or lack of investigation by any of the parties to this Agreement. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. All representations and warranties of the Company and the Sellers are made subject to the exceptions noted in the Disclosure Schedule.

3.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Sellers as follows:

3.2.1 Organization, Existence and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

3.2.2 Power and Authority. Purchaser has the corporate power and authority to execute, deliver and perform this Agreement and each of the documents and instruments required to be entered into pursuant to this Agreement, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and each of the documents and instruments required to be entered into pursuant to this Agreement, and the consummation by Purchaser of the transactions contemplated hereby and thereby, has been duly and validly authorized by all necessary corporate action and such authorization has not been withdrawn or amended in any manner.

3.2.3 Enforceability. This Agreement has been duly executed and delivered by Purchaser. Assuming due and valid authorization, execution and delivery of this Agreement by the Company and each Seller, this Agreement is or will be the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

3.2.4 Consents. No consent, authorization, order or approval of, or filing or registration with, any Governmental or Regulatory Authority is required for or in connection with the execution of this Agreement by the Purchaser or the consummation by Purchaser of the transactions contemplated hereby.

3.2.5 Conflicts Under Constituent Documents or Laws. Neither the execution and delivery of this Agreement by the Purchaser, nor the consummation by the Purchaser of the transactions contemplated hereby, will conflict with or result in a breach of any of the terms, conditions or provisions of the Purchaser's articles of incorporation or bylaws, of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any Governmental or Regulatory Authority or of any arbitration award to which the Purchaser is a party to or by which the Purchaser is bound.

3.2.6 Brokers. Neither Purchaser nor any of its Affiliates has dealt with any Person who is entitled to a broker's commission, finder's fee, investment banker's fee or similar payment from Sellers or the Company for arranging the transactions contemplated hereby or introducing the parties to each other.

3.3 Representations and Warranties of the Company and Sellers. Each of the Company and the Controlling Sellers jointly and severally, and each of the Participating Sellers severally, and not jointly, and solely in respect of such Participating Seller's Percentage Interest, represent and warrant to Purchaser that, except as set forth in the Disclosure Schedule:

3.3.1 Organization, Existence and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Georgia. Each Subsidiary is a duly organized corporation or limited liability company, as the case may be, validly existing and in good standing under the Laws of its respective state of organization.

3.3.2 Foreign Good Standing. The Company and each Subsidiary has qualified as a foreign corporation, and is in good standing, under the Laws of all jurisdictions where the nature of its respective business or the nature or location of its respective assets requires such qualification.

3.3.3 Power and Authority. The Company and each Subsidiary has all necessary corporate power and authority to carry on its respective business as such business is now being conducted. The Company has the corporate power and authority to execute, deliver and perform this Agreement and each of the documents and instruments required to be entered into by it pursuant to this Agreement, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and each of the documents and instruments required to be entered into pursuant to this Agreement, and the consummation by the Company of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action and such authorization has not been withdrawn or amended in any manner.

3.3.4 Enforceability. This Agreement has been duly executed and delivered by the Company. Assuming due and valid authorization, execution and delivery of this Agreement by Purchaser, this Agreement is or will be the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally; and (b) the remedy of specific performance and injunctive and other forms of equitable relief that may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

3.3.5 Consents. No consent, authorization, order or approval of, or filing or registration with, any Governmental or Regulatory Authority is required for or in connection with the execution of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby.

3.3.6 Conflicts Under Constituent Documents or Laws. Neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, will conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of incorporation or bylaws, the organization documents of any of the Subsidiaries, of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any Governmental or Regulatory Authority or of any arbitration award to which the Company and the Subsidiaries are party to or by which the Company or the Subsidiaries are bound.

3.3.7 Conflicts Under Contracts. None of the Company or the Subsidiaries is a party to, or bound by, any unexpired, undischarged or unsatisfied Contract under the terms of which performance by the Company or the Subsidiaries according to the terms of this Agreement will be a default or an event of acceleration, or grounds for termination, modification or cancellation, or whereby timely performance by the Company or the Subsidiaries according to the terms of this Agreement may be prohibited, prevented or delayed.

3.3.8 Subsidiaries and Affiliates. With the exception of those Subsidiaries and Affiliates that are specifically set forth on Schedule 3.3.8 of the Disclosure Schedule, the Company or any Subsidiary does not hold or beneficially own any direct or indirect interest (whether a partnership, joint venture, common or preferred stock or any comparable ownership interest in any Person that is not a corporation), or any subscriptions, options, warrants, rights, calls, convertible securities or other agreements or commitments for any interest in any Person.

3.3.9 Directors and Officers. The names of (i) each director and officer of the Company and (ii) each member, manager and officer of each Subsidiary, in each case, along with his or her respective position(s) in the Company or in any Subsidiary, are set forth on Schedule 3.3.9 of the Disclosure Schedule.

3.3.10 Constituent Documents; Books and Records. True, correct and complete copies of the articles of incorporation and all amendments thereto, the bylaws as amended and currently in force, all stock records, and corporate minute books and records, of the Company have been made available for inspection by Purchaser. Such stock records accurately reflect all Share transactions, the current stock ownership and a listing of all of the current shareholders of the Company. The corporate minute books and records of the Company contain true, correct and complete copies of all resolutions adopted by the directors and shareholders of the Company and represent actual, bona fide transactions. Such books and records have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls. True, correct and complete copies of articles of incorporation, articles of organization, bylaws, operating agreements and other organization documents, as the case may be, of each of the Company's Subsidiaries, as amended and currently in force, have been made available for inspection by Purchaser.

3.3.11 Capitalization. The authorized capital stock of the Company consists solely of 100,000 shares of Common Stock. As of the date hereof, only 1,429 shares (constituting all of the Shares) are issued and outstanding. There are no shares of capital stock of the Company of any other class authorized, issued or outstanding. All of the issued and outstanding Shares have been validly issued, are fully paid and nonassessable, and are solely owned beneficially and of record by the Sellers, free and clear of any Claims of any kind, in the exact number and percentage interests as set forth in Schedule 3.3.11 of the Disclosure Schedule. There are no outstanding subscriptions, options, warrants, rights (including preemptive rights), calls, convertible securities, contractual obligations to repurchase, redeem or otherwise acquire any capital stock of the Company, voting trusts, shareholders' agreements or other agreements or commitments of any character relating to the issued or unissued capital stock or other securities of the Company or obligating the Company to issue any securities of any kind. With the exception of the Amended and Restated Shareholders Agreement, dated February 24, 2005, a true, correct and complete of which has been made available for inspection by Purchaser, there

are no other agreements, voting trusts, understandings or arrangements by and among the shareholders of the Company.

3.3.12 Financial Statements. Complete and accurate copies of the Financial Statements are contained in Schedule 3.3.12 of the Disclosure Schedule. The Financial Statements present fairly, in all material respects, the financial position of the Company as of the dates thereof and the results of operations and cash flows of the Company for the periods covered by said statements, except for, in the case of the Interim Financial Statements, (a) normal year-end adjustments, which adjustments will not be material in amount or significance, and (b) the omission of footnote disclosures. The books and records of the Company and the Subsidiaries properly reflect all of the transactions entered into by the Company and the Subsidiaries. The Company has furnished to Purchaser complete and correct copies of any attorney's responses to audit inquiry letters with respect to the Company and all management letters from the Company Accountants since its inception.

3.3.13 Conduct of Business. Since the Interim Financial Statement Date, (a) the Company and each Subsidiary has conducted its business only in the ordinary course, (b) there has not been any Material Adverse Effect, (c) there has been no non-renewal or material amendment of any of the Permits held by or granted to the Company or any Subsidiary, and the Company and its Subsidiaries have used commercially reasonable efforts to maintain such Permits, (d) there has been no physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the real or personal property or equipment of the Company or any Subsidiary in an amount exceeding \$10,000, individually or \$50,000 in the aggregate; and (e) none of the Company, the Subsidiaries or the Sellers has taken or permitted to be taken any of the following actions: (i) amend the Company's articles of incorporation or bylaws or any organizational documents of the Subsidiaries; (ii) split, combine or reclassify the Shares, or make any change in the Company's or any Subsidiaries' authorized capital stock or issue any shares of stock of any class or issue or become a party to any subscriptions, warrants, rights, options, convertible securities or other agreements or commitments of any character relating to the issued or unissued capital stock of the Company or any Subsidiary, or to other equity securities of the Company or any Subsidiary, or grant any stock appreciation or similar rights; (iii) enter into any Contract or commitment, or amend or otherwise modify any of the terms of any of the Contracts outside the ordinary course of business in accordance with past practices that the Company has not disclosed to Purchaser; (iv) increase the compensation payable to any employee, except in the ordinary course of business consistent with past practices as described in the Disclosure Schedule; (v) establish or modify any targets, goals, bonuses, pools or similar provisions under any Benefit Plan, employment Contract or other employee compensation arrangement, independent contractor Contract or other compensation arrangement; (vi) incur or commit to incur any capital expenditures not set forth in the Disclosure Schedule in excess of \$2,500 in any instance or \$5,000 in the aggregate; (vii) sell, transfer or otherwise dispose of any asset or property, including any Intellectual Property, other than transfers of cash in payment of the Company's or a Subsidiary's Liabilities in the ordinary course of business in accordance with past practices that the Company has previously disclosed to Purchaser; (viii) acquire any assets or properties from any other Person, other than acquisitions in the ordinary course of business, consistent with past practice; (ix) incur, assume or guarantee any long-term or short-term Indebtedness, other than Indebtedness incurred in the ordinary course of business in accordance with past practices that the Company has previously disclosed to Purchaser; (x)

enter into any operating lease, other than in the ordinary course of business, consistent with past practice, and any lease for real property; (xi) pay, discharge or satisfy any claim, obligation or Liability arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of Liabilities reflected or reserved against in the Interim Financial Statements; (xii) fail to pay or delay payment of any Claim or other Indebtedness when due (unless being contested in good faith); (xiii) commence a lawsuit other than for the routine collection of bills; (xiv) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof; (xv) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any Tax return or any amendment to a Tax return, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, or make any distribution of funds or other assets to the Sellers; (xvi) reduce the amount of any insurance coverage provided by existing insurance policies, or fail to renew any such insurance policy; (xvii) do any act or omit to do any act, or permit any act or omission to occur, which will cause a breach by the Company, or any Subsidiary, of any Contract to which it is party; (xviii) institute or amend any employee benefit program or fringe benefit program with respect to the employees of the Company or any Subsidiary; (xix) enter into or modify any written employment Contract with any Person; (xx) fail to maintain or renew any Permits or fail to comply with any applicable Law; (xxi) make any change to the Company's or any Subsidiary's accounting methods, principles or practices; (xxii) revalue any of its assets, including writing off notes or Accounts Receivable or writing down any other assets; (xxiii) terminate or waive any right of substantial value; (xxiv) alter the conduct or operations of its business in any material respect; or (xxv) take or agree in writing or otherwise to take any of the actions described in this Section 3.3.13.

3.3.14 Liabilities. Neither the Company nor any of the Subsidiaries has any Liabilities except for (a) Liabilities provided for or reserved against in the Financial Statements and not discharged subsequent to the dates of the Financial Statements and (b) Liabilities which have been incurred by the Company or the Subsidiaries subsequent to the Interim Financial Statement Date in the ordinary course of the Company's business and not discharged since the Interim Financial Statement Date. Neither the Company nor any of the Subsidiaries has any Liability that relates to or has arisen out of a breach of Contract, breach of warranty, tort, or infringement by or against the Company or any claim or lawsuit involving the Company or the Subsidiaries. With the exception of those specifically set forth on Schedules 2.2.1(b) and 2.2.1(c) of the Disclosure Schedule, the Company does not have any Indebtedness in the nature of borrowed money from any bank or other lender, or any guarantee thereof.

3.3.15 Adequate Cash. The Company and the Subsidiaries have adequate cash on hand or borrowing power to satisfy all accrued short-term liabilities and all trade payables of the Company and the Subsidiaries as of the date hereof. All borrowings by the Company under construction draw loans have been applied, in accordance with the Company's use of funds representations to the applicable lender, to trade vendors and not for employee compensation or other general obligations of the Company.

3.3.16 Assets. The Company and the Subsidiaries have good title to their respective assets, free and clear of any Claims, except for Permitted Liens. Except as disclosed

in Schedule 3.3.16 of the Disclosure Schedule, no unreleased mortgage, trust deed, chattel mortgage, security agreement, financing statement or other instrument encumbering any of the assets of the Company or the Subsidiaries has been recorded, filed, executed or delivered. The Company's and the Subsidiaries' assets are adequate to conduct their respective businesses as each is presently being conducted. The Company's and the Subsidiaries' respective assets and items of tangible personal property are in good operating condition and repair, normal wear and tear excepted.

3.3.17 Accounts Receivable. All of the Accounts Receivable reflected on the Interim Financial Statements or incurred in the normal course of business since the Interim Financial Statement Date have arisen from bona fide transactions in the ordinary course of business and, to the extent not previously collected, are fully collectible, net of any allowance for doubtful accounts shown on the Interim Financial Statements, in the ordinary course of business in accordance with their terms and assuming that the methods of collection practices and procedures used in collection of the Accounts Receivable are consistent with those historically used by the Company and the Subsidiaries. None of the Accounts Receivable is or will be at the Closing Date subject to any counterclaim or set-off. All reserves, allowances and discounts with respect to the Accounts Receivable were and are adequate and consistent in extent with reserves, allowances and discounts previously maintained by the Company and the Subsidiaries in the ordinary course of business.

3.3.18 Insurance. Schedule 3.3.18 of the Disclosure Schedule contains a true, correct and complete list and description (including insurer, coverages, annual premium, deductibles, limitations and expiration dates) of all insurance policies (including fire and casualty, general liability, theft, life, workers' compensation, directors and officers, business interruption, reinsurance and all other forms of insurance) which are owned by the Company and the Subsidiaries or which name the Company or the Subsidiaries as an insured (or loss payee), including without limitation those which pertain to the Company's and the Subsidiaries' respective assets, employees or operations. All such insurance policies are in full force and effect, all premiums have been paid thereunder and none of the coverage provided by such policies will terminate or lapse by reason of any of the transactions contemplated by this Agreement. In the three year period ending on the date hereof, neither the Company nor the Subsidiaries has received any written notice from or on behalf of any insurance carrier issuing such insurance policies to the effect that insurance rates will thereafter be substantially increased, there will thereafter be no renewal of an existing policy, or that material alteration of any owned or leased personal or real property, purchase of additional equipment, or material modification of the Company's or its Subsidiaries methods of doing business, will be required or is suggested. With the exception of those set forth on Schedule 3.3.18, there are no pending claims that have been denied insurance coverage. Neither the Company nor any of the Subsidiaries has failed to give any notice or present any claim under any insurance policy in due and timely fashion or as required by any insurance policy. Schedule 3.3.18 of the Disclosure Schedule sets forth a list of all claims made under any insurance policies covering the Company and the Subsidiaries in the last three years. Neither the Company nor any of the Subsidiaries has received notice that any insurer under any policy is denying, disputing or questioning liability with respect to a claim thereunder or defending under a reservation of rights clause.

3.3.19 Bank Accounts. Schedule 3.3.19 of the Disclosure Schedule contains a list showing: (a) the name of each bank, safe deposit company or other financial institution in which the Company has an account, lock box or safe deposit box, (b) the names of all Persons authorized to draw thereon or to have access thereto and the names of all Persons, if any, holding powers of attorney from the Company or any Subsidiary, and (c) all instruments or agreements to which the Company or any Subsidiary is a party as an endorser, surety or guarantor, other than checks endorsed for collection or deposit in the ordinary course of business.

3.3.20 Taxes.

(a) The Company and each Subsidiary has properly completed and filed on a timely basis all Returns required to be filed. Such Returns are accurate and complete in all material respects. As of the time of filing, the foregoing Returns correctly reflected the facts regarding the income, business, assets, operations, activities, status and other matters of or information regarding the Company or the Subsidiaries required to be shown thereon.

(b) With respect to all amounts in respect of Taxes imposed upon the Company or any Subsidiary or for which the Company or any Subsidiary is or could be liable, whether to taxing authorities or to other Persons (as, for example, under tax allocation agreements), with respect to all taxable periods or portions of periods ending on or before the Closing Date, all applicable Laws have been complied with and all amounts required to be paid by the Company or any Subsidiary to taxing authorities have been paid.

(c) To the Knowledge of the Company, no issues have been raised and are currently pending by any taxing authority in connection with any of the Returns. No waivers of statutes of limitation with respect to the Returns have been given by or requested from the Company or any Subsidiary. All deficiencies asserted or assessments made as a result of any examinations of Returns previously filed by the Company or any Subsidiary have been fully paid, or are fully reflected as a liability in the Financial Statements and the Interim Financial Statements, or are being contested and an adequate reserve therefor has been established and is fully reflected as a liability in the Financial Statements and the Interim Financial Statements.

(d) Neither Company nor any Subsidiary is a party to or bound by any tax indemnity, tax sharing or tax allocation agreement.

(e) All material elections with respect to Taxes affecting the Company or the Subsidiaries are set forth in Schedule 3.3.20 of the Disclosure Schedule.

(f) None of the assets of the Company or any Subsidiary is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(g) Neither the Company nor any Subsidiary has entered into a reportable transaction with the meaning of Section 6011 of the Code or the regulations thereunder.

(h) Neither the Company nor any Subsidiary has agreed to make, nor is required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

(i) None of the Sellers is a Person other than a United States person within the meaning of the Code and the transactions contemplated hereby are not subject to the withholding provisions of Section 3406 or subchapter A of Chapter 3 of the Code.

(j) The Company and each Subsidiary has disclosed on its Returns all positions taken therein that could reasonably give rise to a substantial understatement of Tax within the meaning of Section 6662 of the Code.

(k) Neither the Company nor any Subsidiary has had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(l) The unpaid Taxes of the Company or the Subsidiaries do not exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth or included in the Interim Financial Statements, as adjusted for the passage of time through the Closing Date, in accordance with the past practices of the Company.

(m) The Company has duly elected to be treated and has been qualified as an "S corporation" under the Code (and for all pertinent state tax purposes) for each taxable year since its incorporation, and the Company does not have any potential liability for Tax under Section 1374 of the Code or comparable provisions under state or local Law. Neither the Company nor the Sellers have taken any action which would cause a termination of the Company's "S" election, or which would disqualify the Company as an S corporation.

3.3.21 Contracts. Schedule 3.3.21 of the Disclosure Schedule contains a true, correct and complete list of each undischarged Contract (including all amendments thereto) that is material to the conduct of the Company's or any Subsidiaries' businesses and to which the Company or any Subsidiary is a party to, including without limitation, all agreements with (a) suppliers or vendors; (b) independent contractors and subcontractors; (c) developers; and (d) any Governmental or Regulatory Authority. Furthermore, Schedule 3.3.21 of the Disclosure Schedule contains a true, correct and complete list of all material personal property and equipment leases, employment Contracts, consulting Contracts, all agreements of sale for the purchase of homes that have not closed, all Contracts under which the Company or any Subsidiary has created, incurred, assumed or guaranteed Indebtedness of more than \$10,000, all Contracts that give the Company or any Subsidiary any right to purchase land, including options, letters of intent, rights of first offer and other similar Contracts, and all written warranties, guaranties and/or other similar undertaking with respect to contractual performance extended by the Company or any Subsidiary. Each Contract required to be set forth on the Disclosure Schedule is in full force and effect and is valid and enforceable in accordance with its terms. The Company is in compliance with all material terms and requirements of each such Contract and, to the Knowledge of the Company, each other Person that is party to any such Contract is in compliance with the terms and requirements of such Contract. No event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a violation or breach of, or give the Company, a Subsidiary or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any such Contract. There are no

renegotiations, attempts to renegotiate or outstanding rights to negotiate any amount to be paid or payable to or by the Company or any Subsidiary under any such Contract other than with respect to non-material amounts in the ordinary course of business, and no Person has made a written demand for such renegotiation. The Company or any Subsidiary has not released or waived any of its rights under any such Contract.

3.3.22 Material Adverse Effect. Neither the Company or any Subsidiary has suffered or been threatened with, and no Seller has knowledge of any facts which may cause or result in, any Material Adverse Effect including, without limiting the generality of the foregoing, the existence or threat of any labor dispute, a moratorium or permit allocation scheme or any changes that may have a Material Adverse Effect on any relationship between the Company or a Subsidiary and its respective customers, suppliers or employees or related to any Contract.

3.3.23 Suppliers. Set forth in Schedule 3.3.23 of the Disclosure Schedule are the names and addresses of all the suppliers from which the Company or the Subsidiaries ordered homebuilding supplies, or other goods or services with an aggregate purchase price of \$5,000 or more during the twelve-month period ended November 30, 2005 and the amount for which each such supplier invoiced the Company or the Subsidiaries during such period. The Company or any Subsidiary has not received any notice or has any reason to believe that any such supplier will not sell supplies, merchandise and other goods to the Company or to any Subsidiary at any time after the Closing Date on terms and conditions substantially similar to those used in its current sales to the Company or to the Subsidiary, subject only to general and customary price increases and decreases.

3.3.24 Related Parties Transactions. With the exception of those items set forth Schedule 3.3.24 of the Disclosure Schedule, neither Company nor any Subsidiary has entered into any Contracts, arrangements or other business relationships with any of the Related Parties other than normal employment arrangements and Benefit Plans (all of which are disclosed in the Disclosure Schedule). With the exception of the shareholder notes that are set forth in Schedule 3.3.24 of the Disclosure Schedule, neither the Company nor any Subsidiary is owed or owes any amount from or to the Related Parties (excluding reasonable and customary employee compensation and other ordinary incidents of employment). No property or interest in any property which relates to and is or will be necessary or useful in the present or currently contemplated future operation of the business of the Company or a Subsidiary, is presently owned by or leased by or to any Related Party. Neither the Company nor any Related Party has an interest, directly or indirectly, in any business, corporate or otherwise, which is in competition with the business of the Company or any Subsidiary.

3.3.25 Permits. Schedule 3.3.25 of the Disclosure Schedule contains a true, correct and complete list of, and the Company possesses, all Permits which are required in order for the Company and each Subsidiary to conduct its business as presently conducted or proposed to be conducted. The Company, the Subsidiaries and Sellers have delivered complete and accurate copies of each Permit to Purchaser. The Company and each Subsidiary has not received any citation, suspension, revocation, limitation, warning or similar notice regarding the Permits. With the exception of those jurisdictions set forth on Schedule 3.3.25 of the Disclosure Schedule, neither the Company nor any Subsidiary does not have any operations outside of the State of Georgia.

3.3.26 Employee Benefit Plans. With respect to the Benefit Plans of the Company:

(a) The Company does not maintain, administer or contribute to any Benefit Plan other than those Benefit Plans set forth on Schedule 3.3.26 of the Disclosure Schedule.

(b) The Company does not maintain or contribute to any plan or arrangement providing medical or life insurance benefits to former employees or their dependents, other than benefits provided in the event of disability and conversion privileges.

(c) Each Benefit Plan complies, in form and operation, in all material respects, with all applicable Laws, including ERISA and the Code.

(d) All reports and information relating to each Benefit Plan required to be filed with any Governmental or Regulatory Authority have been timely filed and are accurate in all material respects. All reports and information relating to each Benefit Plan required to be disclosed or provided to participants or their beneficiaries have been timely disclosed or provided. To the Knowledge of the Company, no fiduciary of any Benefit Plan has committed a breach of any responsibility or obligation imposed upon fiduciaries under ERISA with respect to such Benefit Plan.

(e) There are no actions, suits, proceedings, investigations or hearings pending or, to the Knowledge of the Company, overtly threatened with respect to any Benefit Plan or any fiduciary or assets thereof, other than claims for benefits arising in the ordinary course of any Benefit Plan.

3.3.27 Employee Relations. With respect to the employees of the Company and any Subsidiary:

(a) To the Knowledge of the Company, no employee of the Company or a Subsidiary is a party to, or is otherwise bound by, any Contract, including any confidentiality, noncompetition or proprietary rights agreement, between such employee and any other Person that materially adversely affects or will affect the performance of that employee's duties as an employee of the Company or any Subsidiary following the Closing. To the Knowledge of the Company, no officer or other key employee of the Company or a Subsidiary intends to terminate employment with the Company or any Subsidiary prior to or following the Closing.

(b) There is not presently pending or, to the Knowledge of the Company, overtly threatened any: (i) strike, slowdown, picketing, work stoppage or employee grievance process; (ii) charge, grievance proceeding or other claim against or affecting the Company or any Subsidiary relating to the alleged violation of any Law pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental or Regulatory Authority; (iii) union organizational activity or other labor or employment dispute against or affecting the Company; or (iv) application for certification of a collective bargaining agent.

(c) To the Knowledge of the Company, no event has occurred or circumstances exist that could provide the basis for any work stoppage or other labor dispute with respect to the Company or any Subsidiary. There is no lockout of any employees of the Company, and no such action is contemplated by the Company or any Subsidiary.

(d) No employee of the Company or a Subsidiary has any claim against the Company or any Subsidiary (whether under Law, any employment Contract or otherwise) on account of or for: (i) overtime pay, other than overtime pay for the current payroll period, (ii) wages or salaries, other than wages or salaries for the current payroll period, or (iii) vacations, sick leave, time off or pay in lieu of vacation, sick leave or time off, other than vacation, sick leave or time off (or pay in lieu thereof) earned in the 12 month period immediately prior to the date of this Agreement. The Company and each Subsidiary has made all required payments to the relevant unemployment compensation reserve account with the appropriate governmental departments with respect to its respective employees and such accounts have positive balances.

(e) Schedule 3.3.27 of the Disclosure Schedule contains a true, correct and complete list of all employees of the Company and Subsidiaries as of the date of this Agreement, together with their base salaries, bonuses and positions. The Disclosure Schedule correctly states the number of employees laid-off by Company or any Subsidiary in the 90 days preceding the date hereof.

(f) To the Knowledge of the Company, no employee of the Company or any Subsidiary is an undocumented alien or has been hired in violation of the immigration Laws.

(g) The employees and former employees of the Company and any Subsidiary who have (or have had) access to confidential or proprietary information of the Company have executed confidentiality and assignment of inventions forms which, to the Knowledge of the Company, are adequate to protect the Company's or any Subsidiaries' proprietary interest therein.

(h) The employment of each of the Company's and Subsidiaries' employees, other than James B. Parker, Jr. and Andrew H. Chandler, Jr., is terminable at will without cost to the Company, except for payments required under the Benefit Plans and the payment of accrued salaries or wages and vacation pay.

3.3.28 Litigation and Claims. Except as set forth on Schedule 3.3.28, there is no litigation or proceeding, at law or in equity, and there are no proceedings or governmental investigations before any Governmental or Regulatory Authority, pending or, to the Knowledge of the Company, threatened against any Seller, the Company, any Subsidiary or the officers, directors or Affiliates of the Company, with respect to or affecting the Company's or any Subsidiary's operations, Contracts, business or assets, or with respect to the consummation of the transactions contemplated hereby nor, to the Knowledge of the Company, is there any basis for any of the foregoing.

3.3.29 Decrees, Orders or Arbitration Awards. The Company and each Subsidiary is not a party to, or bound by, any decree, order or arbitration award (or agreement entered into in any administrative, judicial or arbitration proceeding with any Governmental or Regulatory Authority) with respect to or affecting the Company's or the Subsidiary's operations, business or assets.

3.3.30 Compliance with Laws. The Company and each Subsidiary is not in violation of, or delinquent in respect to, any decree, order or arbitration award or Law of or agreement with, or any Permit from, any Governmental or Regulatory Authority to which the property, assets, personnel or business activities of the Company or any Subsidiary are subject, including Laws relating to equal employment opportunities, fair employment practices, occupational health and safety, wages and hours, and discrimination. During the last three years, the Company and each Subsidiary has not received from any Governmental or Regulatory Authority any written notification with respect to possible noncompliance of any decree, order, writ, judgment or arbitration award or any Law.

3.3.31 Environmental Matters. There is no Environmental Claim pending or, to the Knowledge of the Company, threatened against the Company or any Subsidiary. The Company and each Subsidiary (a) is in compliance with all applicable Environmental Laws and Environmental Permits, and (b) possesses all Environmental Permits which are required for the operation of its business and operations, all of which are set forth on Schedule 3.3.31 of the Disclosure Schedule. The Company or each Subsidiary has not received any communication alleging that it is not, or at any time has not been, in compliance with any applicable Environmental Laws or Environmental Permits, nor has the Company or any Subsidiary received any written notice from any Person with respect to any Real Property or Leased Real Estate of potential or actual liability or a written request for information from any Person under or relating to CERCLA or any comparable state or local Law. No Real Property or Leased Real Estate is currently listed on the National Priorities List or the Comprehensive Environmental Response, Compensation and Liability Information System, both promulgated under the CERCLA or any comparable state list. Since acquired or leased by the Company, (i) there is not and has not been any Hazardous Substances used, generated, treated, stored, transported, disposed of, handled or otherwise existing on, under or about any Real Property or Leased Real Estate in violation of Environmental Laws, (ii) there are no underground or above-ground storage tanks located on any Real Property or Leased Real Estate, and (iii) all underground or above-ground storage tanks previously located at any Real Property or Leased Real Estate (and not presently thereat as of the date hereof), were removed in accordance with all Environmental Laws. There has been no Release or, to the Knowledge of the Company, any threat of Release, of any Hazardous Substance at or from any Real Property or Leased Real Estate.

3.3.32 Real Property.

(a) Schedule 3.3.32(a) of the Disclosure Schedule contains a true, correct and complete legal description, street address (to the extent one exists) and tax parcel identification number of each tract, parcel and subdivided lot constituting all of the Real Property owned by the Company or Subsidiaries or which is the subject of any Contract to which the Company or any Subsidiary is a party, and the Disclosure Schedule correctly identifies such Real Property as Fully Developed and Buildable Land or Undeveloped Land and states whether each

such tract, parcel or lot is held as inventory or is used for some other purpose. For Undeveloped Land, the Disclosure Schedule shall identify the zoning and/or permit approval status of each parcel along with the number of subdividable lots upon which homes are to be constructed. For Fully Developed and Buildable Land, the Disclosure Schedule shall identify all subdivided lots upon which a home is fully constructed or under construction. For lots upon which a home is currently under construction, a percentage of completion shall be designated for each such lot as of the Closing Date. For existing lots upon which a home has been fully constructed, the Disclosure Schedule shall designate whether it is a model, speculative or sold unit as of the Closing Date. Upon Closing, Purchaser will acquire all of the right, title and interest of the Company in the respective Real Property, including, but not limited to, any Improvements constructed thereon and any Contracts related thereto. Except as disclosed in the Disclosure Schedule, the Company (either itself or through its Subsidiaries) owns good and marketable title to its fee simple estates in the Real Property, free and clear of all Claims other than the Permitted Liens. True, correct and complete copies of (i) all deeds, existing title insurance policies, plans of subdivision, all title encumbrances and exceptions and surveys of or pertaining to the Real Property and (ii) all instruments, agreements and other documents evidencing, creating or constituting any Claims on the Real Property have been delivered to Purchaser.

(b) The use of the Real Property for the various purposes for which it is presently being used, or for which it is being planned to be used, is permitted under all applicable Laws and is not subject to "permitted nonconforming" use or structure classifications. All Improvements on the Real Property are in compliance with all applicable Laws, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, ordinary wear and tear excepted, and are free from latent and patent defects. No part of any improvement on the Real Property encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property that encroach on any part of the Real Property.

(c) With respect to the Real Property, each lot abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such lot, is supplied with public or quasi-public utilities to the boundaries of the lot and other services appropriate for the operation of the Improvements, if any, located thereon and no lot for a home is located within any flood plain or area subject to wetlands regulation or any similar restriction. All offsite easements required in connection with the development and subsequent construction of homes upon any lots within the Real Property have been obtained and paid for by the Company or a Subsidiary. With respect to the Real Property, all water, sewer, electric and telephone facilities and all other utilities required for the normal use and operation of the residences constructed or to be constructed on the lots are installed within the streets or sidewalks of the lots and can be connected for use by the residences without charge except the normal and usual nondiscriminatory tap fees and utilities charges. With respect to the Real Property, there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of any lot or that would prevent or hinder the continued use of any lot as heretofore used in the conduct of the Company's or a Subsidiary's business.

(d) For each parcel of Real Property that is subject to a recorded plat, Purchaser has been provided with a complete copy of such recorded plat. For each Real Property

or Contract which constitutes an option to purchase Real Property that is not subject to a recorded plat, the Company and Sellers have no knowledge of (i) any notification from any Governmental or Regulatory Authority indicating that such tract or parcel is subject to any Law outside of the ordinary course of business, or not uniformly imposed on all similar properties within such Governmental or Regulatory Authority's jurisdiction or (ii) any notification from any Governmental or Regulatory Authority indicating that any plans to develop such tract or parcel may not be approved or may be approved with less density than the current zoning designation Permits.

(e) Schedule 3.3.32(e) of the Disclosure Schedule contains a true, correct and complete list of all street addresses and legal descriptions of the Leased Real Estate. All Leased Real Estate is leased to the Company or a Subsidiary pursuant to written leases, complete and accurate copies of which have been previously delivered to Purchaser, and all of which are in full force and effect. Except as set forth in Schedule 3.3.32(e) of the Disclosure Schedule, the Company has not subleased any Leased Real Estate. To the Knowledge of the Company, the Leased Real Estate is not subject to any leases or tenancies of any kind, except for the Company's leases. The Leased Real Estate constitutes all of the real property and Improvements leased by the Company.

(f) The Leased Real Estate is not in possession of any adverse possessors, is used in a manner which is consistent and permitted by applicable zoning ordinances and other Laws without special use approvals or permits, are served by all water, sewer, electrical, telephone, drainage and other utilities required for normal operations of the Company's business, is in good condition and repair, and requires no work or Improvements to bring it into compliance with any applicable Law or to repair or maintenance the Improvements thereon. None of the utility companies serving any of the Leased Real Estate has threatened the Company with any reduction in service.

(g) To the Knowledge of the Company, there are no challenges or appeals pending regarding the amount of the real estate Taxes on, or the assessed valuation of, the Leased Real Estate, and no special arrangements or agreements exist with any Governmental or Regulatory Authority with respect thereto. There are no condemnation proceedings pending or, to the Knowledge of the Company, threatened with respect to any portion of the Leased Real Estate. There is no tax assessment (in addition to the normal, annual general real estate tax assessment) pending or, to the Knowledge of the Company, threatened with respect to any portion of the Leased Real Estate.

3.3.33 Intellectual Property.

(a) Schedule 3.3.33 of the Disclosure Schedule sets forth a complete and accurate list of any and all U.S. and foreign copyright registrations, copyright applications, patents and patent applications, trademark and service mark registrations (including Internet domain name registrations), trademark and service mark applications and material unregistered trademarks and service marks included within the Intellectual Property, owned, licensed or otherwise used by the Company or any Subsidiary (collectively, the "**Company Intellectual Property**") and identifies each as owned, licensed or otherwise used.

(b) Schedule 3.3.33 of the Disclosure Schedule sets forth a complete and accurate list of all Proprietary Software and Software which is licensed, leased or otherwise used by the Company (other than “off-the-shelf” Software), and identifies which Software is owned, licensed, leased or otherwise used, as the case may be.

(c) Schedule 3.3.33 of the Disclosure Schedule sets forth a complete and accurate list of all Intellectual Property Licenses.

(d) The Company is the owner of, or has exclusive rights to use, all of the Company Intellectual Property.

(e) The conduct of the Company’s business and the exercise of its rights relating to the Company Intellectual Property do not infringe upon or otherwise violate the intellectual property rights of any Person.

(f) To the Knowledge of the Company, no Person is infringing upon or otherwise violating any of the Company Intellectual Property.

(g) The Company has not received notice of any claims, and, to the Knowledge of the Company, there are no pending claims, of any Persons relating to the scope, ownership or use of any of the Company Intellectual Property.

(h) The Company has not licensed or sublicensed its rights in any of the Company Intellectual Property or received or granted any such rights, other than pursuant to Intellectual Property Licenses.

(i) All Proprietary Software was developed either by employees of the Company within the scope of their employment or by independent contractors who have assigned their right to the Company pursuant to written agreements.

3.3.34 Product Liability. Each of the residential homes built, sold and delivered by the Company or a Subsidiary was, at the time of delivery, in compliance in all respects with all applicable Laws and is, and at all relevant times has been, fit for the ordinary purposes for which it is intended to be used and conforms to any promises or affirmations of fact made in connection with the sale. There is no design defect or construction defect or common element defect with respect to any of such homes and there is no presence of mold or existing water intrusion issues with respect to a home under construction or built and sold by the Company or a Subsidiary and neither the Company nor any Subsidiary has received any notice of same from any contractor, supplier, vendor, contract purchaser or owner of a home constructed by the Company or a Subsidiary. To the Knowledge of the Company, there are no claims, actions, suits, inquiries, proceedings or investigations pending or threatened against the Company or any Subsidiary that any of such homes are defective or were improperly designed or constructed or improperly labeled or otherwise improperly described for use and there is no known basis for any of the foregoing. Each of the homes constructed, sold, and delivered by the Company or a Subsidiary has conformed in all material respects with all basic plans and specifications and applicable contractual commitments agreed to between the Company or the Subsidiary and the purchaser of such home, and the Company or the Subsidiary has no Liabilities for replacement thereof or other Damages in connection therewith, subject only to the reserve for product

warranty claims set forth on the face of the Financial Statements, as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company or the Subsidiary.

3.3.35 Commercial Bribery. None of the Company, Subsidiaries, Sellers, or, to the Knowledge of the Company, any of the Company's or any Subsidiary's former or current officers, directors, employees, agents or representatives, has made, directly or indirectly, with respect to the business of the Company or any Subsidiary, any bribes or kickbacks, illegal political contributions, payments from corporate funds not recorded on the books and records of the Company, payments from corporate funds to governmental officials, in their individual capacities, for the purpose of affecting their action or the action of the government they represent, to obtain favorable treatment in securing business or licenses or to obtain special concessions, or illegal payments from corporate funds to obtain or retain business. Without limiting the generality of the foregoing, neither Sellers nor the Company has directly or indirectly made or agreed to make (whether or not said payment is lawful) any payment to obtain, or with respect to, sales other than usual and regular compensation to the Company's employees and sales representatives with respect to such sales.

3.3.36 No Omissions. The representations and warranties of the Company, the Subsidiaries and each Seller in this Agreement, and all representations, warranties and statements of the Company, the Subsidiaries and each Seller contained in any schedule, Financial Statement, exhibit, list, certificate or other document delivered pursuant hereto or in connection herewith, do not omit to state a material fact necessary in order to make the representations, warranties or statements contained herein or therein not misleading.

3.3.37 Brokers. With the exception of BB&T Capital Markets, none of the Company, the Sellers or any of their respective Affiliates has dealt with any Person who is entitled to a broker's commission, finder's fee, investment banker's fee or similar payment from Purchaser, the Company or the Sellers for arranging the transactions contemplated hereby or introducing the parties to each other. The Sellers shall bear full responsibility for any fee or commission that may be due and payable to BB&T Capital Markets or any other brokers or advisors retained on their behalf in connection with the transactions that are contemplated by this Agreement.

3.4 Representations and Warranties of the Sellers. Each Controlling Seller, jointly and severally in respect of all Sellers, and each Participating Seller individually and solely in respect of such Seller (and only such Seller) and not jointly and severally in respect of all Sellers, represents and warrants to Purchaser as follows:

3.4.1 Power and Authority. Such Seller has full power and authority to execute, deliver and perform this Agreement and each of the documents and instruments required to be entered into pursuant to this Agreement, and to consummate the transactions contemplated hereby and thereby.

3.4.2 Enforceability. This Agreement has been duly executed and delivered by such Seller and constitutes a legal, valid and binding agreement of such Seller, enforceable against such Seller in accordance with its terms, except that (a) such enforcement may be subject

to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally; and (b) the remedy of specific performance and injunctive and other forms of equitable relief that may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

3.4.3 Consents. No consent, authorization, order or approval of, or filing or registration with, any Governmental or Regulatory Authority is required for or in connection with the consummation by such Seller of the transactions contemplated hereby.

3.4.4 Conflicts With Laws. Neither the execution and delivery of this Agreement by such Seller, nor the consummation by him or her of the transactions contemplated hereby will conflict with or constitute a breach of any of the terms, conditions or provisions of any statute or administrative regulation or of any order, writ, injunction, judgment or decree of any Governmental or Regulatory Authority, court or of any arbitration award, to which such Seller is a party or by which such Seller is bound.

3.4.5 Conflicts Under Contracts. Such Seller is not a party to, or bound by, any unexpired, undischarged or unsatisfied written or oral Contract, agreement, indenture, mortgage, debenture, note or other instruments under the terms of which the execution, delivery and performance by such Seller of this Agreement and the consummation of the transactions contemplated hereby by such Seller will require a consent, approval, or notice or result in a lien on the Shares owned by such Seller.

3.4.6 Title to Shares. Each Seller has good and marketable title to the Shares which are to be transferred to the Purchaser by such Seller pursuant to this Agreement, free and clear of any and all Claims (including covenants, conditions, restrictions, voting trust arrangements, encumbrances, security interests, options and adverse claims or rights whatsoever). No Seller is, nor will he be, required to give any notice to or obtain any consent or approval from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

ARTICLE IV
[INTENTIONALLY OMITTED.]

ARTICLE V
[INTENTIONALLY OMITTED.]

ARTICLE VI
CLOSING

6.1 Closing Documents. At the Closing, the parties are delivering the documents, and performing the acts, which are set forth in this ARTICLE VI.

6.2 Purchaser's Deliveries. Purchaser hereby executes and/or delivers to Sellers all of the following:

6.2.1 the Closing Payment;

6.2.2 a certificate of the secretary of Purchaser certifying as true, correct and complete the following: (a) the incumbency and specimen signature of each officer of Purchaser executing this Agreement and any other document delivered hereunder on behalf of Purchaser; (b) a copy of Purchaser's certificate of incorporation and bylaws; and (c) a copy of the resolutions of Purchaser's board of directors authorizing the execution, delivery and performance of this Agreement and any other documents delivered by Purchaser hereunder;

6.2.3 a closing certificate executed by an executive officer of Purchaser, on behalf of Purchaser, pursuant to which Purchaser certifies to Sellers that: (a) all covenants required by the terms hereof to be performed by Purchaser on or before the Closing Date, to the extent not waived by Sellers in writing, have been so performed (or, if any such covenant has not been so performed, indicating that such covenant has not been performed); and (b) all documents to be executed and delivered by Purchaser at the Closing have been executed by duly authorized officers of Purchaser;

6.2.4 the Employment Agreement (including all documentation relating to the grant of contingent restricted stock of Purchaser) and a Noncompetition Agreement, each to be entered into with each of James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively, executed by a duly authorized officer of Purchaser; and

6.2.5 without limitation by specific enumeration of the foregoing, all other documents reasonably required from the Company and Sellers to consummate the transactions contemplated hereby.

6.3 Company's and Sellers' Deliveries. The Company and Sellers, as applicable, hereby execute and/or deliver to Purchaser all of the following:

6.3.1 certificates representing all outstanding Shares, duly endorsed in blank or with duly executed stock powers attached;

6.3.2 physical possession of all records, tangible assets, licenses, policies, Contracts, plans, leases or other instruments owned by or pertaining to the Company which are in the possession of Sellers;

6.3.3 the minute books and stock records of the Company and each Subsidiary;

6.3.4 evidence demonstrating that the Company and the Subsidiaries have adequate cash on hand or borrowing power to satisfy all accrued short-term liabilities and all trade payables of the Company and the Subsidiaries as of the date hereof;

6.3.5 a certificate executed by each Seller, certifying that each Seller is not a person or entity subject to withholding under the Foreign Investment in Real Property Tax Act, as amended;

6.3.6 landlord waivers with respect to all property of the Company located at the Leased Real Estate, such waivers to be in form and substance reasonably satisfactory to Purchaser;

6.3.7 copies of all of the Required Consents;

6.3.8 a Seller Release, in the form of Exhibit D attached hereto, duly executed by each Seller;

6.3.9 the written resignations effective as of the Closing Date of such directors, officers and managers of the Company and each Subsidiary as requested by Purchaser to resign;

6.3.10 certified copies of (a) the Company's articles of incorporation issued by the Secretary of State of the State of Georgia and (b) each Subsidiary's articles of incorporation or articles of organization, as the case may be, issued by the secretary of state of the applicable jurisdiction;

6.3.11 certificates of good standing for each of the Company and its Subsidiaries issued not earlier than fifteen days prior to the Closing Date, by the secretaries of state of the applicable jurisdictions;

6.3.12 a certificate of the secretary of the Company certifying as true, correct and complete the following: (a) the incumbency and specimen signature of each Seller and each officer of the Company executing this Agreement and any other document delivered hereunder on behalf of the Company or Sellers; (b) a copy of the bylaws of the Company; (c) copies of the bylaws or operating agreements of the Subsidiaries; and (d) a copy of the resolutions of the Company's board of directors and shareholders authorizing the execution, delivery and performance of this Agreement and any other documents delivered by the Company hereunder;

6.3.13 a closing certificate duly executed by the President of the Company, on behalf of the Company, and by each Seller, pursuant to which the Company and each Seller certifies to Purchaser that: (a) all covenants required by the terms hereof to be performed by either the Company and each Seller on or before the Closing Date, to the extent not waived in writing by Purchaser, have been so performed (or if any such covenant has not been so performed, indicating that such covenant has not been performed); and (b) all documents to be executed by the Company and each Seller and delivered at the Closing have been executed by duly authorized officers of the Company and by each Seller, as applicable;

6.3.14 the Employment Agreement (including all documentation relating to the grant of contingent restricted stock of Purchaser) and a Noncompetition Agreement, each to be entered into with each of James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively, and each duly executed by James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively;

6.3.15 confidentiality and noncompetition agreements to be entered into with employees of the Company as may be requested by Purchaser;

6.3.16 the written opinions of Schreeder, Wheeler & Flint, LLP, counsel to the Company and the Sellers, dated as of the Closing Date, in substantially the form of Exhibit F attached hereto; and

6.3.17 without limitation by specific enumeration of the foregoing, all other documents reasonably required from Purchaser to consummate the transactions contemplated hereby.

ARTICLE VII POST-CLOSING AGREEMENTS

7.1 Post-Closing Agreements. From and after the Closing, the parties shall have the respective rights and obligations which are set forth in the remainder of this ARTICLE VII.

7.2 Inspection of Records. Each Seller shall make his books and records (including work papers in the possession of his accountants) with respect to his investment in the Company available for inspection by Purchaser, or by Purchaser's duly authorized representatives, for reasonable business purposes at all reasonable times during normal business hours, for a seven year period after the Closing Date, with respect to all transactions of the Company occurring prior to the Closing, and the historical financial condition, assets, Liabilities, operations and cash flows of the Company. As used in this Section 7.2, the right of inspection includes the right to make extracts or copies.

7.3 Use of Trademarks. Each Seller shall not use, and shall not license or permit any third party to use, any name, slogan, logo or trademark which is deceptively similar to any of the names or trademarks used in connection with the business of the Company or any Subsidiary.

7.4 Payments of Accounts Receivable. In the event any Seller shall receive any instruments of payment of any of the Accounts Receivable, such Seller shall forthwith deliver such instruments to the Company or Purchaser, endorsed where necessary, without recourse, in favor of the Company or Purchaser.

7.5 Third Party Claims. The parties hereon shall cooperate with each other with respect to the defense of any Third Party Claims subsequent to the Closing Date which are not subject to the indemnification provisions contained in ARTICLE IX, provided that the party requesting cooperation shall reimburse the other party for the other party's reasonable out-of-pocket costs and expenses of furnishing such cooperation.

7.6 Further Assurances. The parties shall execute such further documents, and perform such further acts, as may be necessary to transfer and convey the Shares to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated hereby.

7.7 Company's Release. The Company shall deliver to Sellers the Company's Release, in the form of Exhibit E attached hereto and duly executed by its authorized officer, immediately after Closing.

ARTICLE VIII
OTHER AGREEMENTS

8.1 Confidentiality. Each of the parties hereto hereby agrees to keep the existence and terms of this Agreement (except to the extent contemplated hereby), and such information or knowledge obtained pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, confidential; provided, however, that the foregoing shall not apply to information or knowledge which (a) a party can demonstrate was already lawfully in its possession prior to the disclosure thereof by the other party, (b) is or becomes generally known to the public and did not become so known through any violation of Law, or a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality of the disclosing party or any other party with respect to such information, (c) is later lawfully acquired by such party without confidentiality restrictions from other sources not bound by applicable confidentiality restrictions, (d) is required to be disclosed under applicable Law or the rules of the Securities and Exchange Commission or any stock exchange, (e) is required to be disclosed to satisfy a condition of this Agreement and (f) is required to be disclosed by order of court or Governmental or Regulatory Authority with subpoena powers (provided that such party shall have provided the other party with prior notice of such order and an opportunity to object or seek a protective order and take any other available action) or in connection with any lawsuit or arbitration proceeding between the parties hereto (and in such event only to the extent such disclosure is required).

8.2 Publicity. Except as otherwise required by Law or the rules of the Securities and Exchange Commission or any stock exchange, press releases and other publicity concerning this transaction shall be made only with the prior agreement of Sellers and Purchaser (and in any event, the parties shall use all reasonable efforts to consult and agree with each other with respect to the content of any such required press release or other publicity).

8.3 Certain Tax Matters.

8.3.1 The Company and Sellers shall be liable for, duly prepare, or cause to be prepared, file, or cause to be filed, and pay on a timely basis, all tax returns for the Company for any taxable year or period ending on or before the Closing Date. The Company and Sellers shall provide such tax returns to Purchaser for review at least 30 days prior to the applicable due date (including extensions where applicable) and shall make such changes to the tax returns as may be reasonably requested by Purchaser. No Seller shall file any amended tax returns with respect to the Company without the prior written consent of Purchaser.

8.3.2 Purchaser shall have the right to control any audit or examination of the Company's Taxes by any Governmental or Regulatory Authority, and have the right to initiate any claim for refund or amended return, and contest, resolve and defend against any assessment, notice of deficiency or other adjustment or proposed adjustment of Taxes (collectively with any audits or examinations, "**Tax Proceedings**") for all taxable periods of the Company. The Sellers shall have the right (but not the duty) to participate in any Tax Proceedings with respect to taxable periods for which the Sellers are charged with the payment of the Company's Taxes, and to employ counsel, at their own expense, separate from the counsel employed by Purchaser. Purchaser and Sellers shall cooperate in the defense or prosecution of any Tax Proceeding.

Purchaser and Sellers agree to retain or cause to be retained all books and records pertinent to the Company until the applicable period for assessment under applicable Law (giving effect to any and all extensions or waivers) has expired, and to abide by or cause the abidance with all record retention agreements entered into with any Governmental or Regulatory Authority. The Sellers shall execute or cause to be executed any powers of attorney or other documents reasonably requested by Purchaser to enable Purchaser to take any and all actions it reasonably needs to take with respect to any Tax Proceedings.

8.4 Employee Matters. The Company and each Seller will use their best efforts to retain, and will assist Purchaser's efforts to retain, as may be reasonably requested by Purchaser, key employees of the Company, and/or to find suitable replacements in the event of the termination of employment of any such key employees. At the Closing, Purchaser will enter into Employment Agreements and Noncompetition Agreements with each of James B. Parker, Jr. and Andrew H. Chandler, Jr., respectively.

8.5 Personal Guarantees. Purchaser shall either (a) at Closing assume the personal guarantees previously made by any Seller with respect to any Assumed Institutional Debt, as such guarantees are set forth on Schedule 8.5, to the extent that any guaranteed parties thereunder consent to the substitution of Purchaser thereunder or (b) indemnify and hold harmless such Seller on account of any such personal guarantees, to the extent that any guaranteed parties thereunder do not consent to the substitution of Purchaser thereunder.

8.6 Sellers' Representatives.

8.6.1 Each of the Sellers hereby irrevocably constitutes and appoints the Controlling Sellers, acting individually or collectively, as the Sellers' Representative to represent the interests of the Sellers and to act as the attorneys-in-fact and agents for and on behalf of each Seller. This power is irrevocable and coupled with an interest, and shall not be affected by the death, incapacity, illness, dissolution or other inability to act of any of the Sellers. Each Seller hereby irrevocably grants each Sellers' Representative full power and authority: (a) to execute and deliver, on behalf of such Seller, and to accept delivery of, on behalf of such Seller, such documents as may be deemed by each Sellers' Representative, in his sole discretion, to be appropriate to consummate this Agreement and the other transactions contemplated hereby, including without limitation, the Escrow Agreement; (b) to endorse and to deliver on behalf of such Seller, certificates representing the Shares to be surrendered by such Seller at the Closing; (c) to acknowledge receipt at the Closing of the Closing Payment, and to certify, on behalf of such Seller, as to the accuracy of the representations and warranties of such Seller under, or pursuant to the terms of, this Agreement; (d) to dispute or refrain from disputing, on behalf of such Seller, any claim made by Purchaser under this Agreement; (e) to negotiate and compromise, on behalf of such Seller, any dispute that may arise under, and to exercise or refrain from exercising any remedies available under, this Agreement; (f) to execute, on behalf of such Seller, any settlement agreement, release or other document; (g) to give or to agree to, on behalf of such Seller, any and all consents, waivers, amendments or modifications, deemed by the Sellers' Representative, in his sole discretion, to be necessary or appropriate, under this Agreement, and, in each case, to execute and deliver any documents that may be necessary or appropriate in connection therewith; (h) to enforce, on behalf of such Seller, any claim against Purchaser arising under this Agreement; (i) to engage attorneys, accountants and agents at the

expense of the Sellers; and (j) to give such instructions and to take such action or refrain from taking such action, on behalf of such Seller, as the Sellers' Representative deem, in his sole discretion, necessary or appropriate to carry out the provisions of this Agreement.

8.6.2 Each Seller hereby agrees that: (a) Purchaser shall be entitled to rely on any and all action taken by one or both Sellers' Representatives, under this Agreement or documents contemplated hereby without any liability to, or obligation to inquire of, any of the Sellers or the other Sellers' Representative; (b) notice to any Sellers' Representative, delivered in the manner provided in Section 11.1, shall be deemed to be notice to all Sellers for the purposes of this Agreement; (c) the power and authority of each Sellers' Representative, as described in this Agreement, shall continue in force until all rights and obligations of the Sellers under this Agreement shall have terminated, expired or been fully performed; and (d) if both of the Sellers' Representatives resign or are removed or otherwise cease to function in their capacity as such for any reason whatsoever, and no successor is appointed by the Sellers within thirty (30) days, then Purchaser shall have the right to appoint one or more of the Sellers to act as the substitute Sellers' Representative, to serve as described in this Agreement.

8.6.3 Each Seller, jointly and severally, shall indemnify the Purchaser Indemnitees against, and agree to hold the Purchaser Indemnitees harmless from, any and all Damages incurred or suffered by any Purchaser Indemnitee arising out of, with respect to or incident to the operation of, or any breach of any covenant or agreement pursuant to, this Section 8.6, including without limitation, with respect to (a) actions taken by each Sellers' Representative and (b) reliance by any Purchaser Indemnitee on, and actions taken by any Purchaser Indemnitee in response to or in reliance on, the instructions of, notice given by or any other action taken by each Sellers' Representative.

8.6.4 The Sellers shall jointly and severally indemnify each Sellers' Representative against any Damages (except such Damages as result from such Seller's Representative's gross negligence or willful misconduct) that such Seller may suffer or incur in connection with any action or omission of such Sellers' Representative. Each Seller shall bear its pro-rata portion of such Damages. No Sellers' Representative shall be liable to any Seller with respect to any action, omission taken or omitted to be taken pursuant to this Section 8.6, except for such Sellers' Representative's gross negligence or willful misconduct.

ARTICLE IX INDEMNIFICATION

9.1 The Company's and Sellers' Indemnification Obligations. Subject to the provisions of this Section 9.1 and Sections 9.4, 9.5, 9.6, 9.7 and 9.9, the Sellers shall indemnify, save and keep each Purchaser Indemnitee harmless against and from all Damages sustained or incurred by any Purchaser Indemnitee, as a result of, or arising out of or by virtue of:

9.1.1 any inaccuracy in or breach of any representation and warranty made by the Company or Sellers to Purchaser herein or in any certificate or closing document delivered to Purchaser in connection herewith;

9.1.2 the breach by the Company or Sellers of, or failure of the Company or Sellers to comply with, any of the covenants or obligations under this Agreement to be performed by the Company or Sellers (including their obligations under this ARTICLE IX);

9.1.3 Liabilities of the Company or any Subsidiary of the Company arising out of acts or omissions occurring before the Closing Date, including the operation of the Company's business before the Closing Date, or by virtue of the termination of any employee prior to the Closing Date, or in respect of any Indebtedness (other than the Assumed Institutional Debt or the Assumed Shareholder Debt) arising prior to the Closing Date; or

9.1.4 Taxes which are unpaid as of the Closing Date and which are imposed on the Company with respect to (a) any taxable period ending on or before the Closing Date, or (b) the pre-Closing portion of any taxable period which begins before, and ends after, the Closing Date, to the extent the liability for such Taxes exceeds the accrual for Taxes contained on the Company's Interim Financial Statement and is not a result of any filing election made by Purchaser subsequent to Closing (including, without limitation, any Liabilities arising from the failure of the Company to qualify, or the forfeiture of the Company's qualification, as an "S corporation" under the Code at any time prior to the Closing).

After the Closing, the Sellers shall not be entitled to contribution from, or recovery against, the Company with respect to any liability of the Sellers which may arise under or pursuant to this Agreement, other than with respect to amounts recovered by the Company from third parties or under insurance for the same Damages for which indemnification shall have been obtained hereunder (and only to the extent of such recovery). Each Purchaser Indemnitee acknowledges and agrees that, other than claims for fraud, which claims are specifically excluded from the limitations of this Article IX, the indemnification provided for in this Article IX shall be the sole and exclusive remedy against the Sellers for any and all claims, injuries, demands, costs, contributions, penalties, attorney's fees, costs of litigation and causes of action of any kind whatsoever, now or hereafter in existence, known or unknown, which are related to events, omissions or circumstances arising from this Agreement or the transactions contemplated hereby.

9.2 Purchaser's Indemnification Obligations. Purchaser shall indemnify, save and keep each Seller Indemnitee harmless against and from all Damages sustained or incurred by any Seller Indemnitee, as a result of, or arising out of or by virtue of:

9.2.1 any inaccuracy in or breach of any representation and warranty made by Purchaser to Sellers herein or in any certificate or closing document delivered to Sellers in connection herewith;

9.2.2 any breach by Purchaser of, or failure by Purchaser to comply with, any of the covenants or obligations under this Agreement to be performed by Purchaser (including without limitation its obligations under this ARTICLE IX); or

9.2.3 Taxes which are imposed on the Company with respect to (a) any taxable period ending after the Closing Date, excluding the pre-Closing portion of any taxable period which begins before, and ends after, the Closing Date.

9.3 Cooperation. Subject to the provisions of Section 9.4, the Indemnifying Party shall have the right, at its own expense, to participate in the defense of any Third Party Claim, and if said right is exercised, the parties shall cooperate in the investigation and defense of said Third Party Claim.

9.4 Third Party Claims. Promptly after the receipt of written notice of a Third Party Claim, the party receiving the notice of the Third Party Claim shall notify the other party of its existence setting forth with reasonable specificity the facts and circumstances of which such party has received notice, and if the party giving such notice is an Indemnified Party, specifying the basis hereunder upon which the Indemnified Party's claim for indemnification is asserted; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this ARTICLE IX except to the extent the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party may, upon reasonable notice, tender the defense of a Third Party Claim to the Indemnifying Party. If

9.4.1 the defense of a Third Party Claim is so tendered and within 30 days thereafter such tender is accepted without qualification by the Indemnifying Party; or

9.4.2 within 30 days after the date on which written notice of a Third Party Claim has been given pursuant to this Section 9.4, the Indemnifying Party shall acknowledge without qualification its indemnification obligations as provided in this ARTICLE IX in writing to the Indemnified Party and accept the defense thereof;

then, except as herein provided, the Indemnified Party shall not, and the Indemnifying Party shall, have the right to contest, defend, litigate or settle such Third Party Claim. In all other cases, the Indemnified Party shall have the sole right, at the Indemnifying Party's expense, to contest, defend, litigate or settle such Third Party Claim. The Indemnified Party shall have the right to be represented by counsel at its own expense in any contest, defense, litigation or settlement conducted by the Indemnifying Party, provided that the Indemnified Party shall be entitled to reimbursement therefor if the Indemnifying Party shall not be entitled, or shall lose its right, to contest, defend, litigate and settle the Third Party Claim as herein provided. The Indemnifying Party shall not be entitled, or shall lose its right, as applicable, to contest, defend, litigate and settle a Third Party Claim if (a) there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the reasonable judgment of the Indemnified Party for the same counsel to represent both the Indemnifying Party and the Indemnified Party, (b) the Indemnifying Party shall fail to diligently contest the Third Party Claim, (c) such Third Party Claim involves remedies or disputes other than claims for monetary damages, or (d) such Third Party Claim or the resolution thereof could impair ongoing business relationships with any material customer, supplier, any Governmental or Regulatory Authority, or any other Person doing business with the Indemnified Party or any of its Affiliates. So long as the Indemnifying Party is entitled and has not lost its right and/or obligation to contest, defend, litigate and settle as herein provided, the Indemnifying Party shall have the exclusive right to contest, defend and litigate the Third Party Claim and shall have the exclusive right, in its discretion exercised in good faith, and upon the advice of counsel, to settle any such matter, either before or after the initiation of litigation, at such time and upon such terms as it deems fair and reasonable, provided that (i) at least ten days prior to any such settlement, written notice of its intention to settle shall be given to the Indemnified Party, (ii) such settlement includes as an unconditional term thereof

the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Liabilities in respect of such Third Party Claim, (iii) such settlement does not impose any obligations of any kind upon the Indemnified Party and (iv) such settlement does not otherwise impair ongoing business relationships with any material customer, supplier, any Governmental or Regulatory Authority, or any other Person doing business with the Indemnified Party or any of its Affiliates. All expenses (including without limitation attorneys' fees) incurred by the Indemnifying Party in connection with the foregoing shall be paid by the Indemnifying Party. No failure by an Indemnifying Party to acknowledge in writing its indemnification obligations under this ARTICLE IX shall relieve it of such obligations to the extent they exist. If an Indemnified Party is entitled to indemnification against a Third Party Claim, and the Indemnifying Party fails to accept a tender of, or assume, the defense of a Third Party Claim pursuant to this Section 9.4, or if, in accordance with the foregoing, the Indemnifying Party shall not be entitled or shall lose its right to contest, defend, litigate and settle such a Third Party Claim, the Indemnified Party shall have the right, without prejudice to its right of indemnification hereunder, in its discretion exercised in good faith and upon the advice of counsel, to contest, defend and litigate such Third Party Claim, and may settle such Third Party Claim, either before or after the initiation of litigation, at such time and upon such terms as the Indemnified Party deems fair and reasonable. If, pursuant to this Section 9.4, the Indemnified Party so contests, defends, litigates or settles a Third Party Claim for which it is entitled to indemnification hereunder, the Indemnified Party shall be reimbursed by the Indemnifying Party for the reasonable attorneys' fees and other expenses of contesting, defending, litigating and/or settling the Third Party Claim which are incurred from time to time, forthwith following the presentation to the Indemnifying Party of itemized bills for said attorneys' fees and other expenses.

9.5 Assertion of Claims. No claim shall be brought under Section 9.1 hereof unless the Purchaser Indemnitees, or any of them, at any time prior to the applicable Survival Date (as defined below), give the Sellers written notice of any such claim pursuant to Section 9.4. It is expressly understood and agreed that a claim may be brought for indemnification if facts have developed which reasonably may lead to Damages under Section 9.1, regardless of whether actual Damages have then occurred, provided that the written notification of such claim is provided within the appropriate timeframe as required herein.

9.6 Survival of Representations and Warranties. Subject to further provisions of this Section 9.6, the representations and warranties of the Company and the Sellers contained in Article III and the representations and warranties of Purchaser contained in Article III shall survive the Closing Date until the third year anniversary of the Closing Date. For Unlimited Claims (as defined below), the Survival Date shall be the date on which the applicable statute of limitations would bar such Claims. The covenants and other agreements of the parties contained in this Agreement shall survive the Closing Date until they are otherwise terminated, whether by their terms or as a matter of applicable law. For convenience of reference, the date upon which any representation, warranty, covenant or other agreement contained herein shall terminate, if any, is referred to herein as the "**Survival Date**." Any action for indemnification hereunder shall be brought by a Purchaser Indemnitee in any event by the applicable Survival Date.

9.7 Limitation on Indemnification of the Company, the Sellers and Purchasers.

9.7.1 The provisions for indemnity from the Sellers under this Article IX shall be effective only when the aggregate amount of all Damages for which indemnification is sought, either for a particular claim, a series of related claims or otherwise, exceeds \$150,000 (the “**Deductible**”), in which case the Purchaser Indemnitees shall be entitled to indemnification of the Purchaser Indemnitees’ aggregate Damages under this Section exceeding the Deductible. Notwithstanding the foregoing, the Deductible shall not apply to claims arising from the (a) breach of Section 3.3.1 (Organization, Existence and Good Standing), (b) breach of Section 3.3.3 (Power and Authority), (c) breach of Section 3.3.4 (Enforceability), (d) breach of Section 3.3.11 (Capitalization), (e) breach of Section 3.3.26 (Employee Benefit Plans), and (f) breach of Section 3.4 (Representation and Warranties of the Sellers) (together the claims in clauses (a)-(f) of this sub-Section are “**Unlimited Claims**”). The indemnification obligations of the Sellers shall not exceed (x) \$2,000,000 in respect of all Damages (other than Damages arising from the breach of Section 3.3.31 (Environmental Matters) and any Unlimited Claims), (y) in the case of any Damages relating to any breach of Section 3.3.31 (Environmental Matters), \$5,000,000, and (z) in the case of any Damages relating to any of the Unlimited Claims, the Purchase Price (collectively, the limitations in clauses (x)-(z) of this sub-Section are “**Liability Caps**”), provided, however, that the indemnification obligations of Sellers from all Damages referenced in clauses (x)-(z) of this sub-Section shall not exceed \$10,000,000 in the aggregate. The indemnification obligations of each Participating Seller shall be individual and several, and not joint, and shall be further limited in respect of the indemnification obligations hereunder (other than in respect of each Participating Seller’s individual representations and warranties in Section 3.4) to such Participating Seller’s Percentage Interest of the applicable Damages recoverable hereunder, and in respect of each Participating Seller’s individual representations and warranties in Section 3.4, shall be limited to the portion of the Purchase Price received by such Participating Seller. The indemnification obligations of the Controlling Sellers hereunder shall be joint and several, subject to the Liability Caps. Without limitation to the primary, joint and several obligations of the Controlling Sellers hereunder, the Purchaser will use commercially reasonable efforts to cooperate with the Controlling Sellers in making demand upon and joining the applicable Participating Sellers in any claims by the Purchaser hereunder, provided that Purchaser will not be required to exhaust remedies against the Participating Sellers in order to maintain claims against the Controlling Sellers under this Article IX.

9.7.2 The provisions for indemnity from the Purchaser under this Article IX shall be effective only when the aggregate amount of all losses for which indemnification is sought, either for a particular claim, a series of related claims or otherwise, exceeds the Deductible, in which case the Seller Indemnitees shall be entitled to indemnification of the Seller Indemnitees’ aggregate Damages under this Section exceeding the Deductible. Further, the indemnification obligations of the Purchaser, in the aggregate, under Section 9.2 shall not exceed \$2,000,000.

9.7.3 The parties hereto acknowledge and agree, for themselves and on behalf of their respective Affiliates and representatives, that with respect to each indemnification obligation in this Agreement (i) all Damages shall be net of any third-party insurance proceeds which have been actually recovered by the Indemnified Party (net of any premium increase directly relating to such Damages) in connection with the facts giving rise to the right of indemnification; and (ii) the amount of any Damages shall appropriately take into account any reduction in the Indemnified Parties’ actual Tax liability as a result of the event giving rise to such Damages, with respect to the year in which such Loss arose.

9.8 Corporate Indemnification of Officers and Directors. Notwithstanding any provision of this Agreement to the contrary, including the delivery of any release contemplated herein, Purchaser shall cause the Company to indemnify each officer and director of the Company pursuant to the indemnification policy of the Company as in existence prior to the Closing Date as established in the Company's organizational documents or as provided by law; provided, however, that in no event shall such indemnity exceed the maximum indemnification permitted under applicable state law.

9.9 Set-Off.

9.9.1 Without limiting any other rights or remedies available to Purchaser, Purchaser may set-off and recoup any Damages to which any Purchaser Indemnitee may be entitled to be reimbursed pursuant to this ARTICLE IX against the Escrow Amount and any other amount to which the Sellers may be entitled to under this Agreement, upon due notice from Purchaser to Escrow Agent in accordance with the terms of the Escrow Agreement. The good faith exercise of such right of set-off by Purchaser and Escrow Agent will not constitute a breach of this Agreement. If the Escrow Amount is insufficient to set-off any Damages any Purchaser Indemnitee may be entitled to under the exclusive remedy afforded by Section 9.1, Purchaser may take any action or exercise any remedy available to it by appropriate legal proceedings to collect the Damages, subject to the Liability Caps.

9.9.2 All set-offs and recoupments against the Escrow Amount shall be treated as adjustments to the Purchase Price.

ARTICLE X
[INTENTIONALLY OMITTED]

ARTICLE XI
MISCELLANEOUS

11.1 Notices. All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized private courier, or by United States mail. Notices delivered by mail shall be deemed given three Business Days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notices delivered by hand, by facsimile, or by nationally recognized private courier shall be deemed given on the first Business Day following receipt. All notices shall be addressed as follows:

If to Sellers or the Company:

Parker-Chandler Homes, Inc.
5400 Laurel Springs Parkway
Suite 202
Suwanee, Georgia 30024
Attention: James B. Parker, Jr., President
Fax: (678) 636-3622

with a copy to:

Schreeder, Wheeler & Flint, LLP
127 Peachtree Street, N.E.
Suite 1600
Atlanta, GA 30303
Attention: Chester J. Hosch, Esq.
Fax: (404) 681-1046

If to Purchaser:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Fifth Floor
Reston, Virginia 20190
Attention: Bruce J. Labovitz, Chief Financial Officer and
Jubal R. Thompson, General Counsel
Fax: (703) 760-1520

with a copy to:

Greenberg Traurig, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
Attention: Stephen A. Riddick, Esq.
Fax: (202) 261-0149

and/or to such other respective addresses and/or addressees as may be designated by notice given in accordance with the provisions of this Section 11.1.

11.2 Expenses; Transfer Taxes. Sellers shall bear all fees and expenses incurred by the Company and themselves in connection with, relating to or arising out of the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including financial advisors', attorneys', accountants' and other professional fees and expenses. Purchaser shall bear all fees and expenses incurred by Purchaser in connection with, relating to or arising out of the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including financial advisors', attorneys', accountants' and other professional fees and expenses. Sellers shall pay the cost of all sales, use, stamp, documentary, excise and transfer Taxes which may be payable in connection with the transactions contemplated hereby.

11.3 Entire Agreement. This Agreement, together with the instruments and other documents to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties with respect to the subject matter hereof and shall be binding

upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. Without limiting the generality of the preceding sentence, the letter of intent entered into as of October 28, 2005, between Purchaser, James B. Parker, Jr. and Andrew H. Chandler, Jr. is hereby expressly superseded and of no further force or effect. Each exhibit, schedule and the Disclosure Schedule, shall be considered incorporated into this Agreement. Any amendments, or alternative or supplementary provisions, to this Agreement, must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

11.4 Non-Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

11.5 Counterparts. This Agreement may be executed in multiple counterparts and by facsimile, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

11.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, and, for purposes of such jurisdiction, such provision or portion thereof shall be struck from the remainder of this Agreement, which shall remain in full force and effect. This Agreement shall be reformed, construed and enforced in such jurisdiction so as to best give effect to the intent of the parties under this Agreement.

11.7 Applicable Law; Binding Arbitration. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal Laws of the Commonwealth of Virginia applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the Commonwealth of Virginia. All disputes arising out of or in connection with this Agreement shall be finally resolved by means of binding arbitration in accordance with the Rules of the American Arbitration Association. Any arbitral award so rendered shall be final and executory and can be enforced by either party before any competent court. The arbitrators shall use the substantive Laws of the Commonwealth of Virginia in arriving at their decision and venue for the arbitration shall be in the city of Alexandria, Virginia.

11.8 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns. Nothing in this Agreement, express or implied, shall confer on any Person other than the parties hereto, and their

respective successors and permitted assigns, any rights, remedies, obligations or Liabilities under or by reason of this Agreement, including third party beneficiary rights.

11.9 Assignability. This Agreement shall not be assignable by the Company or Sellers without the prior written consent of Purchaser. Purchaser may assign its rights under this Agreement to an Affiliate or a wholly-owned subsidiary of Purchaser.

11.10 Rule of Construction. The parties acknowledge and agree that each has negotiated and reviewed the terms of this Agreement, assisted by such legal and tax counsel as they desired, and has contributed to its revisions. The parties further agree that the rule of construction that any ambiguities are resolved against the drafting party will be subordinated to the principle that the terms and provisions of this Agreement will be construed fairly as to all parties and not in favor of or against any party.

11.11 Amendments. This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

11.12 Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Stock Purchase Agreement on the date first above written.

PURCHASER:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name: _____
Title: _____

THE COMPANY:

PARKER-CHANDLER HOMES, INC.

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CONTROLLING SELLERS:

JAMES B. PARKER, JR.

ANDREW H. CHANDLER, JR.

PARTICIPATING SELLERS:

SUNDERRAJ M. KAMALESON

ROBERT A. FORSTER

RICHARD DOBKIN

EUGENE E. PEARSON

JOHN D. PEARSON

DONALD SCHROELUCKE

JAMES SHIRAH

Exhibit A
Form of Employment Agreement
(See Attached)

Exhibit B
Form of Noncompetition Agreement
(See Attached)

Exhibit C
Form of Escrow Agreement
(See Attached)

Exhibit D
Form of Seller Release
(See Attached)

Exhibit E
Form of Company Release
(See Attached)

Exhibit F
Form of Legal Opinion
(See Attached)

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made as of this 31st day of January, 2006 by and between (i) **COMSTOCK CARTER LAKE, L.C.**, a Virginia limited liability company ("Borrower") and (ii) **BANK OF AMERICA, N.A.**, a national banking association (the "Lender").

R E C I T A L S:

WHEREAS, Lender has agreed to make a loan to Borrower as more particularly described herein (the "Loan") for the purpose of the acquisition of an apartment complex in Reston, Fairfax County, Virginia containing in the aggregate 259 units (each a "Unit" and collectively, the "Units"), more fully described in Exhibit "A" hereto.

WHEREAS, Lender acknowledges that Borrower intends to renovate and convert the Units into condominiums (the "Renovation") during the term of the Loan, such Renovation being subject to the provisions of this Agreement;

WHEREAS, Comstock Homebuilding Companies, Inc. has executed and delivered to Lender a Guaranty (as defined herein); and

WHEREAS, Lender and Borrower have agreed to execute this Agreement for the purpose of describing together with the other Loan Documents (as herein defined) some of the obligations of Borrower and the Lender.

W I T N E S S E T H:

For and in consideration of these presents, and in further consideration of the mutual covenants and agreements herein set forth, and in consideration of the sum of Ten and no/100 Dollars (\$10.00) lawful money of the United States of America by each of the parties to the other paid, receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE I — DEFINITIONS

1.1 Definitions. Borrower and the Lender agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

(a) **Appraised Value** — The then current market value determined pursuant to the most recent appraisal for the Property. All such appraisals shall be ordered by the Lender, prepared at Borrower's expense by a certified appraiser acceptable to the Lender and otherwise satisfactory to the Lender in all respects. The Lender may order, if required by the Lender's internal policies, reappraisals of the Property, at the Lender's sole discretion and at Borrower's expense.

(b) **Borrower** — The entity hereinabove designated as such.

(c) **Contract** — A fully executed contract of sale for a Unit that: (i) has been accepted by Borrower and meets the Lender's criteria for acceptable contracts; (ii) is not subject to cancellation without forfeiture of all deposits thereunder (except for cause in accordance with applicable law and in the event the purchaser fails to obtain the necessary mortgage loan); (iii) contains no contingencies (including, without limitation, the sale of the purchaser's home) except ordinary financing contingencies; (iv) is accompanied by a cash deposit or deposits in form, content and amount acceptable to the Lender; and (v) that either (A) provides for a cash sale (i.e., a sale not contingent upon financing) by a purchaser whose creditworthiness is satisfactory to the Lender in all respects, or (B) is accompanied by a pre-qualification letter from a permanent mortgage lender in form, amount and content satisfactory to the Lender in all respects. In lieu of copies of Contracts, the Borrower may elect to submit a "Unit Contract Summary Report" in form attached hereto as Exhibit "B". At Lender's option, no more than twice monthly Lender shall verify the accuracy of the information on each Unit Contract Summary Report through a review of Borrower's files. Notwithstanding the foregoing, the Lender shall retain the right to request copies of Contracts at any time during the term of the Loan. At the time any Unit Contract Summary Report is submitted to the Lender for its approval, Borrower shall specifically identify to the Lender each Contract wherein the purchaser is affiliated with or related to Borrower, Guarantor (hereinafter defined) or any of their respective employees, shareholders, partners, members or other principals, as applicable "Related Party Contracts"). The number of Related Party Contracts shall not exceed ten percent (10%) of the total Units without Lender's prior consent.

(d) **Deed of Trust** — Collectively, that certain Credit Line Deed of Trust and Security Agreement of even date herewith, executed and delivered by Borrower to secure the Loan, as any of the same may from time to time be amended, modified, supplemented or spread.

(e) **Default** — Any of the happenings, events, circumstances or occurrences designated as such in this Agreement.

(f) **Environmental Regulations** — "Environmental Regulations" as defined in the Deed of Trust.

(g) **Guarantor** — Comstock Homebuilding Companies, Inc. and any other party that executes and delivers a Guaranty, and its or their respective successors, personal representatives and permitted assigns.

(h) **Guaranty** — That certain (i) Guaranty Agreement of even date herewith executed and delivered by Guarantor to secure the Loan and all other indebtedness under the Loan Documents (hereinafter defined), and (ii) any and all other guaranty agreements executed for the benefit of the Lender to secure the Loan, as any of the same may from time to time be amended, modified, replaced or supplemented.

(i) **Hazardous Materials** — “Hazardous Materials” as defined in the Deed of Trust.

(j) **Improvements** — Any and all buildings, structures, improvements, alterations or appurtenances already existing or at any time hereafter constructed or placed upon the Land, and any replacements thereof, additions thereto and substitutions therefor, including without limitation, all equipment, apparatus, machinery and fixtures of any kind or character forming a part thereof.

(k) **Indebtedness** — All amounts due or to become due to the Lender pursuant to or on account of the Note (hereinafter defined), this Agreement and each of the other Loan Documents, including, without limitation, all principal (whether advanced prior to, upon execution of, or after the date of this Agreement), interest, late charges, loan fees, extension fees, prepayment fees, amounts drawn under any letters of credit, any letter of credit fees and all other payments required to be made by the Borrower pursuant to or on account of the Note, this Agreement and any of the other Loan Documents, and including any and all amounts advanced by the Lender for the account of the Borrower pursuant to the provisions of this Agreement and any of the other Loan Documents, whether or not such amounts are advanced from the proceeds of the Loan.

(l) **Jurisdiction of Choice** — The Commonwealth of Virginia, the jurisdiction under whose laws this Agreement shall be governed, unless otherwise provided herein.

(m) **Land** — Any or all of the real property now owned or hereafter acquired by the Borrower with Loan proceeds and more particularly described in the Deed of Trust.

(n) **Lender** — The party hereinabove designated as such, its successors and assigns.

(o) **Loan** — That certain acquisition loan in the amount of \$26,000,000.00, made pursuant to this Agreement, to finance the acquisition of certain property, as evidenced by the Note and secured by the Deed of Trust and the other Loan Documents.

(p) **Loan Documents** — This Agreement, the Note, the Deed of Trust, any Guaranty and any other instrument or documents executed in connection with the Loan, as any of the same may from time to time be amended, modified or supplemented.

(q) **Maturity Date** — July 31, 2006.

(r) **Note** — That certain Deed of Trust Note of even date herewith in the original principal amount of \$26,000,000.00, or so much thereof as shall be advanced, made by the Borrower, payable to the order of the Lender, as the same may from time to time be amended, modified, replaced or supplemented.

(s) **Obligations** — Any and all of the covenants, warranties, representations, agreements, promises and other obligations (other than the Indebtedness) made or owing by the Borrower, the Guarantor or others to the Lender pursuant to or as otherwise set forth in the Loan Documents.

(t) **Progress Inspector** — Such person or firm as the Lender may from time to time appoint or designate to inspect the progress of the Renovation and conformity of construction with applicable laws, and for such other purposes as may from time to time seem appropriate to the Lender or as may be required by the terms of this Agreement

(u) **Project** — Carter Lake Project (hereinafter defined).

(v) **Property** — The property described as such in the Deed of Trust, including, but not limited to, the Land and the Improvements.

(w) **Title Company** — Any title company approved by the Lender that provides mortgagee title insurance covering the lien of the Deed of Trust in favor of the Lender thereon.

(x) **Carter Lake Project** — acquisition of an apartment complex in Reston, Fairfax County, Virginia containing 259 apartment Units to be converted into 258 condominium Units.

ARTICLE II — CONDITIONS PRECEDENT TO CLOSING

In addition to any other conditions stated in this Agreement, the following conditions must be satisfied prior to Lender having any obligation to advance funds hereunder:

2.1 Loan Documents. Receipt by Lender of appropriately completed and duly executed originals of this Agreement and the other Loan Documents. In addition, Borrower shall provide a written opinion of counsel to the Borrower and the Guarantor as to the authority of the Borrower and the Guarantor to execute and deliver the Loan Documents, as to the enforceability and validity of the Loan Documents, and as to such other matters as the Lender may reasonably require.

2.2 Organizational Documents. Borrower shall supply, with respect to the Borrower and Guarantor: (i) a currently certified copy of the Articles of Organization or Certificate of Incorporation and all amendments thereto, as applicable; (ii) evidence satisfactory to Lender and its counsel that Borrower and Guarantor in good standing in the jurisdiction where

organized and qualified to do business in every jurisdiction in which the nature of their businesses or their properties makes such qualification necessary; (iii) resolutions of the Borrower and Guarantor authorizing the due execution and delivery of the Loan Documents to which it is a party, to the extent necessary; and (iv) certified true copies of the Operating Agreement or By-laws and all amendments thereto, as applicable.

None of the documents pursuant to which the Borrower or Guarantor is organized shall be amended or modified in any respect without the prior written consent of the Lender, which may be given or withheld in the reasonable discretion of the Lender.

2.3 Insurance. Borrower shall provide Lender with a complete and fully paid up policy or policies of casualty and fire insurance with standard extended coverage in an amount not less than the replacement cost of the improvements and personalty located on the Property; \$2,000,000.00 covering all claims for bodily injury or death and property damage arising out of a single occurrence and \$2,000,000.00 for the aggregate of all occurrences during any given annual policy period, plus \$5,000,000.00 of "umbrella" coverage; builder's risk insurance with on a completed value, nonreporting form with permission to complete and occupy; malicious mischief insurance; business interruption insurance and insurance against such other hazards as Lender may require, in amounts, with insurers and under forms of policies containing such provisions and endorsements as Lender may require. All policies of insurance (except employee benefit and public liability insurance which shall name Lender as an additional insured) shall contain a lender's loss payable clause and standard mortgagee clause for the benefit of Lender, and shall provide, in part, that: (a) in the event of a loss, all insurance proceeds shall be paid to Lender and Lender shall be authorized and empowered by Borrower to settle, adjust or compromise any claims for loss, damage or destruction under such policies of insurance; (b) any loss covered by such insurance shall be payable by the insurer in accordance with the terms of such policy notwithstanding any act or negligence of Borrower, its agents or employees, the named insured or any owner, tenant or occupant of the Property which might otherwise result in forfeiture of said insurance; (c) the insurer waives all rights of setoff, counterclaim or deduction against Borrower; and (d) should title to and beneficial ownership of the Property become vested in Lender, the insurance provided by such policies shall continue for the term thereof for the benefit of Lender. All required insurance shall provide that (i) the insurance afforded all parties named as insureds shall be primary insurance and shall not participate with, nor be in excess over, any other valid and collectible insurance available to Lender, (ii) any other insurance obtained by any named insured shall not be called upon to contribute until the limits of the policies required hereunder are exhausted, and (iii) the insurance required hereunder cannot be canceled or materially amended or altered without at least thirty (30) days prior written notification to Lender. All insurance required hereunder shall be issued by companies and in an amounts in each company approved in advance by Lender, in its sole discretion, and such insurance shall be in the form and on terms (including but not limited to deductibles, self-insured retentions or similar provisions) approved in advance by Lender, in its sole discretion.

Borrower shall deliver all such policies (or certified copies thereof) to Lender, together with a one-year's paid receipt for each such policy. In addition, Lender shall be furnished with

satisfactory evidence indicating whether the Property is located within an area that has been identified as a “special flood hazard area” as that term is used in the Flood Disaster Protection Act of 1973. If any insurable improvements on the Property are located in any area so designated, a flood insurance policy satisfactory to Lender shall be deposited with Lender prior to the closing on the Loan and shall be maintained in full force until the Loan is repaid in full.

2.4 Financing Statement. The financing statement necessary to perfect Lender’s security interest in the personal property subject to the Deed of Trust shall be duly filed in all appropriate offices and jurisdictions, all other financing statements covering any of such personal property shall be terminated, and filing and recording receipts evidencing such filings and terminations shall be delivered to Lender, all in form and substance satisfactory to Lender.

2.5 Real Estate Documents. Lender shall have received and approved, in its sole discretion, the following:

(a) **Appraisal.** An appraisal of the Property, prepared by an appraiser acceptable to Lender, in form and content acceptable to Lender, conforming to all regulatory and internal appraisal guidelines applicable to or established by Lender, in its sole, absolute, nonreviewable discretion, reflecting an as-finished discounted value for the Property satisfactory to Lender in its sole, absolute nonreviewable discretion. Lender acknowledges that the appraisal received by it is acceptable.

(b) **Title Insurance.** An irrevocable commitment to issue a full-coverage mortgagee title insurance policy (the “Title Policy”) on the ALTA 1992 form insuring the first lien of the Deed of Trust to Lender in a form and issued by a title insurance company or companies acceptable to Lender, said policy (i) containing only those exceptions to title as shall be reasonably approved by Lender and Lender’s counsel, and (ii) showing the lien of the Deed of Trust securing the Loan to be a first lien of record, on the fee simple estate of Borrower in the Property, together with true and complete copies of all documents or instruments identified therein as exceptions to title. The title policy shall be delivered to Lender promptly after recordation of the Deed of Trust. Lender shall have the right to designate such co-insurers or re-insurers as it deems advisable in its sole discretion. Such policy or policies shall be endorsable or assignable to Lender’s successors and assigns, upon request, without cost to Lender. Such policy or policies shall contain affirmative insurance against filed and unfiled mechanic’s liens in form acceptable to Lender. Lender shall receive satisfactory evidence that there is no pending litigation with respect to the Property.

(c) **Survey.** A current survey (or other documentation acceptable to Lender) and legal description of the Property satisfactory to Lender from a registered land surveyor of the Commonwealth of Virginia, which survey shall show all easements, rights of way and other matters of record, shall locate all proposed improvements on the Land and shall generally show a state of facts acceptable to Lender and contain a surveyor’s certificate satisfactory to the Lender.

(d) Environmental Audit. An environmental audit of the Property prepared by an environmental consulting firm acceptable to Lender, in its sole discretion, confirming that the Property is in compliance with all applicable environmental laws.

(e) Evidence of Zoning Compliance. Such written evidence as the Lender may require to the effect that the Property has been zoned for purposes consistent with the uses contemplated beyond any possibility of appeal and to the effect, further, that there are no pending proceedings, either administrative, legislative or judicial which would in any manner adversely affect the status of the zoning with respect to such property or any part thereof.

(g) Public Utilities. Evidence to the effect that sanitary sewer, water, electric, gas, telephone and other public utilities are available and adequate to serve the Property.

(h) Sale Agreement. A copy of the purchase contract for the Property, satisfactory to the Lender and Lender's counsel in form and substance.

(i) No Default. No event shall have occurred and be continuing that constitutes a Default (as defined below).

(j) Representations. All representations and warranties contained in this Agreement shall be true and correct in every material respect as of the date of the first disbursement under this Agreement and on the date of any future disbursements hereunder.

(k) Satisfactory Documents. All documents delivered pursuant to this Agreement must be in form and substance reasonably satisfactory to Lender and its counsel, and all legal matters incident to this Agreement must be reasonably satisfactory to Lender's counsel.

2.6 Equity Requirement. At or prior to Closing, Borrower shall provide Lender evidence that Borrower has contributed a minimum of \$10,250,000.00 toward the purchase price of the Property and the related closing costs ("Equity Contribution").

2.7 Loan Fee. Upon the closing of the Loan, the Borrower shall pay Lender a non-refundable loan fee in the amount of Sixty-Five Thousand and 00/100 Dollars (\$65,000.00).

ARTICLE III –CONDITIONS PRECEDENT FOR COMMENCEMENT OF RENOVATION

3.1 In addition to any other conditions stated in this Agreement, the following conditions must be satisfied prior to commencement of the Renovation. Borrower shall obtain and submit to Lender, the following, as they pertain to the Renovation:

(a) Permits. Copies of any and all building and similar permits required in connection with the Renovation, together with such evidence as the Lender may require to the effect that all fees for such permits have been paid. Satisfactory evidence shall be submitted to Lender of the receipt of all governmental approvals necessary for the Renovation and

condominium conversion of the Units have been obtained. Lender shall also receive satisfactory evidence that all applicable safety, ecological and environmental laws and any other codes or regulations affecting the Renovation and/or proposed use of the Property have been complied with.

(b) General Contractor. The Borrower shall disclose to Lender the name of the general contractor, who must maintain workers' compensation and disability insurance in amounts required by law, and employer's liability insurance (the "General Contractor") and submit to Lender the executed contract for the Renovation.

(c) List of Subcontractors and Materialmen. If required by Lender, a list of the names of all subcontractors and materialmen intended by the Borrower to perform work or supply materials in connection with the Renovation, and conformed copies of executed contracts for such work and materials.

(d) Builder's Risk Insurance. Evidence that the insurance policy referred to in paragraph 2.3 hereof contains builder's risk coverage on a completed value, non-reporting form with permission to complete and occupy.

(e) Budget. Borrower shall submit to Lender a budget for the Renovation.

(f) Plans and Specifications. Borrower shall submit to Lender the plans and specifications for the Renovation, as certified by an architect.

ARTICLE IV – REQUIREMENTS FOR THE RENOVATION

4.1 The Renovation shall be performed by the Borrower in strict accordance with all applicable (whether present or future) laws, ordinances, rules, regulations, requirements and order of any governmental or regulatory authority having or claiming jurisdiction. The Renovation shall be completed in a manner so as not to encroach upon any easement or right-of-way, or upon the land of others. The Renovation shall be wholly within all applicable building restriction lines and set-backs or variances made therefor, however established, and shall be in strict accordance with all applicable use or other restrictions and the provisions of any prior declarations, covenants and zoning ordinances and regulations.

4.2 Borrower shall submit to Lender or the Progress Inspector, at Lender's discretion, such information as may be reasonably requested by Lender or the Progress Inspector to verify the Renovation costs which are to be incurred in connection with the Renovation. On-site inspection by an authorized officer of the Lender and the Progress Inspector shall be permitted at all times during the term of the Loan.

4.3 Borrower shall permit the Lender and its duly authorized representatives (including, without limitation, the Progress Inspector) to enter upon the Property at all reasonable times and in a reasonable manner to inspect the Improvements and any and all materials and to examine all detailed plans and shop drawings and similar materials relating to

the Renovation. Borrower will at all times cooperate and request its subcontractors and materialmen to cooperate with the Lender and its duly authorized representatives (including, without limitation, the Progress Inspector) in connection with or in aid of the performance of the Lender's functions under this Loan Agreement. Borrower shall pay all inspection fees incurred by the Lender in connection with the Loan; however, so long as no Default exists, inspections shall be limited to two site inspection visits per month to be performed by the Progress Inspector at Borrower's sole cost and expense.

4.4 Borrower will furnish to the Lender, promptly on demand, a computer generated report of job costs and accounts payable for the Renovation.

4.5 Borrower will pay when due all bills for materials supplied and for services or labor performed in connection with the Renovation.

4.6 Borrower will promptly correct or cause the correction of any structural defects in the Improvements and any substantial departures or deviations from the plans and specifications for the Renovation.

4.7 Lender may also require an endorsement to the title insurance policy theretofore delivered, indicating that there has been no change in the status of title and no title exceptions not theretofore approved by the Lender.

4.8 Lender may require the Borrower to obtain from the General Contractor, acknowledgments of payment and releases of liens and rights to claim liens, if applicable. All such acknowledgments and releases shall be in the form and substance satisfactory to the Lender.

4.9 Lender may require (i) evidence satisfactory to it that all work requiring inspection by governmental or regulatory authorities having or claiming jurisdiction has been duly inspected and approved by such authorities and by any rating or inspection organization, bureau, association, or office having or claiming jurisdiction; and (ii) evidence satisfactory to it that requisite certificates of occupancy for permanent occupancy have been validly issued and that the Renovation has occurred free and clear of all mechanics' or materialmens' liens and any bills or claims for labor, materials and services in connection with the Renovation. All fees and costs of the Progress Inspector incurred by the Lender shall be paid by the Borrower at its sole expense.

ARTICLE V — REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to the Lender, as of the date hereof and at all times hereafter, that:

5.1 Organization, Power, Etc. (a) Borrower is a duly organized, validly existing limited liability company, in good standing under the laws of the jurisdiction of its organization; (b) Guarantor is a duly organized, validly existing corporation under the laws of the jurisdiction of its organization (c) each of the Borrower and Guarantor has the power and authority to own its properties and to carry on its business as now being conducted; (c) each of the Borrower and Guarantor is duly qualified to do business in the jurisdiction where the Property is located and in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; (d) each of the Borrower and Guarantor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it; and (e) each of the Borrower and Guarantor has the full power, authority and legal right to execute, deliver and perform the covenants and obligations set forth in this Agreement and the other Loan Documents and to carry out the terms hereof and thereof.

5.2 Validity of Loan Documents. The execution, delivery and performance by Borrower of the Note, and the other Loan Documents: (a) are within the legal powers of Borrower; (b) have been duly authorized by all requisite partnership and/or membership action, as applicable; (c) have received all necessary governmental approvals; (d) will not violate any provision of law, any order of any court or other agency of government or any articles of organization, membership and/or operating agreement, partnership agreement, indenture, agreement or other instrument to which Borrower is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the Loan Documents; and (e) when executed and delivered by Borrower, will constitute the legal, valid and binding obligations of the Borrower and other obligors named therein, if any, in accordance with their respective terms.

5.3 Financial Statements. All financial statements delivered to the Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting practices consistently applied (other than with respect to individual Guarantors), and fairly present the financial condition of the Borrower and other parties named therein as of the dates thereof. No material adverse change has occurred in the financial condition reflected therein since the dates thereof and no material additional liabilities have been incurred since the most recent date thereof other than the borrowing contemplated in the Commitment and this Agreement.

5.4 Other Information. All other information, reports, papers and data given to the Lender with respect to Borrower or others obligated under the terms of the Loan Documents

and the Property are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Lender a true and accurate knowledge of the subject matter.

5.5 Utilities and Access. All utility services and access necessary for the continued operation of the Property are available, including, without limitation, roads, telephone service, water supply, storm and sanitary sewer facilities, and natural gas or electric facilities.

5.6 Defaults. There is no Default on the part of the Borrower under the Note or any of the other Loan Documents and no event has occurred that may give rise to a Default.

5.7 Use of Proceeds. The proceeds of the Loan shall be used solely for the acquisition of the Property. None of the proceeds of the Loan shall be applied toward the costs of the Renovation.

ARTICLE VI — AFFIRMATIVE COVENANTS

Until the Indebtedness has been paid in full and the Loan has been terminated, Borrower hereby affirmatively covenants and agrees as follows:

6.1 Financial Statements . Borrower shall provide the following with respect to the Guarantor:

(a) as soon as available, but in no event later than ninety (90) days after the close of its fiscal year (but in no event earlier than the date such financial statements must be submitted to governmental authorities), financial statements (all of which financial statements may include, as requested by the Lender, a balance sheet, income statement, sources and uses of funds for such fiscal and/or calendar year, projected sources and uses of funds for the coming year, detailed listing and description of all contingent liabilities, tax returns, written verification of liquidity and such other supporting schedules and documentation which the Lender may request). All such financial statements shall be audited by a certified public accountant acceptable to the Lender in all respects; and

(b) if requested by the Lender, within forty-five (45) days after the close of its quarterly business period (but in no event earlier than the date such financial statements must be submitted to governmental authorities), the financial statements to be filed with applicable governmental authorities.

6.2 Approval and Permits. No work associated with the Renovation shall be commenced by Borrower unless and until all necessary approvals by all governmental authorities having or claiming jurisdiction and by the beneficiary of any applicable restrictive covenant have been obtained, and unless and until all required building and other permits have been validly issued and all required fees and bonds have been paid or posted, as the circumstances may require.

6.3 Free and Clear of Liens. Except as may be otherwise specifically permitted under the Loan Documents, Borrower shall not make any contract or arrangement of any kind which would give rise to a lien on any portion of the Property. The Renovation shall be completed by Borrower free and clear of all mechanics' and materialmen's liens.

6.4 Insurance. Borrower will comply with all insurance requirements set forth in the Deed of Trust.

6.5 Hazardous Materials. Borrower will comply with the provisions of the Deed of Trust regarding Hazardous Materials and all applicable Environmental Regulations.

6.6 Compliance with Laws. Borrower, at its own cost and expense, will promptly, fully and faithfully comply with, conform to and obey all present and future applicable federal, state and local statutes, laws, ordinances, rules, regulations, requirements, determinations, judgments, decrees and orders of any governmental authority, governmental agency (including, without limitation, any Board of Fire Underwriters) or court having or claiming jurisdiction over the Borrower or the Property or any part thereof.

6.7 Equity Contribution. At or prior to closing, Borrower shall make the Equity Contribution.

6.8 Condominium Conversion. The Borrower shall take all steps necessary to validly and legally convert the Property into a condominium regime with approximately 258 residential Units. The condominium documents, including without limitation, the condominium declaration and by-laws, shall be acceptable to the Lender in its discretion. From time to time, upon the Lender's request, the Borrower shall provide Lender with evidence that Borrower has complied with any applicable requirements of the condominium documents and any applicable laws. Borrower shall, within 150 days of the closing of the Loan, provide Lender with all condominium documents, including without limitation, the public offering statement.

6.9 Condominium Sales. Borrower will provide Lender with copies of any and all Contracts within two (2) business days of execution.

ARTICLE VII — NEGATIVE COVENANTS

Until the Indebtedness has been paid in full and the Loan has been terminated, Borrower hereby covenants and agrees as follows:

7.1 Restrictions on Subordinate Financing. Throughout the term of the Loan, Borrower shall not place any subordinate financing on the Property.

7.2 Changes to Plans and Specifications. Without the prior written consent of the Lender, Borrower will not permit any substantial changes in the plans and specifications for the Renovation.

7.3 Prohibition on Transfer of Assets. Without the prior written consent of the Lender, Borrower will not transfer any of its assets, except for transfers in the ordinary course of business and transfers for which Borrower receives consideration substantially equivalent to the fair market value of the transferred asset.

7.4 Assignments. Without the prior written consent of Lender, Borrower will not transfer, assign, pledge or hypothecate any of its rights to advances, or any of its rights or obligations under this Agreement. Any assignment made or attempted by Borrower without the prior written consent of the Lender shall be void. No consent by the Lender to an assignment by Borrower shall either (a) release Borrower as the party primarily obligated and liable under the terms of this Agreement unless Borrower shall be released specifically by the Lender in writing, or (b) be deemed to be a waiver of the requirement of prior written consent by the Lender with respect to each and every further assignment.

7.5 Amendments to Purchase Agreement or Holdback Escrow Agreement. Without the prior consent of Lender, Borrower will not amend, restate, or otherwise modify the Purchase Agreement (as defined in the Deed of Trust) or that certain Holdback Escrow Agreement by and between ER Carter,L.L.C. and Borrower dated January 31, 2006.

ARTICLE VIII — DEFAULT

Each of the following events shall constitute a “Default” under this Agreement and each of the other Loan Documents:

8.1 Payment of Indebtedness. Any failure by the Borrower to pay when due any and all amounts payable by the Borrower under the terms of the Note or any of the other Loan Documents, which failure to pay remains uncured for a period of five (5) calendar days after the date such payment is due (or five (5) calendar days after notice from Lender in the case of amounts due that are not regular monthly payments), including, without limitation, any principal payment, interest payment, letter of credit reimbursement, loan fee, extension fee, letter of credit fee or late charge, and including any advances made by the Lender from the proceeds of the Loan or otherwise and interest thereon at the applicable rate set forth in the Loan Documents.

8.2 Performance of Obligations. Any default by the Borrower or Guarantor in the due observance or performance of any of the Obligations and such default, if other than in payment of the Indebtedness, shall remain uncured thirty (30) days after the receipt by

Borrower of written notice from Lender identifying such default. If Borrower receives such notice, Borrower shall diligently pursue a cure of such default.

8.3 Other Defaults. The occurrence of any Default under the Deed of Trust or the Note or any of the other Loan Documents.

8.4 Representations and Warranties. Any determination by the Lender that any representation or warranty contained in any of the Loan Documents or in any certificate, opinion, financial information or any other form delivered to the Lender in connection with the Loan, is incorrect or misleading in any material respect at any time.

8.5 Mechanic's Lien. The establishment of any mechanics' or materialmen's lien against any portion of the Property, unless the same is insured over by the Title Company, satisfied, or bonded off to the satisfaction of the Lender within thirty (30) days.

8.6 Adverse Action or Insolvency. (a) the entry of a final judgment for the payment of money in excess of \$50,000.00 against the Borrower or the Guarantor that is not discharged or bonded within thirty (30) days after the date of entry, (b) the institution of any proceeding by or against the Borrower or the Guarantor in bankruptcy, or for a reorganization or an arrangement with creditors under any insolvency or debtor relief law which is not dismissed or stayed within thirty (30) days of the date of filing, (c) the appointment of any receiver, liquidator, assignee, custodian or similar official for the Borrower or the Guarantor or any portion of the Property, or (d) the issuance of any writ or order of attachment, levy or garnishment against the Borrower or the Guarantor which is not discharged to the Lender's satisfaction within thirty (30) days after the date of such issuance.

8.7 Financial Condition. Any reasonable determination by the Lender that a material adverse change has occurred in the financial condition of the Borrower or Guarantor, including without limitation, the failure of Guarantor to meet the financial covenants of set forth in Section 4 of the Guaranty.

8.8 Hazardous Materials. Violations of any applicable Environmental Regulations or requirements of the Deed of Trust pertaining to Hazardous Materials.

8.9 Death and Dissolution. The death, legal incompetence, dissolution, liquidation or termination of Borrower or Guarantor, or of any general partner of Borrower or Guarantor, subject to the provisions of the Guaranty.

8.10 Cross Defaults. The occurrence of any Default or Event of Default under any other loan or credit facility from Lender to (or guaranteed by) Borrower or Guarantor.

ARTICLE IX — DEFAULT — REMEDIES

9.1 Remedies on Default. Upon the happening of any Default, the Lender shall not be obligated to advance any additional Loan proceeds, and, in addition to any other rights or remedies available to it under this Section, the Deed of Trust and other Loan Documents, the Lender may enter into possession of the Property or any portion thereof.

All sums expended by the Lender for such purposes shall be deemed to have been paid to the Borrower or for its benefit and shall constitute part of the Indebtedness secured by the Deed of Trust. Borrower hereby constitutes and appoints the Lender as its true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver such documents, instruments and certificates, and to take such other actions, in the name and on behalf of Borrower and at the sole cost and expense of Borrower, as the Lender, in its sole discretion, deems necessary, desirable or appropriate to effectuate the provisions of this section.

It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked.

The Lender shall also have the right, upon the happening of any Default, to do any one or more of the following, at its election, but without any obligation to do so:

- (a) to declare the Indebtedness immediately due and payable;
- (b) to terminate the Loan;
- (c) to decline to make any further Loan advances and/or readvances;
- (d) to reduce any claim to judgment;

(e) to exercise any and all rights and remedies afforded by this Agreement and the other Loan Documents, as well as any and all legal or equitable rights and remedies afforded under any statute or otherwise; and

(f) to set off and apply against the Indebtedness any and all deposits, funds or assets at any time held, and any and all indebtedness at any time owed, by the Lender to or for the credit or account of Borrower.

9.2 No Conditions Precedent to Exercise of Remedies. Neither Borrower nor Guarantor shall be relieved of any obligation by reason of the failure of the Lender to comply with any request of Borrower or of any other person to take action to foreclose on the Deed of Trust or otherwise to enforce any provisions of the Note or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the Property, or by reason of any agreement or stipulation between any subsequent owner of any portion of the Property and the Lender extending the time of payment or modifying the terms of the Note or the other Loan Documents without first having obtained the consent of Borrower or Guarantor; and in the latter event, Borrower and Guarantor shall continue to be liable to make payments

according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by the Lender.

9.3 Remedies Cumulative and Concurrent. No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Note or in the other Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under the Note, the Deed of Trust or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given by the Note and the Loan Documents to the Lender shall be concurrent and may be pursued separately, successively or together against the Borrower, Guarantor, or the Property or any part thereof, or any one or more of them; and every right, power and remedy given by the Note or the other Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

9.4 Strict Performance. No delay or omission of the Lender in exercising any right, power or remedy accruing upon the happening of a Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Default or any acquiescence therein. No delay or omission on the part of the Lender in exercising any option for acceleration of the maturity of the Indebtedness, or for foreclosure under the Deed of Trust following any Default as aforesaid, or any other option granted to the Lender hereunder in any one or more instances, or the acceptance by the Lender of any partial payment on account of the Indebtedness, shall constitute a waiver of any such Default and each such option shall remain continuously in full force and effect.

9.5 Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any Dispute shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of the American Arbitration Association, or any successor thereof (“AAA”) and the “Special Rules” set forth below. “Dispute” means any controversy, claim or dispute between or among the parties to this Note, Agreement, or Guaranty, as applicable, including any controversy, claim or dispute arising out of or relating to (a) this Agreement, (b) any other Loan Documents, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Borrower or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms “party” and “parties” shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Agreement, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Agreement.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, the any party to this Agreement, may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Agreement, referred to collectively as the "arbitrator").

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Agreement.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Agreement, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Agreement, in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement, as applicable. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) Conflicting Provisions for Dispute Resolution. If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Agreement, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) Jury Trial Waiver in Arbitration. By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

ARTICLE X — MISCELLANEOUS

10.1 No Warranty by Lender. By accepting or approving anything required to be observed, performed or fulfilled by Borrower or Guarantor pursuant to this Agreement or any other Loan Documents, including, without limitation, any plans, specifications, certificate,

financial information, survey, receipt, appraisal or insurance policy, the Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof. Any such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by the Lender.

10.2 Liability of Lender. The Lender shall not be liable for any act or omission by it pursuant to the provisions of this Agreement in the absence of fraud or gross negligence. The Lender shall incur no liability to Borrower or any other party in connection with the acts or omissions of the Lender in reliance upon any certificate or other paper believed by the Lender to be genuine or with respect to any other thing which the Lender may do or refrain from doing, unless such act or omission amounts to fraud or gross negligence.

10.3 Modification — Waiver. None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except as provided in the Deed of Trust.

10.4 Third Parties — Benefit. All conditions set forth herein with respect to the obligations of the Lender to make Loan advances are imposed solely and exclusively for the benefit of the Lender, and no other person shall either have standing to require satisfaction of such condition in accordance with its terms, be entitled to assume that the Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, or be deemed to be beneficiary of such conditions under any circumstances, any or all of which may be freely waived in whole or in part by the Lender at any time in the sole and absolute exercise of its discretion. The Lender shall in no event be responsible or liable to any person other than the Borrower for the disbursement of or failure to disburse any of the proceeds of the Loan, and no contractor, subcontractor, laborer or material supplier or other person shall have any right or claim against the Lender with respect to this Agreement. The terms and provisions of this Agreement are for the benefit of the parties hereto and, except as herein specifically provided, no other person shall have any right or cause of action on account thereof.

10.5 Captions and Headings. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof.

10.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

10.7 Signs; Publicity. At the request and expense of the Lender (subject to applicable law and compliance with governmental requirements, and subject to Borrower's approval of the design and location of said sign, which consent shall not be unreasonably withheld), Borrower shall install a sign or signs at a location or locations on the Property satisfactory to the Lender, reciting, among other things, that the Lender is financing the acquisition of the Property. Borrower shall (at the expense of Lender) obtain all permits, licenses and approvals from the appropriate governmental agency or association that are necessary for the erection and

existence of any such signs. Borrower expressly authorizes the Lender to prepare and to furnish to the news media for publication from time to time news releases with respect to any portion of the Property detailing the Lender's involvement with the financing.

10.8 Applicable Law. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the Jurisdiction of Choice, unless the "choice of law" rules of the Jurisdiction of Choice can be construed or interpreted to require the laws of another jurisdiction to govern, in which case the "choice of law" rules of the Jurisdiction of Choice shall not apply.

10.9 Time of Essence. Time shall be of the essence of each and every provision of this Agreement of which time is an element.

10.10 Conflicts. The terms and conditions of the Note and the other Loan Documents are incorporated into this Agreement and made a part hereof as if specifically set forth herein. In the event any provision of this Agreement conflicts with the terms of any other Loan Document, the terms of this Agreement shall prevail. For purposes of this Section the absence of a provision from any Loan Documents shall not constitute a conflict.

10.11 Quality of Documents and Other Items. Each document, item or other evidence required to be delivered to the Lender in connection with this Agreement shall be satisfactory in form and substance to the Lender in its sole discretion. In addition, all surveys, appraisals, environmental site assessments, inspections, cost reviews, subcontracts, leases, bonds, insurance policies and all other documents required or contemplated by this Agreement and the other Loan Documents shall be satisfactory to the Lender and, if required by the Lender, Borrower shall provide the Lender and its counsel with copies of any or all of such documents. All contractors, subcontractors, sureties, insurers and any other party responsible for the execution and preparation of the foregoing documents shall also be satisfactory to the Lender.

10.12 Professional Services. If requested by Lender, Borrower shall: (a) not more frequently than annually, cause an inspection and written appraisal of the Property (or such parts of it as are designated in the Lender's request) to be made and provided to Lender by an appraiser approved and engaged by the Lender in its sole discretion; and (b) cause to be conducted or prepared any other written report, summary, opinion, inspection, review, survey, audit or other professional service relating to the Property or any operations in connection with it (all as designated in Lender's request) as Lender may reasonably request, including, without limitation, any accounting, auctioneering, architectural, consulting, engineering, design, legal, management, pest control, surveying, title abstracting or other technical, managerial or professional service relating to the Property or its operations. The Lender may elect to deliver any such request by facsimile, by mail or by hand delivery addressed to the Borrower as provided herein or by any other legally effective method, and it may be given at any time and from time to time.

10.13 Further Assurances. At the request of the Lender, Borrower shall take any action or execute any additional document reasonably required by the Lender to secure the

Indebtedness, confirm the lien of the Deed of Trust or further the intent of any of the Loan Documents.

10.14 Costs and Expenses. The Borrower shall pay all out-of-pocket fees, charges and expenses incurred by or on behalf of the Lender in connection with the Loan and the making, closing and administration of the Loan, including, without limitation (a) fees and expenses for the examination of title to the Property; (b) recording and filing fees, recordation taxes and transfer taxes; (c) Title Company premiums, fees and charges; (d) surveyor charges; (e) appraisal fees; (f) inspection fees; (g) the fees and expenses of the Lender's counsel; (h) all amounts due the Progress Inspector; (i) the payment, satisfaction, discharge and release of any encumbrance, tax, assessment or other charge or lien upon any portion of the Property; (j) any syndication or participation fees, if applicable, and (k) the construction, maintenance and protection of the Improvements and every portion thereof. Further, the Lender may (but shall be under no obligation to do so) advance for the account of Borrower as part of or in addition to the Loan any amount or amounts as the Lender may deem necessary or advisable in order to fulfill the obligations of Borrower hereunder, which amount or amounts may be disbursed by the Lender directly to a third party in order to protect its interests, and any amount so applied by the Lender shall constitute a portion of the Indebtedness, even though the aggregate of the amounts so applied, together with the other advances under the Note, may exceed the principal amount of the Note.

10.15 Fees and Expenses — Indemnity. Borrower will hold the Lender harmless and indemnify the Lender from all claims of brokers and "finders" arising by reason of the Loan, the execution and delivery of this Agreement or the making of the Loan. Borrower shall protect, indemnify and save harmless the Lender and its directors, officers, agents, and employees, the Deed of Trust trustees, and all independent contractors from and against all liabilities, obligations, claims, damages, fines, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and disbursements), imposed upon or incurred by or asserted against any of them in connection with the Loan.

10.16 Sale/Assignment of Loan. Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Borrower shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder. Lender may disseminate any information it now has or hereafter obtains pertaining to the Loan, including any security for the Loan, any credit or other information on the Property (including environmental reports and assessments), Borrower, any of Borrower's principals or any Guarantor, to any actual or prospective assignee or participant, to Lender's affiliates, including Banc of America Securities LLC, to any regulatory body having jurisdiction over Lender, to any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and the Loan, or to any other party as necessary or appropriate in Lender's reasonable judgment.

10.17 Seal. If any Borrower is a corporation, the designation “(SEAL)” on this Agreement shall be effective as the affixing of such Borrower’s corporate seal physically to this Agreement.

10.18 WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES’ AGREEMENT TO ARBITRATE ANY “DISPUTE” (FOR PURPOSES OF THIS SECTION, AS DEFINED IN THE “DISPUTE RESOLUTION” SECTION) AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY “DISPUTE” IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH “DISPUTE” AND ANY ACTION ON SUCH “DISPUTE.” THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT, AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

10.19 Electronic Transmission of Data. Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including transmission over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates and other persons involved with the subject matter of this Agreement. Borrower acknowledges and agrees that (a) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (b) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt or third party interception of any such transmission, except for Lender’s fraud or gross negligence, and (c) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender’s strict liability or sole, comparative or contributory negligence, but excluding that arising from Lender’s fraud or gross negligence, which is related to the electronic transmission of data.

10.20 USA Patriot Act Notice. Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Lender is required to obtain, verify and record information that identifies.

Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Borrower and the Lender, intending to be executed and delivered under seal, have executed and delivered these presents or caused these presents to be executed and delivered under seal as of the year and day first above written.

BORROWER:

COMSTOCK CARTER LAKE, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
Its manager

By: _____
Christopher Clemente
its Chief Executive Officer

Address: 11465 Sunset Hills Road
5 th Floor
Reston, Virginia 20190

WITNESS/ATTEST:

By: _____
Name:
Title:

(Seal)

WITNESS:

LENDER:

BANK OF AMERICA, N.A.

By: _____
John M. DeZinno
Senior Vice President

Address: 8300 Greensboro Drive
Suite 300
McLean, Va. 22102-3604

Name:
Title:

EXHIBIT "A"
Property Description

EXHIBIT "B"
Unit Contract Summary Report

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 31st day of January, 2006, by **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the "Guarantor") in favor of **BANK OF AMERICA, N.A.**, a national banking association (the "Lender"), and its successors and assigns.

RECITALS:

WHEREAS, Lender has made an acquisition loan to Comstock Carter Lake, L.C. ("Borrower") in the maximum principal amount of \$26,000,000.00 (or so much thereof as shall be advanced) (such extensions of credit being herein sometimes called individually and/or collectively the "Loan");

WHEREAS, as a condition precedent to making the Loan, the Lender has required, among other things, the execution and delivery of this Guaranty by Guarantor;

WHEREAS, the Loan shall be made in accordance with the terms and conditions of a Loan Agreement of even date herewith, between the Lender and Borrower (as amended, modified or supplemented from time to time, the "Loan Agreement");

WHEREAS, the Loan shall be evidenced by certain notes, applications or agreements for the issuance of a letter or letters of credit, including, without limitation, that certain Deed of Trust Note of even date herewith, from Borrower payable to the order of the Lender in the maximum principal amount of \$26,000,000.00, or so much thereof as shall be advanced, and any other instrument or agreement executed from time to time by the Borrower in favor of the Lender, as any of the same may from time to time be amended, modified, replaced or supplemented (the "Note");

WHEREAS, the Guaranty is or shall be secured by one or more Credit Line Deed(s) of Trust and Security Agreements now or hereafter executed and delivered by the Borrower to certain trustees for the benefit of the Lender, including, without limitation, that certain Credit Line Deed of Trust and Security Agreement of even date herewith, from Borrower as grantor, to certain trustees for the benefit of the Lender (as amended, modified or supplemented from time to time, collectively, the "Deeds of Trust"), covering certain real property as more particularly described therein, as well as all improvements located thereon;

WHEREAS, it is intended that this Guaranty extend to the Loan and all other amounts owing under any of the "Loan Documents" (hereinafter defined), without any need for any notice to the Guarantor of the making of the Loan or advances thereunder and without any need for any supplements or amendments to this Guaranty or any other documentation to be executed by the Guarantor; and

WHEREAS, unless otherwise defined herein, all capitalized terms used herein shall have the meanings assigned to them in the Loan Agreement.

WITNESSETH:

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to the Lender to extend credit to the Borrower from time to time, the Guarantor hereby guarantees to the Lender the prompt and full payment and performance of the Indebtedness and the other obligations in connection with the Loan as defined and described below in this Guaranty (hereinafter sometimes collectively called the "Obligations"), upon the following terms and conditions:

1. Guaranty of Payment. The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the punctual payment when due, whether by scheduled payment date, upon maturity, lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against the Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness (including, without limitation, indemnification for environmental matters), and other sums of money now or hereafter due and owing pursuant to (a) the terms of the Note, the Loan Agreement, the Deed(s) of Trust, and any and all other documents executed by the Borrower in connection with the Loan (the "Loan Documents"), now or hereafter existing, and specifically including any and all advances made by the Lender under the Loan Documents from sources other than the Loan, and interest on such advances, and (b) all renewals, extensions, increases, refinancings, modifications, supplements or amendments to such indebtedness, or any of the Loan Documents, or any part thereof (such indebtedness being hereinafter collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, whether or not presently contemplated by the Guarantor, the Borrower or the Lender, and whether or not the same shall be incurred after satisfaction, payment or reduction of any previous Indebtedness, including all amounts advanced and/or readvanced by the Lender in stages or installments. The guaranty of the Guarantor as set forth in this Section is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. The Guarantor additionally hereby unconditionally and irrevocably guarantees to the Lender the timely performance of all other obligations of the Borrower under all of the Loan Documents, including without limitation, compliance with all covenants regarding environmental matters.

3. Primary Liability of the Guarantor. This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. The Guarantor shall be liable for the payment and performance of the Obligations, as set forth in this Guaranty, as a primary obligor. This Guaranty shall be effective as a waiver of, and the Guarantor hereby expressly waives any and all rights to which the Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require the Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever. Upon the occurrence of: (i) any Default under the Loan, (ii) any reasonable determination by the Lender that a material adverse

change has occurred in the financial condition of the Guarantor, (iii) the dissolution or insolvency of Guarantor, subject to the provisions of Section 4 below, or (iv) any transfer of assets of Guarantor without receiving fair value in exchange therefor, the Indebtedness shall be deemed immediately due and payable at the election of the Lender, and the Guarantor shall, on demand and without presentment, protest, any notice whatsoever, pay the amount due thereon to the Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and it shall not be necessary for the Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against the Borrower or others liable on the Obligations or for such performance, or to institute suit or pursue or exhaust any rights or remedies against the Borrower or Guarantor or other sureties of the Obligations as contemplated by applicable law or to enforce any rights against any security that shall ever have been given to secure the Obligations, or to join the Borrower or any others liable for the payment or performance of the Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Obligations. The term "Person" as used herein shall mean all of the Borrower and the Guarantor.

4. Representations, Warranties, and Covenants of the Guarantor. Guarantor hereby represents, warrants, and covenants that: (a) Guarantor will derive substantial benefit, directly or indirectly, from the making of the Loan to the Borrower and from the making of this Guaranty by the Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against the Guarantor; (c) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (d) Guarantor is a duly organized, validly existing limited liability company in good standing under the laws of the Commonwealth of Virginia, is lawfully doing business in the jurisdiction where it operates, and has full power and authority to enter into and perform this Guaranty; (e) except as may have been disclosed to the Lender in writing, there is not now pending against or affecting the Guarantor, nor, to the knowledge of the Guarantor, is there threatened, any action, investigation, suit or proceeding by or before any administrative agency which if adversely determined would materially impair or affect the Guarantor's financial condition (f) all financial statements and information heretofore furnished to the Lender by the Guarantor do, and all financial statements and information hereafter furnished to the Lender by the Guarantor will, fully and accurately present the financial condition of the Guarantor as of their dates and the results of the Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Guarantor heretofore furnished to the Lender, no material adverse change has occurred in the financial condition of the Guarantor, nor, except as heretofore disclosed in writing to the Lender, has the Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this Guaranty, the Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Guarantor is an unreasonably small capital, and does not intend to incur or believes that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Lender has no duty at any time to investigate or inform the Guarantor of the financial or business condition or affairs of the Borrower or any change

therein, and the Guarantor will keep fully appraised of the Borrower's financial and business condition; (i) the Guarantor acknowledges and agrees that the Guarantor may be required to pay and perform the Obligations in full without assistance or support from the Borrower or any other Person; and (j) the Guarantor has read and fully understand the provisions contained in the Loan Agreement, the Deed(s) of Trust, and the other Loan Documents, each of which may be modified, extended, supplemented or extended from time to time without notice to or consent from the Guarantor and without affecting the obligations of the Guarantor under this Guaranty.

In addition, during the term of the Loan, Lender must be satisfied that Guarantor's financial condition meets the following requirements:

(i) Adjusted Tangible Net Worth (ATNW) shall be at least \$65,000,000 for fiscal year 2005, increasing by 50% of consolidated after tax net earnings for each year thereafter. Adjusted Tangible Net Worth is defined as GAAP net worth plus subordinated debt approved by Agent less any goodwill, organizational costs, leasehold improvements and Affiliate and/or stockholder receivables and investments in joint ventures; and

(ii) Debt to Tangible Net Worth ("Leverage Ratio") shall be 3.50:1. Leverage Ratio is the total Adjusted Liabilities to Adjusted Tangible Net Worth (ATNW). Adjusted Liabilities is defined as GAAP total liabilities less Variable Interest Entities, less subordinated debt due to related parties and investments in affiliates and joint ventures that are not co-borrowers ("Related Venturer Subordinated Debt"), less subordinated debt ("Direct Subordinated Debt"), plus any other debt guaranteed by Borrower. For purposes hereof, a "Variable Interest Entity" is either: (A) an entity that is consolidated for financial statement purposes when (1) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (2) equity holders either (a) lack direct or indirect ability to make decisions about the entity (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur or (B) a "variable interest entity" as defined in Guarantor's SEC-filed financial statements and as the definition of such term is amended from time to time based upon guidance from the Financial Accounting Standards Board. For purposes of clarity, the primary beneficiary of a Variable Interest Entity is the party that absorbs a majority of the Variable Interest Entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity.

The Guarantor's representations, warranties and covenants are a material inducement to the Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting the Borrower, the Guarantor, any other party, or any security for all or any part of the Obligations.

5. Financial Information. The Guarantor shall furnish or cause to be furnished to the Lender upon request any financial statements for Guarantor and any entity related to the Guarantor containing such information and in such form as Lender may from time to time reasonably determine, provided the obligations of the Guarantor hereunder have not already terminated.

Without limiting the generality of the foregoing, the Guarantor shall furnish to the Lender financial statements as follows:

(a) as soon as available, but in no event later than ninety (90) days after the close of its fiscal year (but in no event earlier than the date such financial statements must be submitted to governmental authorities), financial statements (all of which financial statements may include, as requested by the Lender, a balance sheet, income statement, sources and uses of funds for such fiscal and/or calendar year, projected sources and uses of funds for the coming year, detailed listing and description of all contingent liabilities, tax returns, written verification of liquidity and such other supporting schedules and documentation which the Lender may request). All such financial statements shall be audited by a certified public accountant acceptable to the Lender in all respects; and

(b) if requested by the Lender, within forty-five (45) days after the close of its quarterly business period (but in no event earlier than the date such financial statements must be submitted to governmental authorities), the financial statements to be filed with applicable governmental authorities.

6. Certain Agreements and Waivers by the Guarantor.

(a) The Guarantor hereby waives the benefits of Va. Code Ann. § 49-25 and § 49-26 as amended and agrees that neither the Lender's rights or remedies nor the Obligations shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of the Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (i) any limitation of liability or recourse in any other Loan Document or arising under any law;
- (ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;
- (iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Obligations;
- (iv) any homestead exemption or other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or

security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Obligations, including any impairment of the Guarantor's recourse against any Person or collateral;

(vi) whether express or by any operation of law, any full or partial release of the liability of the Guarantor, the Borrower or any other party hereunder or under any of the other Loan Documents;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Borrower, the Guarantor or any other party at any time liable for the payment or performance of any or all of the Obligations;

(viii) either with or without notice to or consent of the Guarantor, any renewal, extension, modification or rearrangement of the terms of any or all of the Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s), interest rate(s) and amortization) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by the Lender to the Borrower, the Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of the Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Obligations;

(x) any failure of the Lender to notify the Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by the Lender against the Borrower or any security or other recourse, or of any new agreement between the Lender and the Borrower, it being understood that the Lender shall not be required to give the Guarantor any notice of any kind under any circumstances with respect to or in connection with the Obligations, any and all rights to notice that the Guarantor may have otherwise had being hereby waived by the Guarantor;

(xi) any refund of any payment by the Borrower or any other party liable for the payment or performance of any or all of the Obligations;

(xii) the existence of any claim, set-off, or other right that the Guarantor may at any time have against the Borrower, the Lender (other than pursuant to a final judgment), or any other Person, whether or not arising in connection with this Guaranty or any other Loan Document;

(xiii) the unenforceability of all or any part of the Obligations against the Borrower, whether because the Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Obligations, or any part thereof, is beyond the scope of powers granted, or because the officers or Persons creating same acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because the Borrower has any valid defense, claim or offset with respect thereto, or because the Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that the Guarantor shall remain liable hereunder regardless of whether the Borrower or any other Person are found not liable on the Obligations, or any part thereof, for any reason (and regardless of any joinder of the Borrower or any other party in any action to obtain payment or performance of any or all of the Obligations);

(xiv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to the Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Obligations, whether or not consented to by the Lender; or

(xv) any failure to notify the Guarantor of, or obtain the Guarantor's consent to, the making of the Loan or any advances thereunder.

(b) In the event that any payment by the Borrower or any other Person to the Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason the Lender is required to refund such payment or pay the amount thereof to any other party, such payment by the Borrower or any other party to the Lender shall not constitute a release of the Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by the Lender of this Guaranty or of the Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by the Lender or paid by the Lender to another Person (which amounts shall constitute part of the Obligations), and any interest paid by the Lender and any reasonable attorneys' fees, costs and expenses paid or incurred by the Lender in connection with any such event. It is the intent of the Guarantor and the Lender that the obligations and liabilities of the Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of the Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a

legal or equitable discharge or release of any of the Guarantor except as otherwise set forth herein. The Lender shall be entitled to continue to hold this Guaranty in its possession for a period of one year from the date the Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of the Guarantor hereunder and/or to exercise any right or remedy of the Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by the Borrower under the Note or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by the Guarantor on demand by the Lender.

7. Waiver of Trial by Jury; Consent to Jurisdiction. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED IN THE "DISPUTE RESOLUTION" SECTION) AS SET FORTH IN THIS NOTE, AGREEMENT, OR GUARANTY, AS APPLICABLE, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE, AGREEMENT, OR GUARANTY, AS APPLICABLE, AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

The Guarantor irrevocably submits to the nonexclusive jurisdiction of any state or federal court sitting in the Jurisdiction of Choice over any suit, action or proceeding arising out of, or relating to, this Guaranty, and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. The Guarantor irrevocably waives, to the fullest extent permitted by law, any objection that the Guarantor may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claims that any such suit, action or proceeding is brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be

conclusive and binding upon the Guarantor and may be enforced in any court in which the Guarantor are subject to jurisdiction, by a suit upon such judgment provided that service of process is effected upon the Guarantor as provided in the Loan Documents or as otherwise permitted by applicable law.

8. Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any Dispute shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of the American Arbitration Association, or any successor thereof (“AAA”) and the “Special Rules” set forth below. “Dispute” means any controversy, claim or dispute between or among the parties to this Note, Agreement, or Guaranty, as applicable, including any controversy, claim or dispute arising out of or relating to (a) this Note, Agreement, or Guaranty, as applicable, (b) any other Loan Documents, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Borrower or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Note, Agreement, or Guaranty, as applicable, may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms “party” and “parties” shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Note, Agreement, or Guaranty, as applicable, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Note, Agreement, or Guaranty, as applicable.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, the any party to this Note, Agreement, or Guaranty, as applicable, may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Note, Agreement, or Guaranty, as applicable, referred to collectively as the “arbitrator”).

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Note, Agreement, or Guaranty, as applicable.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Note, Agreement, or Guaranty, as applicable, shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Note, Agreement, or Guaranty, as applicable, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Note, Agreement, or Guaranty, as applicable, in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Note, Agreement, or Guaranty, as applicable. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary

remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) **Conflicting Provisions for Dispute Resolution.** If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Note, Agreement, or Guaranty, as applicable, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) **Jury Trial Waiver in Arbitration.** By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

9. Attorneys' Fees and Costs of Collection. The Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by the Lender in the enforcement of or preservation of the Lender's rights under this Guaranty. The Guarantor's obligations and liabilities under this Section 9 shall survive any payment or discharge in full of the Obligations.

10. Term of Guaranty. This Guaranty shall continue in effect until such time as the Obligations have been fully and finally paid and performed, except that, and notwithstanding any return of this Guaranty to the Guarantor, this Guaranty shall continue in effect (a) with respect to any of the Obligations that survive after expiration or termination of the Loan, (b) with respect to all obligations and liabilities of the Guarantor for indemnification and for the payment of all costs and expenses, as provided herein, and (c) as provided herein with respect to preferential, fraudulent or other voidable payments or other transfers.

11. Subordination. If, for any reason whatsoever, the Borrower is now or hereafter becomes indebted to the Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of the Borrower securing same shall, at all times, be subordinate in all respects to the Obligations and to all liens, security interests and rights now or hereafter existing to secure the Obligations; and

(b) The Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of the Borrower to the Guarantor until the Obligations have been fully and finally paid and performed. Notwithstanding the foregoing, the Guarantor may receive payments upon close-out of any Project with regard to loans made by the Guarantor to the owner of any such Project, or with

regard to loans made to Borrower on behalf of the owner of any such Project. Notwithstanding the foregoing, the Guarantor may receive payments from Borrower in the form of salaries or shareholder or member dividends.

12. Subrogation. Notwithstanding anything to the contrary contained herein (a) the Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness, until the later of the date on which the Indebtedness has been fully and finally paid, or the Loan has expired or been terminated, and (b) if the Guarantor is or becomes an “insider” (as defined in Section 101 of the United States Bankruptcy Code) with respect to the Borrower, then the Guarantor hereby irrevocably and absolutely waives any and all rights of contribution, indemnification, reimbursement or any similar rights against the Borrower with respect to this Guaranty (including any right of subrogation, except to the extent of collateral held by the Lender), whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that the Guarantor shall not be deemed to be a “creditor” (as defined in Section 101 of the United States Bankruptcy Code) of the Borrower by reason of the existence of this Guaranty in the event that the Borrower or the Guarantor becomes a debtor in any proceeding under the United States Bankruptcy code.

13. Notices. Unless specifically provided otherwise, any notice for purposes of this Guaranty shall be given in writing or by telecopier transmission and shall be addressed or delivered to the respective addresses set forth at the end of this Guaranty, or to such other address as may have been previously designated by the intended recipient by notice given in accordance with this Section. If sent by prepaid, registered or certified mail (return receipt requested), the notice shall be deemed effective when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change in address of which the sending party has not been notified; and if transmitted by telecopier or personal delivery, the notice shall be effective when received. No notice of change of address shall be effective except upon actual receipt.

14. Cumulative Rights. The exercise by the Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. The Lender shall have all rights, remedies and recourses afforded to the Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same shall be cumulative and concurrent and are intended to be, and shall be, nonexclusive. No waiver of any default on the part of the Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. No provision of this Guaranty or any right, remedy or recourse of the Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or the

Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to the Guarantor, by the Lender, except as otherwise provided herein.

15. Disclosure of Information. The Lender may sell or offer to sell the Loan or an interest in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant any information the Lender has pertaining to the Loan, the Obligations, this Guaranty, or the Guarantor. The Lender also may disclose any such information to any regulatory body having jurisdiction over the Lender and to any agent or attorney of the Lender and in such other circumstances and to such other parties as necessary or appropriate in the Lender's reasonable judgment.

16. Governing Law; Forum. This Guaranty is an agreement executed under seal, and its validity, enforcement, and interpretation, shall for all purposes be governed by and construed in accordance with the laws of the Jurisdiction of Choice and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If the Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of Guarantor's corporate seal physically to this Guaranty. All obligations of the Guarantor hereunder are payable and performable at the place or places where the Obligations are payable and performable. The Guarantor hereby irrevocably submits generally and unconditionally for the Guarantor and in respect of the Guarantor's respective property to the jurisdiction of any state court, or any United States federal court, sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Obligations. The Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that the Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum.

17. Counterparts. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement.

18. Miscellaneous. This Guaranty embodies the entire agreement between the Lender and the Guarantor with respect to the guaranty by the Guarantor of the Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to guaranty by the Guarantor of the Obligations. This Guaranty may not be modified, amended or superseded except in a writing signed by the Lender and the Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty is binding not only on the Guarantor, but also on the Guarantor's heirs, personal representatives, successors and assigns. If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the

applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Guarantor duly executed and delivered this Guaranty, intending that it be an instrument under seal, as of the date first written above.

WITNESS:

GUARANTOR:

COMSTOCK HOMEBUILDING COMPANIES,
INC., a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Christopher Clemente,
Chief Executive Officer

(Seal) _____ Address:

11465 Sunset Hills Road
5th Floor
Reston, Virginia 20190

ADDRESS OF LENDER:

BANK OF AMERICA, N.A.
8300 Greensboro Drive
Suite 300
McLean, Virginia 22102-3604
Attention: Homebuilder Division
Fax No: (703) 761-8160

List of Subsidiaries

Name	State of Incorporation or Organization
1. Buckhead Overlook, LLC	Georgia
2. Comstock Acquisitions, L.C.	Virginia
3. Comstock Airmont, L.C.	Virginia
4. Comstock Aldie, L.C.	Virginia
5. Comstock Barrington Park, L.C.	Virginia
6. Comstock Bellemeade, L.C.	Virginia
7. Comstock Belmont Bay 5, L.C.	Virginia
8. Comstock Belmont Bay 89, L.C.	Virginia
9. Comstock Blair Mill, L.L.C.	Virginia
10. Comstock Blooms Mill II, L.C.	Virginia
11. Comstock Brandy Station, L.C.	Virginia
12. Comstock Carter Lake, L.C.	Virginia
13. Comstock Cascades, L.C.	Virginia
14. Comstock Communities, L.C.	Virginia
15. Comstock Countryside, L.C.	Virginia
16. Comstock Culpeper, L.C.	Virginia
17. Comstock Delta Ridge II, L.L.C.	Virginia
18. Comstock Emerald Farm, L.C.	Virginia
19. Comstock Fairfax I, L.C.	Virginia
20. Comstock Flynn's Crossing, L.C.	Virginia
21. Comstock Hamlets of Blue Ridge, L.C.	Virginia
22. Comstock Holland Road, L.L.C.	Virginia
23. Comstock Homes of North Carolina, L.L.C.	North Carolina
24. Comstock Homes of Raleigh, L.L.C.	North Carolina
25. Comstock Homes of Washington, L.C.	Virginia
26. Comstock Investors III, L.P.	Virginia
27. Comstock Investors V, L.C.	Virginia
28. Comstock Investors VI, L.C.	Virginia
29. Comstock Kelton II, L.C.	Virginia
30. Comstock Lake Pelham, L.C.	Virginia
31. Comstock Landing, L.L.C.	Virginia
32. Comstock Loudoun Condos 1, L.C.	Virginia
33. Comstock North Carolina, L.L.C.	North Carolina
34. Comstock Penderbrook, L.C.	Virginia
35. Comstock Potomac Yard, L.C.	Virginia
36. Comstock Ryan Park, L.C.	Virginia
37. Comstock Sherbrooke, L.C.	Virginia
38. Comstock Summerland, L.C.	Virginia
39. Comstock Wakefield, L.L.C.	Virginia
40. Comstock Wakefield II, L.L.C.	Virginia

Name	State of Incorporation or Organization
41. Highland Avenue Properties, LLC	Georgia
42. Highland Station Partners, LLC	Georgia
43. Mathis Partners, LLC	Georgia
44. North Shore Investors, L.L.C.	Virginia
45. North Shore Raleigh, L.L.C.	Virginia
46. North Shore Raleigh II, L.L.C.	Virginia
47. Parker-Chandler Homes, Inc.	Georgia
48. Parker Chandler Homes/Florida, LLC	Florida
49. Parker Chandler Homes/North Carolina, LLC	North Carolina
50. Parker Chandler Homes/South Carolina, LLC	South Carolina
51. Parker Chandler Realty, LLC	Georgia
52. PCH Development, LLC	Georgia
53. PCH James Road, LLC	Georgia
54. Post Preserve, LLC	Georgia
55. Raleigh Resolution, L.L.C.	Virginia
56. Settlement Title Services, L.L.C.	Virginia
57. TCG Debt Fund II, L.C.	Virginia
58. TCG Fund I, L.C.	Virginia
59. Tribble Road Development, LLC	Georgia

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-123709) of Comstock Homebuilding Companies, Inc. our report dated March 15, 2006 relating to the financial statements, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/PricewaterhouseCoopers LLP

McLean, Virginia

March 15, 2006

CERTIFICATION

I, Christopher Clemente, certify that:

1. I have reviewed this annual report on Form 10-K of Comstock Homebuilding Companies, Inc.;
2. Based on my knowledge, this annual 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 periods 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, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual 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 functions):
 - 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.

/s/ Christopher Clemente

Christopher Clemente

Chairman and Chief Executive Officer

Date: March 16, 2006

CERTIFICATION

I, Bruce J. Labovitz, certify that:

1. I have reviewed this annual report on Form 10-K of Comstock Homebuilding Companies, Inc.;
2. Based on my knowledge, this annual 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 periods 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, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual 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 functions):
 - 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.

/s/ Bruce J. Labovitz

Bruce J. Labovitz
Chief Financial Officer

Date: March 16, 2006

**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 Annual Report on Form 10-K of Comstock Homebuilding Companies, Inc. (the "Company") for the year ended December 31, 2005, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), 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.

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

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

March 16, 2006