
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
Under the Securities Act of 1933

COMSTOCK HOMEBUILDING COMPANIES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

1531
(Primary Standard Industrial
Classification Code Number)

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

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

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

Christopher Clemente
Chief Executive Officer
Comstock Homebuilding Companies, Inc.
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Reston, Virginia 20190
(703) 883-1700

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Class A common stock, par value \$.01 per share	\$75,000,000	\$9,502.50

(1) Includes shares that the underwriters have the option to purchase from the registrant to cover over-allotments, if any. Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

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



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

Subject to Completion, dated _____, 2004.

Shares

[LOGO]

Comstock Homebuilding Companies, Inc.

Class A Common Stock

This is an initial public offering of shares of our Class A common stock. All of the _____ shares of Class A common stock to be sold are being sold by us.

Each share of our Class A common stock has one vote and each share of our Class B common stock has 10 votes. Following this offering, Christopher Clemente, our Chairman and Chief Executive Officer, and Gregory Benson, our President and Chief Operating Officer, will hold Class A and Class B common stock representing _____ % of the combined voting power of our Class A and Class B common stock. Prior to this offering, no public market existed for our Class A common stock. We estimate that the initial public offering price per share will be between \$ _____ and \$ _____. We intend to apply for quotation of our Class A common stock on the Nasdaq National Market under the symbol "CHCI" upon completion of this offering.

Investing in our common stock involves risks. See "Risk Factors" beginning on page 9 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
	_____	_____
Initial public offering price	\$ _____	\$ _____
Underwriting discount	\$ _____	\$ _____
Proceeds before expenses, to us	\$ _____	\$ _____

To the extent that the underwriters sell more than _____ shares of Class A common stock, the underwriters have the option to purchase up to an additional _____ shares from us at the initial public offering price less the underwriting discount.

The underwriters expect to deliver the shares on or about _____, 2004.

BB&T Capital Markets

Prospectus dated _____, 2004.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. It does not contain all of the information that may be important to you. You should read the following summary together with the more detailed information regarding us, the common stock being sold in this offering and our combined consolidated financial statements, including the notes to those statements, appearing elsewhere in this prospectus. In this summary and elsewhere in this prospectus, the narrative description of our business and our pro forma financial information incorporates the business and operations of Comstock Service Corp., Inc., also referred to in this prospectus as Comstock Service, which has not been otherwise combined and consolidated in our financial statements and related notes. Discussion of our historical financial statements and results of operations does not include Comstock Service unless otherwise indicated. As part of this offering, we intend to substantially restructure our current corporate organization. We refer to this restructuring as the "Consolidation." This consolidation will include the merger of Comstock Service with and into one of our subsidiaries, which will be accounted for as an acquisition. See "Corporate Consolidation" on page 24. For information on how we derive our pro forma information, please see "Unaudited Pro Forma Combined Consolidated Financial Information" on page 29.

When we refer to

- "homes," we are referring to single-family homes, townhouses and condominium units;*
- the "Washington, D.C. market," we are referring to the Washington, D.C. Primary Metropolitan Statistical Area, as defined by the U.S. Census Bureau, which includes the District of Columbia, 17 counties and cities in northern Virginia, five counties in Maryland and Berkeley and Jefferson counties in the eastern panhandle of West Virginia;*
- the "Raleigh, North Carolina market," we are referring to the six counties included in the Raleigh-Durham-Chapel Hill, North Carolina Metropolitan Statistical Area, as defined by the U.S. Census Bureau;*
- "orders" or "sales," we are referring to fully executed contracts with buyers of our homes, excluding contracts that were executed and cancelled;*
- "settlements" or "deliveries," we are referring to the transfer of title of a home to a buyer, and*
- "backlog," we are referring to orders for which there has not yet been a settlement. Our backlog equals total orders less total deliveries.*

Our Business

We are a production home builder that develops, builds and markets single-family homes, townhouses and condominiums. We focus on geographic areas, products and price points where we believe there is significant demand and high profit potential. We currently operate in the Washington, D.C. and Raleigh, North Carolina 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 demographics represent a significant and stable segment of home buyers in our markets. Since our founding in 1985, we have built and delivered over 2,500 homes valued at over \$500 million.

Over the past several years we have expanded our business model to include the development of land for our home building operations as a complement to the purchase of finished building lots developed by others. We are currently experiencing the benefits of this expansion. For the year ended December 31, 2003, our revenue and operating income increased over 2002 by 59.7% and 91.4%, respectively. For the three months ended March 31, 2004, our revenue and operating income increased by 116.4% and 359.3%, respectively, as compared to the same period in 2003. The book value of our

real estate held for development increased from \$20.2 million at December 31, 2002 to \$73.6 million at March 31, 2004.

Our markets have generally been characterized by strong population and economic growth trends that have led to strong demand for housing. We believe that these markets provide attractive long-term growth opportunities. At March 31, 2004, including Comstock Service, our backlog was approximately \$73.1 million, representing 206 homes, compared to approximately \$16.6 million, representing 55 homes, at March 31, 2003. Including Comstock Service, our backlog at December 31, 2002 and 2003 was approximately \$17.5 million, representing 56 homes, and approximately \$36.4 million, representing 113 homes, respectively. At June 30, 2004, including Comstock Service, we either owned or controlled under option agreements over 3,000 building lots.

Our Markets

We operate in the Washington, D.C. and Raleigh, North Carolina markets. 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. While national economic indicators are influential, they may not show a direct correlation to the performance of a home builder in a particular market. According to the National Association of Home Builders, the Washington, D.C. and Raleigh, North Carolina metropolitan areas are both ranked in the top 20 housing markets in the country, based upon total residential building permits issued in 2003.

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 and Prince Georges counties in Maryland and in the District of Columbia. The Washington, D.C. metropolitan area has typically experienced strong population and economic growth. The strength of this employment market and the stability and resilience of the local economy result in part from the size of the federal government workforce. The presence of the federal government historically has served as a buffer for the local economy against market downturns in the private sector. According to the Bureau of Labor Statistics, the Washington, D.C. market is also characterized by a large professional and business services sector, such as legal, consulting and lobbying services, that employs about 21% of the metropolitan workforce. According to the U.S. Department of Commerce, the Washington, D.C. market enjoyed the fourth highest per capita income among metropolitan areas in the country in 2002—138% of the national per capita income.

The Washington, D.C. metropolitan area continues to expand and absorb contiguous outlying markets. As employment centers have been created in the suburbs and transportation systems have been improved, the Washington, D.C. market has grown to include areas of northern Virginia, Maryland and West Virginia that were once considered separate markets. This trend of expansion and absorption continues aggressively today as areas such as Culpeper and Fredericksburg, Virginia, Gettysburg, Pennsylvania and Hagerstown, Maryland are now considered contiguous outlying markets.

The current Washington, D.C. new home buying market is characterized by strong demand and a limited supply of available housing inventory. Demand in the Washington, D.C. market is strong because of a low unemployment rate and relatively high household incomes, among other factors. The supply of new homes in the market has been constrained in part by slow-growth and environmental preservation initiatives that are strictly enforced in many counties in the metropolitan area. According to the National Association of Realtors, there was a 1.9-month supply of homes for sale in the Washington, D.C. market for February 2004 as compared to the national supply of 4.6 months. This limited supply has had a significant impact on the price of homes for sale in the Washington, D.C. market. The average sales price of a new Comstock home in the market has risen to \$357,000 in the three months ended March 31, 2004, compared to \$225,000 for the year ended March 31, 2001, an

increase which is in part due to a shift in product mix and in part due to price appreciation. When adjusted to include Comstock Service, the average sales prices for the three months ended March 31, 2004 and for the year ended December 31, 2001 are \$354,000 and \$224,000, respectively.

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 population growth of 38.9% during that period, according to the Census Bureau. Similar to the Washington, D.C. market, the local economy in the Raleigh, North Carolina market is relatively 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 18.7% of the area's aggregate employment. 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 many 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 41st among 361 metropolitan areas in 2002 in terms of per capita income, or 108% of the national per capita income.

Our Strategy

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

Build in and expand within the strong growth markets in which we currently operate. We believe there are significant opportunities for growth in our existing markets. We plan to maintain and expand our business in the Washington, D.C. and Raleigh, North Carolina markets to capitalize on their robust economies and continued population growth. We expect the growth in these two markets to continue. We plan to continue to acquire new land within our markets and may acquire local home builders whose operations would complement ours and enhance our competitive position.

Expand into selected new geographic markets within our region. We intend to expand into selected new geographic markets in the eastern United States through both start-up operations and 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 can achieve sufficient scale to successfully implement our business strategy.

Acquire and develop a high-margin land inventory. 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 a substantial 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 the acquisition of finished lots from other developers. We believe our network of relationships and broad recognition in our core markets give 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, upscale 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 higher overall margins on our products than larger production home builders who are primarily 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. 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 the aging population in America, and to 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. 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. As a production home builder, we construct a large number of homes each year. 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 Company

We were incorporated in May 2004. Our business was started in 1985 by Christopher Clemente, our 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. Immediately prior to this offering, we operated our business through four primary holding companies. As part of this offering, we intend to substantially consolidate our current corporate structure. Please see "Corporate Consolidation" on page 24. 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. Information contained on our Web site does not constitute a part of this prospectus.

The Offering

Class A common stock offered shares

Class A common stock to be outstanding after this offering shares

Class B common stock to be outstanding after this offering shares

Voting and conversion rights

Our Class A and Class B common stock generally have identical rights, except for voting and conversion rights. The holders of Class A common stock are entitled to one vote per share and the holders of Class B common stock are entitled to 10 votes per share. Holders of Class A common stock have no conversion rights. Holders of Class B common stock may convert some or all of their shares into the same number of shares of Class A common stock at any time. Under certain circumstances, a share of Class B common stock may automatically convert into a share of Class A common stock. For more information, please see "Description of Capital Stock" on page 80.

Use of proceeds

To purchase outstanding minority membership interests in certain of our subsidiaries; to repay certain indebtedness; to fund the payment of all or a portion of certain S corporation distributions owed to our current stockholders by certain of our subsidiaries in connection with our Consolidation; for general corporate purposes, including working capital; and to fund new projects and acquisitions of assets and/or companies.

Proposed Nasdaq National Market symbol for Class A common stock

CHCI

Except as otherwise noted, the number of shares to be outstanding after this offering excludes:

- *shares of Class A common stock reserved for future issuance under our equity incentive plan; and*
- *shares of Class A common stock reserved for future issuance under our employee stock purchase plan.*

Except as otherwise noted, all information in this prospectus is based on the following assumptions:

- *the underwriters do not exercise their over-allotment option; and*
- *the completion of our Consolidation immediately prior to the closing of this offering.*

**SUMMARY HISTORICAL AND PRO FORMA
FINANCIAL AND OTHER DATA**

We derived the selected historical financial data shown below for 1999, 2000, 2001, 2002 and 2003 and for the interim periods in 2003 and 2004 from our audited and unaudited financial statements. You should read the following financial information in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and our combined consolidated financial statements and the related notes, included elsewhere in this prospectus.

We have derived the summary pro forma financial data shown below from our unaudited pro forma combined consolidated financial information included elsewhere in this prospectus. The summary unaudited pro forma combined consolidated financial data is not necessarily indicative of either future results of operations or the results that would have occurred if the events we describe had occurred on the indicated dates. You should read the summary historical and pro forma financial data in conjunction with our audited combined consolidated financial statements, the unaudited pro forma combined consolidated financial information and, in each case, the related notes included elsewhere in this prospectus.

The unaudited pro forma combined consolidated financial statements as adjusted give pro forma effect to a number of factors, including the following:

- the Consolidation;
- the deemed acquisition of Comstock Service;
- the acquisition of certain minority membership interests of certain of our subsidiaries;
- the repayment of certain indebtedness;
- funding of the payment of certain S corporation distributions owed to our current stockholders by our four primary holding companies in conjunction with our Consolidation; and
- this offering.

The unaudited pro forma combined consolidated statements of operations as adjusted were prepared as if the foregoing transactions had occurred on January 1, 2003. The unaudited pro forma combined consolidated balance sheet as adjusted was prepared as if the foregoing transactions had occurred on March 31, 2004.

	Actual					Pro Forma as Adjusted(d)	Actual		Pro Forma as Adjusted(d)
	1999	2000	2001	2002	2003	2003	2003	2004	2004
	(in thousands, except share data)								
Operating Data:									
Revenues	\$ 44,898	\$ 49,439	\$ 50,929	\$ 34,752	\$ 55,521	\$ 65,864	\$ 8,262	\$ 17,881	\$ 18,855
Cost of sales	39,296	43,199	40,853	26,820	41,756	48,419	6,590	12,461	13,204
Selling, general and administrative	3,821	1,603	3,900	3,725	5,712	8,996	995	2,310	2,934
Operating income	1,781	4,637	6,176	4,207	8,053	8,449	677	3,110	2,717
Other (income) expense, net	(217)	(62)	(302)	10	(44)	(70)	(26)	184	216
Income before minority interests and equity in earnings of real estate partnerships	1,998	4,699	6,478	4,197	8,097	8,519	703	2,926	2,501
Minority interest	1,167	1,861	1,965	664	2,297	(61)	354	848	115
Income before equity in earnings of real estate partnerships	831	2,838	4,513	3,533	5,800	8,580	349	2,078	2,386
Equity in earnings of real estate partnerships	—	—	6	51	139	19	33	28	30
Net income (a)	\$ 831	\$ 2,838	\$ 4,519	\$ 3,584	5,939	8,599	\$ 382	2,106	2,416
Pro forma provision for income taxes, net of minority interests					2,373(b)	3,354		809(b)	998
Pro forma net income					\$ 3,566(b)	\$ 5,245(d)		\$ 1,297(b)	\$ 1,418(d)
Historical earnings per share:									
Historical basic and diluted earnings per share	\$ 325	\$ 1,109	\$ 1,767	\$ 1,172	\$ 1,669	—	\$ 107	\$ 592	—
Historical weighted-average common shares outstanding	2,558	2,558	2,558	3,058	3,558	—	3,558	3,558	—
Pro forma earnings per share:									
Pro forma basic and diluted earnings per share					—(b)	—(d)		—(b)	—(d)
Pro forma weighted-average common shares outstanding					—(c)	(e)		—(c)	—(e)

Years Ended December 31,						Three Months Ended March 31,		
Actual					Pro Forma	Actual		Pro Forma
1999	2000	2001	2002	2003	2003(f)	2003	2004	2004(f)

(in thousands, except homes)

Supplemental Data:

New sales contracts, net of cancellations (homes)	192	305	161	101	216	258	27	132	151
New sales contracts, value net of cancellations	\$ 37,471	\$ 57,161	\$ 36,251	\$ 28,918	\$ 69,086	\$ 81,278	\$ 7,960	\$ 47,097	\$ 53,405
Average sales price per home ordered	\$ 195	\$ 187	\$ 225	\$ 286	\$ 320	\$ 315	\$ 295	\$ 357	\$ 354
Homes delivered (homes)	223	234	220	124	162	211	25	46	51
Homes delivered, settlement revenue	\$ 44,898	\$ 41,009	\$ 48,058	\$ 29,397	\$ 49,081	\$ 62,359	\$ 7,229	\$ 15,136	\$ 16,725
Average settlement revenue of homes delivered	\$ 201	\$ 175	\$ 218	\$ 237	\$ 303	\$ 296	\$ 289	\$ 329	\$ 328
Backlog at end of period, contract value	\$ 10,177	\$ 23,680	\$ 12,259	\$ 11,480	\$ 31,526	\$ 36,401	\$ 12,026	\$ 63,487	\$ 73,081

December 31,

March 31,

Actual					Pro Forma as Adjusted(d)	
1999	2000	2001	2002	2003	2004	2004

(in thousands)

Balance Sheet Data:

Cash and cash equivalents	\$ 2,544	\$ 6,664	\$ 7,086	\$ 8,695	\$ 17,160	\$ 18,699	\$ (5,734)
Real estate held for development and sale	10,779	12,889	8,573	20,192	65,272	73,586	95,956
Total assets	15,946	20,959	18,402	33,971	90,184	97,906	95,072
Notes payable	9,087	11,855	9,439	17,203	61,062	63,005	76,318
Total liabilities	12,884	17,033	13,035	21,574	71,746	75,893	90,407
Minority interest	2,433	1,318	2,390	8,790	11,413	14,182	2,662
Stockholders' equity	629	2,608	2,937	3,607	7,025	7,831	2,003

- (a) Historical data does not reflect any provision for income taxes. The Comstock Companies were S corporations during the periods indicated and therefore were not subject to income tax. See "Corporate Consolidation."
- (b) Pro forma net income and earnings per share reflect the application of statutory corporate income tax rates to net income as if the termination of the S corporation status of The Comstock Companies had occurred on January 1, 2003 (excluding the deemed acquisition of Comstock Service). The effective derived income tax rates for the year ended December 31, 2003 and the three months ended March 31, 2004 were 40.0% and 38.4%, respectively.
- (c) The historical shares outstanding have been adjusted to reflect the additional number of shares, on an equivalent basis, which are necessary to pay the \$ million S corporation distributions.
- (d) Gives effect to (i) the Consolidation, (ii) the deemed acquisition of Comstock Service, (iii) the acquisition of certain minority membership interests in certain of our subsidiaries, (iv) the repayment of certain indebtedness, (v) funding of the payment of certain S corporation distributions owed to our current stockholders by certain of our subsidiaries in conjunction with the Consolidation and (vi) this offering. See "Unaudited Pro Forma Combined Consolidated Financial Information."
- (e) Represents the number of (i) shares of Class A common stock to be issued to existing stockholders in connection with the Consolidation, (ii) shares of Class B common stock to be issued to certain existing stockholders and (iii) shares of Class A common stock to be issued in connection with this offering to the extent the proceeds from which will be used to acquire certain minority membership interests of certain of our subsidiaries, repay certain indebtedness existing as of March 31, 2004 and pay certain S corporation distributions in conjunction with our Consolidation. See "Unaudited Pro Forma Combined Consolidated Financial Information."
- (f) Includes both The Comstock Companies and Comstock Service.

RISK FACTORS

This offering and an investment in our Class A common stock involve a high degree of risk. You should carefully consider the following risks and all other information contained in this prospectus before purchasing our Class A common stock. If any of the following risks actually occur, our business, financial condition and results of operations could be materially and adversely affected, the value of our stock could decline, and you may lose all or part of your investment. The risks and uncertainties described below are those that we currently believe may materially affect us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

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;
- costs 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.

We are also subject to the potential for significant fluctuations in the cost and availability of land. 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 at higher prices during stronger economic periods and the value of that land subsequently declines during weaker economic periods.

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.

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 and earnings.

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 growth.

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 and earnings may be reduced and we may not be able to continue our current level of growth.

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 and earnings.

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 and earnings.

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 and earnings.

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 or limit our growth.

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. 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 two 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 markets. 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 or our ability to grow our business.

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

We may expand our business to new geographic areas outside of the Washington, D.C. and Raleigh-Durham, North Carolina metropolitan areas. 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 and financial condition.

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

As part of our business strategy, we expect 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. We have not currently identified any acquisition targets, and we may not be successful in identifying suitable acquisition targets or in completing acquisitions. Further, 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 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 and results of operations.

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 and business plans.

Our significant level of debt could adversely affect our financial condition and prevent us from fulfilling our debt service obligations.

We currently have a significant amount of debt, and our ability to meet our debt service obligations will depend on our future performance. Numerous factors outside of our control, including changes in economic or other business conditions generally, such as employment levels, population growth and consumer confidence, or in the markets or industry in which we do business, may adversely affect our operating results and cash flows, which in turn may affect our ability to meet our debt service obligations. As of March 31, 2004, on an unaudited pro forma combined consolidated as adjusted basis, we had \$76.3 million aggregate principal amount of total debt outstanding. We may incur additional debt to fund our operations.

If we are unable to meet our debt service obligations, we may need to restructure or refinance our debt, seek additional equity financing or sell assets. We may be unable to restructure or refinance our debt, obtain additional equity financing or sell assets on satisfactory terms or at all. In addition, a substantial portion of our cash flow from operations must be dedicated to the repayment of debt, including interest, thereby reducing the funds available to us for other purposes. Our level of debt may limit our flexibility to adjust to changing economic or market conditions, reduce our ability to withstand competitive pressures and make us more vulnerable to a downturn in general economic conditions.

Our future 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. We intend to pursue a strategy of continued investment in additional real estate related projects. 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.

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

Currently, we have multiple construction, acquisition and development loans. We plan to replace these credit facilities with one or more larger facilities, which is expected to 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.

Our bank credit facilities impose restrictions on our operations, which, if violated, could adversely affect our financial condition.

Our bank credit facilities impose restrictions on our operations and activities. The most significant restrictions relate to debt incurrence, lien incurrence, sales of significant assets and cash distributions and require us to comply with certain financial covenants. If we fail to comply with any of these restrictions or covenants, the banks could cause our debt to become payable immediately. In addition, some of our debt instruments contain cross-default provisions, which could cause a default under a number of debt instruments if we default on only one debt instrument.

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 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.

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.

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 you 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 have a material adverse effect on our business and results of operations.

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 business.

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 and bodily injury 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.

Increased insurance risk could negatively affect our business.

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 and earnings.

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 would be adversely affected.

Our business, revenues and earnings 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 and earnings may be adversely affected.

We are subject to certain environmental laws and the cost of compliance could adversely affect our business.

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, 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.

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 Washington D.C. and Raleigh, North Carolina markets, and other markets we may enter;
- the cyclical nature of the home building industry;
- the changing regulatory environment concerning real estate development and home building;

- changes in prevailing interests 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 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 either the Washington, D.C. or Raleigh, North Carolina market, 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 and earnings.

Being a public company will increase our administrative costs.

As a public company, we will 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 will add personnel, particularly accounting staff, add independent directors, create board committees, adopt additional internal controls and disclosure controls and procedures, retain a transfer agent and a financial printer, adopt 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 difficult and 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, particularly to serve on our audit committee, and qualified executive officers.

Being a public company will require us to significantly enhance our internal controls over the preparation of financial statements in order to ensure the detection, in a timely manner, of misstatements that could occur in our financial statements in amounts that may be material.

In connection with their audits of our financial statements, our independent auditors have reported certain conditions, which together constitute a material weakness in the internal controls over our ability to produce timely and accurate financial statements. A material weakness is a reportable condition in which the design or operation of one or more internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud, in amounts that

would be material in relation to the financial statements being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

The conditions resulting in the material weakness gave rise to a number of adjustments under generally accepted accounting principles, and adjustments relating to the completeness and accuracy of certain underlying data, which materially changed our financial statements. Our independent auditors also identified a need to add to the staff and strengthen the overall skills of our accounting department. Our auditors reported these conditions to our board of directors.

In preparation for being a public company, and in response to the report of the auditors regarding the conditions, we have formulated a plan for enhancing our financial reporting and internal control procedures. In connection therewith we are taking steps to improve the controls over our accounting processes and procedures, including the adoption of new rules and procedures regarding our financial reporting and internal controls and an evaluation of the personnel necessary to implement and maintain such controls. We have hired an experienced Chief Accounting Officer, who will assist us to further develop and implement our internal controls over the preparation of financial statements, including the evaluation of our finance staff and any resulting changes which may be required to monitor and evaluate internal compliance with our newly established procedures. If we are unsuccessful in these efforts, we may experience reportable conditions and material weaknesses in the future, which, if not remediated, may render us unable to detect, in a timely manner, misstatements that could occur in our financial statements in amounts that may be material.

If we fail to improve and then maintain the adequacy of our internal controls, our ability to provide accurate financial statements could be impaired and any failure to maintain our internal controls and provide accurate financial statements would cause our stock price to decrease substantially.

We are in the process of instituting changes to our internal procedures to satisfy the requirements of the Sarbanes-Oxley Act of 2002, when and as such requirements become applicable to us. As we transition from a private company environment to a public company environment, our executive officers are targeting implementation of these changes to our internal procedures well in advance of the time the requirements of the Sarbanes-Oxley Act of 2002 become applicable to us. Implementing these changes will likely require specific compliance training of our directors, officers and personnel and a significant period of time. We are continuing to evaluate and, where appropriate, enhance, our written policies and procedures and internal controls. If we fail to maintain the adequacy of our internal controls as such standards are modified, supplemented or amended from time to time, we may not be able to provide accurate financial statements and comply with the Sarbanes-Oxley Act of 2002. Any failure to maintain the adequacy of our internal controls and provide accurate financial statements would cause the trading price of our common stock to decrease substantially.

Risks Related to this Offering

There has been no public market, and it is possible that no trading market will develop or be maintained, for our Class A common stock, and you may not be able to resell shares of our Class A common stock for an amount equal to or more than your purchase price.

Prior to this offering there has not been a public market for our Class A common stock. Although it is anticipated that the Class A common stock will be approved for quotation on the Nasdaq National Market, there can be no assurance that a trading market will develop or, if such a market does develop, how liquid that market might become, or whether it will be maintained. The initial public offering price will be determined by negotiation between the representatives of the underwriters and us and may not be indicative of prices that will prevail in the trading market. If an active trading market fails to develop or be maintained you may be unable to sell the shares of Class A common stock purchased in this offering at an acceptable price or at all.

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 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.

Fluctuations in the price of our Class A common stock could contribute to the loss of all or part of your investment. Furthermore, any of the factors listed above could have a material adverse effect on your investment in our Class A common stock and our Class A common stock may trade at prices significantly below the offering price.

You will experience immediate and significant dilution in the book value per share and will experience further dilution with the future exercise of stock options.

If you purchase Class A common stock in this offering, you will incur immediate dilution, which means that:

- you will pay a price per share that exceeds by \$ _____ the per share net tangible book value of our assets immediately following the offering (on a pro forma basis as of _____, 2004); and
- the investors in the offering will have contributed _____ % of the total amount to fund us (before deducting the estimated underwriting discounts and commissions and offering expenses) but will own only _____ % of our outstanding shares of our common stock.

From time to time, we may issue stock options to employees and non-employee directors pursuant to our equity incentive plan. These options generally vest commencing one year from the date of grant and continue vesting over a four-year period. Once these stock options vest, you will experience further dilution as these options are exercised by their holders.

Future sales, or the availability for sale, of our common stock may cause our stock price to decline.

In connection with this offering, we, along with our officers, directors and stockholders, will have agreed prior to the commencement of this offering, subject to limited exceptions, not to sell or transfer

any shares of common stock for 180 days after the date of this prospectus without the underwriters' consent. However, the underwriters may release these shares from these restrictions at any time. In evaluating whether to grant such a request, the underwriters may consider a number of factors with a view toward maintaining an orderly market for, and minimizing volatility in the market price of, our Class A common stock. These factors include, among others, the number of shares involved, recent trading volume and prices of the stock, the length of time before the lock-up expires and the reasons for, and the timing of, the request. We cannot predict what effect, if any, market sales of shares held by any stockholder or the availability of these shares for future sale will have on the market price of our Class A common stock.

Based on shares outstanding as of _____, 2004, a total of _____ shares of common stock may be sold in the public market by existing stockholders 181 days after the date of this prospectus, subject to applicable volume and other limitations imposed under federal securities laws. Sales of substantial amounts of our Class A common stock in the public market after the completion of this offering, or the perception that such sales could occur, could adversely affect the market price of our Class A common stock and could materially impair our future ability to raise capital through offerings of our common stock. See "Shares Eligible for Future Sale" on page 84 for a more detailed description of the restrictions on selling shares of our common stock after this offering.

There may be conflicts of interest arising out of relationships among certain of our directors and officers and third-party entities in which they have interests.

There is a possibility that conflicts of interest will arise between certain of our directors and officers, including Messrs. Clemente, Benson and Labovitz and William Bensten, and us in various areas pertaining to our past and ongoing relationships with third-party entities in which they and members of their families have interests. Such entities are under no obligation to resolve any potential conflicts between them and us in a manner that is favorable to us, and we cannot guarantee that the resolution of such conflicts would not adversely impact our business or prospects. See "Certain Transactions."

The holders of our Class B common stock will continue to control us after this offering.

After this offering, Messrs. Clemente and Benson will own 100% of our outstanding Class B common stock, which will represent _____% of the combined voting power of all classes of our voting stock, or _____% of the combined voting power of all classes of our voting stock if the underwriters exercise their over-allotment option in full. As a result, Messrs. Clemente and Benson, acting together, will have control over us, the election of our board of directors and our management and policies. Messrs. Clemente and Benson, acting together, will also have control over all matters requiring stockholder approval, including the amendment of certain provisions of our certificate of incorporation and bylaws 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 10 votes per share on all matters to be voted on by stockholders. We will be selling our Class A common stock in this offering. 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, as further described in "Description of Capital Stock."

Our amended and restated certificate of incorporation and bylaws will contain provisions that could 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 you and other 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 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.

We have broad discretion in how we use the net proceeds from this offering and ultimately may not use them effectively.

We expect to use the net proceeds received from this offering to acquire minority membership interests in certain of our subsidiaries, to repay certain indebtedness, to fund the payment of all or a portion of certain S corporation distributions owed to our current stockholders by certain of our subsidiaries in conjunction with our Consolidation, to fund future acquisitions and for general corporate purposes. We could use these proceeds in ways which our stockholders may not desire and the failure of our management to use such funds effectively could result in unfavorable returns. This could have a material adverse effect on our financial condition, results of operations and stock price.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements contained in this prospectus 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 prospectus. When considering those forward-looking statements, you should keep in mind the risks, uncertainties and other cautionary statements made in this prospectus. 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:

- general economic and market conditions, including interest rate levels;
- our ability to service our substantial debt;
- inherent risks in investment in real estate;
- our ability to compete in the Washington, D.C. and Raleigh, North Carolina real estate and home building markets;
- regulatory actions;
- fluctuations in operating results;
- our anticipated growth strategies;
- shortages and increased costs of labor or building materials;
- the availability and cost of land in desirable areas;
- natural disasters;
- our ability to raise debt and equity capital and grow our operations on a profitable basis;
- our continuing relationship with affiliates; and
- the other risks described under the heading "Risk Factors."

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 the section of this prospectus entitled "Risk Factors."

USE OF PROCEEDS

We expect to receive approximately \$ million in net proceeds from the sale of the shares of Class A common stock in this offering, assuming that the initial public offering price is \$ per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We expect to receive approximately \$ million in net proceeds if the underwriters' over-allotment option is exercised in full.

We intend to use the net proceeds of this offering as follows:

- approximately \$ million to purchase certain outstanding minority membership interests of certain of our subsidiaries;
- approximately \$ million to fund payment of all or a portion of certain S corporation distributions owed to our current stockholders by our four primary holding companies in conjunction with our Consolidation;
- approximately \$6.0 million to repay indebtedness to our mezzanine debtholders consisting of (1) a \$5 million loan incurred on April 30, 2004 for the purpose of providing us working capital, accruing interest at 12% per annum and due upon the earlier of April 30, 2007 or the closing of our Consolidation with a 10% early payment premium, or \$500,000, if our Consolidation occurs within 12 months of the date of the loan, and (2) a \$528,000 loan incurred on August 19, 2003, accruing interest at 14% per annum and due February 19, 2007;
- to acquire new land for development and home building purposes; and
- general corporate purposes, including working capital, and capital expenditures made in the ordinary course of business.

We may also use a portion of the net proceeds of this offering to acquire companies or to establish joint ventures that we believe will complement our current or future business. However, we have no specific plans, agreements or commitments, oral or written, to do so. We are not currently engaged in any substantive negotiations for any acquisition or joint venture. The amounts that we actually expend for working capital purposes will vary significantly depending on a number of factors, including future revenue growth, if any, and the amount of cash we generate from operations. As a result, we will retain broad discretion in the allocation of the net proceeds of this offering.

Pending the uses described above, we will invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities.

DIVIDEND POLICY

We are a recently organized entity and have never paid cash dividends on our Class A common stock. We intend to retain any future earnings to fund the development and growth of our business, and we do not anticipate paying any cash dividends in the future.

CORPORATE CONSOLIDATION

Current operations. Immediately prior to this offering, we operated our business through four primary holding companies, each of which has been taxed as a Subchapter S corporation since its formation. Each of these companies is owned by our four current stockholders in unequal percentages that are substantially similar in the case of each of the four companies. Our primary holding companies immediately prior to this offering were:

- Comstock Holding Company, Inc.,
- Comstock Homes, Inc.,
- Sunset Investment Corp., Inc., and
- Comstock Service Corp., Inc.

Each of these primary holding companies is a Virginia corporation. As of March 31, 2004, these companies owned, directly or indirectly, either all or a majority of the outstanding membership interests in 18 active project level limited liability companies (LLCs) which in turn operated one or more projects. Immediately prior to this offering, seven of these LLCs were wholly owned by one of our primary holding companies and 11 were majority owned by one of our primary holding companies. The owners of the minority interests, directly or indirectly, in the applicable LLCs are individuals or financial institutions that have invested in one or more of our real estate projects. Proceeds raised from these investors have represented an important part of our working capital funding to date. Pursuant to the terms of the operating agreements of the parent entities of the applicable LLCs, we intend to purchase all of the minority interests in certain of the LLCs at purchase prices set forth in the operating agreements. We intend to use approximately \$ million of the net proceeds of this offering to fund the purchases of the minority interests.

Consolidation. Comstock Homebuilding Companies, Inc., a Delaware corporation, which is selling shares of Class A common stock to the public in this offering, will acquire 100% of the outstanding capital stock of Comstock Holding Company, Inc. following the Consolidation that will take place immediately prior to the closing of this offering. The Consolidation will be effected through the mergers of Comstock Service and Sunset Investment Corp., Inc. with and into Comstock Holding Company, Inc. and the acquisition of 100% of the outstanding capital stock of Comstock Homes, Inc. by Comstock Holding Company, Inc. As a result of the Consolidation, the number of our primary holding companies will be reduced from four to two and those holding companies will become our subsidiaries. The Consolidation will not materially affect our operations, which we will continue to conduct through primary holding companies and LLCs. In connection with the Consolidation, each of the four primary holding companies will distribute promissory notes to its shareholders in an amount equal to the companies' S corporation accumulated adjustments account and undistributed tax basis in affiliated entities, if any, as of the date on which the notes are issued. We intend to use a portion of the net proceeds of this offering to fund distributions to the shareholders of the primary holding companies in payment of all or a portion of the amounts that are due and payable under the promissory notes. If we were to pay the entire outstanding balance of the promissory notes, the aggregate payment would be approximately \$ million. See "S Corporation Distributions." The Subchapter S tax elections of the four primary holding companies will automatically be terminated as a result of the Consolidation.

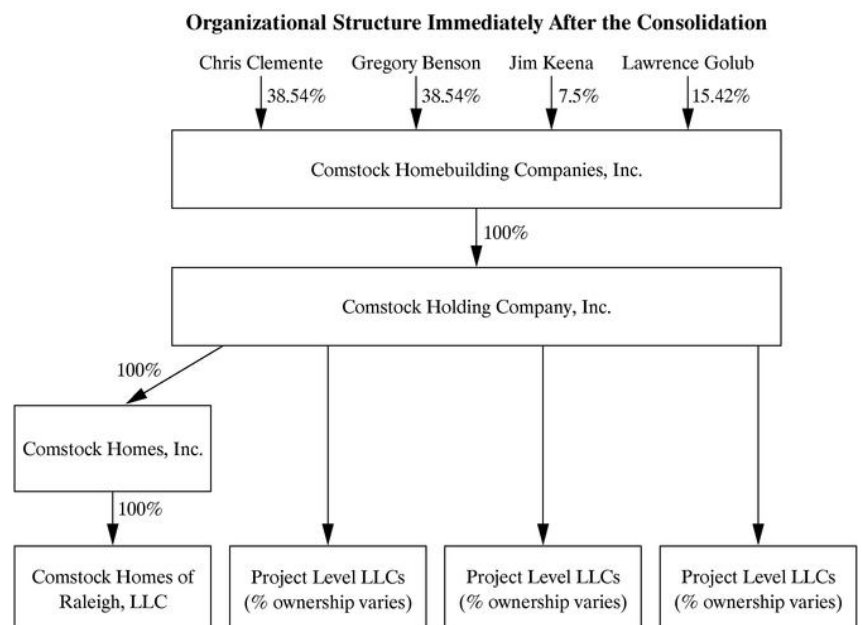
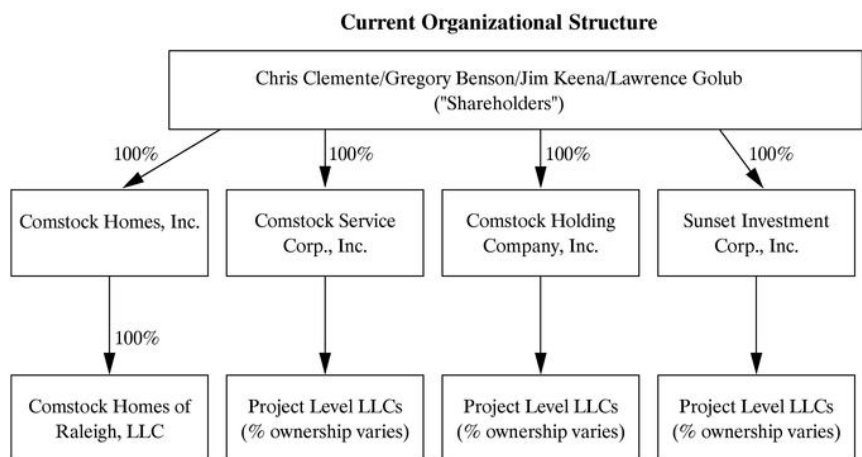
Accounting. Statement of Financial Accounting Standards No. 141, "Business Combinations," or SFAS No. 141, and common practice exclude transfers of net assets or exchanges of shares between entities under common control and situations where transfers lack substance. Comstock Holding Company, Inc., Comstock Homes, Inc., and Sunset Investment Corp., Inc. are wholly owned by our common stockholders with identical ownership interests and accordingly, we will account for the net assets received at the historical carrying amounts at the date of transfer.

Although Comstock Service is also wholly owned by our common stockholders, the individual ownership percentages are different from those in Comstock Holding Company, Inc., Comstock Homes, Inc. and Sunset Investment Corp., Inc., as follows:

	Comstock Holding Company, Inc. Comstock Homes, Inc. Sunset Investment Corp., Inc.	Comstock Service Corp., Inc.
Christopher Clemente	37.5%	40.0%
Gregory Benson	37.5%	40.0%
Lawrence Golub	15.0%	15.0%
James Keena	10.0%	5.0%

Because of the disparity between the individual ownership percentages, we believe the merger of Comstock Service Corp., Inc. to be a substantive exchange, which would be more appropriately accounted for as a purchase under SFAS No. 141, rather than at historical carrying amounts.

The following charts illustrate our organizational structure immediately before and after the Consolidation:



S CORPORATION DISTRIBUTIONS

Our four primary holding companies prior to this offering have elected to be treated for U.S. federal and certain state income tax purposes as S corporations under Subchapter S of the Internal Revenue Code of 1986 and comparable state laws. As a result, our earnings have been taxed for U.S. federal and, in the case of certain states, state income tax purposes directly to the shareholders of these companies rather than to the companies, leaving the shareholders responsible for paying income taxes on these earnings.

In connection with the Consolidation, the four primary holding companies expect to make distributions to their current shareholders representing payment of undistributed S corporation accumulated adjustment accounts and undistributed tax basis in affiliated entities, if any. The distributions will be in the form of promissory notes issued by the four primary holding companies to their current shareholders. The notes will be due and payable 12 months from the date of issuance and will accrue interest at the applicable federal rate, as computed for federal income tax purposes. We estimate that the distribution will be approximately \$ million. The actual amount of the distribution will depend on the amount of our earnings through the promissory note issuance date. We intend to use a portion of the net proceeds of this offering to fund distributions to the shareholders of the primary holding companies in payment of all or a portion of the amounts that are due and payable under the promissory notes. If we were to pay the entire outstanding balance of the promissory notes, the aggregate payment would be approximately \$ million.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of March 31, 2004. We present capitalization:

- On an actual basis;
- On a pro forma basis reflecting adjustments to our historical financial data to give effect to the Consolidation, the deemed acquisition of Comstock Service and recognition of a liability for the estimated amount of previously recognized and undistributed S corporation income accumulated through March 31, 2004 to be paid from the proceeds of the offering, but without giving effect to the offering proceeds, as if each had occurred on March 31, 2004;
- On a pro forma as adjusted basis reflecting additional pro forma adjustments to give effect to the acquisition of certain minority interests, repayment of certain indebtedness, payment of certain S corporation distributions and the consummation of the offering as if each had occurred on March 31, 2004.

	March 31, 2004		
	Actual	Pro Forma	Pro Forma as Adjusted
	(amounts in thousands, except share data)		
Cash and cash equivalents	\$ 18,699	\$ 19,609	\$
Minority interest	14,182	16,908	
Notes payable	63,005	88,423	
Stockholders' equity:			
Common stock			—
Common stock, \$1.00 par value, 5,000 shares authorized (actual), no shares authorized (pro forma) and no shares authorized (pro forma as adjusted); 3,558 shares issued and outstanding (actual), no shares issued and outstanding (pro forma) and no shares issued and outstanding (pro forma as adjusted)	3	3	—
Class A common stock, \$.01 par value, no shares authorized (actual), shares authorized (pro forma) and shares authorized (pro forma as adjusted); no shares issued and outstanding (actual), shares issued and outstanding (pro forma) and shares issued and outstanding (pro forma as adjusted)	—	—	
Class B common stock, \$.01 par value, no shares authorized (actual), shares authorized (pro forma) and shares authorized (pro forma as adjusted); no shares issued and outstanding (actual), shares issued and outstanding (pro forma) and shares issued and outstanding (pro forma as adjusted)	—	—	
Preferred stock, \$.01 par value, no shares authorized (actual), shares authorized (pro forma) and shares authorized (pro forma as adjusted); no shares issued and outstanding (actual), no shares issued and outstanding (pro forma) and shares issued and outstanding (pro forma as adjusted)	—	—	
Additional paid-in capital	1,493	6,060	
Retained earnings (accumulated deficit)	6,335	(4,060)	
Total stockholders' equity	7,831	2,003	
Total capitalization	\$ 103,717	\$ 126,943	\$

Our capitalization information represented above excludes:

- shares of Class A common stock available for issuance pursuant to our equity incentive plan, of which no shares are subject to outstanding options as of _____, 2004; and
- shares of Class A common stock reserved for future issuances under our employee stock purchase plan.

DILUTION

If you invest in our Class A common stock, your interest will be diluted to the extent of the difference between the public offering price per share of our Class A common stock and the pro forma as adjusted net tangible book value per share of Class A common stock after giving effect to this offering.

As of March 31, 2004, our net tangible book value was approximately \$7.8 million or \$ 2,201 per share of common stock. "Net tangible book value" per share represents the amount of our total tangible assets reduced by the amount of our total liabilities, divided by the number of shares of common stock outstanding. As of March 31, 2004, our net tangible book value, on a pro forma as adjusted basis for the sale of shares of our Class A common stock, based on an assumed initial public offering price of \$ per share and after deducting the underwriting discounts and commissions and other estimated offering expenses, would have been approximately \$ per share. This represents an immediate increase of \$ per share to existing stockholders and an immediate dilution of \$ per share to new investors. The following table illustrates this per share dilution:

Assumed initial public offering price per share	\$
Pro forma net tangible book value per share at March 31, 2004	\$
Increase per share attributable to new investors	\$
Pro forma net tangible book value per share after the offering	\$
Dilution per share to new investors	\$

The following summarizes on a pro forma basis as of March 31, 2004, the differences between the total consideration paid and the average price per share paid by the existing stockholders and the new investors with respect to the number of shares of Class A common stock purchased from us based on an assumed initial public offering price of \$ per share.

	Shares Purchased		Pro Forma		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders					
New investors					
Total					

The preceding table excludes:

- shares of Class A common stock available for issuance pursuant to our equity incentive plan, none of which are subject to outstanding options as of _____, 2004; and
- shares of Class A common stock reserved for future issuances under our employee stock purchase plan.

**UNAUDITED PRO FORMA COMBINED
CONSOLIDATED FINANCIAL INFORMATION**

We have derived the unaudited pro forma combined consolidated financial information from the audited and unaudited combined consolidated financial statements of Comstock Holding Company, Inc. and Subsidiaries ("Comstock Holdings"), Comstock Homes, Inc. and Subsidiary ("Comstock Homes") and Sunset Investment Corporation, Inc. and Subsidiary ("Sunset") (collectively, "The Comstock Companies"), and the audited and unaudited consolidated financial statements of Comstock Service Corp., Inc. and Subsidiary ("Comstock Service"). You should read the unaudited pro forma combined consolidated financial information and accompanying notes in conjunction with our "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements described above, all appearing elsewhere in this prospectus.

As described more fully in "Corporate Consolidation," we will consolidate with The Comstock Companies and Comstock Service immediately prior to the closing of this offering. SFAS No. 141 excludes transfers of net assets or exchanges of shares between entities under common control. Comstock Holdings, Comstock Homes and Sunset are all wholly owned by our common stockholders with identical ownership interests and accordingly, we will account for the net assets received at the carrying amounts of The Comstock Companies at the date of transfer.

Although Comstock Service is also wholly owned by our four common stockholders, the individual ownership percentages are different from those in The Comstock Companies, as follows:

(as of March 31, 2004)	The Comstock Companies	Comstock Service
Christopher Clemente	37.5%	40.0%
Gregory Benson	37.5%	40.0%
Lawrence Golub	15.0%	15.0%
James Keena	10.0%	5.0%
	<u>100.0%</u>	<u>100.0%</u>

Because of the disparity between the individual ownership percentages of The Comstock Companies and Comstock Service, we believe the merger of Comstock Service to be a substantive exchange, which would be more appropriately accounted for as a purchase under SFAS No. 141, rather than at the historical carrying amounts.

The unaudited pro forma combined consolidated financial statements as adjusted give pro forma effect to a number of events, including the following:

- the Consolidation;
- the deemed acquisition of Comstock Service;
- the acquisition of certain minority membership interests of certain of our subsidiaries;
- the repayment of certain indebtedness;
- funding of the payment of certain S corporation distributions owed to our current stockholders by our four primary holding companies in conjunction with our Consolidation; and
- this offering.

The unaudited pro forma combined consolidated statements of operations as adjusted were prepared as if the foregoing transactions had occurred on January 1, 2003. The unaudited pro forma combined consolidated balance sheet as adjusted was prepared as if the foregoing transactions had occurred on March 31, 2004.

We have based the unaudited pro forma adjustments upon available information and assumptions that we consider reasonable. The unaudited pro forma combined consolidated financial information is illustrative only and not indicative of, nor does it purport to present, either future results of operations or the results that might have been achieved if these transactions had been consummated on the indicated dates.

We have used the purchase method of accounting to account for acquisitions. Under the purchase method, the aggregate purchase price of the acquisition is allocated to the tangible and intangible assets and liabilities acquired based upon their respective fair values. The allocation of the aggregate purchase price reflected in the unaudited pro forma combined consolidated financial information is preliminary for transactions to be closed subsequent to March 31, 2004. The final allocation of the purchase price is contingent upon finalization of estimates including receipt of appraisals; however, we do not expect the final allocation to differ materially from the preliminary allocation.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

Unaudited Pro Forma Combined Consolidated Balance Sheet
as of March 31, 2004

(in thousands)

	Historical for The Comstock Companies(1)	Historical for Comstock Service(2)	Acquisition of Comstock Service	Pro Forma	Offering Adjustments	Pro Forma as Adjusted
Assets						
Cash and cash equivalents	\$ 18,699	\$ 910	\$	\$ 19,609	\$ (25,343)(13)	\$ (5,734)
Receivables	704			704		704
Due from related parties	2,240	250	(2,071)(3)	419		419
Real estate held for development and sale	73,586	20,694	1,676 (4)	95,956		95,956
Property, plant and equipment, net	326			326		326
Notes receivable			1,008 (8)	1,008	(1,008)(14)	—
Investment in real estate partnerships	1,138		(109)(5)	1,029		1,029
Deferred income tax			1,232 (6)	1,232	(86)(26)	1,146
Other assets	1,213	51	(38)(3)	1,226		1,226
Total assets	\$ 97,906	\$ 21,905	\$ 1,698	\$ 121,509	\$ (26,437)	\$ 95,072
Liabilities and Stockholders' Equity						
Accounts payable and accrued liabilities	\$ 12,653	\$ 1,350	(64)(3)	\$ 13,939		\$ 13,939
Due to related parties	235	811	(896)(3)	150		150
Notes payable	53,858	13,913	11,505 (8)	79,276	(12,105)(14)	67,171
Notes payable to related parties	9,147	1,149	(1,149)(3)	9,147		9,147
Deferred income tax			86 (6)	86	(86)(26)	—
Total liabilities	75,893	17,223	9,482	102,598	(12,191)	90,407
Minority interest	14,182	2,713	13 (9)	16,908	(14,246)(15)	2,662
Stockholders' equity:						
Common stock	3	1	(1)(10)	3	(16)	3
Class A common stock					(17)	—
Class B common stock					(16)	—
Additional paid-in capital	1,493	3,024	1,543 (11)	6,060	— (18)	6,060
Retained earnings (note (27))	6,335	(1,056)	(9,339)(12)	(4,060)		(4,060)
Total stockholders' equity	7,831	1,969	(7,797)	2,003	—	2,003
Total liabilities and stockholders' equity	\$ 97,906	\$ 21,905	\$ 1,698	\$ 121,509	\$ (26,437)	\$ 95,072

See Notes to the Unaudited Pro Forma Combined Consolidated Financial Information.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

Unaudited Pro Forma Combined Consolidated Statement of Operations
For the Year Ended December 31, 2003

(in thousands, except per share amounts)

	Historical for The Comstock Companies(19)	Historical for Comstock Service(20)	Acquisition of Comstock Service	Pro Forma	Offering Adjustments	Pro Forma as Adjusted
Revenues	\$ 55,521	\$ 13,390	\$ (3,047)(21)	\$ 65,864	\$ —	\$ 65,864
Expenses:						
Cost of sales	41,756	9,464	(3,047)(21) 246 (22)	48,419		48,419
Selling, general and administrative	5,712	3,284		8,996		8,996
Operating income	8,053	642	(246)	8,449	—	8,449
Other (income) expense, net	(44)	(26)	—	(70)		(70)
Income before income taxes, minority interest and equity in earnings of real estate partnerships	8,097	668	(246)	8,519	—	8,519
Provision for income taxes	—	—	3,354 (6)	3,354		3,354
Income before minority interest and equity in earnings of real estate partnerships	8,097	668	(3,600)	5,165	—	5,165
Minority interest	2,297	1,416	(1,540)(23)	2,173	(2,234)(24)	(61)
Income (loss) before equity in earnings of real estate partnerships	5,800	(748)	(2,060)	2,992	2,234	5,226
Equity in earnings of real estate partnerships	139	—	(120)(5)	19		19
Net income (loss)	\$ 5,939	\$ (748)	\$ (2,180)	\$ 3,011	\$ 2,234	\$ 5,245
Earnings per share:						
Basic and diluted	\$ 1,669(25)					\$ (25)
Weighted average number of shares:						
Basic and diluted	3,558(25)					(25)

See Notes to the Unaudited Pro Forma Combined Consolidated Financial Information.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

Unaudited Pro Forma Combined Consolidated Statement of Operations
For the Three Months Ended March 31, 2004

(in thousands, except per share amounts)

	Historical for The Comstock Companies(19)	Historical for Comstock Service(20)	Acquisition of Comstock Service	Pro Forma	Offering Adjustments	Pro Forma as Adjusted
Revenues	\$ 17,881	\$ 1,648	\$ (674)(21)	\$ 18,855	\$ —	\$ 18,855
Expenses:						
Cost of sales	12,461	1,369	(674)(21) 48 (22)	13,204		13,204
Selling, general and administrative	2,310	624		2,934		2,934
Operating income	3,110	(345)	(48)	2,717	—	2,717
Other (income) expense, net	184	32		216		216
Income (loss) before income taxes, minority interest and equity in earnings of real estate partnerships	2,926	(377)	(48)	2,501		2,501
Provision for income taxes	—	—	998 (6)	998		998
Income before minority interest and equity in earnings of real estate partnerships	2,926	(377)	(1,046)	1,503		1,503
Minority interest	848	(107)	(296)(23)	445	(330)(24)	115
Income (loss) before equity in earnings of real estate partnerships	2,078	(270)	(750)	1,058	330	1,388
Equity in earnings of real estate partnerships	28	—	2 (5)	30		30
Net income (loss)	\$ 2,106	\$ (270)	\$ (748)	\$ 1,088	\$ 330	\$ 1,418
Earnings per share:						
Basic and diluted	\$ 592(25)					\$ (25)
Weighted average number of shares:						
Basic and diluted	3,558(25)					(25)

See Notes to the Unaudited Pro Forma Combined Consolidated Financial Information.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

Notes to Unaudited Pro Forma Combined Consolidated Financial Information

(in thousands, except per share data)

- (1) Represents the historical combined consolidated balance sheet of The Comstock Companies.
- (2) Represents the historical consolidated balance sheet of Comstock Service.
- (3) Represents the elimination of inter-company balances between The Comstock Companies and Comstock Service.
- (4) Reflects the purchase accounting adjustment to step-up Comstock Service's historical carrying amount of real estate held for development and sale to their estimated fair value.
- (5) The Comstock Companies has a 1.35% membership interest in Comstock North Carolina, LLC ("Comstock North Carolina"). The remaining 98.65% membership interest is held by 18 individual investors, including Comstock Service acting as general partner and owning a 75% membership interest. Comstock Service consolidates its investment in Comstock North Carolina and, accordingly, this pro forma adjustment eliminates the equity investment in Comstock North Carolina, as well as the equity in earnings of Comstock North Carolina, recorded by The Comstock Companies against minority interest recorded by Comstock Service.
- (6) The historical financial statements of The Comstock Companies and Comstock Service do not include a provision for income taxes because the taxable income of the companies were included in the income tax returns of the stockholders, pursuant to elections to be treated as S corporations.

In connection with the formation of Comstock Homebuilding Companies, Inc. and the transactions described above, The Comstock Companies will no longer be treated as S corporations for income tax purposes. Instead, we will be subject to federal and state corporate income taxes and will recognize deferred taxes in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," or SFAS No. 109. SFAS No. 109 requires us to adjust our deferred tax assets and liabilities based on temporary differences between financial statement and tax bases of assets and liabilities using enacted tax rates in effect in the year in which the differences are expected to reverse. Based on our temporary differences existing as of March 31, 2004, the net deferred income taxes are as follows:

	<u>The Comstock Companies</u>	<u>Comstock Service</u>	<u>Pro Forma</u>
Deferred tax assets:			
Real estate held for development and sale	\$ 3,564	\$ —	\$ 3,564
Warranty reserve	218	60	278
Accrued expenses and other	194		194
Net operating loss		834	834
Less valuation allowance	(2,710)		(2,710)
Total deferred tax assets	\$ 1,266	\$ 894	\$ 2,160
Deferred tax liabilities:			
Real estate held for development and sale	\$ 34	\$ 980	\$ 1,014
Total deferred tax liabilities	\$ 34	\$ 980	\$ 1,014
Net deferred tax assets (liabilities)	\$ 1,232	\$ (86)	\$ 1,146

The components of the pro forma income tax provisions are as follows:

	Year Ended December 31, 2003			Three Months Ended March 31, 2004		
	The Comstock Companies	Comstock Service	Pro Forma	The Comstock Companies	Comstock Service	Pro Forma
Current						
Federal	\$ 3,439	\$ —	\$ 3,439	\$ 1,215	\$ —	\$ 1,215
State	700	—	700	248	—	248
Deferred	(887)	102	(785)	(315)	(150)	(465)
	<u>\$ 3,252</u>	<u>\$ 102</u>	<u>\$ 3,354</u>	<u>\$ 1,148</u>	<u>\$ (150)</u>	<u>\$ 998</u>

The effective pro forma income tax rate differs from the 34% statutory federal rate principally as a result of state income taxes.

- (7) The pro forma adjustment reflects the estimated adjustment to goodwill as a result of the following assumed purchase price allocation related to the acquisition of Comstock Service. Under purchase accounting, the estimated purchase price is allocated to identifiable tangible and intangible assets acquired and liabilities assumed based on their relative fair values, with the excess, if any, allocated to goodwill. The pro forma adjustments are based upon our initial assessment of the fair values of identifiable tangible and intangible assets acquired and liabilities assumed. The amount ultimately allocated to these assets and liabilities, including the excess allocated to goodwill, may differ from this preliminary allocation.

Estimated purchase consideration (a)	\$ 4,567
Historical equity of Comstock Service	1,969
	<u>2,598</u>
Initial purchase allocation adjustment	2,598
Less amounts allocated to:	
Real estate held for development and sale (note (4))	1,676
Promissory note receivable from our existing stockholders (note (8))	1,008
Deferred income tax liability (note (6))	(86)
	<u>—</u>
Excess of cost over the fair value of acquired net assets allocated to goodwill	\$ —

(a) Represents the estimated fair value of Comstock Service.

- (8) Represents the promissory notes that will be issued to our existing stockholders in connection with the Consolidation. The promissory notes will be in an amount equal to the primary holding companies' S corporation accumulated adjustments account and undistributed tax basis in affiliated entities, as follows:

Promissory note payable to existing shareholders in respect of The Comstock Companies	\$ 11,505
Promissory note receivable from existing shareholders in respect of Comstock Service	\$ 1,008

(9) Represents the pro forma adjustment to minority interest, as follows:

Adjustment in respect of equity in Comstock North Carolina described in note (5) above	\$ (109)
Minority interest in deferred tax adjustments described in note (6) above	122
	<u>13</u>
	<u>\$ 13</u>

(10) Represents the elimination of the historical common stock of Comstock Service.

(11) Represents the adjustment to additional paid-in capital, as follows:

Assumed purchase price of Comstock Service (note (7))	\$ 4,567
Elimination of historical additional paid-in capital of Comstock Service (note (7))	(3,024)
	<u>1,543</u>
	<u>\$ 1,543</u>

(12) Represents the adjustment to retained earnings, as follows:

Elimination of historical equity of Comstock Service (note (7))	\$ 1,056
Promissory notes issued in respect of The Comstock Companies (note (8))	(11,505)
Adjustment for deferred taxes in The Comstock Companies, net of minority interest (notes (6) and (9))	1,110
	<u>(9,339)</u>
	<u>\$ (9,339)</u>

(13) Reflects the estimated sources and uses of cash for the transactions, as follows:

Sources	
Net proceeds from the offering (a)	\$
Proceeds from promissory notes receivable (note (8))	1,008
Uses	
Repayment of certain indebtedness to our debtholders (b)	(600)
Purchase of certain outstanding minority membership interests (note (15))	(14,246)
Payment of promissory notes payable (note (8))	(11,505)
Estimated expenses	
	<u>(25,343)</u>
Net adjustment to cash	<u>\$ (25,343)</u>

(a) Represents the estimated proceeds from the issuance of Class A common stock, after underwriter's fees of \$.

(b) Represents subordinated second trust loans.

(14) Represents the adjustment to notes payable and notes receivable, as follows:

Repayment of promissory notes receivable (note (8))	\$ (1,008)
	<u>(600)</u>
Repayment of certain indebtedness to one of our debtholders (note (13))	(600)
Payment of promissory notes payable (note (8))	(11,505)
	<u>(12,105)</u>
	<u>\$ (12,105)</u>

- (15) Represents the pro forma adjustment to minority interest as a result of the acquisition of certain minority membership interests of certain of our subsidiaries. The operating agreements for these subsidiaries generally provide us with the right to purchase the minority membership interests. We estimate the amounts to be paid under the operating agreements to approximate the underlying net book values and fair values at the date of acquisitions. The purchase price allocation is preliminary and finalization is contingent on the finalization of estimates including receipt of appraisals.
- (16) Represents the issuance of Class B common stock to our existing stockholders.
- (17) Represents the issuance of approximately of our Class A common stock as part of this offering, at par or stated value.
- (18) Represents the pro forma adjustment to additional paid-in capital as a result of the offering, as follows:

Excess of proceeds from the offering of our Class A common stock over par value (note (13))	\$
Estimated expenses relating to the offering	_____
	\$

- (19) Represents the historical combined consolidated statement of operations of The Comstock Companies.
- (20) Represents the historical consolidated statement of operations of Comstock Service.
- (21) Represents the elimination of inter-company transactions between The Comstock Companies and Comstock Service. In particular, Comstock Homes provides general and administrative services, construction management, marketing, and sales services for homebuilding projects owned by Comstock Service. The adjustment eliminates the revenue and costs generated by Comstock Homes for services provided to Comstock Service.
- (22) Represents the adjustment to cost of sales as a result of the step-up to fair value of Comstock Service's real estate held for development and sale described in note (4) above.
- (23) Represents the pro forma adjustment to minority interest, as follows:

	Year Ended December 31, 2003	Three Months Ended March 31, 2004
	_____	_____
Minority membership interests in the tax adjustments in note (6) above	\$ (1,420)	\$ (298)
Elimination of The Comstock Companies' equity in earnings of Comstock North Carolina (note (5))	(120)	2
	_____	_____
	\$ (1,540)	\$ (296)

- (24) Represents the pro forma adjustment to minority interest as a result of the acquisition of certain minority membership interests of certain of our subsidiaries described in note (5) above.

(25) Basic and diluted earnings per share are calculated as follows:

	Actual		Pro Forma, as Adjusted	
	Year Ended December 31, 2003	Three Months Ended March 31, 2004	Year Ended December 31, 2003	Three Months Ended March 31, 2004
Net income	\$ 5,939	\$ 2,106	\$ 5,245	\$ 1,418
Weighted average number of shares outstanding	3,558	3,558		
Basic and diluted earning per share	\$ 1,669	\$ 592		

For the purposes of the pro forma earnings per share calculation, the weighted average shares outstanding, basic and diluted, were calculated as set forth below:

	Pro Forma, as Adjusted	
	Year Ended December 31, 2003	Three Months Ended March 31, 2004
Class A common shares issued pursuant to this offering (a)		
Class B common shares (note (16))		
	\$	\$

(a) Represents the number of shares of Class A common stock issued, the proceeds of which will be used to acquire certain minority membership interests of certain of our subsidiaries (refer to note (15) above), repay certain indebtedness existing as of March 31, 2004 (note (14) above) to certain of our debtholders, and payment of the promissory notes that will be issued to our existing stockholders in connection with the Consolidation (notes (8) and (14) above). The balance of the proceeds from the offering will be used for general corporate purposes, including capital expenditures in the ordinary course of business. The unaudited pro forma combined consolidated statement of operations does not give effect to these transactions and, as such, the Class A common stock relating to such proceeds are not taken into account in the determination of unaudited pro forma basic and diluted earnings per share.

(26) Reclassification upon consolidation.

(27) A reconciliation of historical retained earnings of The Comstock Companies at March 31, 2004 to pro forma as adjusted accumulated deficit follows:

Historical retained earnings of The Comstock Companies	\$ 6,335
Distribution payable to the shareholders of The Comstock Companies(8)	(11,505)
Deferred income taxes recorded, net of minority interest(12)	1,110
Pro forma accumulated deficit	\$ (4,060)

SELECTED FINANCIAL AND OTHER DATA

We derived the selected historical financial data shown below for 1999, 2000, 2001, 2002 and 2003 and for the interim periods in 2003 and 2004 from our audited and unaudited financial statements. You should read the following financial information in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and our combined consolidated financial statements and the related notes, included elsewhere in this prospectus. Operating results for the three months ended March 31, 2004 are not necessarily indicative of operating results to be expected for the full year.

	Years Ended December 31,					Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
	(in thousands, except homes and share data)						
Operating Data:							
Revenues	\$ 44,898	\$ 49,439	\$ 50,929	\$ 34,752	\$ 55,521	\$ 8,262	\$ 17,881
Cost of sales	39,296	43,199	40,853	26,820	41,756	6,590	12,461
Selling, general and administrative	3,821	1,603	3,900	3,725	5,712	995	2,310
Operating income	1,781	4,637	6,176	4,207	8,053	677	3,110
Other (income) expense, net	(217)	(62)	(302)	10	(44)	(26)	184
Income before minority interests and equity in earnings of affiliates	1,998	4,699	6,478	4,197	8,097	703	2,926
Minority interest	1,167	1,861	1,965	664	2,297	354	848
Income before equity in earnings of affiliates	831	2,838	4,513	3,533	5,800	349	2,078
Equity in earnings of affiliates	—	—	6	51	139	33	28
Net income (a)	\$ 831	\$ 2,838	\$ 4,519	\$ 3,584	5,939	\$ 382	2,106
Pro forma provision for income taxes					2,373(b)		809(b)
Pro forma net income					\$ 3,566		\$ 1,297
Historical earnings per share:							
Historical basic and diluted earnings per share	\$ 325	\$ 1,109	\$ 1,767	\$ 1,172	\$ 1,669	\$ 107	\$ 592
Historical weighted average common shares outstanding	2,558	2,558	2,558	3,058	3,558	3,558	3,558
Pro forma earnings per share:							
Pro forma basic and diluted earnings per share					(b)		(b)
Pro forma weighted average common shares outstanding					(c)		(c)

	Years Ended December 31,					Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004

(in thousands except homes)

Supplemental Data:

New sales contracts, net of cancellations (homes)	192	305	161	101	216	27	132
New sales contracts, value net of cancellations	\$ 37,471	\$ 57,161	\$ 36,251	\$ 28,918	\$ 69,086	\$ 7,960	\$ 47,097
Average sales price per home ordered	\$ 195	\$ 187	\$ 225	\$ 286	\$ 320	\$ 295	\$ 357
Homes delivered (homes)	223	234	220	124	162	25	46
Homes delivered, settlement revenue	\$ 44,898	\$ 41,009	\$ 48,058	\$ 29,397	\$ 49,081	\$ 7,229	\$ 15,136
Average settlement revenue of homes delivered	\$ 201	\$ 175	\$ 218	\$ 237	\$ 303	\$ 289	\$ 329
Backlog at end of period, contract value	\$ 10,177	\$ 23,680	\$ 12,259	\$ 11,480	\$ 31,526	\$ 12,026	\$ 63,487

December 31,

March 31,

Actual					Actual	Pro Forma
1999	2000	2001	2002	2003	2004	2004(d)

(in thousands)

Balance Sheet Data:

Cash and cash equivalents	\$ 2,544	\$ 6,664	\$ 7,086	\$ 8,695	\$ 17,160	\$ 18,699	\$ 18,699
Real estate held for development and sale	10,779	12,889	8,573	20,192	65,272	73,586	73,586
Total assets	15,946	20,959	18,402	33,971	90,184	97,906	99,138
Notes payable	9,087	11,855	13,035	17,203	61,062	63,005	63,005
Total liabilities	12,884	17,033	9,439	21,574	71,746	75,893	87,398
Minority interest	2,433	1,318	2,390	8,790	11,413	14,182	14,182
Stockholders' equity (deficit)	629	2,608	2,937	3,607	7,025	7,831	(2,442)

- (a) Historical data does not reflect any provision for income taxes. The Comstock Companies were S corporations during the periods indicated and therefore were not subject to income tax. See "Corporate Consolidation."
- (b) Pro forma net income and earnings per share reflects the application of statutory corporate income tax rates to net income as if the termination of the S corporation status of The Comstock Companies had occurred on January 1, 2003 (excluding the deemed acquisition of Comstock Service). The effective derived income tax rates for the year ended December 31, 2003 and the three months ended March 31, 2004 were 40.0% and 38.4%, respectively.
- (c) The historical shares outstanding have been adjusted to reflect the additional number of shares, on an equivalent basis, which are necessary to pay the \$ million S corporation distributions.
- (d) Reflects an adjustment for (i) recognition of a liability for the estimated amount of previously recognized and undistributed S corporation income accumulated through March 31, 2004 of \$11.5 million to be paid from proceeds of the offering, but without giving effect to the offering proceeds and (ii) the recognition of net deferred tax assets, upon the automatic termination of the Subchapter S tax elections of our four primary holding companies, as if these terminations had occurred on March 31, 2004. See "S Corporation Distributions."

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Financial and Other Data" and our combined consolidated financial statements and related notes appearing elsewhere in this prospectus. Other than in the "Overview" below, this discussion and analysis does not incorporate the financial condition and results of operations of Comstock Service. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see "Special Note 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 prospectus, particularly under the headings "Risk Factors" and "Special Note 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.

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 recent 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 variance from one period to the next with respect to average price per new order and average settlement revenue. This variance 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.

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 June 30, 2004, including Comstock Service, we either owned or controlled under option agreements over 3,000 building lots.

Critical Accounting Policies and Estimates

Our combined consolidated 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 combined consolidated 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 judgement 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 a 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 title is conveyed to the home buyer at the time of closing, full payment has been received, title and possession of the property 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.

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 "Risk Factors—We are Subject to Certain Environmental Laws and the Cost of Compliance Could Adversely Affect our Business."

Results of Operations

Three months ended March 31, 2004 compared to three months ended March 31, 2003

Orders and backlog.

New orders for the three months ended March 31, 2004 increased \$39.1 million, or 492%, to \$47.1 million on 132 homes as compared to \$8.0 million on 27 homes for the three months ended March 31, 2003. This increase in new orders was primarily attributable to an increase in the availability of saleable product in our inventory and an increase in the demand for new homes in the Washington, D.C. marketplace. Increases in saleable inventory during the period are attributable to the completion of entitlement and development processes at several of our communities during the period. In addition, a mild winter during the period as compared with an extremely harsh winter season during the prior period contributed to sales increases.

The average price per new order for the three months ended March 31, 2004 increased by \$62,000 to \$357,000 as compared to \$295,000 for the same period in 2003. This change was attributable to a shift in product mix that included waterfront condominiums at Belmont Bay as well as single-family and large attached carriage homes at Blooms Mill. Please see "Our Business—Our Communities" for information about our communities. Average price appreciation in the resale housing market in the Washington D.C. market between the three months ended March 31, 2003 and March 31, 2004 was significant and new homes realized the benefit of a shortage of supply of quality resale homes.

Our backlog at March 31, 2004 increased \$51.5 million, or 428%, to \$63.5 million on 179 homes as compared to our backlog at March 31, 2003 of \$12.0 million on 41 homes. This increase in backlog is in part attributable to orders during the second half of 2003 and first quarter of 2004 of condominium units with longer delivery schedules. Increases in backlog are attributed to sales volume during the period that exceeded deliveries by 86 units during the same period.

Revenues.

The number of homes delivered (settlements) in the three months ended March 31, 2004 increased by 84% to 46 from 25 homes in the three months ended March 31, 2003. Average per settlement revenue increased by approximately \$40,000 to \$329,000 for the three months ended March 31, 2004 as compared to \$289,000 for the period ended March 31, 2003. Home building revenues increased by \$7.9 million, or 109%, to \$15.1 million for the three months ended March 31, 2004 as compared with \$7.2 million for the three months ended March 31, 2003. Total revenue, which includes revenue derived from providing administrative and production management services to Comstock Service and the sale of finished lots to other home builders, increased \$9.6 million, or 116.4%, to \$17.9 million for the three months ended March 31, 2004 as compared to \$8.3 million in the three months ended March 31, 2003. The increase in deliveries and revenue from March 31, 2003 to March 31, 2004 are in large part attributable to the sales volume in the third and fourth quarters of 2003 and favorable weather conditions for construction during the first quarter of 2004 as compared to first quarter of 2003. Significant price appreciation in the Washington, D.C. market contributed to increases in per settlement revenues during the period.

Cost of sales and selling, general and administrative expenses.

Our cost of sales for the three months ended March 31, 2004 increased by \$5.9 million, or 89.0%, to \$12.5 million as compared to \$6.6 million for the three months ended March 31, 2003. Since costs of sales are capitalized and released at settlement on a pro-rata basis, increases in cost of sales are primarily attributable to an increase in settlements during the period. As a percentage of sales, cost of goods sold decreased to 69.6% for the three months ended March 31, 2004 as compared to 79.7% for the three months ended March 31, 2003. This decrease is primarily attributable to price appreciation

that outpaced cost inflation. In addition, during the three months ended March 31, 2004 we sold lot inventory at our Blooms Mill development to another home builder and such lot sales delivered a higher gross profit margin than that of our residential property sales which contributed to an increased margin for the period ended March 31, 2004 as compared with the period ended March 31, 2003. While selling finished lots to other home builders is not part of our business strategy we will, from time to time, sell finished lots to other home builders when there is a strategic rationale for such sales. Since our cost of sales includes interest incurred during the development of land and construction of new homes, low interest rates between the three-month period ended March 31, 2003 and the three-month period ended March 31, 2004 contributed to a lower cost of sales as a percentage of revenue.

Selling, general and administrative costs during the three months ended March 31, 2004 increased \$1.3 million to \$2.3 million from \$1.0 million for the three months ended March 31, 2003. This increase was the result of an increase in staff salaries of \$400,000 to accommodate our anticipated growth, increases in marketing expenses of \$200,000, and other increases in general expenses of \$700,000. As a percentage of revenue, however, our selling, general and administrative expenses for the three-month period ending March 31, 2004 remained reasonably consistent at 12.9% as compared to 12.0% in the three-month period ending March 31, 2003.

Operating income.

Our operating income for the three months ended March 31, 2004 increased \$2.4 million to \$3.1 million as compared to \$700,000 for the three months ended March 31, 2003. Our operating margin for the three months ended March 31, 2004 was 17.4% compared with 8.2% for the three months ended March 31, 2003. This increase in operating margin is partially attributable to nominal increases in sales, general and administrative expenses relative to increases in revenues. The increase in operating margin is also attributable to a more profitable mix of product resulting from settlements of lots we developed as opposed to lots we purchased from other developers.

Income before minority interest.

Income before minority interest increased by \$2.2 million, or 316.2%, to \$2.9 million for the three months ended March 31, 2004 as compared to \$700,000 for the three months ended March 31, 2003. Net margins on income before minority interest increased by 7.9% to 16.4% for the three months ended March 31, 2004 as compared to 8.5% for the three months ended March 31, 2003. This increase is primarily attributable to the increase in volume of settlements. Average profit per settlement increased by \$35,500 to \$63,600 for the three months ended March 31, 2004 from \$28,100 in the three months ended March 31, 2003. This increase in average per unit profit is a result of the mix of unit types settled during the period as well as the increase in internally developed lots.

Year ended December 31, 2003 compared to year ended December 31, 2002

Orders and backlog.

New orders for the year ended December 31, 2003 increased \$40.2 million, or 139%, to \$69.1 million on 216 homes as compared to \$28.9 million on 101 homes for the year ended December 31, 2002. This increase in new orders was primarily attributable to an increase in the demand for our products in the Washington, D.C. market and the increased availability of lots at our Blooms Mill, Emerald Farm and Flynn's Crossing communities during the course of the year. Sales for the year ended December 31, 2002 were lower due in part to the shortage of inventory of building lots available for sale. This shortage resulted from the inability of the municipalities in which we operate to keep pace with new development and construction permitting requests. While we expect to continue to experience such delays, we do not anticipate such delays having a significant impact on us in the near future. The delays we experienced as a result of time spent processing land during 2002 created a

natural opportunity for increased orders in 2003. Increases in saleable inventory during the period are partially attributable to the resolution of several infrastructure limitations within the counties in which we operate that had in the recent past restricted the release of development and building permits. For example, the water moratorium we experienced at our Emerald Farm and Riverside developments resulted in no new permits being issued for either development during late 2002 and early 2003.

The average price per new order for the year ended December 31, 2003 increased by \$34,000 to \$320,000 as compared to \$286,000 for the year ended December 31, 2002. This change was attributable to a shift in product mix that included a significant number of higher-priced townhouse sales derived from the opening of our Blooms Mill development during the year ended December 31, 2003 and higher average overall price points than was derived from inventory settled for the year ended December 31, 2002.

Our backlog at December 31, 2003 increased \$20.0 million, or 175%, to \$31.5 million on 93 homes compared to our backlog at December 31, 2002 of \$11.5 million on 39 homes. This increase in backlog is attributable to increases in orders during the second half of the year resulting from the increased demand for our products in the Washington, D.C. market and due to the increased availability of saleable building lots in our developments. Several projects that were in the approval review process at the beginning of the period received approvals necessary for initiation of development or construction during the second half of 2003, increasing inventory of building lots available for sale. As a result of the timing of sales and a year that experienced record rainfall, inventory under construction could not be converted into settlements by the end of 2003. Increased undelivered inventory increased our backlog at December 31, 2003.

Revenues.

The number of homes delivered in the year ended December 31, 2003 increased by 30.6% to 162 from 124 homes in the year ended December 31, 2002. Average per settlement revenue increased by approximately \$66,000 to \$303,000 for the year ended December 31, 2003 as compared to \$237,000 for the year ended December 31, 2002. Home building revenues increased by \$19.7 million, or 67.0%, to \$49.0 million for the year ended December 31, 2003 as compared to \$29.4 million for the year ended December 31, 2002. Total revenue, which includes administrative and production management services revenue derived from Comstock Service, increased \$20.8 million to \$55.5 million for the year ended December 31, 2003 as compared to \$34.8 million in the year ended December 31, 2002. The increase in deliveries and revenue from December 31, 2002 to December 31, 2003 are in large part attributable to the delivery in the quarter ended December 31, 2003 of homes sold during the quarters ended June 30, 2003 and September 30, 2003. Significant price appreciation in the Washington, D.C. market also led to increases in revenues during the year ended December 31, 2003. Low interest rates during the year ended December 31, 2003 increased the affordability of upgrades and had the effect of increasing upgrade elections that contributed to an increase in revenue. The addition of single-family homes at Blooms Mill and the conversion into revenue of the increases in order prices at Wescott Ridge, where average settlement revenue increased approximately \$25,660, increased settlement revenue during the year ended December 31, 2003 as compared to the year ended December 31, 2002.

Cost of sales and selling, general and administrative expenses.

Cost of sales for the year ended December 31, 2003 increased \$15.0 million, or 55.7%, to \$41.8 million as compared to \$26.8 million for the year ended December 31, 2002. Increases in cost of sales are primarily attributable to an increase in settlements during the year ended December 31, 2003 and the associated capitalized costs of sales of those settlements that were expensed during the year ended December 31, 2003 as cost of sales. Since cost of sales is directly related to revenue, higher average settlement revenues for the year ended December 31, 2003 resulted in an increased cost of sales. Extended construction and development periods resulting from severe weather during the second

half of the year ended December 31, 2003 caused increased carrying costs of interest on the homes and lots that were settled during the year ended December 31, 2003. In addition, the competition for skilled labor and subcontractors increased during the year ended December 31, 2003 causing an increase in per unit labor costs.

Selling, general and administrative costs for the year ended December 31, 2003 increased \$2.0 million to \$5.7 million from \$3.7 million for the year ended December 31, 2002. This increase was the result of additional staffing costs of \$300,000 to support our growth, increased marketing expenses of \$800,000, and general inflation with respect to the goods and services of \$900,000. As a percentage of revenue, selling, general and administrative expenses decreased to 10.3% during the year ended December 31, 2003 from 10.7% during the year ended December 31, 2002.

Operating income.

Our operating income for the year ended December 31, 2003 increased \$3.8 million to \$8.1 million as compared to \$4.2 million for the year ended December 31, 2002. Our operating margin for the year ended December 31, 2003 was 14.6% compared with 12.1% for the year ended December 31, 2002. The increase in operating margin in spite of increased cost of sales is attributable to selling, general and administrative expenses that did not experience a similar increase as a percentage of revenue during the year ended December 31, 2003.

Income before minority interest.

Our income before minority interest increased by \$3.9 million, or 93.0%, to \$8.1 million for the year ended December 31, 2003 as compared to \$4.2 million for the year ended December 31, 2002. Net margins as a percentage of revenues increased by 2.5% to 14.6% for the year ended December 31, 2003 from 12.1% for the year ended December 31, 2002. This increase is primarily attributable to the selling, general and administrative expenses that increased but did not increase pro rata to revenue growth during the year ended December 31, 2003.

Year ended December 31, 2002 compared to year ended December 31, 2001

Orders and backlog.

New orders for the year ended December 31, 2002 decreased \$7.3 million, or 20.2%, to \$28.9 million on 101 homes as compared to \$36.3 million on 161 homes for the year ended December 31, 2001. This decrease in new orders was primarily attributable to our shift in focus from primarily purchasing finished lots to developing our own inventory of building lots. Increased competition for finished lots and delays in generating building lot inventory caused a shortfall in our inventory of saleable building lots. As a result, sales for the year ended December 31, 2002 were depressed while we managed land inventory through the entitlement process and obtained building permits. We ended 2002 with a significant inventory of building lots in process but did not achieve completion of the permitting process in time for the building lots to be made available for sale during the period. The average price per new order for the year ended December 31, 2002 increased by \$61,000 to \$286,000 as compared to \$225,000 for the year ended December 31, 2001. This change was primarily attributable to price inflation in the Washington, D.C. market and a shift in our product mix which increased our sales of higher-priced homes.

Our backlog at December 31, 2002 decreased \$780,000, or 6.4%, to \$11.5 million on 39 homes compared to our backlog at December 31, 2001 of \$12.3 million on 62 homes. This decrease in backlog is attributable to our decision to focus on generating inventory internally and the resultant lack of saleable lots.

Revenues.

The number of homes delivered in the year ended December 31, 2002 decreased by 43.6% to 124 from 220 homes in the year ended December 31, 2001. Average per settlement revenue increased by approximately \$18,000 to \$237,000 for the year ended December 31, 2002 from \$218,500 for the year ended December 31, 2001. Home building revenues decreased by \$18.7 million, or 38.8%, to \$29.4 million for the year ended December 31, 2002 as compared to \$48.1 million for the year ended December 31, 2001. Total revenue, which includes administrative and production management services revenue derived from Comstock Service, decreased \$16.1 million to \$34.8 million for the year ended December 31, 2002 as compared to \$50.9 million in the year ended December 31, 2001. The decreases in deliveries and revenue from the year ended December 31, 2001 to the year ended December 31, 2002 are in large part attributable to delays in the processing of our land inventory into developed lots. The increase in per lot revenue was primarily due to an increase in the price of housing in the Washington, D.C. market accompanied by a shift in our inventory to higher-priced product including single-family homes and townhouses along with newly introduced condominiums at Wescott Ridge in Fairfax, Virginia.

Cost of sales and selling, general and administrative expenses.

Cost of sales for the year ended December 31, 2002 decreased \$14.0 million, or 34.4%, to \$26.8 million as compared to \$40.8 million for the year ended December 31, 2001. Decreases in cost of sales are primarily attributable to the reduction in settlement activity. Our cost of sales includes interest associated with the development of land and construction of new homes that was capitalized in prior years. Selling, general and administrative costs during the year ended December 31, 2002 decreased \$175,000, or 4.5%, to \$3.7 million as compared to \$3.9 million for the year ended December 31, 2001. This decrease was primarily a result of our efforts to maintain our resources in advance of the growth that we foresaw materializing within a twelve-month period. In addition, during the course of 2002, we moved our corporate headquarters to a larger facility.

Operating income.

Operating income decreased by \$2.0 million, or 31.9%, to \$4.2 million for the year ended December 31, 2002 as compared to \$6.2 million for the year ended December 31, 2001. Our operating margin as a percentage of total revenues for the year ended December 31, 2002 remained consistent at 12.1% as compared to the year ended December 31, 2001. The stability in operating margin in spite of lower settlements is primarily attributable both to average settlement prices that were approximately \$18,000 higher in 2002 as compared to 2001 and to costs of sales that were 3% lower as a percentage of revenue during the year ended December 31, 2002 than in the year ended December 31, 2001.

Income before minority interest.

Income before minority interest decreased by \$2.3 million, or 35.2%, to \$4.2 million for the year ended December 31, 2002 as compared to \$6.5 million for the year ended December 31, 2001. This increase in income before minority interest is primarily attributed to a reduction in cost of sales as a percentage of revenue and the resulting increase in operating margin.

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 the sale of our equity securities, operations which include the sale of constructed homes, finished lots, and various other borrowings, which are both secured and unsecured. Our currently owned and controlled inventory of home sites will require substantial capital to develop and construct.

In production home building, it is common for builders such as us to employ revolving credit facilities whereby the maximum funding available under the facility exceeds the maximum outstanding balance allowed at any given time. Our overall borrowing capacity may be constrained by loan covenants which limit the ratio of our total liabilities to our total equity. This revolving debt will typically provide for funding of an amount up to a pre-determined percentage of the cost of each asset funded. The balance of the funding for that asset is provided for by us as equity. The efficiency of revolving debt in production home building allows us to operate with less overall debt capital than would be required if we built each project with long-term amortizing debt. At March 31, 2004, we had approximately \$22 million of equity financing, \$63 million of debt financing and \$19 million of cash. As discussed in more detail below, we believe that funds generated from the sale of our equity securities, operations and borrowings under our credit facilities will provide us with sufficient capital to meet our existing and expected capital needs.

Limited Liability Companies and Minority Interest Members

Since 1999, we have formed several LLCs in which there are minority interests to fund one or more developments. At March 31, 2004, we were the managing member of three active minority-interest LLCs (Comstock Investors V, L.C., Comstock Investors VI, L.C. and Comstock Potomac Yard, L.C.) that had provided significant capital to our operation. These three active minority-interest LLCs have collectively generated approximately \$10 million of equity financing for us. The terms of the operating agreements of our minority-interest LLCs vary by LLC but they generally include the following characteristics:

- We are the managing member;
- Priority members (the minority members) receive priority with respect to cash distributions until such time as they have received a pre-determined return;
- After the return has been achieved we share in the profits of the partnership with interests ranging from 67% to 87%;
- The managing member may not use the funds of the LLC for developments other than those stipulated in the operating agreement without the approval of a majority of the members;
- We have the right, triggered by a restructuring of us, to repurchase the minority interest in the LLC at a pre-determined rate of return;
- Other than as allowed in the operating agreement, funds may not be loaned to other entities; and
- These LLCs are consolidated within our financial statements for reporting purposes.

Credit Facilities

At March 31, 2004, we had approximately \$33.3 million available under existing secured revolving and construction loans for planned development expenditures. A majority of our debt is variable rate, based on LIBOR or the prime rate, and therefore, we are exposed to market risk in the area of interest rate changes. At March 31, 2004, the one-month LIBOR and prime rates of interest were 1.09% and 4.0%, respectively. For information regarding risks associated with our level of debt and changes in interest rates, see "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:

- obtain agreements of sale for a specified number of homes within a specified time period, with the number of homes and time period varying by project;
- maintain minimum equity levels and leverage ratios as outlined in the applicable loan agreements;
- maintain control of any subsidiary that is a party to the applicable loan agreement;
- complete any construction which is the subject of the loan agreement without significant delay and in accordance with the approved plan;
- notify the lender immediately if we receive a claim of material lien with respect to any services, labor or material furnished in connection with applicable construction, and to remove any such lien within a specified number of days after the date the lien was filed;
- maintain certain minimum levels of insurance;
- provide inventory status reports and financial statements and other inventory and financial information periodically and as reasonably requested by the lender;
- furnish the lender with copies of all notices received by us claiming any breach or potential breach of any contracts related to the construction, claiming or asserting a right to a lien for work performed or materials provided in connection with construction, or from any governmental authority asserting that the land or construction which is the subject of the loan agreements may or does violate any law or regulations;
- not enter into leases affecting the land or the construction which is the subject of the applicable loan agreements without the prior written consent of the lender;
- not obtain subordinate financing on the land, construction or other property granted as security under applicable loan agreements without the prior approval of the lender; and
- not sell or otherwise dispose of any of the land or the construction other than in the normal course of the business of the project subject to applicable loan agreements.

As of March 31, 2004, we believe that we are in compliance with the financial covenants set forth in our loan agreements.

In order to obtain our current credit facilities, including our project-based credit facilities which were entered into directly by our project-based subsidiaries, we were generally required to obtain guaranties by the parent primary holding company as well as Christopher Clemente, our Chief Executive Officer, and Gregory Benson, our President and Chief Operating Officer, in their personal capacities. At March 31, 2004, such parties guaranteed approximately \$49.6 million under our credit facilities. In addition, the companies have agreed to indemnify Christopher Clemente and Gregory Benson in connection with personal guaranties on a certain loan the balance of which on March 31, 2004 is \$2.9 million. For our future financing arrangements, we do not intend to continue obtaining such guaranties which may result in less favorable financing terms and arrangements for us.

From time to time, we employ subordinated and unsecured credit facilities to supplement our capital resources or a particular project or group of projects. Our lenders under these credit facilities will typically charge interest rates that are substantially higher than those charged by the lenders under our senior and secured credit facilities. These credit facilities will vary with respect to terms and costs.

As of March 31, 2004, the annual rate of interest on these facilities ranged from 12% to 18%. At March 31, 2004, we had approximately \$10.4 million outstanding under these subordinate and unsecured facilities. We intend to continue to use these types of facilities on a selected basis to supplement our capital resources.

We intend to refinance our existing credit facilities and replace them with one or more credit facilities shortly after consummation of this offering. We would be the borrower and primary obligor under this facility or facilities, and we anticipate the indebtedness will be secured, nonrecourse and based on an available borrowing base. As part of the anticipated refinancing, it is expected that our primary holding companies, Christopher Clemente and Greg Benson would be released from all guaranties of our debt obligations.

Cash Flow

Net cash (used in)/provided by operating activities was \$(32.4 million) for the year ended December 31, 2003, \$(7.9 million) for the year ended December 31, 2002 and \$7.9 million for the year ended December 31, 2001. 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. In 2002, 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. In 2001, the primary source of the increase in cash from operating activities was attributable to the sale of real estate held for development and sale and a contribution from minority shareholders. Net cash (used in)/provided by operating activities for the three-month period ended March 31, 2004 was \$2,275 and \$(2,274) for the three-month period ended March 31, 2003. The primary source of the increase in cash from operating activities for the three-month period ended March 31, 2004 was net income earned and retained as well as an increase in accounts payable and accrued liabilities. The primary source of the decrease in cash from operating activities for the three-month period ended March 31, 2003 was minimal net income earned and the reduction of receivable and accounts payable and accrued liabilities.

Net cash (used in)/provided by investing activities was \$67,000 for the year ended December 31, 2003, \$(1.1 million) for the year ended December 31, 2002 and \$(79,000) for the year ended December 31, 2001. In 2002, the primary source of the increase in cash from investing activities was attributable distributions from real estate partnerships. In 2002 the primary source of the decrease in cash from investing activities was attributable to an investment in a real estate partnership. In 2001, the primary source of the increase in cash from investing activities was attributable to the purchase of property, plant and equipment. Net cash (used in)/provided by investing was \$(100,000) for the three-month period ended March 31, 2004 and \$30,000 for the three-month period ended March 31, 2003. The primary source of the decrease in the period ended March 31, 2004 was investment in property, plant and equipment. The primary source of the increase in cash from investing activities for the three-month period ended March 31, 2003 was distributions from an investment in a real estate partnership.

Net cash (used in)/provided by financing activities was \$40.8 million for the year ended December 31, 2003, \$10.6 million for the year ended December 31, 2002 and \$(7.4 million) for the year ended December 31, 2001. 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 and shareholders. Net cash (used in)/provided by financing activities was \$(636,000) for the three-month period ended March 31, 2004 and \$2.0 million for the three-month period ended March 31, 2003. The primary source of the decrease in cash from financing activities for the three-month period ended March 31, 2004 was a distribution to minority shareholders. The primary source of the increase in cash from financing activities for the three-month period ended March 31, 2003 was proceeds from notes payable.

Material Acquisitions

In December 2003, we purchased approximately 4.5 acres of unimproved land in Arlington, Virginia, which is expected to yield approximately 470 condominium units and 80,000 square feet of retail space. Our purchase price was approximately \$21.5 million. The estimated project cost for this development is \$160 million. We intend to enter into a new senior construction credit facility for this project in the estimated amount of \$119.3 million and a mezzanine credit facility of approximately \$28.2 million.

In February 2004, we entered into a contract to purchase unimproved land in eastern Loudoun County, Virginia that is expected to yield approximately 191 condominium units. At that time, we posted a nonrefundable deposit in the amount of \$250,000. We settled on the land in July 2004 for a purchase price of \$5.0 million. We secured bank indebtedness to provide \$3.2 million of the acquisition price and up to \$6.0 million in development and construction financing.

We expect to utilize secured and unsecured financings and existing capital resources to finance the acquisitions described above. We anticipate completing these acquisitions by the end of 2005.

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, 2003, and the effect such obligations are expected to have on liquidity and cash flow in future periods:

Contractual obligations at March 31, 2004	Payments due by period				
	Total	Less than 1 year	1 – 3 years	3 – 5 years	More than 5 years
	(in thousands)				
Notes payable	63,005	63,005	—	—	—
Operating leases	1,647	449	876	322	—
Total	\$ 64,652	\$ 63,454	\$ 876	\$ 322	—

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 Comstock Service and its subsidiaries.

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

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 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.

Quantitative and Qualitative Disclosures about Market Risk

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. A majority of our debt is variable rate based on LIBOR and prime rate, and, therefore, affected by changes in market interest rates. Based on current operations, as of March 31, 2004, an increase/decrease in interest rates of 100 basis points would have resulted in a corresponding increase/decrease in interest actually incurred by us of approximately \$630,000 in a fiscal year, a significant portion of which would be capitalized and included in cost of sales as homes are delivered. As a result, the effect on net income would be deferred until the underlying units settled and the interest was released to cost of goods sold. Changes in the prices of commodities that are a significant component of home construction costs, particularly lumber, may result in unexpected short-term increases in construction costs. Because the sales price of our homes is fixed at the time a buyer enters into a contract to acquire a home and we generally contract to sell our homes before construction begins, any increase in costs in excess of those anticipated at the time of each sale may result in lower consolidated operating income for the homes in our backlog. We attempt to mitigate the market risks of the price fluctuation of commodities by entering into fixed price contracts with our subcontractors and material suppliers for a specified period of time, generally commensurate with the building cycle.

New Accounting Pronouncements

Consolidation of variable interest entities.

We typically acquire land for development at market prices from various entities under fixed price purchase agreements. The purchase agreements require deposits that may be forfeited if we fail 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. We may, at our 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. Our 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 liquidating damage provision contained within the purchase agreement. As a result, none of the creditors of any of the entities with which we enter into forward fixed price purchase agreements have recourse to the general credit of the Company. We also do not share in an allocation of either the profit earned or loss incurred by any of these entities with which we enter fixed price purchase agreements.

We have concluded that whenever we option land or lots from an entity and pay a significant nonrefundable deposit as described above, a variable interest entity is created under the provisions of FIN 46-R (see recent accounting pronouncement in Note 2). This is because we have 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. We therefore examine the entities with which we enter into fixed price purchase agreements, for possible consolidation by us under FIN 46-R. This requires us 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 we do not have any contractual or ownership interests in the entities with which we contract to buy the land, we do not have the ability to compel these development entities to provide financial or other data to assist us in the performance of the primary beneficiary evaluation.

Overview

We are a production home builder that develops, builds and markets single-family homes, townhouses and condominiums. We focus on geographic areas, products and price points where we believe there is significant demand for our homes and the greatest profit potential. We currently operate in the Washington, D.C. and Raleigh, North Carolina 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 this demographic represents a significant and stable segment of the home buying market. Since our founding in 1985, we have built and delivered over 2,500 homes valued at over \$500 million, including Comstock Service.

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. We are currently experiencing the benefits of this expansion. For the year ended December 31, 2003, our revenue and operating income increased over 2002 by 60% and 91.4%, respectively. For the three months ended March 31, 2004, our revenue and operating income increased by 116.4% and 359.3%, respectively, as compared to the same period in 2003.

Our markets have generally been characterized by strong population and economic growth trends that have led to strong demand for housing. We believe that these markets provide attractive long-term growth opportunities. At March 31, 2004, including Comstock Service, our backlog was approximately \$73.1 million, representing 206 homes, compared to approximately \$16.6 million, representing 55 homes, at March 31, 2003. Including Comstock Service, our backlog at December 31, 2002 and 2003 was approximately \$17.5 million, representing 56 homes, and approximately \$36.4 million, representing 113 homes, respectively. At June 30, 2004, including Comstock Service, we either own or have options to acquire over 3,000 building lots, excluding lots in our backlog.

Our Markets

We operate in the Washington, D.C. and the Raleigh, North Carolina markets. We believe that in the home building industry, local economic trends and influences have a more significant impact on supply and demand 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 both ranked in the top 20 housing markets in the country with respect to total residential building permits issued in 2003.

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. The Washington, D.C. metropolitan area enjoys strong population and economic growth. The strength of this employment market and the stability and resilience of the local economy result in part from the size of the federal government workforce. The presence of the federal government historically has served as a buffer for the local economy against market downturns in the private sector. According to the Bureau of Labor Statistics, the Washington, D.C. market is also characterized by a large professional and business services sector, such as legal, consulting and lobbying services, that employs about 21% of the metropolitan workforce. According to the U.S. Department of Commerce, the Washington, D.C. market enjoyed the fourth highest per capita income among metropolitan areas in the country in 2002—138% of the national per capita income.

The Washington, D.C. new home buying market is characterized by strong demand and a limited supply of available housing inventory. Demand in the Washington, D.C. area is strong because of a low unemployment rate and relatively high household incomes, among other factors. The supply of new homes in the market has been constrained in part by slow-growth and environmental preservation initiatives that are strictly enforced in many counties in the metropolitan area. According to the National Association of Realtors, there was a 1.9-month supply of homes for sale in the Washington, D.C. area for February 2004, as compared to the national supply of 4.6 months. This limited supply has had a significant impact on the price of homes for sale in the Washington, D.C. market. The average sales price of a new Comstock home in the market has risen to \$357,000 in the first three months of 2004, compared to \$225,000 in 2001, an increase which is in part due to a shift in product mix and in part due to price appreciation. When adjusted to include Comstock Service the average sales prices for the first three months of 2004 and for 2001 are \$354,000 and \$224,000, respectively.

The Washington, D.C. market experienced population growth of 19.7% from 1990 to 2001, according to the U.S. Census Bureau, and is projected to add approximately 52,000 persons annually through 2030, according to the Metropolitan Washington Council of Governments. According to the U.S. Bureau of Labor Statistics, the unemployment rate for the Washington, D.C. market was 3.0% in March 2004—well below the national unemployment rate of 6.0% and the lowest unemployment rate of the 51 largest metropolitan areas in the United States. For the 12 months ended March 2004, the Washington, D.C. market added 60,600 jobs with northern Virginia adding 50,000. According to the Center for Regional Analysis at George Mason University, the Washington, D.C. market is projected to add approximately 78,000 jobs in 2004.

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 population growth of 38.9% during that period, according to the Census Bureau. According to the Bureau of Labor Statistics, the unemployment rate for the Raleigh, North Carolina market was 3.5% in March 2004, a 1.4% decrease from a year ago and the 21st best performing metropolitan area of 331 areas examined. For the 12 months ended March 2004, the Raleigh, North Carolina market added 10,900 jobs, according to the Bureau of Labor Statistics.

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 government constitutes 18.7% of the total area's aggregate employment. 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. Additional local employers include numerous pharmaceutical and manufacturing companies and hospitals. According to the U.S. Department of Commerce, the Raleigh, North Carolina market ranked 41st among 361 metropolitan areas in 2002 in terms of per capita income, or 108% of the national per capita income.

Our Competitive Strengths

We believe we possess the following competitive strengths:

Strong markets. Washington, D.C. and Raleigh, North Carolina are characterized by strong growth, stability and resistance to unfavorable national economic trends. According to the U.S. Census Bureau, the Washington, D.C. and Raleigh, North Carolina markets enjoyed population growth of 19.7% and 43.4%, respectively, from 1990 to 2001. According to the U.S. Bureau of Labor Statistics, the unemployment rate for the Washington, D.C. and the Raleigh, North Carolina markets was 3.0% and 3.5%, respectively, in March 2004—well below the national unemployment rate of 6.0%. According to the National Association of Home Builders, the Washington, D.C. and Raleigh, North Carolina metropolitan areas are ranked in the top 20 housing markets in the country with respect to total housing permits in 2003.

Committed and experienced management. We have been building homes since 1985 under the leadership of our current Chief Executive Officer. Our current President joined us in 1992. Most of our senior executives have been with us for at least five years. Many of our senior executives and managers have over 15 years of experience in the home building industry with some having over 30 years of experience.

Attractive land position. At June 30, 2004, we owned or controlled over 3,000 lots in our markets, including Comstock Service. 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.

Diversified product mix. 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. We believe that the average order price of our homes of approximately \$320,000 in 2003, including Comstock Service, is consistent with our price and value goals and is well suited for the markets we target.

Broad customer base. By offering a wide variety of 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. We believe the growth in immigration of almost one

million immigrants per year in the 1990s has increased the number of potential home buyers in America and has helped fuel growth in the first-time and early move-up home buyer market. 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.

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 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 promptly and thoroughly address any concerns that our customers may have and also provide our home buyers with home maintenance training and advice. 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.

Brand recognition. We believe the "Comstock" brand is strong and widely recognized in the Washington, D.C. and Raleigh, North Carolina markets. We have registered trademarks to protect our brand. We plan to maintain and enhance our brand and continue to live up to our reputation for building homes marked by quality and value.

Extensive selection of options and upgrades. Our home buyers can choose from hundreds of options and upgrades to customize their homes to meet their individual preferences. These options and upgrades include exterior finishes, bonus rooms, additional bathrooms and upgraded bath finishes, upgraded appliances, cabinets and countertop surfaces in the kitchen, decorative trims, various flooring finishes, fireplaces, lighting packages and technology options such as high speed data cabling, in-home stereo systems, in-home theatres and built-in flat screen televisions. We believe that by making many upgraded features available as options at an additional cost we are able to keep our products affordable to a greater number of potential home buyers. The availability of these options allows us to meet individual home buyer preferences while enhancing profitability through the sale of optional features.

Our Strategy

Our business strategy is to focus on geographic areas, products and price points where we believe there is the greatest market potential. Our strategy has the following key elements:

Build in and expand with the strong growth markets in which we currently operate. We believe there are significant opportunities for growth in our existing markets. We plan to maintain and expand our business in the Washington, D.C. and Raleigh, North Carolina markets to capitalize on their robust economies and continued population growth. We expect the growth in these two markets to continue. According to the Center for Regional Analysis at George Mason University, the Washington, D.C. area economy is projected to add approximately 78,000 jobs in 2004. We plan to utilize our strong regional presence and our extensive experience in the 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.

Expand into selected new geographic markets within our region. We intend to expand into selected new geographic markets in the eastern United States through both start-up operations and acquisitions of other home builders that have strategic land positions, strong local management teams and sound operating principles. In evaluating expansion opportunities, we prefer new markets that are easily reached from our headquarters in northern Virginia in order to enhance our ability to integrate the acquired operation into our core operation. 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.

Acquire and develop a high-margin land inventory. 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, upscale 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 higher overall margins 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 the aging population in America, and to 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. As a production home builder, we construct a large number of homes each year. 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 are presently engaged in land development activities in six projects in the Washington, D.C. market and one project in the Raleigh, North Carolina market. Additionally, we are currently acquiring finished building lots from land developers for our home building operations in six projects in the Washington, D.C. market and seven projects in the Raleigh, North Carolina market.

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 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 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 June 30, 2004, we controlled over 3,000 building lots in our markets, including lots held by Comstock Service. Of that inventory we owned approximately 1,350 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 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 5,100 square feet and are priced from the \$200,000s to the \$600,000s. Our townhouses range in size from approximately 1,200 square feet to over 4,500 square feet and are priced from the \$100,000s 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 \$700,000s.

We typically act as the general contractor in the construction of our single-family homes, townhouses and low-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-density, high-rise and mixed-use developments, we typically 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 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 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 that 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 exclusive relationships that we have created with our preferred mortgage lenders and utilizing our custom marketing programs 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 your specific desires.

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 maps illustrate the locations of our current communities:

[MAPS TO BE FILED BY AMENDMENT]

The following chart summarizes certain information for our current and planned communities at June 30, 2004 and includes Comstock Service:

Project	Status as of June 30, 2004(1)	Estimated Homes at Completion	June 30, 2004					Average Sales Price(\$)
			Homes Settled	Lots Owned	Lots under Option Agreement	Backlog(2)	(in thousands)	
Virginia:								
Blooms Mill Townhouses 20'	Active	91	84	2	—	5	270.4	
Blooms Mill Townhouses 22'	Active	113	—	89	—	24	367.3	
Blooms Mill Carriage	Active	91	11	68	—	12	380.0	
Blooms Mill Single-Family	Active	35	22	5	—	8	475.8	
Blooms Mill Lots	Active	47	34	—	—	13	129.0	
The Eclipse on Center Park	Active	475	—	475	—	—		
Flynn's Crossing	Active	49	38	1	—	10	270.6	
River Club at Belmont Bay 5	Active	84	—	21	28	35	415.8	
Woodlands at Round Hill	Active	65	—	64	—	1	—	
Wescott Ridge Condominiums	Active	170	79	31	—	60	319.5	
Total Virginia Active		1,220	268	756	28	168		
Blakes Crossing	Pre-development	160	—	—	160	—	—	
Brandy Station	Pre-development	350	—	—	350	—	—	
Loudoun Station Condominiums	Pre-development	218	—	—	218	—	—	
Potomac Lakes Condominiums	Pre-development	191	—	—	191	—	—	
River Club at Belmont Bay 8 & 9	Pre-development	600	—	—	600	—	—	
Commons on Williams Square	Pre-development	180	—	—	180	—	—	
Total Virginia Pre-development		1,699	—	0	1,699	0	—	
Total Virginia		2,919	268	756	1,727	168		
Maryland:								
Emerald Farm	Active	84	34	43	—	7	379.2	
North Carolina:								
Allyn's Landing	Active	117	8	106	—	3	236.4	
Beckett Crossing	Active	115	84	19	—	12	303.1	
Delta Ridge II Townhouses	Active	41	28	9	—	4	175.5	
Kelton at Preston	Active	56	19	36	—	1	298.1	
North Shore Condominiums	Active	196	—	194	—	2	258.2	
North Shore Townhouses	Active	163	11	146	—	6	220.7	
Wakefield Plantation	Active	77	25	51	—	1	463.8	
Total North Carolina		765	175	561	—	29		
Total Active		2,069	477	1,360	28	204		
Total Pre-development		1,699	—	—	1,699	—		
Total		3,768	477	1,360	1,727	204		

(1) "Active" communities are open for sales. "Pre-development" communities are in the development process and have not yet opened for sales.

(2) For purposes of this chart, "backlog" means we have an executed order with a buyer, inclusive of lot sales, but the settlement has not yet taken place.

Virginia

Blooms Mill is a 377-unit development in Manassas, Virginia. This development offers 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. In May of 2003 we contracted to sell 47 developed lots in this development to another home builder. At December 31, 2003 we have settled 17 of these lots.

The Eclipse on Center Park is a 475-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 development 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 opened in May 2004 with settlements projected to begin in 2006.

Flynn's Crossing is a 49-unit townhouse-style condominium development located in Ashburn, Virginia. This development includes three affordable dwelling units and is sold out.

River Club at Belmont Bay 5 is an 84-unit condominium development located at the convergence of the Potomac and Occoquan Rivers 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. The first deliveries are expected in 2004.

Woodlands at Round Hill is located in the rural part of western Loudoun County, Virginia, the fastest growing county in the United States. This large lot single-family home development has 65 lots of three or more acres each. This project is expected to deliver homes in 2004.

Wescott Ridge is a 170-unit mid-rise condominium development in Fairfax, Virginia. The complex consists of 10 buildings and is conveniently located near major transportation routes and suburban employment and shopping centers. Amenities at Wescott Ridge include elevators, private indoor garages and a community swimming pool. This project is sold out with deliveries to be completed in 2005.

Blakes Crossing is a 160-unit mixed-use parcel in Culpeper, Virginia which we are designing to include a mixture of townhouses, condominiums and retail sites. The project is currently under contract. We are currently in the process of determining the optimal product mix for this site. We expect to open for sales in 2005.

Brandy Station is a 350-unit single-family home development in Culpeper, Virginia. The project is currently under contract. We expect to open for sales in 2006.

Loudoun Station Condominiums is a 218-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 to Washington Dulles International Airport and will have a total of 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 is expected to begin in 2005. Because the project is being developed by an affiliate of us, we have the ability to secure additional condominium lots at this development. Please see "Certain Transactions" for additional information.

Potomac Lakes Condominiums is a 191-unit mid-rise condominium complex in Loudoun County, Virginia. The complex consists of three buildings. The project will target first-time homeowners and will offer significant appeal to current renters seeking to move up to home ownership. Sales are expected to open in 2004 with settlements beginning in 2005.

River Club at Belmont Bay 8 & 9 is a 600-unit active adult condominium community located at the convergence of the Potomac and Occoquan Rivers 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 include active adult lifestyle amenities, such as a health and

wellness center, a business center, guest accommodations and swimming pools. Sales are expected to open in 2005.

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. Our land development group redesigned the project to maximize available density using a unique, stacked townhouse product. The project will open for sales in 2004.

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 deliver homes through 2005.

North Carolina

Alyn'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.

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 open for sales and is delivering 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 is expected to complete deliveries in 2004.

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.

North Shore is a unique community located on the Centennial Campus of North Carolina State University. It consists of 196 townhouses and 163 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 and is delivering homes.

Wakefield Plantation is a 77-unit carriage home development in Raleigh, North Carolina. Our unique 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 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.

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.

Sales and Marketing

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.

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.

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.

Technology

We are committed to the use of Internet-based technology for managing our business and communicating with our customers. 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.

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 have registered the trademark "Comstock Homes Worthy of the Investment" in the United States. We have filed a federal trademark application with respect to "Comstock Homes." We believe the strength of our trademarks benefits our business and we intend to continue to protect our registered and common law trademarks in the United States.

Employees

At March 31, 2004, we had 93 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.

Property

Our principal administrative, sales and marketing facilities are located at our headquarters in Reston, Virginia. We currently lease approximately 20,000 square feet of office space in the Reston facility which is owned by an affiliate and share approximately 3,300 square feet of office space with another affiliate in the Reston facility. We also lease office space in Raleigh, North Carolina where we occupy approximately 3,300 square feet of office space. We believe these facilities are suitable and provide the appropriate level of capacity for our current operations.

Legal Proceedings

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 not have a material adverse effect on our financial position, operating results or cash flows.

MANAGEMENT

Our directors and executive officers and other management employees and their respective ages and positions as of May 31, 2004 are as follows.

Name	Age	Position
Christopher Clemente	44	Chairman and Chief Executive Officer
Gregory V. Benson	50	President, Chief Operating Officer and Director
Bruce J. Labovitz	36	Chief Financial Officer
William P. Bensten	56	Vice President—Business Development
Jason Parikh	33	Chief Accounting Officer
James Keena	45	Vice President—Construction
David D. Howell	53	Vice President—Market Development
Jubal R. Thompson	34	General Counsel and Secretary
A. Clayton Perfall	45	Director Nominee
Norman D. Chirite	42	Director Nominee
David M. Guernsey	56	Director Nominee
James A. MacCutcheon	52	Director Nominee
Gary Martin	51	Director Nominee

Executive Officers and Key Employees

Christopher Clemente founded Comstock in 1985. 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. 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.

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.

James Keena has served as our Vice President—Construction since 1993. Prior to joining us, Mr. Keena spent 10 years in various positions at NVHomes, a national home builder. Since joining us, Mr. Keena has managed the construction of over 2,000 homes.

William P. Bensten has served as our Vice President—Business Development since December 2003, 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.

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. Subsequent to completion of this offering, Mr. Thompson will serve as our Secretary. 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.

Director Nominees

The following individuals have been nominated and have agreed to serve as members of our board of directors upon consummation of this offering.

A. Clayton Perfall has served as the Chief Executive Officer and as a director of AHL Services, Inc., a provider of outsourced business services, since October 2001. Prior to that, from December 2000 to September 2001, Mr. Perfall served as the Chief Executive Officer of Convergence Holdings, a marketing services company. From September 1996 to October 2000, Mr. Perfall served as the Chief Financial Officer and a director of Snyder Communications, a marketing services company. Prior to that, Mr. Perfall was a partner at Arthur Andersen LLP.

Norman D. Chirite has served as Executive Vice President and General Counsel of the Washington Redskins since August 2002. From May 2001 until July 2002, he served as Managing Director of Counsel Corporation, an investment holding company, and from November 2000 until May 2001, he served as General Counsel of Convergence Holdings Corp., a marketing services company. Prior to that, Mr. Chirite was a partner of Weil, Gotshal & Manges LLP, an international law firm based in New York City, where he practiced corporate law from 1987 until 2000. Mr. Chirite also serves as a director of Iogen Corporation, a privately held biofuels company based in Ottawa, Canada.

David M. Guernsey has served as the President and Chief Executive Officer of Guernsey Office Products, Inc., an office supply company, since May 1971. Mr. Guernsey serves on the board of directors of Virginia Commerce Bancorp, Inc., a banking company.

James A. MacCutcheon has served as the President and Chief Executive Officer of Sunburst Hospitality Corporation, a private hospitality company, since September 2000 and served as its Executive Vice President and Chief Financial Officer from 1997 to September 2000.

Gary Martin has served as a Vice President of M&T Bank since January 2003. From July 2001 to July 2002, he served as a Vice President of Royal Bank of Canada and from September 1991 to June 2001, he served as a Senior Vice President of BB&T, a banking company.

Terms of Office

At present, all directors are elected and serve until a successor is duly elected and qualified or until his or her earlier death, resignation or removal. Our executive officers are elected by, and serve until dismissed by, the board of directors.

Upon the completion of this offering, our board will be divided into three classes, as nearly equal in number as possible, with each director serving a three-year term and one class being elected at each year's annual meeting of stockholders. _____, and _____ will be in the class of directors whose term expires at the 2005 annual meeting of our stockholders. Gregory Benson, _____ and _____ will be in the class of directors whose term expires at the 2006 annual meeting of our stockholders. Christopher Clemente and A. Clayton Perfall will be in the class of directors whose term

expires at the 2007 annual meeting of our stockholders. At each annual meeting of our stockholders, successors to the class of directors whose term expires at such meeting will be elected to serve for three-year terms or until their respective successors are elected and qualified.

Board Committees

The audit committee of the board of directors makes recommendations concerning the engagement of independent public accountants. The audit committee charter mandates that the audit committee approve all audit, audit-related, tax and other services conducted by our independent accountants. In addition, the committee reviews the plans, results and fees of the audit engagement with our independent public accountants, and any independence issues with our independent public accountants. The audit committee also reviews the adequacy of our internal accounting controls. It is our intention that the members of the audit committee will be Norman Chirite, James MacCutcheon and A. Clayton Perfall.

The compensation committee of the board of directors determines compensation for our executive officers and administers our equity plans. It is our intention that the members of the compensation committee currently will be Norman Chirite, David Guernsey and Gary Martin.

Compensation Committee Interlocks and Insider Participation

No member of the compensation committee serves as a member of the board of directors or compensation committee of any other entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Director Compensation

We reimburse each member of our board of directors for out-of-pocket expenses incurred in connection with attending board meetings. We intend to pay each member of our board who is not an employee a director fee of \$ for attending meetings of the board of directors and committee meetings.

Executive Compensation

The table below summarizes information concerning the compensation earned for services rendered to us in all capacities by our executive officers for the fiscal year ended December 31, 2003.

Summary Compensation Table

Name and Principal Position	Salary(\$)	Bonus(\$)
Christopher Clemente Chief Executive Officer	233,333	
Gregory Benson President and Chief Operating Officer	230,939	
Bruce Labovitz Chief Financial Officer	52,205	313,502(1)
William Bensten Vice President—Business Development	175,000	196,871
David Howell Vice President—Market Development	150,000	150,000

(1) Includes \$85,000 in compensation received from Investors Management, LLC. For more information, please see "Certain Transactions."

Employee Benefit Plans

2004 Equity Incentive Plan

In connection with our Consolidation prior to the closing of this offering, our board of directors plans to adopt and submit to our stockholders for approval our 2004 Equity Incentive Plan, which will be effective immediately prior to the closing of our Consolidation. Our equity incentive plan is designed to enable us to attract, retain and motivate our directors, officers, employees and consultants, and to further align their interests with those of our stockholders, by providing for, or increasing their ownership interests in our company.

Administration. Our equity incentive plan will be administered by the compensation committee of our board of directors. Our board may, however, at any time resolve to administer our equity incentive plan. Subject to the specific provisions of our equity incentive plan, the compensation committee is authorized to select persons to participate in our equity incentive plan, determine the form and substance of grants made under our equity incentive plan to each participant, and otherwise make all determinations for the administration of our equity incentive plan.

Participation. Individuals who will be eligible to participate in our equity incentive plan will be directors (including non-employee directors), officers (including non-employee officers) and employees of, and other individuals performing services for, or to whom an offer of employment has been extended by us or our subsidiaries.

Type of Awards. Our equity incentive plan will provide for the issuance of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, dividend equivalents, other stock-based awards and performance awards. Performance awards may be based on the achievement of certain business or personal criteria or goals, as determined by the compensation committee.

Available Shares. An aggregate of _____ shares of our Class A common stock will be reserved for issuance under our equity incentive plan, subject to certain adjustments reflecting changes in our capitalization. If any grant under our equity incentive plan expires or terminates unexercised, becomes unexercisable or is forfeited as to any shares, or is tendered or withheld as to any shares in payment of the exercise price of the grant or the taxes payable with respect to the exercise, then such unpurchased, forfeited, tendered or withheld shares will thereafter be available for further grants under our equity incentive plan unless, in the case of options granted under our equity incentive plan, related SARs are exercised. Our equity incentive plan will provide that the compensation committee shall not grant, in any one calendar year, to any one participant awards to purchase or acquire a number of shares of Class A common stock in excess of _____ % of the total number of shares authorized for issuance under our equity incentive plan.

Option Grants. Options granted under our equity incentive plan may be either incentive stock options within the meaning of Section 422 of the Internal Revenue Code or non-qualified stock options, as the compensation committee may determine. The exercise price per share for each option will be established by the compensation committee, except that in the case of the grant of any incentive stock option, the exercise price may not be less than 100% of the fair market value of a share of Class A common stock as of the date of grant of the option. In the case of the grant of any incentive stock option to an employee who, at the time of the grant, owns more than 10% of the total combined voting power of all of our classes of stock, the exercise price may not be less than 110% of the fair market value of a share of Class A common stock as of the date of grant of the option. There will be no options granted under the plan prior to the closing of this offering.

Terms of Options. The term during which each option may be exercised will be determined by the compensation committee, but if required by the Internal Revenue Code and except as otherwise provided in our equity incentive plan, no option will be exercisable in whole or in part more than ten years from the date it is granted, and no incentive stock option granted to an employee who at the

time of the grant owns more than 10% of the total combined voting power of all of our classes of stock will be exercisable more than five years from the date it is granted. All rights to purchase shares pursuant to an option will, unless sooner terminated, expire at the date designated by the compensation committee. The compensation committee will determine the date on which each option will become exercisable and may provide that an option will become exercisable in installments. The shares constituting each installment may be purchased in whole or in part at any time after such installment becomes exercisable, subject to such minimum exercise requirements as may be designated by the compensation committee. Prior to the exercise of an option and delivery of the shares represented thereby, the optionee will have no rights as a stockholder, including any dividend or voting rights, with respect to any shares covered by such outstanding option. If required by the Internal Revenue Code, the aggregate fair market value, determined as of the grant date, of shares for which an incentive stock option is exercisable for the first time during any calendar year under all of our equity incentive plans may not exceed \$100,000.

Termination of Options. Unless otherwise determined by the compensation committee, and subject to certain exemptions and conditions, if a participant ceases to be a director, officer or employee of, or to otherwise perform services for us for any reason other than death, disability, retirement or termination for cause, all of the participant's options and SARs that were exercisable on the date of such cessation will remain exercisable for, and will otherwise terminate at the end of, a period of 30 days after the date of such cessation. In the case of death or disability, all of the participant's options and SARs that were exercisable on the date of such death or disability will remain so for a period of 180 days from the date of such death or disability. In the case of retirement, all of the participant's options and SARs that were exercisable on the date of retirement will remain exercisable for, and shall otherwise terminate at the end of, a period of 90 days after the date of retirement. In the case of a termination for cause, or if a participant does not become a director, officer or employee of, or does not begin performing other services for us for any reason, all of the participant's options and SARs will expire and be forfeited immediately upon such cessation or non-commencement, whether or not then exercisable.

Amendment of Options and Amendment/Termination of Plan. The board of directors or the compensation committee generally will have the power and authority to amend or terminate the Equity Incentive Plan at any time without approval from our stockholders. The compensation committee generally will have the authority to amend the terms of any outstanding award under the plan, including, without limitation, the ability to reduce the exercise price of any options or SARs or to accelerate the dates on which they become exercisable or vest, at any time without approval from our stockholders. No amendment will become effective without the prior approval of our stockholders if stockholder approval would be required by applicable law or regulations, including if required for continued compliance with the performance-based compensation exception of Section 162(m) of the Internal Revenue Code, under provisions of Section 422 of the Internal Revenue Code or by any listing requirement of the principal stock exchange on which our Class A common stock is then listed. Unless previously terminated by the board or the committee, our equity incentive plan will terminate on the tenth anniversary of its adoption. No termination of our equity incentive plan will materially and adversely affect any of the rights or obligations of any person, without his or her written consent, under any grant of options or other incentives previously granted under our equity incentive plan.

Employee Stock Purchase Plan

Employee Stock Purchase Plan. Our board of directors plans to adopt and submit to our stockholders for approval our Employee Stock Purchase Plan. The purpose of the plan is to provide an incentive for our employees (and employees of our subsidiaries designated by our board of directors) to purchase our Class A common stock and acquire a proprietary interest in us.

Administration. The compensation committee will administer the plan. The plan vests the committee with the authority to interpret the plan, to prescribe, amend, and rescind rules and regulations relating to the plan, and to make all other determinations necessary or advisable for the administration of the plan, although our board of directors may exercise any such authority in lieu of the committee. In all cases, the plan will be required to be administered in such a manner as to comply with applicable requirements of Rule 16b-3 of the Securities Exchange Act of 1934, as amended, and Section 423 of the Internal Revenue Code of 1986, as amended.

Eligibility and Participation. As of the date of this offering, each person who is employed either by us or by one of our designated subsidiaries and is expected on a regularly scheduled basis to work more than 20 hours per week for more than five months per calendar year, automatically will be enrolled in the plan. Persons who subsequently become employed by us or one of our designated subsidiaries will be eligible once they have completed three months of service, provided they are expected on a regularly-scheduled basis to work more than 20 hours per week for more than five months per calendar year.

Options to Purchase/Purchase of Shares. Each participant will be granted an option to purchase shares of our Class A common stock at the beginning of each 24-month "offering period" under the plan, on each "exercise date," during the offering period. Exercise dates will occur on the last day of the calendar month in January, March, May, July, September and November. Participants will purchase the shares of our Class A common stock through after-tax payroll deductions, not to exceed % of the participant's total base salary. No participant may purchase more than shares of Class A common stock on any one exercise date, or more than \$25,000 of Class A common stock in any one calendar year. The purchase price for each share will be at a discount of up to 15% of the fair market value of a share on the exercise date. If the fair market value on any exercise date during an offering period is lower than it was on the first day of the offering period, that offering period will automatically terminate and a new 24-month offering period will commence on the next applicable exercise date. If a participant's employment with us or one of our designated subsidiaries terminates, any outstanding option of that participant also will terminate.

Share Reserve. shares of our Class A common stock will be reserved for issuance over the term of the plan. That amount will be increased each year by the lowest of shares, of all shares outstanding at the end of the previous year, or a lower amount determined by our board. If any option to purchase reserved shares is not exercised by a participant for any reason, or if the option terminates, the shares that were not purchased shall again become available under the plan. The number of shares available under the plan also will be subject to periodic adjustment for changes in the outstanding Class A common stock occasioned by stock splits, stock dividends, recapitalizations or other similar changes affecting our outstanding Class A common stock.

Amendment and Termination. Our board or the committee generally will have the power and authority to amend the plan from time to time in any respect without the approval of our stockholders. However, no amendment will become effective without the prior approval of our stockholders if stockholder approval would be required by applicable law or regulation, including Rule 16b-3 under the Securities Exchange Act of 1934, Section 423 of the Internal Revenue Code, or any listing requirement of the principal stock exchange on which our Class A common stock is then listed. Additionally, no amendment may make any change to an option already granted that adversely affects the rights of any participant. The plan will terminate at the earliest of the 10th anniversary of its implementation, the time when there are no remaining reserved shares available for purchase under the plan, or an earlier time that our board may determine.

401(k) Profit Sharing Plan

We have adopted a tax-qualified employee savings and retirement plan, the 401(k) Profit Sharing Plan, for eligible U.S. employees. Eligible employees may elect to defer a portion of their eligible compensation, subject to the statutorily prescribed annual limit. We may make matching contributions on behalf of all participants who have elected to make deferrals to the 401(k) Profit Sharing Plan in an amount determined annually by the company. Any contributions to the plan by the company or the participants are paid to a trustee. The contributions made by the company, if any, are subject to a vesting schedule; all other contributions are fully vested at all times. The 401(k) Profit Sharing Plan, and the accompanying trust, is intended to qualify under Sections 401(k) and 501 of the Internal Revenue Code, so that contributions by us or by employees and income earned (if any) on plan contributions are not taxable to employees until withdrawn and contributions by us, if any, will be deductible by the company when made. At the direction of each participant, the trustee invests the contributions made to the 401(k) Profit Sharing Plan in any number of investment options.

Employee Equity Grants

Upon the closing of this offering, we intend to grant shares of restricted stock and non-qualified options to our employees who have been employed by us on a full time basis for at least _____ months. These grants will be made under our 2004 Equity Incentive Plan, and we expect that the sum of the shares of restricted stock and the shares of Class A common stock subject to the non-qualified options will not exceed _____ shares of Class A common stock.

Home Ownership for Employees

In order to attract, retain and motivate our employees, we maintain a home ownership benefits program. Under our program, an employee receives certain benefits provided by us when purchasing a Comstock home or having a home custom built by us. An employee purchasing a Comstock home will enjoy certain cost benefits in the pricing of the home. We will also assist the employee in obtaining a mortgage. When having a home built, we may provide construction services to and/or act as a general contractor for the employee at a discounted rate. The employee also enjoys the benefits of our favorable materials pricing and our accounting department assists the employee in monitoring costs and administering payments in connection with the construction of the home.

Limitations on Liability of Directors and Officers and Indemnification

Limitation of Liability

Our certificate of incorporation provides that our officers and directors will not be personally liable to us or our stockholders for monetary damages resulting from a breach of fiduciary duty, to the maximum extent permitted by Delaware law. Under Delaware law, directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for:

- Any breach of the duty of loyalty to the corporation or its stockholders;
- Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- Unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- Any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to non-monetary remedies that may be available, such as injunctive relief or rescission, nor does it relieve our officers and directors from complying with federal or state securities laws.

Indemnification

Our certificate of incorporation and bylaws provide that we shall indemnify our directors and executive officers, and may indemnify our other corporate agents, to the fullest extent permitted by law. An officer or director shall not be entitled to indemnification if:

- The officer or director did not act in good faith and in a manner reasonably believed to be in, or not opposed to our best interests; or
- The officer or director is subject to criminal action or proceedings and had reasonable cause to believe the conduct was unlawful.

We intend to enter into agreements to indemnify our directors and officers in addition to the indemnification provided for in our certificate of incorporation and our bylaws. These agreements, among other things, will provide for indemnification of our directors and officers for expenses specified in the agreements, including attorneys' fees, judgments, fines and settlement amounts incurred by any of these persons in any action or proceeding arising out of these persons' services as a director or officer for us, any of our subsidiaries or any other entity to which the person provides services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and officers.

CERTAIN TRANSACTIONS

Other than the transactions described below, for the last three full fiscal years there has not been, nor is there currently proposed, any transaction or series of similar transactions to which we are or will be a party in which the amount involved exceeded or will exceed \$60,000, and in which any director, executive officer, holder of more than 5% of our common stock or any member of their immediate family has or will have a direct or indirect material interest.

In June 2002, we entered into a \$4 million promissory note agreement with TCG Fund I, LC to fund development projects in which approximately \$2.8 million was funded. TCG Fund I, LC, is an affiliate in which Sunset Investment Corp., Inc., one of our primary holding companies, owns a 9.58% interest and third parties own the remaining 90.42% interest. The note bears interest at 12% per annum and is due on June 15, 2006. At December 31, 2003 and 2002, accrued interest on the note totaled \$85,000 and \$185,000, respectively.

In July 2002 and January 2004, we entered into lease agreements for 7,703 and 8,797 square feet, respectively, for our corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia from Comstock Partners, L.C., an affiliate in which 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 owns a 45% interest, and a third party owns a 5% interest in Comstock Partners. We paid approximately \$221,000 and \$114,000 under these leases in 2003 and 2002, respectively.

We expect to enter into a construction/development fee-for-services agreement with Comstock Loudoun Station, L.C., an affiliate in which Christopher Clemente, Gregory Benson, and others are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 10% interest and an entity which is owned or controlled by Christopher Clemente's father-in-law owns a 45% interest in Comstock Loudoun Station. Pursuant to this agreement, we will provide certain services to Comstock Loudoun Station in exchange for fees as well as the opportunity, on a preferred basis, to purchase certain land owned by Comstock Loudoun Station for residential development. We have received approximately \$121,000 in 2003 from Comstock Loudoun Station for administrative and sales support services rendered.

We expect to enter into a purchase and sale agreement with Comstock Retail Partners, L.C., an affiliate in which Christopher Clemente and Gregory Benson are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 10% interest and an entity which is owned or controlled by Christopher Clemente's father-in-law owns a 45% interest in Comstock Retail Partners. Under the agreement, Comstock Retail Partners will agree to purchase, upon completion of its construction, approximately 80,000 square feet of retail space from us at our mixed-use Potomac Yard development, for use as retail space.

In December 2003 and in connection with our Potomac Yard development, Comstock Potomac Yard, L.C., our subsidiary, entered into a \$7 million second trust loan agreement with Comstock Capital Partners, L.C., an entity equally owned by Messrs. Clemente and Benson, accruing interest at 18% per annum. 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, at 15% per annum. Comstock Capital Partners assigned the remaining \$1 million of principal under the loan to a third party at 18% per annum. Accordingly, Comstock Capital Partners will retain accruing interest of 3% per annum on \$6 million of principal. In 2003, we accrued interest of approximately \$55,000 on the loan.

We license Builder's Co-Pilot, a custom developed information and administrative system, from I-Connect, L.C., an affiliate in which Investors Management, LLC holds a 25% interest. Investors Management is an affiliate in which Christopher Clemente, Gregory Benson, Bruce Labovitz, Lawrence Golub and James Keena are principals each with a 30%, 30%, 25%, 9.375% and 5.625% interest,

respectively. We paid approximately \$471,000 in license and development fees and fees for information technology consulting services to I-Connect in 2003.

In March 2003, we also entered into a space sharing agreement with I-Connect to occupy and use 3,342 square feet of office space subleased by I-Connect from a third party at 11465 Sunset Hills Road, Reston, Virginia. We paid approximately \$40,000 under this agreement in 2003. The I-Connect sublease was subsequently assigned to Comstock Partners.

In May 2003, we hired a construction company in which Christopher Clemente's brother serves as the President and is a significant shareholder, to provide construction services and act as a general contractor in the construction of condominiums at our Belmont Bay development. We paid approximately \$829,000 to this construction company in 2003 for such services.

Christopher Clemente's mother-in-law and Gary Martin each invested \$100,000 in one of our subsidiaries, respectively, and the parents of Bruce Labovitz loaned approximately \$300,000 to another of our subsidiaries. We expect to repurchase such interests and repay such indebtedness with proceeds from this offering.

In May 2003, we entered into a lot purchase agreement with an entity in which Christopher Clemente's father-in-law serves as the chief executive officer and chairman of the board of directors and is a shareholder, to sell a limited number of finished building lots at our Blooms Mill project in Manassas, Virginia for a total purchase price of approximately \$6 million. During 2003, there were 17 building lots sold for an aggregate of approximately \$2.2 million.

Investors Management owned a minority interest in two of our subsidiaries. In 2002 and 2001, Investors Management received distributions of \$17,400 and \$500,000, respectively, from these subsidiaries. We paid Investors Management \$500,000, in 2003. Christopher Clemente received distributions from Investors Management of \$193,057 in 2003, \$(979) in 2002 and \$174,546 in 2001. Gregory Benson received distributions from Investors Management of \$193,057 in 2003, \$(978) in 2002 and \$174,545 in 2001. Lawrence Golub received distributions from Investors Management of \$74,732 in 2003, \$(669) in 2002 and \$119,278 in 2001. James Keena received distributions from Investors Management of \$37,366 in 2003, \$(177) in 2002 and \$31,631 in 2001 for services rendered. Bruce Labovitz received compensation from Investors Management of \$85,000 in 2003 for services rendered.

In July 2003, we loaned William Bensten \$70,000. The loan was repaid in August 2003 with no interest.

Consolidation

In May 2004, upon our incorporation, we issued an aggregate of 10,000 shares of common stock to Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub.

We plan to enter into a series of transactions to consolidate our operations and organization. Two of the primary holding companies through which we currently conduct our operations, Comstock Service and Sunset Investment Corp., Inc., will each be merged into Comstock Holding Company, Inc., which is also one of our primary holding companies. Comstock Holding Company will then acquire all of the outstanding capital stock of Comstock Homes, Inc., another of our primary holding companies. Subsequently, Comstock Homebuilding Companies, Inc. will acquire all of the outstanding capital stock of Comstock Holding Company. In order to consummate these transactions, we plan to enter into share exchange agreements with Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub as the shareholders of Comstock Homes and Comstock Holding Company, which will result in us issuing a total of _____ shares of our Class A common stock to Messrs. Clemente, Benson, Keena and Golub. These transactions will be consummated immediately prior to the closing of this offering.

In connection with the Consolidation, each of our primary holding companies will distribute promissory notes to its shareholders in an amount equal to the companies' S corporation accumulated adjustments account and undistributed tax basis in affiliated entities, if any, as of the date on which the notes are issued. We intend to use a portion of the net proceeds of this offering to fund distributions to the shareholders of the primary holding companies in payment of all or a portion of the amounts that are due and payable under the promissory notes. If we were to pay the entire outstanding balance of the promissory notes, the aggregate payment would be approximately \$ _____ million.

Please see "Corporate Consolidation" and "S Corporation Distributions" for additional information.

PRINCIPAL STOCKHOLDERS

The following table sets forth information as of _____, 2004 regarding the beneficial ownership of our common stock by:

- each person or entity who is known by us to own beneficially more than 5% of our outstanding common stock;
- each of our executive officers named in the Summary Compensation Table;
- each of our directors and director nominees; and
- all directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or will become exercisable within 60 days after _____, 2004, are deemed outstanding, while the shares are not deemed outstanding for purposes of computing percentage ownership of any other person. In addition, because Class B common stock may be voluntarily converted into Class A common stock on a share-to-share basis, each share of Class B common stock also represents beneficial ownership of a share of Class A common stock. However, for purposes of this presentation, share amounts are presented based upon outstanding shares without regard to convertibility, except as specifically noted otherwise. Unless otherwise indicated in the footnotes below, the persons and entities named in the table have sole voting or investment power with respect to all shares beneficially owned, subject to community property laws where applicable.

The number and percentage of shares beneficially owned are based on the aggregate of (i) _____ shares of common stock outstanding as of _____, 2004, and (ii) _____ shares of common stock issued in this offering.

Unless otherwise indicated, the principal address of each of the persons below is c/o Comstock Homebuilding Companies, Inc., 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190.

Name of Beneficial Owner	Class A Common Stock		Class B Common Stock	
	Shares Beneficially Owned Prior to Offering	Percentage Beneficially Owned		
		Before Offering		After Offering
Executive Officers and Directors				
Christopher Clemente				
Gregory Benson				
Bruce Labovitz				
William Bensten				
David Howell				
James Keena				
A. Clayton Perfall				
Norman Chirite				
David Guernsey				
James MacCuthcheon				
Gary Martin				
All directors and officers as a group (_____ persons)				
Other 5% Stockholders				
Lawrence Golub				

DESCRIPTION OF CAPITAL STOCK

The following description of our common stock and preferred stock and the relevant provisions of our amended and restated certificate of incorporation and amended and restated bylaws as will be in effect upon the closing of this offering are summaries and are qualified by reference to these documents. Forms of these documents have been filed with the Securities and Exchange Commission as exhibits to our registration statement, of which this prospectus forms a part.

Upon the closing of this offering, our authorized capital stock will consist of _____ shares of Class A common stock, par value \$.01 per share _____ shares of Class B common stock, par value \$.01 per share and _____ shares of preferred stock, par value \$.01 per share.

Common Stock

As of _____, 2004, there were _____ shares of Class A common stock and _____ shares of Class B common stock outstanding. Of the outstanding shares of Class B common stock, _____ shares are beneficially owned by Christopher Clemente, our Chief Executive Officer and _____ shares are beneficially owned by Gregory Benson, our Chief Operating Officer. Based upon the number of shares outstanding as of that date and giving effect to the sale of shares of Class A common stock in this offering, assuming no exercise of the underwriters' over-allotment option and no exercise of options to be outstanding after _____, 2004, there will be approximately _____ shares of Class A common stock and _____ shares of Class B common stock outstanding at the closing of this offering.

The rights, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of holders of shares of any series of preferred stock that we may designate and issue in the future. The outstanding shares of our common stock are fully paid and nonassessable.

Voting. Holders of Class A common stock are entitled to one vote for each share held of record, and holders of Class B common stock are entitled to 10 votes for each share held of record, except with respect to any "going private transaction," as to which each share of Class A common stock and Class B common stock are entitled to one vote per share. Generally, a going private transaction is a transaction in which Messrs. Clemente and Benson, their affiliates, their direct or indirect permitted transferees or a group, which includes Messrs. Clemente and Benson, such affiliates and permitted transferees, seek to buy all outstanding shares. The Class A common stock and the Class B common stock vote together as a single class on all matters submitted to a vote of stockholders, including the election of directors, except as required by law. However, amendments to our certificate of incorporation that would alter or change the powers, preferences or special rights of the Class A or Class B common stock so as to affect them adversely also must be approved by a majority of the votes entitled to be cast by the holders of the shares affected by the amendment, voting as a separate class." Our common stock does not have cumulative voting rights in the election of directors.

As a result of this offering, the percentage of the aggregate voting power of the outstanding common stock owned or controlled by Messrs. Clemente and Benson will decline to approximately _____ % if the over-allotment option is not exercised, and _____ % if the underwriters' over-allotment option is exercised in full; but they will continue, when acting together, to control all actions to be taken by the stockholders, including the election of all directors to the board of directors. See "Principal Stockholders" and "Risk Factors."

Dividends and Stock Splits. Holders of the common stock are entitled to receive, when and if declared by the board of directors from time to time, such dividends and other distributions in cash, stock or property from our assets or funds legally available for such purposes subject to any dividend preferences that may be attributable to preferred stock that may be authorized. Each share of Class A common stock and Class B common stock is equal in respect of dividends and other distributions in

cash, stock or property, except that in the case of stock dividends, only shares of Class A common stock will be distributed with respect to the Class A common stock and only shares of Class B common stock will be distributed with respect to Class B common stock. In no event will either Class A common stock or Class B common stock be split, divided or combined unless the other class is proportionately split, divided or combined. For example, if we effect a two-for-one stock split with respect to the Class A common stock, we will at the same time effect a two-for-one stock split with respect to the Class B common stock.

Conversion. The shares of Class A common stock are not convertible into any other series or class of securities. Each share of Class B common stock, however, is freely convertible into one share of Class A common stock at the option of the Class B stockholder. Except for transfers to certain immediate family members or trusts established for the benefit of such family members, transfers to partnerships, corporations, or similar entities whose general partners, stockholders or members are, directly or indirectly, such family members, and transfers to certain charitable organizations or to one of our employee benefit plans (each, a "Permitted Transferee"), any transfer of Class B common stock will result in the automatic conversion of the transferred shares into Class A common stock. Shares of Class B common stock may be pledged as collateral for indebtedness but, unless the pledgee is a Permitted Transferee, the shares will automatically convert to Class A common stock upon any transfer in foreclosure of the pledged shares. Upon the death of any holder of Class B common stock, all outstanding shares of Class B common stock held by such stockholder automatically convert to Class A common stock.

Mergers, Consolidation and Other Transactions. In the event that we enter into any consolidation, merger, combination or other transaction in which shares of common stock are exchanged for other capital stock, cash or property, then the shares of each class of common stock will be exchanged for the same amount of capital stock, cash or property, as the case may be, for which each share of any other class of common stock is exchanged. Holders of each class of common stock may receive different distributions of stock, securities, cash or property if:

- Shares of common stock are exchanged for shares of capital stock, then the shares exchanged may differ only to the extent that the Class A common stock and the Class B common stock differ;
- The holders of Class A common stock receive an amount of stock, securities, cash or property per share having a value greater than or equal to the value per share into which or for which each share of Class B common stock is exchanged; or
- Holders of Class A common stock and holders of Class B common stock receive an amount of stock, securities, cash or property per share in accordance with a transaction approved by the holders of a majority of Class A common stock and by the holders of a majority of Class B common stock, each voting separately as a class.

Nasdaq. We have applied for quotation of our Class A common stock on The Nasdaq Stock Market's National Market under the symbol "CHCI."

Preferred Stock

Our amended and restated certificate of incorporation authorizes the board of directors, without stockholder action, to designate and issue from time to time shares of preferred stock in one or more series. The board of directors may designate the price, rights, preferences and privileges of the shares of each series of preferred stock, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of

holders of common stock until the board of directors determines the specific rights of the preferred stock. However, possible effects of issuing preferred stock with voting and conversion rights include:

- Restricting dividends on common stock;
- Diluting the voting power of common stock;
- Impairing the liquidation rights of the common stock;
- Delaying or preventing a change of control of us without stockholder action; and
- Harming the market price of common stock.

Upon the closing of this offering, no shares of our preferred stock will be outstanding. We have no present plans to issue any shares of preferred stock.

Delaware Anti-Takeover Law and Provisions in Our Charter and Bylaws

Delaware Anti-Takeover Statute. We are subject to Section 203 of the Delaware General Corporation Law. In general, these provisions prohibit a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless the transaction in which the person became an interested stockholder is approved in a manner presented in Section 203 of the Delaware General Corporation Law. Generally, a "business combination" is defined to include mergers, asset sales and other transactions resulting in financial benefit to a stockholder. In general, an "interested stockholder" is a person who, together with affiliates and employees, owns, or within three years, did own, 15% or more of a corporation's voting stock.

Certificate of Incorporation. Our amended and restated certificate of incorporation provides that:

- our board of directors may issue, without further action by the stockholders, up to _____ shares of undesignated preferred stock;
- any action to be taken by our stockholders must be effected at a duly called annual or special meeting and not by a consent in writing;
- our board of directors shall be divided into three classes, with each class serving for a term of three years;
- vacancies on the board, including newly created directorships, can be filled by a majority of the directors then in office; and
- our directors may be removed only for cause.

Bylaws. Our amended and restated bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders or to nominate candidates for election as directors at an annual meeting of stockholders, must provide timely notice to us in writing. To be timely, a stockholder's notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting of stockholders. In the event that the annual meeting is called for a date that is not within 30 days before or 60 days after the anniversary date, in order to be timely notice from the stockholder must be received:

- not earlier than 120 days prior to the annual meeting of stockholders; and
- not later than 90 days prior to the annual meeting of stockholders or the tenth day following the date on which notice of the annual meeting was made public.

In the case of a special meeting of stockholders called for the purpose of electing directors, notice by the stockholder, in order to be timely, must be received:

- not earlier than 120 days prior to the special meeting; and
- not later than 90 days prior to the special meeting or the close of business on the tenth day following the day on which public disclosure of the date of the special meeting was made.

Our amended and restated bylaws also specify requirements as to the form and content of a stockholder's notice. These provisions may preclude stockholders from bringing matters before an annual or special meeting of stockholders or from making nominations for directors at an annual or special meeting of stockholders or from making nominations for directors at an annual or special meeting of stockholders. In addition, a two-thirds supermajority vote of stockholders will be required to amend our amended and restated bylaws.

The provisions in our amended and restated certificate of incorporation and our amended and restated bylaws are intended to enhance the likelihood of continuity and stability in the composition of the board of directors and in the policies formulated by the board of directors and to discourage certain types of transactions that may involve an actual or threatened change of control of Comstock. These provisions also are designed to reduce our vulnerability to an unsolicited proposal for a takeover of Comstock that does not contemplate the acquisition of all of its outstanding shares or an unsolicited proposal for the restructuring or sale of all or part of Comstock. These provisions, however, could discourage potential acquisition proposals and could delay or prevent a change in control of Comstock. They may also have the effect of preventing changes in our management.

Transfer Agent

The transfer agent and registrar for our Class A common stock is .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there was no market for our Class A common stock. We cannot predict the effect, if any, that the sale of our Class A common stock or the availability of shares of Class A common stock for sale will have on the market price prevailing from time to time. Nevertheless, sales of substantial amounts of Class A common stock in the public market following the offering could adversely affect the market price of the Class A common stock and adversely affect our ability to raise capital at a time and on terms favorable to us.

Sale of Restricted Shares

Upon completion of this offering, we will have _____ shares of common stock outstanding, assuming no exercise of the underwriters' over-allotment option. Of these shares of common stock, the _____ shares of Class A common stock being sold in this offering, plus any shares sold upon exercise of the underwriters' over-allotment option, will be freely tradable without restriction under the Securities Act, except for any such shares which may be held or acquired by an "affiliate" of ours, as that term is defined in Rule 144 under the Securities Act, which shares will be subject to the volume limitations and other restrictions of Rule 144 described below. The remaining shares of common stock held by our existing stockholders upon completion of the offering will be "restricted securities," as that phrase is defined in Rule 144, and may not be resold in the absence of registration under the Securities Act or pursuant to an exemption from such registration, including among others, the exemptions provided by Rule 144 and 144(k) under the Securities Act, which rules, are summarized below. Taking into account the lock-up agreements described below and the provisions of Rules 144 and 144(k), additional shares will be available for sale in the public market as follows:

- no shares will be available for immediate sale on the date of this prospectus; or
- shares will be available for sale 180 days after the date of this prospectus, the expiration date for the lock-up agreements, pursuant to Rules 144 and 144(k) in the event stockholders are entitled to tack their respective holding periods of the shares of our predecessor companies; or
- shares will be available for sale on the first anniversary of the date of the prospectus pursuant to Rule 144 in the event stockholders are not entitled to tack their respective holding periods of the shares of our predecessor companies.

In general, under Rule 144 as currently in effect, a person who has beneficially owned shares for at least one year, including an "affiliate," as that term is defined in the Securities Act, is entitled to sell, within any three-month period, a number of shares that does not exceed the greater of:

- one percent of the then outstanding shares of our Class A common stock (approximately _____ shares immediately following the offering); or
- the average weekly trading volume during the four calendar weeks preceding filing of notice of such sale.

Sales under Rule 144 are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us. A stockholder who is deemed not to have been an "affiliate" of ours at any time during the 90 days preceding a sale, and who has beneficially owned restricted shares for at least two years, would be entitled to sell such shares under Rule 144(k) without regard to the volume, limitations, manner of sale provisions or public information requirements.

All of our affiliates have agreed to further restrict their shares by entering into lock-up arrangements discussed below.

shares of Class A common stock are reserved for issuance under our equity plans. We intend to register the shares of Class A common stock issuable or reserved for issuance under our equity plans within 180 days after the date of this prospectus.

Lock-up Arrangements

Our officers and directors, employees and other stockholders have agreed not to sell or otherwise dispose of any shares of common stock for a period of 180 days after the date of this prospectus without the prior written consent of BB&T Capital Markets on behalf of the underwriters. Upon the expiration of these lock-up agreements, additional shares will be available for sale in the public market.

UNDERWRITING

We and the underwriters for the offering named below have entered into an underwriting agreement with respect to the shares being offered. Subject to the terms and conditions contained in the underwriting agreement, each underwriter has severally agreed to purchase the number of shares of Class A common stock set forth opposite its name below. The underwriters' obligations are several, which means that each underwriter is required to purchase a specified number of shares, but it is not responsible for the commitment of any other underwriter to purchase shares.

Name	Number of Shares
BB&T Capital Markets, a division of Scott & Stringfellow, Inc.	
Total	

The underwriters propose to offer the shares of Class A common stock directly to the public at the public offering price set forth on the cover of this prospectus and to certain securities dealers at that price, less a discount not to exceed \$ _____ per share. The underwriters may allow, and these dealers may re-allow, a discount not more than \$ _____ per share on sales to other brokers or dealers. If all of the shares are not sold at the public offering price, the underwriters may change the offering price and other selling terms.

We have granted to the underwriters an option, exercisable for 30 days after the date of this prospectus, to purchase up to _____ additional shares of our Class A common stock at the public offering price, less the underwriting discount set forth on the cover page of this prospectus. The underwriters may exercise these options only to cover over-allotments, if any, made in connection with this offering. We will be obligated, pursuant to the option, to sell these additional shares of Class A common stock to the underwriters to the extent the option is exercised. If any additional shares of Class A common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the initial shares are being offered.

The underwriting agreement provides that the underwriters are obligated to purchase all the shares of Class A common stock in this offering if any are purchased, other than those shares covered by the over-allotment option described above.

The shares of Class A common stock are being offered by the underwriters, subject to prior sale, when, as and if issued to and accepted by them, subject to the approval of certain legal matters by counsel for the underwriters and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel or modify this offer and to reject orders in whole or in part.

The following table shows the per share and total underwriting discount we will pay to the underwriters. These amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option to purchase additional shares.

	Without Over-Allotment	With Over-Allotment
Per Share	\$	\$
Total	\$	\$

We estimate that the total expenses of the offering, excluding underwriting discount, will be approximately \$, which includes legal, accounting and printing costs and various other fees associated with registration and listing of our Class A common stock. Such expenses are payable by us.

We, our executive officers and directors and Lawrence Golub have each agreed not to offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of our capital stock or any securities convertible into or exchangeable or exercisable for any shares of our capital stock for a period of 180 days from the date of this prospectus, without the prior written consent of BB&T Capital Markets.

BB&T Capital Markets may, in its sole discretion, and at any time without notice, release all or any portion of the shares subject to these lock-up agreements or waive the extensions described above. In determining whether to consent to a request to release shares from the lock-up or to waive an extension, BB&T Capital Markets would consider the circumstances related to the proposed sale. These circumstances are likely to include the current equity market condition, the performance of the price of our common stock since the offering, the likely impact of any release or waiver on the price of our common stock, the number of shares requested to be sold, and the requesting party's reason for making the request.

Prior to this offering, no public market existed for our Class A common stock. We estimate that the initial public offering price per share will be between \$ and \$. We have applied for inclusion of our Class A common stock in the Nasdaq National Market under the symbol "CHCI."

In connection with this offering, the underwriters may engage in stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids in accordance with Regulation M under the Securities Exchange Act of 1934.

Stabilizing transactions permit bids to purchase shares of Class A common stock so long as the stabilizing bids do not exceed a specified maximum, and are engaged in for the purpose of preventing or retarding a decline in the market price of the Class A common stock while the offering is in progress.

Over-allotment transactions involve sales by the underwriters of shares of Class A common stock in excess of the number of shares the underwriters are obligated to purchase. This creates a syndicate short position which may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters is not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any short position by exercising their over-allotment option and/or purchasing shares in the open market.

Syndicate covering transactions involve purchases of Class A common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared with the price at which they may purchase shares through exercise of the over-allotment option. If the underwriters sell more shares

than could be covered by exercise of the over-allotment option and, therefore, have a naked short position, the position can be closed out only by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that after pricing there could be downward pressure on the price of the shares in the open market that could adversely affect investors who purchase in the offering.

Penalty bids permit the representative to reclaim a selling concession from a syndicate member when the common stock originally sold by that syndicate member is purchased in stabilizing or syndicate covering transactions to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our Class A common stock or preventing or retarding a decline in the market price of our Class A common stock. As a result, the price of our Class A common stock in the open market may be higher than it would otherwise be in the absence of these transactions. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our Class A common stock. These transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act of 1933, as amended, and to contribute to payments that the underwriters may be required to make in respect thereof.

At our request, the underwriters have reserved up to _____ shares of Class A common stock being offered by this prospectus for sale to our trustees, employees, business associates and related persons at the public offering price. The sales will be made by the underwriters through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. These persons must commit to purchase no later than the close of business on the day following the date of this prospectus. Any directed shares not purchased will be offered by the underwriters to the general public on the same basis as all other common shares offered. Any directors, employees or other persons purchasing such reserved shares will be prohibited from disposing of or hedging such shares for a period of at least 180 days after the date of this prospectus.

The underwriters may not purchase our Class A common stock in this offering for any discretionary account without the prior specific written approval of the customer.

From time to time and in the ordinary course of their business, the underwriters have provided, and may continue to provide, commercial and investment banking and other financial services to us for which they have received and continue to receive customary fees and commissions.

LEGAL MATTERS

Greenberg Traurig, LLP, Washington, D.C., will provide us an opinion relating to the validity of the Class A common stock issued in this offering. Legal matters will be passed upon for the underwriters by Hunton & Williams LLP, Richmond, Virginia.

EXPERTS

The balance sheet of Comstock Homebuilding Companies, Inc. as of June 7, 2004 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The combined consolidated financial statements of The Comstock Companies as of December 31, 2002 and 2003 and for each of the three years in the period ended December 31, 2003 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of Comstock Service Corp., Inc. as of December 31, 2003 and for the year then ended included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent auditors, given on the authority of said firm as experts in auditing and accounting.

ADDITIONAL INFORMATION

We have filed with the Commission a registration statement on Form S-1 with respect to the Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules which are part of the registration statement. For further information with respect us and the Class A common stock, reference is made to the registration statement and the exhibits and schedules thereto. You may read and copy any document we file at the Commission's public reference rooms in Washington, D.C., New York, New York and Chicago, Illinois. Please call the Commission at 1-800-SEC-0330 for further information about the public reference rooms. Our SEC filings are also available to the public from the Commission's Web site at www.sec.gov. Upon completion of this offering, we will become subject to the information and periodic reporting requirements of the Securities Exchange Act and, in accordance therewith, will file periodic reports, proxy statements and other information with the Commission. Such periodic reports, proxy statements and other information will be available for inspection and copying at the Commission's public reference rooms and the Web site of the Commission referred to above.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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

In our opinion, the accompanying balance sheet presents fairly, in all material respects, the financial position of Comstock Homebuilding Companies, Inc. at June 7, 2004, in conformity with accounting principles generally accepted in the United States of America. This financial statement is the responsibility of the Company's management; our responsibility is to express an opinion on this financial statement based on our audit. We conducted our audit of this statement 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 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 audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 9, 2004

COMSTOCK HOMEBUILDING COMPANIES, INC.

BALANCE SHEET

June 7, 2004

ASSETS	
Cash	\$ 100
<hr/>	
TOTAL ASSETS	\$ 100
<hr/>	
STOCKHOLDERS' EQUITY	
Common stock, \$.01 par value, 10,000 shares authorized issued and outstanding	\$ 100
<hr/>	
TOTAL STOCKHOLDERS' EQUITY	\$ 100
<hr/>	

The accompanying notes are an integral part of this financial statement.

NOTES TO FINANCIAL STATEMENT

June 7, 2004

1. ORGANIZATION, BASIS OF PRESENTATION, AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Comstock Companies, Inc. (the "Company") was incorporated on May 24, 2004 as a Delaware corporation, and was capitalized on June 7, 2004 with cash of \$100 from shareholders as listed in Note 3 below. On June 30, 2004, the Company changed its name to Comstock Homebuilding Companies, Inc. The Company has not yet commenced operations.

Basis of Presentation

The financial statement has been prepared in accordance with accounting principles generally accepted in the United States.

Cash

The Company holds cash in a demand deposit account.

2. COMMON STOCK

At June 7, 2004, the Company's authorized share of capital consisted of 10,000 shares of Common Stock, par value \$0.01 per share, all of which were issued and outstanding.

3. INITIAL PUBLIC OFFERING AND RELATED CONSOLIDATION

The Company is currently undertaking an initial public offering of its Class A Common stock (the "Offering"). In addition, the Company will acquire 100% of the outstanding capital stock of Comstock Holding Company, Inc. and subsidiaries ("Comstock Holdings") following a consolidation that will take place immediately prior to the closing of the Offering (the "Consolidation"). The Consolidation will be effected through the mergers of Comstock Service Corp., Inc and subsidiaries ("Comstock Service") and Sunset Investment Corp., Inc. and subsidiaries ("Sunset") with and into Comstock Holdings and the acquisition of 100% of the outstanding capital stock of Comstock Homes, Inc. and subsidiaries ("Comstock Homes"). In connection with the Consolidation, Comstock Holdings, Comstock Service, Sunset and Comstock Homes will distribute cash and/or promissory notes to its shareholders in an amount equal to the their Subchapter S corporation accumulated adjustments account and undistributed tax basis in its subsidiaries and real estate partnerships, if any, as of the date on which the cash is paid and/or the notes are issued. The Company intends to use a portion of the net proceeds of this Offering to fund distributions to the shareholders of Comstock Holding, Comstock Service, Sunset and Comstock Homes in payment of all or a portion of the amounts that are due and payable under the promissory notes.

Statement of Financial Accounting Standards No. 141 "Business Combinations" ("SFAS No. 141") excludes transfers of net assets or exchanges of shares between entities under common control. Comstock Holdings, Sunset and Comstock Homes (collectively, "The Comstock Companies") are all wholly owned by the Company's shareholder with identical ownership interests and accordingly, the Company will account for the net assets received at their historical carrying amounts at the date of

transfer. Although Comstock Service is also wholly owned by the Company's common shareholders, the individual ownership percentages are different from those in The Comstock Companies, as follows:

	June 7, 2004	
	The Comstock Companies	Comstock Service
Christopher Clemente	37.5%	40.0%
Gregory Benson	37.5%	40.0%
Lawrence Golub	15.0%	15.0%
James Keena	10.0%	5.0%
	100.0%	100.0%

Because of the disparity between the individual ownership percentages, the Company believes the acquisition of Comstock Service to be a substantive exchange, which would be more appropriately accounted for as a purchase under SFAS No. 141, rather than historical carrying amounts.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Boards of Directors and Shareholders of The Comstock Companies (a combination of companies as defined in note 1 to the financial statements):

In our opinion, the accompanying combined consolidated balance sheets and the related combined consolidated statements of operations, shareholders' equity and cash flows present fairly, in all material respects, the combined financial position of The Comstock Companies and their subsidiaries at December 31, 2003 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003, 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 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.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 9, 2004

THE COMSTOCK COMPANIES
(a combination of companies as defined in note 1)

COMBINED CONSOLIDATED BALANCE SHEETS

(Amounts in thousands, except share data)

	As of December 31,		As of March 31, 2004	Pro Forma As of March 31, 2004
	2002	2003		
	(unaudited)			(note 17)
ASSETS				
Cash and cash equivalents	\$ 8,695	\$ 17,160	\$ 18,699	\$ 18,699
Receivables	202	1,938	704	704
Due from related parties	1,308	3,140	2,240	2,240
Real estate held for development and sale	20,192	65,272	73,586	73,586
Property, plant and equipment	200	223	326	326
Investment in real estate partnerships	1,157	1,139	1,138	1,138
Deferred income tax	—	—	—	1,232
Other assets	2,217	1,312	1,213	1,213
TOTAL ASSETS	\$ 33,971	\$ 90,184	\$ 97,906	\$ 99,138
LIABILITIES AND SHAREHOLDERS' EQUITY				
Accounts payable and accrued liabilities	\$ 4,117	\$ 10,454	\$ 12,653	\$ 12,653
Due to related parties	254	230	235	235
Notes payable	14,364	51,923	53,858	53,858
Notes payable—related parties	2,839	9,139	9,147	9,147
Distribution Payable	—	—	—	11,505
TOTAL LIABILITIES	21,574	71,746	75,893	87,398
Commitments and contingencies (Note 13)				
Minority interest	8,790	11,413	14,182	14,182
SHAREHOLDERS' EQUITY				
Comstock Holding Company, Inc.				
Common stock, \$1 par value; 2,000 shares authorized, 1,279 shares issued and outstanding	1	1	1	1
Comstock Homes, Inc.				
Common stock, \$1 par value; 2,000 shares authorized, 1,279 shares issued and outstanding	1	1	1	1
Sunset Investment Corp., Inc.				
Common stock, \$1 par value; 1,000 shares authorized, issued and outstanding	1	1	1	1
Additional paid-in capital	1,493	1,493	1,493	1,493
Retained earnings (accumulated deficit)	2,111	5,529	6,335	(3,938)
TOTAL SHAREHOLDERS' EQUITY (DEFICIT)	3,607	7,025	7,831	(2,442)
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)	\$ 33,971	\$ 90,184	\$ 97,906	\$ 99,138

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

THE COMSTOCK COMPANIES
(a combination of companies as defined in note 1)

COMBINED CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in thousands, except share data)

	Years Ended December 31,			Three Months Ended	
	2001	2002	2003	March 31, 2003	March 31, 2004
	(unaudited)				
Revenues					
Sale of real estate—Homes	\$ 48,058	\$ 29,397	\$ 49,081	\$ 7,229	\$ 15,136
Other revenue	2,871	5,355	6,440	1,033	2,745
Total revenue	50,929	34,752	55,521	8,262	17,881
Expenses					
Cost of sales of real estate	38,229	22,102	36,620	5,664	10,313
Cost of sales of other	2,624	4,718	5,136	926	2,148
Selling, general and administrative	3,900	3,725	5,712	995	2,310
Operating income	6,176	4,207	8,053	677	3,110
Other (income) expense, net	(302)	10	(44)	(26)	184
Income before minority interest and equity in earnings of real estate partnerships	6,478	4,197	8,097	703	2,926
Minority interest	1,965	664	2,297	354	848
Income before equity in earnings of real estate partnerships	4,513	3,533	5,800	349	2,078
Equity in earnings of real estate partnerships	6	51	139	33	28
Net income	\$ 4,519	\$ 3,584	5,939	\$ 382	2,106
Pro forma provision for income taxes, net of minority interest of \$879 and \$339, respectively (Note 17)			2,373		809
Pro forma net income			\$ 3,566		\$ 1,297
Pro forma earnings per share:					
Pro forma basic and diluted earnings per share			\$ —		\$ —

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

THE COMSTOCK COMPANIES
(a combination of companies as defined in note 1)

COMBINED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(Amounts in thousands, except per share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Total
	Shares	Amount			
Balance, December 31, 2000	2,558	\$ 2	\$ 190	\$ 2,416	\$ 2,608
Repurchase of shares	(116)	—	—	—	—
Stock compensation	116	—	117	—	117
Distributions	—	—	—	(4,308)	(4,308)
Net income	—	—	—	4,519	4,519
Balance, December 31, 2001	2,558	2	307	2,627	2,936
Repurchase of shares	(68)	—	—	—	—
Stock compensation	68	—	77	—	77
Contributions	1,000	1	1,109	—	1,110
Distributions	—	—	—	(4,100)	(4,100)
Net income	—	—	—	3,584	3,584
Balance, December 31, 2002	3,558	3	1,493	2,111	3,607
Distributions	—	—	—	(2,521)	(2,521)
Net income	—	—	—	5,939	5,939
Balance, December 31, 2003	3,558	3	1,493	5,529	7,025
Distributions (unaudited)	—	—	—	(1,300)	(1,300)
Net income (unaudited)	—	—	—	2,106	2,106
Balance, March 31, 2004 (unaudited)	3,558	\$ 3	\$ 1,493	\$ 6,335	\$ 7,831

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

THE COMSTOCK COMPANIES
(a combination of companies as defined in note 1)

COMBINED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands)

	Years Ended December 31,			Three Months Ended March 31,	
	2001	2002	2003	2003	2004
	(unaudited)				
Cash flows from operating activities:					
Net income	\$ 4,519	\$ 3,584	\$ 5,939	\$ 382	\$ 2,106
Adjustment to reconcile net income to net cash provided by operating activities					
Depreciation	20	61	67	20	27
Impairment on real estate held for development and sale	1,023	—	—	—	—
Minority interest	1,965	664	2,297	354	848
Equity in earnings of real estate partnerships	(6)	(51)	(139)	(33)	(28)
Stock compensation	117	77	—	—	—
Changes in operating assets and liabilities:					
Receivables	(261)	402	(1,736)	(888)	1,234
Due from related parties	(692)	(564)	(1,832)	(99)	(400)
Real estate held for development and sale	3,087	(11,757)	(44,260)	(2,100)	(3,560)
Other assets	(318)	(1,057)	1,005	1,546	(151)
Accounts payable and accrued liabilities	(1,827)	825	6,237	(1,381)	2,194
Due to related parties	245	(50)	(24)	(75)	5
Net cash provided by (used in) operating activities	7,872	(7,866)	(32,446)	(2,274)	2,275
Cash flows from investing activities:					
Purchase of property, plant, and equipment	(79)	(132)	(90)	(35)	(130)
Distributions from Investments in real estate partnerships	—	—	157	65	30
Investment in real estate partnerships	—	(1,000)	—	—	—
Net cash (used in) provided by investing activities	(79)	(1,132)	67	30	(100)
Cash flows from financing activities:					
Proceeds from notes payable	30,889	26,240	74,521	6,729	12,033
Proceeds from related party notes payable	—	2,839	6,300	—	8
Payments on notes payable	(33,059)	(21,218)	(37,782)	(4,674)	(12,077)
Contribution from minority shareholders	850	7,592	2,000	—	—
Contributions received from shareholders	—	1,110	—	—	—
Distributions paid to minority shareholders	(1,743)	(1,856)	(1,674)	—	(600)
Distributions paid to shareholders	(4,308)	(4,100)	(2,521)	(83)	—
Net cash (used in) provided by financing activities	(7,371)	10,607	40,844	1,972	(636)
Net increase (decrease) in cash and cash equivalents	422	1,609	8,465	(272)	1,539
Cash and cash equivalents, beginning of period	6,664	7,086	8,695	8,695	17,160
Cash and cash equivalents, end of period	\$ 7,086	\$ 8,695	\$ 17,160	\$ 8,423	\$ 18,699
Supplemental information of noncash activities					
Amounts owed for real estate acquired via deferred purchase agreements (Note 9)	\$ 446	\$ 308	\$ 1,128	\$ 308	\$ 957
Net assets consolidated per FIN 46 (Note 3)	—	—	—	—	2,672
Noncash distributions to shareholders	—	—	—	—	1,300
Supplemental Cash Flow Data					
Interest paid (net of amounts capitalized)	\$ 12	\$ 12	\$ 8	\$ 2	\$ 6

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

THE COMSTOCK COMPANIES
(a combination of companies as defined in note 1)

NOTES TO COMBINED CONSOLIDATED FINANCIAL STATEMENTS

(Amounts in thousands, except share data)

1. BASIS OF PRESENTATION

The accompanying combined consolidated financial statements include the accounts of Comstock Holding Company, Inc. and Subsidiaries ("Comstock Holdings"), Comstock Homes, Inc. and Subsidiary ("Comstock Homes") and Sunset Investment Corp., Inc. and Subsidiaries ("Sunset") (collectively "The Comstock Companies" or the "Company"). Comstock Holdings, Comstock Homes and Sunset are all wholly owned by the same common shareholders and were incorporated in June 1991, January 1993 and June 2002, respectively.

The Company develops, builds and markets single-family homes, townhouses and condominiums in the Washington D.C. 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 combined consolidated financial statements is as follows:

Principles of consolidation

The combined consolidated financial statements include all controlled subsidiaries. In addition, the Company reviews its relationships with other entities to assess if 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.

Investment in real estate partnerships

Real estate partnerships in which the Company has significant influence, 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.

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.

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.

Cash and cash equivalents

Cash and cash equivalents are comprised of cash and short-term investments with original maturities of three months or less. Banking institutions with which the Company does business are considered credit worthy; therefore, credit risk associated with cash and cash equivalents is considered low.

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, 2002 and 2003 and March 31, 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.

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 capitalized interest activity:

	Years Ended December 31,			March 31, 2004 (unaudited)
	2001	2002	2003	
Beginning interest capitalized	\$ 1,247	\$ 468	\$ 586	\$ 1,428
Plus: Interest incurred on notes payable	598	550	1,782	680
Plus: Interest incurred on related party notes payable	—	177	154	345
Less: Interest expensed as a component of cost of sales	(1,377)	(609)	(1,094)	(250)
Ending interest capitalized	\$ 468	\$ 586	\$ 1,428	\$ 2,203

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:

	Years Ended December 31,			March 31, 2004 (unaudited)
	2001	2002	2003	
Balance at beginning of period	\$ 643	\$ 615	\$ 460	\$ 541
Additions	373	214	344	167
Releases and/or charges incurred	(401)	(369)	(263)	(37)
Balance at end of period	\$ 615	\$ 460	\$ 541	\$ 671

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.

Advertising costs

The total amount of advertising costs charged to general, selling and administrative expense was \$296, \$413, \$391, \$54 and \$194 for the years ended December 31, 2001, 2002 and 2003 and the three months ended March 31, 2003 and 2004, respectively.

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.

Minority interest

Minority interest reflects third parties' ownership interest in entities the Company has consolidated. Also included in minority interest is the estimated fair value of all third-party interests in our consolidated variable interest entities, which are described in Note 3.

Income taxes

The Company has elected to be treated as an S corporation under Subchapter S of the Internal Revenue Code and is therefore not subject to income taxes. Taxable income or loss is passed through and reported by the individual shareholders. As such, no provision for income taxes has been reflected in the combined consolidated financial statements.

Stock compensation

Stock issued in consideration for services is recorded at estimated fair value on the date of issuance, in accordance with Statement of Financial Accounting Standards No. 123 ("SFAS 123") "Accounting for Stock-based Compensation."

Earnings per share

Basic and diluted earnings per share are calculated by dividing net income available to common shareholders by the weighted average number of common shares outstanding for the period.

	Years Ended December 31,			Three Months Ended March 31, 2003	Three Months Ended March 31, 2004
	2001	2002	2003		
				(unaudited)	
Net income	\$ 4,519	\$ 3,584	\$ 5,939	\$ 382	\$ 2,106
Weighted-average shares outstanding	2,558	3,058	3,558	3,558	3,558
Basic and diluted earnings per share	\$ 1,767	\$ 1,172	\$ 1,669	\$ 107	\$ 592

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.

Comprehensive income

For the years ended December 31, 2001, 2002, and 2003 and the three months ended March 31, 2003 and 2004, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying combined consolidated financial statements.

Recent accounting pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, "Consolidation of Variable Interest Entities" ("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. The Company 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, FIN46-R was deferred to the end of the first interim or annual period ending after March 15, 2004. The Company fully adopted FIN 46-R effective March 31, 2004. Based on the provisions of FIN 46-R, the Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit, a variable interest entity is created under condition (ii) (b) of the previous paragraph. The Company has 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. For each variable interest entity created the Company will compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46-R. If the Company is deemed to be the primary beneficiary of the variable interest entity it will consolidate the variable interest entity on its balance sheet. See Note 3.

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 (see recent accounting pronouncement in Note 2). 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 one of those entities. As a result, at March 31, 2004, the Company has consolidated this entity in the accompanying combined consolidated balance sheet. The effect of the

consolidation at March 31, 2004 was the inclusion of \$4,925 in "Real estate held for development and sale" with a corresponding inclusion of \$2,150 to "Notes Payable", \$4 to "Accounts payable and accrued payables" and \$2,521 to "Minority Interests," after elimination of inter-company items.

4. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

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

	December 31,		March 31, 2004 (unaudited)
	2002	2003	
Land and land development costs	\$ 8,184	\$ 48,459	\$ 46,658
Cost of construction (including capitalized interest and real estate taxes)	11,104	16,261	21,451
Homes held for resale (model homes)	904	552	552
	<u>\$ 20,192</u>	<u>\$ 65,272</u>	<u>\$ 68,661</u>
Land and land development costs—variable interest entity	—	—	4,925
	<u>\$ 20,192</u>	<u>\$ 65,272</u>	<u>\$ 73,586</u>

5. PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment consist of the following:

	December 31,		March 31, 2004 (unaudited)
	2002	2003	
Computer equipment	\$ 280	\$ 318	\$ 348
Furniture and fixtures	54	89	116
Office equipment	148	165	239
	<u>482</u>	<u>572</u>	<u>703</u>
Less: accumulated depreciation	282	349	377
	<u>\$ 200</u>	<u>\$ 223</u>	<u>\$ 326</u>

Depreciation expense, included in "Selling, general, and administrative" in the combined consolidated financial statements of operations, amounted to \$20, \$61 and \$67 for the years ended December 31, 2001, 2002 and 2003, respectively. Depreciation expense for the three months ended March 31, 2003 and 2004 amounted to \$20 and \$27, respectively.

6. INVESTMENTS IN REAL ESTATE PARTNERSHIPS

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

	December 31,		March 31, 2004
	2002	2003	
			(unaudited)
TCG Fund I, L.C.(1)	\$ 1,065	\$ 1,029	\$ 1,029
Comstock North Carolina, L.L.C.(2)	92	110	109
	\$ 1,157	\$ 1,139	\$ 1,138

- (1) TCG Fund I, L.C. ("Fund I")—During 2002, the Company made a \$1,000 investment in Fund I. Under the terms of the investment the Company has a 9.58% member interest in Fund I and a 33.18% interest in the Loan Class of Fund I. Fund I provides funds for real estate projects being developed, managed or built by entities in which the Company has an interest. For the years ended December 31, 2002 and 2003 and the three months ended March 31, 2003 and March 31, 2004 the Company recorded earnings of \$65, \$120, \$30, and \$30, respectively. The Company received distributions of \$0, \$156 and \$30 during the year ended December 31, 2002 and 2003 and the three months ended on March 31, 2004, respectively.
- (2) Comstock North Carolina, L.L.C. ("Comstock North Carolina")—The Company has a 1.35% member interest in Comstock North Carolina, an entity formed to acquire developed residential lots and constructed single-family and townhouse units through subsidiary entities. The remaining 98.65% of member interests are held by 18 individual investors, including Comstock Service acting as general partner and owning a 75% member interest. For the years ended December 31, 2001, 2002 and 2003 and the three months ended March 31, 2003 and March 31, 2004, the Company recorded earnings (losses) of \$6, \$(14), \$19, \$3, and \$(2), respectively. The Company has not received any distributions during the years ended December 31, 2002 and 2003 and for the three months ended March 31, 2004.

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 (unaudited)

	December 31,		
	2002	2003	March 31, 2004
Real estate held for development and sale	\$ 8,375	\$ 8,575	\$ 9,551
Other assets	11,721	11,780	10,528
Total assets	\$ 20,096	\$ 20,355	\$ 20,079
Mortgage notes payable	\$ 7,101	\$ 5,577	\$ 5,528
Notes payable to related parties	254	606	728
Other liabilities	886	1,330	437
Total liabilities	8,241	7,513	6,693
Partners' capital	11,855	12,842	13,386
Total liabilities and partners' capital	\$ 20,096	\$ 20,355	\$ 20,079

Condensed Combined Statements of Operations (unaudited)

	Years Ended December 31,			Three Months Ended March 31, 2003	Three Months Ended March 31, 2004
	2001	2002	2003		
Revenues	\$ 9,896	\$ 12,225	\$ 11,349	\$ 3,748	\$ 1,198
Operating income (loss)	385	(832)	1,691	(123)	(21)
Other (income) and expense	(124)	32	21	—	9
Net income (loss)	\$ 509	\$ (864)	\$ 1,670	\$ (123)	\$ (30)
Company's share of net income (loss)	\$ 6	\$ 51	\$ 139	\$ 33	\$ 28

7. OTHER ASSETS

Other assets consist of the following:

	December 31,		
	2002	2003	March 31, 2004
			(unaudited)
Contract land deposits	\$ 1,825	\$ 380	\$ 280
Restricted escrow deposits	331	431	463
Other	61	501	470
	\$ 2,217	\$ 1,312	\$ 1,213

8. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following:

	December 31,		March 31, 2004
	2002	2003	
			(unaudited)
Trade payables	\$ 1,958	\$ 7,418	\$ 8,898
Warranty	460	541	671
Customer deposits	818	1,263	1,911
Other	881	1,232	1,173
	<u>\$ 4,117</u>	<u>\$ 10,454</u>	<u>\$ 12,653</u>

9. 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:

	December 31,		March 31, 2004
	2002	2003	
			(unaudited)
Notes payable to non-related parties			
Shared construction and development loans with monthly interest payments ranging from prime + 0.5% to Prime +1% (4.75% to 5.25%, 4.50% to 5.00% and 4.50% to 5.00% for the years ended December 31, 2002 and 2003 and the three months ended March 31, 2004, respectively)	\$ 14,056	\$ 33,567	\$ 33,523
Acquisition loan facility of \$16,000 with monthly interest only payments at the 30 day LIBOR rate + 3% (4.12% and 4.09% at December 31, 2003 and March 31, 2004) maturing in November 2004	—	16,000	16,000
Subordinated 2 nd trust loans of \$1,000 and \$228 with monthly interest only payments of 18% and 14% respectively, The notes mature in October 2004 and August 2007, respectively	—	1,228	1,228
Non-interest bearing deferred purchase money notes issued in exchange for land	308	1,128	957
Notes payable-variable interest entity consolidated per Fin 46	—	—	2,150
	<u>14,364</u>	<u>51,923</u>	<u>53,858</u>
Notes payable to related parties			
Subordinated second trust loans of \$6,000 and \$300 with monthly interest only payments of 18% and 14% respectively, The notes mature in October 2004 and August 2007, respectively	—	6,300	6,308
Note payable to TCG Fund I LLC, a related party due to common ownership, for a loan up to \$4,000 with interest only payments at 12% per annum maturing in June 2006. At December 31, 2002, 2003 and March 31, 2004 the accrued interest on the note is \$185, \$90 and \$85, respectively	2,839	2,839	2,839
	<u>\$ 17,203</u>	<u>\$ 61,062</u>	<u>\$ 63,005</u>

For the years ended December 31, 2001, 2002 and 2003 and for the three months ended March 31, 2004, aggregate debt had a weighted average annual effective interest rate of 6.0%, 6.0%, 6.6% and 6.8%, 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, 2003 and March 31, 2004, 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.

During May 2000, the Company entered into a non-interest bearing deferred purchase money note agreement in exchange to hold title to and develop certain land. Under the terms of the note, the Company is permitted to develop lots on the underlying land, and upon settlement is obligated to pay a specific release payment. During April 2003, the note was increased by \$820 as a result of additional land commitments. From May 2000 to March 31, 2003, the Company, as a result of settled lots, has paid a total of \$515.

10. COMMON STOCK

In June 2002, Sunset issued 1,000 shares of its \$1 par value common stock upon formation in consideration of \$1,110.

During 2001 and 2002, the Company repurchased 116 shares and 68 shares, respectively, of its \$1 par value common stock for \$5 per share from one of the shareholders under the terms of agreements entered into by the shareholders of Comstock Holdings and Comstock Homes. During 2001 and 2002, 116 shares and 68 shares, respectively, were issued to certain shareholders of Comstock Holdings and Comstock Homes in consideration for services rendered. The Company recorded compensation expense of \$117 and \$77, respectively, in consideration for such services rendered.

11. RELATED PARTY TRANSACTIONS

In June 2002, the Company 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 (Note 6). The promissory note agreement allows the Company to borrow up to \$4 million. The note bears interest at 12% per annum and is due on June 15, 2006. During the year ended December 31, 2002, the Company borrowed \$2.8 million under this promissory agreement. As of December 31, 2002 and 2003 and March 31, 2004, the amount owed to TCG Fund I amounted to \$2.8 million. Accrued interests on this note totaled \$185, \$85 and \$85 at December 31, 2002 and 2003 and March 31, 2004, respectively.

In July 2002, the Company entered into lease agreements for its corporate headquarters in Reston, Virginia from Comstock Partners, L.C., a related party in which Christopher Clemente, Gregory Benson (executive officers and shareholders of the Company), and an entity owned by Chris Clemente's father-in-law are shareholders. For the years ended December 31, 2002 and 2003 and for the three months ended March 31, 2003 and 2004, total payments made under this lease agreement were \$114, \$221, \$46, and \$64, respectively.

In May 2003, the Company hired a construction company, in which Christopher Clemente's brother 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 \$829, \$0, and \$322 to this construction company during the year ended December 31, 2003 and the three months ended March 31, 2003 and 2004, respectively, to this company.

In May 2003, the Company entered into a lot purchase agreement to sell 47 developed lots to an entity in which Christopher Clemente's father-in-law serves as the chief executive officer and chairman of the board of directors and is a shareholder. During the year ended December 31, 2003 and the three months ending March 31, 2004, the Company sold 17 and 13 lots, respectively, to this entity for \$2,193 and \$1,677, respectively.

In July 2003, the Company loaned William Bensten, an officer of the Company, \$70. The loan was repaid in August 2003 with no interest.

In December 2003, the Company entered into a \$7,000 second trust loan agreement, accruing interest at 18% per annum, with Comstock Capital Partners, L.C., a related party in which Christopher Clemente and Gregory Benson are shareholders. 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, at 15% per annum. The remaining \$1 million of principal under the loan was assigned to a third party at 18% per annum. At December 31, 2003 and March 31, 2004, the principal owed was \$7,000 and \$7,008, respectively. Accrued interest at December 31, 2003 and March 31, 2004 amounted to \$55 and \$72, respectively.

During the year ended December 31, 2003 and the three months ended March 31, 2003 and 2004, the Company paid \$500, \$0 and \$0, respectively, to Investors Management, LLC for consulting services provided. Investors Management, LLC is a related party, which is owned by Christopher Clemente, Gregory Benson, Bruce Labovitz, Lawrence Golub and James Keena (executive officers and/or shareholders of the Company). In addition, at December 31, 2003 and March 31, 2004, the Company had an outstanding note receivable from Investors Management, LLC of \$14, which accrues interest at a rate of 10% per annum.

In October 2003, the Company entered into a promissory note totaling \$300 with Bruce Labovitz's parents. The note bears an annual interest rate of 14% and begins accruing interest after the first anniversary of the note.

During 2003, the Company 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 year ended December 31, 2003 and the three months ended March 31, 2003 and 2004, the Company paid \$471, \$62, and \$112, respectively, to I-Connect. Also, in March 2003, the Company 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 Company paid \$40 under this agreement in 2003 and \$7 and 4 during the three months ended March 31, 2003 and 2004, respectively. On June 24, 2003, the I-Connect, L.C. sublease was assigned to Comstock Partners, L.C. (as landlord).

As of December 31, 2003, certain employees and their relatives have invested limited amounts of capital in the Company, and therefore hold minority membership interests or promissory notes.

During 2001, 2002 and 2003 and the three months ended March 31, 2003 and 2004, the Company received revenue of approximately \$2,596, \$4,348, \$2,908, \$663 and \$737, respectively, by providing administrative and sales support to Comstock Service Corp., Inc., a related party owned by Christopher Clemente, Gregory Benson, Jim Keena and Lawrence Golub. At December 31, 2002 and 2003, and March 31, 2004, the Company had a receivable of approximately \$365, \$2,690 and \$1,475, respectively, from this entity.

For the years ended December 31, 2001, 2002 and 2003, the Company received revenue of approximately \$0, \$634 and \$926, respectively, and \$246, and \$371 during the three months ending in March 31, 2003 and 2004, respectively, by providing administrative and sales support to other related parties in which Christopher Clemente, Gregory Benson, Jim Keena, Lawrence Golub and Chris Clemente's father-in-law are shareholders.

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

During the course of the years ended December 31, 2001, 2002 and 2003 and the three months ended March 31, 2003 and March 31, 2004, the Company provided bookkeeping services to related party entities at no charge.

12. RETIREMENT PLAN

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 made no contributions to the plan during the years ended December 31, 2001, 2002 and 2003 and the three months ended March 31, 2003 and March 31, 2004.

13. COMMITMENTS AND CONTINGENCIES

Loan guarantees

The Company has guaranteed loans made to Comstock Service Corp., Inc. from its shared construction and development loan facilities. As of December 31, 2003 and March 31, 2004, Comstock

Service Corp., Inc. had outstanding loan balances totaling \$8,852 and \$8,871, respectively, that were guaranteed by the Company. The loans mature between August 2004 and February 2005.

Litigation

In the normal course of its business, the Company and/or its subsidiaries are named as defendants in certain legal actions arising from its normal business activities. Management believes that none of the litigation matters in which the Company or any subsidiary is involved would have a material adverse effect on the consolidated financial condition or operations of the Company.

Lot purchase agreements

On December 26, 2001, the Company 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, 2003 and March 31, 2004, the Company had commitments to purchase fifty-six lots at an average minimum purchase price of approximately \$65 per lot, under non-specific performance agreements.

Homes sold under construction

As of December 31, 2003, the Company has commitments to sell homes that are under construction and included in the Company's real estate held for sale ("Backlog"). At December 31, 2003 and March 31, 2004, the Company's Backlog was \$35,396 and \$65,690, respectively.

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, 2003, the Company has issued \$590 in letters of credit and \$9,795 in performance and payment bonds to these third parties.

Operating leases

The Company leases office space under non-cancelable operating leases. Minimum annual lease payments under these leases at December 31, 2003 approximate:

Year Ended:	Amount
2004	\$ 449
2005	428
2006	227
2007	221
2008	227
Thereafter	95
Total	\$ 1,647

Operating lease rental expense aggregated \$153, \$205 and \$304, respectively, for 2001, 2002 and 2003 and \$54 and \$89, respectively, for the three months ended March 31, 2003 and 2004.

14. 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, 2002 and 2003 and March 31, 2003 were as follows:

	December 31,		March 31, 2004 (unaudited)
	2002	2003	
Carrying amount	\$ 2,839	\$ 10,367	\$ 10,375
Fair value	\$ 3,438	\$ 11,672	\$ 11,423

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.

15. SUBSEQUENT EVENTS

On April 30, 2004, the Company entered into a three year \$5,000 promissory note agreement bearing interest at a rate of 12%. Under the terms of the note, the Company was advanced \$2,500 on April 30, 2004 and has the option to draw an additional \$2,500 within 90 days of this date. In the event of a consolidation of The Comstock Companies, the lender is entitled to a premium of up to 15% of the outstanding principal balance.

On June 4, 2004, the Company entered into an \$11,200 loan agreement with an interest rate of Prime + .5% and a maturity date of June 4, 2007. Under the terms of the loan, the Company may draw up to \$11,200 with interest-only payments due monthly. On June 4, 2004, the Company was advanced a total of \$3,150, of which \$2,514 was used to pay down other notes payable. The loan is secured by land that is owned by the Company and guaranteed by Christopher Clemente and Gregory Benson (executive officers of the Company).

After March 31, 2004, the Company made distributions of \$4,233 to shareholders and \$8,432 to minority shareholders.

From April 2004 to August 2004, the Company borrowed an additional \$445 from TCG Fund I, LC, a related party in which the Company has an equity investment. (Notes 6 and 11)

16. INITIAL PUBLIC OFFERING AND RELATED CONSOLIDATION—UNAUDITED

Comstock Homebuilding Companies, Inc. is currently undertaking an initial public offering of its Class A Common stock ("the Offering"). In addition, Comstock Homebuilding Companies, Inc. will acquire 100% of the outstanding capital stock of Comstock Holdings following a consolidation that will take place immediately prior to the closing of the Offering (the "Consolidation"). The Consolidation will be effected through the mergers of Comstock Service Corp., Inc. and Sunset with and into Comstock Holdings and the acquisition of 100% of the outstanding capital stock of Comstock Homes. For accounting purposes the merger with Comstock Service Corp., Inc. will be accounted for as an acquisition. In connection with the Consolidation, the Company and Comstock Service Corp., Inc. will distribute promissory notes to its shareholders in an amount equal to the their Subchapter S corporation accumulated adjustments account and undistributed tax basis in its subsidiaries and real estate partnerships, if any, as of the date on which the notes are issued. Such amount is reflected as "Distributions Payable" in the accompanying pro forma balance sheet as of March 31, 2004. Comstock Homebuilding Companies, Inc. intends to use a portion of the net proceeds of this Offering to purchase certain minority interests and to fund distributions to the shareholders of the Company and Comstock Service Corp., Inc. in payment of all or a portion of the amounts that are due and payable under the promissory notes.

17. INCOME TAXES AND PRO FORMA INFORMATION—UNAUDITED

The combined consolidated financial statements of the Company do not include a provision for income taxes because the taxable income of the Company was included in the income tax returns of the stockholders pursuant to elections to be treated as S corporations.

In connection with the Offering, and the related Consolidation (see note 16), The Comstock Companies will no longer be treated as S corporations for income tax purposes. The Comstock Companies will be subject to Federal and State corporate income taxes and will recognize deferred taxes in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("SFAS No. 109"). SFAS No. 109 requires companies subject to income taxes to adjust their deferred tax assets and liabilities based on temporary differences between financial statement and tax bases of assets and liabilities using enacted tax rates in effect in the year in which the differences are

expected to reverse. Based on temporary differences existing as of December 31, 2003 and March 31, 2004, the net deferred income taxes are as follows:

	<u>December 31, 2003</u>	<u>March 31, 2004</u>
Deferred tax assets:		
Real estate held for development and sale	\$ 2,595	\$ 3,564
Warranty reserve	207	218
Accrued expenses and other	145	194
	<u>2,947</u>	<u>3,976</u>
Gross deferred tax assets	2,947	3,976
Less: valuation allowance	(1,986)	(2,710)
	<u>961</u>	<u>1,266</u>
Deferred tax liability:		
Property, plant and equipment	45	34
	<u>45</u>	<u>34</u>
Net deferred tax assets	\$ 916	\$ 1,232
	<u>\$ 916</u>	<u>\$ 1,232</u>

The components of the pro forma income tax provisions are as follows:

	<u>Year Ended December 31, 2003</u>	<u>Three Months Ended March 31, 2004</u>
Current tax provision		
Federal	\$ 3,439	\$ 1,215
State	700	249
Deferred tax benefit	(887)	(316)
	<u>\$ 3,252</u>	<u>\$ 1,148</u>

The effective pro forma income tax rate differs from the 34% statutory federal rate principally as a result of state income taxes and changes in the valuation allowance.

The unaudited pro forma balance sheet has been presented to give effect to (i) the distribution of promissory notes to shareholders in an amount equal to their Subchapter S corporation accumulated adjustments account and undistributed tax basis in its subsidiaries and real estate partnerships (note 16) and (ii) the recognition of net deferred tax assets, upon termination of S corporation election, as if it occurred on March 31, 2004.

A reconciliation of historical retained earnings at March 31, 2004 to pro forma accumulated deficit follows:

Historical retained earnings	\$ 6,335
Distribution payable	(11,505)
Deferred income tax	1,232
	<u>1,232</u>
Pro forma accumulated deficit	\$ (3,938)

Pro forma earnings per share is computed by dividing the pro forma net income for the period by the pro forma weighted average number of shares of common stock outstanding during the period. The historical shares outstanding have been adjusted to reflect the additional number of shares, on an equivalent basis, which are necessary to pay the \$ million S corporation distributions.

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Shareholders of Comstock Service Corp., Inc.:

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of operations, shareholders' equity and cash flows present fairly, in all material respects, the financial position of Comstock Service Corp., Inc. and subsidiaries at December 31, 2003, and the results of their operations and their cash flows for the year ended December 31, 2003, 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 audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit 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 audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 9, 2004

COMSTOCK SERVICE CORP., INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Amounts in thousands, except share data)

	As of December 31, 2003	As of March 31, 2004
		(unaudited)
ASSETS		
Cash and cash equivalents	\$ 1,796	\$ 910
Due from related parties	298	250
Real estate held for development and sale	20,222	20,694
Other assets	51	51
	<u>22,367</u>	<u>21,905</u>
TOTAL ASSETS	\$ 22,367	\$ 21,905
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	\$ 1,564	\$ 1,350
Due to related parties	1,974	811
Notes payable	14,051	13,913
Notes payable—related parties	1,019	1,149
	<u>18,608</u>	<u>17,223</u>
TOTAL LIABILITIES	18,608	17,223
Commitments and contingencies (Note 8)		
Minority interest	2,820	2,713
	<u>2,820</u>	<u>2,713</u>
SHAREHOLDERS' EQUITY		
Common stock, \$1 par value; 2,000 shares authorized, 1,279 shares issued and outstanding	1	1
Additional paid-in capital	1,724	3,024
Accumulated deficit	(786)	(1,056)
	<u>939</u>	<u>1,969</u>
TOTAL SHAREHOLDERS' EQUITY	939	1,969
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 22,367	\$ 21,905

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

COMSTOCK SERVICE CORP., INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in thousands)

	Year Ended December 31, 2003	Three Months Ended March 31,	
		2003	2004
(unaudited)			
Revenues			
Sale of real estate	\$ 13,278	\$ 4,216	\$ 1,589
Settlement title services	112	14	59
Total revenue	13,390	4,230	1,648
Expenses			
Cost of sales of real estate	9,421	2,889	1,353
Cost of sales of settlement title services	43	9	16
Selling, general and administrative	3,284	762	624
Operating income (loss)	642	570	(345)
Other (income) expense, net	(26)	(27)	32
Income (loss) before minority interest	668	597	(377)
Minority interest	1,416	431	(107)
Net (loss) income	\$ (748)	\$ 166	\$ (270)

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

COMSTOCK SERVICE CORP., INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDER'S EQUITY

(Amounts in thousands, except share data)

	Common Stock		Paid-in Capital	Retained Earnings	Total
	Shares	Amount			
Balance, December 31, 2002	1,279	\$ 1	\$ 1,724	\$ 16	\$ 1,741
Distributions	—	—	—	(54)	(54)
Net loss	—	—	—	(748)	(748)
Balance, December 31, 2003	1,279	1	1,724	(786)	939
Contributions (unaudited)	—	—	1,300	—	1,300
Net loss (unaudited)	—	—	—	(270)	(270)
Balance, March 31, 2004 (unaudited)	1,279	\$ 1	\$ 3,024	\$ (1,056)	\$ 1,969

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

COMSTOCK SERVICE CORP., INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands)

	Year Ended December 31, 2003	Three Months Ended March 31,	
		2003	2004
		(unaudited)	
Cash flows from operating activities:			
Net (loss) income	\$ (748)	\$ 166	\$ (271)
Adjustment to reconcile net income to net cash provided by operating activities			
Minority interest	1,416	431	(107)
Impairment of real estate held for development and sale	109	—	—
Write off of land deposits	200	—	—
Changes in operating assets and liabilities:			
Due from related parties	(150)	18	48
Real estate held for development and sale	(773)	875	(472)
Other assets	(49)	(71)	1
Accounts payable and accrued liabilities	592	(152)	(214)
Due to related parties	1,376	(178)	137
Net cash provided by (used in) operating activities	1,973	1,089	(878)
Cash flows from financing activities:			
Proceeds from notes payable	9,619	—	1,081
Proceeds from related party notes payable	872	558	130
Payments on notes payable	(11,781)	(1,833)	(1,219)
Distributions paid to shareholders	(54)	—	—
Net cash used in financing activities	(1,344)	(1,275)	(8)
Net increase (decrease) in cash and cash equivalents	629	(186)	(886)
Cash and cash equivalents, beginning of period	1,167	1,167	1,796
Cash and cash equivalents, end of period	\$ 1,796	\$ 981	\$ 910
Supplemental information of noncash activities			
Noncash contributions from shareholders	—	—	1,300
Supplemental Cash Flow Data			
Interest paid (net of capitalized amounts)	\$ —	\$ —	\$ —

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

COMSTOCK SERVICE CORP., INC. AND SUBSIDIARIES
NOTES TO COMBINED CONSOLIDATED FINANCIAL STATEMENTS

(Amounts in thousands)

1. BASIS OF PRESENTATION

Comstock Service Corp., Inc. and subsidiaries (the "Company") was incorporated in 1996 to acquire, develop, own, manage, and otherwise enter into transactions related to real estate property. The Company is owned by the common shareholders of Comstock Holding Company, Inc. and subsidiaries ("Comstock Holdings"), Comstock Homes, Inc. and subsidiaries ("Comstock Homes") and Sunset Investment Corporation, Inc. and subsidiaries ("Sunset").

The Company develops, builds and markets single-family homes, townhouses and condominiums in North Carolina. The Company also provides settlement and title services through its subsidiary Settlement Title Services, LLC.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

Principles of consolidation

The consolidated financial statements include all controlled subsidiaries. In addition, the Company reviews its relationships with other entities to assess if 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 pronouncement" section of this Note, Note 3 and Note 11 for additional discussion on consolidation of variable interest entities. All material inter-company balances and transactions are eliminated in consolidation.

Investment in real estate partnerships

Real estate partnerships in which the Company has significant influence 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.

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, capitalization of costs, consolidation of variable interest entities and warranty reserves.

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, an adequate cash downpayment has been received and the Company has no significant continuing involvement in the property.

Revenues from settlement title services are recognized as the services are provided.

Cash and cash equivalents

Cash and cash equivalents are comprised of cash and short-term investments with original maturities of three months or less. Banking institutions with which the Company does business are considered credit worthy; therefore, credit risk associated with cash and cash equivalents is considered low.

Receivables

Receivables include amounts in transit or due from title and settlement companies for residential property closings. As of December 31, 2003 and March 31, 2004 the Company had no outstanding receivables.

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.

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 capitalized interest activity:

	Year Ended December 31, 2003	March 31, 2004
		(unaudited)
Beginning interest capitalized	\$ 1,887	\$ 2,284
Plus: Interest incurred on notes payable	850	185
Plus: Interest incurred on related party notes payable	83	11
Less: Interest expensed as a component of cost of sales	(536)	(96)
Ending interest capitalized	\$ 2,284	\$ 2,384

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:

	Year Ended December 31, 2003	March 31, 2004
		(unaudited)
Balance at beginning of period	\$ 192	\$ 168
Additions	85	6
Releases and/or charges incurred	(109)	(28)
Balance at end of period	\$ 168	\$ 146

Advertising costs

The total amount of advertising costs charged to general, selling and administrative expense was \$267, \$52 and \$56 for the year ended December 31, 2003 and the three months ended March 31, 2003 and 2004, respectively.

Environmental remediation costs

Development and sale of real property creates a potential for an 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 for properties previously sold are expensed in the period when identified.

Minority interest

Minority interest reflects third parties' ownership interest in ventures that the Company controls.

Income taxes

The Company has elected to be treated as an S corporation under Subchapter S of the Internal Revenue Code and is therefore not subject to income taxes. Taxable income or loss is passed through and reported by the individual shareholders. As such, no provision for income taxes has been reflected in the combined consolidated financial statements.

Stock compensation

Stock issued in consideration for services is recorded at estimated fair value on the date of issuance, in accordance with SFAS 123, "Accounting for Stock-based Compensation."

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.

Comprehensive income

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

Recent accounting pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, "Consolidation of Variable Interest Entities" ("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. The Company adopted the provisions of FIN 46-R on February 1, 2003 to the extent that they related to variable interest entity's created on or after that date. For variable interest entity's 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. The Company fully adopted FIN 46-R effective March 31, 2004. Based on the provisions of FIN 46-R, the Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit, a variable interest entity is created under condition (ii) (b) of the previous paragraph. The Company has 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. For each variable interest entity created the Company will compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46-R. If the Company is deemed to be the primary beneficiary of the variable interest entity it will consolidate the variable interest entity on its balance sheet. See Note 3. In addition, the Company has determined that its investment in North Shore Investors LLC ("North Shore") is also a variable interest entity, but that the Company is not the primary beneficiary and accordingly, not required to consolidate North Shore. See Note 5.

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 (see recent accounting pronouncements in Note 2). 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 did not have any land option agreements outstanding on December 31, 2003 and March 31, 2004.

4. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

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

	December 31, 2003	March 31, 2004
		(unaudited)
Land and land development costs	\$ 7,438	\$ 6,830
Cost of construction (including capitalized interest and real estate taxes)	12,784	13,864
	<u>\$ 20,222</u>	<u>\$ 20,694</u>

During 2003, the Company determined that certain amounts included in Real estate held for development and sale were no longer recoverable. As a result, the company wrote off certain amounts, which are included in Cost of Sales in the accompanying consolidated statements of operations for 2003 and the three months ended March 31, 2004. Total amounts written off for the year ended December 31, 2003 and the three months ended March 31, 2004 was \$109 and \$0, respectively.

5. INVESTMENT IN NORTH SHORE

During 2001, the Company invested \$41 in North Shore Investors, LLC for a 50% ownership interest. North Shore Investors, LLC 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 Investors, LLC, the Company reduced its investment in North Shore Investors, LLC, to \$0. As of December 31, 2003 and March 31, 2004, the Company has not received dividends from North Shore Investors, LLC.

The investment in North Shore is comprised of:

	December 31, 2003	March 31, 2004
		(unaudited)
Investment at cost	\$ 41	\$ 41
Share of earnings (losses)	(41)	(41)
Net Investment	<u>\$ —</u>	<u>\$ —</u>

Unaudited financial information as of and for the year ended December 31, 2003 and the three months ended March 31, 2004 for the Company's investment in North Shore accounted for under the equity method of accounting is as follows:

Condensed Consolidated Balance Sheets (unaudited)

	December 31, 2003	March 31, 2004
Real estate held for development and sale	\$ 9,920	\$ 9,749
Other assets	300	241
Total assets	\$ 10,220	\$ 9,990
Notes payable	\$ 9,918	\$ 9,883
Other liabilities	332	262
Total liabilities	\$ 10,250	\$ 10,145
Partners' capital	(30)	(155)
Total liabilities and partners' capital	\$ 10,220	\$ 9,990

Condensed Consolidated Statements of Operations (unaudited)

	Year Ended December 31, 2003	Three Months Ended March 31, 2003	Three Months Ended March 31, 2004
Revenues	\$ 1,003	\$ 375	\$ 1,426
Cost and expenses	1,267	548	1,551
Net income (loss)	\$ (264)	\$ (173)	\$ (125)
Company's share of net losses	\$ —	\$ —	\$ —

The Company's maximum exposure to loss in North Shore is limited to its capital contribution.

6. OTHER ASSETS

Other assets consist of the following:

	December 31, 2003	March 31, 2004
		(unaudited)
Contract land deposits	50	50
Restricted escrow deposits	1	1
	51	51

7. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following:

	December 31, 2003	March 31, 2004
		(unaudited)
Trade payables	\$ 964	\$ 675
Warranty reserve	168	146
Customer deposits	185	307
Other accrued liabilities	247	222
	<u>\$ 1,564</u>	<u>\$ 1,350</u>

8. 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. Financial data related to the company's borrowings is set forth below:

	December 31, 2003	March 31, 2004
		(unaudited)
Notes payable to non-related parties		
Shared construction and development loans with monthly interest only payments ranging from prime + .5% to Prime + 1% (4.50% to 5.00% for the year ended December 31, 2003 and the three months ended March 31, 2004) with maturity dates ranging from August 2004 to February 2005.	\$ 14,051	\$ 13,913
	<u>14,051</u>	<u>13,913</u>
Notes payable to related parties		
Notes payable to Comstock Homes, a related party due to common ownership (Note 10), with interest accruing at 12% per annum maturing at various times during 2004. At December 31, 2003 and March 31, 2004, accrued interest on the note is \$20 and \$32, respectively, and is included in accounts payable and accrued liabilities.	314	414
Notes payable to Comstock Holdings, a related party due to common ownership (Note 10), with interest accruing at rates ranging from 0% to 18%. At December 31, 2003 and March 31, 2004, accrued interest on the notes is \$26 and \$33, respectively, and is included in accounts payable and accrued liabilities.	705	735
	<u>1,019</u>	<u>1,149</u>
	<u>\$ 15,070</u>	<u>\$ 15,062</u>

Upon settlement of each unit, principal is curtailed based upon 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, the loans which were borrowed at the project entity level are guaranteed by the Company and some of its shareholders. The Company must comply with certain restrictive covenants that include maintenance of a total debt to tangible net worth ratio and a minimum tangible net worth level. As of December 31, 2003 and March 31, 2004, the Company was in compliance with all covenants.

9. COMMITMENTS AND CONTINGENCIES

Litigation

In the normal course of its business, the Company and/or its subsidiaries are named as defendants in certain legal actions arising from its normal business activities. Management believes that none of the litigation matters in which the Company or any subsidiary is involved would have a material adverse effect on the consolidated financial condition or operations of the Company.

Homes sold under construction

As of December 31, 2003 and March 31, 2004, the Company has commitments to sell homes that are under construction and included in the Company's real estate held for sale ("Backlog"). At December 31, 2003 and March 31, 2004, the Company's Backlog was \$4,874 and \$9,593, respectively.

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 satisfied by the Company. At December 31, 2003 and March 31, 2004, the Company had \$110 of issued performance and payment bonds to these third parties.

10. FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying value of cash and cash equivalents, receivables, payables and accrued liabilities approximate their fair value due to the short maturity of these instruments. The fair value of variable rate notes payable approximates book value.

11. RELATED PARTY TRANSACTIONS

The Company incurred fees relating to administrative and sales support with Comstock Homes, Inc, a related party owned by Christopher Clemente, Gregory Benson, Jim Keena, and Lawrence Golub (executive officers and/or shareholders of the Company). For the year ended December 31, 2003 and the three months ending March 31, 2003 and 2004, the Company paid fees to Comstock Homes, Inc. totaling approximately \$2,908, \$663 and \$737, respectively. The Company owed approximately \$382 and \$2,690 and \$1,475 of fees to Comstock Homes, Inc. as of December 31, 2003 and March 31, 2004, respectively.

During the year ended December 31, 2003, the Company entered in to various notes payable agreements with Comstock Homes and Comstock Holdings. These notes accrue interest at various rates ranging from 0% to 12%, and mature between 2004 and 2006. At December 31, 2003, total principal and interest owed was \$1,019 and \$47, respectively. At March 31, 2004, total principal and interest owed was \$1,149 and \$65, respectively (Note 7).

Comstock Holdings has a 1.36% member interest in Comstock North Carolina, LLC, an entity in which the Company acts as the general partner and has a 75% member interest.

At December 31, 2003 and March 31, 2004 the Company had an outstanding inter-company liability to The Comstock Companies in the amount of \$1,300 and \$0, respectively.

As of March 31, 2004, certain employees and their relatives have invested limited amounts of capital in the Company, and therefore hold minority membership interests or promissory notes.

12. INITIAL PUBLIC OFFERING AND RELATED CONSOLIDATION—UNAUDITED

Comstock Homebuilding Companies, Inc. is currently undertaking an initial public offering of its Class A Common stock ("the Offering"). In addition, Comstock Homebuilding Companies, Inc. will acquire 100% of the outstanding capital stock of Comstock Holdings following a consolidation that will take place immediately prior to the closing of the Offering (the "Consolidation"). The Consolidation will be effected through the mergers of the Company and Sunset with and into Comstock Holdings and the acquisition of 100% of the outstanding capital stock of Comstock Homes. For accounting purposes, the merger with the Company will be accounted for as an acquisition. In connection with the Consolidation, Comstock Holdings, Comstock Homes, Sunset and the Company will distribute promissory notes to their shareholders in an amount equal to the their Subchapter S corporation accumulated adjustments account and undistributed tax basis in its subsidiaries and real estate partnerships, if any, as of the date on which the notes are issued. Comstock Homebuilding Companies, Inc. intends to use a portion of the net proceeds of the Offering to purchase certain minority interests and to fund distributions to the shareholders of Comstock Holdings, Comstock Homes, Sunset and the Company in payment of all or a portion of the amounts that are due and payable under the promissory notes.

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the shares offered hereby, and only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

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Through and including _____, 2004 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Shares

Comstock Homebuilding Companies, Inc.

Class A Common Stock

[COMSTOCK
LOGO]

BB&T Capital Markets

Representative of the Underwriters

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

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

Securities and Exchange Commission registration fee	\$ 9,503
NASD filing fee	8,000
Nasdaq filing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky fees and expenses (including legal fees)	*
Transfer agent and registrar fees and expenses	*
Miscellaneous	*
	<hr/>
Total	\$ *
	<hr/>

* To be filed by amendment

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

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the "DGCL") provides, in effect, that any person made a party to any action by reason of the fact that he is or was a director, officer, employee or agent of Comstock may and, in certain cases, must be indemnified by Comstock against, in the case of a non-derivative action, judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys' fees) incurred by him as a result of such action, and in the case of a derivative action, against expenses (including attorneys' fees), if in either type of action he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of Comstock. This indemnification does not apply, (i) in a derivative action, to matters as to which it is adjudged that the director, officer, employee or agent is liable to Comstock, unless upon court order it is determined that, despite such adjudication of liability, but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for expenses, and, (ii) in a non-derivative action, to any criminal proceeding in which such person had reasonable cause to believe his conduct was unlawful.

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

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

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

Comstock has entered into indemnification agreements with each director and certain officers of Comstock, a form of which is filed as Exhibit 10.11 to this registration statement. Pursuant to such agreements, Comstock will be obligated, to the extent permitted by applicable law, to indemnify such directors and officers against all expenses, judgments, fines and penalties incurred in connection with the defense or settlement of any actions brought against them by reason of the fact that they were directors or officers of Comstock or assumed certain responsibilities at the direction of Comstock. Comstock also intends to purchase directors and officers liability insurance in order to limit its exposure to liability for indemnification of directors and officers.

Item 15. Recent Sales of Unregistered Securities

Certain Sales of Securities

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

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

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

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

- 1.1* Form of Underwriting Agreement.
- 2.1* Share Exchange Agreement, dated as of _____, 2004, with Comstock Holding Company, Inc., Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub.
- 2.2* Share Exchange Agreement, dated as of _____, 2004, by and among Comstock Homes, Inc., Comstock Holding Company, Inc., Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub.
- 3.1 Certificate of Incorporation, as amended.
- 3.2* Form of Amended and Restated Certificate of Incorporation (to be filed with the Delaware Secretary of State immediately prior to the closing of the offering covered by this registration statement).
- 3.3 Bylaws.
- 3.4* Form of Amended and Restated Bylaws (to be adopted immediately prior to the closing of the offering covered by this registration statement).
- 4.1* Specimen Class A common stock certificate.
- 5.1* Opinion of Greenberg Traurig, LLP.
- 10.1 Lease Agreement, dated as of April 30, 2002, with Comstock Partners, L.C.

- 10.2 Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
- 10.3* Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
- 10.4 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 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 Purchase Money Deed of Trust and Security Agreement, dated December 15, 2003, with Crescent Potomac Yard Development, LLC.
- 10.7* Form of Indemnification Agreement.
- 10.8* 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.
- 10.9* 2004 Equity Incentive Plan.
- 10.10* Form of Stock Option Agreement under the 2004 Equity Incentive Plan.
- 10.11* Employee Stock Purchase Plan.
- 21.1* List of subsidiaries.
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 23.2* Consent of Greenberg Traurig, LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (contained in the signature page to this registration statement).

* To be filed by amendment.

(b) Financial Statement Schedules

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

Item 17. Undertakings.

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

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

appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Reston, Virginia on August 13, 2004.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chief Executive Officer

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

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

Signature	Title	Date
<hr/> /s/ CHRISTOPHER CLEMENTE Christopher Clemente	Chief Executive Officer and Director (Principal Executive Officer)	August 13, 2004
<hr/> /s/ BRUCE LABOVITZ Bruce Labovitz	Chief Financial Officer (Principal Financial Officer)	August 13, 2004
<hr/> /s/ JASON PARIKH Jason Parikh	Chief Accounting Officer (Principal Accounting Officer)	August 13, 2004
<hr/> /s/ GREGORY BENSON Gregory Benson	President and Chief Operating Officer, Director	August 13, 2004

EXHIBIT INDEX

- 1.1* Form of Underwriting Agreement.
- 2.1* Share Exchange Agreement, dated as of _____, 2004, with Comstock Holding Company, Inc., Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub.
- 2.2* Share Exchange Agreement, dated as of _____, 2004, by and among Comstock Homes, Inc., Comstock Holding Company, Inc., Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub.
- 3.1 Certificate of Incorporation, as amended.
- 3.2* Form of Amended and Restated Certificate of Incorporation (to be filed with the Delaware Secretary of State immediately prior to the closing of the offering covered by this registration statement).
- 3.3 Bylaws.
- 3.4* Form of Amended and Restated Bylaws (to be adopted immediately prior to the closing of the offering covered by this registration statement).
- 4.1* Specimen Class A common stock certificate.
- 5.1* Opinion of Greenberg Traurig, LLP.
- 10.1 Lease Agreement, dated as of April 30, 2002, with Comstock Partners, L.C.
- 10.2 Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
- 10.3* Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
- 10.4 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 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 Purchase Money Deed of Trust and Security Agreement, dated December 15, 2003, with Crescent Potomac Yard Development, LLC.
- 10.7* Form of Indemnification Agreement.
- 10.8* 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.
- 10.9* 2004 Equity Incentive Plan.
- 10.10* Form of Stock Option Agreement under the 2004 Equity Incentive Plan.
- 10.11* Employee Stock Purchase Plan.
- 21.1* List of subsidiaries.
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 23.2* Consent of Greenberg Traurig, LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (contained in the signature page to this registration statement).

* To be filed by amendment.

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CERTIFICATE OF INCORPORATION

OF

COMSTOCK COMPANIES, INC.

ARTICLE I

The name of the corporation is Comstock Companies, Inc. (hereinafter called the "Corporation").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

The capital stock authorized, the par value thereof, and the characteristics of such stock shall be as follows:

Number of Shares Authorized	Par Value Per Share	Class of Stock
10,000	\$ 0.01	Common

ARTICLE V

The name of the Incorporator is Stephen J. Bolin and the address of the Incorporator is c/o Greenberg Traurig, LLP, 800 Connecticut Avenue, NW, Suite 500, Washington, D.C., 20006.

ARTICLE VI

The Board of Directors of the Corporation shall consist of at least one director, with the exact number to be fixed from time to time in the manner provided in the Corporation's Bylaws, who will serve as the Corporation's director until successors are duly elected and qualified.

ARTICLE VII

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under §174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. It is the intent that this provision be interpreted to provide the maximum protection against liability afforded to directors under the Delaware General Corporation Law in existence either now or hereafter.

ARTICLE VIII

This Corporation shall indemnify and shall advance expenses on behalf of its officers and directors to the fullest extent permitted by law in existence either now or hereafter.

ARTICLE IX

The directors of the Corporation shall have the power to adopt, amend or repeal the bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned, being the Incorporator named above, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, has signed this Certificate of Incorporation this 24th day of May, 2004.

/s/ Stephen J. Bolin

Stephen J. Bolin, Incorporator

CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF INCORPORATION
OF
COMSTOCK COMPANIES, INC.

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is Comstock Companies, Inc.
2. The certificate of incorporation of the corporation is hereby amended by striking out Article I thereof and by substituting in lieu of said Article the following new Article:

"ARTICLE I

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

3. The amendment of the certificate of incorporation herein certified has been duly adopted and written consent has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Signed on June 30, 2004

/s/ Christopher Clemente

Christopher Clemente, Secretary

BYLAWS
OF
COMSTOCK COMPANIES, INC.
(A DELAWARE CORPORATION)

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COMSTOCK COMPANIES, INC.

BYLAWS

**ARTICLE ONE
*OFFICES***

Section 1. *Registered Office.* The registered office of Comstock Companies, Inc., a Delaware corporation (the "Corporation"), shall be located in the City of Wilmington, State of Delaware.

Section 2. *Other Offices.* The Corporation may also have offices at such other places, either within or without the State of Delaware, as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine or as the business of the Corporation may require.

**ARTICLE TWO
*MEETINGS OF STOCKHOLDERS***

Section 1. *Place.* All annual meetings of stockholders shall be held at such place, within or without the State of Delaware, as may be designated by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. Special meetings of stockholders may be held at such place, within or without the State of Delaware, and at such time as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. *Time of Annual Meeting.* Annual meetings of stockholders shall be held on such date and at such time fixed, from time to time, by the Board of Directors, provided, that there shall be an annual meeting held every calendar year at which the stockholders shall elect a board of directors and transact such other business as may properly be brought before the meeting.

Section 3. *Call of Special Meetings.* Special meetings of the stockholders may be called by the President, the Board of Directors or by the Secretary on the written request of the holders of not less than a majority of all shares entitled to vote at the meeting.

Section 4. *Conduct of Meetings.* The Chairman of the Board (or in his absence, the President or such other designee of the Chairman of the Board) shall preside at the annual and special meetings of stockholders and shall be given full discretion in establishing the rules and procedures to be followed in conducting the meetings, except as otherwise provided by law or in these Bylaws.

Section 5. *Notice and Waiver of Notice.* Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the day of the meeting, either personally or by first-class mail, by or at the direction of the President, the Secretary, or the officer or person calling the meeting, to each stockholder of record entitled to vote at such meeting. If the notice is mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid. If a meeting is adjourned to another time and/or place, and if an announcement of the adjourned time and/or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment, fixes a new record date for the adjourned meeting or if the adjournment is for more than 30 days. Notice need not be given to any stockholder who submits a written waiver of notice by him before or after the time stated therein. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when a stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice.

Section 6. *Business of Special Meeting.* Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 7. *Quorum.* The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of stockholders except as otherwise provided in the Corporation's certificate of incorporation (the "Certificate of Incorporation"). If, however, a quorum shall not be present or represented at any meeting of the stockholders, the stockholders present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called. The stockholders present at a duly organized meeting may continue to transact business notwithstanding the withdrawal of some stockholders prior to adjournment, but in no event shall a quorum consist of the holders of less than one-third ($\frac{1}{3}$) of the shares entitled to vote and thus represented at such meeting.

Section 8. *Required Vote.* The vote of the holders of a majority of the shares entitled to vote and represented at a meeting at which a quorum is present shall be the act of the Corporation's stockholders, unless the vote of a greater number is required by law, the Certificate of Incorporation, or these Bylaws.

Section 9. *Voting of Shares.* Each outstanding share, regardless of class, shall be entitled to vote on each matter submitted to a vote at a meeting of stockholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Incorporation or the General Corporation Law of Delaware.

Section 10. *Proxies.* A stockholder may vote in person or by proxy executed in writing by the stockholder or by his duly authorized attorney-in-fact. No proxy shall be voted or acted upon after three (3) years from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

Section 11. *Stockholder List.* The officer or agent having charge of the Corporation's stock transfer books shall make, at least ten (10) days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of, and the number and class and series, if any, of shares held by each. Such list, for a period of ten (10) days prior to such meeting, shall be subject to inspection by any stockholder at any time during the usual business hours at the place where the meeting is to be held. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the stockholders entitled to examine such list or transfer book or to vote at any such meeting of stockholders.

Section 12. *Action Without Meeting.* Any action required by the statutes to be taken at a meeting of stockholders, or any action that may be taken at a meeting of the stockholders, may be taken without a meeting or notice if a consent, or consents, in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted with respect to the subject matter thereof, and such consent shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer or agent of the Corporation, having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or certified mail, return receipt requested. Such consent shall have the same force and effect as a vote of stockholders taken at such a meeting.

Section 13. *Fixing Record Date.* For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purposes, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of stockholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of stockholders is to be taken. If no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which the notice of the meeting is mailed or the date on which the resolutions of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the Board of Directors fixes a new record date for the adjourned meeting.

Section 14. *Inspectors and Judges.* The Board of Directors in advance of any meeting may, but need not, appoint one or more inspectors of election or judges of the vote, as the case may be, to act at the meeting or any adjournment thereof. If any inspector or inspectors, or judge or judges, are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors or judges. In case any person who may be appointed as an inspector or judge fails to appear or act, the vacancy may be filled by the Board of Directors in advance of the meeting, or at the meeting by the person presiding thereat. The inspectors or judges, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots and consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots and consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors or judge or judges, if any, shall make a report in writing of any challenge, question or matter determined by him or them, and execute a certificate of any fact found by him or them.

ARTICLE THREE DIRECTORS

Section 1. *Number, Election and Term.* The number of directors of the Corporation shall be fixed from time to time, within the limits specified by the Certificate of Incorporation, by resolution of the Board of Directors; provided, however, no director's term shall be shortened by reason of a resolution reducing the number of directors. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Delaware, stockholders of the Corporation or citizens of the United States. Unless provided otherwise by law, any director may be removed at any time, with or without cause, at a special meeting of the stockholders called for that purpose.

Section 2. *Vacancies.* A director may resign at any time by giving written notice to the Board of Directors or the Chairman of the Board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the size of the Board of Directors shall be filled by the affirmative vote of a majority of the current directors though less than a quorum of the Board of Directors, or may be filled by an election at an annual or special meeting of the stockholders called for that purpose. A director elected to fill a vacancy shall be elected

for the unexpired term of his predecessor in office, or until the next election of one or more directors by stockholders if the vacancy is caused by an increase in the number of directors.

Section 3. *Powers.* The business and affairs of the Corporation shall be managed by its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised and done by the stockholders.

Section 4. *Place of Meetings.* Meetings of the Board of Directors, regular or special, may be held either within or without the State of Delaware.

Section 5. *Annual Meeting.* The first meeting of each newly elected Board of Directors shall be held, without call or notice, immediately following each annual meeting of stockholders.

Section 6. *Regular Meetings.* Regular meetings of the Board of Directors may also be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

Section 7. *Special Meetings and Notice.* Special meetings of the Board of Directors may be called by the President and shall be called by the Secretary on the written request of any two directors. Written notice of special meetings of the Board of Directors shall be given to each director at least twenty-four (24) hours before the meeting. Except as required by statute, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Notices to directors shall be in writing and delivered personally or mailed to the directors at their addresses appearing on the books of the Corporation. Notice by mail shall be deemed to be given at the time when the same shall be received. Notice to directors may also be given by telegram, and shall be deemed delivered when the same shall be deposited at a telegraph office for transmission and all appropriate fees therefor have been paid. Whenever any notice is required to be given to any director, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 8. *Quorum and Required Vote.* A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 9. *Action Without Meeting.* Any action required or permitted to be taken at a meeting of the Board of Directors or committee thereof may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all of the members of the Board of Directors or the committee, as the case may be, and such consent shall have the same force and effect as a unanimous vote at a meeting.

Section 10. *Telephone Meetings.* Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meetings shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

Section 11. *Committees.* The Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of the Corporation except where the action of the full Board of Directors is required by statute. Vacancies in the membership of a committee shall be filled by the Board of Directors at a regular or special meeting of the Board of Directors. The executive committee shall keep regular minutes of its proceedings and report the same to the Board of Directors when required. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 12. *Compensation of Directors.* The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. *Chairman of the Board.* The Board of Directors may, in its discretion, choose a chairman of the board who shall preside at meetings of the stockholders and of the directors and shall be an ex officio member of all standing committees. The Chairman of the Board shall have such other powers and shall perform such other duties as shall be designated by the Board of Directors. The Chairman of the Board shall be a member of the Board of Directors but no other officers of the Corporation need be a director. The Chairman of the Board shall serve until his successor is chosen and qualified, but he may be removed at any time by the affirmative vote of a majority of the Board of Directors.

ARTICLE FOUR **OFFICERS**

Section 1. *Positions.* The officers of the Corporation shall consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary and a Treasurer, and, if elected by the Board of Directors by resolution, a Chairman of the Board. Any two or more offices may be held by the same person.

Section 2. *Election of Specified Officers by Board.* The Board of Directors at its first meeting after each annual meeting of stockholders shall elect a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary and a Treasurer.

Section 3. *Election or Appointment of Other Officers.* Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the Board of Directors, or, unless otherwise specified herein, appointed by the President of the Corporation. The Board of Directors shall be advised of appointments by the President at or before the next scheduled Board of Directors meeting.

Section 4. *Salaries.* The salaries of all officers of the Corporation to be elected by the Board of Directors pursuant to Article Four, Section 2 hereof shall be fixed from time to time by the Board of Directors or pursuant to its discretion. The salaries of all other elected or appointed officers of the Corporation shall be fixed from time to time by the President of the Corporation or pursuant to his direction.

Section 5. *Term.* The officers of the Corporation shall hold office until their successors are chosen and qualified. Any officer or agent elected or appointed by the Board of Directors or the President of the Corporation may be removed, with or without cause, by the Board of Directors

whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officers or agents appointed by the President of the Corporation pursuant to Section 3 of this Article Four may also be removed from such officer positions by the President, with or without cause. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise shall be filled by the Board of Directors, or, in the case of an officer appointed by the President of the Corporation, by the President or the Board of Directors.

Section 6. *Chief Executive Officer.* The Chief Executive Officer shall have general active management of the business of the corporation, and in the absence of the Chairman of the Board, shall preside at all meetings of the shareholders and the Board of Directors; and shall see that all orders and resolutions of the Board of Directors are carried into effect.

Section 7. *President.* The President, in the absence of the Chairman of the Board, shall preside at all meetings of the stockholders and the Board of Directors. He shall have general supervision of the affairs of the Corporation, shall sign or countersign all certificates, contracts, or other instruments of the Corporation as authorized by the Board of Directors, shall make reports to the Board of Directors and stockholders, and shall perform any and all other duties as are incident to her or his office or are properly required of him or her by the Board of Directors.

Section 8. *Vice Presidents.* The Vice Presidents in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. They shall perform such other duties and have such other powers as the Board of Directors shall prescribe or as the President may from time to time delegate.

Section 9. *Secretary.* The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the stockholders and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He shall keep in safe custody the seal of the Corporation and, when authorized by the Board of Directors, affix the same to any instrument requiring it.

Section 10. *Treasurer.* The Treasurer shall have the custody of corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at its regular meetings or when the Board of Directors so requires an account of all his transactions as treasurer and of the financial condition of the Corporation.

ARTICLE FIVE CERTIFICATES FOR SHARES

Section 1. *Issue of Certificates.* The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates (and upon request every holder of uncertificated shares) shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or

vice-chairman of the Board of Directors, or the President or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form.

Section 2. *Legends for Preferences and Restrictions on Transfer.* If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided by law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

A written restriction on the transfer or registration of transfer of a security of the Corporation, if permitted by law and noted conspicuously on the certificate representing the security may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security, a restriction, even though permitted by law, is ineffective except against a person with actual knowledge of the restriction. If the Corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under the applicable state securities laws, the transfer of any such shares shall be restricted substantially in accordance with the following legend:

"THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY APPLICABLE STATE LAW. THEY MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR PLEDGED WITHOUT (1) REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND ANY APPLICABLE STATE LAW, OR (2) AT HOLDER'S EXPENSE, AN OPINION (SATISFACTORY TO THE CORPORATION) OF COUNSEL (SATISFACTORY TO THE CORPORATION) THAT REGISTRATION IS NOT REQUIRED."

Section 3. *Facsimile Signatures.* Any and all signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of the issue.

Section 4. *Lost Certificates.* The Corporation may issue a new certificate of stock in place of any certificate therefore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen, or destroyed certificate, or his legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 5. *Transfer of Shares.* Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6. *Registered Stockholders.* The Corporation shall be entitled to recognize the exclusive rights of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such

share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

ARTICLE SIX
GENERAL PROVISIONS

Section 1. *Dividends.* The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in cash, property, or its own shares pursuant to law and subject to the provisions of the Certificate of Incorporation.

Section 2. *Reserves.* The Board of Directors may by resolution create a reserve or reserves out of earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner.

Section 3. *Checks.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 4. *Fiscal Year.* The fiscal year of the Corporation shall end on December 31 of each year, unless otherwise fixed by resolution of the Board of Directors.

Section 5. *Seal.* The corporate seal shall have inscribed thereon the name and state of incorporation of the Corporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE SEVEN
AMENDMENTS OF BYLAWS

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted at any meeting of the Board of Directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting.

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LEASE AGREEMENT

by and between

COMSTOCK HOMES, INC. as "Tenant"

and

COMSTOCK PARTNERS, L.C. as "Landlord"

April 30, 2002

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B.	Base Building Definition
C.	Owner Approved Architects
D-1.	Space Design of Leased Premises
D-2.	Tenant Improvement Plans
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F.	Rules and Regulations
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H.	RESERVED
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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into this 30th day of April, 2002, by and between (i) COMSTOCK PARTNERS, L.C., a Virginia limited liability company (hereinafter referred to as "Landlord"), and (ii) Comstock Homes, Inc. (hereinafter referred to as "Tenant"), and referred to by singular pronouns of the neuter gender, regardless of the number and gender of the parties involved.

WITNESSETH: Upon and subject to the terms of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises (as defined below), for the Term (as defined below), except that Landlord reserves and Tenant shall have no right in and to (a) the use of the exterior faces of all perimeter walls and windows of the Building, (b) the use of the roof of the Building, or (c) the use of the air space above the Building, except as specifically set forth herein.

1. *DEFINITIONS*

(a) *General Interpretive Principles.* For purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Section have the meanings assigned to them in this Section and include the plural as well as the singular, and the use of any gender shall be deemed to include all other genders; (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (iii) references herein to "Sections," "subsections," "paragraphs," and other subdivisions without reference to a document are to designated Sections, subsections, paragraphs, and other subdivisions of this Lease; (iv) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (v) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Lease as a whole and not to any particular provisions; (vi) the word "including" means "including, but not limited to"; (vii) daily rent is calculated on a thirty (30) day month applied to the number of days being charged, (viii) all amounts due Landlord hereunder are in United States dollars; and (ix) the words "months" and "years" mean calendar months and calendar years..

(b) *Special Lease Definitions.* As used in this Lease the following words and phrases shall have the meanings indicated:

Advance Rent: Sixteen Thousand, Three Hundred and Sixty Eight and 88/100 (\$16,368.88) representing the Basic Rent for the first full month of the Term after the Lease Commencement Date, which Tenant shall pay to Landlord upon execution of this Lease. Landlord acknowledges receipt of the Advance Rent subject to collection.

Basic Rent: For each Lease Year, an amount equal to the product obtained by multiplying the Rentable Area of the Leased Premises leased by Landlord to Tenant during such Lease Year by the Rent per Square Foot for such Lease Year. The Basic Rent shall increase each year by 2.6% over the immediately prior year's Basic Rent. Therefore the Basic Rent for the second year is determined by multiplying the Basic Rent for the first year by 102.6% and for each subsequent year by multiplying the Basic Rent for the immediately prior year's Basic Rent by 102.6%.

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

	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent/S.F.</u>
Lease Year 1	196,426.50	\$ 16,368.88	\$ 25.50
Lease Year 2	201,533.59	16,794.47	\$ 26.16
Lease Year 3	206,773.46	17,231.12	\$ 26.84
Lease Year 4	212,149.57	17,679.13	\$ 27.54
Lease Year 5	217,665.46	18,138.79	\$ 28.26
Lease Year 6	223,324.76	18,610.40	\$ 28.99
Lease Year 7	229,131.21	19,094.27	\$ 29.75

Basic Rent Escalation: See definition of *Basic Rent*.

Building: The existing office building located at 11465 Sunset Hills Road, Reston, Virginia, including the parking lots and parking garage and Landlord's right, title and interest in and to the underlying land.

Building Rentable Area: The total net rentable area in the Building, which (although greater than the actual usable area) is agreed to be 89,221 square feet (as has been determined by the project architect), including core factor.

Brokers: The Tenant hereby represents that it is not represented by a Broker and the Landlord hereby represents that it is not represented by a Broker.

Landlord's Contractor: Any and all professionals or tradespeople engaged by or on behalf of Landlord, or by Tenant at Landlord's direction and/or expense, in connection with alterations and construction in the Leased Premises, either before or during the Term of this Lease, including but not limited to general contractors, sub-contractors, architects, engineers, and any other professionals or tradespeople typically associated with construction and/or alterations.

Landlord's Notice Address: COMSTOCK PARTNERS, L.C. 1313 Dolley Madison Boulevard, Suite 302, McLean, Virginia 22101, Attention: Mr. Christopher Clemente, Manager, with copy to Bankert & Associates, PC, 3025 Hamaker Court, Suite 501 Fairfax, Virginia 22031 Attention: Mr. Joseph E. Bankert and a copy to the following property management company; CDC Management Group, Inc., at 8500 Leesburg Pike, Suite 600 Vienna, Virginia 22181, Attention: Jacqueline Choshire, President (703) 506-8980. Landlord may change the management company at its option and will notify Tenant in such event.

Lease Commencement Date: The Lease Commencement Date shall be the date of Substantial Completion (as defined herein) of the Leased Premises, but no sooner than June 1, 2002 and no later than September 1, 2002. The Landlord or the Project General Contractor shall keep Tenant informed as to the status of construction so as to provide Tenant advance notice of the anticipated date of Substantial Completion. In the event of Tenant Delays (as defined herein) the Lease Commencement Date shall be the date which is an equal number of days prior to the date of Substantial Completion as the number of total days of such Tenant Delays as reasonably determined by the Project General Contractor and the Tenant shall be responsible for payment of rent and other charges provided for herein as of the Lease Commencement Date. In the event the Landlord fails to deliver the Leased Premises on the Lease Commencement Date, through no fault of the Tenant (and provided there are no Tenant Delays) the Lease Commencement Date shall be the date the Landlord delivers the Leased Premises Substantially Completed and ready for occupancy.

Leased Premises: The area located on the fifth (5th) floor of the Building which is outlined in black on the floor plan, attached hereto as Exhibit A and incorporated herein, and containing the following amount of Rentable Area:

Fifth Floor:	7,703 Square Feet to be known as Suite #510
TOTAL:	7,703 Square Feet

Operating Expense Base: For each calendar year ending during the Term, the sum of the 2003 actual Operating Expenses for each square foot of Building Rentable Area.

Operating Expense Increases: Subject to the conditions set forth in Paragraph 31 hereof, for calendar year 2004 and each calendar year thereafter during the Term (subject to prorations as provided in Paragraph 3), an amount equal to Tenant's Proportionate Share of the excess of Landlord's Operating Expenses for such calendar year over the product obtained by multiplying the Operating Expense Base by the Building Rentable Area. In no event shall the Tenant's Proportionate Share of the excess of Landlord's Operating Expenses for any calendar year exceed a sum equal to One Dollar (\$1.00) multiplied by the number of square feet of Rentable Area.

Rent Per Square Foot: The Basic Rent shall be Twenty Five and 50/100 Dollars (\$25.50) per square foot of the Leased Premises during the first Lease Year. For each Lease Year thereafter during the Term, the Rent per Square Foot of the Leased Premises shall be increased by two and six tenths percent (2.6%) as provided for in this Lease.

Rent Offset: Landlord understands that Tenant is obligated on another Lease for its existing offices at 1313 Dolley Madison Boulevard in McLean, Virginia (the "Existing Office Space") and that Tenant is currently attempting to sub-lease the Existing Office Space. As inducement to Tenant to enter into this Agreement the Landlord agrees to offset the Basic Rent due hereunder in an amount equal to the amount of rent paid by Tenant for the Existing Office Space above and beyond any amounts collected from Tenant's sub-tenant(s) at the Existing Office Space on a monthly basis after the Lease Commencement Date. The Tenant shall provide Landlord evidence that it has incurred rent expenses at the Existing Office Space for any month where Tenant does not collect sub-lease rental payments equal to the amount due from Tenant for that month for the Existing Office Space as requested by Landlord and Landlord shall provide a credit towards the amount due hereunder from Tenant for the same month. However, the amount of Rent Offset shall not exceed Fifty Thousand Dollars (\$50,000.00) in the aggregate. In the event the amount of Rent Offset granted by Landlord does not exceed Twenty-Five Thousand Dollars (\$25,000.00) during the first year of the Term, the Landlord agrees that the escalation of the Basic Rent as provided for herein shall, rather than commencing with the beginning of the second year of the term, shall not commence until the beginning of the third (3rd) year of the Term and in such event the schedule of basic Rent set forth in paragraph 1(b) shall be amended to reflect the change in the amount due as Basic Rent hereunder.

Rentable Area: The total rentable area of the Leased Premises, which (although greater than the actual usable area) is agreed to be approximately 7,703 square feet, which shall be verified by the project architect upon completion of the Tenant Improvement Plans and in the event the final calculation is different then as aforesaid the project architect shall provide a written statement to the parties hereto as to the total Rentable Square Feet of the Premises and said written statement shall be attached as an amendment hereto modifying the portions of this Agreement as is appropriate without modifying the general terms hereof.

Security Deposit: Upon execution of this Lease, in addition to paying Landlord the Advance Rent set forth herein, Tenant shall deliver and pay to Landlord a Security Deposit as set forth in Paragraph 19 hereof.

Storage Space: During the term hereof and provided Tenant occupies at least 5,000 square feet within the Building and provided Tenant has not been in default beyond any applicable cure period, the Landlord shall provide Tenant, at no additional cost, with access and exclusive use of a portion of the penthouse of the Building for storage of personal property of Tenant. All costs of constructing and maintaining the storage area shall be borne by Tenant.

Tenant's Notice Address: The Tenant's notice address is: 1313 Dolley Madison Boulevard, Suite 302, McLean, Virginia 22101 ATTENTION: Christopher Clemente, Chief Executive Officer, with a copy to Bankert & Associates, PC, 3025 Hamaker Court, Suite 501 Fairfax, Virginia 22031 Attention: Mr. Joseph E. Bankert. Upon occupancy the Tenant's notice address shall be: Suite 510, 11465 Sunset Hills Road, Reston, Virginia 20190.

Tenant's Proportionate Share: The percentage which the Rentable Area of the Leased Premises is of the Building Rentable Area. The Tenant's Proportionate Share is agreed to be Eight and 63/100 percent (8.63%) subject to the project architect verifying the square footage of the Leased Premises as provided for herein.

Term: Subject to Tenant's exercise of its Option to Renew this Lease, as provided for herein, the period commencing on the Lease Commencement Date and ending on the last day of the calendar month which completes SEVEN (7) YEARS after the Lease Commencement Date, but in any event the Term shall end on any date when this Lease is sooner terminated as provided for herein.

(c) *General Definitions.* As used in this Lease the following words and phrases shall have the meanings indicated:

Additional Charges: All amounts payable by Tenant to Landlord under this Lease other than Basic Rent. All Additional Charges shall, unless otherwise provided herein, be due and payable within Thirty (30) days of invoice and shall be deemed to be additional rent and all remedies applicable to the non-payment of Basic Rent shall be applicable thereto.

Alterations: As defined in Section 9(a).

Business Days: All days except Saturdays, Sundays, and the following legal holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and those holidays designated by an Executive Order of the President of the United States or by Act of Congress.

Default Interest Rate: A rate per annum equal to the sum of (i) the prime rate of interest from time to time established and publicly announced by The Chase Manhattan Bank, N.A., New York, in its sole discretion, as its then applicable prime rate of interest to be used in determining actual interest rates to be charged to certain of its borrowers, said prime rate to change from time to time as and when the change is announced as being effective, and (ii) two percent (2%).

Event of Default: Any of the events set forth in Section 16(a) as an event of default.

First Right of Offer: For so long as Tenant is owned and/or operated by either Christopher Clemente or Gregory Benson the Landlord shall make reasonable efforts to accommodate Tenant's expansion needs by providing Tenant the first opportunity to lease any additional space that becomes available in the Building on the same terms as are applicable hereunder at that time, however, Tenant shall not have any right to any additional space in the Building and Landlord

shall not be required to provide any such space to Tenant unless Tenant enters into an amendment to this Agreement within fifteen (15) Business Days of the date of Landlord's written notice to Tenant that additional space is, or will become, available in the Building, such amendment incorporating the additional space into this Agreement.

Landlord: The Landlord named herein, its successors or assigns and any subsequent owner, lessees, or transferees, from time to time, of the Landlord's interest in the Building and their respective successors and assigns (subject to the provisions of Paragraph 31 hereof.

Lease: This Lease Agreement, as amended from time to time, and all Exhibits incorporated herein and/or attached hereto.

Lease Guarantor: This Lease Agreement, as amended from time to time, and all of Tenant's obligations hereunder are hereby fully guaranteed jointly and severally by those Persons listed on the signature page as Lease Guarantors.

Lease Year: The period of twelve (12) months commencing on the Lease Commencement Date and ending on the last day of the month which completes twelve (12) full calendar months after the Lease Commencement Date, and each 12-month period thereafter commencing on the first day after the end of the immediately preceding Lease Year, except that the last Lease Year shall end on the last day of the Term.

Legal Requirements: All laws, statutes, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, and the appropriate agencies, officers, departments, boards, and commissions thereof, and the board of fire underwriters and/or the fire insurance rating organization or similar organization performing the same or similar functions, whether now or hereafter in force, applicable to the Building or any part thereof and/or the Leased Premises, as to the manner of use or occupancy or the maintenance, repair, or condition of the Leased Premises and/or the Building, and the usual and customary requirements of the carriers of all fire insurance policies maintained by Landlord on the Building.

Mortgage: Any mortgage, deed of trust, or other security instrument of record creating an interest in or affecting title to the Building or the land on which it is constructed, or both, or any part thereof, including a leasehold mortgage or sub-leasehold mortgage, and any and all renewals, modifications, consolidations, or extensions of any such instrument; Mortgagee shall mean the holder or beneficiary of any Mortgage. Tenant shall comply with all reasonable notices from Landlord's Mortgagee as to the manner of use or occupancy or the maintenance, repair or condition of the Leased Premises and/or the Building.

Non-disturbance: Landlord will provide Tenant a reasonable non-disturbance agreement from any current and/or future mortgagees. In connection therewith Tenant shall execute documents reasonably requested by such lender, provided any such instrument or other document is in form and content as would be customary in the industry and does not modify or amend the terms and conditions of this lease.

Operating Expenses: Tenant Shall pay Tenant's Proportionate Share of annual increases in Real Estate Taxes and Operating Expenses above the Calendar 2003 Base Year. Landlord will follow usual and customary practices of the industry and agrees not to defer or omit foreseeable budgeted line items from the Base Year so as not to artificially reduce the Operating Expenses for the Calendar 2003 Base Year. An itemized breakdown of 2003 estimated Operating Expenses will be made available upon completion of Landlord's year end consolidation. Detailed breakdowns of all charges to Tenant will be provided. The aggregate of all costs and expenses reasonably and customarily paid or incurred on a cash basis by Landlord in connection with the ownership, operation, servicing, and maintenance of the Leased Premises, the Building, the land on which the

Building is constructed and any related ancillary improvements constructed on the land, the surface and garage parking areas servicing the Building, and ingress/egress easements and private roadways servicing the Building, including, but not limited to, employees' wages, salaries, welfare and pension benefits and other customary and usual employee fringe benefits; payroll taxes; Real Estate Taxes; property owner's association dues, required fees and contributions of any kind related to the ownership or operation of the Building (but not related to zoning of the Building or construction fees related to the construction of the base building shell), electricity and other utility charges; telephone service related to operation of the Building; painting of public or other common areas of the Building; exterminating service; security services; trash removal; sewer and water charges; premiums for fire and casualty, liability, rent loss, workmen's compensations, sprinkler, water damage and other insurance; repairs, maintenance, additions and improvements made by Landlord to the Building; building, janitorial and cleaning services and supplies; uniforms and dry cleaning; snow removal; landscaping maintenance; window cleaning; service contracts for the maintenance of elevators, boilers, HVAC, and other mechanical, plumbing, and electrical equipment; legal fees (other than legal fees relating to leasing available space in the Building or related to the enforcement of Landlord's rights under leases with tenants for space in the Building); accounting fees; advertising (except for advertising expenses and leasing fees relating to leasing space in the building); management fees at reasonable and customarily incurred rates and all other expenses now or hereafter reasonably and customarily incurred in connection with the ownership, operation and maintenance of comparable office buildings in Northern Virginia, Refunds of Real Estate Taxes (reduced by Landlord's reasonable expenses in obtaining such refunds), receipts from tenants of the Building for after-hours heating or air-conditioning and for excess electrical usage in an amount equal to the actual costs of providing such service, recoveries of expenses and other separate charges made to tenants of the Building for special services (but excluding any mark-up or profit realized by Landlord in connection with providing such special services) and, to the extent that Operating Expenses include the cost of any repair or reconstruction work, the amount of any insurance recoveries, shall be credited against Operating Expenses in computing the amount thereof. Operating Expenses shall also be reduced as provided in Section 3(b).

Notwithstanding anything in this Lease to the contrary, for purposes of the calculations to be made pursuant to this paragraph. Operating Expenses shall exclude (i) Capital Improvements (defined for the purposes of this paragraph to mean the replacement, but not repairs, of all or substantially all, of major capital items, such as (a) mechanical or electrical systems, (b) the roof, (c) the parking lots of the Building, and (d) the elevators, (ii) repairs and replacements, which under sound accounting principles and practices should be classified as capital expenditures as determined by Landlord's independent accounting firm, (iii) painting, redecorating, or other work which Landlord performs for any other tenant or prospective tenant of the building other than painting, redecorating, or other work which is standard for the building and performed relative to the common areas of the Building, (iv) repairs or other work (including rebuilding) occasioned by fire, windstorms, or other casualty, to the extent covered by insurance, or condemnation, (v) any cost (such as repairs, improvements, electricity, special cleaning or overtime services) to the extent such costs are included in tenants' rent or are expressly reimbursable to Landlord by tenants (as opposed to rent escalation provisions) or are separately charged to and payable by tenants or to the extent Landlord is entitled to compensation by insurance proceeds, (vi) leasing commissions and expenses of procuring tenants, including advertising and promotional expenses, lease concessions and lease take-over obligations, (vii) depreciation, (viii) interest on and amortization of debt, (ix) taxes of any nature, excluding real estate taxes, but including interest and penalties for late payment of taxes, except as provided herein, (x) rent payable under any lease to which this lease is subject, (xi) wages or salaries of employees other than on-site employees for the building or employees specifically employed, in whole or in part, in connection with the ownership and

maintenance of the Building, (xii) costs and expenses of enforcing leases against tenants, including legal fees, (xiii) managing agents' commissions in excess of rates then customarily charged by managing agents for comparable office buildings and, (xiv) expenses resulting from any violation by Landlord of the terms of any lease of space in the building or any ground or underlying lease or mortgage to which this lease is subordinate (xv) costs of leasing commissions, legal, space planning, construction, and other expenses incurred in procuring tenants for the Property or with respect to individual tenants or occupants; (xvi) any costs or expenses associated with or incurred in connection with the removal, enclosure, encapsulation or other handling of asbestos or other hazardous or toxic materials or substances knowingly brought onto the Property by Landlord or at the specific direction of Landlord; (xvii) increased insurance or real estate taxes assessed specifically to any other tenant of the Property; (xviii) any cost representing an amount paid to a person, firm, corporation or other entity related to landlord which is in excess of the amount which would have been paid in the absence of such relationship; (xix) any cost of painting or decorating of any interior parts of any tenants leased premises in the Property; (xx) cost of repairs, alterations and/or replacements caused by the exercise of the rights of eminent domain to the extent same is covered by payments received by Landlord from the applicable governmental authority; (xxi) costs of signs in or on the Building identifying the Landlord or any tenant of the Building; and (xxii); costs, fines or penalties incurred due to the Landlord knowingly violating any laws or governmental rules or regulations, unless such costs result from the Landlord's ownership or management of the Property in a manner that is ordinary and customary in the industry or as incurred by Landlord in successfully challenging any such law, rule or regulation.

If during the Term (including the Base Year) the Building is less than ninety-five percent (95%) occupied, or if by reason of partial operation of the Building all Operating Expenses for a calendar year have not been incurred, variable Operating Expenses shall be adjusted for that calendar year to an amount which the Landlord estimates, in the Landlord's reasonable judgment using generally accepted accounting principals, would have been incurred had the Building been ninety-five percent (95%) occupied and in full operation during that calendar year in accordance with generally accepted accounting principles consistently applied. Any adjustment to reflect ninety-five percent (95%) occupancy shall not affect costs or expenses that do not vary with occupancy (such as insurance premiums, utility and maintenance costs for Common Areas, and other fixed expenses) and shall be made in a manner that reasonably reflects all factors relating to the impact of occupancy on the amount of variable costs and expenses and that reasonably constitutes the most accurate possible approximation of what such variable costs and expenses would actually have been had the Building actually been ninety-five percent (95%) occupied and fully assessed for taxes, and shall not result in any adjustment of Operating Expenses to a level such that if all occupied areas of the Building had paid all of such adjusted Operating Expenses, Landlord would have received more than actual Operating Expenses without such adjustment to ninety-five percent (95%) occupancy.

In the event that pursuant to the terms of this Lease, Tenant is obligated to pay its proportionate share of Operating Expenses, Tenant shall have the right to audit Landlord's books and records as follows:

- A. Tenant shall be entitled at any reasonable time during business hours, after giving at least five (5) days prior written notice, to inspect Landlord's books and records relating to Tenant's proportionate share of Operating Expenses at the site of the location of such books and records and to obtain an audit thereof by an independent auditor selected by Tenant (and reasonably acceptable to Landlord) to determine the accuracy of such amounts billed to Tenant by Landlord for the last two (2) calendar years immediately preceding the calendar year in which such notice is given.

- B. If such audit discloses a liability for Tenant's proportionate share of Operating Expenses which is less than the amount billed to, and paid by, Tenant, then Landlord shall within thirty (30) days refund to Tenant all amounts paid by Tenant in excess of the amount Tenant is actually required to pay as provided for herein ("Refund Amount").
- C. All costs of such audit shall be paid by Tenant. However, in the event the Refund Amount is greater than five percent (5%) of the amount for which Tenant is actually liable (as disclosed by the audit), all reasonable actual costs of such audit shall be paid by Landlord.

Notwithstanding anything to the contrary set forth herein, or elsewhere provided for, in no event shall Tenant's Proportionate Share of annual increases in Real Estate Taxes and Operating Expenses above the Calendar 2003 Base Year exceed one dollar (\$1.00) per square foot of space covered by this Agreement during any one calendar year. In the event the square footage changes during any calendar year the average monthly square footage shall be used.

Option to Renew: Tenant is hereby given the option to renew this Lease for two (2) periods of three (3) years, or one (1) period of either; three (3) years, five (5) years, or seven (7) years, provided that there shall be no Event of Default under any of the terms of this Lease either at the time of the giving of any such notice or at the time of commencement of any renewal. Tenant shall give notice in writing to the Landlord of its exercise of such option at least six (6) months prior to the termination of the Initial Term. Such renewal shall be based on the same terms, covenants and conditions as are contained in this Lease except that the Basic Rent for the first year of the renewal period shall be at the then current market rate (for comparable buildings in the general vicinity of the Building), as agreed to by the parties hereto. In the event the parties can not agree to the current market rate as set forth above then the Landlord and Tenant shall each select a licensed commercial real estate broker doing business in Northern Virginia (the "Selected Brokers"), whereupon the Selected Brokers shall select a third similarly qualified broker, who shall each then provide to the parties their expert opinion as to the then current market rate and the average of the three opinions shall be the current market rate for the purposes of this paragraph. In establishing the Basic Rent for the renewal term, the parties or the brokers who determine the Basic Rent shall consider and take into account Tenant's continuing obligation to pay Additional Charges for Operating Expense Increases over the Operating Expense Base, unless the parties have agreed in writing that Tenant's obligation to pay Additional Charges for Operating Expense Increases over the Operating Expense Base shall be terminated and the Operating Expense Base shall be re-set to be the sum of the actual Operating Expenses during the year in which such renewal term commences. Notwithstanding the foregoing, in no event shall the Basic Rent for the first year of the renewal period be less than the current rate at the end of the Initial Term. In the event the Tenant elects to renew, the Landlord shall provide a one time allowance for the re-painting and re-carpeting of the space with specifications matching the original installations which can be utilized at any one renewal term commencement.

Person: A natural person, a partnership, a limited liability company, a corporation, and any other form of business or legal association or entity.

Project General Contractor: Signet Construction Company, Inc. of Fairfax, Virginia.

Real Estate Taxes: All taxes, assessments, vault rentals, water and sewer rents, if any, and other charges, if any, general, special, or otherwise, including all assessments for schools, public betterment, and general or local improvements, which are mandatory or legally compelled, levied or assessed upon or with respect to the ownership of and/or all other taxable interests in the Building and the land on which it is built imposed by any public or quasi-public authority (including The Reston Association and any related or similar organization having jurisdiction over

the Building and the ability to assess fees to the owner of the Building whether now existing or created after the date hereof) having jurisdiction and personal property taxes levied or assessed on Landlord's personal property used in connection with the operation, maintenance, and repair of the Building. Except for taxes, fees, charges, and impositions described in the next succeeding sentence, Real Estate Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, corporation, income, or profit tax or capital levy. If at any time during the Term the methods of taxation shall be altered so that in addition to or in lieu of or as a substitute for the whole or any part of any Real Estate Taxes levied, assessed or imposed there shall be levied, assessed or imposed (i) a tax, license fee, excise or other charge on the rents received by Landlord, or (ii) any other type of tax or other imposition in lieu of, or as a substitute for, or in addition to, the whole or any portion of any Real Estate Taxes, then the same shall be included as Real Estate Taxes. A tax bill or true copy thereof, together with any explanatory or detailed statement of the area or property covered thereby, submitted by Landlord to Tenant shall be conclusive evidence of the amount of taxes assessed or levied, as well as of the items taxed. If any real property tax or assessment levied against the land, buildings or improvements covered thereby or the rents reserved therefrom, shall be evidenced by improvement or other bonds, or in other form, which may be paid in annual installments, only the amount paid or payable in any Lease Year shall be included as Real Estate Taxes for that Lease Year.

Substantially Completed: The completion of the construction or installation, or both, of the Tenant's Improvements, except for any special order, trade specific, or long-lead time items, to the extent that (i) all required governmental inspections for such Tenant Improvements have been successfully completed and only minor items remain unfinished (except for any special order, trade specific, or long-lead time items), and (ii) such minor items do not prevent Tenant from occupying the Leased Premises as reasonably determined by the project architect or the Project General Contractor. Notwithstanding anything contained herein to the contrary, or elsewhere provided, it is specifically understood and agreed that any delay caused by the any special order, trade specific, or long-lead time items of the Tenant (either supply, delivery, condition upon delivery, non-compliance of such equipment with the Construction Documents, or defects inherent to such equipment that effect the use of such equipment upon installation) shall not in any way delay the date of Substantial Completion or the date of Lease Commencement even if such delay prevents the issuance of an occupancy permit for the Leased Premises.

Taking: A taking of property or any interest therein or right appurtenant or accruing thereto, by condemnation or eminent domain or by action, proceedings, or agreement in lieu thereof, pursuant to governmental authority.

Tenant: The tenant named herein and any permitted assignee under Section 15.

Tenant Delays: As set forth in paragraph 2 hereof.

Tenant's Special Installations: As defined in Section 9(d).

Unavoidable Delays: Delays caused by strikes, acts of God, lockouts, labor difficulties, riots, explosions, sabotage, accidents, inability to obtain labor or materials, governmental restrictions or delays in obtaining required building permits or occupancy permits, enemy action, civil commotion, fire, unavoidable casualty, or similar causes not caused by and beyond the reasonable control of the Landlord and/or Tenant.

2. COMPLETION OF LEASED PREMISES, SCHEDULE AND INSPECTIONS

(a) *Base Building Definition:* To the extent not already completed, Landlord shall complete the building shell in accordance with the project specifications set forth in the Base Building Definition attached hereto as, Exhibit B and incorporated herein, (the "Base Building Definition").

(b) *Tenant Improvement Allowance:* Landlord shall provide an allowance of Thirty Four and 24/100 Dollars (\$34.24) per Rentable square foot of the Leased Premises (the "Tenant Improvement Allowance") not to exceed a total of Two Hundred and Sixty Three Thousand and Seven Hundred Nineteen and 83/100 Dollars (\$263,719.83) to be used for space planning (except as set forth below), preparation of the Tenant Improvement Plans (as described below), architectural and engineering services related to the Tenant Improvement Plans that are provided by Landlord's Architect, permitting required in connection with the Tenant Improvement Plans, leasehold improvements (including modifications to the existing building specifications required as a result of the Tenant Improvement Plans), and all other hard and soft costs of construction incurred by Landlord and Tenant in connection with the Tenant Improvement Plans or construction of the Tenant's Improvements in accordance with a budget to be approved by Landlord and Tenant as provided below, provided the Tenant Improvement Allowance will not be used for furniture or moving costs or the hard and soft costs incurred by Tenant until Landlord's hard and soft costs have been paid in accordance with the budget for the Tenant Improvements.

(c) *Tenant's Improvements:* Promptly upon execution of this Lease, Landlord and Tenant shall jointly develop a mutually acceptable space plan and finishing schedule for the Leased Premises that is consistent throughout the Leased Premises, is consistent with Building Standards, and meets Tenant's requirements (the "Space Design"). The Space Design shall be provided by the Landlord's Architect and the cost shall be included in the Tenant Improvement Allowance. Upon completion of the Space Design, an architectural firm shall be selected by Landlord ("Landlord's Architect") from those listed on Exhibit C, attached hereto and incorporated herein, to prepare the complete construction documents (the "Tenant Improvement Plans"). The Tenant Improvement Plans shall fully describe all leasehold improvements required in connection with the build out of the Leased Premises (the "Tenant's Improvements") and shall include all required construction drawings, construction documents and specifications, finishing schedules, structural designs and plans, mechanical designs and plans, electrical designs and plans, plumbing designs and plans, and any other documents or items necessary in connection with obtaining bids for the Tenant Improvement Plans and in connection with obtaining building permits for the Tenant Improvement Plans and occupancy certificates or use permits for the Leased Premises, with the exception of any details, specifications, and/or designs of trade specific equipment that Landlord's Architect can not reasonably include in the Tenant Improvement Plans. Landlord shall contract with Landlord's Architect in connection with the preparation and submission of the Tenant Improvement Plans. Upon completion thereof and the approval of Tenant, the Space Design and the Tenant Improvement Plans shall be attached hereto as Exhibit D-1 and D-2, each hereby being incorporated herein. All Tenant Improvements shall be strictly in accordance with all Landlord's specifications for interior building finishes, (the Building Interior Finish Specifications), attached hereto as Exhibit E, and incorporated herein, unless otherwise approved by Landlord, such approval not to be unreasonably withheld provided the change does not alter the character or quality of the Building. Landlord shall have the right, but not the obligation, to contract with the Project General Contractor and any other party as required in connection with the construction of the Tenant's Improvements and all costs thereof (not to exceed the amount of the Tenant Improvement Allowance) shall be paid by Landlord and charged to (and shall be considered a part of) the Tenant Improvement Allowance.

(d) *Tenant's Costs:* All costs in excess of the Tenant Improvement Allowance will be the sole responsibility of Tenant. Upon receipt of bids for the Tenant's Improvements the Landlord or the Project General Contractor shall provide Tenant with a budget for the Tenant Improvement Plans and the Tenant's Improvements for the Tenant's review, setting forth in reasonable detail all identifiable costs associated with the Tenant Improvement Plans and the Tenant's Improvements. In the event the budget exceeds the Tenant Improvement Allowance the Project General Contractor, to the extent practical, shall provide the Landlord and Tenant suggested modifications to the Tenant Improvement Plans that will lower the Tenant Improvement Costs to an amount that does not exceed the Tenant Improvement Allowance (the "Suggested Modifications"). Landlord and Tenant shall review and

approve the Suggested Modifications, such approval not to be unreasonably withheld, conditioned or delayed. In the event the parties do not agree to any or all of the Suggested Modifications and/or the budget for the Tenant Improvements remains above the Tenant Improvement Allowance and the Tenant is unwilling to pay the Excess Costs, the Landlord shall have the option to (i) terminate this Agreement in which event the Tenant shall reimburse Landlord for its costs related to the Tenant Improvement Plans, or (ii) increase Tenant Improvement Allowance. The Tenant shall not have the right to terminate this Lease based on the Tenant Improvement budget. Upon finalizing the Tenant Improvement budget the Tenant shall deposit cash with Landlord, or provide such other surety as is approved by Landlord in its sole but reasonable discretion, in an amount equal to the total budget less the Tenant Improvement Allowance (the "Excess Costs Deposit"). In the event Tenant requests any change to the Tenant Improvement Plans after finalizing the Tenant Improvement Plans and the cost of such change is not included in the final budget for the Tenant Improvements (as determined by the Project General Contractor) the Tenant shall remit payment to Landlord for the full cost of such change within thirty (30) days of invoice by Landlord. In the event the Excess Costs Deposit is not adequate to pay all costs associated with the Tenant's Improvements above the Tenant Improvement Allowance, the Tenant shall be promptly notified in writing and Tenant will remit payment to Landlord within thirty (30) days of receipt of Landlord's invoice for any additional costs. In the event the Excess Costs Deposit is not fully required to complete the Tenant's Improvements, the Tenant shall receive a refund of any unused portion thereof within thirty (30) days of completion of the Tenant's Improvements. Tenant agrees that the Project General Contractor shall be used for all Tenant Improvements.

(e) *Plan Approvals:* Landlord and Tenant shall jointly approve the Space Design. The Tenant Improvement Plans, the Tenant's Improvements, and any related modifications to the Building shall be subject to Landlord's sole but reasonable approval. Prior to any work commencing, Landlord shall approve all plans and specifications. If Landlord fails to approve or disapprove the Tenant's plans within five (5) business days of receipt of complete plans and specifications related to the Tenant's Improvements, approval shall be deemed given. Prior to any work commencing all required permits shall be obtained.

(f) *Schedule:* On the Lease Commencement Date Landlord shall deliver the Leased Premises to Tenant Substantially Completed, as defined in paragraph 1 above. In order to deliver the Leased Premises in a timely manner the Tenant Improvement work must commence promptly and proceed without delay. Accordingly, the parties hereto will diligently pursue the preparation and approval of all plans, specifications, budgets, and finish selections as may be required to commence the Tenant Improvement Work in a timely manner, subject to Tenant's right to review and respond within five (5) days of Landlord's request for information or decisions as set forth in (g) below. Attached hereto as Exhibit D-3 shall be the schedule for completion of the Tenant Improvement Plans and the Tenant Improvements which is hereby approved by Landlord and tenant.

(g) *Delays:* Tenant shall fully and timely cooperate with Landlord and the Project General Contractor in connection with completion of the Space Design, the Tenant Improvement Plans and the construction of the Tenant Improvements. Requests for information or decisions that are to be made by the Tenant shall be responded to within five (5) business days. In the event Tenant fails to promptly perform its duties as set forth in this paragraph the Landlord shall have the right to make such decision for the Tenant and the Tenant shall accept such decision as final or in the alternative the Tenant shall be deemed to have caused a Tenant Delay. Further in the event Tenant or the supplier of any trade specific equipment required by Tenant causes any delays in whole or in part (as defined below) as reasonably determined by the Project General Contractor, in the completion of the Space Design, completion of the Tenant Improvement Plans, the completion of the Tenant's Improvements, or the installation of the Tenant's trade specific equipment, the Lease Commencement Date shall not be delayed. In the event of any such delay, the Project General Contractor shall promptly notify Tenant

and Landlord of such delay in writing and shall provide specific information regarding the cause of such delay. As used in this Lease, the delays referenced in this paragraph 2(g) and in the following subparagraphs shall be considered Tenant Delays:

(i) Tenant's failure to furnish information in accordance with the requirements of this Lease, or to fully and accurately respond to any request by Landlord or the Project general Contractor for any approval or information within five (5) business days of the request, whether such request is verbal or written;

(ii) Tenant's insistence on materials, finishes or installations other than Building Standard if Tenant has been informed by Landlord or the Project General Contractor, verbally or in writing, at or before the time of delivery to Tenant of final construction pricing for Tenant's approval, that such materials, finishes or installations will cause a Tenant Delay;

(iii) Tenant's change orders or requests for changes to any plans and specifications which result in a delay to the construction schedule. Prior to framing and upon five (5) business days prior notice to Tenant, the Landlord will provide the Tenant an opportunity to walk the space with the Project General Contractor with the wall locations blue lined on the floors. Provided the Tenant promptly reviews the blue lined locations, alterations due to field conditions can be made without cost and without creating a Tenant Delay;

(iv) Any delay in the performance by a person, firm or corporation employed by Tenant or providing any service at the request of Tenant in connection with the Tenant Improvements (including space design and supply of trade specific equipment or office furnishings) in the completion of any work by said person, firm or corporation (all such work and such persons, firms or corporations being subject to the approval of Landlord which shall not be unreasonably withheld or delayed); or

(v) Any request by Tenant that Landlord delay the completion of any of the Tenant Improvements;

(h) *Subcontractors and Suppliers:* All sub-contractors and material suppliers performing work or supplying materials to the Building shall be selected by the Project General Contractor and shall be subject to the Landlord's approval in its sole reasonable discretion. In order to protect the integrity and efficiency of the mechanical, electrical and plumbing systems, all mechanical, electrical and plumbing within the Tenant's space shall be designed by the design build team responsible for the mechanical, electrical and plumbing systems in the building, unless otherwise approved by Landlord in its sole discretion. The Project General Contractor shall be required to obtain three bids for each subcontracted item and shall accept the lowest Qualified Subcontractor's bid. For the purposes hereof the term Qualified Subcontractor shall mean a person, or contractor that is reasonably believed by Landlord and Project General Contractor to be (i) bondable, (ii) properly staffed and fully capable of performing its duties in a timely manner so as to not delay me construction process, (iii) capable of completing its work on the Building in a workmanlike manner in keeping with the Building Standards, and (iv) capable of performing its work in a manner that will not compromise the condition of the Building or its electrical or mechanical or plumbing systems. Tenant shall be entitled to place at least one Qualified Subcontractor per trade or work item on the bid list.

(i) *Inspections:* On or before the Lease Commencement Date, Landlord shall deliver to Tenant a certification from the Project Architect that the Leased Premises are Substantially Completed (as defined in Paragraph 1 above, and Landlord and Tenant, or their respective agents, shall jointly inspect the Leased Premises to note its condition and shall prepare a punch list of any items that the Landlord shall be responsible for completing or correcting (the "Landlord's Punchlist"). The Landlord shall cause such items to be completed or corrected within ninety (90) days of Lease Commencement with the exception of corrections that require special order or long lead time materials. At the time Tenant

surrenders the Leased Premises or at the end of the Term, or within ten (10) business days thereafter, Landlord and Tenant, or their respective agents, shall make a similar inspection of the Leased Premises to note the condition of the Leased Premises at the time of surrender and shall prepare a punch list of any items of repair that Tenant shall be responsible for completing under the terms of this Lease, reasonable wear and tear excepted (the "Tenant's Punchlist"). Landlord shall not be obligated to refund to Tenant all or any part of the Security Deposit then being held by Landlord until all repairs that are the responsibility of Tenant are completed to Landlord's reasonable satisfaction.

(j) *Acceptance of Space:* Subject to Landlord completing any repairs as set forth on the Landlord's Punchlist, the Tenant shall accept the Leased Premises in its "as is" condition on the Lease Commencement Date except as to Landlord's Punchlist Items, latent defects within industry standards as reasonably determined by the Project Architect and applicable general warranties under local laws, and Landlord shall have no obligation to perform any additional work in completing the Leased Premises.

3. RENT AND ADDITIONAL CHARGES

(a) *Payment of Rent and Additional Charges.* Subject to the provisions of Paragraph 1, Tenant shall pay the Basic Rent for each Lease Year in equal monthly installments in advance on the first day of each month during the Term, commencing on the Lease Commencement Date. If the Lease Commencement Date is not the first day of a month, Basic Rent for the period commencing on the Lease Commencement Date and ending on the last day of the month in which the Lease Commencement Date occurs (the "Partial First Month") shall be pro-rated for each day at the rate of one-thirtieth ($1/30$) of the full monthly installment of Basic Rent. In the event the Advance Rent received by Landlord exceeds the amount of Basic Rent due Landlord for the Partial First Month the excess amount shall be credited to the next monthly Basic Rent Payment. The Basic Rent and all Additional Charges shall be paid promptly when due, in lawful money of the United States, without notice or demand and without deduction, diminution, abatement, counterclaim, or setoff of any amount or for any reason whatsoever, except as otherwise expressly provided in subsection (b), to Landlord at Landlord's Notice Address or at such other address or to such other person as Landlord may from time to time designate in writing. If Tenant makes any payment to Landlord by check, such payment shall be by check of Tenant and Landlord shall not be required to accept the check of any other person, and any check received by Landlord shall be deemed received subject to collection. If any check is mailed by Tenant, Tenant shall post such check in sufficient time prior to the date when payment is due so that such check will be received by Landlord on or before the date when payment is due. Tenant shall assume the risk of lateness or failure of delivery of the mails, and no lateness or failure of the mails will excuse Tenant from its obligation to have made the payment in question when required under this Lease. If, during the Term, Landlord receives two or more checks from Tenant which are returned by Tenant's bank for insufficient funds or are otherwise returned unpaid. Tenant agrees that all checks thereafter shall be either bank certified, cashiers', or treasurers' checks. Landlord shall be reimbursed by Tenant an amount equal to one hundred and fifty percent (150%) of all bank service charges resulting from any returned checks. The rent reserved under this Lease shall be the total of all Basic Rent and Additional Charges, increased and adjusted as elsewhere herein provided, payable during the entire Term and, accordingly, the methods of payment provided for herein, namely, annual and monthly rental payments, are for convenience only and are made on account of the total rent reserved hereunder.

(b) *Payment of Operating Expense Increases.* Beginning on January 1, 2004 Tenant shall pay as Additional Charges any Operating Expense Increases in accordance with Section 1(b) for each calendar year, commencing with the calendar year 2004. Landlord shall make a reasonable estimate of Tenant's Operating Expense Increase for each calendar year, and Tenant shall pay to Landlord 1/12th of the amount so estimated on the first day of each month in advance. If Landlord's estimate of Tenant's Operating Expense Increases for any calendar year is received by Tenant after January 1 of the calendar year, Tenant shall pay to Landlord in a lump sum, within thirty (30) days after receipt of the estimate, the arrearage in the monthly estimates for each month in the calendar year before receipt of the estimate and shall pay the remaining monthly installments on the first day of each month in advance during the balance of the calendar year. Within one hundred and twenty (120) days after the end of each calendar year, Landlord shall submit to Tenant a statement setting forth in reasonable detail the Operating Expenses for such calendar year and the amount (if any) of Tenant's Operating Expense Increases for such calendar year. If Tenant's Operating Expense Increases so stated are more than the amount (if any) theretofore paid by Tenant for Operating Expense Increases based on Landlord's estimate, Tenant shall pay to Landlord the deficiency within thirty (30) days after the submission of such statement. If Tenant's Operating Expense Increases so stated are less than the amount (if any) theretofore paid by Tenant for Operating Expense Increases based on Landlord's estimate, Landlord shall refund to Tenant the excess within thirty (30) days after submission of such statement. If either the Lease Commencement Date shall not coincide with the beginning of a calendar year or the last day of the Term shall not coincide with the end of a calendar year, then the amount of Operating Expense Increases payable for the calendar year in which the Lease Commencement Date or the last day of the Term occurs, as the case may be, shall be pro-rated on a daily basis between Landlord and Tenant based on the number of days in such calendar year in which this Lease is in effect. Tenant's obligations under this subsection to pay Operating Expense Increases and Landlord's obligation to reimburse Tenant for an overpayment of Operating Expenses shall survive the expiration of the Term. If any part of the Building is leased to tenants (hereinafter referred to as "Special Tenants") which, in accordance with the terms of their leases, provide their own cleaning and janitorial services, electrical services, or are not required to pay Operating Expense Increases on the basis of operating expenses for the Building which include substantially the same components as the Operating Expenses (as defined in this Lease), the following provisions shall apply as to those components of Operating Expenses: (i) the Building Rentable Area shall be reduced by the rentable area of the space leased to Special Tenants; (ii) Tenant's Proportionate Share shall be the percentage which the Rentable Area is of the Building Rentable Area (determined after the reduction specified in clause (i); and (iii) those components of Operating Expenses shall be reduced by the sum of the amounts payable to Landlord by Special Tenants, in accordance with the terms of their leases, as reimbursements for Real Estate Taxes and expenses of owning, operating, managing and maintaining the Building and the amount of the applicable operating expense base under such Special Tenants' leases.

(c) *Interest.* If Tenant fails to make any payment of Basic Rent or Additional Charges within five (5) calendar days of the due date thereof, interest shall, at Landlord's option, accrue on the unpaid portion thereof from the due date at the Default Interest Rate, but in no event at a rate higher than the maximum rate allowed by law, and shall be payable on demand.

(d) *Accord and Satisfaction.* No payment by Tenant, receipt or acceptance by Landlord of any lesser amount than the amount stipulated to be paid hereunder shall be deemed other than on account of the earliest stipulated Basic Rent or Additional Charges; nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord.

(e) *Late Payment Charge.* If Tenant fails to pay any Basic Rent or Additional Charges within five (5) days after the same become due and payable, Tenant shall also pay to Landlord on demand a late

payment service charge (to cover Landlord's administrative and overhead expenses of processing late payments) equal to the greater of \$100.00 or two percent (2%) of such unpaid sum for each and every calendar month or part thereof after the due date that such sum has not been paid to Landlord. Such payment shall be deemed liquidated damages and not a penalty, but shall not excuse the untimely payment of rent.

4. COMMON AREAS

Throughout the Term, Tenant and its agents, employees and business invitees shall have the nonexclusive right, in common with others, to use the public lobbies, parking lots, elevator, corridors, stairways, and other common areas in the Building and the toilet rooms in public areas of multi-tenant floors in the Building. Landlord shall have the right at any time, without the Tenant's consent, to make reasonable changes to the arrangement or location of entrances, passageways, doors, doorways, corridors, stairs, toilet rooms, or other public portions of the Building, provided any such change does not unreasonably obstruct Tenant's access to the Leased Premises.

5. SERVICES AND UTILITIES

(a) *Services Provided:* Throughout the Term, Landlord agrees that the Building will be maintained in a manner befitting comparable Class A rental office buildings in Northern Virginia, and that, subject to Legal Requirements, it will furnish to Tenant the following services:

- (1) Subject to the provisions of subsections (b) and (c), normal and usual electricity for lighting purposes and the operation of ordinary office equipment;
- (2) Adequate supplies for toilet rooms located in public areas of the Building;
- (3) Normal and usual cleaning and janitorial services after business hours on Business Days;
- (4) Hot and cold running water in the toilet rooms;
- (5) Subject to the provisions of subsection (d), heating and air-conditioning to the Leased Premises when required for the comfortable occupancy of the Leased Premises, at reasonable temperatures, pressures, and degrees of humidity, and in reasonable volumes and velocities, between the hours of 8:00 a.m. and 6:00 p.m. on Business Days and between the hours of 9:00 a.m. and 1:00 p.m. on Saturdays unless Saturday is a legal holiday;
- (6) Automatically operated elevator service twenty-four (24) hours a day, seven (7) days a week throughout the Term;
- (7) All electric bulbs and fluorescent tubes in building standard light fixtures in the public areas of the Building and building standard fixtures within the Leased Premises;
- (8) A reasonable number of keys to the Leased Premises shall initially be provided at no cost to Tenant, but all additional keys including replacements for lost keys shall be issued only upon the payment of a reasonable actual cost for each additional key; and
- (9) A security access system for the public areas of the Building and card keys or other means of entry into the Building.
- (10) An electronic perimeter card key security system will be provided for building access after normal operating hours. Building will be unlocked between 7:00 AM and 6:00 PM Monday-Friday and for certain holidays in which tenant is conducting business. Access during other times will be by security phone and Landlord shall assist Tenant in establishing a password system in order to simplify access for Tenant's clients during non-standard

(b) *Electrical Supply:* Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy furnished to the Leased Premises by reason of any

requirement, act or omission of the public utility serving the Building with electricity. Tenant's use of electrical energy in the Leased Premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Leased Premises. Tenant shall not install or operate in the Leased Premises any electrically operated equipment, including lighting, which uses electric current in excess of the allocable share of the Building system capacity without Landlord's written consent, which consent may be conditioned upon Tenant's agreement to pay an additional charge to compensate Landlord for Tenant's excessive consumption of electricity and to pay the cost of any additional wiring which may be required for the operation of such equipment. Tenant shall not connect any equipment or other electrical device to the electrical system of the Building that would require unusual or excessive electrical service or that would interfere with the adequate supply of electrical service to (i) other tenants within the Building, or (ii) the Building common facilities. In order to minimize the chances of the Building's electrical capacity being exceeded and to reduce the possibility of a possible adverse effect upon the Building electrical service Tenant shall give notice to Landlord whenever Tenant shall connect to the Building electrical distribution system any electrically operated equipment other than lamps, typewriters, personal computers, computer servers, and similar small office machines. Any feeders or risers to supply Tenant's electrical requirements in addition to those originally installed, and all other equipment proper and necessary in connection with such feeders or risers, shall be installed by Landlord upon Tenant's request, at the sole cost and expense of Tenant, provided that, in Landlord's reasonable judgment, such additional feeders or risers are permissible under applicable laws and insurance regulations and the installation of such feeders or risers will not cause permanent damage or injury to the Building or cause or create a dangerous condition or unreasonably interfere with other tenants of the Building.

(c) *Electrical Use Limits:* If, at any time or from time to time, the estimated connected electrical load (including lighting and power) used by Tenant's electrically operated equipment exceeds an average of eight (8) watts (6 watts for low voltage and 2 watts for high voltage) per square foot of the Leased Premises on a 120/208 volt panel board, Landlord may either (i) install a separate electric meter for the Leased Premises, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of electricity it consumes, as recorded by such meter, in excess of the amount of electricity that would be consumed by a tenant whose consumption of electricity was equal to, but did not exceed, the specified limits, or (ii) from time to time have a survey made by an independent electrical engineer or electrical consulting firm to be selected and paid for by Landlord to determine the amount of electricity consumed by Tenant in excess of the amount of electricity that would be consumed by a tenant whose consumption of electricity was equal to, but did not exceed, then specified limits, and Tenant shall pay to Landlord the cost of excess electricity it consumes as determined by such electrical engineer or consulting firm. Landlord shall provide Tenant the right to connect to the Building generator to provide back up power for the Tenant's computer equipment. The costs of adding the connection and any pro-rata share of applicable operating costs of the generator shall be Tenant's cost.

(d) *After Hours HVAC:* Landlord shall provide heat and air-conditioning for the entire sixth floor at times in addition to those specified in subsection (a) of paragraph (5) at Tenant's expense, provided Tenant gives Landlord notice prior to 2:00 p.m. on any Business Day for same day or next Business Day after hour service, or 10:00 a.m. on Fridays or the day preceding a holiday (in the case of after-hours service on Saturdays, Sundays, or holidays). Landlord shall initially charge Tenant for after-hours service at the rate of \$35.00 per hour. Landlord reserves the right from time to time, in its sole discretion, to increase the hourly charge for said after-hours service, but in no event will the rate per hour charged to Tenant be more than an amount per hour which represents Landlord's reasonable estimate of its actual cost of providing such after hours service, including labor, cost of electricity and wear and tear on equipment, plus an allowance of ten percent (10%) thereof to cover general overhead as an Additional Charge hereunder. Notwithstanding the foregoing, for each year during the initial ten (10) years the Landlord shall provide 300 hours of after-hours HVAC operation of the 5th floor at no cost to the Tenant, it being understood and agreed that said 300 hours of additional service is to be

available for the use of the Tenant on a cumulative basis during each year. Landlord shall install thermostats within the Leased Premises that provide Tenant the ability to regulate and control its use of after hours HVAC services. Tenant agrees not to unreasonably utilize the HVAC system.

(e) *Landlord's Use Rights:* Landlord reserves the right to erect, use, maintain, and repair pipes, conduits, cables, plumbing, vents, and wires in, to and through the Leased Premises as and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of the Building, or other tenants' installations in the Building, and the right at all times to transmit water, heat, air-conditioning, and electric current through such pipes, conduits, cables, plumbing, vents, and wires, provided that Landlord, in the exercise of such rights, shall not unreasonably inconvenience Tenant or unreasonably interfere with Tenant's use of the Leased Premises.

(f) *Maintenance Access:* Landlord shall have unrestricted access to any and all air-conditioning facilities in the Leased Premises for the purpose of repairs, maintenance, alterations, and improvements, but in exercising its rights under this subsection Landlord shall use its best efforts to minimize interference with Tenant's business in the Leased Premises.

(g) *Tenant's Efforts:* Tenant agrees at all times to cooperate fully with Landlord and to abide by all the reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building air-conditioning system.

(h) *Service Interruptions:* Landlord reserves the right to stop the service of heating, air-conditioning, ventilating, elevator, plumbing, electricity, or other mechanical systems or facilities in the Leased Premises or the Building, if necessary by reason of accident or emergency, or for repairs, alterations, replacements, additions, or improvements which, in the reasonable judgment of Landlord, are necessary, until said repairs, alterations, replacements, additions, or improvements shall have been completed. The exercise of such right by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to, or interruption of, Tenant's business, or otherwise, or entitle Tenant to any abatement or diminution of rent. Except in cases of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage of any such repairs, alterations, replacements, additions, or improvements promptly. Landlord shall also perform any such work in a manner designated to minimize interference with Tenant's normal business operations.

(i) *Service Delays:* If Landlord shall fail to supply, or be delayed in supplying, any service expressly or implied to be supplied under this Lease, or shall be unable to make, or be delayed in making, any repairs, alterations, additions, improvements, or decorations, or shall be unable to supply, or be delayed in supplying, any equipment or fixtures, and if such failure, delay or inability shall result from Unavoidable Delays, such failure, delay or inability shall not constitute an actual or constructive eviction, in whole or in part, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience to Tenant, or injury to, or interruption of, Tenant's business, or otherwise, or entitle Tenant to any abatement or diminution of rent.

(j) *Voice, Data and other Communications Services:* Landlord shall make reasonable efforts to accommodate Tenant's need for additional riser space during the Lease Term and any extensions thereof for the installation of voice/data and other communications devices by providing at least one riser for the sole use of Tenant.

6. USE OF LEASED PREMISES

(a) *Permitted Uses:* Tenant shall use and occupy the Leased Premises solely for general office purposes strictly in accordance with the applicable zoning regulations and consistent with the character and dignity of the Building, and shall not use or permit or suffer the use of the Leased Premises for

any other purpose whatsoever without the prior written consent of the Landlord which shall not be unreasonably conditioned, delayed or withheld. Tenant shall not permit or suffer the Leased Premises to be occupied by anyone other than Tenant except as provided by Section 15. Tenant shall at all times have access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week, subject, however, in all respects to all the terms, covenants and conditions contained in this Lease. However, Landlord may regulate and restrict access to the Building at times other than normal business hours on Business Days for security purposes so long as Tenant's employees and agents have reasonable access to the Leased Premises without unreasonable inconvenience. Throughout the Term, Tenant shall not use, or permit the Leased Premises to be used, for the business of selling food, beverages, or tobacco products, except that Tenant may operate on the Leased Premises vending machines for the sale of food, beverages, and tobacco products exclusively to its employees, agents, assignees or their respective visitors.

(b) *Use Restrictions:* Throughout the Term, Tenant covenants and agrees: (i) to pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon Tenant's business conducted in the Leased Premises, upon the leasehold estate created by this Lease or upon Tenant's fixtures, furnishings or equipment in the Leased Premises, without affecting Tenant's right to contest same; (ii) not to use or knowingly permit or suffer the use of any portion of the Leased Premises for any unlawful purpose; (iii) not to use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any foreign substances (including medical waste or byproducts) therein; (iv) not to place a load on any floor exceeding the floor load per square foot which such floor was designed to carry in accordance with the plans and specifications of the Building, and not to install, operate or maintain in the Leased Premises any heavy item of equipment except in such manner as to achieve a proper distribution of weight; (v) not to strip, over-load, damage, or deface the Leased Premises, or the hallways, stairways, elevators, parking facilities, or other public areas of the Building, or the fixtures therein or used therewith; (vi) not to move any furniture or equipment into or out of the Leased Premises except at such times and in such locations as Landlord may from time to time reasonably designate; (vii) not to install any other equipment of any kind or nature which will or may necessitate any changes, replacements or additions to, or in the use of, the water system, heating system, plumbing system, air-conditioning system, or electrical system of the Leased Premises or the Building, without first obtaining the written consent of Landlord not to be unreasonably withheld; and (ix) at all times to comply with all Legal Requirements.

(c) *Legal Requirements:* Tenant will not use or occupy the Leased Premises in violation of any Legal Requirements. If any governmental authority, after the commencement of the Term, shall contend or declare that the Leased Premises are being used for a purpose which is in violation of any Legal Requirements, then Tenant shall, within five (5) days of receipt of written notice from Landlord, immediately discontinue such use of the Leased Premises. If thereafter the governmental authority asserting such violation threatens, commences, or continues criminal or civil proceedings against Landlord for Tenant's failure to discontinue such use in addition to any and all rights, privileges and remedies given to Landlord under this Lease for default therein, Landlord shall have the option of terminating this Lease forthwith. Tenant has confirmed that its proposed use of the Leased Premises is permitted under applicable zoning, or other legal ordinances

(d) *Fire Insurance Limitations:* Tenant shall not do, permit or suffer to be done any act, matter, thing, or failure to act in respect of the Leased Premises and/or the Building that will invalidate or be in conflict with fire insurance policies covering the Building or any part thereof, and shall not do, or permit anything to be done, in or upon the Leased Premises and/or the Building, or bring or keep anything therein, which shall increase the rate of fire insurance on the Building or on any property located therein. If, by reason of the failure of Tenant to comply with the provisions of this subsection, the fire insurance rate shall at any time be higher than it otherwise would be, then Tenant shall reimburse Landlord and any other tenant of the Building, on demand, for that part of all premiums for

any insurance coverage that shall have been charged because of such violations by Tenant and which Landlord or such other tenant, or both, shall have paid on account of an increase in the rate or rates in its own policies of insurance. Tenant shall not be responsible for any increase in fire insurance rates generally applicable to office space in Fairfax County, Virginia, and not resulting from the particular manner in which Tenant uses the Leased Premises.

(e) *Restricted Materials:* Tenant shall not bring or permit to be brought or kept in or on the Leased Premises any flammable, combustible, or explosive fluid, material, chemical or substance except standard cleaning fluid in reasonable amounts, standard equipment and materials (including magnetic tape) customarily used in conjunction with business machines. Further, Tenant shall not allow any drop boxes to be placed in any common area.

7. CARE OF LEASED PREMISES

(a) *Tenant Care and Maintenance:* Tenant shall act with care in its use and occupancy of the Leased Premises and the Building and the fixtures therein and, at Tenant's sole cost and expense, shall furnish its own electric bulbs and fluorescent tubes for all non-building standard light fixtures in the Leased Premises and shall make all repairs and replacements to the Leased Premises, structural or otherwise, necessitated or caused by the acts, omissions, or negligence of Tenant or any Person claiming through or under Tenant or by the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any such Person; however, the foregoing provisions of this subsection shall be subject to the provisions of Section 13. Without affecting Tenant's obligations set forth in the preceding sentence, Tenant, at Tenant's sole cost and expense, shall also (i) make all repairs and replacements, as and when necessary, to Tenant's Special Installations and to any Alterations made or performed by or on behalf of Tenant or any Person claiming through or under Tenant, and (ii) perform all maintenance and make all repairs and replacements, as and when necessary, to any special equipment, (other than the Building's standard equipment and systems) which may be installed in the Leased Premises, or elsewhere in the Building for the express purpose of serving the Leased Premises, by Landlord, Tenant, or others. However, except as otherwise provided in this Lease, Tenant shall not have any right to install air-conditioning equipment, elevators, escalators, conveyors, or mechanical systems. In addition to the foregoing, all damage or injury to the Leased Premises and to its fixtures, appurtenances and equipment or to the Building or to its fixtures, appurtenances and equipment caused by Tenant moving property in or out of the Building or by installation or removal of furniture, fixtures, or other property by Tenant shall be repaired, restored, or replaced promptly by Tenant, at its sole cost and expense, to the reasonable satisfaction of Landlord. All such aforesaid repairs, restoration, and replacements shall be in quality and class equal to the original work or installation but in no event need exceed Building standards.

(b) *Landlord Repairs:* Except as otherwise provided in subsection (a), Landlord shall make the following repairs as and when necessary: (i) structural repairs to the Leased Premises and Building; (ii) repairs required in order to provide the elevator, plumbing, electrical, heating, and air-conditioning services to be furnished by Landlord pursuant to this Lease; (iii) repairs to exterior portions of the Building, including the windows, balconies, parking areas and roof thereof; and (iv) other repairs to the Building necessary for Tenant's permitted use and enjoyment of the Leased Premises. Landlord's obligations under the preceding sentence shall not accrue until after notice by Tenant to Landlord of the necessity for any specific repair.

8. RULES AND REGULATIONS

Tenant shall comply with, and shall cause its agents, employees and invitees to, comply with and observe all reasonable rules and regulations concerning the use, management, operation, safety, and good order of the Leased Premises, the Building and the Building parking areas which may from time to time be promulgated by Landlord, provided that such rules and regulations are not inconsistent with the provisions of this Lease and do not materially interfere with Tenant's permitted use of the Leased

Premises. Initial rules and regulations, which shall be effective until amended by Landlord, are attached to this Lease as Exhibit F hereto and incorporated herein. Tenant shall be deemed to have received notice of any amendment to the rules and regulations when a copy of such amendment has been delivered to Tenant at the Leased Premises or has been mailed to Tenant in the manner prescribed for the giving of notices. Landlord shall not be responsible to Tenant for any violation of the rules and regulations, or the covenants or agreements contained in any other lease, by any other tenant of the Building, or such tenant's agents, employees or invitees, and Landlord may waive in writing, or otherwise, any or all of the rules or regulations in respect of any one or more tenants. Landlord shall make reasonable efforts to uniformly enforce all rules and regulations.

9. TENANT'S ALTERATIONS AND INSTALLATIONS

(a) *Alterations:* Tenant shall not make or perform, or permit the making or performance of, any alterations, installations, improvements, additions or other physical changes in or about the Leased Premises (referred to collectively as "*Alterations*") without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All plans, specifications and details for such Alterations, and all contractors performing the Alterations are subject to the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed. In the event Landlord grants such consent and permits Tenant to contract out such work, such Alterations shall be made and performed in conformity with and subject to the following provisions: (i) all Alterations shall be made and performed at Tenant's sole cost and expense and at such time and in such manner as Landlord may reasonably from time to time designate; (ii) all Alterations shall be performed by adequately insured contractors approved by Landlord and in a good and workmanlike manner in accordance with all applicable Legal Requirements, and Tenant shall indemnify and hold harmless Landlord from and against any and all costs, expenses, claims, liens and damages to person or property resulting from the making of any such alterations, decorations, additions or improvements in or to the Leased Premises or the Building; (iii) no Alteration shall affect any part of the Building other than the Leased Premises or adversely affect any service required to be furnished by Landlord to Tenant or to any other tenant or occupant of the Building; (iv) all business machines and mechanical equipment shall be placed and maintained by Tenant in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance to other tenants or occupants of the Building; (v) Tenant shall submit to Landlord reasonably detailed written plans and specifications for each proposed alteration and shall not commence any such Alteration without first obtaining Landlord's written approval of such plans and specifications; (vi) all Alterations in or to the electrical facilities in or serving the Leased Premises shall be subject to the provisions of Section 5 relating to exceeding electrical capacity; (vii) notwithstanding Landlord's approval of plans and specifications for any Alteration, all Alterations shall be made and performed in full compliance with all Legal Requirements and in accordance with the Rules and Regulations; and (viii) all materials and equipment to be incorporated in the Leased Premises as a result of all Alterations shall be of good quality. If building or other permits from governmental authorities are required for any Alterations, Tenant shall obtain such permits and deliver copies thereof to Landlord before work on such Alterations is begun. After any Alterations are completed, Tenant shall cause all required governmental inspections of the Alterations to be made and shall deliver to Landlord a copy of the inspection report and one complete set of the "as built" plans for such Alterations.

(b) *Unauthorized Alterations:* If Tenant shall be in default under this Section by reason of the making of any Alteration not hereby authorized or by reason of failure to give any notice or to obtain any approval required herein, Tenant may cure such default within the applicable grace period provided in this Lease for curing such default by removing such Alteration and restoring the Leased Premises to their former condition, as provided in Section 7, and if Tenant fails to do so Landlord may correct or remove the same and Tenant shall be liable for any and all costs and expenses incurred by Landlord in such removal.

(c) *Installed Fixtures:* Except to the extent specifically provided in sub-section (d), all appurtenances, fixtures, improvements, additions and other property attached to or installed in the Leased Premises, whether by Landlord or Tenant or others, and whether at Landlord's expense, or Tenant's expense, or the joint expense of Landlord and Tenant, which are affixed to walls, floors or ceilings or which cannot be removed without structural damage to the Building, shall be and remain the property of Landlord. Any replacements of any property of Landlord, whether made at Tenant's expense or otherwise, shall be and remain the property of Landlord except as agreed to in writing by Landlord prior to Lease Execution or prior to commencing such Alterations.

(d) *Tenant's Special Installations:* All furniture, furnishings and trade specific equipment or fixtures, excepting lighting fixtures and equipment, but including, without limitation, business machines and equipment, vaults, vault doors and door frames, and vault equipment, if any, safe deposit equipment, counterscreens, grillwork, cages, partitions which are moveable, railings, raised floors, equipment relating to food preparation, food storage and serving, dish washing and cleaning devices and any moveable property, installed by or at the expense of Tenant shall remain the property of Tenant and are referred to herein as "Tenant's Special Installations". Tenant may at its expense remove all or any part of said property at any time during the Term, and shall at its expense remove all of said property at the expiration or other termination of the Term unless Landlord shall otherwise consent in writing. Upon removal of any or all of said property Tenant shall then repair all damage. Any of Tenant's Special Installations which are not removed from the Leased Premises at the expiration of the Term shall be deemed to have been abandoned by Tenant and may be disposed of by Landlord without liability to Tenant. Tenant shall at all times be responsible for any damage caused by the delivery, installation or operation of tenant's Special Installations.

(e) *Mechanic's Liens:* Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's, materialman's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Leased Premises or the Building. Whenever and as often as any mechanic's lien or materialman's lien shall have been filed against the Leased Premises or the Building based upon any act or interest of Tenant or of anyone claiming through Tenant, or if any lien or security interest with respect thereto shall have been filed affecting any materials, machinery or fixtures used in the construction, repair or operation thereof or annexed thereto by Tenant or its successors in interest, Tenant shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien or other security interest and in default thereof after the expiration of thirty (30) days after notice to Tenant, Landlord, in addition to any other remedy under this Lease, may pay the amount secured by such lien or security interest or discharge the same by deposit and the amount so paid or deposited shall be collectible as additional rent. The provisions of this subsection shall not be applicable to liens filed with respect to work done for Tenant's account by Landlord.

10. *NAME OF BUILDING; TENANT'S SIGNS*

(a) *Building Name:* The name of the Building shall be determined by Landlord in its sole discretion. Landlord expressly reserves the right to have the Building designated by a street number or numbers and to affix to the Building, at locations designated by Landlord, signs indicating any such number or numbers and to change the name of the Building as selected from time to time by Landlord.

(b) *Roof Rights:* Landlord hereby grants to Tenant the right to erect communication devices on a portion of the roof, not to exceed Tenant's Proportionate Share of the roof area that is adequate for placement of such devices. Landlord does not grant Tenant any other rights in or to the roof or the outer side of the outside walls or windows of the Building, control of which is hereby reserved by Landlord except that Tenant shall have non-exclusive access to and the use of the building roof for the installation and maintenance of communications equipment of Tenant as aforesaid. Landlord will

require detailed specifications for review and approval to be provided to Landlord and its chosen consultant at least thirty (30) days prior to the date Tenant desires installation to commence. Any reasonable cost of landlord's consultant in connection with review and approval of the subject specifications and plans shall be reimbursed by Tenant promptly upon request therefore. All roof access will be coordinated with Landlord's management. Any building penetration shall be subject to the approval of Landlord (and its consultant's) in Landlord's sole and absolute discretion. Tenant will obtain all required permits and comply with all applicable restrictions at its sole cost and shall be solely responsible for all costs associated with installation, maintenance and removal of Tenant's roof top equipment and of any associated building penetrations.

(c) *Signage:* Tenant shall not display or erect any lettering, signs, advertisements, awnings or other projections on the exterior of the Leased Premises or in the interior of the Leased Premises if visible from a public way, except for Building Standard hallway door lettering or interior suite signage visible to the public way that is approved in writing in advance by Landlord (Landlord hereby approves Tenants identification sign to be located in the lobby of the Leased Premises identifying the "Comstock Companies"), Landlord shall provide a directory tablet in the main lobbies of the Building, at its expense, upon which Landlord, at Landlord's expense, will affix Tenant's name and a reasonable number of names of its affiliates, officers, partners or employees. Landlord, at Landlord's expense, shall provide a reasonable number of building standard suite identification signs. Directory listings and suite signage for any sub-tenants of Tenant shall be at Tenant's expense. The size, color, and style of such directory and names affixed thereto shall be selected by Landlord. During the term hereof and provided Tenant occupies at least 5,000 square feet within the Building, the Landlord shall provide a listing of Tenant's name on any building monument sign incorporated into the project by Landlord and shall allow Tenant to place upon the exterior walls of the Building an exterior sign subject to all restrictions created by any exterior sign rights granted to any other Tenant whose lease pre-dates this Agreement, and shall restrict exterior signage of other Tenants from being on any face of the Building where Tenant's signage is placed as permitted hereunder. The Tenant shall not utilize more than its pro-rata share of exterior signage square feet as provided for in local zoning ordinances. The Tenant shall be solely responsible for obtaining all required permits and approvals and shall be solely responsible for all costs associated with permitting, installation, maintenance, removal, and building restoration resulting from the removal of Tenant's exterior sign. Landlord will require detailed specifications for review and approval, and installation will be coordinated with Landlord's management. Any building penetration shall be subject to the approval of Landlord (and its consultant's) in Landlord's sole and absolute discretion.

11. *LIABILITY INSURANCE*

(a) *General Liability Insurance:* Tenant, at Tenant's sole cost and expense, shall obtain and maintain in effect at all times during the Term, a policy of comprehensive general public liability insurance with broad form property damage endorsement, naming Landlord and (at Landlord's request) any Mortgagee of the Building and any management agent as additional insured(s), protecting Landlord, Tenant and any such Mortgagee and management agent against any liability for bodily injury, death or property damage occurring upon, in or about any part of the Building or the land on which it is built, the Leased Premises or any appurtenances thereto, with such policies to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury, death, or property damage per occurrence with an aggregate limit of not less than Three Million Dollars (\$3,000,000.00) and with a deductible of no greater than Two Thousand Five Hundred Dollars (\$2,500.00) per occurrence. Such comprehensive liability insurance may be effected by a policy or policies of blanket insurance which cover other property in addition to the Leased Premises, provided that the protection afforded thereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Leased Premises and provided further that in all other respects any such policy shall comply with the other provisions of this Section.

(b) *Policy Restrictions:* The insurance policy required to be obtained by Tenant under this Section: (i) shall be issued by an insurance company of recognized responsibility licensed to do business in the jurisdiction in which the Building is located; and (ii) shall be written as primary policy coverage and not contributing with or in excess of any coverage which Landlord may carry. Neither the issuance of any insurance policy required under this Lease, nor the minimum limits specified herein with respect to Tenant's insurance coverage, shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease. With respect to each insurance policy required to be obtained by Tenant under this Section, on or before the Lease Commencement Date, and at least thirty (30) days before the expiration of the expiring policy or certificate previously furnished, Tenant shall deliver to Landlord a certificate of insurance therefor, together with evidence of payment of all applicable premiums. Each insurance policy required to be carried hereunder by or on behalf of Tenant shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be cancelled unless Landlord shall have received thirty (30) days' prior written notice of cancellation.

(c) *Hold Harmless:* Except for the willful or negligent acts or omissions of Landlord or its agents or employees, Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all claims, losses, actions, damages, liabilities, and expenses (including reasonable attorneys' fees) that (i) arise from or are in connection with Tenant's possession, use, occupancy, management, repair, maintenance, or control of the Leased Premises, or any portion thereof, or (ii) arise from or are in connection with any willful or negligent act or omission of Tenant or Tenant's agents, employees, invitees, or subtenants, or (iii) result from any default, breach, violation, or nonperformance of this Lease or any provisions therein by Tenant, or (iv) arise from injury or death to persons or damage to property sustained on or about the Leased Premises. Tenant shall, at its own cost and expense, defend any and all actions, suits, and proceedings which may be brought against Landlord with respect to the foregoing or in which Landlord may be impleaded. Tenant shall pay, satisfy, and discharge any and all money judgments which may be recovered against Landlord in connection with the foregoing. Landlord hereby agrees to indemnify Tenant from and against any and all claims, actions, and expenses (including reasonable attorneys' fees) that arise as a direct result of Landlord's Gross Negligence and Landlord shall pay, satisfy, and discharge any and all money judgments which may be recovered against Tenant in connection with the Gross Negligence of Landlord.

12. FIRE INSURANCE

(a) Landlord shall, throughout the Term, at its expense, keep the Building, but not Tenant's Special Installations or Tenant's furniture, furnishings, trade fixtures or property removable by Tenant under the provisions of this Lease, insured against all loss or damage by fire with extended coverage in such amount as any first Mortgagee of the Building may from time to time require, but not less than the Building's full replacement cost. Tenant shall, throughout the Term, at its expense, keep Tenant's Special Installations and Tenant's personal property insured against all loss or damage by fire with extended coverage in an amount sufficient to prevent Tenant from becoming a co-insurer. Tenant's policies of insurance shall contain an appropriate clause or endorsement under which the insurer agrees that such policy shall not be cancelled without at least thirty (30) days' notice to Landlord.

(b) Landlord and Tenant will (i) if requested, advise the other as to the provisions of fire and extended coverage insurance policies obtained pursuant to this Section, and (ii) notify the other promptly of any change in the terms of any such policy which would affect such provisions.

13. *DAMAGE BY FIRE OR OTHER CASUALTY*

In the event of loss of, or damage to, the Leased Premises or the Building by fire or other casualty, the rights and obligations of the parties hereto shall be as follows:

(a) If the Leased Premises or any part thereof shall be damaged by fire or other casualty. Tenant shall give prompt notice thereof to Landlord, and Landlord, upon receiving such notice, shall proceed promptly and with reasonable diligence, subject to Unavoidable Delays and a reasonable time for adjustment of insurance losses, to repair, or cause to be repaired, such damage in a manner designed to minimize interference with Tenant's occupancy (but with no obligation to employ labor at overtime or other premium pay rates). If the Leased Premises or any part thereof shall be rendered untenantable by reason of such damage, whether to the Leased Premises or the Building, the Basic Rent and Additional Charges shall proportionately abate for the period from the date of such damage to the date when such damage shall have been repaired for the portion of the Leased Premises rendered untenantable. However, if, prior to the date when all of such damage shall have been repaired, any part of the Leased Premises so damaged shall be rendered tenantable and shall be used or occupied by Tenant, then the amount by which the Basic Rent and Additional Charges shall abate shall be equitably apportioned for the period from the date of any such use.

(b) If as a result of fire or other casualty more than one-half ($1/2$) of the Building Rentable Area is rendered untenantable, Landlord within sixty (60) days from the date of such fire or casualty may terminate this Lease by notice to Tenant, specifying a date, not less than twenty (20) nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as if such date were the date herein originally fixed for the expiration of the Term, provided, however, Landlord terminates all similarly Tenants within the Building. If the Leased Premises are damaged as a result of fire or other casualty and if the damage to the Leased Premises (but not including Tenant's Special Installations or Alterations) is so extensive that such damage cannot be substantially repaired within one hundred and eighty (180) days from the date of the fire or other casualty (except for Unavoidable Delays), either Landlord or Tenant within thirty (30) days from the date of such fire or other casualty may terminate this Lease by notice to the other, specifying a date, not less than twenty (20) nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as if such date were the date originally fixed for the expiration of the Term. If either Landlord or Tenant terminates this Lease, the Basic Rent and Additional Charges shall be apportioned as of the date of such fire or other casualty. If neither Landlord nor Tenant so elects to terminate this Lease, then Landlord shall proceed to repair the damage to the Building and the damage to the Leased Premises (but not Tenant's Special Installations or Alterations), if any shall have occurred, and the Basic Rent and Additional Charges shall meanwhile be apportioned and abated all as provided in subsection (a). However, if such damage is not repaired and the Leased Premises and the Building restored to reasonably the same condition as they were prior to such damage within two hundred and seventy (270) days from the date of such damage (such 270-day period to be extended by the period of any Unavoidable Delays plus a reasonable time for adjustment of insurance losses), Tenant, within thirty (30) days from the expiration of such 270-day period (as the same may be extended), may terminate this Lease by notice to Landlord, specifying a date not more than sixty (60) days after the giving of such notice on which the Term shall expire as fully and completely as if such date were the date herein originally fixed for the expiration of the Term.

(c) If the Leased Premises shall be rendered untenantable to the extent of eighty percent (80%) or more by fire or other casualty during the last six (6) months of the Term, Landlord or Tenant may terminate this Lease upon notice to the other party given within ninety (90) days after such fire or other casualty specifying a day, not less than twenty (20) days nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as

if such date were the date originally fixed for the expiration of the Term. If either Landlord or Tenant terminates this Lease pursuant to this subsection, the Basic Rent and Additional Charges shall be apportioned as of the date of such fire or casualty.

(d) Landlord shall not be required to repair or replace any of Tenant's Special Installations or Alterations or any other personal property of Tenant and no damages, compensation, or claim shall be payable by Landlord for inconvenience, loss of business, or annoyance arising from any repair or restoration of any portion of the Leased Premises or of the Building, but the foregoing shall not be deemed to relieve Landlord of liability for its breach of any covenant of this Lease.

(e) The provisions of this Section shall be considered an express agreement governing any instance of damage or destruction of the Building or the Leased Premises by fire or other casualty, and any law now or hereafter in force providing for such a contingency in the absence of express agreement shall have no application.

(f) Notwithstanding any other provisions of this Lease, Landlord shall not be liable or responsible for, and Tenant hereby releases Landlord and its partners, shareholders, officers, directors, agents, and employees from, any and all liability or responsibility to Tenant or any Person claiming by, through or under Tenant, unless caused by Landlord's gross negligence, by way of subrogation or otherwise, for any injury, loss, or damage to Tenant's property covered or required to be covered by a valid and collectible fire insurance policy with extended coverage endorsement. Tenant shall require its insurer(s) to include in all of Tenant's insurance policies which could give rise to a right of subrogation against Landlord a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Landlord, and Tenant shall pay any additional premium required therefor.

(g) Notwithstanding any other provision of this Lease, Tenant shall not be liable or responsible for, and Landlord hereby releases Tenant and its partners, shareholders, officers, directors, agents, and employees from, any and all liability or responsibility to Landlord or any Person claiming by, through or under Landlord, unless caused by Tenant's gross negligence, by way of subrogation or otherwise, for any injury, loss, or damage to Landlord's property covered or required to be covered by a valid and collectible fire insurance policy with extended coverage endorsement. Landlord shall require its insurer(s) to include in all of Landlord's insurance policies which could give rise to a right of subrogation against Tenant a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Tenant, and Landlord shall pay any additional premium required therefor.

(h) The proceeds payable under all fire and other hazard insurance policies maintained by Landlord on the Building shall belong to and be the property of Landlord, and Tenant shall not have any interest in such proceeds. Tenant agrees to look to its own fire and hazard insurance policies in the event of damage to Tenant's Special Installations or Alterations or its personal property.

14. *CONDEMNATION*

(a) In the event of a Taking of the whole of the Leased Premises, this Lease shall terminate as of the date of such Taking. If only a part of the Leased Premises shall be so taken then, except as otherwise provided in this subsection, this Lease shall continue in force and effect but, from and after the date of the Taking, the Basic Rent and Additional Charges shall be equitably reduced on the basis of the portion of the Leased Premises so taken. If a part of the Building shall be taken, and if either (i) the part of the Building so taken contains more than twenty-five percent (25%) of the Rentable Area of the Leased Premises immediately prior to such Taking, or (ii) in Landlord's reasonable opinion it shall be impracticable to continue to operate the Building, then Landlord, at Landlord's option, may give to Tenant within sixty (60) days after the date upon which Landlord shall have received notice of

the Taking, thirty (30) days notice of termination of this Lease provided, however, Landlord terminates all similarly Tenants within the Building. If a part of the Building so taken contains more than twenty-five percent (25%) of the Rentable Area of the Leased Premises immediately prior to such Taking, or (ii) by reason of such Taking, Tenant no longer has reasonable means of access to the Leased Premises, then Tenant, at Tenant's option, may give to Landlord within sixty (60) days after the date upon which Tenant shall have received notice of such Taking, thirty (30) days notice of termination of this Lease. If thirty (30) days notice of termination is given by Landlord or Tenant, this Lease shall terminate upon the expiration of the thirty (30) day period. If this Lease is terminated pursuant to the foregoing provisions of this subsection, then, to the extent permitted by applicable law and such Taking, Tenant shall have access to the Leased Premises in order to remove Tenant's Special Installations and any other personal property then owned by Tenant and which Tenant is entitled to remove pursuant to this Lease during the period of thirty (30) days from the date Tenant is permitted access therefor. If a Taking occurs which does not result in the termination of this Lease, Landlord shall repair, alter, and restore the remaining portions of the Leased Premises to their former condition to the extent that the same may be feasible.

(b) Landlord shall have the exclusive light to receive any and all awards made for damages to the Leased Premises and the Building accruing by reason of a Taking or by reason of anything lawfully done in pursuance of public or other authority. Tenant hereby releases and assigns to Landlord all of Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. However, Tenant shall have the right to make its own claim against the condemning authority for a separate award for the value of any of Tenant's Special Installations and Alterations, for moving and relocation expenses and for such business damages and/or consequential damages as may be allowed by law which do not constitute part of the compensation for the Building and do not diminish the amount of the award to which Landlord would otherwise be entitled.

(c) If the Leased Premises or any portion thereof is rendered untenable due to a Taking or if Tenant is prevented from accessing the Leased Premises due to a Taking and this Lease is not terminated, then the Basic Rent and any additional rent reserved herein shall be abated in proportion to the untenable area of the Premises for the duration of such Taking.

15. *ASSIGNMENT AND SUBLETTING*

Tenant shall not mortgage, pledge, encumber, sell, assign, or transfer this Lease, in whole or in part, by operation of law or otherwise, or sublease all or any part of the Leased Premises, without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord and Tenant agree that the specific provisions of this paragraph 15 are reasonable grounds for withholding consent. In all events no such assignment shall be valid unless, prior to the commencement of the subject sub-lease or the occupancy by the subject sub-tenant Tenant shall deliver to Landlord (i) a duplicate original instrument of assignment in form reasonably satisfactory to Landlord, duly executed by Tenant, and (ii) an instrument in form attached hereto as Exhibit I, duly executed by the Tenant and the assignee or sub-tenant, in which such assignee or sub-tenant shall agree, among other things, to observe and perform, and to be bound by, all of the terms, covenants, and conditions of this Lease on Tenant's part to be observed and performed accruing after the date of such assignment and whether or not relating to such assignment, and to deliver all payments due to Tenant under the subject sub-lease directly to Landlord upon receipt of written notice from Landlord.

(a) *Right to Sublease:* Tenant shall have the right to sublease or assign this Lease in whole, or in part, to its wholly owned subsidiaries or other entities which are in common control with Tenant or the Lease Guarantors, or to any corporation which is a successor to or assignee of Tenant by acquisition, merger or consolidation without Landlord's approval (a "Permitted Transfer"). However, in all events

Tenant and the Lease Guarantors shall remain primarily liable under the lease unless Landlord agrees in writing to replace Tenant and all Lease Guarantors as the primary party obligated under the Lease, which agreement by Landlord shall not be unreasonably withheld, conditioned, or delayed.

(b) *Restrictions on Sub-leasing:* It is understood and agreed that the overall make up of tenants and the size of sub-leased spaces within the Building is subject to the Landlord's sole and reasonable judgment and approval, not to be unreasonably withheld, conditioned, or delayed. The Landlord reserves the right to deny approval of a sub-lease to any party that the Landlord does not reasonably deem compatible as a tenant of the Building. Further, Landlord shall not be required to approve any sub-lease to a party that Landlord does not deem financially qualified to perform its obligations under the sub-lease or the Lease, as reasonably determined by Landlord.

(c) *Prior to Offering:* In connection with any request by Tenant for consent to sublet all or any portion of the Leased Premises, Tenant shall, at least thirty (30) days prior to offering any space for sub-lease, submit to Landlord, in writing, a notice of Tenant's desire to sub-lease a portion of the Leased premises containing such information as the amount of proposed sub-lease space, the location of the proposed sub-lease space, an as-built floor plan of the proposed sub-lease space, the terms to be sought by Tenant under a sub-lease for the proposed sub-lease space, and the date of availability of the proposed sub-lease space. Landlord shall have the First Right of Refusal to all such space, as set forth below.

(d) *Sub-tenant Identification:* Upon identifying a proposed sub-lease tenant (a "Proposed Sub-tenant") or a proposed assignee (a "Proposed Assignee") Tenant shall submit to Landlord, in writing, a statement containing the name of the Proposed Assignee or Sub-tenant, such information as to its financial responsibility and standing of the Proposed Assignee or Sub-tenant as Landlord may require (including financial statements and information regarding the proposed Sub-Tenant), and all of the terms and provisions upon which the proposed assignment or sublease is to be made, and a floor plan delineating the proposed sublease area.

(e) *Sub-lease Profits:* Any profits from generating additional rent under such sub-lease by the sub-tenant shall be the shared fifty percent (50%) by Tenant and fifty percent (50) by Landlord. The profits, if any, will be those remaining after deducting Tenant's costs of sub-leasing, including only the commissions due the broker representing the sub-tenant, sub-tenant improvements paid for by Tenant above those provided by Landlord, and other monetary concessions made to the subject sub-tenant (the "Sub-lease costs") from the actual rent and payables under the Sub-lease. Any profits generated by the sale of special services provided by Landlord, including but not limited after hours HVAC services, to any sub-tenant of Tenant shall be the sole property of Landlord. In all events any sub-tenant shall be required to execute a sub-lease acknowledgement agreement in the form attached hereto as Exhibit I.

(f) *Mortgage Approval:* In all events all proposed sub-leases of the Leased Premises shall be subject to the reasonable approval of any lender of Landlord that holds a mortgage on the Building, if such approval is required of Landlord under the terms of this Lease.

(g) *First Right of Refusal:* The Landlord shall at all times have the right of first refusal upon any portion of the Leased Premises that Tenant desires to sub-lease which right of first refusal may be assigned by Landlord. In the event the Landlord exercises this option the terms of the subject sub-lease shall be those readily available to Tenant from a third party. The foregoing portion of this sub-paragraph (g) shall not apply to Permitted Transfers.

(h) *Invalid Transfers:* Any attempted transfer, assignment, sub-leasing, mortgaging or encumbering of this Lease in violation of the provisions of this Section shall be void and confer no rights upon any third person. No permitted assignment or subletting shall relieve Tenant of any of its obligations under this Lease, except as specifically provided for herein. Subject to the provisions of this paragraph 15, Landlord and Tenant agree that (i) any consideration paid to Tenant in connection with a

sub-leasing of all or any part of the Leased Premises which is attributable to an increase in the rental value of the Leased Premises over and above the Basic Rent and Additional Charges payable under this Lease, and (ii) any consideration paid to Tenant or any sub-tenant or other Person claiming through or under Tenant in connection with an assignment of the Tenant's interest in this Lease or the interest of any sub-tenant or other Person claiming through or under Tenant under any sub-lease, shall accrue to the benefit of Landlord and not to the benefit of Tenant, or any sub-tenant or other Person claiming through or under Tenant, or the creditors of Tenant or of any such sub-tenant or other Person claiming through or under Tenant

(i) *Transfer of Control:* If Tenant is a corporation, any transfer of any of Tenant's issued and outstanding capital stock or any issuance of additional capital stock, as a result of which the majority of the issued and outstanding capital stock of Tenant is held by a Person or Persons who do not hold a majority of the issued and outstanding capital stock of Tenant on the date hereof, shall be deemed an assignment under this Section 15. If Tenant is a partnership, or limited liability company, any transfer of any interest in the partnership, or limited liability company, or any other change in the composition of the partnership, or limited liability company, which results in a change in the control of Tenant from the Person or Persons controlling the partnership, or limited liability company, on the date hereof, shall be deemed an assignment under this Section 15. The provisions of this subsection (i) shall not apply to Permitted Transfers.

(j) *Obligations of Assignee or Subtenant:* If Tenant's interest in this Lease is assigned, whether or not in violation of the provisions of this Section, Landlord may collect rent from the assignee; if the Leased Premises or any part thereof are sub-leased to, or occupied by, or used by, any Person other than Tenant, whether or not in violation of this Section, Landlord, may at its option collect rent from the sub-tenant, user or occupant. In either case, Landlord shall apply the amount collected to the rents reserved in this Lease, but neither any such assignment, sub-leasing, occupancy, or use, whether with or without Landlord's prior consent, nor any such collection or application, shall be deemed a waiver of any term, covenant or condition of this Lease or the acceptance by Landlord of such assignee, sub-tenant, occupant or user as tenant. The consent by Landlord to any further assignment or sub-leasing shall not relieve Tenant from its obligation to obtain the express prior consent of Landlord to any further assignment or sub-leasing. The listing of any name other than that of Tenant on any door of the Leased Premises or on any directory in the Building, or otherwise, shall not operate to vest in the Person so named any right or interest in this Lease or in the Leased Premises or be deemed to constitute, or serve as a substitute for, any prior consent of Landlord required under this Section, and it is understood that any such listing shall constitute a privilege extended by Landlord which shall be revocable at Landlord's will by notice to Tenant, except where there exists a valid sublease. Neither an assignment of Tenant's interest in this Lease nor a sub-leasing, occupancy or use of the Leased Premises or any part thereof by any Person other than Tenant, nor the collection of rent by Landlord from any Person other than Tenant as provided in this subsection, nor the application of any such rent as provided in this subsection shall, in any circumstances, relieve Tenant from its obligation fully to observe and perform the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

16. *DEFAULT PROVISIONS*

(a) Each of the following events shall be deemed to be, and is referred to in this Lease as, an "Event of Default":

(1) A default by Tenant in the due and punctual payment of any Basic Rent or Additional Charges, which continues for more than five (5) days after such Basic Rent or Additional Charges shall be due and payable; or

(2) The neglect or failure of Tenant to perform or observe any of the terms, covenants, or conditions contained in this Lease on Tenant's part to be performed or observed (other than those referred to in paragraph (1) above) which is not remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant written notice specifying such neglect or failure; or if such condition can not practically be remedied within said thirty (30) day period Tenant shall have sixty (60) days from the date of such notice to remedy the condition provided Tenant timely commences and diligently prosecutes such remedy unless the nature of such condition requires it to be remedied in a shorter period of time: or: or

(3) The assignment, transfer, mortgaging, or encumbering of this Lease or the sub-leasing of any or all of the Leased Premises in a manner not strictly in accordance with and permitted by Section 15; or

(4) The taking of this Lease or the Leased Premises, or any part thereof, upon execution or by other process of law directed against Tenant, or upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, which execution or attachment shall not be discharged or disposed of within sixty (60) days after the levy thereof; or

(5) The abandonment of the Leased Premises by Tenant.

(6) The failure of any sub-tenant occupying any portion of the Leased Premises to comply with each and every provision of this Lease or the Default of any sub-tenant under any sub-lease agreement, subject to the applicable cure periods of this Lease, which Tenant shall always have the right to cure.

(b) Upon the occurrence of an Event of Default, Landlord shall have the right, at its election, then or at any time thereafter while such Event of Default shall continue, either:

(1) To give Tenant written notice that this Lease will terminate on a date to be specified in such notice, which date shall not be less than thirty (30) days after such notice, and on the date specified in such notice Tenant's right to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, but Tenant shall remain liable as provided in subsection (c);or

(2) Without demand or notice, to re-enter and take possession of the Leased Premises, or any part thereof, and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant a right to occupy the Leased Premises, and remove the effects of both or either, either by summary proceedings, or by action at law or in equity or by force (if necessary) or otherwise, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant.

If Landlord elects to re-enter the Leased Premises as set forth above, Landlord may terminate this Lease, or, from time to time, without terminating this Lease, may release the Leased Premises, or any part thereof, as agent for Tenant for such term or terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Leased Premises. No such re-entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant as set forth above or unless the termination thereof be decreed by a court of competent jurisdiction. Tenant waives any right to the service of any notice of Landlord's intention to re-enter provided for by any present or future law.

(c) If Landlord terminates this Lease pursuant to subsection (b), Landlord shall have the option to accelerate and declare the entire amount of all Basic Rent and Additional Charges provided for herein until the date this Lease would have expired had such termination not occurred as the total rental set forth in Section (a) (1) of this Paragraph as due and payable forthwith. Tenant shall be liable (in addition to accrued liabilities) to the extent legally permissible for (i) the sum of (A) all Basic Rent and Additional Charges provided for in this Lease until the date this Lease would have expired had such termination not occurred, and (B) any and all reasonable expenses incurred by Landlord in re-entering the Leased Premises, repossessing the same, making good any default of Tenant, painting the same, adjoining the same with any adjacent space for any new tenants, putting the same in proper repair, re-letting the same (including any and all reasonable attorneys' fees and disbursements and reasonable brokerage fees incurred with so doing), and any and all expenses which Landlord may incur during the occupancy of any new tenant (other than expenses of a type that are Landlord's responsibility under the terms of this Lease); less (ii) the net proceeds of any re-lotting.

In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereover may adjudge reasonable as attorney's fees with respect to any successful law suit or action instituted by Landlord to enforce the provisions of this Lease. Landlord shall have the right,

at its sole option, to release the whole or any part of the Leased Premises for the whole of the un-expired Term, or longer, or from time to time for shorter periods, for any rental then obtainable, giving such concessions of rent and making such special repairs, alterations, decorations, and paintings for any new tenant as Landlord, in its sole and absolute discretion, may deem advisable. Tenant's liability as aforesaid shall survive the institution of summary proceedings and the issuance of any warrant thereunder. Landlord shall be under no obligation to re-lease the Leased Premises, but agrees to use its best efforts to do so.

(d) Notwithstanding the terms and conditions of this Paragraph 16, with regard only to an Event of Default as set forth in Paragraph 16 (a) (1), Landlord shall provide Tenant written notice of such Event of Default and the right to cure such Event of Default by payment of all amounts due Landlord within fifteen (15) business days after such notice is given (as set forth in Paragraph 30 (d)) once in any calendar year.

17. *BANKRUPTCY TERMINATION PROVISION*

This Lease shall automatically terminate and expire, without the performance of any act or the giving of any notice by Landlord, upon the occurrence of any of the following events: (1) Tenant's admitting in writing its inability to pay its debts generally as they become due, or (2) the commencement by Tenant or any Lease Guarantor of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or (3) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Tenant or any Lease Guarantor in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, or (4) Tenant's making an assignment of all or a substantial part of its property for the benefit of its creditors, or (5) Tenant's or any Lease Guarantor's seeking or consenting to or acquiescing in the appointment of, or the taking of possession by, a receiver, trustee or custodian for all or a substantial part of its property, or (6) the entry of a court order without Tenant's or any Lease Guarantor's consent, which order shall not be vacated, set aside or stayed within sixty (60) days from the date of entry, appointing a receiver, trustee, or custodian for all or a substantial part of its property. The provisions of this Section shall be construed with due recognition for the provisions of the federal bankruptcy laws, where applicable, but shall be interpreted in a manner which results in a termination of this Lease in each and every instance, and to the fullest extent that such termination is permitted under the federal bankruptcy laws, it being of prime importance to the Landlord to deal only with tenants who have, and continue to have, a strong degree of financial strength and financial stability.

18. *LANDLORD MAY PERFORM TENANT'S OBLIGATIONS* If Tenant shall fail to keep or perform any of its obligations as provided in this Lease in respect to (a) maintenance of insurance, (b) repairs and maintenance of Leased Premises, (c) compliance with Legal Requirements, or (d) the making of any other payment or performance of any other obligation, then Landlord may (but shall not be obligated to) upon the continuance of such failure on Tenant's part for ten (10) days after written notice to Tenant (or after such additional period, if any, as Tenant may reasonably require to cure such failure if of a nature which cannot be cured within said 10-day period), or without notice in the case of an emergency, and without waiving or releasing Tenant from any obligation, and as an additional but not exclusive remedy, make any such payment or perform any such obligation and all sums so paid by Landlord and all necessary incidental costs and expenses, including attorney's fees, incurred by Landlord in making such payment or performing such obligation, together with interest thereon from the date of payment at the Default Interest Rate, shall be deemed additional rent and shall be paid to the Landlord on demand, or at Landlord's option may be added to any installment of Basic Rent thereafter falling due, and if not so paid by Tenant, Landlord shall have the same rights and remedies as in the case of a default by Tenant in the payment of Basic Rent.

19. *SECURITY DEPOSIT*

(a) Upon execution of this Lease, Tenant shall pay Landlord a Security Deposit equal to one (1) month rent in cash.

(b) As consideration for Landlord entering into this Lease Agreement the Tenant hereby expressly waives and relinquishes any and all right Tenant may have to earn interest on the cash Security Deposit delivered to Landlord. The Landlord shall be free from any restrictions of any kind whatsoever on the use of the cash Security Deposit and shall not be required to hold the cash Security Deposit in a special account (or in any account) and may utilize the cash Security Deposit as its own funds.

(c) Tenant hereby deposits with Landlord the Security Deposit, as security for the prompt, full, and faithful performance by Tenant of each and every provision of this Lease and of all obligations of Tenant hereunder. If an Event of Default occurs, Landlord may use, apply, or retain the whole or any part of the Security Deposit for the payment of (i) any Basic Rent or Additional Charges which Tenant may not have paid or which may become due after the occurrence of such Event or Default. (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease (including the reimbursement of the Tenant Improvement Allowance provided by Landlord), or (iii) any sum which Landlord may expend or be required to expend by reason of Tenant's default, including damages or deficiency in the releasing of the Leased Premises as provided in Section 16. The use, application, or retention of the Security Deposit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. If any portion of the Security Deposit is used, applied or retained by Landlord for the purpose set forth above, Tenant agrees, within ten (10) days after a written demand therefore is made by Landlord, to deposit cash with the Landlord in an amount sufficient to restore the Security Deposit to its original amount.

(d) If Tenant shall fully and faithfully comply with all of the provisions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after the expiration of the Term, without interest. In the absence of evidence satisfactory to Landlord of any permitted assignment of the right to receive the Security Deposit, or the remaining balance thereof, Landlord may return the same to the original Tenant, regardless of one or more assignments of Tenant's interest in this Lease or the Security Deposit. In such event, upon the return of the Security Deposit (or balance thereof) to the original Tenant, Landlord shall be completely relieved of liability under this Section.

(e) In the event of a transfer of Landlord's interest in the Leased Premises, Landlord shall have the right to transfer the Security Deposit to the transferee thereof subject to sub-paragraph (d) above. In such event, upon the delivery by Landlord to Tenant of such transferee's written acknowledgement of its receipt of such Security Deposit, Landlord shall be deemed to have been released by Tenant from all liability or obligation for the return of such Security Deposit, and Tenant agrees to look solely to such transferee for the return of the Security Deposit and the transferee shall be bound by all provisions of this Lease relating to the return of the Security Deposit.

(f) The Security Deposit shall not be mortgaged, assigned, or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord, which may be withheld by Landlord in its sole discretion.

20. *SUBORDINATION*

(a) This Lease and Tenant's interest hereunder shall have priority over, and be senior to, the lien of any Mortgage made by Landlord after the date of this Lease. However, if at any time or from time to time during the Term, a Mortgagee or prospective Mortgagee requests that this Lease be subject and subordinate to its Mortgage, and if Landlord consents to such subordination, this Lease and Tenant's interest hereunder shall be subject and subordinate to the lien of such Mortgage and to all renewals,

modifications, replacements, consolidations, and extensions thereof and to any and all advances made thereunder and the interest thereon. Tenant agrees that, within ten (10) days after receipt of a written request therefor from Landlord, it will, from time to time, execute and deliver any instrument or other document required by any such Mortgagee to subordinate this Lease and its interest in the Leased Premises to the lien of such Mortgage, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease. If, at any time or from time to time during the Term, a Mortgagee of a Mortgage made prior to the date of this Lease shall request that this Lease have priority over the lien of such Mortgage, and if Landlord consents thereto, this Lease shall have priority over the lien of such Mortgage and all renewals, modifications, replacements, consolidations, and extensions thereof and all advances made thereunder and the interest thereon, and Tenant shall, within ten (10) days after receipt of a written request therefor from Landlord, execute, acknowledge and deliver any and all documents and instruments confirming the priority of this Lease, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially alter the terms and conditions of this lease. In addition, the Mortgagee of a Mortgage which has priority over this Lease shall have the right, at its option, to subordinate the lien of its Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to that effect among the applicable Land Records. In any event, however, if this Lease shall have priority over the lien of a first Mortgage, this Lease shall not become subject or subordinate to the lien of any subordinate Mortgage, and Tenant shall not execute any subordination documents or instruments for any subordinate Mortgage, without the written consent of the first Mortgagee.

(b) This Lease and Tenant's interest hereunder shall be subject and subordinate to each and every ground or underlying lease hereafter made of the Building or the land on which it is constructed, or both, and to all renewals, modifications, replacements, and extensions thereof. Tenant agrees that, within ten (10) days after receipt of written request therefor from Landlord, it will, from time to time, execute, acknowledge and deliver any instrument or other document required by any such lessor to subordinate this Lease and its interest in the Leased Premises to such ground or underlying lease, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease.

(c) If (i) the Building, or any part thereof, or the land on which the Building is constructed, or the Landlord's leasehold estate in the Building, is at any time subject to a first Mortgage, and Landlord has entered into an assignment of this Lease to the holder of said first Mortgage, and (ii) the Tenant is given written notice of such assignment, including the name and address of the assignee, then, in that event, Tenant shall not terminate this Lease or make any abatement in the Basic Rent payable hereunder for any default on the part of the Landlord without first giving written notice, in the manner provided elsewhere in this Lease for the giving of notice, to such first Mortgagee, specifying the default in reasonable detail, and affording such first Mortgagee a reasonable opportunity to make performance, at its election, for and on behalf of the Landlord.

21. *ATTORNMEN*

In the event of (a) a transfer of Landlord's interest in the Leased Premises, (b) the termination of any ground or underlying lease of the Building or the land on which it is constructed, or both, or (c) the purchase of the Building or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any Mortgage or pursuant to a power of sale contained in any Mortgage, then in any of such events Tenant shall, upon demand by the owner of the Building or the land on which it is constructed, or both, attorn to and recognize the transferee or purchaser of Landlord's interest or the lessor under the terminated ground or underlying lease, as the case may be, as Landlord under this Lease for the balance then remaining of the Term, and thereafter this Lease shall continue as a direct lease between such person, as "Landlord," and Tenant, as "Tenant," except that such lessor, transferee or purchaser shall not be liable for any act or omission of Landlord prior to such lease termination or

prior to such person's succession to title, nor be subject to any offset, defense or counterclaim accruing prior to such lease termination or prior to such person's succession to title, nor be bound by any payment of Basic Rent or Additional Charges prior to such lease termination or prior to such person's succession to title for more than one (1) month in advance. Tenant shall, upon request by Landlord or the transferee or purchaser of Landlord's interest or the lessor under the terminated ground or underlying lease, as the case may be, execute and deliver an instrument or instruments confirming the foregoing provisions of this Section, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease. Tenant hereby waives the provisions of any present or future law or regulation which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease, or the obligations of Tenant hereunder, upon or as a result of the termination of any such ground or underlying lease or the completion of any such foreclosure and sale.

22. *QUIET ENJOYMENT*

Landlord covenants that Tenant, upon paying the Basic Rent and the Additional Charges provided for in this Lease, and upon performing and observing all of the terms, covenants, conditions, and provisions of this Lease on Tenant's part to be kept, observed and performed, shall quietly hold, occupy, and enjoy the Leased Premises during the Term without hindrance, ejection, or molestation by Landlord or any party lawfully claiming through or under Landlord. Landlord will provide Tenant a reasonable non-disturbance agreement from any current and/or future mortgagees. In connection therewith Tenant shall execute documents reasonably requested by such lender, provided any such instrument or other document is in form and content as would be customary in the industry and does not modify or amend the terms and conditions of this lease.

23. *LANDLORD'S RIGHT OF ACCESS TO LEASED PREMISES*

(a) Landlord and its agents shall have the following rights in and about the Leased Premises: (i) to enter the Leased Premises at all reasonable times and with reasonable notice (which shall be at least two days except in the case of emergency) to examine the Leased Premises or for any of the purposes set forth in this section or for the purpose of performing any obligation of Landlord under this Lease or exercising any right or remedy reserved to Landlord in this Lease, and if Tenant, its officers, partners, agents, or employees shall not be personally present or shall not open and permit an entry into the Leased Premises at any time when such entry shall be necessary or permissible, to use a master key or forcibly to enter the Leased Premises; (ii) to erect, install, use, and maintain pipes, ducts, and conduits in and through the Leased Premises which, when completed, will not substantially interfere with the use or appearance or materially reduce the space afforded to Tenant in the Leased Premises; (iii) to exhibit the Leased Premises to others at reasonable times and for reasonable purposes; (iv) to make such decorations, repairs, alterations, improvements, or additions, or to perform such maintenance, including, but not limited to, the maintenance of all heating, air-conditioning, elevator, plumbing, electrical and other mechanical facilities installed by Landlord, as Landlord may deem necessary or desirable; (v) to take all materials into and upon the Leased Premises that may be required in connection with any such decorations, repairs, alterations, improvements, additions, or maintenance; and (vi) to alter, renovate and decorate the Leased Premises at any time during the Term if Tenant shall have removed all or substantially all of Tenant's property from the Leased Premises. Landlord agrees to give prior notice before it exercises its rights under this subsection, except that Landlord may enter the Leased Premises without notice in the case of an emergency. In making such an entry, Landlord agrees to use reasonable efforts to avoid interfering with the regular and usual conduct of the Tenant's business. Tenant shall at all times have the option of accompanying Landlord or its agents when Landlord or its agents enter the Leased Premises.

(b) All parts (except surfaces facing the interior of the Leased Premises) of all walls, windows, and doors bounding the Leased Premises (including exterior Building walls, corridor walls, doors, and

entrances), all balconies, terraces, and roofs adjacent to the Leased Premises, all space in or adjacent to the Leased Premises used for shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, heating, and air-conditioning, plumbing, electrical, and other mechanical facilities installed by Landlord, service closets and other Building facilities, and the use thereof, as well as access thereto through the Leased Premises for the purposes of operation, maintenance, alteration, and repair, are hereby reserved to Landlord. Nothing contained in this Section shall impose any obligation upon Landlord with respect to the operation, maintenance, alteration, or repair of the Leased Premises or the Building.

(c) The exercise by Landlord or its agents of any right reserved to Landlord in this Section shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord, or its agents, or upon any lessor under any ground or underlying lease, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise. Landlord agrees to exercise its rights under this Section in a manner designed to minimize interference with Tenant's normal business operations, without any obligation, however, to employ labor at overtime or other premium pay rates. Landlord shall take reasonable steps to insure that the exercise by Landlord or its agents of any right reserved to Landlord in this Section does not interfere with the Tenant conducting its business.

24. *LIMITATION ON LANDLORD'S LIABILITY*

(a) Except for damages resulting from the willful or negligent act or omission of Landlord, its agents and employees, Landlord shall not be liable to Tenant, its employees, agents, business invitees, licensees, customers, guests or trespassers, for any damage or loss to the property of Tenant or others located on the Leased Premises, or in the Building or the land on which it is built, or for any accident or injury to Persons in the Leased Premises or the Building, resulting from the necessity of repairing any portion of the Building; the use or operation (by Tenant or any other Person or Persons whatsoever) of any elevators, or heating, cooling, electrical or plumbing equipment or apparatus; the termination of this Lease by reason of the destruction of the Building or the Leased Premises; any fire, robbery, theft, and/or any other casualty; any leaking in any part of the Leased Premises; any water, gas, steam, fire, explosion, electricity or falling plaster; the bursting, stoppage or leakage of any pipes, sewer pipes, drains, conduits, appliances or plumbing works; or any other cause whatsoever.

(b) Landlord shall not be required to perform any of its obligations hereunder, nor be liable for loss or damage for failure to do so, nor shall Tenant be released from any of its obligations under this Lease because of the Landlord's failure to perform, where such failure arises from or through Unavoidable Delays or Legal Requirements. If Landlord is so delayed or prevented from performing any of its obligations during the Term, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation.

25. *ESTOPPEL CERTIFICATES*

Tenant agrees from time to time, within ten (10) days after written request therefor by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying to Landlord, any Mortgagee, assignee of a Mortgagee, or any purchaser of the Building or the land on which it is constructed, or both, or any other Person designated by Landlord, as of the date of such statement, to the extent of Tenant's knowledge (i) that Tenant is in possession of the Leased Premises; (ii) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and setting forth such modifications); (iii) whether or not there are then existing any set-offs or defenses known to Tenant against the enforcement of any right or remedy of Landlord, or any duty or obligation of Tenant, hereunder (and, if so, specifying the same in detail); (iv) the dates, if any, to which any Basic Rent or Additional Charges have been paid in advance; (v) that Tenant has no knowledge of any uncured defaults on the part of Landlord under this Lease

(or, if Tenant has such knowledge, specifying the same in detail); (vii) the amount of any Security Deposit held by Landlord; and (viii) any additional facts reasonably requested by any such Mortgagee, assignee or a Mortgagee or purchaser.

Landlord agrees from time to time, within ten (10) days (or as soon as reasonably practical but not more than thirty (30) days), after written request therefor by Tenant to execute, acknowledge and deliver to Tenant a statement in writing certifying to Tenant, any Mortgagee, assignee of a Mortgagee, or any purchaser of or successor in interest to Tenant, or any other Person designated by Tenant, as of the date of such statement, to the extent of Landlord's actual knowledge (i) that Landlord is the owner of the Building and the Land; (ii) that Tenant is in possession of the Leased Premises; (iii) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and setting forth the dates of such modifications); (iv) the dates, if any, to which any Basic Rent or Additional Charges have been paid in advance; and (v) the amount of any Security Deposit held by Landlord;

26. *SURRENDER OF LEASED PREMISES*

(a) Tenant shall, on or before the last day of the Term, except as otherwise expressly provided elsewhere in this Lease, remove all of its property and peaceably and quietly leave, surrender and yield up to the Landlord the Leased Premises, free of sub-tenancies, broom clean and in good order and condition except for reasonable wear and tear, damage by fire or other casualty, or conditions requiring repair by Landlord hereunder at Landlord's expense.

(b) The provisions of this Section shall survive any expiration or termination of this Lease.

27. *HOLDING OVER*

If Tenant shall hold over possession of the Leased Premises after the end of the Term, Tenant shall be deemed to be occupying the Leased Premises as a Tenant from month to month, at 110% of the Basic Rent, adjusted to a monthly basis, and subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable, or as the same shall be adjusted, to a month-to-month tenancy. Notwithstanding the immediately preceding sentence the Tenant shall have the right to hold over for a period of up to two (2) months following the expiration of the Lease Term, or any extension thereof, at 100% of the Base Rent in effect during the last month of the previous Lease Term with six (6) months written notice to Landlord. Thereafter the holdover rent will be at 110% of the Base Rent in effect during the last month of the previous Lease Term plus consequential damages, if any.

28. *PARKING*

Tenant will have the right to utilize Tenant's Proportionate Share of the reserved and un-reserved parking spaces in the project's parking structure and in the surface parking lots at no cost during the initial Lease Term. Throughout the Term, Tenant and/or its employees shall have the right, without additional cost, to park their automobiles in the surface and garage parking areas provided for the Building. Such parking spaces shall be available on a first-come, first-served basis, subject however, to the rights of any other tenant of the Building to park automobiles in reserved parking spaces as provided in its lease. Landlord shall use good faith, reasonable efforts to insure that Tenant continuously is able to use Tenant's Proportionate Share of the parking spaces. Landlord reserves the right, at any time or from time to time during the Term, to establish reserved parking spaces for the tenant's in the Building on part of or all of the parking spaces on the Property and in such event Tenant shall utilize only those reserved spaces assigned to Tenant, Landlord reserves the right, at any time or from time to time during the Term, to control access to the surface and garage parking areas, by use of mechanical or electric devices or otherwise, to tenants of the Building and their employees, provided that Landlord shall reserve at least sixteen (16) parking spaces for parking of visitors of the Building. If at any time during the Term, Landlord implements a controlled access system for the

Building parking areas, Tenant shall have the right without additional cost, to use unassigned parking spaces in the structured parking and the surface parking lots based on Tenant's Proportionate Share. Neither Tenant nor any of its employees shall use any of the parking facilities for storage of vehicles (or any other item such as boats or trailers) or park its or their automobiles in any portion of the Building parking areas reserved for visitor or handicapped parking or for parking of automobiles belonging to other tenants of the Building. Tenant shall be provided reserved parking spaces (including covered parking spaces) as detailed on the Reserved Parking Plan attached hereto as EXHIBIT G.

29. *LEASING COMMISSION*

Landlord and Tenant each represent and warrant to the other that neither of them has employed any broker in carrying on the negotiations relative to this Lease. Landlord and Tenant shall each indemnify and hold harmless the other from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty.

30. *GENERAL PROVISIONS*

(a) The covenants, conditions, agreements, terms and provisions herein contained shall be binding upon, and shall inure to the benefit of, the parties hereto and, subject to the provisions of Section 15, each of their respective personal representatives, successors and assigns.

(b) Tenant agrees to provide Landlord with reasonable documentation evidencing the Tenant's financial viability and good standing as may be requested from time to time by Landlord or Landlord's mortgage holder.

(c) It is the intention of the parties hereto that this Lease (and the terms and provisions hereof) shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

(d) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by the Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition, limitation, right or remedy. No term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Landlord or by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord or by Tenant, as the case may be. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(e) No notice, request, consent, approval, waiver or other communication which may be or is required or permitted to be given under this Lease shall be effective unless the same is in writing and is delivered in person or sent by registered or certified mail, return receipt requested, first-class postage prepaid, or by recognized overnight carrier, (1) if to Landlord, at Landlord's Notice Address, or (2) if to Tenant, at Tenant's Notice Address, or at any other address that may be given by one party to the other by notice pursuant to this subsection. Such notices, if sent by registered or certified mail, shall be deemed to have been given two (2) business after the date of deposit in the U.S. Mail and if sent by overnight courier shall be deemed to have been given one (1) business after the date of deposit with the overnight courier.

(f) It is understood and agreed by and between the parties hereto that this Lease contains the Final and entire agreement between said parties, and that they shall not be bound by any terms, statements, conditions or representations, oral or written, express or implied, not herein contained. It is understood and agreed, however, that the terms hereof shall be modified, if so required, for the purpose of complying with or fulfilling the requirements of any Mortgage secured by a first Mortgage

that may now be or hereafter become a lien on the Building, provided, however, that such modification shall not be in substantial derogation or diminution of any of the rights of the parties hereunder, nor increase any of the obligations or liabilities of the parties hereunder.

(g) Tenant hereby waives all right to trial by jury in any claim, action, proceeding or counterclaim by Landlord on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant and/or Tenant's use or occupancy of the Leased Premises. Tenant also agrees to waive any and all counterclaims Tenant may have in any suit for possession by Landlord; it being understood that the subject of any such counterclaim may be asserted by Tenant but only in a separate action brought by Tenant against Landlord.

(h) Tenant hereby waives any objection to the venue of any action filed by Landlord against Tenant in any state or federal court in the jurisdiction in which the Building is located, and Tenant further waives any right, claim or power, under the doctrine of forum non conveniens or otherwise, to transfer any such action filed by Landlord to any other court.

(i) Not Used.

(j) If Tenant is a corporation, concurrently with the signing of this Lease, it shall furnish to Landlord certified copies of the resolutions of its Board of Directors (or of the executive committee of its Board of Directors) authorizing Tenant to enter into this Lease; and it shall furnish to Landlord evidence (reasonably satisfactory to Landlord and its counsel) that Tenant is a duly organized corporation in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business in good standing in the Commonwealth of Virginia, has the power and authority to enter into this Lease, and that all corporate action requisite to authorize Tenant to enter into this Lease has been duly taken.

(k) Time is strictly of the essence in the performance of all Tenant's obligations under this Lease.

(l) Wherever appropriate herein, the singular includes the plural and the plural includes the singular.

(m) If any provision of this Lease shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

(n) The captions in this Lease are for convenience only and shall not affect the interpretation of the provisions hereof.

(o) This Lease is not intended to create a partnership or joint venture between Landlord and Tenant in the conduct of their respective business.

(p) Notwithstanding any provision to the contrary, Tenant shall look solely to the estate and property of Landlord in and to the Building in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, and Tenant agrees that the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, shall be limited to such estate and property of Landlord. No other properties or assets of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, and if Tenant shall acquire a lien on or interest in any other properties or assets by judgment or otherwise, Tenant shall promptly release such lien on or interest in such other properties and assets by executing, acknowledging and delivering to Landlord an instrument to that effect prepared by Landlord's attorneys.

(q) This Lease may be executed in several counterparts, but all counterparts shall constitute one and the same instrument.

(r) Any option or right of first refusal contained in this Lease, if any, including but not limited to any option or right of first refusal in connection with extending the Term, terminating before the expiration of the Term, or expanding, must be exercised by Tenant on or before the date specified for so doing in this Lease (the "Option Date"), by Tenant's execution on or before the Option Date of final Lease modification documents effectuating the changes to this Lease required by such option or right of first refusal. Any notice by Tenant of its intent to exercise any such option or right of first refusal shall be void if Tenant does not execute final Lease modification documents on or before the Option Date or, at the option of Landlord, if on the date of Tenant's Notice or the Option Date there exists an Event of Default.

30. *BUILDING OWNERSHIP CHANGES*

It is understood and agreed that the common ownership and control of the Landlord and the Tenant is in contributing factor to the Landlord agreeing to lease the Leased Premises to Tenant and Tenant agreeing to lease the Leased Premises from Landlord. Accordingly, notwithstanding anything else contained herein, or elsewhere provided for, it is agreed that in the event Landlord sells the Building (a "Landlord Transfer") during the Term the following shall apply:

(a) the Operating Expenses that are the responsibility of Tenant as set forth in paragraph 1(b) hereof for any calendar year that completes after the date of a Landlord Transfer shall be capped (and shall not exceed) the amount of such Operating Expenses that were the responsibility of the Tenant in the preceding calendar year.

(b) the profits generated by the sub-lease of the Leased Premises by Tenant shall belong to Tenant and shall not be shared between Tenant and Landlord as set forth in paragraph 15(e) hereof.

(c) sub-paragraphs 15(c), 15(g), 15(f), and 30(b) shall be deleted in their entirety.

(d) the amount that Tenant may be liable to Landlord in the event of a monetary default by Tenant that results in the Tenant be evicted from the Lease Premises shall be limited to an amount equal to all un-amortized Tenant Improvement Costs incurred by Landlord plus a termination fee of fifty thousand (\$50,000.00), plus all reasonable fees of Landlord's counsel and all applicable court costs.

However, it is agreed and understood that the provisions of sub-paragraphs 30(a), (b), (c), and (d) above are intended for the sole benefit of the Tenant and the Lease Guarantors and their respective current shareholders. In the event that the shareholders (including their respective estates) of the Tenant or the Lease Guarantors whom hold a majority of the outstanding shares of company stock no longer own a majority of the outstanding shares of company stock, or otherwise lose their controlling interest and rights to management of the Tenant and the Lease Guarantor (a "Tenant Transfer") during the Term the provisions of this Paragraph 30 shall be null and void and of no consequence as if never included in this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed by their duly authorized partners or officers as set forth below:

Seen and agreed this 30 day of April, 2002

Tenant: Comstock-Homes, Inc.

By: /s/ GREGORY BENSON

Witness: /s/ KELLY WYCHE

Name: Gregory Benson
Title: President

Name: /s/ KELLY WYCHE

Seen and agreed this 30 day of April, 2002

Lease Guarantor: Comstock Holding Company, Inc.

By: /s/ GREGORY BENSON

Witness: /s/ KELLY WYCHE

Name: Gregory Benson
Title: President

Name: /s/ KELLY WYCHE

Seen and agreed this 30 day of April, 2002

Landlord: Comstock Partners, LC

By: /s/ CHRISTOPHER CLEMENTE

Witness: /s/ KELLY WYCHE

Print: Christopher Clemente
Title: Managing Member

Name: /s/ KELLY WYCHE

QuickLinks

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LEASE AGREEMENT

by and between

COMSTOCK HOMES, INC. as "Tenant"

and

COMSTOCK PARTNERS, L.C. as "Landlord"

January , 2004

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into this _____ day of January, 2004, by and between (i) COMSTOCK PARTNERS, L.C., a Virginia limited liability company (hereinafter referred to as "Landlord"), and (ii) Comstock Homes, Inc. (hereinafter referred to as "Tenant"), and referred to by singular pronouns of the neuter gender, regardless of the number and gender of the parties involved.

WITNESSETH: Upon and subject to the terms of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises (as defined below), for the Term (as defined below), except that Landlord reserves and Tenant shall have no right in and to (a) the use of the exterior faces of all perimeter walls and windows of the Building, (b) the use of the roof of the Building, or (c) the use of the air space above the Building, except as specifically set forth herein.

1. **DEFINITIONS**

(a) *General Interpretive Principles.* For purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Section have the meanings assigned to them in this Section and include the plural as well as the singular, and the use of any gender shall be deemed to include all other genders; (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (iii) references herein to "Sections," "subsections," "paragraphs," and other subdivisions without reference to a document are to designated Sections, subsections, paragraphs, and other subdivisions of this Lease; (iv) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (v) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Lease as a whole and not to any particular provisions; (vi) the word "including" means "including, but not limited to"; (vii) daily rent is calculated on a thirty (30) day month applied to the number of days being charged, (viii) all amounts due Landlord hereunder are in United States dollars; and (ix) the words "months" and "years" mean calendar months and calendar years.

(b) *Special Lease Definitions.* As used in this Lease the following words and phrases shall have the meanings indicated:

Advance Rent: Thirteen Thousand, Three Hundred and Forty Six and 00/100 (\$13,195.50) representing the Basic Rent for the first full month of the Term after the Lease Commencement Date, which Tenant shall pay to Landlord upon execution of this Lease. Landlord acknowledges receipt of the Advance Rent subject to collection.

Basic Rent: For each Lease Year, an amount equal to the product obtained by multiplying the Rentable Area of the Leased Premises leased by Landlord to Tenant during such Lease Year by the Rent per Square Foot for such Lease Year. The Basic Rent shall increase each year by 4.0% over the immediately prior year's Basic Rent. Therefore the Basic Rent for the second year is determined by multiplying the Basic Rent for the first year by 104%.

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

	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent/S.F.</u>
Lease Year 1	\$ 158,346.00	\$ 13,195.50	\$ 18.00
Lease Year 2	164,679.84	13,723.32	\$ 18.72

Basic Rent Escalation: See definition of *Basic Rent*.

Building: The existing office building located at 11465 Sunset Hills Road, Reston, Virginia, including the parking lots and parking garage and Landlord's right, title and interest in and to the underlying land.

Building Rentable Area: The total net rentable area in the Building, which (although greater than the actual usable area) is agreed to be 89,221 square feet (as has been determined by the project architect), including core factor.

Brokers: The Tenant hereby represents that it is not represented by a Broker and the Landlord hereby represents that it is not represented by a Broker.

Landlord's Contractor: Any and all professionals or tradespeople engaged by or on behalf of Landlord, or by Tenant at Landlord's direction and/or expense, in connection with alterations and construction in the Leased Premises, either before or during the Term of this Lease, including but not limited to general contractors, sub-contractors, architects, engineers, and any other professionals or tradespeople typically associated with construction and/or alterations.

Landlord's Notice Address: COMSTOCK PARTNERS, L.C. 11465 Sunset Hills Rd, Reston, Va. 20190, Attention: Mr. Christopher Clemente, Manager, with copy to Bankert & Associates, PC, 3025 Hamaker Court, Suite 501 Fairfax, Virginia 22031 Attention: Mr. Joseph E. Bankert and a copy to the Landlord's property management company, as selected by Landlord. Landlord may change the management company at its option and will notify Tenant in such event.

Lease Commencement Date: The Lease Commencement Date shall be February 1, 2004.

Leased Premises: The area located on the Third (3rd) floor of the Building which is outlined in black on the floor plan, attached hereto as Exhibit A and incorporated herein, and containing the following amount of Rentable Area:

Third Floor:	8,797 Square Feet to be known as Suite #300
TOTAL:	8,797 Square Feet

Operating Expense Base: For each calendar year ending during the Term, the sum of the 2004 actual Operating Expenses for each square foot of Building Rentable Area.

Operating Expense Increases: Subject to the conditions set forth in Paragraph 31 hereof, for calendar year 2005 and each calendar year thereafter during the Term (subject to prorations as provided in Paragraph 3), an amount equal to Tenant's Proportionate Share of the excess of Landlord's Operating Expenses for such calendar year over the product obtained by multiplying the Operating Expense Base by the Building Rentable Area. In no event shall the Tenant's Proportionate Share of the excess of Landlord's Operating Expenses for any calendar year exceed a sum equal to One Dollar (\$1.00) multiplied by the number of square feet of Rentable Area.

Rent Per Square Foot: The Basic Rent shall be Eighteen and 00/00 Dollars (\$18.00) per square foot of the Leased Premises during the first Lease Year. For each Lease Year thereafter during the Term, the Rent per Square Foot of the Leased Premises shall be increased by four percent (4.0%) as provided for in this Lease.

Rent Offset: NOT APPLICABLE

Rentable Area: The total rentable area of the Leased Premises, which (although greater than the actual usable area) is agreed to be 8,797 square feet, which shall be verified by the project architect upon completion of the Tenant Improvement Plans and in the event the final calculation is different then as aforesaid the project architect shall provide a written statement to the parties

hereto as to the total Rentable Square Feet of the Premises and said written statement shall be attached as an amendment hereto modifying the portions of this Agreement as is appropriate without modifying the general terms hereof.

Security Deposit: Upon execution of this Lease, in addition to paying Landlord the Advance Rent set forth herein, Tenant shall deliver and pay to Landlord a Security Deposit as set forth in Paragraph 19 hereof.

Storage Space: During the term hereof and provided Tenant occupies at least 5,000 square feet within the Building and provided Tenant has not been in default beyond any applicable cure period, the Landlord shall provide Tenant, at no additional cost, with access and exclusive use of a portion of the penthouse of the Building for storage of personal property of Tenant. All costs of constructing and maintaining the storage area shall be borne by Tenant.

Tenant's Notice Address: The Tenant's notice address is: 11465 Sunset Hills Rd., Suite 510, Reston, Va. 20190 ATTENTION: Christopher Clemente, Chief Executive Officer, with a copy to Bankert & Associates, PC, 3025 Hamaker Court, Suite 501 Fairfax, Virginia 22031 Attention: Mr. Joseph E. Bankert. Tenant's notice address shall be: Suite 510, 11465 Sunset Hills Road, Reston, Virginia 20190.

Tenant's Proportionate Share: The percentage which the Rentable Area of the Leased Premises is of the Building Rentable Area. The Tenant's Proportionate Share is agreed to be Nine and 86/100 percent (9.86%).

Term: Subject to Tenant's exercise of its Option to Renew this Lease, as provided for herein, the period commencing on the Lease Commencement Date and ending on the last day of the calendar month which completes TWO (2) YEARS after the Lease Commencement Date, but in any event the Term shall end on any date when this Lease is sooner terminated as provided for herein.

(c) *General Definitions.* As used in this Lease the following words and phrases shall have the meanings indicated:

Additional Charges: All amounts payable by Tenant to Landlord under this Lease other than Basic Rent. All Additional Charges shall, unless otherwise provided herein, be due and payable within Thirty (30) days of invoice and shall be deemed to be additional rent and all remedies applicable to the non-payment of Basic Rent shall be applicable thereto.

Alterations: As defined in Section 9(a).

Business Days: All days except Saturdays, Sundays, and the following legal holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and those holidays designated by an Executive Order of the President of the United States or by Act of Congress.

Default Interest Rate: A rate per annum equal to the sum of (i) the prime rate of interest from time to time established and publicly announced by The Chase Manhattan Bank, N.A., New York, in its sole discretion, as its then applicable prime rate of interest to be used in determining actual interest rates to be charged to certain of its borrowers, said prime rate to change from time to time as and when the change is announced as being effective, and (ii) two percent (2%).

Event of Default: Any of the events set forth in Section 16(a) as an event of default.

First Right of Offer: For so long as Tenant is owned and/or operated by either Christopher Clemente or Gregory Benson the Landlord shall make reasonable efforts to accommodate Tenant's

expansion needs by providing Tenant the first opportunity to lease any additional space that becomes available in the Building, however, Tenant shall not have any right to any additional space in the Building and Landlord shall not be required to provide any such space to Tenant unless Tenant enters into a lease for such additional space within fifteen (15) Business Days of the date of Landlord's written notice to Tenant that additional space is, or will become, available in the Building.

Landlord: The Landlord named herein, its successors or assigns and any subsequent owner, lessees, or transferees, from time to time, of the Landlord's interest in the Building and their respective successors and assigns (subject to the provisions of Paragraph 31 hereof.

Lease: This Lease Agreement, as amended from time to time, and all Exhibits incorporated herein and/or attached hereto.

Lease Guarantor: This Lease Agreement, as amended from time to time, and all of Tenant's obligations hereunder are hereby fully guaranteed jointly and severally by those Persons listed on the signature page as Lease Guarantors.

Lease Year: The period of twelve (12) months commencing on the Lease Commencement Date and ending on the last day of the month which completes twelve (12) full calendar months after the Lease Commencement Date, and each 12-month period thereafter commencing on the first day after the end of the immediately preceding Lease Year, except that the last Lease Year shall end on the last day of the Term.

Legal Requirements: All laws, statutes, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, and the appropriate agencies, officers, departments, boards, and commissions thereof, and the board of fire underwriters and/or the fire insurance rating organization or similar organization performing the same or similar functions, whether now or hereafter in force, applicable to the Building or any part thereof and/or the Leased Premises, as to the manner of use or occupancy or the maintenance, repair, or condition of the Leased Premises and/or the Building, and the usual and customary requirements of the carriers of all fire insurance policies maintained by Landlord on the Building.

Mortgage: Any mortgage, deed of trust, or other security instrument of record creating an interest in or affecting title to the Building or the land on which it is constructed, or both, or any part thereof, including a leasehold mortgage or sub-leasehold mortgage, and any and all renewals, modifications, consolidations, or extensions of any such instrument; Mortgagee shall mean the holder or beneficiary of any Mortgage. Tenant shall comply with all reasonable notices from Landlord's Mortgagee as to the manner of use or occupancy or the maintenance, repair or condition of the Leased Premises and/or the Building.

Non-disturbance: Landlord will provide Tenant a reasonable non-disturbance agreement from any current and/or future mortgagees. In connection therewith Tenant shall execute documents reasonably requested by such lender, provided any such instrument or other document is in form and content as would be customary in the industry and does not modify or amend the terms and conditions of this lease.

Operating Expenses: Tenant shall pay Tenant's Proportionate Share of annual increases in Real Estate Taxes and Operating Expenses above the Calendar 2003 Base Year. Landlord will follow usual and customary practices of the industry and agrees not to defer or omit foreseeable budgeted line items from the Base Year so as not to artificially reduce the Operating Expenses for the Calendar 2003 Base Year. An itemized breakdown of 2003 estimated Operating Expenses will be made available upon completion of Landlord's year end consolidation. Detailed breakdowns of all charges to Tenant will be provided. The aggregate of all costs and expenses reasonably and

customarily paid or incurred on a cash basis by Landlord in connection with the ownership, operation, servicing, and maintenance of the Leased Premises, the Building, the land on which the Building is constructed and any related ancillary improvements constructed on the land, the surface and garage parking areas servicing the Building, and ingress/egress easements and private roadways servicing the Building, including, but not limited to, employees' wages, salaries, welfare and pension benefits and other customary and usual employee fringe benefits; payroll taxes; Real Estate Taxes; property owner's association dues, required fees and contributions of any kind related to the ownership or operation of the Building (but not related to zoning of the Building or construction fees related to the construction of the base building shell), electricity and other utility charges; telephone service related to operation of the Building; painting of public or other common areas of the Building; exterminating service; security services; trash removal; sewer and water charges; premiums for fire and casualty, liability, rent loss, workmen's compensations, sprinkler, water damage and other insurance; repairs, maintenance, additions and improvements made by Landlord to the Building; building, janitorial and cleaning services and supplies; uniforms and dry cleaning; snow removal; landscaping maintenance; window cleaning; service contracts for the maintenance of elevators, boilers, HVAC, and other mechanical, plumbing, and electrical equipment; legal fees (other than legal fees relating to leasing available space in the Building or related to the enforcement of Landlord's rights under leases with tenants for space in the Building); accounting fees; advertising (except for advertising expenses and leasing fees relating to leasing space in the building); management fees at reasonable and customarily incurred rates and all other expenses now or hereafter reasonably and customarily incurred in connection with the ownership, operation and maintenance of comparable office buildings in Northern Virginia. Refunds of Real Estate Taxes (reduced by Landlord's reasonable expenses in obtaining such refunds), receipts from tenants of the Building for after-hours heating or air-conditioning and for excess electrical usage in an amount equal to the actual costs of providing such service, recoveries of expenses and other separate charges made to tenants of the Building for special services (but excluding any mark-up or profit realized by Landlord in connection with providing such special services) and, to the extent that Operating Expenses include the cost of any repair or reconstruction work, the amount of any insurance recoveries, shall be credited against Operating Expenses in computing the amount thereof. Operating Expenses shall also be reduced as provided in Section 3(b).

Notwithstanding anything in this Lease to the contrary, for purposes of the calculations to be made pursuant to this paragraph, Operating Expenses shall exclude (i) Capital Improvements (defined for the purposes of this paragraph to mean the replacement, but not repairs, of all or substantially all, of major capital items, such as (a) mechanical or electrical systems, (b) the roof, (c) the parking lots of the Building, and (d) the elevators, (ii) repairs and replacements, which under sound accounting principles and practices should be classified as capital expenditures as determined by Landlord's independent accounting firm, (iii) painting, redecorating, or other work which Landlord performs for any other tenant or prospective tenant of the building other than painting, redecorating, or other work which is standard for the building and performed relative to the common areas of the Building, (iv) repairs or other work (including rebuilding) occasioned by fire, windstorms, or other casualty, to the extent covered by insurance, or condemnation, (v) any cost (such as repairs, improvements, electricity, special cleaning or overtime services) to the extent such costs are included in tenants' rent or are expressly reimbursable to Landlord by tenants (as opposed to rent escalation provisions) or are separately charged to and payable by tenants or to the extent Landlord is entitled to compensation by insurance proceeds, (vi) leasing commissions and expenses of procuring tenants, including advertising and promotional expenses, lease concessions and lease take-over obligations, (vii) depreciation, (viii) interest on and amortization of debt, (ix) taxes of any nature, excluding real estate taxes, but including interest and penalties for late payment of taxes, except as provided herein, (x) rent payable under any lease to which this

lease is subject, (xi) wages or salaries of employees other than on-site employees for the building or employees specifically employed, in whole or in part, in connection with the ownership and maintenance of the Building, (xii) costs and expenses of enforcing leases against tenants, including legal fees, (xiii) managing agents' commissions in excess of rates then customarily charged by managing agents for comparable office buildings and, (xiv) expenses resulting from any violation by Landlord of the terms of any lease of space in the building or any ground or underlying lease or mortgage to which this lease is subordinate (xv) costs of leasing commissions, legal, space planning, construction, and other expenses incurred in procuring tenants for the Property or with respect to individual tenants or occupants; (xvi) any costs or expenses associated with or incurred in connection with the removal, enclosure, encapsulation or other handling of asbestos or other hazardous or toxic materials or substances knowingly brought onto the Property by Landlord or at the specific direction of Landlord; (xvii) increased insurance or real estate taxes assessed specifically to any other tenant of the Property; (xviii) any cost representing an amount paid to a person, firm, corporation or other entity related to landlord which is in excess of the amount which would have been paid in the absence of such relationship; (xix) any cost of painting or decorating of any interior parts of any tenants leased premises in the Property; (xx) cost of repairs, alterations and/or replacements caused by the exercise of the rights of eminent domain to the extent same is covered by payments received by Landlord from the applicable governmental authority; (xxi) costs of signs in or on the Building identifying the Landlord or any tenant of the Building; and (xxii); costs, fines or penalties incurred due to the Landlord knowingly violating any laws or governmental rules or regulations, unless such costs result from the Landlord's ownership or management of the Property in a manner that is ordinary and customary in the industry or as incurred by Landlord in successfully challenging any such law, rule or regulation.

If during the Term (including the Base Year) the Building is less than ninety-five percent (95%) occupied, or if by reason of partial operation of the Building all Operating Expenses for a calendar year have not been incurred, variable Operating Expenses shall be adjusted for that calendar year to an amount which the Landlord estimates, in the Landlord's reasonable judgment using generally accepted accounting principals, would have been incurred had the Building been ninety-five percent (95%) occupied and in full operation during that calendar year in accordance with generally accepted accounting principles consistently applied. Any adjustment to reflect ninety-five percent (95%) occupancy shall not affect costs or expenses that do not vary with occupancy (such as insurance premiums, utility and maintenance costs for Common Areas, and other fixed expenses) and shall be made in a manner that reasonably reflects all factors relating to the impact of occupancy on the amount of variable costs and expenses and that reasonably constitutes the most accurate possible approximation of what such variable costs and expenses would actually have been had the Building actually been ninety-five percent (95%) occupied and fully assessed for taxes, and shall not result in any adjustment of Operating Expenses to a level such that if all occupied areas of the Building had paid all of such adjusted Operating Expenses, Landlord would have received more than actual Operating Expenses without such adjustment to ninety-five percent (95%) occupancy.

In the event that pursuant to the terms of this Lease, Tenant is obligated to pay its proportionate share of Operating Expenses, Tenant shall have the right to audit Landlord's books and records as follows:

- A. Tenant shall be entitled at any reasonable time during business hours, after giving at least five (5) days prior written notice, to inspect Landlord's books and records relating to Tenant's proportionate share of Operating Expenses at the site of the location of such books and records and to obtain an audit thereof by an independent auditor selected by Tenant (and reasonably acceptable to Landlord) to determine the accuracy of such

amounts billed to Tenant by Landlord for the last two (2) calendar years immediately preceding the calendar year in which such notice is given.

- B. If such audit discloses a liability for Tenant's proportionate share of Operating Expenses which is less than the amount billed to, and paid by, Tenant, then Landlord shall within thirty (30) days refund to Tenant all amounts paid by Tenant in excess of the amount Tenant is actually required to pay as provided for herein ("Refund Amount").
- C. All costs of such audit shall be paid by Tenant. However, in the event the Refund Amount is greater than five percent (5%) of the amount for which Tenant is actually liable (as disclosed by the audit), all reasonable actual costs of such audit shall be paid by Landlord.

Notwithstanding anything to the contrary set forth herein, or elsewhere provided for, in no event shall Tenant's Proportionate Share of annual increases in Real Estate Taxes and Operating Expenses above the Calendar 2003 Base Year exceed one dollar (\$1.00) per square foot of space covered by this Agreement during any one calendar year. In the event the square footage changes during any calendar year the average monthly square footage shall be used.

Option to Renew: Tenant is hereby given the option to renew this Lease for two (2) periods of three (3) years, or one (1) period of either; three (3) years, five (5) years, or seven (7) years, provided that there shall be no Event of Default under any of the terms of this Lease either at the time of the giving of any such notice or at the time of commencement of any renewal. Tenant shall give notice in writing to the Landlord of its exercise of such option at least six (6) months prior to the termination of the Initial Term. Such renewal shall be based on the same terms, covenants and conditions as are contained in this Lease except that the Basic Rent for the first year of the renewal period shall be at the then current market rate (for comparable buildings in the general vicinity of the Building), as agreed to by the parties hereto, but in no event less than the previous year's rate multiplied by 104%. In the event the parties can not agree to the current market rate as set forth above then the Landlord and Tenant shall each select a licensed commercial real estate broker doing business in Northern Virginia (the "Selected Brokers"), whereupon the Selected Brokers shall select a third similarly qualified broker, who shall each then provide to the parties their expert opinion as to the then current market rate and the average of the three opinions shall be the current market rate for the purposes of this paragraph. In establishing the Basic Rent for the renewal term, the parties or the brokers who determine the Basic Rent shall consider and take into account Tenant's continuing obligation to pay Additional Charges for Operating Expense Increases over the Operating Expense Base, unless the parties have agreed in writing that Tenant's obligation to pay Additional Charges for Operating Expense Increases over the Operating Expense Base shall be terminated and the Operating Expense Base shall be re-set to be the sum of the actual Operating Expenses during the year in which such renewal term commences. Notwithstanding the foregoing, in no event shall the Basic Rent for the first year of the renewal period be less than the current rate at the end of the Initial Term multiplied by 104%. In the event the Tenant elects to renew, the Landlord shall provide a one time allowance for the re-painting and re-carpeting of the space with specifications matching the original installations which can be utilized at any one renewal term of at least five (5) years commencement.

Person: A natural person, a partnership, a limited liability company, a corporation, and any other form of business or legal association or entity.

Project General Contractor: Signet Construction Company, Inc. of Fairfax, Virginia.

Real Estate Taxes: All taxes, assessments, vault rentals, water and sewer rents, if any, and other charges, if any, general, special, or otherwise, including all assessments for schools, public betterment, and general or local improvements, which are mandatory or legally compelled, levied

or assessed upon or with respect to the ownership of and/or all other taxable interests in the Building and the land on which it is built imposed by any public or quasi-public authority (including The Reston Association and any related or similar organization having jurisdiction over the Building and the ability to assess fees to the owner of the Building whether now existing or created after the date hereof) having jurisdiction and personal property taxes levied or assessed on Landlord's personal property used in connection with the operation, maintenance, and repair of the Building. Except for taxes, fees, charges, and impositions described in the next succeeding sentence, Real Estate Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, corporation, income, or profit tax or capital levy. If at any time during the Term the methods of taxation shall be altered so that in addition to or in lieu of or as a substitute for the whole or any part of any Real Estate Taxes levied, assessed or imposed there shall be levied, assessed or imposed (i) a tax, license fee, excise or other charge on the rents received by Landlord, or (ii) any other type of tax or other imposition in lieu of, or as a substitute for, or in addition to, the whole or any portion of any Real Estate Taxes, then the same shall be included as Real Estate Taxes. A tax bill or true copy thereof, together with any explanatory or detailed statement of the area or property covered thereby, submitted by Landlord to Tenant shall be conclusive evidence of the amount of taxes assessed or levied, as well as of the items taxed. If any real property tax or assessment levied against the land, buildings or improvements covered thereby or the rents reserved therefrom, shall be evidenced by improvement or other bonds, or in other form, which may be paid in annual installments, only the amount paid or payable in any Lease Year shall be included as Real Estate Taxes for that Lease Year.

Substantially Completed: The completion of the construction or installation, or both, of the Tenant's Improvements, except for any special order, trade specific, or long-lead time items, to the extent that (i) all required governmental inspections for such Tenant Improvements have been successfully completed and only minor items remain unfinished (except for any special order, trade specific, or long-lead time items), and (ii) such minor items do not prevent Tenant from occupying the Leased Premises as reasonably determined by the project architect or the Project General Contractor. Notwithstanding anything contained herein to the contrary, or elsewhere provided, it is specifically understood and agreed that any delay caused by the any special order, trade specific, or long-lead time items of the Tenant (either supply, delivery, condition upon delivery, non-compliance of such equipment with the Construction Documents, or defects inherent to such equipment that effect the use of such equipment upon installation) shall not in any way delay the date of Substantial Completion or the date of Lease Commencement even if such delay prevents the issuance of an occupancy permit for the Leased Premises. Notwithstanding anything to the contrary set forth herein or elsewhere provided for, the parties agree and acknowledge that the Leased Premises are Substantially Completed and the Landlord has no additional obligations regarding construction of improvements except as set forth in Paragraph 2(b) below. Tenant shall have the right to make certain construction improvements subject to the provisions hereof and the written approval of Landlord. All changes made by Tenant shall be at its sole cost.

Taking: A taking of property or any interest therein or right appurtenant or accruing thereto, by condemnation or eminent domain or by action, proceedings, or agreement in lieu thereof, pursuant to governmental authority.

Tenant: The tenant named herein and any permitted assignee under Section 15.

Tenant Delays: As set forth in paragraph 2 hereof.

Tenant's Special Installations: As defined in Section 9(d).

Unavoidable Delays: Delays caused by strikes, acts of God, lockouts, labor difficulties, riots, explosions, sabotage, accidents, inability to obtain labor or materials, governmental restrictions or

delays in obtaining required building permits or occupancy permits, enemy action, civil commotion, fire, unavoidable casualty, or similar causes not caused by and beyond the reasonable control of the Landlord and/or Tenant.

2. COMPLETION OF LEASED PREMISES, SCHEDULE AND INSPECTIONS

(a) *Base Building Definition*: Landlord has completed the building shell substantially in accordance with the project specifications set forth in the Base Building Definition attached hereto as, Exhibit B and incorporated herein, (the "Base Building Definition").

(b) *Tenant Improvement Allowance*: Landlord shall provide an allowance of One Thousand Dollars (\$1,000.00) (the "Tenant Improvement Allowance") to be used for space planning (except as set forth below), preparation of the Tenant Improvement Plans (as described below), architectural and engineering services related to the Tenant Improvement Plans that are provided by Landlord's Architect, permitting required in connection with the Tenant Improvement Plans, leasehold improvements (including modifications to the existing building specifications required as a result of the Tenant Improvement Plans), and all other hard and soft costs of construction incurred by Landlord and Tenant in connection with the Tenant Improvement Plans or construction of the Tenant's Improvements in accordance with a budget to be approved by Landlord and Tenant as provided below, provided the Tenant Improvement Allowance will not be used for furniture or moving costs or the hard and soft costs incurred by Tenant until Landlord's hard and soft costs have been paid in accordance with the budget for the Tenant Improvements.

(c) *Tenant's Improvements*: In the event any construction modifications are requested by Tenant and approved by Landlord, Landlord and Tenant shall jointly develop a mutually acceptable space plan and finishing schedule for the Leased Premises that is consistent throughout the Leased Premises, is consistent with Building Standards, and meets Tenant's requirements (the "Space Design"). The Space Design shall be provided by the Landlord's Architect and the cost shall be included in the Tenant Improvement Allowance, if any remains available at the time. Upon completion of the Space Design, an architectural firm shall be selected by Landlord ("Landlord's Architect") from those listed on Exhibit C, attached hereto and incorporated herein, to prepare the complete construction documents (the "Tenant Improvement Plans"). The Tenant Improvement Plans shall fully describe all leasehold improvements required in connection with the build out of the Leased Premises (the "Tenant's Improvements") and shall include all required construction drawings, construction documents and specifications, finishing schedules, structural designs and plans, mechanical designs and plans, electrical designs and plans, plumbing designs and plans, and any other documents or items necessary in connection with obtaining bids for the Tenant Improvement Plans and in connection with obtaining building permits for the Tenant Improvement Plans and occupancy certificates or use permits for the Leased Premises, with the exception of any details, specifications, and/or designs of trade specific equipment that Landlord's Architect can not reasonably include in the Tenant Improvement Plans. Landlord shall contract with Landlord's Architect in connection with the preparation and submission of the Tenant Improvement Plans. Upon completion thereof and the approval of Tenant, the Space Design and the Tenant Improvement Plans shall be attached hereto as Exhibit D-1 and D-2, each hereby being incorporated herein. All Tenant Improvements shall be strictly in accordance with all Landlord's specifications for interior building finishes, (the Building Interior Finish Specifications), attached hereto as Exhibit E, and incorporated herein, unless otherwise approved by Landlord, such approval not to be unreasonably withheld provided the change does not alter the character or quality of the Building. Landlord shall have the right, but not the obligation, to contract with the Project General Contractor and any other party as required in connection with the construction of the Tenant's Improvements and all costs thereof (not to exceed the amount of the Tenant Improvement Allowance) shall be paid by Landlord and charged to (and shall be considered a part of) the Tenant Improvement Allowance, if any remains available at the time.

(d) *Tenant's Costs*: All costs in excess of the Tenant Improvement Allowance will be the sole responsibility of Tenant. Upon receipt of bids for the Tenant's Improvements the Landlord or the Project General Contractor shall provide Tenant with a budget for the Tenant Improvement Plans and the Tenant's Improvements for the Tenant's review, setting forth in reasonable detail all identifiable costs associated with the Tenant Improvement Plans and the Tenant's Improvements. In the event the budget exceeds the Tenant Improvement Allowance the Project General Contractor, to the extent practical, shall provide the Landlord and Tenant suggested modifications to the Tenant Improvement Plans that will lower the Tenant Improvement Costs to an amount that does not exceed the Tenant Improvement Allowance (the "Suggested Modifications"). Landlord and Tenant shall review and approve the Suggested Modifications, such approval not to be unreasonably withheld, conditioned or delayed. In the event the parties do not agree to any or all of the Suggested Modifications and/or the budget for the Tenant Improvements remains above the Tenant Improvement Allowance and the Tenant is unwilling to pay the Excess Costs, the Landlord shall have the option to (i) terminate this Agreement in which event the Tenant shall reimburse Landlord for its costs related to the Tenant Improvement Plans, or (ii) increase Tenant Improvement Allowance. The Tenant shall not have the right to terminate this Lease based on the Tenant Improvement budget. Upon finalizing the Tenant Improvement budget the Tenant shall deposit cash with Landlord, or provide such other surety as is approved by Landlord in its sole but reasonable discretion, in an amount equal to the total budget less the Tenant Improvement Allowance (the "Excess Costs Deposit"). In the event Tenant requests any change to the Tenant Improvement Plans after finalizing the Tenant Improvement Plans and the cost of such change is not included in the final budget for the Tenant Improvements (as determined by the Project General Contractor) the Tenant shall remit payment to Landlord for the full cost of such change within thirty (30) days of invoice by Landlord. In the event the Excess Costs Deposit is not adequate to pay all costs associated with the Tenant's Improvements above the Tenant Improvement Allowance, the Tenant shall be promptly notified in writing and Tenant will remit payment to Landlord within thirty (30) days of receipt of Landlord's invoice for any additional costs. In the event the Excess Costs Deposit is not fully required to complete the Tenant's Improvements, the Tenant shall receive a refund of any unused portion thereof within thirty (30) days of completion of the Tenant's Improvements. Tenant agrees that the Project General Contractor shall be used for all Tenant Improvements.

(e) *Plan Approvals*: Landlord and Tenant shall jointly approve the Space Design. The Tenant Improvement Plans, the Tenant's Improvements, and any related modifications to the Building shall be subject to Landlord's sole but reasonable approval. Prior to any work commencing, Landlord shall approve all plans and specifications. If Landlord fails to approve or disapprove the Tenant's plans within ten (10) business days of receipt of complete plans and specifications related to the Tenant's Improvements, approval shall be deemed given. Prior to any work commencing all required permits shall be obtained.

(f) *Schedule*: On the Lease Commencement Date Landlord shall deliver the Leased Premises to Tenant Substantially Completed, as defined in paragraph 1 above. In the event the Tenant desires to seek construction changes for the Leased Premises, the parties agree to attach hereto as Exhibit D-3, shall be the schedule for completion of the Tenant Improvement Plans and the Tenant Improvements.

(g) *Delays*: If applicable, Tenant shall fully and timely cooperate with Landlord and the Project General Contractor in connection with completion of the Space Design, the Tenant Improvement Plans and the construction of the Tenant Improvements. Requests for information or decisions that are to be made by the Tenant shall be responded to within five (5) business days. In the event Tenant fails to promptly perform its duties as set forth in this paragraph the Landlord shall have the right to make such decision for the Tenant and the Tenant shall accept such decision as final or in the alternative the Tenant shall be deemed to have caused a Tenant Delay. Further in the event Tenant or the supplier of any trade specific equipment required by Tenant causes any delays in whole or in part (as defined

below) as reasonably determined by the Project General Contractor, in the completion of the Space Design, completion of the Tenant Improvement Plans, the completion of the Tenant's Improvements, or the installation of the Tenant's trade specific equipment, the Lease Commencement Date shall not be delayed. In the event of any such delay, the Project General Contractor shall promptly notify Tenant and Landlord of such delay in writing and shall provide specific information regarding the cause of such delay. As used in this Lease, the delays referenced in this paragraph 2(g) and in the following subparagraphs shall be considered Tenant Delays:

(i) Tenant's failure to furnish information in accordance with the requirements of this Lease, or to fully and accurately respond to any request by Landlord or the Project general Contractor for any approval or information within five (5) business days of the request, whether such request is verbal or written;

(ii) Tenant's insistence on materials, finishes or installations other than Building Standard if Tenant has been informed by Landlord or the Project General Contractor, verbally or in writing, at or before the time of delivery to Tenant of final construction pricing for Tenant's approval, that such materials, finishes or installations will cause a Tenant Delay;

(iii) Tenant's change orders or requests for changes to any plans and specifications which result in a delay to the construction schedule. Prior to framing and upon five (5) business days prior notice to Tenant, the Landlord will provide the Tenant an opportunity to walk the space with the Project General Contractor with the wall locations blue lined on the floors. Provided the Tenant promptly reviews the blue lined locations, alterations due to field conditions can be made without cost and without creating a Tenant Delay;

(iv) Any delay in the performance by a person, firm or corporation employed by Tenant or providing any service at the request of Tenant in connection with the Tenant Improvements (including space design and supply of trade specific equipment or office furnishings) in the completion of any work by said person, firm or corporation (all such work and such persons, firms or corporations being subject to the approval of Landlord which shall not be unreasonably withheld or delayed); or

(v) Any request by Tenant that Landlord delay the completion of any of the Tenant Improvements;

(h) *Subcontractors and Suppliers*: All sub-contractors and material suppliers performing work or supplying materials to the Building shall be selected by the Project General Contractor and shall be subject to the Landlord's approval in its sole reasonable discretion. In order to protect the integrity and efficiency of the mechanical, electrical and plumbing systems, all mechanical, electrical and plumbing within the Tenant's space shall be designed by the design build team responsible for the mechanical, electrical and plumbing systems in the building, unless otherwise approved by Landlord in its sole discretion. The Project General Contractor shall be required to obtain three bids for each subcontracted item and shall accept the lowest Qualified Subcontractor's bid. For the purposes hereof the term Qualified Subcontractor shall mean a person, or contractor that is reasonably believed by Landlord and Project General Contractor to be (i) bondable, (ii) properly staffed and fully capable of performing its duties in a timely manner so as to not delay the construction process, (iii) capable of completing its work on the Building in a workmanlike manner in keeping with the Building Standards, and (iv) capable of performing its work in a manner that will not compromise the condition of the Building or its electrical or mechanical or plumbing systems. Tenant shall be entitled to place at least one Qualified Subcontractor per trade or work item on the bid list.

(i) *Inspections*: On or before the Lease Commencement Date, Landlord and Tenant, or their respective agents, shall jointly inspect the Leased Premises to note its condition and shall prepare a punch list of any items that the Landlord shall be responsible for completing or correcting (the

"Landlord's Punchlist"). The Landlord shall cause such items to be completed or corrected within ninety (90) days of Lease Commencement with the exception of corrections that require special order or long lead time materials. At the time Tenant surrenders the Leased Premises or at the end of the Term, or within ten (10) business days thereafter, Landlord and Tenant, or their respective agents, shall make a similar inspection of the Leased Premises to note the condition of the Leased Premises at the time of surrender and shall prepare a punch list of any items of repair that Tenant shall be responsible for completing under the terms of this Lease, reasonable wear and tear excepted (the "Tenant's Punchlist"). Landlord shall not be obligated to refund to Tenant all or any part of the Security Deposit then being held by Landlord until all repairs that are the responsibility of Tenant are completed to Landlord's reasonable satisfaction.

(j) *Acceptance of Space*: Tenant hereby accepts the Leased Premises in its "as is" condition on the Lease Commencement Date within industry standards as reasonably determined by the Project Architect and applicable general warranties under local laws, and Landlord shall have no obligation to perform any additional work in completing the Leased Premises.

3. RENT AND ADDITIONAL CHARGES

(a) *Payment of Rent and Additional Charges*. Subject to the provisions of Paragraph 1, Tenant shall pay the Basic Rent for each Lease Year in equal monthly installments in advance on the first day of each month during the Term, commencing on the Lease Commencement Date. If the Lease Commencement Date is not the first day of a month, Basic Rent for the period commencing on the Lease Commencement Date and ending on the last day of the month in which the Lease Commencement Date occurs (the "Partial First Month") shall be pro-rated for each day at the rate of one-thirtieth ($1/30$) of the full monthly installment of Basic Rent. In the event the Advance Rent received by Landlord exceeds the amount of Basic Rent due Landlord for the Partial First Month the excess amount shall be credited to the next monthly Basic Rent Payment. The Basic Rent and all Additional Charges shall be paid promptly when due, in lawful money of the United States, without notice or demand and without deduction, diminution, abatement, counterclaim, or setoff of any amount or for any reason whatsoever, except as otherwise expressly provided in subsection (b), to Landlord at Landlord's Notice Address or at such other address or to such other person as Landlord may from time to time designate in writing. If Tenant makes any payment to Landlord by check, such payment shall be by check of Tenant and Landlord shall not be required to accept the check of any other person, and any check received by Landlord shall be deemed received subject to collection. If any check is mailed by Tenant, Tenant shall post such check in sufficient time prior to the date when payment is due so that such check will be received by Landlord on or before the date when payment is due. Tenant shall assume the risk of lateness or failure of delivery of the mails, and no lateness or failure of the mails will excuse Tenant from its obligation to have made the payment in question when required under this Lease. If, during the Term, Landlord receives two or more checks from Tenant which are returned by Tenant's bank for insufficient funds or are otherwise returned unpaid, Tenant agrees that all checks thereafter shall be either bank certified, cashiers', or treasurers' checks. Landlord shall be reimbursed by Tenant an amount equal to one hundred and fifty percent (150%) of all bank service charges resulting from any returned checks. The rent reserved under this Lease shall be the total of all Basic Rent and Additional Charges, increased and adjusted as elsewhere herein provided, payable during the entire Term and, accordingly, the methods of payment provided for herein, namely, annual and monthly rental payments, are for convenience only and are made on account of the total rent reserved hereunder.

(b) *Payment of Operating Expense Increases*. Beginning on January 1, 2005 Tenant shall pay as Additional Charges any Operating Expense Increases in accordance with Section 1(b) for each calendar year, commencing with the calendar year 2004. Landlord shall make a reasonable estimate of Tenant's Operating Expense Increase for each calendar year, and Tenant shall pay to Landlord 1/12th of the amount so estimated on the first day of each month in advance. If Landlord's estimate of Tenant's

Operating Expense Increases for any calendar year is received by Tenant after January 1 of the calendar year, Tenant shall pay to Landlord in a lump sum, within thirty (30) days after receipt of the estimate, the arrearage in the monthly estimates for each month in the calendar year before receipt of the estimate and shall pay the remaining monthly installments on the first day of each month in advance during the balance of the calendar year. Within one hundred and twenty (120) days after the end of each calendar year, Landlord shall submit to Tenant a statement setting forth in reasonable detail the Operating Expenses for such calendar year and the amount (if any) of Tenant's Operating Expense Increases for such calendar year. If Tenant's Operating Expense Increases so stated are more than the amount (if any) theretofore paid by Tenant for Operating Expense Increases based on Landlord's estimate, Tenant shall pay to Landlord the deficiency within thirty (30) days after the submission of such statement. If Tenant's Operating Expense Increases so stated are less than the amount (if any) theretofore paid by Tenant for Operating Expense Increases based on Landlord's estimate, Landlord shall refund to Tenant the excess within thirty (30) days after submission of such statement. If either the Lease Commencement Date shall not coincide with the beginning of a calendar year or the last day of the Term shall not coincide with the end of a calendar year, then the amount of Operating Expense Increases payable for the calendar year in which the Lease Commencement Date or the last day of the Term occurs, as the case may be, shall be pro-rated on a daily basis between Landlord and Tenant based on the number of days in such calendar year in which this Lease is in effect. Tenant's obligations under this subsection to pay Operating Expense Increases and Landlord's obligation to reimburse Tenant for an overpayment of Operating Expenses shall survive the expiration of the Term. If any part of the Building is leased to tenants (hereinafter referred to as "Special Tenants") which, in accordance with the terms of their leases, provide their own cleaning and janitorial services, electrical services, or are not required to pay Operating Expense Increases on the basis of operating expenses for the Building which include substantially the same components as the Operating Expenses (as defined in this Lease), the following provisions shall apply as to those components of Operating Expenses: (i) the Building Rentable Area shall be reduced by the rentable area of the space leased to Special Tenants; (ii) Tenant's Proportionate Share shall be the percentage which the Rentable Area is of the Building Rentable Area (determined after the reduction specified in clause (i)); and (iii) those components of Operating Expenses shall be reduced by the sum of the amounts payable to Landlord by Special Tenants, in accordance with the terms of their leases, as reimbursements for Real Estate Taxes and expenses of owning, operating, managing and maintaining the Building and the amount of the applicable operating expense base under such Special Tenants' leases.

(c) *Interest.* If Tenant fails to make any payment of Basic Rent or Additional Charges within five (5) calendar days of the due date thereof, interest shall, at Landlord's option, accrue on the unpaid portion thereof from the due date at the Default Interest Rate, but in no event at a rate higher than the maximum rate allowed by law, and shall be payable on demand.

(d) *Accord and Satisfaction.* No payment by Tenant, receipt or acceptance by Landlord of any lesser amount than the amount stipulated to be paid hereunder shall be deemed other than on account of the earliest stipulated Basic Rent or Additional Charges; nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord.

(e) *Late Payment Charge.* If Tenant fails to pay any Basic Rent or Additional Charges within five (5) days after the same become due and payable, Tenant shall also pay to Landlord on demand a late payment service charge (to cover Landlord's administrative and overhead expenses of processing late payments) equal to the greater of \$100.00 or two percent (2%) of such unpaid sum for each and every calendar month or part thereof after the due date that such sum has not been paid to Landlord. Such payment shall be deemed liquidated damages and not a penalty, but shall not excuse the untimely payment of rent.

4. COMMON AREAS

Throughout the Term, Tenant and its agents, employees and business invitees shall have the nonexclusive right, in common with others, to use the public lobbies, parking lots, elevator, corridors, stairways, and other common areas in the Building and the toilet rooms in public areas of multi-tenant floors in the Building. Landlord shall have the right at any time, without the Tenant's consent, to make reasonable changes to the arrangement or location of entrances, passageways, doors, doorways, corridors, stairs, toilet rooms, or other public portions of the Building, provided any such change does not unreasonably obstruct Tenant's access to the Leased Premises.

5. SERVICES AND UTILITIES

(a) *Services Provided:* Throughout the Term, Landlord agrees that the Building will be maintained in a manner befitting comparable Class A rental office buildings in Northern Virginia, and that, subject to Legal Requirements, it will furnish to Tenant the following services:

- (1) Subject to the provisions of subsections (b) and (c), normal and usual electricity for lighting purposes and the operation of ordinary office equipment;
- (2) Adequate supplies for toilet rooms located in public areas of the Building;
- (3) Normal and usual cleaning and janitorial services after business hours on Business Days;
- (4) Hot and cold running water in the toilet rooms;
- (5) Subject to the provisions of subsection (d), heating and air-conditioning to the Leased Premises when required for the comfortable occupancy of the Leased Premises, at reasonable temperatures, pressures, and degrees of humidity, and in reasonable volumes and velocities, between the hours of 8:00 a.m. and 6:00 p.m. on Business Days and between the hours of 9:00 a.m. and 1:00 p.m. on Saturdays unless Saturday is a legal holiday;
- (6) Automatically operated elevator service twenty-four (24) hours a day, seven (7) days a week throughout the Term;
- (7) All electric bulbs and fluorescent tubes in building standard light fixtures in the public areas of the Building and building standard fixtures within the Leased Premises;
- (8) A reasonable number of keys to the Leased Premises shall initially be provided at no cost to Tenant, but all additional keys including replacements for lost keys shall be issued only upon the payment of a reasonable actual cost for each additional key; and
- (9) A security access system for the public areas of the Building and card keys or other means of entry into the Building.
- (10) An electronic perimeter card key security system will be provided for building access after normal operating hours. Building will be unlocked between 7:00AM and 6:00PM Monday-Friday and for certain holidays in which tenant is conducting business. Access during other times will be by security phone and Landlord shall assist Tenant in establishing a password system in order to simplify access for Tenant's clients during non-standard

(b) *Electrical Supply:* Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy furnished to the Leased Premises by reason of any requirement, act or omission of the public utility serving the Building with electricity. Tenant's use of electrical energy in the Leased Premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Leased Premises. Tenant shall not install or operate in the Leased Premises any electrically operated equipment, including lighting, which uses electric current in excess of the allocable share of the Building system capacity without Landlord's written consent, which consent may be conditioned upon Tenant's agreement to pay an additional

charge to compensate Landlord for Tenant's excessive consumption of electricity and to pay the cost of any additional wiring which may be required for the operation of such equipment. Tenant shall not connect any equipment or other electrical device to the electrical system of the Building that would require unusual or excessive electrical service or that would interfere with the adequate supply of electrical service to (i) other tenants within the Building, or (ii) the Building common facilities. In order to minimize the chances of the Building's electrical capacity being exceeded and to reduce the possibility of a possible adverse effect upon the Building electrical service Tenant shall give notice to Landlord whenever Tenant shall connect to the Building electrical distribution system any electrically operated equipment other than lamps, typewriters, personal computers, computer servers, and similar small office machines. Any feeders or risers to supply Tenant's electrical requirements in addition to those originally installed, and all other equipment proper and necessary in connection with such feeders or risers, shall be installed by Landlord upon Tenant's request, at the sole cost and expense of Tenant, provided that, in Landlord's reasonable judgment, such additional feeders or risers are permissible under applicable laws and insurance regulations and the installation of such feeders or risers will not cause permanent damage or injury to the Building or cause or create a dangerous condition or unreasonably interfere with other tenants of the Building.

(c) *Electrical Use Limits*: If, at any time or from time to time, the estimated connected electrical load (including lighting and power) used by Tenant's electrically operated equipment exceeds an average of eight (8) watts (6 watts for low voltage and 2 watts for high voltage) per square foot of the Leased Premises on a 120/208 volt panel board, Landlord may either (i) install a separate electric meter for the Leased Premises, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of electricity it consumes, as recorded by such meter, in excess of the amount of electricity that would be consumed by a tenant whose consumption of electricity was equal to, but did not exceed, the specified limits, or (ii) from time to time have a survey made by an independent electrical engineer or electrical consulting firm to be selected and paid for by Landlord to determine the amount of electricity consumed by Tenant in excess of the amount of electricity that would be consumed by a tenant whose consumption of electricity was equal to, but did not exceed, then specified limits, and Tenant shall pay to Landlord the cost of excess electricity it consumes as determined by such electrical engineer or consulting firm. Landlord shall provide Tenant the right to connect to the Building generator to provide back up power for the Tenant's computer equipment. The costs of adding the connection and any pro-rata share of applicable operating costs of the generator shall be Tenant's cost.

(d) *After Hours HVAC*: Landlord shall provide heat and air-conditioning for the entire sixth floor at times in addition to those specified in subsection (a) of paragraph (5) at Tenant's expense, provided Tenant gives Landlord notice prior to 2:00 p.m. on any Business Day for same day or next Business Day after hour service, or 10:00 a.m. on Fridays or the day preceding a holiday (in the case of after-hours service on Saturdays, Sundays, or holidays). Landlord shall initially charge Tenant for after-hours service at the rate of \$35.00 per hour. Landlord reserves the right from time to time, in its sole discretion, to increase the hourly charge for said after-hours service, but in no event will the rate per hour charged to Tenant be more than an amount per hour which represents Landlord's reasonable estimate of its actual cost of providing such after hours service, including labor, cost of electricity and wear and tear on equipment, plus an allowance of ten percent (10%) thereof to cover general overhead as an Additional Charge hereunder. Notwithstanding the foregoing, for each year during the initial two (2) years the Landlord shall provide 300 hours of after-hours HVAC operation of the 3rd floor at no cost to the Tenant, it being understood and agreed that said 300 hours of additional service is to be available for the use of the Tenant on a cumulative basis during each year. Landlord shall install thermostats within the Leased Premises that provide Tenant the ability to regulate and control its use of after hours HVAC services. Tenant agrees not to unreasonably utilize the HVAC system.

(e) *Landlord's Use Rights*: Landlord reserves the right to erect, use, maintain, and repair pipes, conduits, cables, plumbing, vents, and wires in, to and through the Leased Premises as and to the

extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of the Building, or other tenants' installations in the Building, and the right at all times to transmit water, heat, air-conditioning, and electric current through such pipes, conduits, cables, plumbing, vents, and wires, provided that Landlord, in the exercise of such rights, shall not unreasonably inconvenience Tenant or unreasonably interfere with Tenant's use of the Leased Premises.

(f) *Maintenance Access*: Landlord shall have unrestricted access to any and all air-conditioning facilities in the Leased Premises for the purpose of repairs, maintenance, alterations, and improvements, but in exercising its rights under this subsection Landlord shall use its best efforts to minimize interference with Tenant's business in the Leased Premises.

(g) *Tenant's Efforts*: Tenant agrees at all times to cooperate fully with Landlord and to abide by all the reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building air-conditioning system.

(h) *Service Interruptions*: Landlord reserves the right to stop the service of heating, air-conditioning, ventilating, elevator, plumbing, electricity, or other mechanical systems or facilities in the Leased Premises or the Building, if necessary by reason of accident or emergency, or for repairs, alterations, replacements, additions, or improvements which, in the reasonable judgment of Landlord, are necessary, until said repairs, alterations, replacements, additions, or improvements shall have been completed. The exercise of such right by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to, or interruption of, Tenant's business, or otherwise, or entitle Tenant to any abatement or diminution of rent. Except in cases of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage of any such repairs, alterations, replacements, additions, or improvements promptly. Landlord shall also perform any such work in a manner designated to minimize interference with Tenant's normal business operations.

(i) *Service Delays*: If Landlord shall fail to supply, or be delayed in supplying, any service expressly or implied to be supplied under this Lease, or shall be unable to make, or be delayed in making, any repairs, alterations, additions, improvements, or decorations, or shall be unable to supply, or be delayed in supplying, any equipment or fixtures, and if such failure, delay or inability shall result from Unavoidable Delays, such failure, delay or inability shall not constitute an actual or constructive eviction, in whole or in part, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience to Tenant, or injury to, or interruption of, Tenant's business, or otherwise, or entitle Tenant to any abatement or diminution of rent.

(j) *Voice, Data and other Communications Services*: Landlord shall make reasonable efforts to accommodate Tenant's need for additional riser space during the Lease Term and any extensions thereof for the installation of voice/data and other communications devices by providing at least one riser for the sole use of Tenant.

6. USE OF LEASED PREMISES

(a) *Permitted Uses*: Tenant shall use and occupy the Leased Premises solely for general office purposes strictly in accordance with the applicable zoning regulations and consistent with the character and dignity of the Building, and shall not use or permit or suffer the use of the Leased Premises for any other purpose whatsoever without the prior written consent of the Landlord which shall not be unreasonably conditioned, delayed or withheld. Tenant shall not permit or suffer the Leased Premises to be occupied by anyone other than Tenant except as provided by Section 15. Tenant shall at all times have access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week, subject, however, in all respects to all the terms, covenants and conditions contained in this Lease. However,

Landlord may regulate and restrict access to the Building at times other than normal business hours on Business Days for security purposes so long as Tenant's employees and agents have reasonable access to the Leased Premises without unreasonable inconvenience. Throughout the Term, Tenant shall not use, or permit the Leased Premises to be used, for the business of selling food, beverages, or tobacco products, except that Tenant may operate on the Leased Premises vending machines for the sale of food, beverages, and tobacco products exclusively to its employees, agents, assignees or their respective visitors.

(b) *Use Restrictions:* Throughout the Term, Tenant covenants and agrees: (i) to pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon Tenant's business conducted in the Leased Premises, upon the leasehold estate created by this Lease or upon Tenant's fixtures, furnishings or equipment in the Leased Premises, without affecting Tenant's right to contest same; (ii) not to use or knowingly permit or suffer the use of any portion of the Leased Premises for any unlawful purpose; (iii) not to use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any foreign substances (including medical waste or byproducts) therein; (iv) not to place a load on any floor exceeding the floor load per square foot which such floor was designed to carry in accordance with the plans and specifications of the Building, and not to install, operate or maintain in the Leased Premises any heavy item of equipment except in such manner as to achieve a proper distribution of weight; (v) not to strip, over-load, damage, or deface the Leased Premises, or the hallways, stairways, elevators, parking facilities, or other public areas of the Building, or the fixtures therein or used therewith; (vi) not to move any furniture or equipment into or out of the Leased Premises except at such times and in such locations as Landlord may from time to time reasonably designate; (vii) not to install any other equipment of any kind or nature which will or may necessitate any changes, replacements or additions to, or in the use of, the water system, heating system, plumbing system, air-conditioning system, or electrical system of the Leased Premises or the Building, without first obtaining the written consent of Landlord not to be unreasonably withheld; and (ix) at all times to comply with all Legal Requirements.

(c) *Legal Requirements:* Tenant will not use or occupy the Leased Premises in violation of any Legal Requirements. If any governmental authority, after the commencement of the Term, shall contend or declare that the Leased Premises are being used for a purpose which is in violation of any Legal Requirements, then Tenant shall, within five (5) days of receipt of written notice from Landlord, immediately discontinue such use of the Leased Premises. If thereafter the governmental authority asserting such violation threatens, commences, or continues criminal or civil proceedings against Landlord for Tenant's failure to discontinue such use in addition to any and all rights, privileges and remedies given to Landlord under this Lease for default therein, Landlord shall have the option of terminating this Lease forthwith. Tenant has confirmed that its proposed use of the Leased Premises is permitted under applicable zoning, or other legal ordinances

(d) *Fire Insurance Limitations:* Tenant shall not do, permit or suffer to be done any act, matter, thing, or failure to act in respect of the Leased Premises and/or the Building that will invalidate or be in conflict with fire insurance policies covering the Building or any part thereof, and shall not do, or permit anything to be done, in or upon the Leased Premises and/or the Building, or bring or keep anything therein, which shall increase the rate of fire insurance on the Building or on any property located therein. If, by reason of the failure of Tenant to comply with the provisions of this subsection, the fire insurance rate shall at any time be higher than it otherwise would be, then Tenant shall reimburse Landlord and any other tenant of the Building, on demand, for that part of all premiums for any insurance coverage that shall have been charged because of such violations by Tenant and which Landlord or such other tenant, or both, shall have paid on account of an increase in the rate or rates in its own policies of insurance. Tenant shall not be responsible for any increase in fire insurance rates generally applicable to office space in Fairfax County, Virginia, and not resulting from the particular manner in which Tenant uses the Leased Premises.

(e) *Restricted Materials*: Tenant shall not bring or permit to be brought or kept in or on the Leased Premises any flammable, combustible, or explosive fluid, material, chemical or substance except standard cleaning fluid in reasonable amounts, standard equipment and materials (including magnetic tape) customarily used in conjunction with business machines. Further, Tenant shall not allow any drop boxes to be placed in any common area.

7. CARE OF LEASED PREMISES

(a) *Tenant Care and Maintenance*: Tenant shall act with care in its use and occupancy of the Leased Premises and the Building and the fixtures therein and, at Tenant's sole cost and expense, shall furnish its own electric bulbs and fluorescent tubes for all non-building standard light fixtures in the Leased Premises and shall make all repairs and replacements to the Leased Premises, structural or otherwise, necessitated or caused by the acts, omissions, or negligence of Tenant or any Person claiming through or under Tenant or by the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any such Person; however, the foregoing provisions of this subsection shall be subject to the provisions of Section 13. Without affecting Tenant's obligations set forth in the preceding sentence, Tenant, at Tenant's sole cost and expense, shall also (i) make all repairs and replacements, as and when necessary, to Tenant's Special Installations and to any Alterations made or performed by or on behalf of Tenant or any Person claiming through or under Tenant, and (ii) perform all maintenance and make all repairs and replacements, as and when necessary, to any special equipment, (other than the Building's standard equipment and systems) which may be installed in the Leased Premises, or elsewhere in the Building for the express purpose of serving the Leased Premises, by Landlord, Tenant, or others. However, except as otherwise provided in this Lease, Tenant shall not have any right to install air-conditioning equipment, elevators, escalators, conveyors, or mechanical systems. In addition to the foregoing, all damage or injury to the Leased Premises and to its fixtures, appurtenances and equipment or to the Building or to its fixtures, appurtenances and equipment caused by Tenant moving property in or out of the Building or by installation or removal of furniture, fixtures, or other property by Tenant shall be repaired, restored, or replaced promptly by Tenant, at its sole cost and expense, to the reasonable satisfaction of Landlord. All such aforesaid repairs, restoration, and replacements shall be in quality and class equal to the original work or installation but in no event need exceed Building standards.

(b) *Landlord Repairs*: Except as otherwise provided in subsection (a), Landlord shall make the following repairs as and when necessary: (i) structural repairs to the Leased Premises and Building; (ii) repairs required in order to provide the elevator, plumbing, electrical, heating, and air-conditioning services to be furnished by Landlord pursuant to this Lease; (iii) repairs to exterior portions of the Building, including the windows, balconies, parking areas and roof thereof; and (iv) other repairs to the Building necessary for Tenant's permitted use and enjoyment of the Leased Premises. Landlord's obligations under the preceding sentence shall not accrue until after notice by Tenant to Landlord of the necessity for any specific repair.

8. RULES AND REGULATIONS

Tenant shall comply with, and shall cause its agents, employees and invitees to, comply with and observe all reasonable rules and regulations concerning the use, management, operation, safety, and good order of the Leased Premises, the Building and the Building parking areas which may from time to time be promulgated by Landlord, provided that such rules and regulations are not inconsistent with the provisions of this Lease and do not materially interfere with Tenant's permitted use of the Leased Premises. Initial rules and regulations, which shall be effective until amended by Landlord, are attached to this Lease as Exhibit F hereto and incorporated herein. Tenant shall be deemed to have received notice of any amendment to the rules and regulations when a copy of such amendment has been delivered to Tenant at the Leased Premises or has been mailed to Tenant in the manner prescribed for the giving of notices. Landlord shall not be responsible to Tenant for any violation of the rules and

regulations, or the covenants or agreements contained in any other lease, by any other tenant of the Building, or such tenant's agents, employees or invitees, and Landlord may waive in writing, or otherwise, any or all of the rules or regulations in respect of any one or more tenants. Landlord shall make reasonable efforts to uniformly enforce all rules and regulations.

9. TENANT'S ALTERATIONS AND INSTALLATIONS

(a) *Alterations*: Tenant shall not make or perform, or permit the making or performance of, any alterations, installations, improvements, additions or other physical changes in or about the Leased Premises (referred to collectively as "*Alterations*") without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All plans, specifications and details for such Alterations, and all contractors performing the Alterations are subject to the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed. In the event Landlord grants such consent and permits Tenant to contract out such work, such Alterations shall be made and performed in conformity with and subject to the following provisions: (i) all Alterations shall be made and performed at Tenant's sole cost and expense and at such time and in such manner as Landlord may reasonably from time to time designate; (ii) all Alterations shall be performed by adequately insured contractors approved by Landlord and in a good and workmanlike manner in accordance with all applicable Legal Requirements, and Tenant shall indemnify and hold harmless Landlord from and against any and all costs, expenses, claims, liens and damages to person or property resulting from the making of any such alterations, decorations, additions or improvements in or to the Leased Premises or the Building; (iii) no Alteration shall affect any part of the Building other than the Leased Premises or adversely affect any service required to be furnished by Landlord to Tenant or to any other tenant or occupant of the Building; (iv) all business machines and mechanical equipment shall be placed and maintained by Tenant in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance to other tenants or occupants of the Building; (v) Tenant shall submit to Landlord reasonably detailed written plans and specifications for each proposed alteration and shall not commence any such Alteration without first obtaining Landlord's written approval of such plans and specifications; (vi) all Alterations in or to the electrical facilities in or serving the Leased Premises shall be subject to the provisions of Section 5 relating to exceeding electrical capacity; (vii) notwithstanding Landlord's approval of plans and specifications for any Alteration, all Alterations shall be made and performed in full compliance with all Legal Requirements and in accordance with the Rules and Regulations; and (viii) all materials and equipment to be incorporated in the Leased Premises as a result of all Alterations shall be of good quality. If building or other permits from governmental authorities are required for any Alterations, Tenant shall obtain such permits and deliver copies thereof to Landlord before work on such Alterations is begun. After any Alterations are completed, Tenant shall cause all required governmental inspections of the Alterations to be made and shall deliver to Landlord a copy of the inspection report and one complete set of the "as built" plans for such Alterations.

(b) *Unauthorized Alterations*: If Tenant shall be in default under this Section by reason of the making of any Alteration not hereby authorized or by reason of failure to give any notice or to obtain any approval required herein, Tenant may cure such default within the applicable grace period provided in this Lease for curing such default by removing such Alteration and restoring the Leased Premises to their former condition, as provided in Section 7, and if Tenant fails to do so Landlord may correct or remove the same and Tenant shall be liable for any and all costs and expenses incurred by Landlord in such removal.

(c) *Installed Fixtures*: Except to the extent specifically provided in sub-section (d), all appurtenances, fixtures, improvements, additions and other property attached to or installed in the Leased Premises, whether by Landlord or Tenant or others, and whether at Landlord's expense, or Tenant's expense, or the joint expense of Landlord and Tenant, which are affixed to walls, floors or ceilings or which cannot be removed without structural damage to the Building, shall be and remain

the property of Landlord. Any replacements of any property of Landlord, whether made at Tenant's expense or otherwise, shall be and remain the property of Landlord except as agreed to in writing by Landlord prior to Lease Execution or prior to commencing such Alterations.

(d) *Tenant's Special Installations*: All furniture, furnishings and trade specific equipment or fixtures, excepting lighting fixtures and equipment, but including, without limitation, business machines and equipment, vaults, vault doors and door frames, and vault equipment, if any, safe deposit equipment, counterscreens, grillwork, cages, partitions which are moveable, railings, raised floors, equipment relating to food preparation, food storage and serving, dish washing and cleaning devices and any moveable property, installed by or at the expense of Tenant shall remain the property of Tenant and are referred to herein as "Tenant's Special Installations". Tenant may at its expense remove all or any part of said property at any time during the Term, and shall at its expense remove all of said property at the expiration or other termination of the Term unless Landlord shall otherwise consent in writing. Upon removal of any or all of said property Tenant shall then repair all damage. Any of Tenant's Special Installations which are not removed from the Leased Premises at the expiration of the Term shall be deemed to have been abandoned by Tenant and may be disposed of by Landlord without liability to Tenant. Tenant shall at all times be responsible for any damage caused by the delivery, installation or operation of tenant's Special Installations.

(e) *Mechanic's Liens*: Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's, materialman's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Leased Premises or the Building. Whenever and as often as any mechanic's lien or materialman's lien shall have been filed against the Leased Premises or the Building based upon any act or interest of Tenant or of anyone claiming through Tenant, or if any lien or security interest with respect thereto shall have been filed affecting any materials, machinery or fixtures used in the construction, repair or operation thereof or annexed thereto by Tenant or its successors in interest, Tenant shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien or other security interest and in default thereof after the expiration of thirty (30) days after notice to Tenant, Landlord, in addition to any other remedy under this Lease, may pay the amount secured by such lien or security interest or discharge the same by deposit and the amount so paid or deposited shall be collectible as additional rent. The provisions of this subsection shall not be applicable to liens filed with respect to work done for Tenant's account by Landlord.

10. *NAME OF BUILDING; TENANT'S SIGNS*

(a) *Building Name*: The name of the Building shall be determined by Landlord in its sole discretion. Landlord expressly reserves the right to have the Building designated by a street number or numbers and to affix to the Building, at locations designated by Landlord, signs indicating any such number or numbers and to change the name of the Building as selected from time to time by Landlord.

(b) *Roof Rights*: Landlord hereby grants to Tenant the right to erect communication devices on a portion of the roof, not to exceed Tenant's Proportionate Share of the roof area that is adequate for placement of such devices. Landlord does not grant Tenant any other rights in or to the roof or the outer side of the outside walls or windows of the Building, control of which is hereby reserved by Landlord except that Tenant shall have non-exclusive access to and the use of the building roof for the installation and maintenance of communications equipment of Tenant as aforesaid. Landlord will require detailed specifications for review and approval to be provided to Landlord and its chosen consultant at least thirty (30) days prior to the date Tenant desires installation to commence. Any reasonable cost of landlord's consultant in connection with review and approval of the subject specifications and plans shall be reimbursed by Tenant promptly upon request therefore. All roof access will be coordinated with Landlord's management. Any building penetration shall be subject to the

approval of Landlord (and its consultant's) in Landlord's sole and absolute discretion. Tenant will obtain all required permits and comply with all applicable restrictions at its sole cost and shall be solely responsible for all costs associated with installation, maintenance and removal of Tenant's roof top equipment and of any associated building penetrations.

(c) *Signage*: Tenant shall not display or erect any lettering, signs, advertisements, awnings or other projections on the exterior of the Leased Premises or in the interior of the Leased Premises if visible from a public way, except for Building Standard hallway door lettering or interior suite signage visible to the public way that is approved in writing in advance by Landlord (Landlord hereby approves Tenants identification sign to be located in the lobby of the Leased Premises identifying the "Comstock Companies"), Landlord shall provide a directory tablet in the main lobbies of the Building, at its expense, upon which Landlord, at Landlord's expense, will affix Tenant's name and a reasonable number of names of its affiliates, officers, partners or employees. Landlord, at Landlord's expense, shall provide a reasonable number of building standard suite identification signs. Directory listings and suite signage for any sub-tenants of Tenant shall be at Tenant's expense. The size, color, and style of such directory and names affixed thereto shall be selected by Landlord. During the term hereof and provided Tenant occupies at least 5,000 square feet within the Building, the Landlord shall provide a listing of Tenant's name on any building monument sign incorporated into the project by Landlord and shall allow Tenant to place upon the exterior walls of the Building an exterior sign subject to all restrictions created by any exterior sign rights granted to any other Tenant whose lease pre-dates this Agreement, and shall restrict exterior signage of other Tenants from being on any face of the Building where Tenant's signage is placed as permitted hereunder. The Tenant shall not utilize more than its pro-rata share of exterior signage square feet as provided for in local zoning ordinances. The Tenant shall be solely responsible for obtaining all required permits and approvals and shall be solely responsible for all costs associated with permitting, installation, maintenance, removal, and building restoration resulting from the removal of Tenant's exterior sign. Landlord will require detailed specifications for review and approval, and installation will be coordinated with Landlord's management. Any building penetration shall be subject to the approval of Landlord (and its consultant's) in Landlord's sole and absolute discretion.

11. *LIABILITY INSURANCE*

(a) *General Liability Insurance*: Tenant, at Tenant's sole cost and expense, shall obtain and maintain in effect at all times during the Term, a policy of comprehensive general public liability insurance with broad form property damage endorsement, naming Landlord and (at Landlord's request) any Mortgagee of the Building and any management agent as additional insured(s), protecting Landlord, Tenant and any such Mortgagee and management agent against any liability for bodily injury, death or property damage occurring upon, in or about any part of the Building or the land on which it is built, the Leased Premises or any appurtenances thereto, with such policies to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury, death, or property damage per occurrence with an aggregate limit of not less than Three Million Dollars (\$3,000,000.00) and with a deductible of no greater than Two Thousand Five Hundred Dollars (\$2,500.00) per occurrence. Such comprehensive liability insurance may be effected by a policy or policies of blanket insurance which cover other property in addition to the Leased Premises, provided that the protection afforded thereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Leased Premises and provided further that in all other respects any such policy shall comply with the other provisions of this Section.

(b) *Policy Restrictions*: The insurance policy required to be obtained by Tenant under this Section: (i) shall be issued by an insurance company of recognized responsibility licensed to do business in the jurisdiction in which the Building is located; and (ii) shall be written as primary policy coverage and not contributing with or in excess of any coverage which Landlord may carry. Neither the issuance of any insurance policy required under this Lease, nor the minimum limits specified herein with respect to

Tenant's insurance coverage, shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease. With respect to each insurance policy required to be obtained by Tenant under this Section, on or before the Lease Commencement Date, and at least thirty (30) days before the expiration of the expiring policy or certificate previously furnished, Tenant shall deliver to Landlord a certificate of insurance therefor, together with evidence of payment of all applicable premiums. Each insurance policy required to be carried hereunder by or on behalf of Tenant shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be cancelled unless Landlord shall have received thirty (30) days' prior written notice of cancellation.

(c) *Hold Harmless*: Except for the willful or negligent acts or omissions of Landlord or its agents or employees, Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all claims, losses, actions, damages, liabilities, and expenses (including reasonable attorneys' fees) that (i) arise from or are in connection with Tenant's possession, use, occupancy, management, repair, maintenance, or control of the Leased Premises, or any portion thereof, or (ii) arise from or are in connection with any willful or negligent act or omission of Tenant or Tenant's agents, employees, invitees, or subtenants, or (iii) result from any default, breach, violation, or nonperformance of this Lease or any provisions therein by Tenant, or (iv) arise from injury or death to persons or damage to property sustained on or about the Leased Premises. Tenant shall, at its own cost and expense, defend any and all actions, suits, and proceedings which may be brought against Landlord with respect to the foregoing or in which Landlord may be impleaded. Tenant shall pay, satisfy, and discharge any and all money judgments which may be recovered against Landlord in connection with the foregoing. Landlord hereby agrees to indemnify Tenant from and against any and all claims, actions, and expenses (including reasonable attorneys' fees) that arise as a direct result of Landlord's Gross Negligence and Landlord shall pay, satisfy, and discharge any and all money judgments which may be recovered against Tenant in connection with the Gross Negligence of Landlord.

12. FIRE INSURANCE

(a) Landlord shall, throughout the Term, at its expense, keep the Building, but not Tenant's Special Installations or Tenant's furniture, furnishings, trade fixtures or property removable by Tenant under the provisions of this Lease, insured against all loss or damage by fire with extended coverage in such amount as any first Mortgagee of the Building may from time to time require, but not less than the Building's full replacement cost. Tenant shall, throughout the Term, at its expense, keep Tenant's Special Installations and Tenant's personal property insured against all loss or damage by fire with extended coverage in an amount sufficient to prevent Tenant from becoming a co-insurer. Tenant's policies of insurance shall contain an appropriate clause or endorsement under which the insurer agrees that such policy shall not be cancelled without at least thirty (30) days' notice to Landlord.

(b) Landlord and Tenant will (i) if requested, advise the other as to the provisions of fire and extended coverage insurance policies obtained pursuant to this Section, and (ii) notify the other promptly of any change in the terms of any such policy which would affect such provisions.

13. DAMAGE BY FIRE OR OTHER CASUALTY

In the event of loss of, or damage to, the Leased Premises or the Building by fire or other casualty, the rights and obligations of the parties hereto shall be as follows:

(a) If the Leased Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and Landlord, upon receiving such notice, shall proceed promptly and with reasonable diligence, subject to Unavoidable Delays and a reasonable time for adjustment of insurance losses, to repair, or cause to be repaired, such damage in a manner designed to minimize interference with Tenant's occupancy (but with no obligation to employ labor at overtime or other premium pay rates). If the Leased Premises or any part thereof

shall be rendered untenable by reason of such damage, whether to the Leased Premises or the Building, the Basic Rent and Additional Charges shall proportionately abate for the period from the date of such damage to the date when such damage shall have been repaired for the portion of the Leased Premises rendered untenable. However, if, prior to the date when all of such damage shall have been repaired, any part of the Leased Premises so damaged shall be rendered tenable and shall be used or occupied by Tenant, then the amount by which the Basic Rent and Additional Charges shall abate shall be equitably apportioned for the period from the date of any such use.

(b) If as a result of fire or other casualty more than one-half ($\frac{1}{2}$) of the Building Rentable Area is rendered untenable, Landlord within sixty (60) days from the date of such fire or casualty may terminate this Lease by notice to Tenant, specifying a date, not less than twenty (20) nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as if such date were the date herein originally fixed for the expiration of the Term, provided, however, Landlord terminates all similarly Tenants within the Building. If the Leased Premises are damaged as a result of fire or other casualty and if the damage to the Leased Premises (but not including Tenant's Special Installations or Alterations) is so extensive that such damage cannot be substantially repaired within one hundred and eighty (180) days from the date of the fire or other casualty (except for Unavoidable Delays), either Landlord or Tenant within thirty (30) days from the date of such fire or other casualty may terminate this Lease by notice to the other, specifying a date, not less than twenty (20) nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as if such date were the date originally fixed for the expiration of the Term. If either Landlord or Tenant terminates this Lease, the Basic Rent and Additional Charges shall be apportioned as of the date of such fire or other casualty. If neither Landlord nor Tenant so elects to terminate this Lease, then Landlord shall proceed to repair the damage to the Building and the damage to the Leased Premises (but not Tenant's Special Installations or Alterations), if any shall have occurred, and the Basic Rent and Additional Charges shall meanwhile be apportioned and abated all as provided in subsection (a). However, if such damage is not repaired and the Leased Premises and the Building restored to reasonably the same condition as they were prior to such damage within two hundred and seventy (270) days from the date of such damage (such 270-day period to be extended by the period of any Unavoidable Delays plus a reasonable time for adjustment of insurance losses), Tenant, within thirty (30) days from the expiration of such 270-day period (as the same may be extended), may terminate this Lease by notice to Landlord, specifying a date not more than sixty (60) days after the giving of such notice on which the Term shall expire as fully and completely as if such date were the date herein originally fixed for the expiration of the Term.

(c) If the Leased Premises shall be rendered untenable to the extent of eighty percent (80%) or more by fire or other casualty during the last six (6) months of the Term, Landlord or Tenant may terminate this Lease upon notice to the other party given within ninety (90) days after such fire or other casualty specifying a day, not less than twenty (20) days nor more than forty (40) days after the giving of such notice, on which the Term shall expire as fully and completely as if such date were the date originally fixed for the expiration of the Term. If either Landlord or Tenant terminates this Lease pursuant to this subsection, the Basic Rent and Additional Charges shall be apportioned as of the date of such fire or casualty.

(d) Landlord shall not be required to repair or replace any of Tenant's Special Installations or Alterations or any other personal property of Tenant and no damages, compensation, or claim shall be payable by Landlord for inconvenience, loss of business, or annoyance arising from any repair or restoration of any portion of the Leased Premises or of the Building, but the foregoing shall not be deemed to relieve Landlord of liability for its breach of any covenant of this Lease.

(e) The provisions of this Section shall be considered an express agreement governing any instance of damage or destruction of the Building or the Leased Premises by fire or other casualty, and any law now or hereafter in force providing for such a contingency in the absence of express agreement shall have no application.

(f) Notwithstanding any other provisions of this Lease, Landlord shall not be liable or responsible for, and Tenant hereby releases Landlord and its partners, shareholders, officers, directors, agents, and employees from, any and all liability or responsibility to Tenant or any Person claiming by, through or under Tenant, unless caused by Landlord's gross negligence, by way of subrogation or otherwise, for any injury, loss, or damage to Tenant's property covered or required to be covered by a valid and collectible fire insurance policy with extended coverage endorsement. Tenant shall require its insurer(s) to include in all of Tenant's insurance policies which could give rise to a right of subrogation against Landlord a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Landlord, and Tenant shall pay any additional premium required therefor.

(g) Notwithstanding any other provision of this Lease, Tenant shall not be liable or responsible for, and Landlord hereby releases Tenant and its partners, shareholders, officers, directors, agents, and employees from, any and all liability or responsibility to Landlord or any Person claiming by, through or under Landlord, unless caused by Tenant's gross negligence, by way of subrogation or otherwise, for any injury, loss, or damage to Landlord's property covered or required to be covered by a valid and collectible fire insurance policy with extended coverage endorsement. Landlord shall require its insurer(s) to include in all of Landlord's insurance policies which could give rise to a right of subrogation against Tenant a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Tenant, and Landlord shall pay any additional premium required therefor.

(h) The proceeds payable under all fire and other hazard insurance policies maintained by Landlord on the Building shall belong to and be the property of Landlord, and Tenant shall not have any interest in such proceeds. Tenant agrees to look to its own fire and hazard insurance policies in the event of damage to Tenant's Special Installations or Alterations or its personal property.

14. CONDEMNATION

(a) In the event of a Taking of the whole of the Leased Premises, this Lease shall terminate as of the date of such Taking. If only a part of the Leased Premises shall be so taken then, except as otherwise provided in this subsection, this Lease shall continue in force and effect but, from and after the date of the Taking, the Basic Rent and Additional Charges shall be equitably reduced on the basis of the portion of the Leased Premises so taken. If a part of the Building shall be taken, and if either (i) the part of the Building so taken contains more than twenty-five percent (25%) of the Rentable Area of the Leased Premises immediately prior to such Taking, or (ii) in Landlord's reasonable opinion it shall be impracticable to continue to operate the Building, then Landlord, at Landlord's option, may give to Tenant within sixty (60) days after the date upon which Landlord shall have received notice of the Taking, thirty (30) days notice of termination of this Lease provided, however, Landlord terminates all similarly Tenants within the Building. If a part of the Building so taken contains more than twenty-five percent (25%) of the Rentable Area of the Leased Premises immediately prior to such Taking, or (ii) by reason of such Taking, Tenant no longer has reasonable means of access to the Leased Premises, then Tenant, at Tenant's option, may give to Landlord within sixty (60) days after the date upon which Tenant shall have received notice of such Taking, thirty (30) days notice of termination of this Lease. If thirty (30) days notice of termination is given by Landlord or Tenant, this Lease shall terminate upon the expiration of the thirty (30) day period. If this Lease is terminated pursuant to the foregoing provisions of this subsection, then, to the extent permitted by applicable law and such Taking,

Tenant shall have access to the Leased Premises in order to remove Tenant's Special Installations and any other personal property then owned by Tenant and which Tenant is entitled to remove pursuant to this Lease during the period of thirty (30) days from the date Tenant is permitted access therefor. If a Taking occurs which does not result in the termination of this Lease, Landlord shall repair, alter, and restore the remaining portions of the Leased Premises to their former condition to the extent that the same may be feasible.

(b) Landlord shall have the exclusive right to receive any and all awards made for damages to the Leased Premises and the Building accruing by reason of a Taking or by reason of anything lawfully done in pursuance of public or other authority. Tenant hereby releases and assigns to Landlord all of Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. However, Tenant shall have the right to make its own claim against the condemning authority for a separate award for the value of any of Tenant's Special Installations and Alterations, for moving and relocation expenses and for such business damages and/or consequential damages as may be allowed by law which do not constitute part of the compensation for the Building and do not diminish the amount of the award to which Landlord would otherwise be entitled.

(c) If the Leased Premises or any portion thereof is rendered untenable due to a Taking or if Tenant is prevented from accessing the Leased Premises due to a Taking and this Lease is not terminated, then the Basic Rent and any additional rent reserved herein shall be abated in proportion to the untenable area of the Premises for the duration of such Taking.

15. *ASSIGNMENT AND SUBLETTING*

Tenant shall not mortgage, pledge, encumber, sell, assign, or transfer this Lease, in whole or in part, by operation of law or otherwise, or sublease all or any part of the Leased Premises, without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord and Tenant agree that the specific provisions of this paragraph 15 are reasonable grounds for withholding consent. In all events no such assignment shall be valid unless, prior to the commencement of the subject sub-lease or the occupancy by the subject sub-tenant Tenant shall deliver to Landlord (i) a duplicate original instrument of assignment in form reasonably satisfactory to Landlord, duly executed by Tenant, and (ii) an instrument in form attached hereto as Exhibit I, duly executed by the Tenant and the assignee or sub-tenant, in which such assignee or sub-tenant shall agree, among other things, to observe and perform, and to be bound by, all of the terms, covenants, and conditions of this Lease on Tenant's part to be observed and performed accruing after the date of such assignment and whether or not relating to such assignment, and to deliver all payments due to Tenant under the subject sub-lease directly to Landlord upon receipt of written notice from Landlord.

(a) *Right to Sublease:* Tenant shall have the right to sublease or assign this Lease in whole, or in part, to its wholly owned subsidiaries or other entities which are in common control with Tenant or the Lease Guarantors, or to any corporation which is a successor to or assignee of Tenant by acquisition, merger or consolidation without Landlord's approval (a "Permitted Transfer"). However, in all events Tenant and the Lease Guarantors shall remain primarily liable under the lease unless Landlord agrees in writing to replace Tenant and all Lease Guarantors as the primary party obligated under the Lease, which agreement by Landlord shall not be unreasonably withheld, conditioned, or delayed.

(b) *Restrictions on Sub-leasing:* It is understood and agreed that the overall make up of tenants and the size of sub-leased spaces within the Building is subject to the Landlord's sole and reasonable judgment and approval, not to be unreasonably withheld, conditioned, or delayed. The Landlord reserves the right to deny approval of a sub-lease to any party that the Landlord does not reasonably deem compatible as a tenant of the Building. Further, Landlord shall not be required to approve any

sub-lease to a party that Landlord does not deem financially qualified to perform its obligations under the sub-lease or the Lease, as reasonably determined by Landlord.

(c) *Prior to Offering*: In connection with any request by Tenant for consent to sublet all or any portion of the Leased Premises, Tenant shall, at least thirty (30) days prior to offering any space for sub-lease, submit to Landlord, in writing, a notice of Tenant's desire to sub-lease a portion of the Leased premises containing such information as the amount of proposed sub-lease space, the location of the proposed sub-lease space, an as-built floor plan of the proposed sub-lease space, the terms to be sought by Tenant under a sub-lease for the proposed sub-lease space, and the date of availability of the proposed sub-lease space. Landlord shall have the First Right of Refusal to all such space, as set forth below.

(d) *Sub-tenant Identification*: Upon identifying a proposed sub-lease tenant (a "Proposed Sub-tenant") or a proposed assignee (a "Proposed Assignee") Tenant shall submit to Landlord, in writing, a statement containing the name of the Proposed Assignee or Sub-tenant, such information as to its financial responsibility and standing of the Proposed Assignee or Sub-tenant as Landlord may require (including financial statements and information regarding the proposed Sub-Tenant), and all of the terms and provisions upon which the proposed assignment or sublease is to be made, and a floor plan delineating the proposed sublease area.

(e) *Sub-lease Profits*: Any profits from generating additional rent under such sub-lease by the sub-tenant shall be the sole property of Landlord. The profits, if any, will be those remaining after deducting Tenant's costs of sub-leasing, including only the commissions due the broker representing the sub-tenant, sub-tenant improvements paid for by Tenant above those provided by Landlord, and other monetary concessions made to the subject sub-tenant (the "Sub-lease costs") from the actual rent and payables under the Sub-lease. Any profits generated by the sale of special services provided by Landlord, including but not limited after hours HVAC services, to any sub-tenant of Tenant shall be the sole property of Landlord. In all events any sub-tenant shall be required to execute a sub-lease acknowledgement agreement in the form attached hereto as Exhibit I.

(f) *Mortgagee Approval*: In all events all proposed sub-leases of the Leased Premises shall be subject to the reasonable approval of any lender of Landlord that holds a mortgage on the Building, if such approval is required of Landlord under the terms of this Lease.

(g) *First Right of Refusal*: The Landlord shall at all times have the right of first refusal upon any portion of the Leased Premises that Tenant desires to sub-lease which right of first refusal may be assigned by Landlord. In the event the Landlord exercises this option the terms of the subject sub-lease shall be those readily available to Tenant from a third party. The foregoing portion of this sub-paragraph (g) shall not apply to Permitted Transfers.

(h) *Invalid Transfers*: Any attempted transfer, assignment, sub-leasing, mortgaging or encumbering of this Lease in violation of the provisions of this Section shall be void and confer no rights upon any third person. No permitted assignment or subletting shall relieve Tenant of any of its obligations under this Lease, except as specifically provided for herein. Subject to the provisions of this paragraph 15, Landlord and Tenant agree that (i) any consideration paid to Tenant in connection with a sub-leasing of all or any part of the Leased Premises which is attributable to an increase in the rental value of the Leased Premises over and above the Basic Rent and Additional Charges payable under this Lease, and (ii) any consideration paid to Tenant or any sub-tenant or other Person claiming through or under Tenant in connection with an assignment of the Tenant's interest in this Lease or the interest of any sub-tenant or other Person claiming through or under Tenant under any sub-lease, shall accrue to the benefit of Landlord and not to the benefit of Tenant, or any sub-tenant or other Person claiming through or under Tenant, or the creditors of Tenant or of any such sub-tenant or other Person claiming through or under Tenant

(i) *Transfer of Control*; If Tenant is a corporation, any transfer of any of Tenant's issued and outstanding capital stock or any issuance of additional capital stock, as a result of which the majority of the issued and outstanding capital stock of Tenant is held by a Person or Persons who do not hold a majority of the issued and outstanding capital stock of Tenant on the date hereof, shall be deemed an assignment under this Section 15. If Tenant is a partnership, or limited liability company, any transfer of any interest in the partnership, or limited liability company, or any other change in the composition of the partnership, or limited liability company, which results in a change in the control of Tenant from the Person or Persons controlling the partnership, or limited liability company, on the date hereof, shall be deemed an assignment under this Section 15. The provisions of this subsection (i) shall not apply to Permitted Transfers.

(j) *Obligations of Assignee or Subtenant*: If Tenant's interest in this Lease is assigned, whether or not in violation of the provisions of this Section, Landlord may collect rent from the assignee; if the Leased Premises or any part thereof are sub-leased to, or occupied by, or used by, any Person other than Tenant, whether or not in violation of this Section, Landlord, may at its option collect rent from the sub-tenant, user or occupant. In either case, Landlord shall apply the amount collected to the rents reserved in this Lease, but neither any such assignment, sub-leasing, occupancy, or use, whether with or without Landlord's prior consent, nor any such collection or application, shall be deemed a waiver of any term, covenant or condition of this Lease or the acceptance by Landlord of such assignee, sub-tenant, occupant or user as tenant. The consent by Landlord to any further assignment or sub-leasing shall not relieve Tenant from its obligation to obtain the express prior consent of Landlord to any further assignment or sub-leasing. The listing of any name other than that of Tenant on any door of the Leased Premises or on any directory in the Building, or otherwise, shall not operate to vest in the Person so named any right or interest in this Lease or in the Leased Premises or be deemed to constitute, or serve as a substitute for, any prior consent of Landlord required under this Section, and it is understood that any such listing shall constitute a privilege extended by Landlord which shall be revocable at Landlord's will by notice to Tenant, except where there exists a valid sublease. Neither an assignment of Tenant's interest in this Lease nor a sub-leasing, occupancy or use of the Leased Premises or any part thereof by any Person other than Tenant, nor the collection of rent by Landlord from any Person other than Tenant as provided in this subsection, nor the application of any such rent as provided in this subsection shall, in any circumstances, relieve Tenant from its obligation fully to observe and perform the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

16. *DEFAULT PROVISIONS*

(a) Each of the following events shall be deemed to be, and is referred to in this Lease as, an "Event of Default":

(1) A default by Tenant in the due and punctual payment of any Basic Rent or Additional Charges, which continues for more than five (5) days after such Basic Rent or Additional Charges shall be due and payable; or

(2) The neglect or failure of Tenant to perform or observe any of the terms, covenants, or conditions contained in this Lease on Tenant's part to be performed or observed (other than those referred to in paragraph (1) above) which is not remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant written notice specifying such neglect or failure; or if such condition can not practically be remedied within said thirty (30) day period Tenant shall have sixty (60) days from the date of such notice to remedy the condition provided Tenant timely commences and diligently prosecutes such remedy unless the nature of such condition requires it to be remedied in a shorter period of time; or; or

(3) The assignment, transfer, mortgaging, or encumbering of this Lease or the sub-leasing of any or all of the Leased Premises in a manner not strictly in accordance with and permitted by Section 15; or

(4) The taking of this Lease or the Leased Premises, or any part thereof, upon execution or by other process of law directed against Tenant, or upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, which execution or attachment shall not be discharged or disposed of within sixty (60) days after the levy thereof; or

(5) The abandonment of the Leased Premises by Tenant.

(6) The failure of any sub-tenant occupying any portion of the Leased Premises to comply with each and every provision of this Lease or the Default of any sub-tenant under any sub-lease agreement, subject to the applicable cure periods of this Lease, which Tenant shall always have the right to cure.

(b) Upon the occurrence of an Event of Default, Landlord shall have the right, at its election, then or at any time thereafter while such Event of Default shall continue, either:

(1) To give Tenant written notice that this Lease will terminate on a date to be specified in such notice, which date shall not be less than thirty (30) days after such notice, and on the date specified in such notice Tenant's right to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, but Tenant shall remain liable as provided in subsection (c);or

(2) Without demand or notice, to re-enter and take possession of the Leased Premises, or any part thereof, and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant a right to occupy the Leased Premises, and remove the effects of both or either, either by summary proceedings, or by action at law or in equity or by force (if necessary) or otherwise, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant.

If Landlord elects to re-enter the Leased Premises as set forth above, Landlord may terminate this Lease, or, from time to time, without terminating this Lease, may re-lease the Leased Premised, or any part thereof, as agent for Tenant for such term or terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Leased Premises. No such re-entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant as set forth above or unless the termination thereof be decreed by a court of competent jurisdiction. Tenant waives any right to the service of any notice of Landlord's intention to re-enter provided for by any present or future law.

(c) If Landlord terminates this Lease pursuant to subsection (b), Landlord shall have the option to accelerate and declare the entire amount of all Basic Rent and Additional Charges provided for herein until the date this Lease would have expired had such termination not occurred as the total rental set forth in Section (a) (1) of this Paragraph as due and payable forthwith. Tenant shall be liable (in addition to accrued liabilities) to the extent legally permissible for (i) the sum of (A) all Basic Rent and Additional Charges provided for in this Lease until the date this Lease would have expired had such termination not occurred, and (B) any and all reasonable expenses incurred by Landlord in re-entering the Leased Premises, repossessing the same, making good any default of Tenant, painting the same, adjoining the same with any adjacent space for any new tenants, putting the same in proper repair, re-letting the same (including any and all reasonable attorneys' fees and disbursements and reasonable brokerage fees incurred with so doing), and any and all expenses which Landlord may incur during the occupancy of any new tenant (other than expenses of a type that are Landlord's responsibility under the terms of this Lease); less (ii) the net proceeds of any re-letting.

In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereover may adjudge reasonable as attorney's fees with respect to any successful law suit or action instituted by Landlord to enforce the provisions of this Lease. Landlord shall have the right, at its sole option, to release the whole or any part of the Leased Premises for the whole of the un-expired Term, or longer, or from time to time for shorter periods, for any rental then obtainable, giving such concessions of rent and making such special repairs, alterations, decorations, and paintings for any new tenant as Landlord, in its sole and absolute discretion, may deem advisable. Tenant's liability as aforesaid shall survive the institution of summary proceedings and the issuance of any warrant thereunder. Landlord shall be under no obligation to re-lease the Leased Premises, but agrees to use its best efforts to do so.

(d) Notwithstanding the terms and conditions of this Paragraph 16, with regard only to an Event of Default as set forth in Paragraph 16 (a) (1), Landlord shall provide Tenant written notice of such Event of Default and the right to cure such Event of Default by payment of all amounts due Landlord within fifteen (15) business days after such notice is given (as set forth in Paragraph 30 (d)) once in any calendar year.

17. *BANKRUPTCY TERMINATION PROVISION*

At the sole and exclusive option of Landlord, evidenced by written notice from Landlord to Tenant, the Landlord may, without relieving Tenant from any of its obligations that survive termination, terminate this Lease, without the performance of any additional act or the giving of any additional notice to any other party, effective immediately upon the occurrence of any of the following events, even if the effective date of termination precedes the date of Landlord's notice, or on such later date as determined by Landlord: (1) Tenant's admitting in writing its inability to pay its debts generally as they become due, or (2) the commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or (3) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) consecutive days, or (4) Tenant's making an assignment of all or a substantial part of its property for the benefit of its creditors in satisfaction of a pre-existing debt or obligation, or (5) Tenant's seeking or consenting to or acquiescing in the appointment of, or the taking of possession by, a receiver, trustee or custodian for all or a substantial part of its property, or (6) the entry of a court order without Tenant's consent, which order shall not be vacated, set aside or stayed within thirty (30) days from the date of entry, appointing a receiver, trustee, or custodian for all or a substantial part of Tenant's property. The provisions of this Section shall be construed with due recognition for the provisions of the federal bankruptcy laws, where applicable, but shall be interpreted in a manner which results in a termination of this Lease, at the option of Landlord, in each and every instance, and to the fullest extent that such termination is permitted under the federal bankruptcy laws, it being of prime importance to the Landlord to deal only with tenants who have, and continue to have, a strong degree of financial strength and financial stability.

18. *LANDLORD MAY PERFORM TENANT'S OBLIGATIONS*

If Tenant shall fail to keep or perform any of its obligations as provided in this Lease in respect to (a) maintenance of insurance, (b) repairs and maintenance of Leased Premises, (c) compliance with Legal Requirements, or (d) the making of any other payment or performance of any other obligation, then Landlord may (but shall not be obligated to) upon the continuance of such failure on Tenant's part for ten (10) days after written notice to Tenant (or after such additional period, if any, as Tenant may reasonably require to cure such failure if of a nature which cannot be cured within said 10-day period), or without notice in the case of an emergency, and without waiving or releasing Tenant from

any obligation, and as an additional but not exclusive remedy, make any such payment or perform any such obligation and all sums so paid by Landlord and all necessary incidental costs and expenses, including attorney's fees, incurred by Landlord in making such payment or performing such obligation, together with interest thereon from the date of payment at the Default Interest Rate, shall be deemed additional rent and shall be paid to the Landlord on demand, or at Landlord's option may be added to any installment of Basic Rent thereafter falling due, and if not so paid by Tenant, Landlord shall have the same rights and remedies as in the case of a default by Tenant in the payment of Basic Rent.

19. *SECURITY DEPOSIT*

(a) Upon execution of this Lease, Tenant shall pay Landlord a Security Deposit equal to five thousand dollars (\$5,000.00) in cash.

(b) As consideration for Landlord entering into this Lease Agreement the Tenant hereby expressly waives and relinquishes any and all right Tenant may have to earn interest on the cash Security Deposit delivered to Landlord. The Landlord shall be free from any restrictions of any kind whatsoever on the use of the cash Security Deposit and shall not be required to hold the cash Security Deposit in a special account (or in any account) and may utilize the cash Security Deposit as its own funds.

(c) Tenant hereby deposits with Landlord the Security Deposit, as security for the prompt, full, and faithful performance by Tenant of each and every provision of this Lease and of all obligations of Tenant hereunder. If an Event of Default occurs, Landlord may use, apply, or retain the whole or any part of the Security Deposit for the payment of (i) any Basic Rent or Additional Charges which Tenant may not have paid or which may become due after the occurrence of such Event or Default, (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease (including the reimbursement of the Tenant Improvement Allowance provided by Landlord), or (iii) any sum which Landlord may expend or be required to expend by reason of Tenant's default, including damages or deficiency in the releasing of the Leased Premises as provided in Section 16. The use, application, or retention of the Security Deposit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. If any portion of the Security Deposit is used, applied or retained by Landlord for the purpose set forth above, Tenant agrees, within ten (10) days after a written demand therefore is made by Landlord, to deposit cash with the Landlord in an amount sufficient to restore the Security Deposit to its original amount.

(d) If Tenant shall fully and faithfully comply with all of the provisions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after the expiration of the Term, without interest. In the absence of evidence satisfactory to Landlord of any permitted assignment of the right to receive the Security Deposit, or the remaining balance thereof, Landlord may return the same to the original Tenant, regardless of one or more assignments of Tenant's interest in this Lease or the Security Deposit. In such event, upon the return of the Security Deposit (or balance thereof) to the original Tenant, Landlord shall be completely relieved of liability under this Section.

(e) In the event of a transfer of Landlord's interest in the Leased Premises, Landlord shall have the right to transfer the Security Deposit to the transferee thereof subject to sub-paragraph (d) above. In such event, upon the delivery by Landlord to Tenant of such transferee's written acknowledgement of its receipt of such Security Deposit, Landlord shall be deemed to have been released by Tenant from all liability or obligation for the return of such Security Deposit, and Tenant agrees to look solely to such transferee for the return of the Security Deposit and the transferee shall be bound by all provisions of this Lease relating to the return of the Security Deposit.

(f) The Security Deposit shall not be mortgaged, assigned, or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord, which may be withheld by Landlord in its sole discretion.

20. *SUBORDINATION*

(a) This Lease and Tenant's interest hereunder shall have priority over, and be senior to, the lien of any Mortgage made by Landlord after the date of this Lease. However, if at any time or from time to time during the Term, a Mortgagee or prospective Mortgagee requests that this Lease be subject and subordinate to its Mortgage, and if Landlord consents to such subordination, this Lease and Tenant's interest hereunder shall be subject and subordinate to the lien of such Mortgage and to all renewals, modifications, replacements, consolidations, and extensions thereof and to any and all advances made thereunder and the interest thereon. Tenant agrees that, within ten (10) days after receipt of a written request therefor from Landlord, it will, from time to time, execute and deliver any instrument or other document required by any such Mortgagee to subordinate this Lease and its interest in the Leased Premises to the lien of such Mortgage, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease. If, at any time or from time to time during the Term, a Mortgagee of a Mortgage made prior to the date of this Lease shall request that this Lease have priority over the lien of such Mortgage, and if Landlord consents thereto, this Lease shall have priority over the lien of such Mortgage and all renewals, modifications, replacements, consolidations, and extensions thereof and all advances made thereunder and the interest thereon, and Tenant shall, within ten (10) days after receipt of a written request therefor from Landlord, execute, acknowledge and deliver any and all documents and instruments confirming the priority of this Lease, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially alter the terms and conditions of this lease. In addition, the Mortgagee of a Mortgage which has priority over this Lease shall have the right, at its option, to subordinate the lien of its Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to that effect among the applicable Land Records. In any event, however, if this Lease shall have priority over the lien of a first Mortgage, this Lease shall not become subject or subordinate to the lien of any subordinate Mortgage, and Tenant shall not execute any subordination documents or instruments for any subordinate Mortgage, without the written consent of the first Mortgagee.

(b) This Lease and Tenant's interest hereunder shall be subject and subordinate to each and every ground or underlying lease hereafter made of the Building or the land on which it is constructed, or both, and to all renewals, modifications, replacements, and extensions thereof. Tenant agrees that, within ten (10) days after receipt of written request therefor from Landlord, it will, from time to time, execute, acknowledge and deliver any instrument or other document required by any such lessor to subordinate this Lease and its interest in the Leased Premises to such ground or underlying lease, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease.

(c) If (i) the Building, or any part thereof, or the land on which the Building is constructed, or the Landlord's leasehold estate in the Building, is at any time subject to a first Mortgage, and Landlord has entered into an assignment of this Lease to the holder of said first Mortgage, and (ii) the Tenant is given written notice of such assignment, including the name and address of the assignee, then, in that event, Tenant shall not terminate this Lease or make any abatement in the Basic Rent payable hereunder for any default on the part of the Landlord without first giving written notice, in the manner provided elsewhere in this Lease for the giving of notice, to such first Mortgagee, specifying the default in reasonable detail, and affording such first Mortgagee a reasonable opportunity to make performance, at its election, for and on behalf of the Landlord.

21. *ATTORNMENT*

In the event of (a) a transfer of Landlord's interest in the Leased Premises, (b) the termination of any ground or underlying lease of the Building or the land on which it is constructed, or both, or (c) the purchase of the Building or Landlord's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any Mortgage or pursuant to a power of sale contained in any Mortgage, then in any of such events Tenant shall, upon demand by the owner of the Building or the land on which it is constructed, or both, attorn to and recognize the transferee or purchaser of Landlord's interest or the lessor under the terminated ground or underlying lease, as the case may be, as Landlord under this Lease for the balance then remaining of the Term, and thereafter this Lease shall continue as a direct lease between such person, as "Landlord," and Tenant, as "Tenant," except that such lessor, transferee or purchaser shall not be liable for any act or omission of Landlord prior to such lease termination or prior to such person's succession to title, nor be subject to any offset, defense or counterclaim accruing prior to such lease termination or prior to such person's succession to title, nor be bound by any payment of Basic Rent or Additional Charges prior to such lease termination or prior to such person's succession to title for more than one (1) month in advance. Tenant shall, upon request by Landlord or the transferee or purchaser of Landlord's interest or the lessor under the terminated ground or underlying lease, as the case may be, execute and deliver an instrument or instruments confirming the foregoing provisions of this Section, provided any such instrument or other document is in form and content as would be customary in the industry and does not materially modify or amend the terms and conditions of this lease. Tenant hereby waives the provisions of any present or future law or regulation which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease, or the obligations of Tenant hereunder, upon or as a result of the termination of any such ground or underlying lease or the completion of any such foreclosure and sale.

22. *QUIET ENJOYMENT*

Landlord covenants that Tenant, upon paying the Basic Rent and the Additional Charges provided for in this Lease, and upon performing and observing all of the terms, covenants, conditions, and provisions of this Lease on Tenant's part to be kept, observed and performed, shall quietly hold, occupy, and enjoy the Leased Premises during the Term without hindrance, ejection, or molestation by Landlord or any party lawfully claiming through or under Landlord. Landlord will provide Tenant a reasonable non-disturbance agreement from any current and/or future mortgagees. In connection therewith Tenant shall execute documents reasonably requested by such lender, provided any such instrument or other document is in form and content as would be customary in the industry and does not modify or amend the terms and conditions of this lease.

23. *LANDLORD'S RIGHT OF ACCESS TO LEASED PREMISES*

(a) Landlord and its agents shall have the following rights in and about the Leased Premises: (i) to enter the Leased Premises at all reasonable times and with reasonable notice (which shall be at least two days except in the case of emergency) to examine the Leased Premises or for any of the purposes set forth in this section or for the purpose of performing any obligation of Landlord under this Lease or exercising any right or remedy reserved to Landlord in this Lease, and if Tenant, its officers, partners, agents, or employees shall not be personally present or shall not open and permit an entry into the Leased Premises at any time when such entry shall be necessary or permissible, to use a master key or forcibly to enter the Leased Premises; (ii) to erect, install, use, and maintain pipes, ducts, and conduits in and through the Leased Premises which, when completed, will not substantially interfere with the use or appearance or materially reduce the space afforded to Tenant in the Leased Premises; (iii) to exhibit the Leased Premises to others at reasonable times and for reasonable purposes; (iv) to make such decorations, repairs, alterations, improvements, or additions, or to perform such maintenance, including, but not limited to, the maintenance of all heating, air-conditioning, elevator, plumbing, electrical and other mechanical facilities installed by Landlord, as Landlord may

deem necessary or desirable; (v) to take all materials into and upon the Leased Premises that may be required in connection with any such decorations, repairs, alterations, improvements, additions, or maintenance; and (vi) to alter, renovate and decorate the Leased Premises at any time during the Term if Tenant shall have removed all or substantially all of Tenant's property from the Leased Premises. Landlord agrees to give prior notice before it exercises its rights under this subsection, except that Landlord may enter the Leased Premises without notice in the case of an emergency. In making such an entry, Landlord agrees to use reasonable efforts to avoid interfering with the regular and usual conduct of the Tenant's business. Tenant shall at all times have the option of accompanying Landlord or its agents when Landlord or its agents enter the Leased Premises.

(b) All parts (except surfaces facing the interior of the Leased Premises) of all walls, windows, and doors bounding the Leased Premises (including exterior Building walls, corridor walls, doors, and entrances), all balconies, terraces, and roofs adjacent to the Leased Premises, all space in or adjacent to the Leased Premises used for shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, heating, and air-conditioning, plumbing, electrical, and other mechanical facilities installed by Landlord, service closets and other Building facilities, and the use thereof, as well as access thereto through the Leased Premises for the purposes of operation, maintenance, alteration, and repair, are hereby reserved to Landlord. Nothing contained in this Section shall impose any obligation upon Landlord with respect to the operation, maintenance, alteration, or repair of the Leased Premises or the Building.

(c) The exercise by Landlord or its agents of any right reserved to Landlord in this Section shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord, or its agents, or upon any lessor under any ground or underlying lease, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise. Landlord agrees to exercise its rights under this Section in a manner designed to minimize interference with Tenant's normal business operations, without any obligation, however, to employ labor at overtime or other premium pay rates. Landlord shall take reasonable steps to insure that the exercise by Landlord or its agents of any right reserved to Landlord in this Section does not interfere with the Tenant conducting its business.

24. *LIMITATION ON LANDLORD'S LIABILITY*

(a) Except for damages resulting from the willful or negligent act or omission of Landlord, its agents and employees, Landlord shall not be liable to Tenant, its employees, agents, business invitees, licensees, customers, guests or trespassers, for any damage or loss to the property of Tenant or others located on the Leased Premises, or in the Building or the land on which it is built, or for any accident or injury to Persons in the Leased Premises or the Building, resulting from the necessity of repairing any portion of the Building; the use or operation (by Tenant or any other Person or Persons whatsoever) of any elevators, or heating, cooling, electrical or plumbing equipment or apparatus; the termination of this Lease by reason of the destruction of the Building or the Leased Premises; any fire, robbery, theft, and/or any other casualty; any leaking in any part of the Leased Premises; any water, gas, steam, fire, explosion, electricity or falling plaster; the bursting, stoppage or leakage of any pipes, sewer pipes, drains, conduits, appliances or plumbing works; or any other cause whatsoever.

(b) Landlord shall not be required to perform any of its obligations hereunder, nor be liable for loss or damage for failure to do so, nor shall Tenant be released from any of its obligations under this Lease because of the Landlord's failure to perform, where such failure arises from or through Unavoidable Delays or Legal Requirements. If Landlord is so delayed or prevented from performing any of its obligations during the Term, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation.

25. ESTOPPEL CERTIFICATES

Tenant agrees from time to time, within ten (10) days after written request therefor by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying to Landlord, any Mortgagee, assignee of a Mortgagee, or any purchaser of the Building or the land on which it is constructed, or both, or any other Person designated by Landlord, as of the date of such statement, to the extent of Tenant's knowledge (i) that Tenant is in possession of the Leased Premises; (ii) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and setting forth such modifications); (iii) whether or not there are then existing any set-offs or defenses known to Tenant against the enforcement of any right or remedy of Landlord, or any duty or obligation of Tenant, hereunder (and, if so, specifying the same in detail); (iv) the dates, if any, to which any Basic Rent or Additional Charges have been paid in advance; (v) that Tenant has no knowledge of any uncured defaults on the part of Landlord under this Lease (or, if Tenant has such knowledge, specifying the same in detail); (vi) the amount of any Security Deposit held by Landlord; and (viii) any additional facts reasonably requested by any such Mortgagee, assignee or a Mortgagee or purchaser.

Landlord agrees from time to time, within ten (10) days (or as soon as reasonably practical but not more than thirty (30) days), after written request therefor by Tenant to execute, acknowledge and deliver to Tenant a statement in writing certifying to Tenant, any Mortgagee, assignee of a Mortgagee, or any purchaser of or successor in interest to Tenant, or any other Person designated by Tenant, as of the date of such statement, to the extent of Landlord's actual knowledge (i) that Landlord is the owner of the Building and the Land; (ii) that Tenant is in possession of the Leased Premises; (iii) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and setting forth the dates of such modifications); (iv) the dates, if any, to which any Basic Rent or Additional Charges have been paid in advance; and (v) the amount of any Security Deposit held by Landlord;

26. SURRENDER OF LEASED PREMISES

(a) Tenant shall, on or before the last day of the Term, except as otherwise expressly provided elsewhere in this Lease, remove all of its property and peaceably and quietly leave, surrender and yield up to the Landlord the Leased Premises, free of sub-tenancies, broom clean and in good order and condition except for reasonable wear and tear, damage by fire or other casualty, or conditions requiring repair by Landlord hereunder at Landlord's expense.

(b) The provisions of this Section shall survive any expiration or termination of this Lease.

27. HOLDING OVER

If Tenant shall hold over possession of the Leased Premises after the end of the Term, Tenant shall be deemed to be occupying the Leased Premises as a Tenant from month to month, at 110% of the Basic Rent, adjusted to a monthly basis, and subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable, or as the same shall be adjusted, to a month-to-month tenancy. Notwithstanding the immediately preceding sentence the Tenant shall have the right to hold over for a period of up to two (2) months following the expiration of the Lease Term, or any extension thereof, at 125% of the Base Rent in effect during the last month of the previous Lease Term with six (6) months written notice to Landlord. Thereafter the holdover rent will be at 125% of the Base Rent in effect during the last month of the previous Lease Term plus consequential damages, if any.

28. PARKING

Tenant will have the right to utilize Tenant's Proportionate Share of the reserved and un-reserved parking spaces in the project's parking structure and in the surface parking lots at no cost during the

initial Lease Term. Throughout the Term, Tenant and/or its employees shall have the right, without additional cost, to park their automobiles in the surface and garage parking areas provided for the Building. Such parking spaces shall be available on a first-come, first-served basis, subject however, to the rights of any other tenant of the Building to park automobiles in reserved parking spaces as provided in its lease. Landlord shall use good faith, reasonable efforts to insure that Tenant continuously is able to use Tenant's Proportionate Share of the parking spaces. Landlord reserves the right, at any time or from time to time during the Term, to establish reserved parking spaces for the tenant's in the Building on part of or all of the parking spaces on the Property and in such event Tenant shall utilize only those reserved spaces assigned to Tenant. Landlord reserves the right, at any time or from time to time during the Term, to control access to the surface and garage parking areas, by use of mechanical or electric devices or otherwise, to tenants of the Building and their employees, provided that Landlord shall reserve at least sixteen (16) parking spaces for parking of visitors of the Building. If at any time during the Term, Landlord implements a controlled access system for the Building parking areas, Tenant shall have the right without additional cost, to use unassigned parking spaces in the structured parking and the surface parking lots based on Tenant's Proportionate Share. Neither Tenant nor any of its employees shall use any of the parking facilities for storage of vehicles (or any other item such as boats or trailers) or park its or their automobiles in any portion of the Building parking areas reserved for visitor or handicapped parking or for parking of automobiles belonging to other tenants of the Building. Tenant shall be provided reserved parking spaces (including covered parking spaces) as detailed on the Reserved Parking Plan attached hereto as EXHIBIT G.

29. *LEASING COMMISSION*

Landlord and Tenant each represent and warrant to the other that neither of them has employed any broker in carrying on the negotiations relative to this Lease. Landlord and Tenant shall each indemnify and hold harmless the other from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty.

30. *GENERAL PROVISIONS*

(a) The covenants, conditions, agreements, terms and provisions herein contained shall be binding upon, and shall inure to the benefit of, the parties hereto and, subject to the provisions of Section 15, each of their respective personal representatives, successors and assigns.

(b) Tenant agrees to provide Landlord with reasonable documentation evidencing the Tenant's financial viability and good standing as may be requested from time to time by Landlord or Landlord's mortgage holder.

(c) It is the intention of the parties hereto that this Lease (and the terms and provisions hereof) shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

(d) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by the Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition, limitation, right or remedy. No term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Landlord or by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord or by Tenant, as the case may be. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(e) No notice, request, consent, approval, waiver or other communication which may be or is required or permitted to be given under this Lease shall be effective unless the same is in writing and

is delivered in person or sent by registered or certified mail, return receipt requested, first-class postage prepaid, or by recognized overnight carrier, (1) if to Landlord, at Landlord's Notice Address, or (2) if to Tenant, at Tenant's Notice Address, or at any other address that may be given by one party to the other by notice pursuant to this subsection. Such notices, if sent by registered or certified mail, shall be deemed to have been given two (2) business after the date of deposit in the U.S. Mail and if sent by overnight courier shall be deemed to have been given one (1) business after the date of deposit with the overnight courier.

(f) It is understood and agreed by and between the parties hereto that this Lease contains the final and entire agreement between said parties, and that they shall not be bound by any terms, statements, conditions or representations, oral or written, express or implied, not herein contained. It is understood and agreed, however, that the terms hereof shall be modified, if so required, for the purpose of complying with or fulfilling the requirements of any Mortgagee secured by a first Mortgage that may now be or hereafter become a lien on the Building, provided, however, that such modification shall not be in substantial derogation or diminution of any of the rights of the parties hereunder, nor increase any of the obligations or liabilities of the parties hereunder.

(g) Tenant hereby waives all right to trial by jury in any claim, action, proceeding or counterclaim by Landlord on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant and/or Tenant's use or occupancy of the Leased Premises. Tenant also agrees to waive any and all counterclaims Tenant may have in any suit for possession by Landlord; it being understood that the subject of any such counterclaim may be asserted by Tenant but only in a separate action brought by Tenant against Landlord.

(h) Tenant hereby waives any objection to the venue of any action filed by Landlord against Tenant in any state or federal court in the jurisdiction in which the Building is located, and Tenant further waives any right, claim or power, under the doctrine of forum non conveniens or otherwise, to transfer any such action filed by Landlord to any other court.

(i) Not Used.

(j) If Tenant is a corporation, concurrently with the signing of this Lease, it shall furnish to Landlord certified copies of the resolutions of its Board of Directors (or of the executive committee of its Board of Directors) authorizing Tenant to enter into this Lease; and it shall furnish to Landlord evidence (reasonably satisfactory to Landlord and its counsel) that Tenant is a duly organized corporation in good standing under the laws of the jurisdiction of its incorporation, is qualified to do business in good standing in the Commonwealth of Virginia, has the power and authority to enter into this Lease, and that all corporate action requisite to authorize Tenant to enter into this Lease has been duly taken.

(k) Time is strictly of the essence in the performance of all Tenant's obligations under this Lease.

(l) Wherever appropriate herein, the singular includes the plural and the plural includes the singular.

(m) If any provision of this Lease shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

(n) The captions in this Lease are for convenience only and shall not affect the interpretation of the provisions hereof.

(o) This Lease is not intended to create a partnership or joint venture between Landlord and Tenant in the conduct of their respective business.

(p) Notwithstanding any provision to the contrary, Tenant shall look solely to the estate and property of Landlord in and to the Building in the event of any claim against Landlord arising out of

or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, and Tenant agrees that the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, shall be limited to such estate and property of Landlord. No other properties or assets of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Leased Premises, and if Tenant shall acquire a lien on or interest in any other properties or assets by judgment or otherwise, Tenant shall promptly release such lien on or interest in such other properties and assets by executing, acknowledging and delivering to Landlord an instrument to that effect prepared by Landlord's attorneys.

(q) This Lease may be executed in several counterparts, but all counterparts shall constitute one and the same instrument.

(r) Any option or right of first refusal contained in this Lease, if any, including but not limited to any option or right of first refusal in connection with extending the Term, terminating before the expiration of the Term, or expanding, must be exercised by Tenant on or before the date specified for so doing in this Lease (the "Option Date"), by Tenant's execution on or before the Option Date of final Lease modification documents effectuating the changes to this Lease required by such option or right of first refusal. Any notice by Tenant of its intent to exercise any such option or right of first refusal shall be void if Tenant does not execute final Lease modification documents on or before the Option Date or, at the option of Landlord, if on the date of Tenant's Notice or the Option Date there exists an Event of Default.

30. *BUILDING OWNERSHIP CHANGES*

It is understood and agreed that the common ownership and control of the Landlord and the Tenant is in contributing factor to the Landlord agreeing to lease the Leased Premises to Tenant and Tenant agreeing to lease the Leased Premises from Landlord. Accordingly, notwithstanding anything else contained herein, or elsewhere provided for, it is agreed that in the event Landlord sells the Building (a "Landlord Transfer") during the Term the following shall apply:

(a) the Operating Expenses that are the responsibility of Tenant as set forth in paragraph 1 (b) hereof for any calendar year that completes after the date of a Landlord Transfer shall be capped (and shall not exceed) the amount of such Operating Expenses that were the responsibility of the Tenant in the preceding calendar year,

(b) the profits generated by the sub-lease of the Leased Premises by Tenant shall belong to Tenant and shall not be shared between Tenant and Landlord as set forth in paragraph 15 (e) hereof.

(c) sub-paragraphs 15(c), 15(g), 15(f), and 30(b) shall be deleted in their entirety,

(d) the amount that Tenant may be liable to Landlord in the event of a monetary default by Tenant that results in the Tenant be evicted from the Lease Premises shall be limited to an amount equal to all un-amortized Tenant Improvement Costs incurred by Landlord plus a termination fee of fifty thousand (\$50,000.00), plus all reasonable fees of Landlord's counsel and all applicable court costs,

However, it is agreed and understood that the provisions of sub-paragraphs 30 (a), (b), (c), and (d) above are intended for the sole benefit of the Tenant and the Lease Guarantors and their respective current shareholders. In the event that the shareholders (including their respective estates) of the Tenant or the Lease Guarantors whom hold a majority of the outstanding shares of company stock no longer own a majority of the outstanding shares of company stock, or otherwise lose their controlling interest and rights to management of the Tenant and the Lease Guarantor (a "Tenant Transfer") during the Term the provisions of this Paragraph 30 shall be null and void and of no consequence as if never included in this Lease.

Seen and agreed this 31st day of January, 2004

Tenant: Comstock Homes, Inc.

By: /s/ GREGORY BENSON

Witness: /s/ J. A. POWERS

Name: Gregory Benson
Title: President

Name: J. A. Powers

Seen and agreed this 31st day of January, 2004

Lease Guarantor: Comstock Holding Company, Inc.

By: /s/ GREGORY BENSON

Witness:

Name: Gregory Benson
Title: President

Name:

Seen and agreed this 31st day of January, 2004

Landlord: Comstock Partners, LC

By: /s/ CHRISTOPHER CLEMENTE

Witness: /s/ J. A. POWERS

Print Name: Christopher Clemente
Title: Managing Member

Name: J. A. Powers

QuickLinks

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DISBURSEMENT AND DEVELOPMENT LOAN AGREEMENT

THIS DISBURSEMENT AND DEVELOPMENT LOAN AGREEMENT ("Development Agreement") is dated this October 10, 2002, by and between COMSTOCK BLOOMS MILL II, L.C., a Virginia Limited Liability Company (the "Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, having a principal address of 1308 Devils Reach Road, Woodbridge, Virginia 22192 (the "Lender").

RECITALS

(A) The Lender agreed to make a secured refinance, revolving development and revolving construction loan to Borrower in the face amount of up to Thirteen Million and No/100 Dollars (\$13,000,000.00), (the "Loan") to be secured by real property subdivided (or to be subdivided) into three hundred seventy-five (375) residential building lots comprised of eighty-two (82) single family lots; ninety-one (91) twenty (20) foot wide townhouse lots; one hundred eleven (111) twenty-two foot wide townhouse lots; and ninety-one (91) carriage home lots (collectively, the "Lots") together with all Improvements (as defined below), and more fully described in Exhibit A, attached hereto and made a part hereof (collectively, the "Real Property").

(B) In connection with the Loan, the Borrower intends to grant to Lender a perfected first priority secured interest in the Real Property in favor of the Lender as of the date hereof, and to enter into that certain: (i) Credit Line Deed of Trust executed by the Borrower of even date herewith (the "Deed of Trust"), (ii) Assignment Of Leases, Interests, Contracts, Plans and Profits executed by the Borrower of even date herewith (the "Assignment of Interests"), (iii) two (2) Deed of Trust Notes executed by the Borrower of even date herewith, in the face amounts of \$9,000,000.00 ("Note 1") and \$4,000,000.00 ("Note 2") (together totaling the Loan), in favor of the Lender (hereinafter collectively, the "Notes"), and all other Loan Documents (as defined herein) to further secure the Loan.

(C) This Development Agreement sets forth the terms and conditions under which the Lender agrees to disburse the portion of the Loan for the refinance and development portion of the Loan, interest reserve, and certain other costs to the Borrower, not to exceed an aggregate total funding amount of \$16,390,637.00, provided \$9,000,000.00 is never disbursed and remaining outstanding at any one time (hereinafter, the "Disbursement and Development Portion"). [In this Development Agreement, all references to the "Loan" hereinafter shall refer to this Disbursement and Development Portion of the Loan only, unless the context expressly states otherwise]. The Disbursement and Construction Loan Agreement dated of even date herewith (the "Construction Loan Agreement") sets forth the terms and conditions under which the Lender agrees to disburse revolving construction proceeds of up to Four Million and No/100 Dollars (\$4,000,000.00).

(D) The exhibits attached hereto are identified as follows:

- (i) Exhibit A—contains the legal description of the Real Property.
- (ii) Exhibit B—contains the definitions of certain basic words and terms used in this Development Agreement.
- (iii) Exhibit C—contains the conditions precedent to the refinance of the Loan.
- (iv) Exhibit D—contains the conditions precedent to all subsequent disbursements, other than the final disbursement.
- (v) Exhibit E—contains the Events of Default under the Development Agreement, and the remedies of the Lender.

(E) Accordingly, capitalized words and/or terms used throughout this Development Agreement indicate that the words and/or terms have been defined in Exhibit B, attached hereto and/or are set forth in the main body of the Development Agreement, and the words and/or terms shall be construed to have the meanings and statements as set forth. The definitions listed in the main body of the Development Agreement and in Exhibit B shall not be construed as limiting, undermining or modifying any of terms and conditions contained in any of the other Loan Documents, and shall have the meanings, interpretation and significance as defined, unless otherwise required by the context of the paragraph.

(F) The proceeds of the Loan, together with certain of the Borrower's Funds are to be used by the Borrower for the sole purpose (the "Purpose") of refinancing the Real Property which is to be subdivided into the Lots and to perform certain development work to finish the Lots, such that they are ready for the ultimate construction of dwellings at the Real Property (also referred to as the "Project") in accordance with the terms of the Construction Loan Agreement.

(G) To induce the Lender to make the Loan, the Borrower agrees to the terms and conditions in this Development Agreement.

WITNESSETH

In consideration of the Loan to the Borrower, the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. INTRODUCTION

1. *Incorporation of Recitals.* Each and every one of the Recitals stated above are hereby expressly incorporated herein by reference as if fully set forth in this Development Agreement.

2. *Specific Incorporation of Exhibits.* Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E attached hereto (collectively referred to as the "Exhibits") are hereby incorporated into this Development Agreement and expressly made a part hereof as if fully set forth herein. The Borrower's signature on the last page of this Development Agreement shall evidence Borrower's express acceptance and agreement with all of the terms, conditions, words and definitions set forth in this Development Agreement, which is hereby deemed to include each and every one of the Exhibits.

3. *Compliance With Loan Documents.* Borrower agrees and covenants to comply with and perform all of the terms, covenants and conditions of this Development Agreement and each and every one of the other Loan Documents.

4. *Use of Proceeds.* All Loan Disbursements shall be used by the Borrower for the specific Purpose stated herein, subject to the requirements of the Lender as set forth herein and in each of the other Loan Documents.

5. *Borrower As Fiduciary.* If Borrower receives the Loan Disbursements made under this Development Agreement, Borrower shall hold the funds advanced as a fiduciary prior to payment, and shall apply such advances to the payment of the legitimate Costs then due for the Work performed in connection with the development of the Improvements. Borrower hereby agrees, at any time and from time-to-time upon request of Lender, to exhibit to Lender receipts, vouchers, statements, bills of sale or other evidence satisfactory to Lender of actual payment of such Costs within ten (10) days after such request.

II. INITIAL ADVANCE

The Lender shall make an initial advance of Loan funds for refinancing the Property prior to the commencement of development in an amount that does not exceed \$1,975,574.00 (the "Initial Advance") provided however:

(A) Any Initial Advance may be reduced by any unavailability of the Borrower's Funds, or any other sources of repayment of the Loan (other than the sale of the Real Property) that were disclosed in the Financial Statements as determined by the Lender; and

(B) The Initial Advance is further subject to the Borrower remaining in compliance with all of the underwriting standards, representations and warranties made in connection with the Loan and the Loan Documents; and

(C) The Borrower shall provide the Lender on or around closing with evidence that it has invested the Borrower Equity (as defined below) into the Project. The Initial Advance may be paid directly to the Borrower's closing attorney, at the option of the Lender. All advances hereunder shall be deemed to be evidenced by Note 1 and secured by the Deed of Trust.

III. REQUIREMENTS FOR INITIAL ADVANCE

The Lender agrees to disburse the Initial Advance subject to the Borrower's compliance as determined by Lender, with all terms and conditions set forth in this Development Agreement, including each and every one of the Conditions Precedent To Initial Advance, set forth in Exhibit C, attached hereto and made a part hereof.

IV. SUBSEQUENT DISBURSEMENTS

The Borrower may submit (not more than twice a month) a properly completed Draw Application accompanied by the Inspection Fee (which may be deducted from each draw) for each subsequent Loan Disbursement under the Loan, in an amount which equals the lesser of: (i) the Completion Percentage as reasonably determined by Lender's Inspector, less all amounts previously advanced under the Loan, or (ii) the budgeted amounts available for the development of said Improvements under the Development Budget, as approved by the Lender. Requests for site development advances shall be supported by receipts for payment for labor performed and materials installed, or invoices for work performed, in a manner deemed sufficient by the Lender, provided however:

(A) The Borrower shall provide a detailed budget outlining costs, preliminarily budgeted as follows:

Land Advance*	\$	730,000
Engineering/Zoning		1,608,000
Lot Development Costs**		10,019,637
Storm Water Pond		475,000
Amenities		588,000
Marketing/Adm.***		0
Misc. Costs		150,000
Access Road		1,820,000
Landscaping		350,000
Interest Reserve****		650,000

* These Proceeds shall not be disbursed until the Lender has verified that at least \$2,000,000 of equity remains in the Lots, based on the appraisal provided to the Lender.

- **** The Borrower shall provide equity in the amount of \$659,105.00 toward the payment of Lot Development Costs, and this amount shall be generated by cash flow resulting from sales occurring at the Project, and represents a "back-end" equity requirement.
- ***** Six Hundred Fifty Thousand Dollars (\$650,000) shall be allocated by the Borrower to fund marketing/administration and other miscellaneous costs incurred in the initial phase of development at the Project, and the Lender shall not be required to fund any advance under the Loan for such purpose. Funding for this amount shall come from the Borrower's Equity.
- ****** Proceeds from the Loan shall be allocated by the Lender for the purpose of paying the monthly payments of interest coming due under Note 1 up to \$650,000. Nothing contained herein shall adversely affect the Borrower's obligations under any note.

All budgeted items are subject to verification by a consulting engineer, with requests for advances to be approved by the Lender's designated inspector and/or consulting engineer at a reasonable cost to be determined by the Lender, to be deducted from each draw;

(B) Any amounts necessary to effect corrections to the Work that arise from violations of building codes or structural defects, defective workmanship or materials, or other matters, may be deducted from a disbursement by the Lender; and

(C) In no event shall the total aggregate amount of any remaining disbursements for refinance and development exceed the lesser of: (i) the applicable Loan-To-Value Ratio as determined by an Appraisal, or (ii) \$ 9,000,000.00 outstanding at any one time (the "Development Disbursements").

(D) Disbursements from the Lender that comprise the Development Disbursements, shall revolve and when the Borrower shall repay any portion of the Development Disbursements, the Borrower may request subsequent disbursements for site development at the Project in accordance with the terms herein, provided however, in no event (i) shall the amount outstanding at any one time exceed \$9,000,000.00 and (ii) shall the total aggregate amount disbursed exceed \$16,390,637.00.

All subsequent Loan Disbursements shall be further subject to the Borrower's compliance with all of the terms and provisions set forth herein, including Exhibit D, and paying all of the remaining development Costs from the Borrower's Funds.

Within five (5) business days after approval of a Draw Application, which shall not be unreasonably withheld or delayed, Lender shall make a subsequent Loan Disbursement based on the Draw Application as approved by the Lender and on the terms and conditions of this Development Agreement.

V. LOAN LIMITATIONS

1. The Borrower shall restrict development to the Real Property and any off-site easements or construction as may be necessary to develop the Lots in accordance with the Purpose.
2. The Borrower shall demonstrate at closing to the satisfaction of the Lender, that it shall have invested a minimum of \$3,000,000.00 equity into the Project (collectively, the "Borrower's Equity"). Two million dollars (\$2,000,000) of the Borrower's Equity shall be demonstrated to be in the land at closing, and one million dollars (\$1,000,000) shall be allocated by the Borrower to fund marketing/administration and other miscellaneous costs incurred in the initial phase of development at the Project, and the Lender shall not be required to fund any advance under the Loan for such purpose.
3. As each section or phase of the Project receives final site plan approval from the County (the "Approved Section"), the Lender shall disburse development costs to the Borrower in connection

therewith, subject to the terms of this Development Agreement. On a case-by-case basis, however, if the Borrower requests additional development disbursements with respect to a section of the Project that has not received final site plan approval, the Lender, in its reasonable discretion, may disburse funds to the Borrower for the development of sections or phases that: (i) have received preliminary site plan approval, and (ii) are within sixty (60) days of receiving final site plan approval from all necessary government departments, as determined by the Borrower's engineers.

4. So long as: (i) the Borrower is not in default hereunder, (ii) the Borrower complies with the terms of the Deed of Trust, and (iii) the Borrower has paid to the Lender such other amounts as may be due the Lender under the Deed of Trust and in connection with all amounts advanced and remaining outstanding under the construction portion of the Loan in connection with the Lot to be released, the Lender shall permit a Lot to be released from the lien of the Deed of Trust, upon payment to the Lender of the following amounts (herein referred to collectively, as the "Partial Release Payment"):

- (a) \$75,000.00 per lot for each single family lot
- (b) \$55,000.00 per lot for each carriage home lot
- (c) \$45,000.00 per lot for each 20' wide town house lot
- (d) \$50,000.00 per lot for each 22' wide town house lot

5. The Borrower must have a binding commitment for development bonding prior to the date hereof, and said bonds for the Approved Section must be duly posted with the County of Prince William, and evidence of same provided to the Lender.

VI. GENERAL REQUIREMENTS

1. *Appraisal.* Lender shall order and shall have received at Borrower's expense prior to settlement, an Appraisal for Lender's use. The Lender may obtain at Borrower's expense an updated Appraisal of any part of the Real Property performed by a third party appraiser engaged directly by the Lender. Borrower shall disclose all known defects of the Real Property to the appraiser and provide the appraiser a copy of the Title Commitment.

2. *Financial Statements.* Borrower and Guarantors shall deliver to Lender its Financial Statements or other information at the times and for the periods that Lender may prescribe from time-to-time as long as the Loan remains outstanding.

3. *Insurance.* The Borrower shall have in effect all Insurance Coverage at the closing of the Loan. In the event of a major casualty loss, the Lender shall apply any proceeds received from Insurance Coverage in accordance with the applicable provisions set forth in the Deed of Trust.

4. *Commencement; Development.* Borrower shall commence development of the Improvements as promptly as is practical, and shall continue such development with reasonable diligence and dispatch, pursuant to the Development Schedule. Development shall be performed in accordance with the Plans and Specifications, the Contracts, and the Development Budget and the Lender shall not be obligated to review any proposed change unless it has received a Change Order in a form, substance and containing such evidence as is satisfactory solely to the Lender. All development shall be done in a good and workmanlike manner using new materials and first-class equipment, and be performed to meet or exceed all applicable building codes. Borrower shall disclose the existence of any cemetery and the areas of ingress and egress thereto, to the Lender and the Appraiser in writing, prior to commencing any construction, and shall not construct any Improvements near or around any cemetery or its areas of access. The Borrower shall not allow any development to disturb any "wetlands" that may be protected under Federal and/or state laws that require a permit for such disturbance, except as may be authorized under Corps. of Engineers permit.

5. *Plans of Development; Contracts.* The Improvements shall be constructed by the General Contractor after obtaining all necessary Building Permits. Borrower assumes responsibility for complying with all of the terms and conditions of this Development Agreement, including compliance with the Plans and Specifications, the restrictions governing the Real Property, with all laws, government requirements, building codes, and sound engineering practices.

(a) A master set of Plans and Specifications shall have been delivered to the Lender and shall govern all questions that may arise with respect to the construction of the Improvements. Each page of the Plans and Specifications has been identified and approved by Lender and Borrower. No substantive changes to the Plans and Specifications shall be effective unless requested by Change Order and approved by the Lender.

(b) If requested by Lender, a master copy of all Contracts shall have been delivered to the Lender and shall govern all questions that may arise with respect to the development and construction of the Improvements.

(c) The Borrower shall diligently work to record each Approved Section for the Property and shall meet all government requirements for the timely recordation of each Approved Section. In no event shall the legal subdivision of the entire Property be recorded later than 210 days after the date hereof.

6. *Development Budget Constraints.* The Lender shall not be required to: (a) make any advance for any Costs not set forth in the Development Budget, (b) make any advance for any line item in the Development Budget that, when added to all prior advances for that line item, would exceed the lesser of (i) the actual cost incurred by Borrower for such line item, or (ii) the sum allocated in the Development Budget approved by the Lender for such line item, or (c) make any advance for any contingency line item unless Lender consents to such advance in its sole discretion. Without prior written approval of Lender, whose approval shall not be unreasonably withheld, Borrower shall not reallocate unused Loan funds from one Development Budget line item to another or otherwise amend the Development Budget.

7. *Reports and Vouchers.* If requested by Lender, Borrower shall promptly deliver to Lender: (i) copies of those Engineering Reports, title reports, studies, inspections and tests made on the Real Property, the Improvements or the materials, and (ii) any Contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles to be incorporated into the Improvements.

8. *Secured Advances.* All Loan Disbursements made by the Lender to the Borrower hereunder shall be: (i) subject to the Loan-To-Value Ratio, and (ii) secured by the Deed of Trust and each of the Loan Documents. Lender does not intend to make any unsecured advances to the Borrower under the Loan.

9. *Inspection.* Prior to any Loan Disbursement, the Inspector may enter the Real Property at any reasonable time to inspect the Improvements which have been satisfactorily completed and to determine the Completion Percentage. The Lender may enter upon the Real Property to inspect the Real Property, the Improvements and any materials at any reasonable time. Borrower will make available to Lender upon reasonable notice for inspection and copying, all Plans and Specifications, drawings, books and records, and other documents and information required by Lender.

10. *Termination of Loan Disbursements.* In addition to all other rights of the Lender granted under any of the Loan Documents to terminate Loan Disbursements, the Lender's commitment to make Loan Disbursements shall expire and terminate: (i) automatically after the Final Disbursement, (ii) automatically if the Loan is prepaid in full and the Deed of Trust is released after Project completion, (iii) in the event the outstanding Loan Amount exceeds the Loan-To-Value Ratio at any time which is not cured by the Borrower, as determined by the Lender, after notice thereof, (iv) if the

Improvements are completed for an amount less than the Development Budget, or (v) the Borrower defaults under this Development Agreement or under any of the other Loan Documents, that continues after the expiration of any applicable notice and cure period.

11. *Borrower To Cover Deficiency.*

(a) If at any time the remaining portion of the Loan not yet disbursed is determined to be less than the remaining development costs required for completion of construction of the Improvements, as estimated by the Inspector and/or Lender (the "Deficiency"), and Lender has given Borrower twenty (20) days notice thereof, Lender shall not be required to make any Loan Disbursements under the Loan, unless the Borrower first deposits the Borrower's Funds (or provides adequate assurances to the Lender of the immediate availability of the Borrower's Funds) in the amount of the Deficiency. Any amount deposited by Borrower with Lender to pay the Deficiency shall be applied, to pay the deficiency amount of the remaining Costs of constructing the Improvements. Notwithstanding any of the provisions of this Development Agreement, the Lender shall also have the right to withhold from any Loan Disbursement an amount sufficient to cover: (i) the Deficiency or any unpaid balance of the Costs to complete the Project, or (ii) any surplusage resulting when all Loan Disbursements, total more than the actual construction Costs incurred (or to be incurred) by the Borrower.

(b) Any amount deposited by the Borrower with the Lender in the amount of the Deficiency, shall be deposited with the Lender in an account which shall be deemed to be a General Account.

(c) The Borrower hereby unconditionally grants, pledges, assigns, transfers and conveys to the Lender all funds and interest deposited in the General Account, together with all of the Borrowers right, title, interest and estate in and to the General Account, as additional collateral and security for the Loan, and hereby further expressly grants in favor of the Lender, the full and unconditional right of setoff thereto.

12. *Completion.* The Borrower shall complete construction of all the Improvements free and clear of all liens except the Loan Documents, on or before the Completion Date subject to any Excusable Delays. Excusable Delays shall not extend the Completion Date unless the Lender provides written approval in its reasonable discretion, and the Borrower continues to comply with all provisions set forth in the Loan Documents. Except as otherwise provided under the Notes, Lender is under no obligation to extend the Completion Date. Borrower shall correct, using Borrower's Funds, any: (A) material defect in the structure or Improvements, (B) material deviations from the Plans and Specifications, and (C) encroachments or setback violations that are necessary prior to completing construction of the Project.

13. *Storage of Materials.* The Borrower shall cause all materials intended to be utilized in the construction of the Improvements, and when delivered, to be stored on the Real Property, with adequate safeguards.

14. *Payment.* Lender shall make Loan Disbursement checks payable to the Borrower, but reserves the right, for good cause shown, in Lender's reasonable discretion, to make Loan Disbursement checks payable: (A) solely to the closing attorney, (B) solely to the Title Company to be disbursed to those contractors and materialmen entitled to payment, or (C) jointly to the Borrower and the persons entitled to payment. Any advance requested by Borrower may be deposited with the Title Company pending the appropriate endorsement to the Title Policy. If Lender chooses not to deposit any Loan Disbursements with the Title Company, advances shall be made at the principal office of Lender or at such other place as Lender may from time to time designate.

15. *Loan Expenses:* Except for items to be paid for loan proceeds per the Loan budget, all fees, premiums, expenses and charges incurred in procuring, processing and administering the Loan, including without limitation charges for the Title Policy, title examination, title bring downs, title endorsements, inspections, surveys, recordings, taxes, Lender's reasonable attorneys fees, Lender's fees,

service charges, closing attorney, Borrower's attorney, Insurance Coverage, real estate taxes, assessments, engineers, architects, water, sewer, utilities, brokers, liens, encumbrances, Work corrections, Loan Document modifications, broker's fees and any other matters in connection with the Real Property, the Project, the Improvements and the Loan, shall be paid for by the Borrower. All such amounts shall be paid by the Borrower when due, or, subject to Borrower's approval (not to be unreasonably withheld) Lender may, at its option, deduct any amounts necessary for the payment of these items from any Loan Disbursement. All sums so applied shall be deemed advances under this Development Agreement and secured by the Loan Documents.

16. *Loan Fees.* The Borrower agrees to pay the Loan Fees in addition to any loan fees charged in the Construction Loan Agreement.

17. *Construction Consultant.* Lender, only upon the reasonable determination that it is necessary, may hire, at the cost and expense of the Borrower, any engineer, architect or consultant that Lender considers necessary or useful to assist the Lender in performing any of its rights and obligations under this Development Agreement (the "Construction Consultant"). The services of the Construction Consultant are confidential and solely for the benefit of Lender and Borrower in administering the Loan, and shall not be disclosed to any other party.

18. *Deposit of Funds.* The Borrower agrees that it shall use the Borrower's Funds for paying for the balance of any and all development costs in excess of the development disbursements in connection with the development of the Real Property, and shall deposit with the Lender the Borrower's Funds if the actual Costs exceed the Loan Disbursements, or the projected Costs will exceed the unadvanced portion of the Loan to which Borrower is entitled, in the amount of the Deficiency as determined by the Lender, with interest earned thereon, if any, to be part of the Borrower's Funds. The Borrower's Funds shall be deposited with the Lender into a General Account. Upon a Default, Lender may (but shall have no obligation to) apply all or any part of the Borrower's Funds against any unpaid indebtedness arising under any of the Loan Documents, in such order as Lender determines. Lender may apply all or a portion of the Borrower's Funds prior to any Loan Disbursement.

19. *Pledge and Use of Deposited Funds.* The Borrower hereby unconditionally grants, bargains, conveys, pledges, assigns and transfers the General Account and the Interest Reserve, any and all funds deposited therein (together with any interest earned thereon) in favor of the Lender as additional collateral for the Loan, and hereby grants, bargains, assigns, and conveys in favor of the Lender a security interest therein, together with the unconditional and immediate right of setoff thereto, in the event of a Default as defined herein. In addition, in the event the Borrower fails to complete the development of contemplated Improvements within the budgeted amounts set forth in the Development Budget as approved by the Lender, and after twelve (12) days advance notice from the Lender, fails to commence completion using Borrower's Funds, or thereafter, fails to diligently pursue completion using Borrower's Funds, the Borrower hereby grants the Lender the right, at its sole option, (but not the obligation) to pay for the completion of the development of Improvements contemplated by the Lender, and/or use the proceeds that remain in any and all accounts to pay down any fees, costs, accrued interest and/or principal that remains due and outstanding under the Loan.

VII. CONDITIONS TO FINAL ADVANCE

Remaining Loan proceeds shall not be disbursed, unless all requirements specified in Exhibits C and D hereof shall have been (and continue to be) satisfied, and:

- A. The Lender has received the Certificate of Completion from the General Contractor;
- B. The Improvements including any off-site Improvements have been completed with new materials, in a good and workmanlike manner substantially in accord with the Plans and Specifications, and in accordance with all applicable laws and regulations;

C. Evidence satisfactory to Lender that all Work and Improvements requiring inspection by governmental or regulatory authorities having or claiming jurisdiction has been duly inspected and approved by such authorities having or claiming jurisdiction;

D. Two (2) copies of the "as-built" Physical Survey dated within thirty (30) days of the request for the final advance, and executed by a certified land engineer in a form and substance acceptable to Lender and the Title Company, which in addition to any other requirements imposed herein, shall clearly designate (1) the location of the perimeter of the Real Property by courses and distances; (2) the location of all easements, cemeteries, rights of way, alleys, streams, waters, encroachments, fences, parking lots and spaces, and means of ingress and egress, together with the deed book and page number indicated; (3) the location of all building restriction lines and setbacks, however established; (4) the location of any streets or roadways abutting the Property; (5) the "as-built" location of any on-site and off-site easements, rights of way, building restriction lines and applicable setbacks and their relation by feet and inches to the perimeter of the Property; (6) encroachments on any easements, rights of way, flood prone areas, restricted areas, the Real Property, or onto adjoining premises, (7) the flood zone areas, and (8) such other matters as Lender may reasonably require, including certification to the Lender and the Title Company as to the correctness, accuracy, location and statements made, and that no part of the Real Property is located in an identified flood hazard area; and

E. A final endorsement to the Title Policy is obtained containing no exceptions unacceptable to Lender, insuring Lender in the full Loan Amount, an endorsement removing any exception for mechanics or materialmen's liens or pending disbursements, and with no additional title changes or exceptions objectionable to Lender.

VIII. MISCELLANEOUS

1. *Representations and Warranties.* Borrower represents and warrants that: (i) a copy of any Contract furnished or to be furnished to Lender is and shall be a true and complete copy thereof, (ii) that the copies of the Plans and Specifications to be delivered to Lender are and shall be true and complete copies, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that the Borrower's interest therein is not subject to any claim, setoff, or encumbrance, (iii) that all of the real estate taxes have been paid with respect to the Real Property, and the Borrower has paid all taxes and governmental charges in connection with the construction of the Improvements thereby shown to be owing, (iv) the Plans and Specifications and the Contracts are satisfactory to Borrower, have been accepted by each contractor, are complete in all material respects, contain all detail necessary, are adequate for the construction of the Improvements, and comply with the Loan Documents, all applicable laws, restrictive covenants, and governmental requirements, rules, and regulations, (v) Borrower has obtained (or will obtain) a separate tax lot or lots with a separate tax assessment or assessments for each Lot, independent of any other lands or improvements, (vi) the Real Property and Improvements will comply with all laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property, (vii) the Plans and Specifications do, and the Improvements when constructed, will comply with all legal requirements regarding access and facilities for handicapped or disabled persons, if applicable, (viii) the Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, air rights, mineral rights or other similar rights, privileges or attributes with respect to the Real Property, including those arising under any zoning or land use ordinance or other law or governmental requirement, (ix) the Development Schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project, (x) the Financial Statements delivered to Lender are true and correct, and there has been no material change of Borrower's financial condition from the financial condition of Borrower indicated in any applications and Financial Statements previously submitted to the Lender,

(xi) all utility services necessary for the development of the Real Property and the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Real Property, including, without limitation, telephone service, and adequate drainfield sites, (xii) except as otherwise provided for in the Loan Documents, the Borrower has made no agreement or arrangement of any kind which would give rise to a lien on the Real Property, and (xiii) the Purpose of the Loan and the current or anticipated use of the Real Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Real Property, all use requirements, proffer statements and conditions of approval by any governmental authority having jurisdiction over the Real Property and the Project, have been satisfied, and no violation of any law or regulation exists with respect thereto.

2. *(Reserved).*

3. *No Liability To Lender For Approvals.* Notwithstanding any approvals, consents, or judgments made by Lender herein, Borrower agrees that Lender shall have no obligation, liability or responsibility whatsoever in the construction of the Improvements, or for the adequacy, quality, sufficiency, form or content of any of the plans, budgets, schedules, contracts, surveys, plats, changes, leases, or any other matter incident to the Real Property or the construction of the Improvements. Lender's acceptance of an assignment of the Plans and Specifications shall not constitute approval of the Plans and Specifications. Any inspection or audit of the Real Property or the books and records of Borrower, or the procuring of documents, Financial Statements, financial information and other data, by or on behalf of Lender shall be for Lender's protection only in the interests of Lender protecting its collateral, and shall not constitute any assumption of responsibility from Borrower or from anyone else with regard to the condition, construction quality, development, maintenance, location or operation of the Real Property, or relieve Borrower of any of Borrower's obligations under any of the Loan Documents. Borrower is hereby deemed to have selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project notwithstanding Lender's input. Lender has the right, but not the duty to supervise or to inspect the Real Property and the development of the Improvements. However, any such action is in connection with the Lender acting as a lender protecting the value of its collateral, and neither Lender, nor any of its Inspectors, Development Consultants, employees or agents has any duty of care to Borrower or to any other person to protect against, or inform Borrower or any other person of, the existence of negligent, faulty, inadequate or defective design or development of the Improvements. Lender shall not be liable or responsible for any defect in the Real Property or the Improvements, the performance or default of Borrower, Borrower's architect, engineer, contractor, the Development Consultant, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials, or services supplied for the development of the Improvements, or for the performance of any obligation of Borrower whatsoever. No action from the Lender, and no advance or acceptance of any document or instrument from the Borrower, General Contractor or any other party, shall be construed as a representation or warranty, express or implied, to any party by Lender. Inspection shall not constitute an acknowledgment or representation by Lender, its employees or the Development Consultant that there has been or will be compliance with the Plans and Specifications, Loan Documents, applicable laws and governmental requirements or that the construction is free from defective materials or workmanship. Inspection whether or not followed by notice of Default shall not constitute a waiver of any default then existing, or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications, Loan Documents, applicable laws, and governmental requirements. Lender's failure to inspect shall not constitute a waiver of any of Lender's rights under the Loan Documents or at law or in equity.

4. *Disclaimer.* Borrower acknowledges that Lender does not have among its investment department personnel, any architects, contractors, engineers or other construction related experts, and

that Lender does not claim to have any general or specific expertise in technical matters related to construction. Lender's inspection of any of the Plans and Specifications and Improvements is only in the capacity of a lender evaluating the value of the Project as security and collateral for the Loan. Lender has not reviewed such items in the capacity of an expert and any approvals given or objections withheld shall in no way constitute a warranty or endorsement of the technical soundness of the Project, whether as to the structure or components of same.

5. *Indemnity.* Except for willful misconduct, or gross negligence, the Borrower, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, jointly and severally, on behalf of Borrower, and its successors and/or assigns, (the "Borrower's Parties") do hereby remise, release, acquit, satisfy and forever discharge Lender and its BB&T Mortgage Division, and each one of its respective past, present and future subsidiaries, divisions, mortgage companies, affiliates, parent corporations, joint venturers, officers, directors, employees, agents, attorneys, representatives, participants, successors and assigns (collectively referred to as the "Entities") from any and all manner of action and actions, cause or causes of actions, suits, claims, unintentional torts, counterclaims, demands, damages, judgments, liabilities, contingent claims or contingent liabilities, debts, sums of money, attorneys fees, costs, accounts, covenants, contracts, controversies, obligations, agreements, promises, expenses, variances, trespasses, liens, and/or claims of lien of any nature whatsoever, whether at law or in equity, whether now accrued or hereafter maturing and whether known or unknown, which the Borrower's Parties (and any people comprising Borrower) now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world until two (2) years and one (1) day after the Loan is paid back to the Lender in full, arising out of or in connection with: (A) all of the Lender's obligations, duties, approvals, and decisions made in good faith pursuant to the terms and conditions of this Development Agreement (B) the inspections, discretions and approvals made or not made by the Lender in good faith hereunder, (C) the implementation, procedures, collections, administration, or actions taken by the Lender in good faith in accordance with this Development Agreement, (D) the remedies pursued by the Lender, and all actions in connection therewith taken by the Lender in good faith, as attorney-in-fact pursuant to this Development Agreement in the event of a Default, (E) the actions, decisions or remedies not taken by the Lender in good faith under this Development Agreement, and (F) all of the Borrower's obligations, duties and liabilities under the Loan Documents all of the Borrower's Parties hereby jointly and severally indemnify and hold each of the Entities harmless from same.

6. *Publicity.* Lender may announce and publicize the source of the financing contemplated by the Loan by the placement of a sign for display upon the Real Property, provided however, the Lender agrees to include its display on the Project marketing sign. Any such display shall be furnished by Lender. Borrower agrees to provide a prominent and suitable location for the display of the sign and to maintain the display of such sign for the duration of the construction on the Real Property or until the Loan has been repaid in full, whichever shall first occur.

7. *No Assignment.* Neither this Development Agreement nor the proceeds of the Loan shall be assigned by Borrower without the written consent of Lender, and any attempted assignment without such written consent shall be void and shall constitute an Event of Default.

8. *Notices.* All notices required or contemplated hereunder including all Exhibits, shall be in writing and shall be deemed to have been given properly when deposited in the United States Mail,

postage prepaid, certified or registered, return receipt requested, or when deposited with Federal Express or another comparable overnight express delivery service, addressed as follows:

To Borrower:

COMSTOCK BLOOMS MILL II, L.C.
11465 Sunset Hills Road
Suite 510,
Reston, Virginia 20190.
Attn. C. Clemente

To Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA
1308 Devils Reach Road
Woodbridge, Virginia 22192
Attn: J. Arvai

(or to such other address as may be specified by notice given as required herein).

9. *No Waiver Of Lender's Rights.* Notwithstanding anything in this Development Agreement or any other Loan Document to the contrary, Lender, in its sole discretion, may defer or relinquish any requirements hereunder, including without limitation any condition to any Loan Disbursement. However, no such deferral or relinquishment shall constitute a waiver of the Lender's right to invoke any of said requirements subsequently. Moreover, no delay, omission or acquiescence of the Lender to exercise 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. No delay or omission on the part of the Lender to exercise any rights or privileges herein, or any other option granted to the Lender hereunder in any one or more instances, shall constitute a waiver of any of such rights or privileges. Lender may make any advances or part of advances after the occurrence of a Default without thereby waiving the right to demand payment of the Loan and without becoming liable to make any other or further advances. If Lender makes advances before they are due in accordance with the Development Budget because Lender, in its sole discretion, believes it advisable so to do, such advances shall be deemed to be made in pursuance and not in modification hereof and shall not be deemed to be a waiver of any of the strict procedures, terms and conditions set forth in this Development Agreement. No acceptance by the Lender of any partial payment on account of the Loan in the event of a Default, shall constitute a waiver of any Default and all of Lender's rights and remedies shall remain continuously in full force and effect.

10. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Notes or in any of the other Loan Documents. Each and every remedy herein shall be cumulative, and shall be in addition to every other remedy given under any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Lender herein and in any of the other Loan Documents shall be concurrent and may be pursued separately, successively or together against the Borrower, or the Real Property or any part thereof, or any personal property secured by the Loan Documents, and every right, power and remedy given in any of the Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

11. *Further Assurances.* Borrower will, on request of Lender: (A) promptly correct any defect, error or omission in this Development Agreement or in any other Loan Document; (B) execute, acknowledge, deliver, procure, record or file such further documents and do such further acts deemed necessary, desirable or proper by Lender to carry out the purposes of the Loan Documents, (C) execute and deliver any renewals, continuation statements, additions, substitutions, replacements, or appurtenances to the Real Property or Loan Documents; (D) execute, acknowledge, deliver, procure,

file, record or re-record any document or instrument deemed necessary, desirable, or proper by Lender to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (E) provide such certificates, documents, reports, information, affidavits and other instruments and so such further acts deemed necessary, desirable or proper by Lender to comply with the requirements of any Federal agency having jurisdiction over Lender.

12. *Successor And Assigns.* This Development Agreement shall inure to the benefit of and be binding upon the parties hereto and their successor and/or assigns; but nothing herein shall authorize the assignment hereof by Borrower.

13. *Governing Law.* This Development Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

14. *Non-Merger.* The covenants of Borrower set forth herein and the terms and provisions of this Development Agreement shall survive the closing of the Loan, the recordation of any and all deeds and the delivery of the Loan Documents.

15. *Interpretation Among Documents.* In the event of any inconsistency or conflict between the Commitment and this Development Agreement, the provisions of this Development Agreement shall govern. Nothing herein shall be construed to limit or adversely affect in any way the terms and provisions of the Notes, and the rights and remedies of the Lender pursuant to the Deed of Trust.

16. *Construction Of This Document.* Words of any gender used in this Development Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. References to "money", "cash" "funds" "deposit" or other similar monetary terms are references to lawful money of the United States. References to persons shall include any legal entities, businesses, agencies and natural persons as the context may call for. The words "including" shall be interpreted as if followed by the words "without limitation" if those words are not present. Captions and headings in the Development Agreement are for convenience only and shall not affect construing this Development Agreement.

17. *Severability.* If any provision of this Development Agreement, or the application thereof to any circumstance, is deemed to be unenforceable, the remainder of the Development Agreement shall not be affected thereby and shall remain enforceable.

18. *Time Of The Essence.* TIME IS OF THE ESSENCE with respect to the performance of the Borrower's obligations hereunder.

19. *No Partnership.* Nothing in this Development Agreement or in any of the other Loan Documents shall be construed as making the Lender a partner, a joint venturer, having an association, or having a special relationship with any other party herein, or creating a principal-agent relationship or any other relationship except for that of "lender" and "borrower".

20. *No Lender Control.* The Borrower agrees that Lender's rights and interests under the Loan Documents, and the administration thereof, shall not be construed or deemed to indicate that the Lender is in control of the Real Property, the Project, construction, or the business operations of the Borrower.

21. *Counterparts.* This Development Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

22. *Written Agreement.* This Development Agreement, together with each of the Loan Documents constitutes the entire understanding and agreements between Borrower and Lender, and no prior oral statements shall be binding upon the Lender with respect to the matters addressed in the Loan Documents.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

(SIGNATURES FOLLOW NEXT)

WITNESS the following signatures:

Borrower:

COMSTOCK BLOOMS MILL, II L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By

Print:

Title:

EXHIBIT B

DEFINITIONS

1. *DEFINITIONS*: The definitions listed below are hereby incorporated into the Development Agreement, and shall provide the meaning and full significance to any word or words that are capitalized and not otherwise defined in the body of the Development Agreement:

A. *Activity*: See "Development Plan" herein.

B. *Appraisal*: The word "Appraisal" shall mean and refer to a report of value, and/or any updated value or new Appraisal, in a form and substance acceptable to Lender, in connection with the Real Property, which: (i) establishes the present "as-is" market value of the un-subdivided real property acceptable to the Lender, as determined solely by the Lender; (ii) establishes the value of the Real Property assuming the proper subdivision and/or timely completion of any Improvements to be constructed on the Real Property; and (iii) conforms in every particular with the appraisal standards established by the Lender.

C. *Architect*: N/A

D. *Assignment of Interests*: In addition to the definition in the Recital above, the words "Assignment Of Interests" shall refer the loan document entitled Assignment of Leases, Interests, Contracts, Plans and Profits, by which Borrower assigns to Lender all of Borrower's profits and interests in business entities, warranties, plans, plats, contracts for the Construction of the Improvements (as defined below), operating contracts, permits, subdivision rights, deposits, bonds and other matters in connection with the development, management and use of the Real Property, as additional security for the Loan.

E. (Reserved);

F. *Borrower's Funds*: The words "Borrower's Funds" shall mean and refer to the Borrower's: (i) cash or proceeds other than received from the Lender, (ii) other available funds shown on Borrower's application and Financial Statements relied upon by the Lender, and (iii) portion of the Real Property purchase price and development Costs of the Real Property which are scheduled to be paid by Borrower from non-loaned funds set aside and committed, in an amount satisfactory to the Lender.

G. *Building Permits*: The words "Building Permits" shall mean and refer to all necessary building, environmental, activity, well, septic and drainfield permits and authorizations from all necessary Federal, state and local authorities, allowing all development activities contemplated to proceed to completion and authorizing all on-site and off-site temporary and permanent easements and storm water management systems to be in place on the Real Property.

H. *Certificate of Completion*: The words "Certificate of Completion" shall mean a certificate executed by the General Contractor (as defined below) and the Borrower, certifying that the Improvements have been completed strictly in accordance with the Plans and Specifications and that no structural defects exist in the construction of the Improvements.

I. *Change Order*: The words "Change Order" shall mean and refer to any written request to allow any material additions, deletions, modifications, substitutions or extras to any Contract, the Plans and Specifications, or the Development Budget, in a form and substance acceptable solely to the Lender, where: (i) the request contains supporting documentation and information, (ii) the Borrower has obtained the approval of the General Contractor, the Architect, all applicable contractors, all sureties, and government entities, (iii) the structural integrity, quality and standard of workmanship of the Improvements is not impaired, (iv) no violation of any law or requirement

would result, (v) the Borrower is not doing so to cover any excess Costs of the Improvements, and (vi) the Completion Date will not be affected; all as determined by the Lender.

J. *Conditional Loan Fee:* N/A.

K. *Costs:* The word "Costs" shall mean all settlement costs and development, construction, material, labor and other costs in connection with the Work and the final completion of the Project through the maturity date of the Loan (as the same may be extended) after taking into account the requirements of this Development Agreement.

L. *Completion Date:* The words "Completion Date" shall refer to the maturity date set forth in the Note which is the last date by which the Borrower covenants and represents that the Improvements (as defined below) shall be properly developed on the Real Property, fully completed and ready for sale or use.

M. *Completion Percentage:* The words "Completion Percentage" shall mean and refer to the amount of the Improvements completed and installed on the Real Property in accordance with the Development Budget and Development Plan, expressed as a percentage of all Work remaining outstanding that is necessary and contemplated as reasonably determined by the Lender or Lender's Inspector.

N. *Contracts:* The word "Contract" or "Contracts" shall mean and refer to: (a) any written or oral contract sub-contract, purchase order or agreement for supplying or performing any Work for the development of the Improvements, (b) any management, leasing, maintenance or other agreement pertaining to the Real Property not described in clause (a) preceding this clause, or (c) the modification, amendment, or substitution of any such contracts.

O. *Deed of Trust:* In addition to the definition in the Recital above, the words "Deed of Trust" shall refer to the loan document entitled "This Is A Credit Line Deed Of Trust" of even date herewith, which grants the Lender a perfected first trust interest and encumbrance on the Real Property and the Improvements (as defined below).

P. *Default:* the word "Default" or the words "Event of Default" shall mean and refer to: (i) those breaches of the Development Agreement, continuing after the expiration of any applicable notice and cure period, that shall give rise to certain and specific remedies identified in the Development Agreement including all Exhibits, in favor of the Lender, in addition to all other remedies permitted by law or equity, and (ii) those breaches or defaults under any of the other Loan Documents, continuing after the expiration of any notice and cure period, which are hereby expressly deemed to be a default or an event of default under the Development Agreement.

Q. *Development Budget:* The words "Development Budget" shall refer to the approved projected construction cost breakdown by trade, and shall list each Activity and materials used in connection with the development, and shall include an itemization of Costs and estimates: (a) for each activity to complete the Work stage, (b) for each item of contract Work, (i.e. labor, supplies and materials) comprising each Activity (the "Items"), (c) on a per unit basis for each of the Items used, (d) cumulatively, for costs already incurred for each Item comprising each Activity, (e) for the type and quantity of materials stored at the Project, (f) for each type and quantity of materials used in each Activity, (g) for the balance of money needed to complete or finish each Item in connection with each Activity (h) for each contractor, sub-contractor and laborer used in support of each activity (i) for the total costs associated with the completion of each activity, and (j) as to the aggregate Costs associated with the completion of the stage and the Project; together with all copies of bids and executed Contracts and subcontractors in support of each cost breakdown.

R. *Development Plan*: The words "Development Plan shall mean and refer to the schedule for site development and construction of Improvements on the Real Property in a form, content, and detail satisfactory to the Lender.

S. *Draw Application*: The words "Draw Application" shall mean and refer to American Institute of Architects documents G-702 and G-703, entitled Application And Certificate For Payment, and Continuation Sheets, respectively, or any other letter or form acceptable to the Lender which must be properly completed and approved by the Inspector.

T. *Engineering Reports*: The words "Engineering Reports" shall mean and refer to written reports prepared by licensed, professional engineers acceptable to the Lender certifying that: (a) the subsurface conditions of the Real Property are suitable in all respects for the construction of the proposed Improvements thereupon, (b) all Improvements have been made in compliance with all building codes and restrictive covenants (c) no encroachments exist upon any easements, rights-of-way, or adjoining property, (d) all utilities required for use at the Real Property are available to the Real Property, and (e) such other engineering notes as the Lender may require.

U. *Environmental Report*: The words "Environmental Report" shall mean and refer to a final written report from an independent soil scientist or environmental engineer acceptable to the Lender, assessing surface and sub-surface conditions of the Real Property and surrounding areas to a degree and complexity acceptable to the Lender, with respect to the presence of any and all hazardous or toxic substances, as those terms are used by, implied or referenced in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the United States Department of Transportation Table, the Environmental Protection Agency, the Toxic Substances Control Act, or such other Federal, state or local agencies, regulations, acts, laws, or policies governing the disposal of hazardous substances and toxic substances.

V. *Excusable Delays*. The Words "Excusable Delays" shall mean unusually adverse weather conditions which have not been taken into account in the Development Plan, including events such as fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money) beyond the control of Borrower, not to exceed a total of twenty-five (25) days, provided Borrower promptly notifies Lender of the delays and

(a) Other than an individual:

(1) The words "Financial Statements" shall mean and refer to: (i) a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, (ii) a reconciliation of changes in equity, (iii) business entity tax returns, and (iv) a consolidation statement (if the Borrower is a holding or parent company); or

(b) An individual:

(1) The words "Financial Statements shall mean and refer to: (i) a balance sheet and statements of amount and sources of contingent liabilities, (ii) sources and uses of cash, (iii) individual tax returns, and (iv) Financial Statements of all entities owned by the Borrower; and

(c) Submitting Financial Statements to the Lender:

(1) All Financial Statements shall be in a form and detail satisfactory to Lender and shall contain or be attached to the signed, dated and written certification of the reporting party stating that Financial Statements constitute a true and correct statement of the reporting party's financial condition. All Financial Statements shall contain all reports and

disclosures required by accepted accounting principles, consistently applied, and certified to be true and correct by a corporate officer of the Borrower; and

(2) Items provided under the heading "Financial Statements" shall be in form and detail satisfactory to Lender.

X. *Financing Statements*: The words "Financing Statements" shall refer to any loan document or Uniform Commercial Code (UCC-1) statement that acts as a financing statement to be executed by the Borrower and filed in any and/or all of the appropriate local and central jurisdictions to perfect the security interests created in any of the Loan Documents.

Y. *Guarantor*: The word "Guarantor" shall mean and refer to each and every one of the following who shall execute a Guaranty Agreement (as defined below), and agree to jointly and severally guarantee repayment of the Loan and performance and completion under all of the Loan Documents:

Christopher D. Clemente
Gregory V. Benson
Comstock Holding Company, Inc.

Z. *Guaranty*: The word "Guaranty" shall refer to the loan document entitled "Unconditional Guaranty Agreement" by which each Guarantor unconditionally, jointly and severally guarantees the payment by Borrower of the Notes and the performance and completion by the Borrower of all obligations under the Loan Documents.

AA. *General Contractor*: The words "General Contractor" shall mean and refer to the Borrower, or any general contractor or successor general contractor first approved by Lender.

BB. *General Accounts*. The words "General Accounts" shall mean and refer to any account that the Borrower is required in this Development Agreement to open with the Lender, and each and every one of said accounts shall expressly be deemed to be "general accounts" and not "special accounts", such that funds may be setoff and commingled.

CC. *Improvements*: The word "Improvements" shall mean and refer to the Real Property and all work product and valuable additions benefiting the Real Property, currently affixed, to become affixed, or unique to the Real Property, now existing or hereafter acquired, to include but not be limited to any and all on-site and off-site storm water management systems, sewer and water systems, erosion control systems, excavation, cement, footers, foundations, pipe lines, plumbing, ingress/egress areas, roadways, driveways, pathways, culverts, dirt, gravel, septic fields, drainfields, curb and guttering, wells, water supplies, grading, sodding, seeding, shrubbery, trees, materials, supplies, parking facilities, fixtures, appendages, chattels, equipment, personal property, mixed property, goods, inventory, subdivision plats, site plans, zoning permits, building permits, bonds, surveys, structures, buildings and other facilities to be constructed in accordance with the Plans and Specifications.

DD. *Inspector*: The word "Inspector" shall refer to Lender's inspecting structural engineer, employee, agent or representative, to be appointed by and in the sole discretion of the Lender to inspect the Project.

EE. *Inspection Fee*: The words "Inspection Fee" shall mean and refer to an approximate charge of \$350.00 due and payable to the Lender, for each and every inspection visit, regardless of the number of lots inspected, and may at Lender's option, be deducted from the amount of any Loan Disbursement or advance under the Loan.

FF. *Insurance Coverage*: The words "Insurance Coverage" or "Insurance" shall refer to each and every policy of insurance that the Borrower is to have, or cause to have, in effect pursuant to

the Commitment, in connection with the Project, the Improvements and the Real Property, including but not limited to Title Insurance, builders risk insurance, workmens compensation insurance, liability insurance and flood insurance, and: (i) all policies must contain deductibles and/or co-insurance provisions acceptable to the Lender, and (ii) all policies must be underwritten by insurance companies acceptable to the Lender, and (iii) all policies must name the Lender as an additional insured and/or loss payee, (iv) all policies must contain a mortgagee clause granting coverage to the Lender and its successors and assigns, as their respective interests may appear, (v) all policies must provide that they shall not be cancelled unless the insurance company issuing such insurance policy shall first give the Lender at least thirty (30) days' prior written notice, (vi) the issuance and renewal of each and every insurance policy required hereunder, and the payment of the premium therefore, shall be performed by the Borrower with written notice to the Lender, and (vii) the Borrower shall deliver a copy of each such insurance policy to the Lender.

GG. *Loan Disbursements:* The words "Loan Disbursements" or "Loan Disbursement" shall mean and refer to any and all advancement of funds under the Loan Documents for the development Purpose stated, after all conditions precedent thereto have been met and satisfied as determined by the Lender.

HH. *Loan Documents:* The words "Loan Documents" shall mean and refer to any and all papers, letters, documents, instruments, agreements, statements, certificates, certifications, affidavits, and indemnities in a form and substance acceptable solely to Lender, and shall include but not be limited to this Development Agreement, the Commitment, the Notes, the Deed of Trust, the Assignment of Interests, the Construction Loan Agreement, agreements, disbursement and construction loan agreements, security agreements, hazardous waste indemnity agreements, credit agreements, unconditional guaranty agreements, financing statements, affidavits, compliance agreements, closing agreements, certificates, indemnities and certifications; and any and all amendments or modifications thereto.

II. *Loan Fees:* The words "Loan Fees" shall collectively mean and refer to a non-refundable loan fee which shall be deemed to be earned by the Lender as stated below, and shall be paid by the Borrower as follows:

(a) Three-quarters of one percent (0.75%) of the amount of each and every disbursement, shall be paid by the Borrower to the Lender at the time of such disbursement.

JJ. *Loan-To-Value Percentage:* The words "Loan-To-Value Percentage", "Loan-To-Value Ratio" or "Loan-To-Value Amount" may be expressed as a ratio, a sum or an amount but nevertheless shall mean that all aggregate advances made under the Loan shall never exceed seventy-five percent (75.00%) of the appraised value of the Lots, as determined by the Lender, and in addition, in no event shall any disbursements exceed 100% of the actual costs incurred, as determined by the Lender.

KK. *Non-Refundable Loan Fee.* See "Loan Fee".

LL. (Reserved).

MM. *Physical Survey:* The words "Physical Survey" shall mean and refer to a current of the Real Property, in a form and content acceptable to the Lender.

NN. *Plans And Specifications:* The words "Plans and Specifications" shall mean and refer to a complete and final set of professional engineering drawings, construction plans, and working plans and specifications relating to the development of the Project and construction of Improvements on the Real Property, containing all customary notes and professional details.

OO. *Plats and Plans:* The words "Plats and Plans" shall mean and refer to any and all elevation plats, dedication plats, declaration statements, subdivision plats, boundary line surveys,

site plans and all other submitted plans of development for recording and/or government approval in connection with the Project and the Real Property.

PP. *Project*: In addition to the definition in the Recital, the word "Project" shall refer to the Purpose, the Improvements, and Site Development activities contemplated herein.

QQ. *Stage*: See "Development Plan" herein.

RR. *Title Company*: The words "Title Company" shall mean and refer to that title insurance company acceptable to the Lender, issuing a mortgagee Title Policy (as defined below) insuring the Lender in the full amount of the Loan, and containing only those exceptions to title to the Real Property that are acceptable to Lender, as determined by the Lender in its sole discretion, as well as each endorsement to the coverage.

SS. *Title Policy*: The words "Title Policy" shall mean and refer to that commitment to issue a final mortgagee title insurance policy issued by the Title Company prior to any Loan Disbursement hereunder, pursuant to all of Lender's instructions and insuring that the Lender's Deed of Trust is a valid, first priority lien and encumbrance on the Real Property, without exception for matters of survey or possible unfiled mechanic's and materialmen's liens. Such title insurance shall be increased by written endorsement to cover the amount of every Loan Disbursement, be in a form and substance satisfactory to Lender, and contain such other endorsements as the Lender may require from time to time.

TT. *Work*. The word "Work" shall mean and refer to all contract work, sub-contract work, supplies, labor, services, materials, articles, property, products and any other trade work, material or thing in connection with the construction of all Improvements on the Real Property and development of the Project.

EXHIBIT C

CONDITIONS PRECEDENT TO INITIAL ADVANCE

Each and every one of the requirements listed in this Exhibit C is hereby incorporated into the Development Agreement as if fully set forth therein, and expressly deemed to be conditions precedent to be satisfied by the Borrower prior to the Lender becoming obligated to make the Initial Advance. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable to the Lender, and (ii) that compliance with each and every one of the requirements shall be determined by the Lender, in Lender's sole discretion, just as if this sentence were incorporated into each requirement listed. Accordingly, the Borrower agrees:

- A. To provide documentation that the Borrower: (a) has been duly formed and is validly existing under the laws of its state of formation, (b) has filed or recorded all necessary documents or certificates with all necessary government entities, (c) is in good standing and properly qualified to do business under the laws of the Commonwealth of Virginia, (d) is duly authorized to enter into all transactions contemplated by this Development Agreement and (e) has obtained formal resolutions authorizing the Borrower to enter into the Loan, accepting its terms, and specifying the names of all persons who have power to bind the Borrower and execute Loan Documents, and (f) such other certificates, resolutions, consents and agreements that Lender may require, and any partners of the Borrower (that are not a natural person) shall also comply with all of the above requirements;
- B. To provide accurate and completed Financial Statements to the Lender for the Borrower, or any other party required by any loan application or Commitment or otherwise required by Lender;
- C. To execute all Loan Documents, and deliver same to the Lender (or certified copies if originals are not available) and have all Loan Documents duly executed by all necessary signatories thereto, properly dated, with receipts (if available) of recordings in the proper jurisdictions and delivered to the Lender;
- D. (Reserved);
- E. (Reserved);
- F. That the narrative Appraisal of the Real Property shall be ordered by the Lender directly from an appraiser acceptable to it, and received in an acceptable quality by the Lender, and the Borrower shall have paid for the Appraisal and all costs incurred in connection therewith;
- G. To provide documentation that the Real Property complies with all applicable zoning ordinances, zoning offices, restrictive covenants and governmental requirements affecting the Real Property, and that the occupancy, use, and Purpose for which the Project and Real Property is intended is permitted, and that the Project and Real Property will comply thereto without the necessity of a variance, and will be within a conforming use;
- H. To provide a true copy of any and all proffers, proffer statements, letters or governmental requirements or conditions concerning the Real Property, the Project and the construction of the proposed Improvements on the Real Property, which shall be subject to approval by the Lender in its sole discretion;
- I. To provide evidence sufficient to Lender stating: (a) that all utility services in sufficient capacity necessary for the development of the Improvements and the intended use and operation of the Project are adequate and available at the boundaries of the Property, including water, on-site and off-site storm water management, on-site and off-site sanitary sewer facilities, gas and electric, (b) all impact fees, utility reservation deposits or connection fees required to assure the availability of such service, have been paid, and (c) that no utility moratorium imposed by any governmental authority having or claiming jurisdiction, is in effect;

J. To provide authorized copies of any and all Plats and Plans available in connection with the subdivision or use of the Real Property.

K. To provide an acceptable current Physical Survey of the Real Property of date acceptable to Lender,;

L. To provide an examination performed by the Title Company stating that: (i) no contract, or memorandum thereof, for construction, design, surveying, or any other service relating to the Project has been filed for record where the Real Property is located; (ii) no mechanic's or materialman's lien claim or notice, lis pendens, judgment, or other claim or encumbrance against the Real Property has been filed for record where the Real Property is located or in any other public record which by law provides notice of claims or encumbrances regarding the Real Property, and (iii) no financing statements, assignments or security agreements (other than the Lender's) have been filed for record anywhere, against any personal property comprising any of the collateral for the Loan, except as otherwise referenced in the Loan Documents (iv) no tax liens or judgments are filed against the Real Property, and all real estate taxes, both special and general, including any and all land use taxes coming due as a result of the purchase, have been paid, and (v) there are no other conditions unacceptable to Lender;

M. The Lender shall have received an acceptable commitment to insure title having no unacceptable exceptions, issued by the Title Company in the Loan Amount, all in a form and substance satisfactory to Lender, and showing Lender and its successors and assigns as their interest may appear, as the insured mortgagee and showing the Land Advance, and insuring among other things that: (i) the Deed of Trust is a valid first lien on the Real Property, and Borrower shall satisfy all requirements therefor, (ii) the Real Property has adequate ingress and egress, and Borrower shall satisfy all requirements therefor, (iii) the restrictive covenants have not been violated and a future violation will not cause a reversion of title, and Borrower shall satisfy all requirements therefor, (iv) there shall be no exception for rollback taxes, subsequent assessments for prior years, or for real estate taxes other than those for the year in which the closing occurs, to the extent the same are not then due and payable, and Borrower shall satisfy all requirements therefor, (v) there shall be full coverage against mechanic's and materialmen's liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor, (vi) a fee simple indefeasible or marketable fee simple title to the Real Property and Improvements is vested in Borrower, and Borrower shall satisfy all requirements therefor, (vii) insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Real Property and the Improvements as part of the insured estate, and Borrower shall satisfy all requirements therefor, and (viii) containing such other endorsements regarding Loan Disbursements acceptable to the Lender;

N. To provide evidence that all roads, right-of-ways and driveways for the full utilization of the Project, and ingress/egress to the Real Property for all intended purposes have: (i) if necessary, been platted, recorded, dedicated to public use, accepted by said state and local governments, and have been completed, or (ii) the necessary rights and dedications for access to the Property have been granted by the appropriate state and local government authorities and all recordings and bonds have been filed to assure the complete construction and installation thereof, and the Borrower shall disclose all financial obligations and conditions imposed in connection with any dedications, roads and approvals contemplated herein;

O. To provide a complete set of functional and final Plans and Specifications (if not available at closing, as they become available) together with such evidence as Lender may require to demonstrate that the Plans and Specifications have been or will be approved by all governmental and quasi-governmental authorities having or claiming jurisdiction over them;

P. If requested by Lender, to provide a soil report regarding soil composition, soil construction notes, substance, borings and narration on buildable areas and such other acceptable

reports, writings or opinions, and performed by a licensed engineer and/or land surveyor acceptable to Lender;

Q. If requested by the Lender, to provide written evidence from an authorized government agency, or other individual, acceptable to Lender, that the Project, all proposed Improvements, and all contemplated construction activities are not in violation of any tidal or non-tidal "wetlands" act, or any successor acts or any other similar wetlands, ecological or environmental laws or acts, and the Real Property contains no "resource management areas", or environmentally protected soils, such that all contemplated construction activities and uses can be commenced and completed as planned;

R. To provide copies of all Building Permits and similar permits, as and when they become available, that are required in connection with the development of the Real Property or construction of the Improvements, together with evidence to ensure that all fees for such permits have been paid;

S. To provide an accurate and complete Development Budget, together with (if received) all bids and contracts in support thereof. The Development Budget shall be updated as required by Lender, and, at Lender's option, the Borrower shall have an Engineer certify that the Costs listed in the Development Budget are adequate to cause the Improvements to be completed in accordance with the Plans and Specifications;

T. If requested by Lender, in addition to the General Contractor, to provide a list containing the names and addresses of all existing contractors, subcontractors, engineers, materialmen and other suppliers of services and materials for the Project, and a copy of their contracts. This list shall be updated at the time of each Loan Disbursement so that it is complete and accurate;

U. If requested by Lender, to obtain from each contractor, architect, engineer, subcontractor, or supplier of services or materials required by Lender, duly executed, acknowledged and delivered original lien waivers, or agreements satisfactory to Lender acknowledging payment, and to the extent payment is received, to subordinate all rights, liens, claims and charges they may have against Borrower or the Real Property, to the rights, liens and security interests of Lender, and delivering same to the Lender;

V. If requested by Lender, to provide an acceptable Development Plan along with the Workers and Suppliers List Requirements; 27

W. (Reserved);

X. To provide all Insurance Coverage, policies and all paid receipts for premiums in connection with the Project, the Improvements and the Real Property;

Y. To provide copies or proof of all necessary performance bonds, completion bonds and dual obligee performance and payment bonds, as and when they become available, together with a surety acceptable to the Lender;

Z. To provide the Lender all of its Loan Fees, and reimbursements in full for all Appraisal fees, attorneys fees and any other expenses incurred by the Lender in connection with the Loan;

AA. To provide an acceptable, properly executed Draw Application; and

BB. That the Borrower is in compliance with all of the terms and conditions contained in all of the other Loan Documents, and no Default or Event of Default shall be committed or now exists under any of the Loan Documents, or with the giving of notice and/or the lapse of time could become a Default;

EXHIBIT D

CONDITIONS PRECEDENT TO SUBSEQUENT LOAN DISBURSEMENTS

Each and every one of the requirements listed in this Exhibit D is hereby incorporated into the Development Agreement as if fully set forth therein, and expressly deemed to be conditions precedent of the Borrower, prior to the Lender becoming obligated to make any subsequent Loan Disbursement after the Initial Advance. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable solely to the Lender, and (ii) that compliance with each and every one of the requirements listed below, shall be determined by the Lender, in Lender's sole discretion, just as if this sentence were incorporated into each requirement listed below.

Accordingly, in addition to all of the Conditions Precedent To The Initial Advance, and in addition to all other requirements contained in any of the Loan Documents, the Borrower agrees that no subsequent Loan Disbursement under the Development Loan shall be advanced unless the following conditions precedent are satisfied as determined by the Lender:

- (A) All of the Conditions Precedent To The Initial Advance as set forth in Exhibit C have been (and continue to be) satisfied by the Borrower;
- (B) No Event of Default exists under any of the Loan Documents;
- (C) The representations and warranties made herein, and in each of the Loan Documents continues to be true and correct on and as of the date of any subsequent Loan Disbursement;
- (D) No hazardous waste has been discovered on the Real Property;
- (E) The Title Insurance shall have been endorsed and "down-dated" in a manner satisfactory to Lender to increase the coverage by the amount of each Loan Disbursement through the date of each such advance with no additional or subsequent title change or exception not approved by Lender;
- (F) The Lender or its Inspector has not determined that the undisbursed proceeds of the Loan will be insufficient to pay the Costs required for completion of the Improvements, and the Borrower has not funded the Deficiency after requested to do so;
- (G) When reasonably requested, the Lender shall have received the updated Physical Survey;
- (H) The Improvements shall not have been damaged and not repaired;
- (I) Borrower shall have paid with the Borrower's Funds, all amounts required hereunder to be paid by Borrower;
- (J) Borrower's project engineer shall provide Lender with a letter confirming that development costs (submitted to the Lender) are realistic indications of the cost to complete; and
- (K) The Borrower has delivered to Lender such other information, documents, updated lists and other information as may be reasonably required by Lender; and

EXHIBIT E

EVENTS OF DEFAULT AND REMEDIES AVAILABLE TO LENDER

Each and every one of the terms and provisions listed in this Exhibit E is hereby incorporated into the Development Agreement as if fully set forth therein.

EVENTS OF DEFAULT

Any one of the following events below shall constitute a breach of this Development Agreement and be deemed to be an Event Of Default:

A. If the Borrower fails to timely construct Improvements in accordance with the Plans and Specifications for the Purpose stated herein, substantially within the Development Budget;

B. If at any time there is discovered or created a material defect in title to the Real Property which is not cured or insured over to the reasonable satisfaction of Lender within thirty (30) days after the giving of notice thereof (provided however, if the defect is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said defect);

C. If the Improvements or any portion thereof violate any setback restriction, however created, or the requirements of any governmental authority having jurisdiction, or any adjoining structure encroaches upon the Real Property or on any easement appurtenant thereto to an extent deemed material by Lender's attorneys, and the encroachment or violation is not removed within thirty (30) days after the giving of notice thereof (provided however, if the encroachment or violation is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said encroachment or violation);

D. If Borrower does not erect and equip the Improvements substantially in accordance with the Plans and Specifications and with all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if at any time it becomes apparent, in Lender's judgement, that the Improvements will not be completed by the Completion Date;

E. If Borrower does not permit Lender to enter upon the Real Property to make Inspections of the Real Property, the Improvements and any and all materials to be used in connection with the construction thereof, and to examine all details, plans, shop drawings and similar materials relating to the development of the Project;

F. If for any reason whatsoever Borrower abandons the Project, or the construction of the Improvements is at any time in the reasonable judgement of Lender, discontinued or not carried on with diligence and dispatch;

G. If Borrower fails to comply with any requirement of any government authority having jurisdiction within thirty (30) days after the giving of notice thereof;

H. If following demand by Lender: (i) Borrower fails to promptly correct or cause the correction of any defects in the Improvements, or (ii) Borrower materially departs and deviates from the Plans and Specifications, without prior written approval from Lender;

I. If Borrower assigns this Development Agreement or any interest herein, or if the Real Property or Improvements are conveyed or encumbered in any way without the prior written consent of Lender;

J. If, without approval from the Lender, the Borrower executes any other security agreement, which affects any materials, equipment, fixtures or articles used in the construction or operation of the Improvements or articles of personal property located on the Property, or if any such materials, fixtures or articles are purchased in a conditional sales transaction or otherwise so that the ownership thereof will not vest unconditionally in Borrower, free from encumbrance, on delivery at the Real Property;

K. If within thirty (30) days after written request by Lender, Borrower does not furnish to Lender on request the contracts, bills of sale, statements, receipts vouchers and agreements, or any of them under which Borrower claims title to materials, fixtures, and articles comprising the Improvements;

L. If within thirty (30) days after written request by Lender, Borrower fails to furnish Lender with Financial Statements and such other statements as Lender may reasonably require to determine the financial condition of Borrower;

M. If Borrower fails to pay when due all bills for Work performed in connection with the development of the Real Property and construction of the Improvements;

N. If Borrower fails generally to pay their debts when due; or if there is filed by Borrower a petition in bankruptcy under any of the provisions of the United States Bankruptcy Act, as amended, or under any similar state or federal law, or a petition for the appointment of a receiver or trustee of the property of Borrower; or if Borrower makes a general assignment for the benefit of creditors or makes any insolvency assignment or is adjudged insolvent by any court of competent jurisdiction; or if there is filed against Borrower a petition in bankruptcy or for the appointment of a receiver which involuntary petition is not dismissed within forty-five (45) days thereafter;

O. If Borrower shall not deposit with Lender any portion of the Borrower's Funds if required hereunder, and when requested by the Lender within ten (10) days after Lender has notified Borrower to deposit the Borrower's Funds;

P. If any indebtedness due under either of the Notes or under any of the other Loan Documents, is not paid in full when due;

Q. If any covenant or agreement herein is not fully and timely performed, observed or kept;

R. If the Borrower fails to comply with any: (i) of the conditions precedent to the obligation of Lender to make any Loan Disbursements hereunder, or (ii) of the terms and provisions of any of the other Loan Documents;

S. Construction is enjoined or prohibited for a period exceeding thirty (30) days for any reason through no fault of the Lender;

T. A mechanics lien, materialmen's lien or judgment lien is established against the Real Property, and remains unsatisfied, unpaid or unsatisfactorily bonded with, and insured over by, a Title Company for a period of thirty (30) days after the date of attachment to the Real Property;

U. The Lender has determined that a material adverse change has occurred in the financial condition of the Borrower or in the condition of the Real Property, and Borrower has not remedied same to the reasonable satisfaction of the Lender within 20 days after notice thereof;

V. If the Real Property is found to contain any hazardous waste, hazardous substance or toxic waste as those terms are contemplated in any of the Loan Documents, that is not immediately cleaned up by the Borrower, to the reasonable satisfaction of the Lender;

W. If the Borrower causes a breach of any contracts or agreements that the Lender has contemplated and/or relied upon in its underwriting analysis of the Loan;

X. If the Real Property is not subdivided within 210 days from the date hereof, and fails to yield the minimum number of Lots contemplated herein, and Borrower does not provide a sufficient amount of additional cash, or collateral in a form and substance reasonably acceptable to the Lender;

Y. If the Borrower commits an event of default under any of the Letter of Credit Documents evidencing the Letters of Credit; or

Z. If Borrower breaches, or commits a default or an Event of Default under the Construction Loan Agreement, or under any one of the other Loan Documents.

A default by the Borrower under any of the Letter of Credit Documents, or under any of the other Loan documents shall automatically be deemed to be a default under this Development Agreement, and an Event of Default under this Development Agreement, after the expiration of any applicable notice and cure period, shall automatically be deemed to be a default under each and every one of the other Loan Documents, and a default under the Letter of Credit Documents.

REMEDIES OF THE LENDER

Upon an Event of Default, the Lender shall mail notice of the default to the Borrower (at Borrower's address herein), and the Borrower shall have fifteen (15) days from the date of mailing notice for any monetary-related default, and thirty (30) days from the date of mailing notice for any non-monetary default, to cure said default (provided however, if the non-monetary default is not reasonably capable of being cured within said 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice to cure said non-monetary default), whereupon, if remaining uncured at the expiration thereof, the Lender shall immediately be entitled to all remedies as stated herein, in addition to all other remedies provided to Lender under any of the Loan Documents, and under the law or rules of equity, and Lender may, at its election, but without any obligation to do so, without further notice, enjoy any or all of the rights, powers, privileges and remedies listed below, all at the sole cost and expense of the Borrower:

SPECIAL REMEDIES

In furtherance of the remedies herein provided to the Lender, the Borrower hereby expressly grants, empowers, authorizes and consents to the Lender, its successors and/or assigns, by and through any of its officers, attorneys, employees, agents and contractors, with the full unconditional right, power, privilege and authority, doing any one or all of the following upon the occurrence of an Event of Default, and expiration of any applicable notice and cure periods:

(A) Enter upon and take possession of the Real Property and the Project at any time, without any advance notice to the Borrower whatsoever, and to take control of the Real Property;

(B) Perform any and all Work that is reasonable by the Lender, or that is necessary to complete the Improvements as contemplated herein, or to terminate any Work being performed, and take whatever other action may be necessary or desirable, in the sole opinion of the Lender;

(C) Perform all Work necessary to complete the construction of the Improvements substantially in accordance with the Plans and Specifications, Contracts, Loan Documents, and governmental requirements, or in accordance with any modifications or Change Orders thereto, as deemed necessary or desirable solely by the Lender, and continue to employ Borrower's architect, engineer, and any contractor pursuant to the applicable Contracts, or otherwise;

(D) Use and apply any General Accounts, deposits, funds, money, or assets, or make any Loan Disbursements as are necessary to: (i) to pay down the balance of the Loan, (ii) stabilize and secure the Project, the Improvements and/or the Real Property, or (iii) to complete development or construction;

(E) Set-off any and all General Accounts, Borrower's Funds and any other deposits, funds, money, assets or other indebtedness against the Loan;

(F) Make such Change Orders or corrections in the Plans and Specifications and Contracts as the Lender may deem acceptable in its sole discretion;

(G) Employ such architects, engineers, trustees, agents, consultants, managers and contractors as may be required by the Lender for the purpose of: (i) advising the Lender and assessing any problems, (ii) completing the construction of the Improvements substantially in accordance with the Plans and Specifications (as modified as deemed necessary by Lender), Loan Documents, laws and governmental requirements, or as otherwise may be necessary or desirable for purposes of completing such development, (iii) operating, managing, leasing, controlling and running the Project and/or the Real Property and reviewing the books and records of the Project; (iv) assessing Lender's rights and options, and/or (v) stabilizing the Project;

(H) Do every act with respect to contracting for the Work, constructing the Improvements on the Project, executing Building Permits, plats, site plans and government approved or required prints and papers, and all such other acts, or no such other acts, which Borrower may do in connection with the Real Property and the Project on terms acceptable to the Lender;

(I) Prosecute legal action, hire legal counsel and defend and compromise any claim, action or proceeding incident to the Real Property, the construction of Improvements and the development of the Project as the Lender deems proper; and/or

(J) Pay, settle, or compromise all bills and claims so as to clear title to the Real Property in an amount and on such terms as the Lender deems proper;

(K) Seek a refund of all monies paid by the Borrower to any government or business entity, to which the Borrower may be entitled and apply said amount against the outstanding indebtedness in accordance with Loan Documents;

(L) Take over, liquidate and/or use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements; and

(M) Take such other and further action that is ancillary thereto and in furtherance of the rights, powers, privileges and remedies granted under this Special Power of Attorney, and in the Development Agreement, all on terms, conditions and amounts deemed satisfactory solely to the Lender, and this provision shall be construed liberally and in the broadest sense in favor of the Lender, to hereby provide the Lender with all such rights, power and authority as is necessary and/or desirable to further the purpose, remedies and privileges set forth herein.

OTHER REMEDIES

In addition to the above rights and remedies the Lender shall have any and all of the remedies listed below:

- (1) Terminate its commitment to make Loan Disbursements under the Loan and terminate any Loan Disbursement pending;
- (2) Terminate any obligation to disburse any of the Borrower's Funds hereunder;

- (3) Reduce any claim to judgment;
- (4) Exercise any and all rights and remedies afforded by this Development Agreement, the other Loan Documents, and/or at law, equity or otherwise;
- (5) Set-off and apply, to the maximum extent permitted by law, any and all General Accounts and any other deposits, funds, Borrower's Funds, or assets (or any indebtedness at any time owing by Lender to or for the credit or account of Borrower), against the Loan and any indebtedness due the Lender and remaining outstanding under any of the Loan Documents; and
- (6) Accelerate the Notes, and foreclose under the terms of the Deed of Trust.

SPECIAL POWER OF ATTORNEY

The Borrower hereby irrevocably makes, constitutes and appoints the Lender, by and through any of its loan officers, (any one of which has full power to act) as the Borrower's duly appointed agent and/or Attorney-In-Fact, (collectively, the "Attorney In Fact"). Any loan officer of the Lender shall have full power and authority on behalf of the Lender to act as the Borrower's Attorney In Fact. This power of attorney and appointment is irrevocable and coupled with an interest, and shall not terminate upon the disability, insolvency or dissolution of the Borrower in accordance with the Code of Virginia, 1950, as amended. Upon the occurrence of an Event of Default, after the expiration of any applicable notice and cure periods, the Attorney In Fact shall have the right, power, privilege and authority to effect and/or do any and all of the rights, privileges, powers, actions, remedies, or acts contemplated herein, including but not limited to accomplishing or effecting the Special Remedies herein, the Other Remedies herein, any of the rights, privileges or remedies of the Lender set forth in any and all of the other Loan Documents, and any or all of the following:

- (A) To execute all related papers contemplated in this Development Agreement, including applications, Contracts, notes, plans, drawings, bonds, plats, and certificates, and deliver same for any purpose in connection with the Project which may be required for completion of construction of the Improvements, operation and management of the Project, or to secure the collateral;
- (B) To endorse, negotiate, transfer and deliver all checks, drafts, notes, deposits and negotiable instruments and assign or transfer all non-negotiable instruments in the name of Borrower, and to withdraw such cash, deposits, Borrower's Funds, and funds from any General Account, and apply same to: (i) stabilize the Real Property and the Project, (ii) any and all costs and expenses incurred by the Lender in connection with the operations and management of the Project, (iii) any and all Costs incurred in connection with the development of the Project and the use of the Real Property, (iv) any and all indebtedness that continues to arise under any of the Loan Documents, (v) pay creditors bills, and (vi) for such other matters as the Attorney In Fact shall deem necessary or important in the sole discretion of the Attorney In Fact in connection with the Lender's full realization of any of the Remedies set forth herein; and/or
- (C) To endorse the name of Borrower on any checks or drafts representing proceeds of any Insurance Policies, bonds, or other checks, returns of security, deposits or instruments payable to Borrower with respect to the Real Property, and apply said proceeds to: (i) all expenses, fees and costs incurred by the Attorney In Fact in pursuing any of its remedies hereunder, including reasonable attorneys fees incurred by the Attorney In Fact, and (ii) then to payment of the Loan in accordance with the terms of the Notes.

DISBURSEMENT AND CONSTRUCTION LOAN AGREEMENT

THIS DISBURSEMENT AND CONSTRUCTION LOAN AGREEMENT (the "Construction Agreement") is made this 10 day of October, 2002, by and between COMSTOCK BLOOMS MILL II, L.C., a Virginia Limited Liability Company (the "Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, having a principal address of 1308 Devils Reach Road, Woodbridge, Virginia 22192 (the "Lender").

RECITALS

(A) The Lender has agreed to make refinance, revolving development and revolving construction loan to Borrower in the total amount of up to Thirteen Million and No/100 Dollars (\$ 13,000,000.00) (the "Loan") to be secured by real property subdivided into a three hundred seventy-five (375) lot subdivision (the "Lots"), together with all Improvements (as defined below), and more fully described in Exhibit A, attached hereto and made a part hereof (collectively, the "Real Property" or sometimes the "Project").

(B) The Borrower intends to grant to Lender a perfected first priority secured interest in the Real Property in favor of the Lender as of the date hereof, and to enter into that certain: (i) Deed of Trust executed by the Borrower of even date herewith (the "Deed of Trust"), (ii) Assignment Of Leases, Interests, Contracts, Plans and Profits executed by the Borrower of even date herewith (the "Assignment of Interests"), (iii) two (2) Deed of Trust Notes executed by the Borrower of even date herewith, in the face amounts of \$9,000,000.00 ("Note 1") and \$4,000,000.00 ("Note 2"), (together equaling the amount of the Loan), in favor of the Lender (collectively, the "Notes"), and all other Loan Documents (as defined herein) to further secure the Loan.

(C) This Construction Agreement sets forth the terms and conditions under which the Lender agrees to disburse the construction portion of the Loan to the Borrower, which shall not exceed an amount outstanding at any one time of Four Million and No/100 Dollars (\$ 4,000,000.00), (the "Construction Portion"). [In this Construction Agreement, all references to the "Loan" hereinafter shall refer to this Construction Portion of the Loan only, unless the context expressly states otherwise]. The Disbursement and Development Loan Agreement dated of even date herewith (the "Development Loan Agreement") sets forth the terms and conditions under which the Lender agrees to disburse refinance and development proceeds of up to Nine Million and No/100 Dollars (\$ 9,000,000.00).

(D.) The exhibits attached hereto are identified as follows:

- (1) Exhibit A—contains the legal description of the Real Property.
- (2) Exhibit B—contains the definitions of certain basic words and terms used in this Construction Agreement.
- (3) Exhibit C—contains the conditions precedent to disbursements
- (5) Exhibit D—contains the Events of Default under the Construction Agreement, and the remedies of the Lender.
- (6) Exhibit E—contains the construction Draw Schedule.

(E) Accordingly, capitalized words and/or terms used throughout this Construction Agreement indicate that the words and/or terms have been defined in Exhibit B, attached hereto and/or are set forth in the main body of the Construction Agreement, and the words and/or terms shall be construed to have the meanings and statements assigned to them herein. The definitions listed in the main body of the Construction Agreement and in Exhibit B shall not be construed as limiting, undermining or modifying any of the terms and conditions contained in any other loan documents, or Loan Documents,

and shall have the meanings, interpretation and significance as defined, unless otherwise required by the context of the paragraph.

(F) The proceeds of the Loan, together with certain of the Borrower's Funds are to be used by the Borrower for the purpose (the "Purpose") of constructing, in accordance with the terms herein, single family dwellings upon the Lots, consisting of eighty-two (82) single family dwellings; two hundred two (202) townhouses and ninety-one carriage dwellings (collectively, the "Dwellings").

(G) To induce the Lender to make the Loan, the Borrower agrees to the terms and conditions in this Construction Agreement.

WITNESSETH

In consideration of the Loan to the Borrower, the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. INTRODUCTION

1. *Incorporation of Recitals.* Each and every one of the Recitals stated above are hereby expressly incorporated herein by reference as if fully set forth in the body of this Construction Agreement.

2. *Specific Incorporation of Exhibits.* Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E attached hereto (collectively referred to as the "Exhibits") are hereby incorporated into this Construction Agreement and expressly made a part hereof as if fully set forth herein. The Borrower's signature on the last page of this Construction Agreement shall evidence Borrower's express acceptance and agreement with all of the terms, conditions, words and definitions set forth in this Construction Agreement, which is hereby deemed to include each and every one of the Exhibits.

3. *Compliance With Loan Documents.* Borrower agrees and covenants to comply with and perform all of the terms, covenants and conditions of this Construction Agreement and each and every one of the other Loan Documents.

4. *Use of Proceeds.* All Loan Disbursements shall be used by the Borrower for the specific Purpose stated herein, subject to the requirements of the Lender as set forth herein and in each of the other Loan Documents.

5. *Borrower As Fiduciary.* If Borrower receives the Loan Disbursements made under this Construction Agreement, Borrower shall hold the funds advanced as a fiduciary prior to payment, and shall apply such advances to the payment of the legitimate Costs due for the Work performed and approved by the Lender for payment in connection with the construction of the Improvements. Borrower hereby agrees, at any time and from time-to-time upon request of Lender, to exhibit to Lender receipts, vouchers or other evidence satisfactory to Lender of actual payment of such Costs within ten (10) days after such request.

II. WARRANTIES AND CERTIFICATIONS

As a material inducement to the Lender to make the Loan on the terms, at the interest rate and for the Loan Fees described herein, and taking into consideration the short maturity date of the Loan, the Borrower acknowledges it shall prominently display Lender's business cards, and maintain an adequate supply as a source of information for prospective purchasers.

III. DISBURSEMENTS

Subject to all requirements herein, and at such time as the Lots have been subdivided and finished under the Development Agreement, the Lender shall make disbursements of Loan funds for construction work as to each Dwelling in accordance with the construction Draw Schedule, based on the Draw Application submitted by the Borrower and approved by the Lender, provided however:

- (1) No disbursement shall exceed the Loan-To-Value Ratio in connection with all Dwellings and any Dwelling; and
- (2) The Borrower must remain in compliance with all of the underwriting standards, representations and warranties made in connection with the Loan and the Loan Documents; and

All advances hereunder shall be deemed to be evidenced by Note 2 and secured by the Deed of Trust.

The Borrower may submit (not more than twice a month) a properly completed Draw Application for each subsequent Loan Disbursement under the Loan, in amounts (or percentages) apportioned for each subsequent construction advance, as set forth in the Draw Schedule to be supplied by the Lender from time-to-time for the specific building. Any disbursement shall be reduced if it would exceed the Loan-To-Value Ratio, all as determined and approved by the Lender, less at the option of the Lender an amount that the Lender deems reasonable if necessary to effect corrections to the Work that arise from violations of building codes, structural defects, defective workmanship, defective materials, or other matters.

Each subsequent Loan Disbursement shall be determined reasonably by the Lender, however, all subsequent Loan Disbursements shall be further subject to the Borrower continuing to: (i) comply with all provisions set forth in the Exhibits; (ii) comply with the terms and provisions of any county or government agreements, including but not limited to any set-aside, performance, bonding or site improvement agreements, and (iii) provide such other matters, papers or forms as Lender shall reasonably require.

Within five (5) business days after approval of a Draw Application Lender shall make a subsequent Loan Disbursement under the Loan based on the Draw Application as approved by the Lender and on the terms and conditions of this Construction Agreement.

IV. REQUIREMENTS FOR DISBURSEMENTS

The Lender agrees to make the Disbursements subject to the Borrower's compliance with all of the terms and conditions set forth in this Construction Agreement, including each and every one of the Conditions Precedent To Disbursements set forth in Exhibit C, attached hereto and made a part hereof, as determined by the Lender.

VI. LOAN LIMITATIONS

The Borrower contemplates constructing the Dwellings upon the Lots at the Project in accordance with the Purpose, at such time as the Borrower first has obtained "pre-sold" non-contingent and enforceable third party written contracts in a form and substance reasonably acceptable to the Lender from prospective purchasers that are reasonably acceptable to the Lender, to purchase said Dwellings to be constructed thereon (hereafter referred to as the "Pre-Start Agreements").

The Lender shall not be obligated to make any advance of Loan proceeds with respect to the construction of any more than eighteen (18) townhouse Dwellings that remain outstanding at any one time and two (2) detached single family model or speculative Dwellings (collectively, the "Speculative Units") unless the Borrower has first entered into (and provided the Lender with) a Pre Start Agreement for the sale of such Dwelling to a third party not affiliated with the Borrower, with a

minimum reasonable deposit and a reasonable purchase price, as determined by the Lender, provided however, in no event: (i) shall aggregate disbursements exceed a total of one Hundred Percent (100%) of the cost of each Dwelling, and (ii) shall disbursements made as to any one Dwelling exceed the applicable Loan-To-Value Ratio

The contract purchaser must be obligated to fully and faithfully perform each and every obligation and undertaking required by the terms of a Pre-Start Agreement to be performed by the contract-purchaser without condition, precedent or subsequent, except such as the Lender shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. In the event any such contract is terminated, Lender will continue making advances for such Dwelling, but advances of additional starts of unsold Dwellings will be further subject to the resale of the subject Dwelling.

VII. GENERAL REQUIREMENTS

1. *Appraisal.* Lender shall have ordered and received at Borrower's expense an Appraisal for use in underwriting, granting, closing or disbursing the Loan, in a form and substance acceptable to the Lender.

2. (Reserved).

3. *Insurance.* The Borrower shall have in effect all Insurance Coverage at the closing of the Loan. The Borrower shall not permit construction of the Improvements to commence within 10 feet of any flood plain or "flood prone area" as referenced in the Flood Disaster Protection Act of 1973, as amended, or as shown on any flood maps held by any government agency. The Borrower shall provide Lender with Insurance Coverage on terms acceptable solely to the Lender, if Improvements on the Real Property, after written approval from the Lender, are located or constructed in a flood plain. In the event of a major casualty loss, the Lender shall apply any insurance proceeds received, in accordance with the applicable terms set forth in the Deed of Trust.

4. *Commencement; Construction.* Borrower shall obtain all necessary building permits and commence construction of the Improvements as promptly as is practical, and shall continue such construction with reasonable diligence and dispatch. Construction shall be performed in accordance with the Plans and Specifications, and the Construction Budget and the Lender shall not be obligated to review any proposed material change unless it has received a Change Order in a form, substance and containing such evidence as is satisfactory solely to the Lender. All construction shall be done in a good and workmanlike manner using new materials and first-class equipment, and be performed to meet or exceed all applicable building codes. Borrower shall disclose the existence of any cemetery and the areas of ingress and egress thereto, to the Lender and the Appraiser in writing, prior to commencing any construction, and shall not construct any Improvements near or around any cemetery or its areas of access.

5. *Plans of Construction; Contracts.* All Improvements shall be constructed by the General Contractor and Borrower assumes responsibility for complying with all of the terms and conditions of this Construction Agreement, including compliance with the Plans and Specifications, the restrictions governing the Real Property, with all laws, government requirements, building codes, and sound engineering practices.

(A) A master set of Plans and Specifications shall have been delivered to the Lender and shall govern all questions that may arise with respect to the construction of the Improvements. No substantive and material changes to the Plans and Specifications shall be effective unless requested by Change Order, approved by the Lender.

6. *Construction Budget Constraints.* The Lender shall not be required to: (A) make any advance for any line item in the Construction Budget that would exceed the scheduled amount allocated in the Draw Schedule, as extrapolated and interpreted by the Lender, or (B) make any advance under the

Construction Budget, that when added to all prior Loan Disbursements, would exceed the percentages allocated for the advance under the Draw Schedule as determined by the Lender, or (C) make any advance that would exceed the amount of the Construction Budget. Without prior written approval of Lender, Borrower shall not substantially reallocate unused Loan funds from one Construction Budget line item to another.

7. *Reports and Vouchers.* If requested, Borrower shall promptly deliver to Lender: (i) copies of those Engineering Reports, title reports, studies, inspections and tests made on the Real Property, the Improvements or the materials.

8. *Secured Advances.* All Loan Disbursements made by the Lender to the Borrower hereunder shall be: (A) subject to the Loan-To-Value Ratio, (B) subject to and in accordance with Exhibits C and D attached hereto and made a part hereof, (C) deemed to be evidenced by Note 2, and (D) secured by the Deed of Trust and each of the Loan Documents. Lender does not intend to make any unsecured advances to the Borrower under the Loan.

9. *Inspection.* Prior to any Loan Disbursement, the Inspector may enter the Real Property at any reasonable time to inspect the Project and Improvements which have been satisfactorily completed. If requested, Borrower will make available during normal business hours for inspection and copying, all Plans and Specifications, drawings, books and records, and other documents and information required by Lender.

10. *Termination of Loan Disbursements.*

If the total remaining Loan Disbursements not yet disbursed is less than the amount of the remaining construction costs required for completion of construction of the Improvements, as estimated by the Inspector and /or Lender (the "Deficiency"), Lender shall not be obligated to make any Loan Disbursements under the Loan, unless the Borrower first deposits the Borrower's Funds with the Lender at least in the amount of the Deficiency. Any amount deposited by Borrower with Lender to pay the Deficiency shall be applied to pay the Costs of constructing the Improvements. Notwithstanding any of the provisions of this Construction Agreement, Lender shall have the right to withhold from any Loan Disbursement an amount sufficient to cover: (i) the Deficiency or any unpaid balance of the Costs to complete the Project, or (ii) any surplusage resulting when all Loan Disbursements total more than the actual construction Costs incurred (or to be incurred) by the Borrower.

11. *Deposit of Funds.* The Borrower agrees to pay additional Borrower's Funds if the actual Costs exceed the Loan Disbursements, or the projected Costs will exceed the un-advanced portion of the Loan to which Borrower is entitled, in the amount of the Deficiency as determined by the Lender. The Borrower hereby grants and conveys to the Lender a security interest in any and all General Accounts deposited with Lender as additional collateral for the Loan, together with the full right of setoff thereto, in favor of the Lender. Upon a Default, Lender may (but shall have no obligation to) apply all or any part of the Funds in any General Accounts against any unpaid indebtedness arising under any of the Loan Documents, in such order as Lender determines.

12. *Completion.* The Borrower shall complete construction of all the Improvements free and clear of all liens except the Loan Documents, on or before the Completion Date (as the same may be extended) subject to any Excusable Delays. Excusable Delays shall not extend the Completion Date unless: (A) the Lender provides approval in its reasonable discretion, and (B) the Borrower continues to comply with all other terms and conditions set forth in the Loan Documents. Lender shall be under no obligation to extend the Completion Date, except as otherwise provided in the Notes. Borrower shall correct, using Borrower's Funds, any: (A) material defect in the structure or Improvements, (B) material deviations from the Plans and Specifications, and (C) encroachments or setback violations that are necessary prior to completing construction of the Project. Upon completion, the Borrower shall obtain final residential use permits from the proper local government.

13. *Storage of Materials.* The Borrower shall cause all materials intended to be utilized in the construction of the Improvements, to be stored on the Real Property, with adequate safeguards.

14. *Payment.* Lender reserves the right, upon an Event of Default, to make Loan Disbursement checks payable: (A) solely to the closing attorney, (B) solely to the Title Company to be disbursed to those contractors and materialmen entitled to payment, (C) jointly to the Borrower and the persons entitled to payment, or (D) in such other manner as Lender may reasonably elect.

15. *Loan Expenses:* All fees, premiums, expenses and charges reasonably incurred in procuring, processing and administering the Loan, including without limitation charges for the Title Policy, title examination, title bring downs, title endorsements, inspections, surveys, recordings, taxes, Lender's attorneys, Lender's fees, service charges, closing attorney, Borrower's attorney, Insurance Coverage, real estate taxes, assessments, engineers, Architects, water, sewer, utilities, brokers, liens, encumbrances, Work corrections, Loan Document modifications, broker's fees and any other matters in connection with the Real Property, the Project, the Improvements and the Loan, shall be paid for solely by the Borrower. All such amounts, unless sooner paid, shall be paid by the Borrower when due, or Lender may, at its option, deduct any amounts necessary for the payment of these items from any Loan Disbursement. All sums so applied shall be deemed advances under this Construction Agreement secured by the Loan Documents.

16. *Loan Fees.* The Borrower agrees to pay the Loan Fees, in addition to any fees required under the Development Loan Agreement.

17. *Construction Consultant.* Lender may hire, with the mutual consent of the Borrower, and at the cost and expense of the Borrower, any engineer, architect or consultant that the Lender considers necessary or useful to assist the Lender in performing any of its rights and obligations under this Construction Agreement (the "Construction Consultant").

18. *Operating Account.* The Borrower shall establish and maintain its primary operating account with the Lender in connection with the Project for so long as the Loan remains outstanding.

VIII. CONDITIONS TO FINAL ADVANCE

Lender shall not be obligated to make the final Loan Disbursement of any remaining Loan proceeds, which shall include any portion of the Loan, unless all requirements specified in Exhibit C hereof shall have been (and continue to be satisfied), and the following requirements have been met to the satisfaction of Lender:

1. The Improvements have been completed with new materials, in a good and workmanlike manner, in accordance with the Plans and Specifications, and all applicable laws and regulations;
2. The Lender has received one (1) final house location survey, approved by the Borrower that is in a form and substance acceptable to the Lender and Title Company;
3. A valid residential use permit on each Dwelling as completed is obtained without conditions unacceptable to Lender; and
4. A final endorsement to the Title Policy is obtained, containing no exceptions unacceptable to Lender, insuring Lender in the full Loan Amount, an endorsement removing any exception for mechanic's or materialmen's liens or pending disbursements, and with no additional title changes or exceptions objectionable to Lender; and
5. Any other supporting evidence, indemnities, agreements or inspections that the Lender or Title Company may reasonably require.

IX. MISCELLANEOUS

1. *Representations and Warranties.* Borrower represents and warrants that: (A) a copy of any Contract furnished or to be furnished to Lender is and shall be a true and complete copy thereof, (B) that the copies of the Plans and Specifications delivered to Lender are and shall be true and complete copies, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that the Borrower's interest therein is not subject to any claim, setoff, or encumbrance, (C) that all of the real estate taxes have been paid with respect to the Real Property, and the Borrower has paid all taxes and governmental charges in connection with the construction of the Improvements thereby shown to be owing, (D) the Plans and Specifications and the Contracts are satisfactory to Borrower, have been approved by all applicable governmental authorities, have been accepted by each contractor, are complete in all material respects, contain all detail necessary, are adequate for the construction of the Improvements, and comply with the Loan Documents, all applicable laws, restrictive covenants, and governmental requirements, rules, and regulations, (E) Borrower will obtain a separate tax lot or lots with a separate tax assessment or assessments for the Real Property and Improvements, independent of any other lands or improvements, (F) the Real Property and Improvements comply with all laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property, (G) the Plans and Specifications do, and the Improvements when constructed will, comply with all legal requirements regarding access and facilities for handicapped or disabled persons, if applicable, (H) the Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any construction rights, privileges or attributes with respect to the Real Property, including those arising under any zoning or land use ordinance or other law or governmental requirement, (I) the construction schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project, (J) (Reserved), (K) all utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Real Property, including, without limitation, telephone service, water supply, storm and sanitary sewer facilities, and natural gas or electric facilities, (L) except as otherwise provided for in the Loan Documents, the Borrower has made no agreement or arrangement of any kind which would give rise to a lien on the Real Property, and (M) the Purpose of the Loan and the current or anticipated use of the Real Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Real Property, all use requirements, proffer statements and conditions of approval by any governmental authority having jurisdiction over the Real Property and the Project, have been satisfied, and no violation of any law or regulation exists with respect thereto.

2. (Reserved)

3. *No Liability To Lender For Approvals.* Notwithstanding any approvals, consents, or judgments made by Lender herein, Borrower agrees that Lender shall have no obligation, liability or responsibility whatsoever in the construction of the Improvements, or for the adequacy, quality, sufficiency, form or content of any of the plans, budgets, schedules, contracts, surveys, plats, changes, leases, or any other matter incident to the Real Property or the construction of the Improvements. Lender's acceptance of an assignment of the Plans and Specifications shall not constitute approval of the Plans and Specifications. Any inspection or audit of the Real Property or the books and records of Borrower, or the procuring of documents, information and other data, by or on behalf of Lender shall be for Lender's protection only in the interests of Lender protecting its collateral, and shall not constitute any assumption of responsibility from Borrower or from anyone else with regard to the condition, construction, quality, maintenance, location or operation of the Real Property, or relieve Borrower of any of Borrower's obligations under any of the Loan Documents. Borrower is hereby deemed to have selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project notwithstanding Lender's input. Lender has the right, but

not the duty to supervise or to inspect the Real Property and the construction of the Improvements. However, any such action is in connection with the Lender acting as a lender protecting the value of its collateral, and neither Lender, nor any of its Inspectors, Construction Consultants, employees or agents has any duty of care to Borrower or to any other person to protect against, or inform Borrower or any other person of, the existence of negligent, faulty, inadequate or defective design or construction of the Improvements. Lender shall not be liable or responsible for any defect in the Real Property or the Improvements, the performance or default of Borrower, Borrower's architect, engineer, contractor, the Construction Consultant, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials, or services supplied for the construction of the Improvements, or for the performance of any obligation of Borrower whatsoever. No action by the Lender, and no advance or acceptance of any document or instrument by the Borrower, General Contractor or any other party, shall be construed as a representation or warranty, express or implied, to any party by Lender. Inspection shall not constitute an acknowledgment or representation by Lender, its employees or the Construction Consultant that there has been or will be compliance with the Plans and Specifications, Loan Documents, applicable laws and governmental requirements or that the construction is free from defective materials or workmanship. Inspection whether or not followed by notice of Default shall not constitute a waiver of any default then existing, or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications, Loan Documents, applicable laws, and governmental requirements. Lender's failure to inspect shall not constitute a waiver of any of Lender's rights under the Loan Documents or at law or in equity.

4. *Disclaimer.* Borrower acknowledges that Lender does not have among its investment department personnel, any architects, contractors, engineers or other construction related experts, and that Lender does not claim to have any general or specific expertise in technical matters related to construction. Lender's inspection of any of the Plans and Specifications and Improvements is only in the capacity of a lender evaluating the value of the Project as security and collateral for the Loan. Lender has not reviewed such items in the capacity of an expert and any approvals given or objections withheld shall in no way constitute a warranty or endorsement of the technical soundness of the Project, whether as to the structure or components of same.

5. *Indemnity.* Except for willful misconduct, or gross negligence, Borrower, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, jointly and severally, on behalf of Borrower, and each of their respective heirs, spouses, officers, directors, employees, agents, shareholders, successors and assigns, (the "Borrower's Parties") do hereby remise, release, acquit, satisfy and forever discharge Lender and its BB&T Mortgage Division, and each one of its respective past, present and future subsidiaries, divisions, mortgage companies, affiliates, parent corporations, joint venturers, officers, directors, employees, agents, attorneys, representatives, participants, successors and assigns (collectively referred to as the "Entities") from any and all manner of action and actions, cause or causes of actions, suits, claims, unintentional torts, counterclaims, demands, damages, judgments, liabilities, contingent claims or contingent liabilities, debts, sums of money, attorneys fees, costs, accounts, covenants, contracts, controversies, obligations, agreements, promises, expenses, variances, trespasses, liens, and/or claims of lien of any nature whatsoever, whether at law or in equity, whether now accrued or hereafter maturing and whether known or unknown, which the Borrower's Parties (and any people comprising Borrower) now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world until two (2) years and one (1) day after the Loan is paid back to the Lender in full, arising out of or in connection with: (A) all of the Lender's obligations, duties, approvals, and decisions made in good faith pursuant to the terms and conditions of this Construction Agreement (B) the inspections, discretions and approvals made or not made by the Lender in good faith hereunder, (C) the implementation, procedures, collections, administration, or actions taken by the Lender in good faith in accordance with this Construction Agreement, (D) the remedies pursued by the Lender, and all actions in connection

therewith taken by the Lender in good faith, as attorney-in-fact pursuant to this Construction Agreement in the event of a Default, and (E) the actions, decisions or remedies not taken by the Lender in good faith under this Construction Agreement; and the Borrower's Parties hereby jointly and severally indemnify and hold each of the Entities harmless from same.

6. *Publicity.* Lender may announce and publicize the source of the financing contemplated by the Loan by the placement of a sign for display upon the Real Property. Any such sign shall be furnished by Lender. Borrower agrees to provide a prominent and suitable location for the display of the sign and to maintain the display of such sign for the duration of the construction on the Real Property or until the Loan has been repaid in full, whichever shall first occur.

7. *No Assignment.* Neither this Construction Agreement nor the proceeds of the Loan shall be assigned by Borrower without the written consent of Lender, and any attempted assignment without such written consent shall be void and shall constitute an Event of Default.

8. *Notices.* All notices required or contemplated hereunder including all Exhibits, shall be in writing and shall be deemed to have been given properly when deposited in the United States Mail, postage prepaid, certified or registered, return receipt requested, or when deposited with Federal Express or another comparable overnight express delivery service, addressed as follows:

To Borrower:

COMSTOCK BLOOMS MILL II, L.C.
11465 Sunset Hills Rd.
Suite 510
Reston, Virginia 20190
Attn: C. Clemente

To Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA
1308 Devils Reach Road
Woodbridge, Virginia 22192
Attn: J. Arvai

(or to such other address as may be specified by notice given as required herein).

9. *No Waiver Of Lender's Rights.* Notwithstanding anything in this Construction Agreement or any other Loan Document to the contrary, Lender may, in its sole discretion, defer or relinquish any requirements hereunder, including without limitation any condition to any Loan Disbursement. However, no such deferral or relinquishment shall constitute a waiver of the Lender's right to invoke any of said requirements subsequently. Moreover, no delay, omission or acquiescence of the Lender to exercise 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. No delay or omission on the part of the Lender to exercise any rights or privileges herein, or any other option granted to the Lender hereunder in any one or more instances, shall constitute a waiver of any of such rights or privileges. Lender may make any advances or part of advances after the occurrence of a Default without thereby waiving the right to demand payment of the Loan and without becoming liable to make any other or further advances. If Lender makes advances before they are scheduled in accordance with the Construction Budget because Lender, in its sole discretion, believes it advisable so to do, such advances shall be deemed to be made in pursuance and not in modification hereof and shall not be deemed to be a waiver of any of the strict procedures, terms and conditions set forth in this Construction Agreement. No acceptance by the Lender of any partial payment on account of the Loan in the event of a Default, shall constitute a waiver of any Default and all of Lender's rights and remedies shall remain continuously in full force and effect.

10. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Notes or in any of the other Loan Documents. Each and every remedy herein shall be cumulative, and shall be in addition to every other remedy given under any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Lender herein and in any of the other Loan Documents shall be concurrent and may be pursued separately, successively or together against the Borrower, or the Real Property or any part thereof, or any personal property secured by the Loan Documents, and every right, power and remedy given in any of the Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

11. *Further Assurances.* Borrower will, on request of Lender: (a) promptly correct any defect, error or omission in this Construction Agreement or in any other Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further documents and do such further acts deemed necessary, desirable or proper by Lender to carry out the purposes of the Loan Documents, (c) execute and deliver any renewals, continuation statements, additions, substitutions, replacements, or appurtenances to the Real Property or Loan Documents; (c) execute, acknowledge, deliver, procure, file or record any document or instrument deemed necessary, desirable, or proper by Lender to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Lender to comply with the requirements of any Federal agency having jurisdiction over Lender.

12. *Participants.* Lender shall have the right to have others participate with it in the Loan.

13. *Successors And Assigns.* This Construction Agreement shall inure to the benefit of the Lender, and be binding upon the parties hereto and their successor, assigns and successors in title; but nothing herein shall authorize the assignment hereof by Borrower.

14. *Governing Law.* This Construction Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

15. *Non-Merger.* The covenants of Borrower set forth herein and the terms and provisions of this Construction Agreement shall survive the closing of the Loan, the recordation of any and all deeds and the delivery of the Loan Documents.

16. *Interpretation Among Documents.* In the event of any inconsistency or conflict between the Commitment and this Construction Agreement, the provisions of this Construction Agreement shall govern. Nothing herein shall be construed to limit or adversely affect in any way the terms and provisions of the Notes, and the rights and remedies of the Lender pursuant to the Deed of Trust.

17. *Construction Of This Document.* Words of any gender used in this Construction Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. References to "money", "cash" "funds" "deposit" or other similar monetary terms are references to lawful money of the United States. References to persons shall include any legal entities, businesses, agencies and natural persons as the context may call for. The words "including" shall be interpreted as if followed by the words "without limitation" if those words are not present. Captions and headings in the Construction Agreement are for convenience only and shall not affect construing this Construction Agreement.

18. *Severability.* If any provision of this Construction Agreement, or the application thereof to any circumstance, is deemed to be unenforceable, the remainder of the Construction Agreement shall not be affected thereby and shall remain enforceable.

19. *Time Of The Essence.* TIME IS OF THE ESSENCE with respect to the performance of the Borrower's obligation hereunder.

20. *No Partnership.* Nothing in this Construction Agreement or in any of the other Loan Documents shall be construed to make Borrower a partner, a joint venturer, or have an association, or a special arrangement with the Lender, or creating a principal-agent relationship or any other relationship except for that of "lender" and "borrower".

21. *No Lender Control.* The Borrower agrees that Lender's rights and interests under the Loan Documents, and the administration thereof, shall not be deemed to indicate that the Lender is in control of the Real Property, the Project or the business operations of the Borrower.

22. *Counterparts.* This Construction Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

23. *Written Agreement.* This Construction Agreement, together with each of the Loan Documents constitutes the entire understanding and agreements between Borrower and Lender.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

WITNESS the following signatures:

Borrower:

COMSTOCK BLOOMS MILL, II L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By

Print:

Title:

EXHIBIT "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

EXHIBIT B

DEFINITIONS

1. *DEFINITIONS:* The definitions listed below are hereby incorporated into the Construction Agreement, and shall provide the meaning and full significance to any word or words that are capitalized and not otherwise defined in the body of the Construction Agreement:

- A. *Activity:* See "Development Plan" herein.
- B. *Appraisal:* The word "Appraisal" shall mean and refer to a report of value, and/or any updated report of value, in a form and substance acceptable to Lender in connection with the Real Property, prepared and executed by a licensed professional appraiser which: (i) establishes the present "as-is" market value of the Property; (ii) establishes the value of the Real Property assuming the proper and timely completion of any Improvements to be constructed on the Real Property; and (iii) conforms in every particular with the appraisal standards established by the Lender.
- C. *Architect:* The word "Architect" shall mean and refer to a practicing and professional architect, duly licensed as such in the Commonwealth of Virginia, in good standing therein.
- D. *Assignment of Interests:* In addition to the definition in the Recital above, the words "Assignment Of Interests" shall refer to the loan document entitled Assignment of Leases, Interests, Contracts, Plans and Profits, by which Borrower assigns to Lender all of Borrower's ownership interests in business entities, Project names, warranties, plans, plats, contracts for the Construction of the Improvements (as defined below), operating contracts, permits, subdivision rights, deposits, bonds and other matters in connection with the construction, management and use of the Real Property, as additional security for the Loan.
- E. (Reserved).
- F. *Borrower's Funds:* The words "Borrower's Funds" shall mean and refer to the Borrower's: (i) cash or proceeds other than received from the Lender, (ii) other available funds shown on Borrower's application relied upon by the Lender, and (iii) portion of the Real Property sales price or Costs which are scheduled to be paid by Borrower from other funds set aside and committed, in an amount satisfactory to the Lender.
- G. *Building Permits:* The words "Building Permits" shall mean and refer to all necessary building, environmental, activity and drainfield permits and authorizations from all necessary Federal, state and local authorities, allowing all construction activities contemplated to proceed to completion and authorizing the proposed use of the Project, thereafter.
- H. *Certificate of Completion:* The words "Certificate of Completion" shall refer to a certification that the Improvements have been completed strictly in accordance with the Plans and Specifications, and that no structural defects exist in the construction of the Improvements, and may be satisfied by a residential use permit issued by the appropriate government entity.
- I. *Change Order:* The words "Change Order" shall mean and refer to any written request to allow any additions, deletions, modifications, substitutions or extras to any Contract, the Plans and Specifications, or the Construction Budget, in a form and substance acceptable solely to the Lender, where: (i) the request contains supporting documentation and information, (ii) the Borrower has obtained the approval of the General Contractor, all applicable contractors, all sureties, and government entities, (iii) the structural integrity, quality and standard of workmanship of the Improvements is not impaired, (iv) no substantial change in architectural appearance is affected, (v) no violation of any law or requirement would result, (vi) the Borrower is not doing so

to cover any excess Costs of the Improvements, and (vii) the Completion Date will not be affected; all as determined by the Lender.

J. (Omitted).

K. *Costs*: The word "Costs" shall mean every and all construction, material, labor and other costs in connection with the Work and the final completion of the Project through the maturity date of the Loan, after taking into account the requirements of this Construction Agreement.

L. *Completion Date*: The words "Completion Date" shall refer to the maturity date set forth in the Note which is the last date by which the Borrower covenants and represents that the Improvements (as defined below) shall be properly erected on the Real Property, fully completed and ready for use and immediate permanent occupancy.

M. *Completion Percentage*: The words "Completion Percentage" shall mean and refer to the amount of the Improvements completed and installed on the Real Property in accordance with the Plans and Specifications, expressed as a percentage of all Work remaining outstanding that is necessary to finish the Improvements and obtain a residential use permit from the proper government.

N. *Construction Budget*: The words "Construction Budget" shall refer to the projected detailed construction cost breakdown list submitted to, and approved by the Lender.

O. *Contracts*: The word "Contract" or "Contracts" shall mean and refer to: (a) any written or oral contract, sub-contract, purchase order or agreement for supplying or performing any Work for the construction of the Improvements, (b) any maintenance or other agreement pertaining to the Real Property not described in clause (a) preceding this clause, or (c) the modification, amendment, or substitution of any such contracts.

P. *Deed of Trust*: In addition to the definition in the Recital above, the words "Deed of Trust" shall refer to the loan document entitled "This Is A Credit Line Deed Of Trust" of even date herewith, which grants the Lender a perfected interest and encumbrance on the Real Property and the Improvements (as defined below).

Q. *Default*: The word "Default" or the words "Event of Default" shall mean and refer to: (i) those breaches of the Construction Agreement, that shall give rise, after the expiration of any applicable notice and cure period, to certain and specific remedies in favor of the Lender as specified in the Construction Agreement including all Exhibits, in addition to all other remedies permitted by law or equity, or under any of the other Loan Documents and (ii) those breaches or defaults under any of the other Loan Documents, that give rise, after the expiration of any applicable notice and cure period, to remedies thereunder, which are hereby expressly deemed to be a default or an event of default under the Construction Agreement.

R. *Construction Plan*: The words "Construction Plan" shall mean and refer to a schedule for construction of Improvements on the Real Property in a form, content, and detail satisfactory to the Lender.

S. *Draw Application*: The words "Draw Application" shall mean and refer to construction draw forms that are used and acceptable solely to the Lender, which must be approved by the Inspector.

T. *Engineering Reports*: The words "Engineering Reports" shall mean and refer to written reports prepared by licensed, professional engineers acceptable to the Lender certifying that: (a) if reasonably required by Lender, the subsurface conditions of the Real Property are suitable in all respects for the construction of the proposed Improvements thereupon, (b) all Improvements have been made in compliance with all building codes and restrictive covenants (c) no encroachments

exist upon any easements, rights-of-way, or adjoining property, (d) all utilities required for use at the Real Property are available to the Real Property, and (e) such other engineering notes as the Lender may require

U. *Environmental Report*: (Reserved).

V. *Excusable Delays*. The Words "Excusable Delays" shall mean unusually adverse weather conditions which have not been taken into account in the Construction Plan, including events such as fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money) beyond the control of Borrower, not to exceed a total of twenty-five (25) days, provided Borrower promptly notifies Lender of the delays and whereupon no Excusable Delay shall suspend or abate any obligation of Borrower or any Guarantor or any other person to pay any money.

W. *Financial Statements*. (Reserved)

Y. *Guarantor*: The word "Guarantor" shall mean and refer to each and every one of the following who shall execute an Unconditional Guaranty Agreement (as defined below), and agree unconditionally and jointly and severally guarantee repayment of the Loan and performance and completion under all of the Loan Documents:

Christopher D. Clemente
Gregory V. Benson
Comstock Holding Company, Inc.

Z. *Guaranty*: The word "Guaranty" shall refer to the loan document entitled "Unconditional Guaranty Agreement" by which each Guarantor unconditionally, jointly and severally guarantees the payment by Borrower of the Notes and the performance and completion by the Borrower of all obligations under the Loan Documents.

AA. *General Contractor*: The words "General Contractor" shall mean and refer to any general contractor hired to work the Project specifically approved by the Lender, which may be the Borrower, or any successor general contractor approved by Lender.

BB. *General Account*. The words "General Accounts" shall mean and refer to deposit accounts, operation accounts, savings accounts and other accounts with the Lender, and that each and every one of said accounts shall expressly be deemed to be "general accounts" and not "special accounts", such that funds may be setoff and commingled.

CC. *Improvements*: The word "Improvements" shall mean and refer to the Real Property and all work product and valuable additions benefiting the Real Property, currently affixed, to become affixed, or unique to the Real Property, now existing or hereafter acquired, to include but not be limited to any and all buildings, structures, edifices, fixtures, materials, supplies, engineering work, concrete, curb and gutter, dirt, grading, parking facilities, trees, shrubs, appendages, chattels, equipment, personal property, mixed property, goods, inventory, subdivision plats, site plans, zoning permits, building permits, bonds, plans, surveys and other facilities to be constructed in accordance with the Plans and Specifications.

DD. *Inspector*: The word "Inspector" shall refer to Lender's inspecting architect, structural engineer, employee or representative, to be appointed by and in the sole discretion of the Lender to inspect the Project.

EE. *Inspection Fee*: The words "Inspection Fee" shall mean and refer to a \$150.00 charge due and payable to the Lender for each and every inspection visit, regardless of the number of lots inspected, requested in connection with a Loan Disbursement under the Loan representing actual

sums due the Inspector in connection with each inspection, and may at Lender's option, be deducted from the amount of any Loan Disbursement or advance under the Loan.

FF. *Insurance Coverage:* The words "Insurance Coverage" or "Insurance" shall refer to each and every policy of insurance that the Borrower is to have, or cause to have, in effect pursuant to the Commitment, in connection with the Project, the Improvements and the Real Property, including but not limited to Title Insurance, builders risk insurance, hazard insurance, workmen's compensation insurance, liability insurance and flood insurance, and: (a) all policies must contain deductibles and/or co-insurance provisions acceptable to the Lender, and (b) all policies must be underwritten by insurance companies acceptable to the Lender, and (c) all policies must name the Lender as an additional insured and/or loss payee, (d) all policies must contain a mortgagee clause granting coverage to the Lender and its successors and assigns, as their respective interests may appear, (e) all policies must provide that they shall not be cancelled unless the insurance company issuing such insurance policy shall first give the Lender at least thirty (30) days' prior written notice, (f) the issuance and renewal of each and every insurance policy required hereunder, and the payment of the premium therefore, shall be performed by the Borrower with written notice to the Lender, and (g) the Borrower shall deliver a copy of each such insurance policy to the Lender.

GG. *Loan Disbursements:* The words "Loan Disbursements" or "Loan Disbursement" shall mean and refer to any and all advancement of acquisition and/or construction funds under the Loan Documents for the Purpose stated, after all conditions precedent thereto have been met and satisfied as determined by the Lender.

HH. *Loan Documents:* The words "Loan Documents" shall mean and refer to any and all papers, letters, documents, instruments, agreements, statements, certificates, certifications, affidavits, and indemnities in a form and substance acceptable solely to Lender, and shall include but not be limited to this Construction Agreement, the Development Loan Agreement, the Commitment, the Notes, the Deed of Trust, the Assignment of Interests, and any and all loan agreements, development loan agreements, security agreements, hazardous waste indemnity agreements, credit agreements, unconditional guaranty agreements, financing statements, loans to one borrower statements, affidavits, compliance agreements, closing agreements, certificates, indemnities and certifications; and any and all amendments or modifications thereto that are executed by the Borrower in connection with the Loan.

II. *Loan Fees:* The words "Loan Fees" shall mean that the following fees shall be deemed earned by the Lender and paid by the Borrower as follows:

(i) A non-refundable loan fee in the amount of one percent (1.00%) of each and every disbursement shall be paid at the time any and all disbursements are made, at any time and for any purpose under this Construction Agreement, and may be deducted directly by the Lender from any disbursement, and shall be deemed earned by the Lender in full at the time of disbursement, provided however, with respect to this construction loan only, the total fees paid by Borrower to the Lender in connection with the revolving construction portion of the Loan, shall in no event exceed \$40,000 per annum for each year the Loan is outstanding, with the first year commencing as of the date of closing, and all said amounts shall be deducted by Lender from each advance when made.

JJ. *Loan-To-Value Percentage:* The words "Loan-To-Value Percentage", "Loan-To-Value Ratio" or "Loan-To-Value Amount" may be expressed as a ratio, a sum or an amount but in any event shall mean that the aggregate of all Loan Disbursements made by the Lender and remaining outstanding under the \$13,000,000.00 Loan in connection with the Real Property and Improvements, or as any part of said \$13,000,000.00 Loan is apportioned or allocated by the Lender and/or disbursed in connection with any one Lot and Dwelling thereon, shall never exceed (a) eighty percent (80.0%) or, if less, eighty percent (80.0%) of the contract price to the unit

purchaser for such Dwelling, plus, one hundred percent (100%) of the wholesale cost of options and upgrades, provided however, in no event shall the Loan amount with respect to the land, development and construction advances on account of the model or speculative Dwelling, exceed a loan-to-value ratio of seventy-five percent (75.0%), plus one hundred percent (100%) of the wholesale cost of options and upgrades. In no event whatsoever shall total disbursements: (i) exceed 100% of the actual costs incurred by the Borrower, as determined by the Lender, and (ii) exceed seventy-five percent (75.00%) of the gross retail sell-out value of the Project as determined by the Lender.

KK. *Non-Refundable Loan Fee.* See "Loan Fee".

LL. (Reserved).

MM. *Physical Survey:* The words "Physical Survey" shall mean and refer to a wall check survey, the record plat and a final "as-built" survey.

NN. *Plans And Specifications:* The words "Plans and Specifications" shall mean and refer to a complete and final set of professional architectural drawings, construction plans, and working plans and specifications relating to the construction of the Project and Improvements on the Real Property, containing all customary notes and professional details.

OO. *Plats and Plans:* The words "Plats and Plans" shall mean and refer to any and all elevation plats, dedication plats, declaration statements, subdivision plats, boundary line surveys, site plans and all other submitted plans of construction for recording and/or government approval in connection with the Project and the Real Property.

PP. *Project:* In addition to the definition in the Recital, the word "Project" shall refer to the Purpose, the Improvements, construction activities, and use of the Real Property.

QQ. *Stage:* The word "Stage" shall refer to each progressive interval of construction as listed on the Draw Schedule.

RR. *Title Company:* The words "Title Company" shall mean and refer to that title insurance company acceptable to the Lender, issuing a mortgagee Title Policy (as defined below) insuring the Lender in the full amount of the Loan, and containing only those exceptions to title to the Real Property acceptable to Lender, as determined by the Lender in its sole discretion, as well as each endorsement to the coverage.

SS. *Title Policy:* The words "Title Policy" shall mean and refer to that final mortgagee title insurance policy issued by the Title Company prior to any Loan Disbursement hereunder, pursuant to all of Lender's instructions and insuring that the Lender's Deed of Trust is a valid, first priority lien and encumbrance on the Real Property without exception for matters of survey or possible unfiled mechanic's and materialmen's liens. Such title insurance shall be increased by written endorsement to cover the amount of every Loan Disbursement, be in a form and substance satisfactory to Lender, and contain such other endorsements as the Lender may require from time to time.

TT. *Work.* The word "Work" shall mean and refer to all contract work, sub-contract work, supplies, labor, services, materials, articles, property, products and any other trade work, material or thing in connection with the construction of all Improvements on the Real Property.

EXHIBIT C

CONDITIONS PRECEDENT TO DISBURSEMENTS

Each and every one of the requirements listed in this Exhibit C is hereby incorporated into the Construction Agreement as if fully set forth therein, and expressly deemed to be conditions precedent to be satisfied by the Borrower prior to the Lender becoming obligated to make disbursements. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable to the Lender, and (ii) that compliance with each and every one of the requirements shall be determined by the Lender, in Lender's sole but reasonable discretion, just as if this sentence were incorporated into each requirement listed. Accordingly, the Borrower agrees:

1. To comply with all requirements for disbursements set forth in the Development Loan Agreement, including Exhibits;
2. The Lender shall have received an acceptable endorsement to the title policy, having no unacceptable exceptions as determined by the Lender, issued by the Title Company in a form and substance satisfactory to Lender, and, if and to the extent required by the Title Company, to obtain from each contractor, architect, engineer, subcontractor, or supplier of services or materials, duly executed original lien waivers, or agreements satisfactory to the Title Company subordinating all rights, liens, claims and charges they may have against Borrower or the Real Property, to the rights, liens and security interests of Lender, and delivering same to the Title Company. The Title Insurance shall be endorsed and "down-dated" in a manner satisfactory to Lender to increase the coverage by the amount of each Loan Disbursement through the date of each such advance with no additional title change or exception not approved by Lender and all releases or waivers of mechanic's liens and materialmen's liens and receipted bills showing payment of all amounts due to all parties who furnished materials or services or performed labor of any kind in connection with the Real Property as to any prior advance, if, and to the extent required by the Title Company, shall have been obtained on forms and in a substance acceptable to the Lender and the Title Company in connection with the subsequent advance;
3. To provide an accurate and complete Construction Budget, updated as required by Lender, adequate to cause the Improvements to be completed in accordance with the Plans and Specifications;
4. If requested by Lender, to provide a list containing the names and addresses of all existing contractors, subcontractors, engineers, materialmen and other suppliers of services and materials for the Project;
5. To provide an acceptable, properly executed Draw Application;
6. That no Default or Event of Default shall be committed or now exists under any of the Loan Documents, or under the Development Loan Agreement;
7. That no mechanics or materialmen liens shall have been filed, that are not bonded-off or otherwise fully satisfied;
8. To provide the Pre-Start Agreements, as applicable; and
9. The Lender shall have received the Physical Survey showing and detailing the foundation, within ten (10) days after the laying of the foundation of each Dwelling comprising the Improvements, that is in a form and substance satisfactory to the Lender;
10. As of the date of making any Loan Disbursement, no event shall have occurred, nor shall any condition exist that is materially adverse to the financial condition of Borrower or any Guarantor, or which would impair the ability of Borrower or any Guarantor to fulfill its material obligations under the Loan Documents;
11. The Improvements shall not have been damaged and not repaired; and
12. The Borrower and or Guarantor has delivered to Lender such other information, documents, supplemental legal opinions, updated lists and other information as may be reasonably required by Lender.

EXHIBIT D

EVENTS OF DEFAULT AND REMEDIES AVAILABLE TO LENDER

Each and every one of the terms and provisions listed in this Exhibit D is hereby incorporated into the Construction Agreement as if fully set forth therein.

EVENTS OF DEFAULT

Any one of the following events below shall constitute a breach of this Construction Agreement and be deemed to be an Event Of Default:

A. If the Borrower fails to timely construct Improvements in accordance with the Plans and Specifications for the Purpose stated herein, substantially within the Construction Budget;

B. If at any time there is discovered or created a defect in title to the Real Property which is not cured or insured over to the reasonable satisfaction of Lender within thirty (30) days after the giving of notice thereof;

C. If the Improvements or any portion thereof encroach upon a street or easement or upon adjoining property or violate any setback restriction, however created, or the requirements of any governmental authority having jurisdiction, or any adjoining structure encroaches upon the Real Property or on any easement appurtenant thereto to an extent deemed material by Lender's attorneys, and the encroachment or violation is not removed within thirty (30) days after the giving of notice thereof, (provided however, if the encroachment or violation is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said encroachment or violation);

D. If Borrower does not erect and equip the Improvements substantially in accordance with the Plans and Specifications and with all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if at any time it becomes apparent, in Lender's judgement, that the Improvements will not be completed by the Completion Date;

E. If Borrower does not permit Lender to enter upon the Real Property to make Inspections of the Real Property, the Improvements and any and all materials to be used in connection with the construction thereof, and to examine all details, plans, shop drawings and similar materials relating to the construction of the Project;

F. If for any reason whatsoever Borrower abandons the Project, or the construction of the Improvements is at any time in the reasonable judgement of Lender, discontinued or not carried on with diligence and dispatch;

G. If Borrower fails to comply with any requirement of any government authority having jurisdiction within thirty (30) days after the giving of notice thereof;

H. If following demand by Lender: (i) Borrower fails to promptly correct or cause the correction of any defects in the Improvements, or (ii) Borrower materially departs and deviates from the Plans and Specifications, without prior written approval from Lender;

I. If Borrower assigns this Construction Agreement or any interest herein, or if the Real Property or Improvements are conveyed or encumbered in any way without the prior written consent of Lender;

J. If Borrower executes any other security agreement, which affects any materials, equipment, fixtures or articles used in the construction or operation of the Improvements or articles of personal property located on the Property, or if any such materials, fixtures or articles

are purchased in a conditional sales transaction or otherwise so that the ownership thereof will not vest unconditionally in Borrower, free from encumbrance, on delivery at the Real Property;

K. (Reserved);

L. (Reserved);

M. If Borrower fails to pay when due all bills for Work performed in connection with construction of the Improvements;

N. If Borrower fails generally to pay their debts when due; or if there is filed by Borrower a petition in bankruptcy under any of the provisions of the United States Bankruptcy Act, as amended, or under any similar state or federal law, or a petition for the appointment of a receiver or trustee of the property of Borrower; or if Borrower makes a general assignment for the benefit of creditors or makes any insolvency assignment or is adjudged insolvent by any court of competent jurisdiction; or if there is filed against Borrower a petition in bankruptcy or for the appointment of a receiver which involuntary petition is not dismissed within forty-five (45) days thereafter;

O. If Borrower shall not deposit with Lender any portion of the Borrower's Funds required hereunder when requested by the Lender within ten (10) days after Lender has notified Borrower to deposit the Borrower's Funds;

P. If any indebtedness due under either of the Notes or under any of the other Loan Documents, is not paid immediately when due;

Q. If any covenant or agreement herein is not fully and timely performed, observed or kept;

R. If the Borrower fails to comply with any of the conditions precedent to the obligation of Lender to make any Loan Disbursements hereunder or under any other Loan Documents;

S. Construction is enjoined or prohibited for a period exceeding 30 days for any reason through no fault of the Lender;

T. A mechanics lien, materialmens' lien or judgment lien is established against the Real Property, and remains unsatisfied, unpaid or unbonded, or not insured over by the Title Company (in a manner satisfactory to the Lender) for a period of thirty (30) days after the date of recordation or docketing;

U. The Lender has determined that a material adverse change has occurred in the financial condition of the Borrower, or in the condition of the Real Property, and Borrower has not remedied same within 20 days after notice thereof;

V. If the Real Property is found to contain any hazardous waste, hazardous substance or toxic waste as those terms are contemplated in any of the Loan Documents;

W. If the Borrower causes a breach of any contracts or agreements that the Lender has contemplated and/or relied upon in its underwriting analysis of the Loan; or

X. If Borrower breaches, or commits a Default or an Event of Default under the Development Loan Agreement, or under any of the other Loan Documents.

A default by the Borrower under any of the other Loan Documents shall be deemed to be a default under this Construction Agreement, and an Event of Default under this Construction Agreement shall automatically be deemed to be a default under each and every one of the other Loan Documents.

REMEDIES OF THE LENDER

Upon an Event of Default, the Lender shall mail notice of the default to the Borrower, and the Borrower shall have fifteen (15) days for any monetary-related default, and thirty (30) days for any non-monetary default, from the date of mailing the notice, to cure said default (provided however, if the non-monetary default is not reasonably capable of being cured within said 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice to cure said non-monetary default), whereupon, if remaining uncured at the expiration thereof, the Lender shall immediately be entitled to all remedies as stated herein, in addition to all other remedies provided to Lender under any of the Loan Documents, and under the law or rules of equity, and Lender may, at its election, but without any obligation to do so, without further notice, enjoy any or all of the rights, powers, privileges and remedies listed below, all at the sole cost and expense of the Borrower:

SPECIAL REMEDIES

In furtherance of the remedies herein provided to the Lender, the Borrower hereby expressly grants, empowers, authorizes and consents to the Lender, its successors and/or assigns, by and through any of its officers, attorneys, employees, agents and contractors, with the full unconditional right, power, privilege and authority to do any one or all of the following upon the occurrence of an Event of Default after the expiration of any applicable notice and cure periods:

- (A) Enter upon and take possession of the Real Property and the Project at any time, without any advance notice to the Borrower whatsoever, and to take control of the Real Property;
- (B) Perform any and all Work that is reasonable by the Lender, or that is necessary to complete the Improvements as contemplated herein, or to terminate any Work being performed, and take whatever other action may be necessary or desirable, in the sole opinion of the Lender;
- (C) Perform all Work necessary to complete the construction of the Improvements substantially in accordance with the Plans and Specifications, Contracts, Loan Documents, and governmental requirements, or in accordance with any modifications or Change Orders thereto, as deemed necessary or desirable solely by the Lender, and continue to employ Borrower's architect, engineer, and any contractor pursuant to the applicable Contracts, or otherwise;
- (D) Use and apply any General Accounts, Interest Reserve, funds, deposits, money, or assets, or make any Loan Disbursements as are necessary to:
 - (i) stabilize and secure the Project, the Improvements and/or the Real Property, or
 - (ii) to complete development or construction;
- (E) Set-off any and all General Accounts, Borrower's Funds and any other deposits, funds, money, assets or other indebtedness against the Loan;
- (F) Make such Change Orders or corrections in the Plans and Specifications and Contracts as the Lender may deem acceptable in its sole discretion;
- (G) Employ such architects, engineers, trustees, agents, consultants, managers and contractors as may be required by the Lender for the purpose of:
 - (i) advising the Lender and assessing any problems,
 - (ii) completing the construction of the Improvements substantially in accordance with the Plans and Specifications (as modified as deemed necessary by Lender), Loan Documents, laws and governmental requirements, or as otherwise may be necessary or desirable for purposes of completing such construction,
 - (iii) operating, managing, leasing, controlling and running the Project and/or the Real Property and reviewing the books and records of the Project;
 - (iv) assessing Lender's rights and options, and/or
 - (v) stabilizing the Project;
- (H) Do every act with respect to contracting for the Work, constructing the Improvements on the Project, executing Building Permits, plats, site plans and government approved or required

prints and papers, and all such other acts, or no such other acts, which Borrower may do in connection with the Real Property and the Project on terms acceptable to the Lender;

(I) Prosecute legal action, hire legal counsel and defend and compromise any claim, action or proceeding incident to the Real Property, the construction of Improvements at the Project as the Lender deems proper; and/or

(J) Pay, settle, or compromise all bills and claims so as to clear title to the Real Property in an amount and on such terms as the Lender deems proper;

(K) Seek a refund of all monies paid by the Borrower to any government or business entity, to which the Borrower may be entitled and apply said amount against the outstanding indebtedness in accordance with Loan Documents;

(L) Take over, liquidate and/or use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements; and

(M) Take such other and further action that is ancillary thereto and in furtherance of the rights, powers, privileges and remedies granted under the Special Power of Attorney, and in the Construction Agreement, all on terms, conditions and amounts deemed satisfactory solely to the Lender, and this provision shall be construed liberally and in the broadest sense in favor of the Lender, to hereby provide the Lender with all such rights, power and authority as is necessary and/or desirable to further the purpose, remedies and privileges set forth herein.

OTHER REMEDIES

In addition to the above rights and remedies the Lender shall have any and all of the remedies listed below:

(1) Terminate its commitment to make Loan Disbursements under the Loan and terminate any Loan Disbursement pending;

(2) Terminate its obligation to disburse any of the Borrower's Funds hereunder;

(3) Reduce any claim to judgment;

(4) Exercise any and all rights and remedies afforded by this Construction Agreement, the other Loan Documents, and/or at law, equity or otherwise;

(5) Set-off and apply, to the maximum extent permitted by law, any and all General Accounts and any other deposits, funds, Borrower's Funds, or assets (or any indebtedness at any time owing by Lender to or for the credit or account of Borrower), against the Loan and any indebtedness due the Lender and remaining outstanding under any of the Loan Documents; and

(6) Accelerate the Notes, and foreclose under the terms of the Deed of Trust.

SPECIAL POWER OF ATTORNEY

The Borrower hereby irrevocably makes, constitutes and appoints the Lender, by and through any of its corporate officers, (any one of which has full power to act) as the Borrower's duly appointed agent and/or Attorney-In-Fact, (collectively, the "Attorney In Fact") with the full power, authority and right to act in the name, place and stead of the Borrower, and do all things as the Borrower could do if present, but nevertheless limited to matters and assets relating and/or earmarked solely in connection with the Real Property. This power of attorney and appointment is irrevocable and coupled with an interest, and shall not terminate upon the disability, insolvency or dissolution of the Borrower in accordance with the Code of Virginia, 1950. Upon the occurrence of an Event of Default, after the

expiration of any applicable notice and cure periods, the Attorney In Fact shall have the right, power, privilege and authority to effect and/or do any and all of the rights, privileges, powers, actions, remedies, or acts contemplated herein, including but not limited to accomplishing or effecting the Special Remedies herein, the Other Remedies herein, any of the rights, privileges or remedies of the Lender set forth in any and all of the other Loan Documents, and any or all of the following solely in connection with the Real Property:

(A) To execute all related papers contemplated in this Construction Agreement, including applications, Contracts, notes, plans, drawings, bonds, plats, and certificates, and deliver same for any purpose in connection with the Project which may be required for completion of construction of the Improvements, operation and management of the Project, or to secure the collateral;

(B) To endorse, negotiate, transfer and deliver all checks, drafts, notes, deposits and negotiable instruments and assign or transfer all non-negotiable instruments in the name of Borrower, and to withdraw such cash, deposits, Borrower's Funds, and funds from any General Account, and apply same to: (i) stabilize the Real Property and the Project, (ii) any and all costs and expenses incurred by the Lender in connection with the operations and management of the Project, (iii) any and all Costs incurred in connection with the Work at the Project and the use of the Real Property, (iv) any and all indebtedness that continues to arise under any of the Loan Documents, (v) pay creditors bills, and (vi) for such other matters as the Attorney In Fact shall deem necessary or important in the sole discretion of the Attorney In Fact in connection with the Lender's full realization of any of the Remedies set forth herein; and/or

(C) To endorse the name of Borrower on any checks or drafts representing proceeds of any Insurance Policies, bonds, or other checks, returns of security, deposits or instruments payable to Borrower with respect to the Real Property, and apply said proceeds to: (i) all expenses, fees and costs incurred by the Attorney In Fact in pursuing any of its remedies hereunder, including reasonable attorneys fees incurred by the Attorney In Fact, and (ii) then to payment of the Loan in accordance with the terms of the Notes.

EXHIBIT E
DRAW SCHEDULE

Parcel # _____

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (the "Agreement") is dated this 21st day of August, 2003, by and between COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower"), and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192; and BB&T-VA COLLATERAL SERVICE CORPORATION, a Virginia corporation, Trustee ("Trustee"); and the Guarantors (as defined below).

RECITALS:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars, as amended, (collectively, and as further increased by the Allonge (as defined below) to \$16,500,000.00, referred to hereinafter as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (together with any and all other or further amendments or modifications thereto, referred to as "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been modified by that certain Allonge and Modification Agreement to \$4,000,000 Note dated of even date herewith (the "Allonge") (Note 2, as modified by the Allonge, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records"), (hereinafter, the "Trust") as further supplemented by a Deed of Trust in the amount of \$300,000.00 further securing standby letters of credit, and as the Trust is modified this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deed of Trust"), encumbering real property as described therein (which is not otherwise released by the Holder, and hereinafter referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded among the Land Records immediately after the Trust, as further modified by this Agreement, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, and as further amended by this Agreement (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as amended by this Agreement, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as amended by this Agreement (the "Construction Agreement"), (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as the same may be modified from time-to-time, and as further modified by this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"), [The Notes, the Trust, the Deed of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

4. The parties hereto desire to enter into this Agreement to evidence certain agreed upon changes to the Loan Documents.

WITNESSETH:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.

2. *Modification of Note 2.*

i. Simultaneously with the execution of this Agreement, the Borrower agrees to execute and deliver to the Holder the Allonge dated of even date herewith which shall modify Note 2 to among other things, increase it by \$3,000,000.00.

ii. The Borrower hereby reaffirms, confirms, consents and agrees to pay to the order of Holder all amounts disbursed and remaining outstanding under the Loan and under the Notes, as amended.

3. *Modification of the Trust.*

i. Each reference in the Trust to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended (to-wit, Note 1 and Trust Note 2, as Trust Note 2 is amended by the Allonge and as either may be amended or modified from time-to-time) and as the same may be further amended, modified, supplemented, renewed or replaced from time-to-time. The Notes, as amended, hereby remain contemplated and secured by the Trust.

ii. The lien and priority of the Trust as modified herein shall be and remain a first priority encumbrance against the real property and all improvements as described more fully therein (and not otherwise released by Holder), and shall completely secure the Loan as evidenced by the Loan Documents, inclusive of the Notes, as amended, and any further extensions, renewals, amendments, modifications or supplements thereof and thereto.

iii. The top of page 1 of the Trust is hereby modified to state as follows:

THE MAXIMUM AMOUNT OF PRINCIPAL THAT IS SECURED UNDER THIS DEED OF TRUST IS \$16,500,000.00.

iv. This Modification shall be deemed to modify the Trust. Except as modified herein, all other terms of the Trust as well as the Deed of Trust remain unchanged, and in full force and effect.

4. *Modification To Loan Agreements.*

i. Each reference in the Development Agreement to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended, and as said note or notes may be further amended, modified, supplemented, renewed or replaced from time-to-time.

ii. Each reference in the Construction Agreement to Note 2, shall be deemed to be a reference to Trust Note 2, together with any and all other amendments thereto.

a. the amount of funds available for disbursement in connection with construction shall be evidenced by Trust Note 2, as amended, and all additional funds available for construction under the Allonge shall be disbursed in accordance with the provisions set forth in the Construction Agreement.

b. the Loan Fees (as defined in the Loan Agreements) shall continue to be in full force and effect in connection with the funds advanced under the Allonge.

5. *Modification To Guaranty.*

i. Each reference in the Guaranty to the "Deed of Trust Notes" or the "Notes" shall be deemed to be a reference to the Notes, as amended, and as the same may be further supplemented or amended from time-to-time.

ii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, the "Guarantor") hereby jointly and severally reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirm all obligations to the Holder under the Guaranty, as amended, in connection with the terms of the Allonge and this Agreement and each Guarantor remains bound in accordance with the terms of the Guaranty, as amended.

6. *Modification of Loan Documents.*

i. Each reference to the "Deed of Trust Note (No. 1)" shall be deemed to be a reference to "Note 1" and each reference to "Deed of Trust Note (No. 2)" shall be deemed to be a reference to Trust Note 2, as amended.

ii. Each reference in the Loan Documents to any particular Loan Document shall be deemed to be a reference to such Loan Document, as amended, and as further modified by this Agreement. In the event of a conflict between the terms of any Loan Document and the terms of this Agreement, the terms of this Agreement shall control.

iii. Except as specifically modified by this Agreement, the Loan Documents, and all terms and provisions contained therein remain unchanged, and are hereby ratified and confirmed by the parties hereto in all respects and remain in full force and effect and binding upon the Borrower.

6. *Additional Covenants.*

i. Each of the undersigned hereby certify that the execution, delivery and performance of this Agreement has been properly authorized, consented to and approved by all requisite and necessary parties.

ii. The Borrower agrees that there are no defenses, counterclaims or setoffs against any of their respective obligations under the Loan Documents.

iii. This Agreement is a modification only and does not effect a novation of the Borrower's obligations under any of the Loan Documents, or any agreements contained therein.

iv. The Assignment of Interests as modified herein remains binding upon the Borrower and in full force and effect.

v. The Borrower shall deliver to the Holder, at Borrower's expense, an endorsement to the mortgage title insurance policy insuring the Deed of Trust, which endorsement shall be in a form and substance acceptable solely to the Holder.

vi. The Borrower hereby covenants and agrees to execute and deliver, now or at any time in the future, any and all instruments, papers, deeds, acts or things, supplemental confirmatory or otherwise, as reasonably may be required by the Holder for the purpose of effecting this Agreement described or contemplated herein.

vii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantor") hereby jointly and severally further reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended.

viii. This Agreement is binding on the parties hereto, their successors, assigns and successors in title.

ix. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles.

x. This Agreement may be executed in counterparts, all of which together shall constitute but one and the same agreement.

xi. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior discussions, understandings or agreements among the parties hereto.

7. *Trustee.* The Trustee joins in this Agreement at the direction of the Holder.

(signatures follow)

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente as the Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente as the Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

Holder:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: /s/ JAMES E. DAVIS

Print Name: James E. Davis

Title: Sr. Vice President

Trustee who is directed to sign by the Holder herein:

BB&T-VA COLLATERAL SERVICE CORPORATION a Virginia corporation

By: /s/ JAY P. ARVAI

Jay Arvai
Senior Vice President

Commonwealth of Virginia
CITY/COUNTY OF Fairfax, to wit:

I, the undersigned, a Notary Public do hereby certify that James E. Davis whose name as Sr. Vice President of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 20 day August, 2003.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Fairfax, to wit:

I, the undersigned, a Notary Public do hereby certify that Jay Arvai, Trustee has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 20 day August, 2003.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

NOTARY PUBLIC

ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2

THIS ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2 (the "Agreement") is dated this 21st day of August, 2003, by COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, successor in interest to VIRGINIA FIRST SAVINGS BANK, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192, and the Guarantors (as defined below).

WITNESSETH:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars (\$13,500,000.00), as amended (and the loan as further amended by this Agreement to the amount of \$16,500,000.00, is hereinafter referred to as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (collectively, together with any and all other or further amendments or modifications thereto, "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been modified by this Agreement (Note 2, as modified by this Agreement, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records") (hereinafter, the "Trust") as modified, as supplemented by a Deed of Trust (in the amount of \$300,000) and as further modified by that certain Modification Agreement dated of even date herewith, recorded among the Land Records (the "Modification"), (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deed of Trust"), encumbering real property as described therein (hereinafter, which is not otherwise released by the Holder, referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded immediately after the Trust, as further modified by the Modification, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, and as further amended by the Modification (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Land Acquisition, Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as amended by the Modification, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as amended by the Modification (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as the same may be modified from time-to-time, and as further modified by the Modification (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"); [The Notes, the Trust, the Deed of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

WHEREAS, the parties hereto desire to modify the terms of Trust Note 2 in accordance with the terms stated herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.
 2. Note 2 is hereby increased by Three Million Dollars (\$3,000,000.00), from Four Million Dollars (\$4,000,000.00) to the amount of Seven Million Dollars (\$7,000,000.00) which shall be the face amount of Note 2, due and payable by the Borrower in accordance with its terms.
 3. Borrower hereby jointly and severally warrants, certifies, represents, promises, reaffirms, agrees and promises:
 - (a) to pay to the order of Holder, its successors and/or assigns, all principal sums advanced under the Loan and evidenced by Trust Note 2, that remain outstanding, together with all accrued but unpaid interest, costs and fees as and when they come due thereunder;
 - (b) that Trust Note 2, is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.
 - (c) that the terms of the Notes, as the same are amended, modified or supplemented, remain in full force and effect.
 5. Nothing contained herein shall be construed to release Borrower from any of the obligations set forth in Trust Note 2, the Deed of Trust, and/or under any of the other Loan Documents.
 6. This Agreement shall be deemed to be incorporated into and become a part of Trust Note 2 as if fully set forth therein, and may be attached to the aforementioned note.
 7. Each of the undersigned hereby certify that the execution, delivery and performance of this Agreement has been properly authorized and consented to.
 8. This Agreement shall not be deemed or construed to be a novation or release of any of the Loan Documents, or any parties thereto, and the Borrower by executing this Agreement consents to remain unconditionally bound by the terms of Trust Note 2, as modified by this Agreement.
 9. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantors") hereby each reaffirms and ratifies the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirms all obligations to the Holder under the Guaranty, as amended, in connection with the terms set forth in this Agreement and in connection with the Modification.
 10. This Agreement constitutes the entire agreement among the parties hereto, supersedes all prior discussions and agreements, and is binding on the parties hereto, their successors, assigns and successors in title.
-

Except as modified herein, all other terms and conditions in Note 2 shall remain unchanged, and in full force and effect.

(signatures follow)

WITNESS OUR SIGNATURES:

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente as the Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 21 day of August, 2003, by Christopher Clemente as the Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: /s/ JAY P. ARVAI

Print Name: Jay P. Arvai

Title: Senior Vice President

Commonwealth of Virginia
CITY/COUNTY OF Fairfax, to wit:

I, the undersigned, a Notary Public do hereby certify that Jay Arvai whose name as Senior Vice President of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this 20 day August, 2003.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

NOTARY PUBLIC

Parcel # _____

2nd MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (the "Agreement") is dated this _____ day of January, 2004, by and between COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower"), and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192; and BB&T-VA COLLATERAL SERVICE CORPORATION, a Virginia corporation, Trustee ("Trustee"); and the Guarantors (as defined below).

RECITALS:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars (\$13,500,000), as the same has been amended, (collectively, and as further increased by the Allonge (as defined below) to \$17,200,000.00, referred to hereinafter as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (together with any and all other or further amendments or modifications thereto, referred to as "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been increased to \$7,000,000.00, and as further modified by that certain Allonge and Modification Agreement to the amount of \$7,700,000.00, dated of even date herewith (the "Allonge"), (Note 2, as modified, and as further modified by the Allonge, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records"), as amended (hereinafter, the "Trust") as further supplemented by a Deed of Trust in the amount of \$300,000.00 further securing standby letters of credit, and as the Trust is further modified this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deeds of Trust"), encumbering real property as described therein (which is not otherwise released by the Holder, and hereinafter referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded among the Land Records immediately after the Trust, as modified, and as further modified by this Agreement, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, as modified, and as further modified by this Agreement (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as modified, and as further amended by this Agreement, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as modified, and as further amended by this Agreement (the "Construction Agreement"), (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as modified, and as further modified by this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"), [The Notes, the Trust, the Deeds of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

4. The parties hereto desire to enter into this Agreement to evidence certain agreed upon changes to the Loan Documents.

WITNESSETH:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.

2. *Modification of Note 2.*

i. Simultaneously with the execution of this Agreement, the Borrower agrees to execute and deliver to the Holder the Allonge dated of even date herewith which shall modify Note 2 to among other things, increase it by \$700,000.00.

ii. The Borrower hereby reaffirms, confirms, consents and agrees to pay to the order of Holder all amounts disbursed and remaining outstanding under the Loan and under the Notes, as amended.

3. *Modification of the Trust.*

i. Each reference in the Trust to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended (to-wit, Note 1 and Trust Note 2, as Trust Note 2 is further amended by the Allonge and as either may be further amended or modified from time-to-time) and as the same may be further amended, modified, supplemented, renewed or replaced from time-to-time. The Notes, as amended, hereby remain contemplated and secured by the Trust.

ii. The lien and priority of the Trust as modified herein shall be and remain a first priority encumbrance against the real property and all improvements as described more fully therein (and not otherwise released by Holder), and shall completely secure the Loan as evidenced by the Loan Documents, inclusive of the Notes, as amended, and any further extensions, renewals, amendments, modifications or supplements thereof and thereto.

iii. The top of page 1 of the Trust is hereby modified to state as follows:

THE MAXIMUM AMOUNT OF PRINCIPAL THAT IS SECURED UNDER THIS DEED OF TRUST IS \$17,200,000.00.

iv. This Modification shall be deemed to modify the Trust. Except as modified herein, all other terms of the Trust remain unchanged, and in full force and effect.

4. *Modification To Loan Agreements.*

i. Each reference in the Development Agreement to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended, and as said note or notes may be further amended, modified, supplemented, renewed or replaced from time-to-time.

ii. Each reference in the Construction Agreement to Note 2, shall be deemed to be a reference to Trust Note 2, together with any and all other amendments thereto.

a. the amount of funds available for disbursement in connection with construction shall be evidenced by Trust Note 2, as amended, and all additional funds available for construction in connection with the Allonge shall be disbursed in accordance with the Construction Agreement.

b. the Loan Fees (as defined in the Loan Agreements) shall continue to be in full force and effect in connection with the funds advanced under the Allonge.

c. In Paragraph VI, entitled, Loan Limitations, the number of Speculative Units (as defined therein) is hereby increased to fifty (50).

d. Paragraph VI, entitled, Loan Limitations, the following provision is added:

During the one hundred twenty (120) days immediately following the date of this Agreement, the Borrower hereby covenants that Comstock Investor VI, LC shall not distribute any funds in excess of its pre-tax profit received from the Borrower for either (i) the year ending December 31, 2003, or (ii) for the first quarter period ending March 31, 2004, and shall provide written evidence of compliance with this provision, in a form and substance acceptable to the Lender, at any time or from time-to-time reasonably requested by the Lender. Any failure of the Borrower to comply with this provision shall automatically be deemed to be a default under the Loan Agreements and an Event of Default (as defined therein).

5. *Modification To Guaranty.*

i. Each reference in the Guaranty to the "Deed of Trust Notes" or the "Notes" shall be deemed to be a reference to the Notes, as amended, and as the same may be further supplemented or amended from time-to-time.

ii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, the "Guarantor") hereby jointly and severally reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirm all obligations to the Holder under the Guaranty, as amended, in connection with the terms of the Allonge and this Agreement, and each Guarantor shall remain bound in accordance with the terms of the Guaranty, as amended.

6. *Modification of Loan Documents.*

i. Each reference to the "Deed of Trust Note (No. 1)" shall be deemed to be a reference to "Note 1" and each reference to "Deed of Trust Note (No. 2)" shall be deemed to be a reference to Trust Note 2, as amended.

ii. Each reference in the Loan Documents to any particular Loan Document shall be deemed to be a reference to such Loan Document, as amended, and as further modified by

this Agreement. In the event of a conflict between the terms of any Loan Document and the terms of this Agreement, the terms of this Agreement shall control.

iii. Except as specifically modified by this Agreement, the Loan Documents, and all terms and provisions contained therein remain unchanged, and are hereby ratified and confirmed by the parties hereto in all respects and remain in full force and effect and binding upon the Borrower.

6. *Additional Covenants.*

i. Each of the undersigned hereby certify that the execution, delivery and performance of this Agreement has been properly authorized, consented to and approved by all requisite and necessary parties.

ii. The Borrower agrees that there are no defenses, counterclaims or setoffs against any of their respective obligations under the Loan Documents.

iii. This Agreement is a modification only and does not effect a novation of the Borrower's obligations under any of the Loan Documents, or any agreements contained therein.

iv. The Assignment of Interests as modified herein remains binding upon the Borrower and in full force and effect.

v. The Borrower shall deliver to the Holder, at Borrower's expense, an endorsement to the mortgage title insurance policy insuring the Deed of Trust, which endorsement shall be in a form and substance acceptable solely to the Holder.

vi. The Borrower hereby covenants and agrees to execute and deliver, now or at any time in the future, any and all instruments, papers, deeds, acts or things, supplemental confirmatory or otherwise, as reasonably may be required by the Holder for the purpose of effecting this Agreement described or contemplated herein.

vii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantor") hereby jointly and severally further reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended.

viii. This Agreement is binding on the parties hereto, their successors, assigns and successors in title.

ix. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles.

x. This Agreement may be executed in counterparts, all of which together shall constitute but one and the same agreement.

xi. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior discussions, understandings or agreements among the parties hereto.

7. *Trustee.* The Trustee joins in this Agreement at the direction of the Holder.

(signatures follow)

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

Holder:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: _____

Print Name: _____

Title: _____

Trustee who is directed to sign by the Holder herein:

BB&T-VA COLLATERAL SERVICE CORPORATION a Virginia corporation

By: _____

Jay Arvai
Senior Vice President

Commonwealth of Virginia
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that _____ whose name as _____ of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that Jay Arvai, Trustee has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2

THIS ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2 (the "Agreement") is dated this _____ day of January, 2004, by COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, successor in interest to VIRGINIA FIRST SAVINGS BANK, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192, and the Guarantors (as defined below).

WITNESSETH:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars (\$13,500,000.00), as amended (and the loan as further amended by this Agreement to the amount of \$17,200,000.00, is hereinafter referred to as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (collectively, together with any and all other or further amendments or modifications thereto, "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 as increase to \$7,000,000, payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been further modified by this Agreement (Note 2, as modified by this Agreement, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records") (hereinafter, the "Trust") as modified, as supplemented by a Deed of Trust (in the amount of \$300,000) and as further modified by that certain Modification Agreement dated of even date herewith, recorded among the Land Records (the "Modification"), (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deed of Trust"), encumbering real property as described therein (hereinafter, which is not otherwise released by the Holder, referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded immediately after the Trust, as further modified by the Modification, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, and as further amended by the Modification (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Land Acquisition, Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as amended by the Modification, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as amended by the Modification (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as the same may be modified from time-to-time, and as further modified by the Modification (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"); [The Notes, the Trust, the Deed of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

WHEREAS, the parties hereto desire to modify the terms of Trust Note 2 in accordance with the terms stated herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.
 2. Note 2 is hereby increased by Seven Hundred Thousand Dollars (\$700,000.00), from Seven Million Dollars (\$7,000,000.00) to the amount of Seven Million Seven Hundred Thousand Dollars (\$7,700,000.00) which shall be the face amount of Note 2, due and payable by the Borrower in accordance with its terms.
 3. Borrower hereby jointly and severally warrants, certifies, represents, promises, reaffirms, agrees and promises:
 - (a) to pay to the order of Holder, its successors and/or assigns, all principal sums advanced under the Loan and evidenced by Trust Note 2, that remain outstanding, together with all accrued but unpaid interest, costs and fees as and when they come due thereunder;
 - (b) that Trust Note 2, is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;
 - (c) that the terms of the Notes, as the same are amended, modified or supplemented, remain in full force and effect;
 - (d) to execute, acknowledge and deliver as of the date hereof, an allonge and modification agreement reducing the amount of Note 2 by \$700,000.00, effective approximately one hundred twenty (120) days after the date hereof.
 5. Nothing contained herein shall be construed to release Borrower from any of the obligations set forth in Trust Note 2, the Deed of Trust, and/or under any of the other Loan Documents.
 6. This Agreement shall be deemed to be incorporated into and become a part of Trust Note 2 as if fully set forth therein, and may be attached to the aforementioned note.
 7. Each of the undersigned hereby certifies that the execution, delivery and performance of this Agreement has been properly authorized and consented to.
 8. This Agreement shall not be deemed or construed to be a novation or release of any of the Loan Documents, or any parties thereto, and the Borrower by executing this Agreement consents to remain unconditionally bound by the terms of Trust Note 2, as modified by this Agreement.
 9. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantors") hereby each reaffirms and ratifies the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirms all obligations to the Holder under the Guaranty, as amended, in connection with the terms set forth in this Agreement and in connection with the Modification.
-

10. This Agreement constitutes the entire agreement among the parties hereto, supersedes all prior discussions and agreements, and is binding on the parties hereto, their successors, assigns and successors in title.

Except as modified herein, all other terms and conditions in Note 2 shall remain unchanged, and in full force and effect.

(signatures follow below)

WITNESS OUR SIGNATURES:

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: _____

Print Name: _____

Title: _____

Commonwealth of Virginia
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that _____ whose name as _____ of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

Parcel # _____

3rd MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (the "Agreement") is dated as of the effective date of April , 2004, by and between COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower"), and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192; and BB&T-VA COLLATERAL SERVICE CORPORATION, a Virginia corporation, Trustee ("Trustee"); and the Guarantors (as defined below).

RECITALS:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars, as amended, (collectively, and as decreased by the Allonge (as defined below) to \$16,500,000.00, referred to hereinafter as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (together with any and all other or further amendments or modifications thereto, referred to as "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been increased to \$7,700,000, and as further decreased by that certain Allonge and Modification Agreement dated of even date herewith, to \$7,000,000 (the "Allonge"), (Note 2, as further modified by the Allonge, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records"), as modified (hereinafter, the "Trust") as further supplemented by a Deed of Trust in the amount of \$300,000.00 further securing standby letters of credit, and as the Trust is modified this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deeds of Trust"), encumbering real property as described therein (which is not otherwise released by the Holder, and hereinafter referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded among the Land Records immediately after the Trust, as further modified by this Agreement, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, and as further amended by this Agreement (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as amended by this Agreement, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as amended by this Agreement (the "Construction Agreement"), (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as the same may be modified from time-to-time, and as further modified by this Agreement (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"), [The Notes, the Trust, the Deed of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

4. The parties hereto desire to enter into this Agreement to evidence certain agreed upon changes to the Loan Documents.

WITNESSETH:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.
2. *Modification of Note 2.*
 - i. Simultaneously with the execution of this Agreement, the Borrower agrees to execute and deliver to the Holder the Allonge dated of even date herewith which shall modify Note 2 to among other things, decrease it by \$700,000.00.
 - ii. The Borrower hereby reaffirms, confirms, consents and agrees to pay to the order of Holder all amounts disbursed and remaining outstanding under the Loan and under the Notes, as amended.
3. *Modification of the Trust.*
 - i. Each reference in the Trust to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended (to-wit, Note 1 and Trust Note 2, as Trust Note 2 is amended by the Allonge and as either may be amended or modified from time-to-time) and as the same may be further amended, modified, supplemented, renewed or replaced from time-to-time. The Notes, as amended, hereby remain contemplated and secured by the Trust.
 - ii. The lien and priority of the Trust as modified herein shall be and remain a first priority encumbrance against the real property and all improvements as described more fully therein (and not otherwise released by Holder), and shall completely secure the Loan as evidenced by the Loan Documents, inclusive of the Notes, as amended, and any further extensions, renewals, amendments, modifications or supplements thereof and thereto.
 - iii. The top of page 1 of the Trust is hereby modified to state as follows:

THE MAXIMUM AMOUNT OF PRINCIPAL THAT IS SECURED UNDER THIS DEED OF TRUST IS \$16,500,000.00.

- iv. This Modification shall be deemed to modify the Trust. Except as modified herein, all other terms of the Trust as well as the Deed of Trust remain unchanged, and in full force and effect.
4. *Modification To Loan Agreements.*
 - i. Each reference in the Development Agreement to the "Deed of Trust Notes" or "Notes" shall be deemed to be a reference to the Notes, as amended, and as said note or notes may be further amended, modified, supplemented, renewed or replaced from time-to-time.
 - ii. Each reference in the Construction Agreement to Note 2, shall be deemed to be a reference to Trust Note 2, together with any and all other amendments thereto.
 - a. the amount of funds available for disbursement in connection with construction shall be evidenced by Trust Note 2, as amended, and all additional funds available for construction under the Allonge shall be disbursed in accordance with the provisions set forth in the Construction Agreement.
 - b. the Loan Fees (as defined in the Loan Agreements) shall continue to be in full force and effect in connection with the funds advanced under the Allonge.

c. In paragraph VI, entitled Loan Limitations, the number of Speculative Units (as defined therein) is hereby decreased to thirty-two (32).

5. *Modification To Guaranty.*

i. Each reference in the Guaranty to the "Deed of Trust Notes" or the "Notes" shall be deemed to be a reference to the Notes, as amended, and as the same may be further supplemented or amended from time-to-time.

ii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, the "Guarantor") hereby jointly and severally reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirm all obligations to the Holder under the Guaranty, as amended, in connection with the terms of the Allonge and this Agreement and each Guarantor remains bound in accordance with the terms of the Guaranty, as amended.

6. *Modification of Loan Documents.*

i. Each reference to the "Deed of Trust Note (No. 1)" shall be deemed to be a reference to "Note 1" and each reference to "Deed of Trust Note (No. 2)" shall be deemed to be a reference to Trust Note 2, as amended.

ii. Each reference in the Loan Documents to any particular Loan Document shall be deemed to be a reference to such Loan Document, as amended, and as further modified by this Agreement. In the event of a conflict between the terms of any Loan Document and the terms of this Agreement, the terms of this Agreement shall control.

iii. Except as specifically modified by this Agreement, the Loan Documents, and all terms and provisions contained therein remain unchanged, and are hereby ratified and confirmed by the parties hereto in all respects and remain in full force and effect and binding upon the Borrower.

6. *Additional Covenants.*

i. Each of the undersigned hereby certify that the execution, delivery and performance of this Agreement has been properly authorized, consented to and approved by all requisite and necessary parties.

ii. The Borrower agrees that there are no defenses, counterclaims or setoffs against any of their respective obligations under the Loan Documents.

iii. This Agreement is a modification only and does not effect a novation of the Borrower's obligations under any of the Loan Documents, or any agreements contained therein.

iv. The Assignment of Interests as modified herein remains binding upon the Borrower and in full force and effect.

v. The Borrower shall deliver to the Holder, at Borrower's expense, an endorsement to the mortgage title insurance policy insuring the Deed of Trust, which endorsement shall be in a form and substance acceptable solely to the Holder.

vi. The Borrower hereby covenants and agrees to execute and deliver, now or at any time in the future, any and all instruments, papers, deeds, acts or things, supplemental confirmatory or otherwise, as reasonably may be required by the Holder for the purpose of effecting this Agreement described or contemplated herein.

vii. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantor") hereby jointly and severally further reaffirm and ratify the terms and conditions set forth in the Guaranty, as amended.

viii. This Agreement is binding on the parties hereto, their successors, assigns and successors in title.

ix. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles.

x. This Agreement may be executed in counterparts, all of which together shall constitute but one and the same agreement.

xi. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior discussions, understandings or agreements among the parties hereto.

7. *Trustee.* The Trustee joins in this Agreement at the direction of the Holder.

(signatures follow)

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

Holder:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: _____

Print Name: _____

Title: _____

Trustee who is directed to sign by the Holder herein:

BB&T-VA COLLATERAL SERVICE CORPORATION a Virginia corporation

By: _____

Jay Arvai
Senior Vice President

Commonwealth of Virginia
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that _____ whose name as _____ of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that Jay Arvai, Trustee has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2

THIS ALLONGE AND MODIFICATION AGREEMENT TO NOTE 2 (the "Agreement") is effectively dated as of April , 2003, by COMSTOCK BLOOMS MILL II, L.C., a Virginia limited liability company, having an address of 11465 Sunset Hills Rd., Suite 510, Reston, Virginia 20190, Attn. C. Clemente ("Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, successor in interest to VIRGINIA FIRST SAVINGS BANK, its successors and/or assigns ("Holder") having an address of 1308 Devils Reach Road, Woodbridge, Virginia 22192, and the Guarantors (as defined below).

WITNESSETH:

1. Holder made an acquisition, revolving development and revolving construction loan to Borrower in the total original amount of up to Thirteen Million Five Hundred Thousand and no/100 Dollars (\$13,500,000.00), as amended (and the loan as further amended by this Agreement to the amount of \$16,500,000.00, is hereinafter referred to as the "Loan").

2. The Loan is evidenced by, among other documents, a Deed of Trust Note (No. 1) in the original face amount of \$9,000,000.00 payable to the order of the Holder dated October 10, 2002 (collectively, together with any and all other or further amendments or modifications thereto, "Note 1"), and that certain Deed of Trust Note (No. 2) in the original face amount of \$4,000,000.00 as increased to \$7,700,000, payable to the order of the Holder dated of even date with Note 1 ("Note 2") as the same has been further modified by this Agreement (Note 2, as modified by this Agreement, together with any and all further amendments, modifications, supplements, or extensions thereto, are collectively referred to herein as "Trust Note 2" (hereinafter, Note 1 and Trust Note 2, together with any and all other amendments, modifications, extensions or supplements thereto, are collectively referred to hereinafter as the "Notes").

3. The Loan is further evidenced by, among other documents:

a. That certain Credit Line Deed of Trust executed by Borrower to secure the indebtedness, dated of even date with Note 1 and recorded among the land records of Prince William County, Virginia (the "Land Records")(hereinafter, the "Trust") as modified, as supplemented by a Deed of Trust (in the amount of \$300,000) and as further modified by that certain Modification Agreement dated of even date herewith, recorded among the Land Records (the "Modification"), (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Deed of Trust"), encumbering real property as described therein (hereinafter, which is not otherwise released by the Holder, referred to as the "Real Property"); and

b. That certain Assignment of Leases, Interests, Contracts, Plans and Profits dated of even date with the Trust, executed by the parties described therein, in favor of the Holder, recorded immediately after the Trust, as further modified by the Modification, and as the same may be further amended, modified or supplemented from time-to-time (collectively, and as further amended, modified or supplemented from time-to-time, the "Assignment of Interests"); and

c. That certain Hazardous Waste Indemnity Agreement executed by the Borrower of even date with the Trust, and as further amended by the Modification (hereinafter, and as further amended, modified or supplemented from time-to-time, collectively, the "Indemnity"); and

d. That certain Land Acquisition, Disbursement and Development Loan Agreement executed by the Borrower (the "Development Agreement"), of even date with the Trust, as amended by the Modification, that certain Disbursement and Construction Loan Agreement of even date with the Trust, as amended by the Modification (collectively, and as the same have been or may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Loan Agreements"); and

e. That certain Guaranty Agreement executed by the Guarantors (as defined below) of even date with the Trust, as the same may be modified from time-to-time, and as further modified by the Modification (collectively, and as the same may be further amended, modified or supplemented from time-to-time, hereinafter referred to as the "Guaranty"); [The Notes, the Trust, the Deed of Trust, the Assignment of Interests, the Indemnity, the Loan Agreements, the Guaranty and any other document that governs, secures, evidences or otherwise relates to the Loan, and any and all further amendments, modifications or supplements thereto from time-to-time shall be referred to hereinafter collectively as the "Loan Documents"].

WHEREAS, the parties hereto desire to modify the terms of Trust Note 2 in accordance with the terms stated herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto do hereby agree as follows:

1. All of the recitals stated above are hereby incorporated herein by reference as if fully set forth in the body of this Agreement.
 2. Effective as of the date hereof, Note 2 is hereby decreased by Seven Hundred Thousand Dollars (\$700,000.00), from Seven Million Seven Hundred Thousand Dollars (\$7,700,000.00) to the amount of Seven Million Dollars (\$7,000,000.00) which shall be the face amount of Note 2, due and payable by the Borrower in accordance with its terms.
 3. Borrower hereby jointly and severally warrants, certifies, represents, promises, reaffirms, agrees and promises:
 - (a) to pay to the order of Holder, its successors and/or assigns, all principal sums advanced under the Loan and evidenced by Trust Note 2, that remain outstanding, together with all accrued but unpaid interest, costs and fees as and when they come due thereunder;
 - (b) that Trust Note 2, is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.
 - (c) that the terms of the Notes, as the same are amended, modified or supplemented, remain in full force and effect.
 5. Nothing contained herein shall be construed to release Borrower from any of the obligations set forth in Trust Note 2, the Deed of Trust, and/or under any of the other Loan Documents.
 6. This Agreement shall be deemed to be incorporated into and become a part of Trust Note 2 as if fully set forth therein, and may be attached to the aforementioned note.
 7. Each of the undersigned hereby certify that the execution, delivery and performance of this Agreement has been properly authorized and consented to.
 8. This Agreement shall not be deemed or construed to be a novation or release of any of the Loan Documents, or any parties thereto, and the Borrower by executing this Agreement consents to remain unconditionally bound by the terms of Trust Note 2, as modified by this Agreement.
 9. The undersigned guarantors, CHRISTOPHER D. CLEMENTE, GREGORY V. BENSON and COMSTOCK HOLDING COMPANY, INC., a Virginia corporation (collectively, "Guarantors") hereby each reaffirms and ratifies the terms and conditions set forth in the Guaranty, as amended, and hereby reaffirms all obligations to the Holder under the Guaranty, as amended, in connection with the terms set forth in this Agreement and in connection with the Modification.
 10. This Agreement constitutes the entire agreement among the parties hereto, supersedes all prior discussions and agreements, and is binding on the parties hereto, their successors, assigns and successors in title.
-

Except as modified herein, all other terms and conditions in Note 2 shall remain unchanged, and in full force and effect.

(signatures follow)

WITNESS OUR SIGNATURES:

Borrower:

COMSTOCK BLOOMS MILL II, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Guarantor:

/s/ CHRISTOPHER D. CLEMENTE (seal) Payment Guaranteed

Christopher D. Clemente

/s/ GREGORY BENSON (seal) Payment Guaranteed

Gregory Benson

COMSTOCK HOLDING COMPANY, INC. Payment Guaranteed
a Virginia corporation

By: /s/ CHRISTOPHER D. CLEMENTE (seal)

Christopher D. Clemente
Title: Chief Executive Officer

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., manager of Comstock Blooms Mill II, L.C., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Gregory Benson, before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

State of Virginia
County of Fairfax

The above instrument was acknowledged this 20 day of January, 2004, by Christopher Clemente, Chief Executive Officer of Comstock Holding Company, Inc., before me, a Notary Public.

My Commission Expires: 11-30-04

/s/ KELLY WYCHE

Notary Public

HOLDER:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By: _____

Print Name: _____

Title: _____

Commonwealth of Virginia
CITY/COUNTY OF _____, to wit:

I, the undersigned, a Notary Public do hereby certify that _____ whose name as _____ of BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, has signed the foregoing Agreement, and has personally acknowledged the same before me in my aforesaid jurisdiction.

GIVEN under my hand and seal this _____ day _____, 2003.

My Commission Expires:

NOTARY PUBLIC

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ACQUISITION, DISBURSEMENT AND DEVELOPMENT LOAN AGREEMENT

THIS ACQUISITION, DISBURSEMENT AND DEVELOPMENT LOAN AGREEMENT ("Development Agreement") is dated this July 25, 2003, by and between COMSTOCK HAMLETS OF BLUE RIDGE, L.C., a Virginia Limited Liability Company (the "Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, having a principal address of 1308 Devils Reach Road, Woodbridge, Virginia 22192 (the "Lender").

RECITALS

(A) The Lender agreed to make a secured acquisition, revolving development and revolving construction loan to Borrower in the face amount of up to Ten Million Four Hundred Ninety-Three Thousand Three Hundred and No/100 Dollars (\$10,493,300.00), (the "Loan") to be secured by real property located in Loudoun County, Virginia, subdivided into sixty-five (65) residential single family building lots each containing a minimum of approximately three (3) acres (collectively, the "Lots") together with all Improvements (as defined below), and more fully described in Exhibit A, attached hereto and made a part hereof (collectively, the "Real Property").

(B) In connection with the Loan, the Borrower intends to grant to Lender a perfected first priority secured interest in the Real Property in favor of the Lender as of the date hereof, and to enter into that certain: (i) Credit Line Deed of Trust executed by the Borrower of even date herewith (the "Purchase Money Deed of Trust"), (ii) Assignment Of Leases, Interests, Contracts, Plans and Profits executed by the Borrower of even date herewith (the "Assignment of Interests"), (iii) two (2) Deed of Trust Notes executed by the Borrower of even date herewith, in the face amounts of \$8,243,300.00 ("Note 1") and \$2,250,000.00 ("Note 2") (together totaling the Loan), in favor of the Lender (hereinafter collectively, the "Notes"), and all other Loan Documents (as defined herein) to further secure the Loan.

(C) This Development Agreement sets forth the terms and conditions under which the Lender agrees to disburse the portion of the Loan for the acquisition and revolving development portion of the Loan, interest reserve, and certain other costs to the Borrower, provided no more than \$8,243,300.00 is ever disbursed and outstanding at any one time (hereinafter, the "Disbursement and Development Portion"). [In this Development Agreement, all references to the "Loan" hereinafter shall refer to this Disbursement and Development Portion of the Loan only, unless the context expressly states otherwise]. The Disbursement and Construction Loan Agreement dated of even date herewith (the "Construction Loan Agreement") sets forth the terms and conditions under which the Lender agrees to disburse revolving construction proceeds of up to Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00).

(D) The exhibits attached hereto are identified as follows:

- (i) Exhibit A—contains the legal description of the Real Property.
- (ii) Exhibit B—contains the definitions of certain basic words and terms used in this Development Agreement.
- (iii) Exhibit C—contains the conditions precedent to the initial advance under the Loan.
- (iv) Exhibit D—contains the conditions precedent to all subsequent disbursements, other than the final disbursement.
- (v) Exhibit E—contains the Events of Default under the Development Agreement, and the remedies of the Lender.

(E) Accordingly, capitalized words and/or terms used throughout this Development Agreement indicate that the words and/or terms have been defined in Exhibit B, attached hereto and/or are set forth in the main body of the Development Agreement, and the words and/or terms shall be construed to have the meanings and statements as set forth. The definitions listed in the main body of the Development Agreement and in Exhibit B shall not be construed as limiting, undermining or modifying any of terms and conditions contained in any of the other Loan Documents, and shall have the meanings, interpretation and significance as defined, unless otherwise required by the context of the paragraph.

(F) The proceeds of the Loan, together with certain of the Borrower's Funds are to be used by the Borrower for the sole purpose (the "Purpose") of acquiring the Real Property which is to be subdivided into the Lots and to perform certain development work to finish the Lots, such that they are ready for the ultimate construction of dwellings at the Real Property (also referred to as the "Project") in accordance with the terms of the Construction Loan Agreement.

(G) To induce the Lender to make the Loan, the Borrower agrees to the terms and conditions in this Development Agreement.

WITNESSETH

In consideration of the Loan to the Borrower, the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. INTRODUCTION

1. *Incorporation of Recitals.* Each and every one of the Recitals stated above are hereby expressly incorporated herein by reference as if fully set forth in this Development Agreement.

2. *Specific Incorporation of Exhibits.* Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E attached hereto (collectively referred to as the "Exhibits") are hereby incorporated into this Development Agreement and expressly made a part hereof as if fully set forth herein. The Borrower's signature on the last page of this Development Agreement shall evidence Borrower's express acceptance and agreement with all of the terms, conditions, words and definitions set forth in this Development Agreement, which is hereby deemed to include each and every one of the Exhibits.

3. *Compliance With Loan Documents.* Borrower agrees and covenants to comply with and perform all of the terms, covenants and conditions of this Development Agreement and each and every one of the other Loan Documents.

4. *Use of Proceeds.* All Loan Disbursements shall be used by the Borrower for the specific Purpose stated herein, subject to the requirements of the Lender as set forth herein and in each of the other Loan Documents.

5. *Borrower As Fiduciary.* If Borrower receives the Loan Disbursements made under this Development Agreement, Borrower shall hold the funds advanced as a fiduciary prior to payment, and shall apply such advances to the payment of the legitimate Costs then due for the Work performed in connection with the development of the Improvements. Borrower hereby agrees, at any time and from time-to-time upon request of Lender, to exhibit to Lender receipts, vouchers, statements, bills of sale or other evidence satisfactory to Lender of actual payment of such Costs within ten (10) days after such request.

II. INITIAL ADVANCE

The Lender shall make an initial advance of Loan funds for acquiring the Property prior to the commencement of development in an amount that does not exceed \$6,234,300.00, plus soft costs due and payable at or prior to closing (the "Initial Advance") provided however:

- (A) Any Initial Advance may be reduced by any unavailability of the Borrower's Funds, or any other sources of repayment of the Loan (other than the sale of the Real Property) that were disclosed in the Financial Statements as determined by the Lender; and
- (B) The Initial Advance is further subject to the Borrower remaining in compliance with all of the underwriting standards, representations and warranties made in connection with the Loan and the Loan Documents; and
- (C) The Borrower shall provide the Lender on or around closing with evidence that it has invested the Borrower Equity (as defined below) into the Project. The Initial Advance may be paid directly to the Borrower's closing attorney, at the option of the Lender. All advances hereunder shall be deemed to be evidenced by Note 1 and secured by the Purchase Money Deed of Trust; and
- (D) The Borrower agrees to repay to the Lender the sum of five hundred thousand dollars (\$500,000.00) within ninety (90) days after the date hereof, to effectively reduce the outstanding Land Advance to the amount of \$5,734,300.00 (the "Land Advance Curtailment").

III. REQUIREMENTS FOR INITIAL ADVANCE

The Lender agrees to disburse the Initial Advance subject to the Borrower's compliance as determined by Lender, with all terms and conditions set forth in this Development Agreement, including each and every one of the Conditions Precedent To Initial Advance, set forth in Exhibit C, attached hereto and made a part hereof.

IV. SUBSEQUENT DISBURSEMENTS

The Borrower may submit (not more than twice a month) a properly completed Draw Application accompanied by the Inspection Fee (which may be deducted from each draw) for each subsequent Loan Disbursement under the Loan, in an amount which equals the lesser of: (i) the Completion Percentage as reasonably determined by Lender's Inspector, less all amounts previously advanced under the Loan, or (ii) the budgeted amounts available for the development of said Improvements under the Development Budget, as approved by the Lender. Requests for site development advances shall be supported by receipts for payment for labor performed and materials installed, or invoices for work performed, in a manner deemed sufficient by the Lender, provided however:

- (A) The Borrower shall provide a detailed budget outlining costs, preliminarily budgeted as follows:

Lot Development Costs*	3,282,500.00
Soft Costs**	364,200.00
Interest Reserve***	325,000.00

* The Lender shall not disburse any proceeds under this budgeted item unless and until the Borrower has first provided to the Lender copies of invoices or sufficient evidence in support of the draw request, which must first be reviewed and approved by the Lender. In addition, the Lender shall have no obligation to disburse funds under this budgeted item, in excess of \$2,000,000.00 unless and until the Borrower has timely paid the Land Advance Curtailment in full.

** The Lender will disburse sixty-six percent (66.00%) of the actual costs incurred in this category, for all soft costs funded, including engineering, surveying, marketing, legal, permits, etc. The Borrower shall pay for the balance of the soft costs using the Borrower's Funds.

*** Proceeds from the Loan shall be allocated by the Lender for the purpose of paying the monthly payments of interest coming due under Note 1, up to \$325,000.00. Nothing contained herein shall adversely affect the Borrower's obligations under any note.

All budgeted items are subject to verification by a consulting engineer, with requests for advances to be approved by the Lender's designated inspector and/or consulting engineer at a reasonable cost to be determined by the Lender, to be deducted from each draw;

(B) Any amounts necessary to effect corrections to the Work that arise from violations of building codes or structural defects, defective workmanship or materials, or other matters, may be deducted from a disbursement by the Lender; and

(C) In no event shall the total aggregate amount of any remaining disbursements for acquisition and development exceed the lesser of: (i) the applicable Loan-To-Value Ratio as determined by an Appraisal, or (ii) \$8,243,300.00 outstanding at any one time (the "Development Disbursements").

All subsequent Loan Disbursements shall be further subject to the Borrower's compliance with all of the terms and provisions set forth herein, including Exhibit D, and paying all of the remaining development Costs from the Borrower's Funds.

Within five (5) business days after approval of a Draw Application, which shall not be unreasonably withheld or delayed, Lender shall make a subsequent Loan Disbursement based on the Draw Application as approved by the Lender and on the terms and conditions of this Development Agreement.

V. REVOLVING DISBURSEMENTS

The Lender hereby permits the Borrower a revolving use of credit under Note 1, limited to the amount of \$2,500,000.00. The Borrower may repay principal advances due under Note 1 and subsequently request re-advances of such sums strictly in accordance with the terms and conditions set forth herein (the "Credit Advance") provided however, in no event: (i) shall the principal amount disbursed and remaining outstanding at any one time in connection with development at the Project exceed \$2,500,000.00, or in connection with land and development at the Project exceed \$8,243,300.00, and (ii) shall the total aggregate amount disbursed under Note 1 in connection with the Project exceed \$3,971,700.00, or in connection with land and development at the Project exceed \$9,715,000.00 (collectively, the "Credit Limit").

Regardless of when any Credit Advance or Loan Disbursement is applied for by the Borrower and received, any and all sums outstanding under the Loan shall be due and payable in full on the Completion Date.

The Borrower shall apply for any and all advances hereunder strictly in accordance with the terms and conditions, and using the same forms and procedures, that are identified in the Construction Loan Agreement, incorporated herein by reference.

VI. LOAN LIMITATIONS

1. The Borrower shall restrict development to the Real Property and any off-site easements or construction as may be necessary to develop the Lots in accordance with the Purpose.

2. The Borrower shall demonstrate at closing to the satisfaction of the Lender, that it shall have invested a minimum of \$2,035,600.00 equity into the Project (collectively, the "Borrower's Equity").

3. As each section or phase of the Project receives final site plan approval from the County (the "Approved Section"), the Lender shall disburse development costs to the Borrower in connection therewith, subject to the terms of this Development Agreement. On a case-by-case basis, however, if the Borrower requests additional development disbursements with respect to a section of the Project that has not received final site plan approval, the Lender, in its reasonable discretion, may disburse funds to the Borrower for the development of sections or phases that: (i) have received preliminary site plan approval, and (ii) are within sixty (60) days of receiving final site plan approval from all necessary government departments, as determined by the Borrower's engineers.

4. So long as: (i) the Borrower is not in default hereunder, (ii) the Borrower complies with the terms of the Purchase Money Deed of Trust, and (iii) the Borrower has paid to the Lender such other amounts as may be due the Lender under the Purchase Money Deed of Trust and in connection with all amounts advanced and remaining outstanding under the construction portion of the Loan in connection with the Lot to be released, the Lender shall permit a Lot to be released from the lien of the Purchase Money Deed of Trust, upon payment to the Lender of the following amounts (herein referred to collectively, as the "Partial Release Payment"):

(a) \$176,365.00 per lot for each Lot sold to a residential third party end-user;

(b) However, if a vacant Lot is sold to another unrelated builder, person or entity, then the Borrower shall pay to the Lender an amount equal to the greater of \$176,365.00 or eighty percent (80.00%) of the gross sales price.

5. The Borrower must have a binding commitment for development bonding prior to the date hereof, and said bonds for the Approved Section must be duly posted with the County of Loudoun, and evidence of same provided to the Lender.

6. At least sixty-six percent (66.00%) of the Borrower, must at all times be owned by Comstock Holding Company, Inc. In addition, at least sixty-six percent (66.00%) of all other Comstock related entities involved in this transaction, must be owned by the principals (i.e. the individual Guarantors) of Comstock Holding Company, Inc.

VII. GENERAL REQUIREMENTS

1. *Appraisal.* Lender shall order and shall have received at Borrower's expense prior to settlement, an Appraisal for Lender's use. The Lender may obtain at Borrower's expense an updated Appraisal of any part of the Real Property performed by a third party appraiser engaged directly by the Lender. Borrower shall disclose all known defects of the Real Property to the appraiser and provide the appraiser a copy of the Title Commitment.

2. *Financial Statements.* Borrower and Guarantors shall deliver to Lender its Financial Statements or other information at the times and for the periods that Lender may prescribe from time-to-time as long as the Loan remains outstanding.

3. *Insurance.* The Borrower shall have in effect all Insurance Coverage at the closing of the Loan. In the event of a major casualty loss, the Lender shall apply any proceeds received from Insurance Coverage in accordance with the applicable provisions set forth in the Purchase Money Deed of Trust.

4. *Commencement; Development.* Borrower shall commence development of the Improvements as promptly as is practical, and shall continue such development with reasonable diligence and dispatch, pursuant to the Development Schedule. Development shall be performed in accordance with the Plans and Specifications, the Contracts, and the Development Budget and the Lender shall not be obligated

to review any proposed change unless it has received a Change Order in a form, substance and containing such evidence as is satisfactory solely to the Lender. All development shall be done in a good and workmanlike manner using new materials and first-class equipment, and be performed to meet or exceed all applicable building codes. Borrower shall disclose the existence of any cemetery and the areas of ingress and egress thereto, to the Lender and the Appraiser in writing, prior to commencing any construction, and shall not construct any Improvements near or around any cemetery or its areas of access. The Borrower shall not allow any development to disturb any "wetlands" that may be protected under Federal and/or state laws that require a permit for such disturbance, except as may be authorized under Corps. of Engineers permit.

5. *Plans of Development; Contracts.* The Improvements shall be constructed by the General Contractor after obtaining all necessary Building Permits. Borrower assumes responsibility for complying with all of the terms and conditions of this Development Agreement, including compliance with the Plans and Specifications, the restrictions governing the Real Property, with all laws, government requirements, building codes, and sound engineering practices.

(a) A master set of Plans and Specifications shall have been delivered to the Lender and shall govern all questions that may arise with respect to the construction of the Improvements. Each page of the Plans and Specifications has been identified and approved by Lender and Borrower. No substantive changes to the Plans and Specifications shall be effective unless requested by Change Order and approved by the Lender.

(b) If requested by Lender, a master copy of all Contracts shall have been delivered to the Lender and shall govern all questions that may arise with respect to the development and construction of the Improvements.

(c) The Borrower shall diligently work to record each Approved Section for the Property and shall meet all government requirements for the timely recordation of each Approved Section. In no event shall the legal subdivision of the entire Property be recorded later than 210 days after the date hereof.

6. *Development Budget Constraints.* The Lender shall not be required to: (a) make any advance for any Costs not set forth in the Development Budget, (b) make any advance for any line item in the Development Budget that, when added to all prior advances for that line item, would exceed the lesser of (i) the actual cost incurred by Borrower for such line item, or (ii) the sum allocated in the Development Budget approved by the Lender for such line item, or (c) make any advance for any contingency line item unless Lender consents to such advance in its sole discretion. Without prior written approval of Lender, whose approval shall not be unreasonably withheld, Borrower shall not reallocate unused Loan funds from one Development Budget line item to another or otherwise amend the Development Budget.

7. *Reports and Vouchers.* If requested by Lender, Borrower shall promptly deliver to Lender: (i) copies of those Engineering Reports, title reports, studies, inspections and tests made on the Real Property, the Improvements or the materials, and (ii) any Contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles to be incorporated into the Improvements.

8. *Secured Advances.* All Loan Disbursements made by the Lender to the Borrower hereunder shall be: (i) subject to the Loan-To-Value Ratio, and (ii) secured by the Purchase Money Deed of Trust and each of the Loan Documents. Lender does not intend to make any unsecured advances to the Borrower under the Loan.

9. *Inspection.* Prior to any Loan Disbursement, the Inspector may enter the Real Property at any reasonable time to inspect the Improvements which have been satisfactorily completed and to determine the Completion Percentage. The Lender may enter upon the Real Property to inspect the

Real Property, the Improvements and any materials at any reasonable time. Borrower will make available to Lender upon reasonable notice for inspection and copying, all Plans and Specifications, drawings, books and records, and other documents and information required by Lender.

10. *Termination of Loan Disbursements.* In addition to all other rights of the Lender granted under any of the Loan Documents to terminate Loan Disbursements, the Lender's commitment to make Loan Disbursements shall expire and terminate: (i) automatically after the Final Disbursement, (ii) automatically if the Loan is prepaid in full and the Purchase Money Deed of Trust is released after Project completion, (iii) in the event the outstanding Loan Amount exceeds the Loan-To-Value Ratio at any time which is not cured by the Borrower, as determined by the Lender, after notice thereof, (iv) if the Improvements are completed for an amount less than the Development Budget, or (v) the Borrower defaults under this Development Agreement or under any of the other Loan Documents, that continues after the expiration of any applicable notice and cure period.

11. *Borrower To Cover Deficiency.*

(a) If at any time the remaining portion of the Loan not yet disbursed is determined to be less than the remaining development costs required for completion of construction of the Improvements, as estimated by the Inspector and/or Lender (the "Deficiency"), and Lender has given Borrower twenty (20) days notice thereof, Lender shall not be required to make any Loan Disbursements under the Loan, unless the Borrower first deposits the Borrower's Funds (or provides adequate assurances to the Lender of the immediate availability of the Borrower's Funds) in the amount of the Deficiency. Any amount deposited by Borrower with Lender to pay the Deficiency shall be applied, to pay the deficiency amount of the remaining Costs of constructing the Improvements. Notwithstanding any of the provisions of this Development Agreement, the Lender shall also have the right to withhold from any Loan Disbursement an amount sufficient to cover: (i) the Deficiency or any unpaid balance of the Costs to complete the Project, or (ii) any surplusage resulting when all Loan Disbursements, total more than the actual construction Costs incurred (or to be incurred) by the Borrower.

(b) Any amount deposited by the Borrower with the Lender in the amount of the Deficiency, shall be deposited with the Lender in an account which shall be deemed to be a General Account.

(c) The Borrower hereby unconditionally grants, pledges, assigns, transfers and conveys to the Lender all funds and interest deposited in the General Account, together with all of the Borrowers right, title, interest and estate in and to the General Account, as additional collateral and security for the Loan, and hereby further expressly grants in favor of the Lender, the full and unconditional right of setoff thereto.

12. *Completion.* The Borrower shall complete construction of all the Improvements free and clear of all liens except the Loan Documents, on or before the Completion Date subject to any Excusable Delays. Excusable Delays shall not extend the Completion Date unless the Lender provides written approval in its sole discretion, and the Borrower continues to comply with all provisions set forth in the Loan Documents. Except as otherwise provided under the Notes, Lender is under no obligation to extend the Completion Date. Borrower shall correct, using Borrower's Funds, any: (A) material defect in the structure or Improvements, (B) material deviations from the Plans and Specifications, and (C) encroachments or setback violations that are necessary prior to completing construction of the Project.

13. *Storage of Materials.* The Borrower shall cause all materials intended to be utilized in the construction of the Improvements, and when delivered, to be stored on the Real Property, with adequate safeguards.

14. *Payment.* Lender shall make Loan Disbursement checks payable to the Borrower, but reserves the right, for good cause shown, in Lender's reasonable discretion, to make Loan Disbursement checks payable: (A) solely to the closing attorney, (B) solely to the Title Company to be

disbursed to those contractors and materialmen entitled to payment, or (C) jointly to the Borrower and the persons entitled to payment. Any advance requested by Borrower may be deposited with the Title Company pending the appropriate endorsement to the Title Policy. If Lender chooses not to deposit any Loan Disbursements with the Title Company, advances shall be made at the principal office of Lender or at such other place as Lender may from time to time designate.

15. *Loan Expenses:* Except for items to be paid for loan proceeds per the Loan budget, all fees, premiums, expenses and charges incurred in procuring, processing and administering the Loan, including without limitation charges for the Title Policy, title examination, title bring downs, title endorsements, inspections, surveys, recordings, taxes, Lender's reasonable attorneys fees, Lender's fees, service charges, closing attorney, Borrower's attorney, Insurance Coverage, real estate taxes, assessments, engineers, architects, water, sewer, utilities, brokers, liens, encumbrances, Work corrections, Loan Document modifications, broker's fees and any other matters in connection with the Real Property, the Project, the Improvements and the Loan, shall be paid for by the Borrower. All such amounts shall be paid by the Borrower when due, or, subject to Borrower's approval (not to be unreasonably withheld) Lender may, at its option, deduct any amounts necessary for the payment of these items from any Loan Disbursement. All sums so applied shall be deemed advances under this Development Agreement and secured by the Loan Documents.

16. *Loan Fees.* The Borrower agrees to pay the Loan Fees in addition to any loan fees charged in the Construction Loan Agreement.

17. *Construction Consultant.* Lender, only upon the reasonable determination that it is necessary, may hire, at the cost and expense of the Borrower, any engineer, architect or consultant that Lender considers necessary or useful to assist the Lender in performing any of its rights and obligations under this Development Agreement (the "Construction Consultant"). The services of the Construction Consultant are confidential and solely for the benefit of Lender and Borrower in administering the Loan, and shall not be disclosed to any other party.

18. *Deposit of Funds.* The Borrower agrees that it shall use the Borrower's Funds for paying for the balance of any and all development costs in excess of the development disbursements in connection with the development of the Real Property, and shall deposit with the Lender the Borrower's Funds if the actual Costs exceed the Loan Disbursements, or the projected Costs will exceed the unadvanced portion of the Loan to which Borrower is entitled, in the amount of the Deficiency as determined by the Lender, with interest earned thereon, if any, to be part of the Borrower's Funds. The Borrower's Funds shall be deposited with the Lender into a General Account. Upon a Default, Lender may (but shall have no obligation to) apply all or any part of the Borrower's Funds against any unpaid indebtedness arising under any of the Loan Documents, in such order as Lender determines. Lender may apply all or a portion of the Borrower's Funds prior to any Loan Disbursement.

19. *Pledge and Use of Deposited Funds.* The Borrower hereby unconditionally grants, bargains, conveys, pledges, assigns and transfers the General Account and the Interest Reserve, any and all funds deposited therein (together with any interest earned thereon) in favor of the Lender as additional collateral for the Loan, and hereby grants, bargains, assigns, and conveys in favor of the Lender a security interest therein, together with the unconditional and immediate right of setoff thereto, in the event of a Default as defined herein. In addition, in the event the Borrower fails to complete the development of contemplated Improvements within the budgeted amounts set forth in the Development Budget as approved by the Lender, and after twelve (12) days advance notice from the Lender, fails to commence completion using Borrower's Funds, or thereafter, fails to diligently pursue completion using Borrower's Funds, the Borrower hereby grants the Lender the right, at its sole option, (but not the obligation) to pay for the completion of the development of Improvements contemplated by the Lender, and/or use the proceeds that remain in any and all accounts to pay down any fees, costs, accrued interest and/or principal that remains due and outstanding under the Loan.

VIII. CONDITIONS TO FINAL ADVANCE

Remaining Loan proceeds shall not be disbursed, unless all requirements specified in Exhibits C and D hereof shall have been (and continue to be) satisfied, and:

- A. The Lender has received the Certificate of Completion from the General Contractor;
- B. The Improvements including any off-site Improvements have been completed with new materials, in a good and workmanlike manner substantially in accord with the Plans and Specifications, and in accordance with all applicable laws and regulations;
- C. Evidence satisfactory to Lender that all Work and Improvements requiring inspection by governmental or regulatory authorities having or claiming jurisdiction has been duly inspected and approved by such authorities having or claiming jurisdiction;
- D. Two (2) copies of the "as-built" Physical Survey dated within thirty (30) days of the request for the final advance, and executed by a certified land engineer in a form and substance acceptable to Lender and the Title Company, which in addition to any other requirements imposed herein, shall clearly designate (1) the location of the perimeter of the Real Property by courses and distances; (2) the location of all easements, cemeteries, rights of way, alleys, streams, waters, encroachments, fences, parking lots and spaces, and means of ingress and egress, together with the deed book and page number indicated; (3) the location of all building restriction lines and setbacks, however established; (4) the location of any streets or roadways abutting the Property; (5) the "as-built" location of any on-site and off-site easements, rights of way, building restriction lines and applicable setbacks and their relation by feet and inches to the perimeter of the Property; (6) encroachments on any easements, rights of way, flood prone areas, restricted areas, the Real Property, or onto adjoining premises, (7) the flood zone areas, and (8) such other matters as Lender may reasonably require, including certification to the Lender and the Title Company as to the correctness, accuracy, location and statements made, and that no part of the Real Property is located in an identified flood hazard area; and
- E. A final endorsement to the Title Policy is obtained containing no exceptions unacceptable to Lender, insuring Lender in the full Loan Amount, an endorsement removing any exception for mechanics or materialmen's liens or pending disbursements, and with no additional title changes or exceptions objectionable to Lender.

IX. MISCELLANEOUS

1. *Representations and Warranties.* Borrower represents and warrants that: (i) a copy of any Contract furnished or to be furnished to Lender is and shall be a true and complete copy thereof, (ii) that the copies of the Plans and Specifications to be delivered to Lender are and shall be true and complete copies, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that the Borrower's interest therein is not subject to any claim, setoff, or encumbrance, (iii) that all of the real estate taxes have been paid with respect to the Real Property, and the Borrower has paid all taxes and governmental charges in connection with the construction of the Improvements thereby shown to be owing, (iv) the Plans and Specifications and the Contracts are satisfactory to Borrower, have been accepted by each contractor, are complete in all material respects, contain all detail necessary, are adequate for the construction of the Improvements, and comply with the Loan Documents, all applicable laws, restrictive covenants, and governmental requirements, rules, and regulations, (v) Borrower has obtained (or will obtain) a separate tax lot or lots with a separate tax assessment or assessments for each Lot, independent of any other lands or improvements, (vi) the Real Property and Improvements will comply with all laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property, (vii) the Plans and Specifications do, and the Improvements when constructed, will comply with all

legal requirements regarding access and facilities for handicapped or disabled persons, if applicable, (viii) the Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, air rights, mineral rights or other similar rights, privileges or attributes with respect to the Real Property, including those arising under any zoning or land use ordinance or other law or governmental requirement, (ix) the Development Schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project, (x) the Financial Statements delivered to Lender are true and correct, and there has been no material change of Borrower's financial condition from the financial condition of Borrower indicated in any applications and Financial Statements previously submitted to the Lender, (xi) all utility services necessary for the development of the Real Property and the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Real Property, including, without limitation, telephone service, and adequate drainfield sites, (xii) except as otherwise provided for in the Loan Documents, the Borrower has made no agreement or arrangement of any kind which would give rise to a lien on the Real Property, and (xiii) the Purpose of the Loan and the current or anticipated use of the Real Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Real Property, all use requirements, proffer statements and conditions of approval by any governmental authority having jurisdiction over the Real Property and the Project, have been satisfied, and no violation of any law or regulation exists with respect thereto.

2. *(Reserved)*.

3. *No Liability To Lender For Approvals.* Notwithstanding any approvals, consents, or judgments made by Lender herein, Borrower agrees that Lender shall have no obligation, liability or responsibility whatsoever in the construction of the Improvements, or for the adequacy, quality, sufficiency, form or content of any of the plans, budgets, schedules, contracts, surveys, plats, changes, leases, or any other matter incident to the Real Property or the construction of the Improvements. Lender's acceptance of an assignment of the Plans and Specifications shall not constitute approval of the Plans and Specifications. Any inspection or audit of the Real Property or the books and records of Borrower, or the procuring of documents, Financial Statements, financial information and other data, by or on behalf of Lender shall be for Lender's protection only in the interests of Lender protecting its collateral, and shall not constitute any assumption of responsibility from Borrower or from anyone else with regard to the condition, construction quality, development, maintenance, location or operation of the Real Property, or relieve Borrower of any of Borrower's obligations under any of the Loan Documents. Borrower is hereby deemed to have selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project notwithstanding Lender's input. Lender has the right, but not the duty to supervise or to inspect the Real Property and the development of the Improvements. However, any such action is in connection with the Lender acting as a lender protecting the value of its collateral, and neither Lender, nor any of its Inspectors, Development Consultants, employees or agents has any duty of care to Borrower or to any other person to protect against, or inform Borrower or any other person of, the existence of negligent, faulty, inadequate or defective design or development of the Improvements. Lender shall not be liable or responsible for any defect in the Real Property or the Improvements, the performance or default of Borrower, Borrower's architect, engineer, contractor, the Development Consultant, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials, or services supplied for the development of the Improvements, or for the performance of any obligation of Borrower whatsoever. No action from the Lender, and no advance or acceptance of any document or instrument from the Borrower, General Contractor or any other party, shall be construed as a representation or warranty, express or implied, to any party by Lender. Inspection shall not constitute an acknowledgment or representation by Lender, its employees or the Development Consultant that there has been or will be compliance with the Plans and Specifications, Loan Documents, applicable laws and governmental requirements or that the

construction is free from defective materials or workmanship. Inspection whether or not followed by notice of Default shall not constitute a waiver of any default then existing, or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications, Loan Documents, applicable laws, and governmental requirements. Lender's failure to inspect shall not constitute a waiver of any of Lender's rights under the Loan Documents or at law or in equity.

4. *Disclaimer.* Borrower acknowledges that Lender does not have among its investment department personnel, any architects, contractors, engineers or other construction related experts, and that Lender does not claim to have any general or specific expertise in technical matters related to construction. Lender's inspection of any of the Plans and Specifications and Improvements is only in the capacity of a lender evaluating the value of the Project as security and collateral for the Loan. Lender has not reviewed such items in the capacity of an expert and any approvals given or objections withheld shall in no way constitute a warranty or endorsement of the technical soundness of the Project, whether as to the structure or components of same.

5. *Indemnity.* Except for willful misconduct, or gross negligence, the Borrower, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, jointly and severally, on behalf of Borrower, and its successors and/or assigns, (the "Borrower's Parties") do hereby remise, release, acquit, satisfy and forever discharge Lender and its BB&T Mortgage Division, and each one of its respective past, present and future subsidiaries, divisions, mortgage companies, affiliates, parent corporations, joint venturers, officers, directors, employees, agents, attorneys, representatives, participants, successors and assigns (collectively referred to as the "Entities") from any and all manner of action and actions, cause or causes of actions, suits, claims, unintentional torts, counterclaims, demands, damages, judgments, liabilities, contingent claims or contingent liabilities, debts, sums of money, attorneys fees, costs, accounts, covenants, contracts, controversies, obligations, agreements, promises, expenses, variances, trespasses, liens, and/or claims of lien of any nature whatsoever, whether at law or in equity, whether now accrued or hereafter maturing and whether known or unknown, which the Borrower's Parties (and any people comprising Borrower) now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world until two (2) years and one (1) day after the Loan is paid back to the Lender in full, arising out of or in connection with: (A) all of the Lender's obligations, duties, approvals, and decisions made in good faith pursuant to the terms and conditions of this Development Agreement (B) the inspections, discretions and approvals made or not made by the Lender in good faith hereunder, (C) the implementation, procedures, collections, administration, or actions taken by the Lender in good faith in accordance with this Development Agreement, (D) the remedies pursued by the Lender, and all actions in connection therewith taken by the Lender in good faith, as attorney-in-fact pursuant to this Development Agreement in the event of a Default, (E) the actions, decisions or remedies not taken by the Lender in good faith under this Development Agreement, and (F) all of the Borrower's obligations, duties and liabilities under the Loan Documents all of the Borrower's Parties hereby jointly and severally indemnify and hold each of the Entities harmless from same.

6. *Publicity.* Lender may announce and publicize the source of the financing contemplated by the Loan by the placement of a sign for display upon the Real Property, provided however, the Lender agrees to include its display on the Project marketing sign. Any such display shall be furnished by Lender. Borrower agrees to provide a prominent and suitable location for the display of the sign and to maintain the display of such sign for the duration of the construction on the Real Property or until the Loan has been repaid in full, whichever shall first occur.

7. *No Assignment.* Neither this Development Agreement nor the proceeds of the Loan shall be assigned by Borrower without the written consent of Lender, and any attempted assignment without such written consent shall be void and shall constitute an Event of Default.

8. *Notices.* All notices required or contemplated hereunder including all Exhibits, shall be in writing and shall be deemed to have been given properly when deposited in the United States Mail, postage prepaid, certified or registered, return receipt requested, or when deposited with Federal Express or another comparable overnight express delivery service, addressed as follows:

To Borrower:

COMSTOCK HAMLETS OF BLUE RIDGE, L.C.
11465 Sunset Hills Road
Suite 510,
Reston, Virginia 20190.
Attn. C. Clemente

To Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA
1308 Devils Reach Road
Woodbridge, Virginia 22192
Attn: J. Arvai

(or to such other address as may be specified by notice given as required herein).

9. *No Waiver Of Lender's Rights.* Notwithstanding anything in this Development Agreement or any other Loan Document to the contrary, Lender, in its sole discretion, may defer or relinquish any requirements hereunder, including without limitation any condition to any Loan Disbursement. However, no such deferral or relinquishment shall constitute a waiver of the Lender's right to invoke any of said requirements subsequently. Moreover, no delay, omission or acquiescence of the Lender to exercise 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. No delay or omission on the part of the Lender to exercise any rights or privileges herein, or any other option granted to the Lender hereunder in any one or more instances, shall constitute a waiver of any of such rights or privileges. Lender may make any advances or part of advances after the occurrence of a Default without thereby waiving the right to demand payment of the Loan and without becoming liable to make any other or further advances. If Lender makes advances before they are due in accordance with the Development Budget because Lender, in its sole discretion, believes it advisable so to do, such advances shall be deemed to be made in pursuance and not in modification hereof and shall not be deemed to be a waiver of any of the strict procedures, terms and conditions set forth in this Development Agreement. No acceptance by the Lender of any partial payment on account of the Loan in the event of a Default, shall constitute a waiver of any Default and all of Lender's rights and remedies shall remain continuously in full force and effect.

10. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Notes or in any of the other Loan Documents. Each and every remedy herein shall be cumulative, and shall be in addition to every other remedy given under any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Lender herein and in any of the other Loan Documents shall be concurrent and may be pursued separately, successively or together against the Borrower, or the Real Property or any part thereof, or any personal property secured by the Loan Documents, and every right, power and remedy given in any of the Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

11. *Further Assurances.* Borrower will, on request of Lender: (A) promptly correct any defect, error or omission in this Development Agreement or in any other Loan Document; (B) execute, acknowledge, deliver, procure, record or file such further documents and do such further acts deemed necessary, desirable or proper by Lender to carry out the purposes of the Loan Documents,

(C) execute and deliver any renewals, continuation statements, additions, substitutions, replacements, or appurtenances to the Real Property or Loan Documents; (D) execute, acknowledge, deliver, procure, file, record or re-record any document or instrument deemed necessary, desirable, or proper by Lender to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (E) provide such certificates, documents, reports, information, affidavits and other instruments and so such further acts deemed necessary, desirable or proper by Lender to comply with the requirements of any Federal agency having jurisdiction over Lender.

12. *Successor And Assigns.* This Development Agreement shall inure to the benefit of and be binding upon the parties hereto and their successor and/or assigns; but nothing herein shall authorize the assignment hereof by Borrower.

13. *Governing Law.* This Development Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

14. *Non-Merger.* The covenants of Borrower set forth herein and the terms and provisions of this Development Agreement shall survive the closing of the Loan, the recordation of any and all deeds and the delivery of the Loan Documents.

15. *Interpretation Among Documents.* Nothing herein shall be construed to limit or adversely affect in any way the terms and provisions of the Notes, and the rights and remedies of the Lender pursuant to the Purchase Money Deed of Trust.

16. *Construction Of This Document.* Words of any gender used in this Development Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. References to "money", "cash" "funds" "deposit" or other similar monetary terms are references to lawful money of the United States. References to persons shall include any legal entities, businesses, agencies and natural persons as the context may call for. The words "including" shall be interpreted as if followed by the words "without limitation" if those words are not present. Captions and headings in the Development Agreement are for convenience only and shall not affect construing this Development Agreement.

17. *Severability.* If any provision of this Development Agreement, or the application thereof to any circumstance, is deemed to be unenforceable, the remainder of the Development Agreement shall not be affected thereby and shall remain enforceable.

18. *Time Of The Essence.* TIME IS OF THE ESSENCE with respect to the performance of the Borrower's obligations hereunder.

19. *No Partnership.* Nothing in this Development Agreement or in any of the other Loan Documents shall be construed as making the Lender a partner, a joint venturer, having an association, or having a special relationship with any other party herein, or creating a principal-agent relationship or any other relationship except for that of "lender" and "borrower".

20. *No Lender Control.* The Borrower agrees that Lender's rights and interests under the Loan Documents, and the administration thereof, shall not be construed or deemed to indicate that the Lender is in control of the Real Property, the Project, construction, or the business operations of the Borrower.

21. *Counterparts.* This Development Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

22. *Written Agreement.* This Development Agreement, together with each of the Loan Documents constitutes the entire understanding and agreements between Borrower and Lender, and no prior oral statements shall be binding upon the Lender with respect to the matters addressed in the Loan Documents.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

(SIGNATURES FOLLOW NEXT)

WITNESS the following signatures:

Borrower:

COMSTOCK HAMLETS OF BLUE RIDGE, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By

Print:

Title:

EXHIBIT B

DEFINITIONS

1. *DEFINITIONS:* The definitions listed below are hereby incorporated into the Development Agreement, and shall provide the meaning and full significance to any word or words that are capitalized and not otherwise defined in the body of the Development Agreement:

A. *Activity:* See "Development Plan" herein.

B. *Appraisal:* The word "Appraisal" shall mean and refer to a report of value, and/or any updated value or new Appraisal, in a form and substance acceptable to Lender, in connection with the Real Property, which: (i) establishes the present "as-is" market value of the un-subdivided real property acceptable to the Lender, as determined solely by the Lender; (ii) establishes the value of the Real Property assuming the proper subdivision and/or timely completion of any Improvements to be constructed on the Real Property; and (iii) conforms in every particular with the appraisal standards established by the Lender.

C. *Architect:* N/A

D. *Assignment of Interests:* In addition to the definition in the Recital above, the words "Assignment Of Interests" shall refer the loan document entitled Assignment of Leases, Interests, Contracts, Plans and Profits, by which Borrower assigns to Lender all of Borrower's profits and interests in business entities, warranties, plans, plats, contracts for the Construction of the Improvements (as defined below), operating contracts, permits, subdivision rights, deposits, bonds and other matters in connection with the development, management and use of the Real Property, as additional security for the Loan.

E. (Reserved);

F. *Borrower's Funds:* The words "Borrower's Funds" shall mean and refer to the Borrower's: (i) cash or proceeds other than received from the Lender, (ii) other available funds shown on Borrower's application and Financial Statements relied upon by the Lender, and (iii) portion of the Real Property purchase price and development Costs of the Real Property which are scheduled to be paid by Borrower from non-loaned funds set aside and committed, in an amount satisfactory to the Lender.

G. *Building Permits:* The words "Building Permits" shall mean and refer to all necessary building, environmental, activity, well, septic and drainfield permits and authorizations from all necessary Federal, state and local authorities, allowing all development activities contemplated to proceed to completion and authorizing all on-site and off-site temporary and permanent easements and storm water management systems to be in place on the Real Property.

H. *Certificate of Completion:* The words "Certificate of Completion" shall mean a certificate executed by the General Contractor (as defined below) and the Borrower, certifying that the Improvements have been completed strictly in accordance with the Plans and Specifications and that no structural defects exist in the construction of the Improvements.

I. *Change Order:* The words "Change Order" shall mean and refer to any written request to allow any material additions, deletions, modifications, substitutions or extras to any Contract, the Plans and Specifications, or the Development Budget, in a form and substance acceptable solely to the Lender, where: (i) the request contains supporting documentation and information, (ii) the Borrower has obtained the approval of the General Contractor, the Architect, all applicable contractors, all sureties, and government entities, (iii) the structural integrity, quality and standard of workmanship of the Improvements is not impaired, (iv) no violation of any law or requirement

would result, (v) the Borrower is not doing so to cover any excess Costs of the Improvements, and (vi) the Completion Date will not be affected; all as determined by the Lender.

J. (Intentionally Omitted)

K. *Completion Date:* The words "Completion Date" shall refer to the maturity date set forth in the Note which is the last date by which the Borrower covenants and represents that the Improvements (as defined below) shall be properly developed on the Real Property, fully completed and ready for sale or use.

L. *Completion Percentage:* The words "Completion Percentage" shall mean and refer to the amount of the Improvements completed and installed on the Real Property in accordance with the Development Budget and Development Plan, expressed as a percentage of all Work remaining outstanding that is necessary and contemplated as reasonably determined by the Lender or Lender's Inspector.

M. *Costs:* The word "Costs" shall mean all settlement costs and development, construction, material, labor and other costs in connection with the Work and the final completion of the Project through the maturity date of the Loan (as the same may be extended) after taking into account the requirements of this Development Agreement.

N. *Contracts:* The word "Contract" or "Contracts" shall mean and refer to: (a) any written or oral contract sub-contract, purchase order or agreement for supplying or performing any Work for the development of the Improvements, (b) any management, leasing, maintenance or other agreement pertaining to the Real Property not described in clause (a) preceding this clause, or (c) the modification, amendment, or substitution of any such contracts.

O. *Purchase Money Deed of Trust:* In addition to the definition in the Recital above, the words "Purchase Money Deed of Trust" shall refer to the loan document entitled "This Is A Credit Line Deed Of Trust" of even date herewith, which grants the Lender a perfected first trust interest and encumbrance on the Real Property and the Improvements (as defined below).

P. *Default:* the word "Default" or the words "Event of Default" shall mean and refer to: (i) those breaches of the Development Agreement, continuing after the expiration of any applicable notice and cure period, that shall give rise to certain and specific remedies identified in the Development Agreement including all Exhibits, in favor of the Lender, in addition to all other remedies permitted by law or equity, and (ii) those breaches or defaults under any of the other Loan Documents, continuing after the expiration of any notice and cure period, which are hereby expressly deemed to be a default or an event of default under the Development Agreement.

Q. *Development Budget:* The words "Development Budget" shall refer to the approved projected construction cost breakdown by trade, and shall list each Activity and materials used in connection with the development, and shall include an itemization of Costs and estimates: (a) for each activity to complete the Work stage, (b) for each item of contract Work, (i.e. labor, supplies and materials) comprising each Activity (the "Items"), (c) on a per unit basis for each of the Items used, (d) cumulatively, for costs already incurred for each Item comprising each Activity, (e) for the type and quantity of materials stored at the Project, (f) for each type and quantity of materials used in each Activity, (g) for the balance of money needed to complete or finish each Item in connection with each Activity (h) for each contractor, sub-contractor and laborer used in support of each activity (i) for the total costs associated with the completion of each activity, and (j) as to the aggregate Costs associated with the completion of the stage and the Project; together with all copies of bids and executed Contracts and subcontractors in support of each cost breakdown.

R. *Development Plan*: The words "Development Plan shall mean and refer to the schedule for site development and construction of Improvements on the Real Property in a form, content, and detail satisfactory to the Lender.

S. *Draw Application*: The words "Draw Application" shall mean and refer to American Institute of Architects documents G-702 and G-703, entitled Application And Certificate For Payment, and Continuation Sheets, respectively, or any other letter or form acceptable to the Lender which must be properly completed and approved by the Inspector.

T. *Engineering Reports*: The words "Engineering Reports" shall mean and refer to written reports prepared by licensed, professional engineers acceptable to the Lender certifying that: (a) the subsurface conditions of the Real Property are suitable in all respects for the construction of the proposed Improvements thereupon, (b) all Improvements have been made in compliance with all building codes and restrictive covenants (c) no encroachments exist upon any easements, rights-of-way, or adjoining property, (d) all utilities required for use at the Real Property are available to the Real Property, and (e) such other engineering notes as the Lender may require.

U. *Environmental Report*: The words "Environmental Report" shall mean and refer to a final written report from an independent soil scientist or environmental engineer acceptable to the Lender, assessing surface and sub-surface conditions of the Real Property and surrounding areas to a degree and complexity acceptable to the Lender, with respect to the presence of any and all hazardous or toxic substances, as those terms are used by, implied or referenced in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the United States Department of Transportation Table, the Environmental Protection Agency, the Toxic Substances Control Act, or such other Federal, state or local agencies, regulations, acts, laws, or policies governing the disposal of hazardous substances and toxic substances.

V. *Excusable Delays*. The Words "Excusable Delays" shall mean unusually adverse weather conditions which have not been taken into account in the Development Plan, including events such as fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money) beyond the control of Borrower, not to exceed a total of twenty-five (25) days, provided Borrower promptly notifies Lender of the delays and whereupon no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money.

W. *Financial Statements*. The words "Financial Statements" shall mean all of the following, and when Borrower is:

(a) Other than an individual:

(1) The words "Financial Statements" shall mean and refer to: (i) a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, (ii) a reconciliation of changes in equity, (iii) business entity tax returns, and (iv) a consolidation statement (if the Borrower is a holding or parent company); or

(b) An individual:

(1) The words "Financial Statements shall mean and refer to: (i) a balance sheet and statements of amount and sources of contingent liabilities, (ii) sources and uses of cash, (iii) individual tax returns, and (iv) Financial Statements of all entities owned by the Borrower; and

(c) Submitting Financial Statements to the Lender:

(1) All Financial Statements shall be in a form and detail satisfactory to Lender and shall contain or be attached to the signed, dated and written certification of the reporting party stating that Financial Statements constitute a true and correct statement of the reporting party's financial condition. All Financial Statements shall contain all reports and disclosures required by accepted accounting principles, consistently applied, and certified to be true and correct by a corporate officer of the Borrower; and

(2) Items provided under the heading "Financial Statements" shall be in form and detail satisfactory to Lender.

X. *Financing Statements:* The words "Financing Statements" shall refer to any loan document or Uniform Commercial Code (UCC-1) statement that acts as a financing statement to be executed by the Borrower and filed in any and/or all of the appropriate local and central jurisdictions to perfect the security interests created in any of the Loan Documents.

Y. *Guarantor:* The word "Guarantor" shall mean and refer to each and every one of the following who shall execute a Guaranty Agreement (as defined below), and agree to jointly and severally guarantee repayment of the Loan and performance and completion under all of the Loan Documents:

Christopher D. Clemente
Gregory V. Benson
Comstock Holding Company, Inc.

Z. *Guaranty:* The word "Guaranty" shall refer to the loan document entitled "Unconditional Guaranty Agreement" by which each Guarantor unconditionally, jointly and severally guarantees the payment by Borrower of the Notes and the performance and completion by the Borrower of all obligations under the Loan Documents.

AA. *General Contractor:* The words "General Contractor" shall mean and refer to the Borrower, or any general contractor or successor general contractor first approved by Lender.

BB. *General Accounts.* The words "General Accounts" shall mean and refer to any account that the Borrower is required in this Development Agreement to open with the Lender, and each and every one of said accounts shall expressly be deemed to be "general accounts" and not "special accounts", such that funds may be setoff and commingled.

CC. *Improvements:* The word "Improvements" shall mean and refer to the Real Property and all work product and valuable additions benefiting the Real Property, currently affixed, to become affixed, or unique to the Real Property, now existing or hereafter acquired, to include but not be limited to any and all on-site and off-site storm water management systems, sewer and water systems, erosion control systems, excavation, cement, footers, foundations, pipe lines, plumbing, ingress/egress areas, roadways, driveways, pathways, culverts, dirt, gravel, septic fields, drainfields, curb and guttering, wells, water supplies, grading, sodding, seeding, shrubbery, trees, materials, supplies, parking facilities, fixtures, appendages, chattels, equipment, personal property, mixed property, goods, inventory, subdivision plats, site plans, zoning permits, building permits, bonds, surveys, structures, buildings and other facilities to be constructed in accordance with the Plans and Specifications.

DD. *Inspector:* The word "Inspector" shall refer to Lender's inspecting structural engineer, employee, agent or representative, to be appointed by and in the sole discretion of the Lender to inspect the Project.

EE. *Inspection Fee:* The words "Inspection Fee" shall mean and refer to an approximate charge of \$350.00 due and payable to the Lender, for each and every inspection visit, regardless of the number of lots inspected, and may at Lender's option, be deducted from the amount of any Loan Disbursement or advance under the Loan.

FF. *Insurance Coverage:* The words "Insurance Coverage" or "Insurance" shall refer to each and every policy of insurance that the Borrower is to have, or cause to have, in effect pursuant to the Commitment, in connection with the Project, the Improvements and the Real Property, including but not limited to Title Insurance, builders risk insurance, workmens compensation insurance, liability insurance and flood insurance, and: (i) all policies must contain deductibles and/or co-insurance provisions acceptable to the Lender, and (ii) all policies must be underwritten by insurance companies acceptable to the Lender, and (iii) all policies must name the Lender as an additional insured and/or loss payee, (iv) all policies must contain a mortgagee clause granting coverage to the Lender and its successors and assigns, as their respective interests may appear, (v) all policies must provide that they shall not be cancelled unless the insurance company issuing such insurance policy shall first give the Lender at least thirty (30) days' prior written notice, (vi) the issuance and renewal of each and every insurance policy required hereunder, and the payment of the premium therefore, shall be performed by the Borrower with written notice to the Lender, and (vii) the Borrower shall deliver a copy of each such insurance policy to the Lender.

GG. *Loan Disbursements:* The words "Loan Disbursements" or "Loan Disbursement" shall mean and refer to any and all advancement of funds under the Loan Documents for the development Purpose stated, after all conditions precedent thereto have been met and satisfied as determined by the Lender.

HH. *Loan Documents:* The words "Loan Documents" shall mean and refer to any and all papers, letters, documents, instruments, agreements, statements, certificates, certifications, affidavits, and indemnities in a form and substance acceptable solely to Lender, and shall include but not be limited to this Development Agreement, the Commitment, the Notes, the Purchase Money Deed of Trust, the Assignment of Interests, the Construction Loan Agreement, agreements, disbursement and construction loan agreements, security agreements, hazardous waste indemnity agreements, credit agreements, unconditional guaranty agreements, financing statements, affidavits, compliance agreements, closing agreements, certificates, indemnities and certifications; and any and all amendments or modifications thereto.

II. *Loan Fees:* The words "Loan Fees" shall collectively mean and refer to a non-refundable loan fee which shall be deemed to be earned by the Lender as stated below, and shall be paid by the Borrower as follows:

(a) Three-quarters of one percent (0.75%) of the amount of each and every disbursement, shall be paid by the Borrower to the Lender at the time of such disbursement. The Loan Fee shall be deducted from the "soft cost" line item of the Loan Budget.

JJ. *Loan-To-Value Percentage:* The words "Loan-To-Value Percentage", "Loan-To-Value Ratio" or "Loan-To-Value Amount" may be expressed as a ratio, a sum or an amount but nevertheless shall mean that all aggregate advances made under the Loan shall never exceed the lesser of: (i) seventy-five percent (75.00%) of the gross retail sellout value of the Project, or (ii) ninety percent (90.00%) of the discounted cash flow value of the Project, all as reasonably determined by the Lender. In no event shall any disbursements exceed 100% of the actual costs incurred, as determined by the Lender.

KK. *Non-Refundable Loan Fee.* See "Loan Fee".

LL. (Reserved).

MM. *Physical Survey:* The words "Physical Survey" shall mean and refer to a current of the Real Property, in a form and content acceptable to the Lender.

NN. *Plans And Specifications:* The words "Plans and Specifications" shall mean and refer to a complete and final set of professional engineering drawings, construction plans, and working plans and specifications relating to the development of the Project and construction of Improvements on the Real Property, containing all customary notes and professional details.

OO. *Plats and Plans:* The words "Plats and Plans" shall mean and refer to any and all elevation plats, dedication plats, declaration statements, subdivision plats, boundary line surveys, site plans and all other submitted plans of development for recording and/or government approval in connection with the Project and the Real Property.

PP. *Project:* In addition to the definition in the Recital, the word "Project" shall refer to the Purpose, the Improvements, and Site Development activities contemplated herein.

QQ. (Intentionally Omitted).

RR. *Title Company:* The words "Title Company" shall mean and refer to that title insurance company acceptable to the Lender, issuing a mortgagee Title Policy (as defined below) insuring the Lender in the full amount of the Loan, and containing only those exceptions to title to the Real Property that are acceptable to Lender, as determined by the Lender in its sole discretion, as well as each endorsement to the coverage.

SS. *Title Policy:* The words "Title Policy" shall mean and refer to that commitment to issue a final mortgagee title insurance policy issued by the Title Company prior to any Loan Disbursement hereunder, pursuant to all of Lender's instructions and insuring that the Lender's Purchase Money Deed of Trust is a valid, first priority lien and encumbrance on the Real Property, without exception for matters of survey or possible unfiled mechanic's and materialmen's liens. Such title insurance shall be increased by written endorsement to cover the amount of every Loan Disbursement, be in a form and substance satisfactory to Lender, and contain such other endorsements as the Lender may require from time to time.

TT. *Work.* The word "Work" shall mean and refer to all contract work, sub-contract work, supplies, labor, services, materials, articles, property, products and any other trade work, material or thing in connection with the construction of all Improvements on the Real Property and development of the Project.

EXHIBIT C

CONDITIONS PRECEDENT TO INITIAL ADVANCE

Each and every one of the requirements listed in this Exhibit C is hereby incorporated into the Development Agreement as if fully set forth therein, and expressly deemed to be conditions precedent to be satisfied by the Borrower prior to the Lender becoming obligated to make the Initial Advance. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable to the Lender, and (ii) that compliance with each and every one of the requirements shall be determined by the Lender, in Lender's sole discretion, just as if this sentence were incorporated into each requirement listed. Accordingly, the Borrower agrees at closing:

- A. To provide documentation that the Borrower: (a) has been duly formed and is validly existing under the laws of its state of formation, (b) has filed or recorded all necessary documents or certificates with all necessary government entities, (c) is in good standing and properly qualified to do business under the laws of the Commonwealth of Virginia, (d) is duly authorized to enter into all transactions contemplated by this Development Agreement and (e) has obtained formal resolutions authorizing the Borrower to enter into the Loan, accepting its terms, and specifying the names of all persons who have power to bind the Borrower and execute Loan Documents, and (f) such other certificates, resolutions, consents and agreements that Lender may require, and any partners of the Borrower (that are not a natural person) shall also comply with all of the above requirements;
- B. To provide accurate and completed Financial Statements to the Lender for the Borrower, or any other party required by any loan application or otherwise required by Lender;
- C. To execute all Loan Documents, and deliver same to the Lender (or certified copies if originals are not available) and have all Loan Documents duly executed by all necessary signatories thereto, properly dated, with receipts (if available) of recordings in the proper jurisdictions and delivered to the Lender;
- D. To provide sufficient evidence to the Lender that at least \$2,035,600.00 of equity remains in the Real Property at closing, based on the Appraisal provided to the Lender at closing.
- E.
- F. That the narrative Appraisal of the Real Property shall be ordered by the Lender directly from an appraiser acceptable to it, and received in an acceptable quality by the Lender, and the Borrower shall have paid for the Appraisal and all costs incurred in connection therewith;
- G. To provide documentation that the Real Property complies with all applicable zoning ordinances, zoning offices, restrictive covenants and governmental requirements affecting the Real Property, and that the occupancy, use, and Purpose for which the Project and Real Property is intended is permitted, and that the Project and Real Property will comply thereto without the necessity of a variance, and will be within a conforming use;
- H. To provide a true copy of any and all proffers, proffer statements, letters or governmental requirements or conditions concerning the Real Property, the Project and the construction of the proposed Improvements on the Real Property, which shall be subject to approval by the Lender in its sole discretion;
- I. To provide evidence sufficient to Lender stating: (a) that all utility services in sufficient capacity necessary for the development of the Improvements and the intended use and operation of the Project are adequate and available at the boundaries of the Property, including water, on-site and off-site storm water management, on-site and off-site sanitary sewer facilities, gas and electric, (b) all impact fees, utility reservation deposits or connection fees required to assure the

availability of such service, have been paid, and (c) that no utility moratorium imposed by any governmental authority having or claiming jurisdiction, is in effect;

J. To provide authorized copies of any and all Plats and Plans available in connection with the subdivision or use of the Real Property;

K. To provide the Lender with a copy of the final site plan with all approvals of the Project by all necessary government entities, necessary or desirable in connection with the Real Property (collectively, the "Plan Approvals"), and to provide an acceptable current recorded record plat of the Real Property of date acceptable to the Lender;

L. To provide an examination performed by the Title Company stating that: (i) no contract, or memorandum thereof, for construction, design, surveying, or any other service relating to the Project has been filed for record where the Real Property is located; (ii) no mechanic's or materialman's lien claim or notice, lis pendens, judgment, or other claim or encumbrance against the Real Property has been filed for record where the Real Property is located or in any other public record which by law provides notice of claims or encumbrances regarding the Real Property, and (iii) no financing statements, assignments or security agreements (other than the Lender's) have been filed for record anywhere, against any personal property comprising any of the collateral for the Loan, except as otherwise referenced in the Loan Documents (iv) no tax liens or judgments are filed against the Real Property, and all real estate taxes, both special and general, including any and all land use taxes coming due as a result of the purchase, have been paid, and (v) there are no other conditions unacceptable to Lender;

M. The Lender shall have received an acceptable commitment to insure title having no unacceptable exceptions, issued by the Title Company in the Loan Amount, all in a form and substance satisfactory to Lender, and showing Lender and its successors and assigns as their interest may appear, as the insured mortgagee and showing the Loan Amount, and insuring among other things that: (i) the Purchase Money Deed of Trust is a valid first lien on the Real Property, and Borrower shall satisfy all requirements therefor, (ii) the Real Property has adequate ingress and egress, and Borrower shall satisfy all requirements therefor, (iii) the restrictive covenants have not been violated and a future violation will not cause a reversion of title, and Borrower shall satisfy all requirements therefor, (iv) there shall be no exception for rollback taxes, subsequent assessments for prior years, or for real estate taxes other than those for the year in which the closing occurs, to the extent the same are not then due and payable, and Borrower shall satisfy all requirements therefor, (v) there shall be full coverage against mechanic's and materialmen's liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor, (vi) a fee simple indefeasible or marketable fee simple title to the Real Property and Improvements is vested in Borrower, and Borrower shall satisfy all requirements therefor, (vii) insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Real Property and the Improvements as part of the insured estate, and Borrower shall satisfy all requirements therefor, and (viii) containing such other endorsements regarding Loan Disbursements acceptable to the Lender;

N. To provide evidence that all roads, right-of-ways and driveways for the full utilization of the Project, and ingress/egress to the Real Property for all intended purposes have: (i) if necessary, been platted, recorded, dedicated to public use, accepted by said state and local governments, and have been completed, or (ii) the necessary rights and dedications for access to the Property have been granted by the appropriate state and local government authorities and all recordings and bonds have been filed to assure the complete construction and installation thereof, and the Borrower shall disclose all financial obligations and conditions imposed in connection with any dedications, roads and approvals contemplated herein;

O. To provide a complete set of functional and final Plans and Specifications (if not available at closing, as they become available) together with such evidence as Lender may require to

demonstrate that the Plans and Specifications have been or will be approved by all governmental and quasi-governmental authorities having or claiming jurisdiction over them;

P. If requested by Lender, to provide a soil report regarding soil composition, soil construction notes, substance, borings and narration on buildable areas and such other acceptable reports, writings or opinions, and performed by a licensed engineer and/or land surveyor acceptable to Lender;

Q. If requested by the Lender, to provide written evidence from an authorized government agency, or other individual, acceptable to Lender, that the Project, all proposed Improvements, and all contemplated construction activities are not in violation of any tidal or non-tidal "wetlands" act, or any successor acts or any other similar wetlands, ecological or environmental laws or acts, and the Real Property contains no "resource management areas", or environmentally protected soils, such that all contemplated construction activities and uses can be commenced and completed as planned;

R. To provide the development grading permits for the Project and copies of all other Building Permits as and when they become available, that are required in connection with the development of the Real Property or Improvements, together with evidence to ensure that all fees for such permits have been paid;

S. To provide an accurate and complete Development Budget, together with (if received) all bids and contracts in support thereof. The Development Budget shall be updated as required by Lender, and, at Lender's option, the Borrower shall have an Engineer certify that the Costs listed in the Development Budget are adequate to cause the Improvements to be completed in accordance with the Plans and Specifications;

T. If requested by Lender, in addition to the General Contractor, to provide a list containing the names and addresses of all existing contractors, subcontractors, engineers, materialmen and other suppliers of services and materials for the Project, and a copy of their contracts. This list shall be updated at the time of each Loan Disbursement so that it is complete and accurate;

U. If requested by Lender, to obtain from each contractor, architect, engineer, subcontractor, or supplier of services or materials required by Lender, duly executed, acknowledged and delivered original lien waivers, or agreements satisfactory to Lender acknowledging payment, and to the extent payment is received, to subordinate all rights, liens, claims and charges they may have against Borrower or the Real Property, to the rights, liens and security interests of Lender, and delivering same to the Lender;

V. To provide an acceptable development contract along with the Workers and Suppliers List Requirements, and site contractor;

W. To provide all Insurance Coverage, policies and all paid receipts for premiums in connection with the Project, the Improvements and the Real Property;

X. To provide the Lender with evidence of an existing bond or letter of credit in place for bonding the full development of at least the first section of the Project to be developed and to provide copies or proof to the Lender of all necessary performance bonds, completion bonds and dual obligee performance and payment bonds, together with a surety acceptable to the Lender;

Y. To provide the Lender all of its Loan Fees, and reimbursements in full for all Appraisal fees, attorneys fees and any other expenses incurred by the Lender in connection with the Loan; and

Z. To have executed, acknowledged and delivered to the Lender (or to do so within ten (10) days after the date hereof) certain modification documents to effect the reduction of the loan to Comstock Holding Company, Inc., from \$7,500,000.00 to \$3,500,000.00.

EXHIBIT D

CONDITIONS PRECEDENT TO SUBSEQUENT LOAN DISBURSEMENTS

Each and every one of the requirements listed in this Exhibit D is hereby incorporated into the Development Agreement as if fully set forth therein, and expressly deemed to be conditions precedent of the Borrower, prior to the Lender becoming obligated to make any subsequent Loan Disbursement after the Initial Advance. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable solely to the Lender, and (ii) that compliance with each and every one of the requirements listed below, shall be determined by the Lender, in Lender's sole discretion, just as if this sentence were incorporated into each requirement listed below.

Accordingly, in addition to all of the Conditions Precedent To The Initial Advance, and in addition to all other requirements contained in any of the Loan Documents, the Borrower agrees that no subsequent Loan Disbursement under the Development Loan shall be advanced unless the following conditions precedent are satisfied as determined by the Lender:

- (A) All of the Conditions Precedent To The Initial Advance as set forth in Exhibit C have been (and continue to be) satisfied by the Borrower;
- (B) No Event of Default exists under any of the Loan Documents;
- (C) The Title Insurance shall have been endorsed and "down-dated" in a manner satisfactory to Lender to increase the coverage by the amount of each Loan Disbursement through the date of each such advance with no additional or subsequent title change or exception not approved by Lender;
- (D) The Lender or its Inspector has not determined that the undisbursed proceeds of the Loan will be insufficient to pay the Costs required for completion of the Improvements, and the Borrower has not funded the Deficiency after requested to do so;
- (E) No mechanics lien, materialmen's lien, judgment lien or other lien or encumbrance other than a subordinate deed of trust in an amount of \$1,700,000 from a third party lender secured by the Property, subject to the Lender reviewing and approving a subordination agreement.
- (F) The Improvements shall not have been damaged and not repaired;
- (G) Borrower shall have paid with the Borrower's Funds, all amounts required hereunder to be paid by Borrower;
- (H) Borrower's project engineer shall provide Lender with a letter confirming that development costs (submitted to the Lender) are realistic indications of the cost to complete; and
- (I) The Borrower has delivered to Lender such other information, documents, updated lists and other information as may be reasonably required by Lender; and

EXHIBIT E

EVENTS OF DEFAULT AND REMEDIES AVAILABLE TO LENDER

Each and every one of the terms and provisions listed in this Exhibit E is hereby incorporated into the Development Agreement as if fully set forth therein.

EVENTS OF DEFAULT

Any one of the following events below shall constitute a breach of this Development Agreement and be deemed to be an Event Of Default:

A. If the Borrower fails to timely construct Improvements in accordance with the Plans and Specifications for the Purpose stated herein, substantially within the Development Budget;

B. If at any time there is discovered or created a material defect in title to the Real Property which is not cured or insured over to the reasonable satisfaction of Lender within thirty (30) days after the giving of notice thereof (provided however, if the defect is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said defect);

C. If the Improvements or any portion thereof violate any setback restriction, however created, or the requirements of any governmental authority having jurisdiction, or any adjoining structure encroaches upon the Real Property or on any easement appurtenant thereto to an extent deemed material by Lender's attorneys, and the encroachment or violation is not removed within thirty (30) days after the giving of notice thereof (provided however, if the encroachment or violation is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said encroachment or violation);

D. If Borrower does not erect and equip the Improvements substantially in accordance with the Plans and Specifications and with all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if at any time it becomes apparent, in Lender's judgement, that the Improvements will not be completed by the Completion Date;

E. If Borrower does not permit Lender to enter upon the Real Property to make Inspections of the Real Property, the Improvements and any and all materials to be used in connection with the construction thereof, and to examine all details, plans, shop drawings and similar materials relating to the development of the Project;

F. If for any reason whatsoever Borrower abandons the Project, or the construction of the Improvements is at any time in the reasonable judgment of Lender, discontinued or not carried on with diligence and dispatch;

G. If Borrower fails to comply with any requirement of any government authority having jurisdiction within thirty (30) days after the giving of notice thereof;

H. If following demand by Lender: (i) Borrower fails to promptly correct or cause the correction of any defects in the Improvements, or (ii) Borrower materially departs and deviates from the Plans and Specifications, without prior written approval from Lender;

I. If Borrower assigns this Development Agreement or any interest herein, or if the Real Property or Improvements are conveyed or encumbered in any way without the prior written consent of Lender;

J. If, without approval from the Lender, the Borrower executes any other security agreement, which affects any materials, equipment, fixtures or articles used in the construction or operation of the Improvements or articles of personal property located on the Property, or if any such materials, fixtures or articles are purchased in a conditional sales transaction or otherwise so that the ownership thereof will not vest unconditionally in Borrower, free from encumbrance, on delivery at the Real Property;

K. If within thirty (30) days after written request by Lender, Borrower does not furnish to Lender on request the contracts, bills of sale, statements, receipts, vouchers and agreements, or any of them under which Borrower claims title to materials, fixtures, and articles comprising the Improvements;

L. If within thirty (30) days after written request by Lender, Borrower fails to furnish Lender with Financial Statements and such other statements as Lender may reasonably require to determine the financial condition of Borrower;

M. If Borrower fails to pay when due all bills for Work performed in connection with the development of the Real Property and construction of the Improvements;

N. If Borrower fails generally to pay their debts when due; or if there is filed by Borrower a petition in bankruptcy under any of the provisions of the United States Bankruptcy Act, as amended, or under any similar state or federal law, or a petition for the appointment of a receiver or trustee of the property of Borrower; or if Borrower makes a general assignment for the benefit of creditors or makes any insolvency assignment or is adjudged insolvent by any court of competent jurisdiction; or if there is filed against Borrower a petition in bankruptcy or for the appointment of a receiver which involuntary petition is not dismissed within forty-five (45) days thereafter;

O. If Borrower shall not deposit with Lender any portion of the Borrower's Funds if required hereunder, and when requested by the Lender within ten (10) days after Lender has notified Borrower to deposit the Borrower's Funds;

P. If any indebtedness due under either of the Notes or under any of the other Loan Documents, is not paid in full when due;

Q. If any covenant or agreement herein is not fully and timely performed, observed or kept;

R. If the Borrower fails to comply with any: (i) of the conditions precedent to the obligation of Lender to make any Loan Disbursements hereunder, or (ii) of the terms and provisions of any of the other Loan Documents;

S. Construction is enjoined or prohibited for a period exceeding thirty (30) days for any reason through no fault of the Lender;

T. A mechanics lien, materialmen's lien or judgment lien is established against the Real Property, and remains unsatisfied, unpaid or unsatisfactorily bonded with, and insured over by, a Title Company for a period of thirty (30) days after the date of attachment to the Real Property;

U. The Lender has determined that a material adverse change has occurred in the financial condition of the Borrower or in the condition of the Real Property, and Borrower has not remedied same to the reasonable satisfaction of the Lender within 20 days after notice thereof;

V. If the Real Property is found to contain any hazardous waste, hazardous substance or toxic waste as those terms are contemplated in any of the Loan Documents, that is not immediately cleaned up by the Borrower, to the reasonable satisfaction of the Lender;

W. If the Borrower causes a breach of any contracts or agreements that the Lender has contemplated and/or relied upon in its underwriting analysis of the Loan;

X. If the Real Property is not subdivided within 210 days from the date hereof, and fails to yield the minimum number of Lots contemplated herein, and Borrower does not provide a sufficient amount of additional cash, or collateral in a form and substance reasonably acceptable to the Lender;

Y. If the Borrower commits an event of default under any of the letter of credit documents or letters of credit posted to comply with bonding requirements;

Z. If the Borrower fails to timely pay the Land Advance Curtailment; or

AA. If Borrower breaches, or commits a default or an Event of Default under the Construction Loan Agreement, or under any one of the other Loan Documents.

A default by the Borrower under any of the Letter of Credit Documents, or under any of the other Loan documents shall automatically be deemed to be a default under this Development Agreement, and an Event of Default under this Development Agreement, after the expiration of any applicable notice and cure period, shall automatically be deemed to be a default under each and every one of the other Loan Documents, and a default under the Letter of Credit Documents.

REMEDIES OF THE LENDER

Upon an Event of Default, the Lender shall mail notice of the default to the Borrower (at Borrower's address herein), and the Borrower shall have fifteen (15) days from the date of mailing notice for any monetary-related default, and thirty (30) days from the date of mailing notice for any non-monetary default, to cure said default (provided however, if the non-monetary default is not reasonably capable of being cured within said 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice to cure said non-monetary default), whereupon, if remaining uncured at the expiration thereof, the Lender shall immediately be entitled to all remedies as stated herein, in addition to all other remedies provided to Lender under any of the Loan Documents, and under the law or rules of equity, and Lender may, at its election, but without any obligation to do so, without further notice, enjoy any or all of the rights, powers, privileges and remedies listed below, all at the sole cost and expense of the Borrower:

SPECIAL REMEDIES

In furtherance of the remedies herein provided to the Lender, the Borrower hereby expressly grants, empowers, authorizes and consents to the Lender, its successors and/or assigns, by and through any of its officers, attorneys, employees, agents and contractors, with the full unconditional right, power, privilege and authority, doing any one or all of the following upon the occurrence of an Event of Default, and expiration of any applicable notice and cure periods:

(A) Enter upon and take possession of the Real Property and the Project at any time, without any advance notice to the Borrower whatsoever, and to take control of the Real Property;

(B) Perform any and all Work that is reasonable by the Lender, or that is necessary to complete the Improvements as contemplated herein, or to terminate any Work, being performed, and take whatever other action may be necessary or desirable, in the sole opinion of the Lender;

(C) Perform all Work necessary to complete the construction of the Improvements substantially in accordance with the Plans and Specifications, Contracts, Loan Documents, and governmental requirements, or in accordance with any modifications or Change Orders thereto, as deemed necessary or desirable solely by the Lender, and continue to employ Borrower's architect, engineer, and any contractor pursuant to the applicable Contracts, or otherwise;

(D) Use and apply any General Accounts, deposits, funds, money, or assets, or make any Loan Disbursements as are necessary to: (i) to pay down the balance of the Loan, (ii) stabilize and secure the Project, the Improvements and/or the Real Property, or (iii) to complete development or construction;

(E) Set-off any and all General Accounts, Borrower's Funds and any other deposits, funds, money, assets or other indebtedness against the Loan;

(F) Make such Change Orders or corrections in the Plans and Specifications and Contracts as the Lender may deem acceptable in its sole discretion;

(G) Employ such architects, engineers, trustees, agents, consultants, managers and contractors as may be required by the Lender for the purpose of: (i) advising the Lender and assessing any problems, (ii) completing the construction of the Improvements substantially in accordance with the Plans and Specifications (as modified as deemed necessary by Lender), Loan Documents, laws and governmental requirements, or as otherwise may be necessary or desirable for purposes of completing such development, (iii) operating, managing, leasing, controlling and running the Project and/or the Real Property and reviewing the books and records of the Project; (iv) assessing Lender's rights and options, and/or (v) stabilizing the Project;

(H) Do every act with respect to contracting for the Work, constructing the Improvements on the Project, executing Building Permits, plats, site plans and government approved or required prints and papers, and all such other acts, or no such other acts, which Borrower may do in connection with the Real Property and the Project on terms acceptable to the Lender;

(I) Prosecute legal action, hire legal counsel and defend and compromise any claim, action or proceeding incident to the Real Property, the construction of Improvements and the development of the Project as the Lender deems proper; and/or

(J) Pay, settle, or compromise all bills and claims so as to clear title to the Real Property in an amount and on such terms as the Lender deems proper;

(K) Seek a refund of all monies paid by the Borrower to any government or business entity, to which the Borrower may be entitled and apply said amount against the outstanding indebtedness in accordance with Loan Documents;

(L) Take over, liquidate and/or use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements; and

(M) Take such other and further action that is ancillary thereto and in furtherance of the rights, powers, privileges and remedies granted under this Special Power of Attorney, and in the Development Agreement, all on terms, conditions and amounts deemed satisfactory solely to the Lender, and this provision shall be construed liberally and in the broadest sense in favor of the Lender, to hereby provide the Lender with all such rights, power and authority as is necessary and/or desirable to further the purpose, remedies and privileges set forth herein.

OTHER REMEDIES

In addition to the above rights and remedies the Lender shall have any and all of the remedies listed below:

- (1) Terminate its commitment to make Loan Disbursements under the Loan and terminate any Loan Disbursement pending;
- (2) Terminate any obligation to disburse any of the Borrower's Funds hereunder;

- (3) Reduce any claim to judgment;
- (4) Exercise any and all rights and remedies afforded by this Development Agreement, the other Loan Documents, and/or at law, equity or otherwise;
- (5) Set-off and apply, to the maximum extent permitted by law, any and all General Accounts and any other deposits, funds, Borrower's Funds, or assets (or any indebtedness at any time owing by Lender to or for the credit or account of Borrower), against the Loan and any indebtedness due the Lender and remaining outstanding under any of the Loan Documents; and
- (6) Accelerate the Notes, and foreclose under the terms of the Purchase Money Deed of Trust.

SPECIAL POWER OF ATTORNEY

The Borrower hereby irrevocably makes, constitutes and appoints the Lender, by and through any of its loan officers, (any one of which has full power to act) as the Borrower's duly appointed agent and/or Attorney-In-Fact, (collectively, the "Attorney In Fact"). Any loan officer of the Lender shall have full power and authority on behalf of the Lender to act as the Borrower's Attorney In Fact. This power of attorney and appointment is irrevocable and coupled with an interest, and shall not terminate upon the disability, insolvency or dissolution of the Borrower in accordance with the Code of Virginia, 1950, as amended. Upon the occurrence of an Event of Default, after the expiration of any applicable notice and cure periods, the Attorney In Fact shall have the right, power, privilege and authority to effect and/or do any and all of the rights, privileges, powers, actions, remedies, or acts contemplated herein, including but not limited to accomplishing or effecting the Special Remedies herein, the Other Remedies herein, any of the rights, privileges or remedies of the Lender set forth in any and all of the other Loan Documents, and any or all of the following:

- (A) To execute all related papers contemplated in this Development Agreement, including applications, Contracts, notes, plans, drawings, bonds, plats, and certificates, and deliver same for any purpose in connection with the Project which may be required for completion of construction of the Improvements, operation and management of the Project, or to secure the collateral;
- (B) To endorse, negotiate, transfer and deliver all checks, drafts, notes, deposits and negotiable instruments and assign or transfer all non-negotiable instruments in the name of Borrower, and to withdraw such cash, deposits, Borrower's Funds, and funds from any General Account, and apply same to: (i) stabilize the Real Property and the Project, (ii) any and all costs and expenses incurred by the Lender in connection with the operations and management of the Project, (iii) any and all Costs incurred in connection with the development of the Project and the use of the Real Property, (iv) any and all indebtedness that continues to arise under any of the Loan Documents, (v) pay creditors bills, and (vi) for such other matters as the Attorney In Fact shall deem necessary or important in the sole discretion of the Attorney In Fact in connection with the Lender's full realization of any of the Remedies set forth herein; and/or
- (C) To endorse the name of Borrower on any checks or drafts representing proceeds of any Insurance Policies, bonds, or other checks, returns of security, deposits or instruments payable to Borrower with respect to the Real Property, and apply said proceeds to: (i) all expenses, fees and costs incurred by the Attorney In Fact in pursuing any of its remedies hereunder, including reasonable attorneys fees incurred by the Attorney In Fact, and (ii) then to payment of the Loan in accordance with the terms of the Notes.

DISBURSEMENT AND CONSTRUCTION LOAN AGREEMENT

THIS DISBURSEMENT AND CONSTRUCTION LOAN AGREEMENT (the "Construction Agreement") is made this 25 day of July, 2003, by and between COMSTOCK HAMLETS OF BLUE RIDGE, L.C., a Virginia Limited Liability Company (the "Borrower") and BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, having a principal address of 1308 Devils Reach Road, Woodbridge, Virginia 22192 (the "Lender").

RECITALS

(A) The Lender has agreed to make an acquisition, revolving development and revolving construction loan to Borrower in the total amount of up to Ten Million Four Hundred Ninety-Three Thousand Three Hundred and No/100 Dollars (\$10,493,300.00) (the "Loan") to be secured by real property subdivided into a sixty-five (65) lot subdivision (the "Lots"), together with all Improvements (as defined below), and more fully described in Exhibit A, attached hereto and made a part hereof (collectively, the "Real Property" or sometimes the "Project").

(B) The Borrower intends to grant to Lender a perfected first priority secured interest in the Real Property in favor of the Lender as of the date hereof, and to enter into that certain: (i) Deed of Trust executed by the Borrower of even date herewith (the "Purchase Money Deed of Trust"), (ii) Assignment Of Leases, Interests, Contracts, Plans and Profits executed by the Borrower of even date herewith (the "Assignment of Interests"), (iii) two (2) Deed of Trust Notes executed by the Borrower of even date herewith, in the face amounts of \$8,243,300.00 ("Note 1") and \$2,250,000.00 ("Note 2"), (together equaling the amount of the Loan), in favor of the Lender (collectively, the "Notes"), and all other Loan Documents (as defined herein) to further secure the Loan.

(C) This Construction Agreement sets forth the terms and conditions under which the Lender agrees to disburse the construction portion of the Loan to the Borrower, which shall not exceed an amount outstanding at any one time of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00), (the "Construction Portion"). [In this Construction Agreement, all references to the "Loan" hereinafter shall refer to this Construction Portion of the Loan only, unless the context expressly states otherwise]. The Disbursement and Development Loan Agreement dated of even date herewith (the "Development Loan Agreement") sets forth the terms and conditions under which the Lender agrees to disburse acquisition and development proceeds of up to Eight Million Two Hundred Forty-Three Thousand Three Hundred and No/100 Dollars (\$8,243,300.00).

(D.) The exhibits attached hereto are identified as follows:

- (1) Exhibit A—contains the legal description of the Real Property.
- (2) Exhibit B—contains the definitions of certain basic words and terms used in this Construction Agreement.
- (3) Exhibit C—contains the conditions precedent to disbursements
- (5) Exhibit D—contains the Events of Default under the Construction Agreement, and the remedies of the Lender.
- (6) Exhibit E—contains the construction Draw Schedule.

(E) Accordingly, capitalized words and/or terms used throughout this Construction Agreement indicate that the words and/or terms have been defined in Exhibit B, attached hereto and/or are set forth in the main body of the Construction Agreement, and the words and/or terms shall be construed to have the meanings and statements assigned to them herein. The definitions listed in the main body of the Construction Agreement and in Exhibit B shall not be construed as limiting, undermining or modifying any of the terms and conditions contained in any other loan documents, or Loan Documents,

and shall have the meanings, interpretation and significance as defined, unless otherwise required by the context of the paragraph.

(F) The proceeds of the Loan, together with certain of the Borrower's Funds are to be used by the Borrower for the purpose (the "Purpose") of constructing, in accordance with the terms herein, up to sixty-five (65) single family dwellings upon the Lots (collectively, the "Dwellings").

(G) To induce the Lender to make the Loan, the Borrower agrees to the terms and conditions in this Construction Agreement.

WITNESSETH

In consideration of the Loan to the Borrower, the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. INTRODUCTION

1. *Incorporation of Recitals.* Each and every one of the Recitals stated above are hereby expressly incorporated herein by reference as if fully set forth in the body of this Construction Agreement.

2. *Specific Incorporation of Exhibits.* Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E attached hereto (collectively referred to as the "Exhibits") are hereby incorporated into this Construction Agreement and expressly made a part hereof as if fully set forth herein. The Borrower's signature on the last page of this Construction Agreement shall evidence Borrower's express acceptance and agreement with all of the terms, conditions, words and definitions set forth in this Construction Agreement, which is hereby deemed to include each and every one of the Exhibits.

3. *Compliance With Loan Documents.* Borrower agrees and covenants to comply with and perform all of the terms, covenants and conditions of this Construction Agreement and each and every one of the other Loan Documents.

4. *Use of Proceeds.* All Loan Disbursements shall be used by the Borrower for the specific Purpose stated herein, subject to the requirements of the Lender as set forth herein and in each of the other Loan Documents.

5. *Borrower As Fiduciary.* If Borrower receives the Loan Disbursements made under this Construction Agreement, Borrower shall hold the funds advanced as a fiduciary prior to payment, and shall apply such advances to the payment of the legitimate Costs due for the Work performed and approved by the Lender for payment in connection with the construction of the Improvements. Borrower hereby agrees, at any time and from time-to-time upon request of Lender, to exhibit to Lender receipts, vouchers or other evidence satisfactory to Lender of actual payment of such Costs within ten (10) days after such request.

II. WARRANTIES AND CERTIFICATIONS

As a material inducement to the Lender to make the Loan on the terms, at the interest rate and for the Loan Fees described herein, and taking into consideration the short maturity date of the Loan, the Borrower acknowledges it shall prominently display Lender's business cards, and maintain an adequate supply as a source of information for prospective purchasers.

III. DISBURSEMENTS

Subject to all requirements herein, and at such time as the Lots have been subdivided and finished under the Development Agreement, the Lender shall make disbursements of Loan funds for

construction work as to each Dwelling in accordance with the construction Draw Schedule, based on the Draw Application submitted by the Borrower and approved by the Lender, provided however:

- (1) No disbursement shall exceed the Loan-To-Value Ratio in connection with all Dwellings and any Dwelling; and
- (2) The Borrower must remain in compliance with all of the underwriting standards, representations and warranties made in connection with the Loan and the Loan Documents; and

All advances hereunder shall be deemed to be evidenced by Note 2 and secured by the Purchase Money Deed of Trust.

The Borrower may submit (not more than twice a month) a properly completed Draw Application for each subsequent Loan Disbursement under the Loan, in amounts (or percentages) apportioned for each subsequent construction advance, as set forth in the Draw Schedule to be supplied by the Lender from time-to-time for the specific Dwelling. Any disbursement shall be reduced if it would exceed the Loan-To-Value Ratio, all as determined and approved by the Lender, less at the option of the Lender an amount that the Lender deems reasonable if necessary to effect corrections to the Work that arise from violations of building codes, structural defects, defective workmanship, defective materials, or other matters.

Each subsequent Loan Disbursement shall be determined reasonably by the Lender, however, all subsequent Loan Disbursements shall be further subject to the Borrower continuing to: (i) comply with all provisions set forth in the Exhibits; (ii) comply with the terms and provisions of any county or government agreements, including but not limited to any set-aside, performance, bonding or site improvement agreements, and (iii) provide such other matters, papers or forms as Lender shall reasonably require.

Within five (5) business days after approval of a Draw Application Lender shall make a subsequent Loan Disbursement under the Loan based on the Draw Application as approved by the Lender and on the terms and conditions of this Construction Agreement.

IV. REVOLVING DISBURSEMENTS

The Lender hereby permits the Borrower a revolving use of credit up to the amount of Note 2. The Borrower may repay principal advances due under Note 2 and subsequently request re-advances of such sums strictly in accordance with the terms and conditions set forth herein (the "Credit Advance") provided however, in no event shall the principal amount disbursed and remaining outstanding at any one time in connection with construction at the Project (as evidenced by Note 2) exceed the lesser of: (i) \$2,250,000.00, or (ii) the Loan-To-Value Percentage of the appraised value of the Real Property that is in fact secured or encumbered by the Lender's Purchase Money Deed of Trust, as reasonably determined by the Lender, which shall be the limit of credit under this Credit Agreement (the "Credit Limit").

Regardless of when any Credit Advance or Loan Disbursement is applied for by the Borrower and received, any and all sums outstanding under the Loan shall be due and payable in full on the Completion Date. The Borrower shall apply for any and all advances hereunder strictly in accordance with the terms and conditions, and using the same forms and procedures, that are identified in the Construction Loan Agreement, incorporated herein by reference.

V. REQUIREMENTS FOR DISBURSEMENTS

The Lender agrees to make the Disbursements subject to the Borrower's compliance with all of the terms and conditions set forth in this Construction Agreement, including each and every one of the

Conditions Precedent To Disbursements set forth in Exhibit C, attached hereto and made a part hereof, as determined by the Lender.

VI. LOAN LIMITATIONS

The Borrower contemplates constructing the Dwellings upon the Lots at the Project in accordance with the Purpose, at such time as the Borrower first has obtained "pre-sold" non-contingent and enforceable third party written contracts in a form and substance reasonably acceptable to the Lender from prospective purchasers that are reasonably acceptable to the Lender, to purchase said Dwellings to be constructed thereon (hereafter referred to as the "Pre-Start Agreements").

The Lender shall not be obligated to make any advance of Loan proceeds with respect to the construction of any more than one (1) model Dwelling and two (2) speculative Dwellings (collectively, the "Speculative Units") unless the Borrower has first entered into (and provided the Lender with) a Pre-Start Agreement for the sale of such Dwelling to a third party not affiliated with the Borrower, with a minimum reasonable deposit and a reasonable purchase price, as determined by the Lender, provided however, in no event: (i) shall aggregate disbursements exceed a total of one Hundred Percent (100%) of the cost of each Dwelling, and (ii) shall disbursements made as to any one Dwelling exceed the applicable Loan-To-Value Ratio

The contract purchaser must be obligated to fully and faithfully perform each and every obligation and undertaking required by the terms of a Pre-Start Agreement to be performed by the contract-purchaser without condition, precedent or subsequent, except such as the Lender shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. In the event any such contract is terminated, Lender will continue making advances for such Dwelling, but advances of additional starts of unsold Dwellings will be further subject to the resale of the subject Dwelling.

VII. GENERAL REQUIREMENTS

1. *Appraisal.* Lender shall have ordered and received at Borrower's expense an Appraisal for use in underwriting, granting, closing or disbursing the Loan, in a form and substance acceptable to the Lender.

2. (Reserved).

3. *Insurance.* The Borrower shall have in effect all Insurance Coverage at the closing of the Loan. The Borrower shall not permit construction of the Improvements to commence within 10 feet of any flood plain or "flood prone area" as referenced in the Flood Disaster Protection Act of 1973, as amended, or as shown on any flood maps held by any government agency. The Borrower shall provide Lender with Insurance Coverage on terms acceptable solely to the Lender, if Improvements on the Real Property, after written approval from the Lender, are located or constructed in a flood plain. In the event of a major casualty loss, the Lender shall apply any insurance proceeds received, in accordance with the applicable terms set forth in the Purchase Money Deed of Trust.

4. *Commencement; Construction.* Borrower shall obtain all necessary building permits and commence construction of the Improvements as promptly as is practical, and shall continue such construction with reasonable diligence and dispatch. Construction shall be performed in accordance with the Plans and Specifications, and the Construction Budget and the Lender shall not be obligated to review any proposed material change unless it has received a Change Order in a form, substance and containing such evidence as is satisfactory solely to the Lender. All construction shall be done in a good and workmanlike manner using new materials and first-class equipment, and be performed to meet or exceed all applicable building codes. Borrower shall disclose the existence of any cemetery and the areas of ingress and egress thereto, to the Lender and the Appraiser in writing, prior to

commencing any construction, and shall not construct any Improvements near or around any cemetery or its areas of access.

5. *Plans of Construction; Contracts.* All Improvements shall be constructed by the General Contractor and Borrower assumes responsibility for complying with all of the terms and conditions of this Construction Agreement, including compliance with the Plans and Specifications, the restrictions governing the Real Property, with all laws, government requirements, building codes, and sound engineering practices.

(A) A master set of Plans and Specifications shall have been delivered to the Lender and shall govern all questions that may arise with respect to the construction of the Improvements. No substantive and material changes to the Plans and Specifications shall be effective unless requested by Change Order, approved by the Lender.

6. *Construction Budget Constraints.* The Lender shall not be required to: (A) make any advance for any line item in the Construction Budget that would exceed the scheduled amount allocated in the Draw Schedule, as extrapolated and interpreted by the Lender, or (B) make any advance under the Construction Budget, that when added to all prior Loan Disbursements, would exceed the percentages allocated for the advance under the Draw Schedule as determined by the Lender, or (C) make any advance that would exceed the amount of the Construction Budget. Without prior written approval of Lender, Borrower shall not substantially reallocate unused Loan funds from one Construction Budget line item to another.

7. *Reports and Vouchers.* If requested, Borrower shall promptly deliver to Lender: (i) copies of those Engineering Reports, title reports, studies, inspections and tests made on the Real Property, the Improvements or the materials.

8. *Secured Advances.* All Loan Disbursements made by the Lender to the Borrower hereunder shall be: (A) subject to the Loan-To-Value Ratio, (B) subject to and in accordance with Exhibits C and D attached hereto and made a part hereof, (C) deemed to be evidenced by Note 2, and (D) secured by the Purchase Money Deed of Trust and each of the Loan Documents. Lender does not intend to make any unsecured advances to the Borrower under the Loan.

9. *Inspection.* Prior to any Loan Disbursement, the Inspector may enter the Real Property at any reasonable time to inspect the Project and Improvements which have been satisfactorily completed. If requested, Borrower will make available during normal business hours for inspection and copying, all Plans and Specifications, drawings, books and records, and other documents and information required by Lender.

10. *Termination of Loan Disbursements.*

If the total remaining Loan Disbursements not yet disbursed is less than the amount of the remaining construction costs required for completion of construction of the Improvements, as estimated by the Inspector and /or Lender (the "Deficiency"), Lender shall not be obligated to make any Loan Disbursements under the Loan, unless the Borrower first deposits the Borrower's Funds with the Lender at least in the amount of the Deficiency. Any amount deposited by Borrower with Lender to pay the Deficiency shall be applied to pay the Costs of constructing the Improvements. Notwithstanding any of the provisions of this Construction Agreement, Lender shall have the right to withhold from any Loan Disbursement an amount sufficient to cover: (i) the Deficiency or any unpaid balance of the Costs to complete the Project, or (ii) any surplusage resulting when all Loan Disbursements total more than the actual construction Costs incurred (or to be incurred) by the Borrower.

11. *Deposit of Funds.* The Borrower agrees to pay additional Borrower's Funds if the actual Costs exceed the Loan Disbursements, or the projected Costs will exceed the un-advanced portion of the Loan to which Borrower is entitled, in the amount of the Deficiency as determined by the Lender.

The Borrower hereby grants and conveys to the Lender a security interest in any and all General Accounts deposited with Lender as additional collateral for the Loan, together with the full right of setoff thereto, in favor of the Lender. Upon a Default, Lender may (but shall have no obligation to) apply all or any part of the Funds in any General Accounts against any unpaid indebtedness arising under any of the Loan Documents, in such order as Lender determines.

12. *Completion.* The Borrower shall complete construction of all the Improvements free and clear of all liens except the Loan Documents, on or before the Completion Date (as the same may be extended) subject to any Excusable Delays. Excusable Delays shall not extend the Completion Date unless: (A) the Lender provides approval in its reasonable discretion, and (B) the Borrower continues to comply with all other terms and conditions set forth in the Loan Documents. Lender shall be under no obligation to extend the Completion Date, except as otherwise provided in the Notes. Borrower shall correct, using Borrower's Funds, any: (A) material defect in the structure or Improvements, (B) material deviations from the Plans and Specifications, and (C) encroachments or setback violations that are necessary prior to completing construction of the Project. Upon completion, the Borrower shall obtain final residential use permits from the proper local government.

13. *Storage of Materials.* The Borrower shall cause all materials intended to be utilized in the construction of the Improvements, to be stored on the Real Property, with adequate safeguards.

14. *Payment.* Lender reserves the right, upon an Event of Default, to make Loan Disbursement checks payable: (A) solely to the closing attorney, (B) solely to the Title Company to be disbursed to those contractors and materialmen entitled to payment, (C) jointly to the Borrower and the persons entitled to payment, or (D) in such other manner as Lender may reasonably elect.

15. *Loan Expenses:* All fees, premiums, expenses and charges reasonably incurred in procuring, processing and administering the Loan, including without limitation charges for the Title Policy, title examination, title bring downs, title endorsements, inspections, surveys, recordings, taxes, Lender's attorneys, Lender's fees, service charges, closing attorney, Borrower's attorney, Insurance Coverage, real estate taxes, assessments, engineers, Architects, water, sewer, utilities, brokers, liens, encumbrances, Work corrections, Loan Document modifications, broker's fees and any other matters in connection with the Real Property, the Project, the Improvements and the Loan, shall be paid for solely by the Borrower. All such amounts, unless sooner paid, shall be paid by the Borrower when due, or Lender may, at its option, deduct any amounts necessary for the payment of these items from any Loan Disbursement. All sums so applied shall be deemed advances under this Construction Agreement secured by the Loan Documents.

16. *Loan Fees.* The Borrower agrees to pay the Loan Fees, in addition to any fees required under the Development Loan Agreement.

17. *Construction Consultant.* Lender may hire, with the mutual consent of the Borrower, and at the cost and expense of the Borrower, any engineer, architect or consultant that the Lender considers necessary or useful to assist the Lender in performing any of its rights and obligations under this Construction Agreement (the "Construction Consultant").

18. *Operating Account.* The Borrower shall establish and maintain its primary operating account with the Lender in connection with the Project for so long as the Loan remains outstanding.

VIII. CONDITIONS TO FINAL ADVANCE

Lender shall not be obligated to make the final Loan Disbursement of any remaining Loan proceeds (as to a Dwelling), which shall include any portion of the Loan, unless all requirements

specified in Exhibit C hereof shall have been (and continue to be satisfied), and the following requirements have been met to the satisfaction of Lender:

1. The Improvements have been completed with new materials, in a good and workmanlike manner, in accordance with the Plans and Specifications, and all applicable laws and regulations;
2. The Lender has received one (1) final house location survey, approved by the Borrower that is in a form and substance acceptable to the Lender and Title Company;
3. A valid residential use permit on the Dwelling as completed is obtained without conditions unacceptable to Lender; and
4. A final endorsement to the Title Policy is obtained, containing no exceptions unacceptable to Lender, insuring Lender in the full Loan Amount, an endorsement removing any exception for mechanic's or materialmen's liens or pending disbursements, and with no additional title changes or exceptions objectionable to Lender; and
5. Any other supporting evidence, indemnities, agreements or inspections that the Lender or Title Company may reasonably require.

IX. MISCELLANEOUS

1. *Representations and Warranties.* Borrower represents and warrants that: (A) a copy of any Contract furnished or to be furnished to Lender is and shall be a true and complete copy thereof, (B) that the copies of the Plans and Specifications delivered to Lender are and shall be true and complete copies, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that the Borrower's interest therein is not subject to any claim, setoff, or encumbrance, (C) that all of the real estate taxes have been paid with respect to the Real Property, and the Borrower has paid all taxes and governmental charges in connection with the construction of the Improvements thereby shown to be owing, (D) the Plans and Specifications and the Contracts are satisfactory to Borrower, have been approved by all applicable governmental authorities, have been accepted by each contractor, are complete in all material respects, contain all detail necessary, are adequate for the construction of the Improvements, and comply with the Loan Documents, all applicable laws, restrictive covenants, and governmental requirements, rules, and regulations, (E) Borrower will obtain a separate tax lot or lots with a separate tax assessment or assessments for the Real Property and Improvements, independent of any other lands or improvements, (F) the Real Property and Improvements comply with all laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property, (G) the Plans and Specifications do, and the Improvements when constructed will, comply with all legal requirements regarding access and facilities for handicapped or disabled persons, if applicable, (H) the Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any construction rights, privileges or attributes with respect to the Real Property, including those arising under any zoning or land use ordinance or other law or governmental requirement, (I) the construction schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project, (J) (Reserved), (K) all utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Real Property, including, without limitation, telephone service, water supply, storm and sanitary sewer facilities, and natural gas or electric facilities, (L) except as otherwise provided for in the Loan Documents, the Borrower has made no agreement or arrangement of any kind which would give rise to a lien on the Real Property, and (M) the Purpose of the Loan and the current or anticipated use of the Real Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Real Property, all use requirements, proffer statements and conditions of approval by any governmental authority having jurisdiction over

the Real Property and the Project, have been satisfied, and no violation of any law or regulation exists with respect thereto.

2. (Reserved)

3. *No Liability To Lender For Approvals.* Notwithstanding any approvals, consents, or judgments made by Lender herein, Borrower agrees that Lender shall have no obligation, liability or responsibility whatsoever in the construction of the Improvements, or for the adequacy, quality, sufficiency, form or content of any of the plans, budgets, schedules, contracts, surveys, plats, changes, leases, or any other matter incident to the Real Property or the construction of the Improvements. Lender's acceptance of an assignment of the Plans and Specifications shall not constitute approval of the Plans and Specifications. Any inspection or audit of the Real Property or the books and records of Borrower, or the procuring of documents, information and other data, by or on behalf of Lender shall be for Lender's protection only in the interests of Lender protecting its collateral, and shall not constitute any assumption of responsibility from Borrower or from anyone else with regard to the condition, construction, quality, maintenance, location or operation of the Real Property, or relieve Borrower of any of Borrower's obligations under any of the Loan Documents. Borrower is hereby deemed to have selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project notwithstanding Lender's input. Lender has the right, but not the duty to supervise or to inspect the Real Property and the construction of the Improvements. However, any such action is in connection with the Lender acting as a lender protecting the value of its collateral, and neither Lender, nor any of its Inspectors, Construction Consultants, employees or agents has any duty of care to Borrower or to any other person to protect against, or inform Borrower or any other person of, the existence of negligent, faulty, inadequate or defective design or construction of the Improvements. Lender shall not be liable or responsible for any defect in the Real Property or the Improvements, the performance or default of Borrower, Borrower's architect, engineer, contractor, the Construction Consultant, or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials, or services supplied for the construction of the Improvements, or for the performance of any obligation of Borrower whatsoever. No action by the Lender, and no advance or acceptance of any document or instrument by the Borrower, General Contractor or any other party, shall be construed as a representation or warranty, express or implied, to any party by Lender. Inspection shall not constitute an acknowledgment or representation by Lender, its employees or the Construction Consultant that there has been or will be compliance with the Plans and Specifications, Loan Documents, applicable laws and governmental requirements or that the construction is free from defective materials or workmanship. Inspection whether or not followed by notice of Default shall not constitute a waiver of any default then existing, or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications, Loan Documents, applicable laws, and governmental requirements. Lender's failure to inspect shall not constitute a waiver of any of Lender's rights under the Loan Documents or at law or in equity.

4. *Disclaimer.* Borrower acknowledges that Lender does not have among its investment department personnel, any architects, contractors, engineers or other construction related experts, and that Lender does not claim to have any general or specific expertise in technical matters related to construction. Lender's inspection of any of the Plans and Specifications and Improvements is only in the capacity of a lender evaluating the value of the Project as security and collateral for the Loan. Lender has not reviewed such items in the capacity of an expert and any approvals given or objections withheld shall in no way constitute a warranty or endorsement of the technical soundness of the Project, whether as to the structure or components of same.

5. *Indemnity.* Except for willful misconduct, or gross negligence, Borrower, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, jointly and severally, on behalf of Borrower, and each of their respective heirs, spouses, officers, directors,

employees, agents, shareholders, successors and assigns, (the "Borrower's Parties") do hereby remise, release, acquit, satisfy and forever discharge Lender and its BB&T Mortgage Division, and each one of its respective past, present and future subsidiaries, divisions, mortgage companies, affiliates, parent corporations, joint venturers, officers, directors, employees, agents, attorneys, representatives, participants, successors and assigns (collectively referred to as the "Entities") from any and all manner of action and actions, cause or causes of actions, suits, claims, unintentional torts, counterclaims, demands, damages, judgments, liabilities, contingent claims or contingent liabilities, debts, sums of money, attorneys fees, costs, accounts, covenants, contracts, controversies, obligations, agreements, promises, expenses, variances, trespasses, liens, and/or claims of lien of any nature whatsoever, whether at law or in equity, whether now accrued or hereafter maturing and whether known or unknown, which the Borrower's Parties (and any people comprising Borrower) now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world until two (2) years and one (1) day after the Loan is paid back to the Lender in full, arising out of or in connection with: (A) all of the Lender's obligations, duties, approvals, and decisions made in good faith pursuant to the terms and conditions of this Construction Agreement (B) the inspections, discretions and approvals made or not made by the Lender in good faith hereunder, (C) the implementation, procedures, collections, administration, or actions taken by the Lender in good faith in accordance with this Construction Agreement, (D) the remedies pursued by the Lender, and all actions in connection therewith taken by the Lender in good faith, as attorney-in-fact pursuant to this Construction Agreement in the event of a Default, and (E) the actions, decisions or remedies not taken by the Lender in good faith under this Construction Agreement; and the Borrower's Parties hereby jointly and severally indemnify and hold each of the Entities harmless from same.

6. *Publicity.* Lender may announce and publicize the source of the financing contemplated by the Loan by the placement of a sign for display upon the Real Property. Any such sign shall be furnished by Lender. Borrower agrees to provide a prominent and suitable location for the display of the sign and to maintain the display of such sign for the duration of the construction on the Real Property or until the Loan has been repaid in full, whichever shall first occur.

7. *No Assignment.* Neither this Construction Agreement nor the proceeds of the Loan shall be assigned by Borrower without the written consent of Lender, and any attempted assignment without such written consent shall be void and shall constitute an Event of Default.

8. *Notices.* All notices required or contemplated hereunder including all Exhibits, shall be in writing and shall be deemed to have been given properly when deposited in the United States Mail, postage prepaid, certified or registered, return receipt requested, or when deposited with Federal Express or another comparable overnight express delivery service, addressed as follows:

To Borrower:

COMSTOCK HAMLETS OF BLUE RIDGE, L.C.
11465 Sunset Hills Rd.
Suite 510
Reston, Virginia 20190
Attn: C. Clemente

To Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA
1308 Devils Reach Road
Woodbridge, Virginia 22192
Attn: J. Arvai

(or to such other address as may be specified by notice given as required herein).

9. *No Waiver Of Lender's Rights.* Notwithstanding anything in this Construction Agreement or any other Loan Document to the contrary, Lender may, in its sole discretion, defer or relinquish any requirements hereunder, including without limitation any condition to any Loan Disbursement. However, no such deferral or relinquishment shall constitute a waiver of the Lender's right to invoke any of said requirements subsequently. Moreover, no delay, omission or acquiescence of the Lender to exercise 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. No delay or omission on the part of the Lender to exercise any rights or privileges herein, or any other option granted to the Lender hereunder in any one or more instances, shall constitute a waiver of any of such rights or privileges. Lender may make any advances or part of advances after the occurrence of a Default without thereby waiving the right to demand payment of the Loan and without becoming liable to make any other or further advances. If Lender makes advances before they are scheduled in accordance with the Construction Budget because Lender, in its sole discretion, believes it advisable so to do, such advances shall be deemed to be made in pursuance and not in modification hereof and shall not be deemed to be a waiver of any of the strict procedures, terms and conditions set forth in this Construction Agreement. No acceptance by the Lender of any partial payment on account of the Loan in the event of a Default, shall constitute a waiver of any Default and all of Lender's rights and remedies shall remain continuously in full force and effect.

10. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Notes or in any of the other Loan Documents. Each and every remedy herein shall be cumulative, and shall be in addition to every other remedy given under any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Lender herein and in any of the other Loan Documents shall be concurrent and may be pursued separately, successively or together against the Borrower, or the Real Property or any part thereof, or any personal property secured by the Loan Documents, and every right, power and remedy given in any of the Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

11. *Further Assurances.* Borrower will, on request of Lender: (a) promptly correct any defect, error or omission in this Construction Agreement or in any other Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further documents and do such further acts deemed necessary, desirable or proper by Lender to carry out the purposes of the Loan Documents, (c) execute and deliver any renewals, continuation statements, additions, substitutions, replacements, or appurtenances to the Real Property or Loan Documents; (c) execute, acknowledge, deliver, procure, file or record any document or instrument deemed necessary, desirable, or proper by Lender to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Lender to comply with the requirements of any Federal agency having jurisdiction over Lender.

12. *Participants.* Lender shall have the right to have others participate with it in the Loan.

13. *Successors And Assigns.* This Construction Agreement shall inure to the benefit of the Lender, and be binding upon the parties hereto and their successor, assigns and successors in title; but nothing herein shall authorize the assignment hereof by Borrower.

14. *Governing Law.* This Construction Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

15. *Non-Merger.* The covenants of Borrower set forth herein and the terms and provisions of this Construction Agreement shall survive the closing of the Loan, the recordation of any and all deeds and the delivery of the Loan Documents.

16. *Interpretation Among Documents.* In the event of any inconsistency or conflict between the Commitment and this Construction Agreement, the provisions of this Construction Agreement shall govern. Nothing herein shall be construed to limit or adversely affect in any way the terms and provisions of the Notes, and the rights and remedies of the Lender pursuant to the Purchase Money Deed of Trust.

17. *Construction Of This Document.* Words of any gender used in this Construction Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. References to "money", "cash" "funds" "deposit" or other similar monetary terms are references to lawful money of the United States. References to persons shall include any legal entities, businesses, agencies and natural persons as the context may call for. The words "including" shall be interpreted as if followed by the words "without limitation" if those words are not present. Captions and headings in the Construction Agreement are for convenience only and shall not affect construing this Construction Agreement.

18. *Severability.* If any provision of this Construction Agreement, or the application thereof to any circumstance, is deemed to be unenforceable, the remainder of the Construction Agreement shall not be affected thereby and shall remain enforceable.

19. *Time Of The Essence.* TIME IS OF THE ESSENCE with respect to the performance of the Borrower's obligation hereunder.

20. *No Partnership.* Nothing in this Construction Agreement or in any of the other Loan Documents shall be construed to make Borrower a partner, a joint venturer, or have an association, or a special arrangement with the Lender, or creating a principal-agent relationship or any other relationship except for that of "lender" and "borrower".

21. *No Lender Control.* The Borrower agrees that Lender's rights and interests under the Loan Documents, and the administration thereof, shall not be deemed to indicate that the Lender is in control of the Real Property, the Project or the business operations of the Borrower.

22. *Counterparts.* This Construction Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

23. *Written Agreement.* This Construction Agreement, together with each of the Loan Documents constitutes the entire understanding and agreements between Borrower and Lender.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS. OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

WITNESS the following signatures:

Borrower:

COMSTOCK HAMLETS OF BLUE RIDGE, L.C.
a Virginia Limited Liability Company

By: Comstock Holding Company, Inc.
a Virginia corporation
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Christopher D. Clemente
Title: Chief Executive Officer

Lender:

BRANCH BANKING AND TRUST COMPANY OF VIRGINIA

By

Print:

Title:

EXHIBIT "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

EXHIBIT B

DEFINITIONS

1. **DEFINITIONS:** The definitions listed below are hereby incorporated into the Construction Agreement, and shall provide the meaning and full significance to any word or words that are capitalized and not otherwise defined in the body of the Construction Agreement:

- A. *Activity:* See "Development Plan" herein.
- B. *Appraisal:* The word "Appraisal" shall mean and refer to a report of value, and/or any updated report of value, in a form and substance acceptable to Lender in connection with the Real Property, prepared and executed by a licensed professional appraiser which: (i) establishes the present "as-is" market value of the Property; (ii) establishes the value of the Real Property assuming the proper and timely completion of any Improvements to be constructed on the Real Property; and (iii) conforms in every particular with the appraisal standards established by the Lender.
- C. *Architect:* The word "Architect" shall mean and refer to a practicing and professional architect, duly licensed as such in the Commonwealth of Virginia, in good standing therein.
- D. *Assignment of Interests:* In addition to the definition in the Recital above, the words "Assignment Of Interests" shall refer to the loan document entitled Assignment of Leases, Interests, Contracts, Plans and Profits, by which Borrower assigns to Lender all of Borrower's ownership interests in business entities, Project names, warranties, plans, plats, contracts for the Construction of the Improvements (as defined below), operating contracts, permits, subdivision rights, deposits, bonds and other matters in connection with the construction, management and use of the Real Property, as additional security for the Loan.
- E. (Reserved).
- F. *Borrower's Funds:* The words "Borrower's Funds" shall mean and refer to the Borrower's: (i) cash or proceeds other than received from the Lender, (ii) other available funds shown on Borrower's application relied upon by the Lender, and (iii) portion of the Real Property sales price or Costs which are scheduled to be paid by Borrower from other funds set aside and committed, in an amount satisfactory to the Lender.
- G. *Building Permits:* The words "Building Permits" shall mean and refer to all necessary building, environmental, activity and drainfield permits and authorizations from all necessary Federal, state and local authorities, allowing all construction activities contemplated to proceed to completion and authorizing the proposed use of the Project, thereafter.
- H. *Certificate of Completion:* The words "Certificate of Completion" shall refer to a certification that the Improvements have been completed strictly in accordance with the Plans and Specifications, and that no structural defects exist in the construction of the Improvements, and may be satisfied by a residential use permit issued by the appropriate government entity.
- I. *Change Order:* The words "Change Order" shall mean and refer to any written request to allow any additions, deletions, modifications, substitutions or extras to any Contract, the Plans and Specifications, or the Construction Budget, in a form and substance acceptable solely to the Lender, where: (i) the request contains supporting documentation and information, (ii) the Borrower has obtained the approval of the General Contractor, all applicable contractors, all sureties, and government entities, (iii) the structural integrity, quality and standard of workmanship of the Improvements is not impaired, (iv) no substantial change in architectural appearance is affected, (v) no violation of any law or requirement would result, (vi) the Borrower is not doing so

to cover any excess Costs of the Improvements, and (vii) the Completion Date will not be affected; all as determined by the Lender.

J. (Omitted).

K. *Completion Date*: The words "Completion Date" shall refer to the maturity date set forth in the Note which is the last date by which the Borrower covenants and represents that the Improvements (as defined below) shall be properly erected on the Real Property, fully completed and ready for use and immediate permanent occupancy.

L. *Completion Percentage*: The words "Completion Percentage" shall mean and refer to the amount of the Improvements completed and installed on the Real Property in accordance with the Plans and Specifications, expressed as a percentage of all Work remaining outstanding that is necessary to finish the Improvements and obtain a residential use permit from the proper government.

M. *Construction Budget*: The words "Construction Budget" shall refer to the projected detailed construction cost breakdown list submitted to, and approved by the Lender.

N. *Contracts*: The word "Contract" or "Contracts" shall mean and refer to: (a) any written or oral contract, sub-contract, purchase order or agreement for supplying or performing any Work for the construction of the Improvements, (b) any maintenance or other agreement pertaining to the Real Property not described in clause (a) preceding this clause, or (c) the modification, amendment, or substitution of any such contracts.

O. *Costs*: The word "Costs" shall mean every and all construction, material, labor and other costs in connection with the Work and the final completion of the Project through the maturity date of the Loan, after taking into account the requirements of this Construction Agreement.

P. *Default*: The word "Default" or the words "Event of Default" shall mean and refer to: (i) those breaches of the Construction Agreement, that shall give rise, after the expiration of any applicable notice and cure period, to certain and specific remedies in favor of the Lender as specified in the Construction Agreement including all Exhibits, in addition to all other remedies permitted by law or equity, or under any of the other Loan Documents and (ii) those breaches or defaults under any of the other Loan Documents, that give rise, after the expiration of any applicable notice and cure period, to remedies thereunder, which are hereby expressly deemed to be a default or an event of default under the Construction Agreement.

Q. *Construction Plan*: The words "Construction Plan" shall mean and refer to a schedule for construction of Improvements on the Real Property in a form, content, and detail satisfactory to the Lender.

R. *Draw Application*: The words "Draw Application" shall mean and refer to construction draw forms that are used and acceptable solely to the Lender, which must be approved by the Inspector.

S. *Engineering Reports*: The words "Engineering Reports" shall mean and refer to written reports prepared by licensed, professional engineers acceptable to the Lender certifying that: (a) if reasonably required by Lender, the subsurface conditions of the Real Property are suitable in all respects for the construction of the proposed Improvements thereupon, (b) all Improvements have been made in compliance with all building codes and restrictive covenants (c) no encroachments exist upon any easements, rights-of-way, or adjoining property, (d) all utilities required for use at the Real Property are available to the Real Property, and (e) such other engineering notes as the Lender may require

T. *Environmental Report*: (Reserved).

U. *Excusable Delays*. The Words "Excusable Delays" shall mean unusually adverse weather conditions which have not been taken into account in the Construction Plan, including events such as fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money) beyond the control of Borrower, not to exceed a total of twenty-five (25) days, provided Borrower promptly notifies Lender of the delays and whereupon no Excusable Delay shall suspend or abate any obligation of Borrower or any Guarantor or any other person to pay any money.

V. *Financial Statements*. (Reserved)

W. *Guarantor*: The word "Guarantor" shall mean and refer to each and every one of the following who shall execute an Unconditional Guaranty Agreement (as defined below), and agree to unconditionally and jointly and severally guarantee repayment of the Loan and performance and completion under all of the Loan Documents:

Christopher D. Clemente
Gregory V. Benson
Comstock Holding Company, Inc.

X. *Guaranty*: The word "Guaranty" shall refer to the loan document entitled "Guaranty Agreement" by which each Guarantor jointly and severally guarantees the payment by Borrower of the Notes and the performance and completion by the Borrower of all obligations under the Loan Documents.

Y. *General Contractor*: The words "General Contractor" shall mean and refer to any general contractor hired to work the Project specifically approved by the Lender, which may be the Borrower, or any successor general contractor approved by Lender.

Z. *General Account*. The words "General Accounts" shall mean and refer to deposit accounts, operation accounts, savings accounts and other accounts with the Lender, and that each and every one of said accounts shall expressly be deemed to be "general accounts" and not "special accounts", such that funds may be setoff and commingled.

AA. *Improvements*: The word "Improvements" shall mean and refer to the Real Property and all work product and valuable additions benefiting the Real Property, currently affixed, to become affixed, or unique to the Real Property, now existing or hereafter acquired, to include but not be limited to any and all buildings, structures, edifices, fixtures, materials, supplies, engineering work, concrete, curb and gutter, dirt, grading, parking facilities, trees, shrubs, appendages, chattels, equipment, personal property, mixed property, goods, inventory, subdivision plats, site plans, zoning permits, building permits, bonds, plans, surveys and other facilities to be constructed in accordance with the Plans and Specifications.

BB. *Inspector*: The word "Inspector" shall refer to Lender's inspecting architect, structural engineer, employee or representative, to be appointed by and in the sole discretion of the Lender to inspect the Project.

CC. *Inspection Fee*: The words "Inspection Fee" shall mean and refer to a \$75.00 charge for each Dwelling to be inspected up to a maximum amount of \$375.00 per site visit due and payable to the Lender for each and every inspection visit,, requested in connection with a Loan Disbursement under the Loan representing actual sums due the Inspector in connection with each inspection, and may at Lender's option, be deducted from the amount of any Loan Disbursement or advance under the Loan.

DD. *Insurance Coverage:* The words "Insurance Coverage" or "Insurance" shall refer to each and every policy of insurance that the Borrower is to have, or cause to have, in effect pursuant to the Commitment, in connection with the Project, the Improvements and the Real Property, including but not limited to Title Insurance, builders risk insurance, hazard insurance, workmen's compensation insurance, liability insurance and flood insurance, and: (a) all policies must contain deductibles and/or co-insurance provisions acceptable to the Lender, and (b) all policies must be underwritten by insurance companies acceptable to the Lender, and (c) all policies must name the Lender as an additional insured and/or loss payee, (d) all policies must contain a mortgagee clause granting coverage to the Lender and its successors and assigns, as their respective interests may appear, (e) all policies must provide that they shall not be cancelled unless the insurance company issuing such insurance policy shall first give the Lender at least thirty (30) days' prior written notice, (f) the issuance and renewal of each and every insurance policy required hereunder, and the payment of the premium therefore, shall be performed by the Borrower with written notice to the Lender, and (g) the Borrower shall deliver a copy of each such insurance policy to the Lender.

EE. *Loan Disbursements:* The words "Loan Disbursements" or "Loan Disbursement" shall mean and refer to any and all advancement of acquisition and/or construction funds under the Loan Documents for the Purpose stated, after all conditions precedent thereto have been met and satisfied as determined by the Lender.

FF. *Loan Documents:* The words "Loan Documents" shall mean and refer to any and all papers, letters, documents, instruments, agreements, statements, certificates, certifications, affidavits, and indemnities in a form and substance acceptable solely to Lender, and shall include but not be limited to this Construction Agreement, the Development Loan Agreement, the Notes, the Purchase Money Deed of Trust, the Assignment of Interests, and any and all loan agreements, development loan agreements, security agreements, hazardous waste indemnity agreements, credit agreements, unconditional guaranty agreements, financing statements, loans to one borrower statements, affidavits, compliance agreements, closing agreements, certificates, indemnities and certifications; and any and all amendments or modifications thereto that are executed by the Borrower in connection with the Loan.

GG. *Loan Fees:* The words "Loan Fees" shall mean that the following fees shall be deemed earned by the Lender and paid by the Borrower as follows:

(i) A non-refundable loan fee in the amount of one percent (1.00%) of each and every disbursement shall be paid at the time any and all disbursements are made, at any time and for any purpose under this Construction Agreement, and may be deducted directly by the Lender from any disbursement, and shall be deemed earned by the Lender in full at the time of disbursement, provided however, with respect to this construction loan only, the total fees paid by Borrower to the Lender in connection with the revolving construction portion of the Loan, shall in no event exceed \$22,500.00 per annum for each year the Loan is outstanding, with the first year commencing as of the date of closing, and all said amounts shall be deducted by Lender from each advance when made.

HH. *Loan-To-Value Percentage:* The words "Loan-To-Value Percentage", "Loan-To-Value Ratio" or "Loan-To-Value Amount" may be expressed as a ratio, a sum or an amount but in any event shall mean that the aggregate of all Loan Disbursements made by the Lender and remaining outstanding under the \$10,493,300.00 Loan in connection with the Real Property and Improvements, or as any part of said \$10,493,300.00 Loan is apportioned or allocated by the Lender and/or disbursed in connection with any one Lot and Dwelling thereon, shall never exceed (a) eighty percent (80.0%) or, if less, eighty percent (80.0%) of the contract price to the purchaser for such Dwelling, plus, one hundred percent (100%) of the wholesale cost of options and

upgrades, provided however, in no event shall the Loan amount with respect to the land, development and construction advances on account of the model or speculative Dwelling, exceed a loan-to-value ratio of seventy-five percent (75.0%), plus one hundred percent (100%) of the wholesale cost of options and upgrades. In no event whatsoever shall total disbursements: (i) exceed 100% of the actual costs incurred by the Borrower, as determined by the Lender, and (ii) exceed seventy-five percent (75.00%) of the gross retail sell-out value of the Project as determined by the Lender.

II. *Non-Refundable Loan Fee.* See "Loan Fee".

JJ. (Reserved).

KK. *Physical Survey:* The words "Physical Survey" shall mean and refer to a wall check survey, the record plat and a final "as-built" survey.

LL. *Plans And Specifications:* The words "Plans and Specifications" shall mean and refer to a complete and final set of professional architectural drawings, construction plans, and working plans and specifications relating to the construction of the Project and Improvements on the Real Property, containing all customary notes and professional details.

MM. *Plats and Plans:* The words "Plats and Plans" shall mean and refer to any and all elevation plats, dedication plats, declaration statements, subdivision plats, boundary line surveys, site plans and all other submitted plans of construction for recording and/or government approval in connection with the Project and the Real Property.

NN. *Project:* In addition to the definition in the Recital, the word "Project" shall refer to the Purpose, the Improvements, construction activities, and use of the Real Property.

OO. *Purchase Money Deed of Trust:* In addition to the definition in the Recital above, the words "Purchase Money Deed of Trust" shall refer to the loan document entitled "This Is A Credit Line Deed Of Trust" of even date herewith, which grants the Lender a perfected interest and encumbrance on the Real Property and the Improvements (as defined below).

PP. *Stage:* The word "Stage" shall refer to each progressive interval of construction as listed on the Draw Schedule.

QQ. *Title Company:* The words "Title Company" shall mean and refer to that title insurance company acceptable to the Lender, issuing a mortgagee Title Policy (as defined below) insuring the Lender in the full amount of the Loan, and containing only those exceptions to title to the Real Property acceptable to Lender, as determined by the Lender in its sole discretion, as well as each endorsement to the coverage.

RR. *Title Policy:* The words "Title Policy" shall mean and refer to that final mortgagee title insurance policy issued by the Title Company prior to any Loan Disbursement hereunder, pursuant to all of Lender's instructions and insuring that the Lender's Purchase Money Deed of Trust is a valid, first priority lien and encumbrance on the Real Property without exception for matters of survey or possible unfiled mechanic's and materialmen's liens. Such title insurance shall be increased by written endorsement to cover the amount of every Loan Disbursement, be in a form and substance satisfactory to Lender, and contain such other endorsements as the Lender may require from time to time.

SS. *Work.* The word "Work" shall mean and refer to all contract work, sub-contract work, supplies, labor, services, materials, articles, property, products and any other trade work, material or thing in connection with the construction of all Improvements on the Real Property.

EXHIBIT C

CONDITIONS PRECEDENT TO DISBURSEMENTS

Each and every one of the requirements listed in this Exhibit C is hereby incorporated into the Construction Agreement as if fully set forth therein, and expressly deemed to be conditions precedent to be satisfied by the Borrower prior to the Lender becoming obligated to make disbursements. The Borrower agrees: (i) to fully comply with each of the requirements listed below in a manner deemed acceptable to the Lender, and (ii) that compliance with each and every one of the requirements shall be determined by the Lender, in Lender's sole but reasonable discretion, just as if this sentence were incorporated into each requirement listed. Accordingly, the Borrower agrees:

1. To comply with all requirements for disbursements set forth in the Development Loan Agreement, including Exhibits;
2. The Lender shall have received an acceptable endorsement to the title policy, having no unacceptable exceptions as determined by the Lender, issued by the Title Company in a form and substance satisfactory to Lender, and, if and to the extent required by the Title Company, to obtain from each contractor, architect, engineer, subcontractor, or supplier of services or materials, duly executed original lien waivers, or agreements satisfactory to the Title Company subordinating all rights, liens, claims and charges they may have against Borrower or the Real Property, to the rights, liens and security interests of Lender, and delivering same to the Title Company. The Title Insurance shall be endorsed and "down-dated" in a manner satisfactory to Lender to increase the coverage by the amount of each Loan Disbursement through the date of each such advance with no additional title change or exception not approved by Lender and all releases or waivers of mechanic's liens and materialmen's liens and receipted bills showing payment of all amounts due to all parties who furnished materials or services or performed labor of any kind in connection with the Real Property as to any prior advance, if, and to the extent required by the Title Company, shall have been obtained on forms and in a substance acceptable to the Lender and the Title Company in connection with the subsequent advance;
3. To provide an accurate and complete Construction Budget, updated as required by Lender, adequate to cause the Improvements to be completed in accordance with the Plans and Specifications;
4. If requested by Lender, to provide a list containing the names and addresses of all existing contractors, subcontractors, engineers, materialmen and other suppliers of services and materials for the Project;
5. To provide an acceptable, properly executed Draw Application;
6. That no Default or Event of Default shall be committed or now exists under any of the Loan Documents, or under the Development Loan Agreement;
7. That no mechanics or materialmen liens shall have been filed, that are not bonded-off or otherwise fully satisfied;
8. To provide the Pre-Start Agreements, as applicable; and
9. The Lender shall have received the Physical Survey showing and detailing the foundation, within ten (10) days after the laying of the foundation of each Dwelling comprising the Improvements, that is in a form and substance satisfactory to the Lender;
10. As of the date of making any Loan Disbursement, no event shall have occurred, nor shall any condition exist that is materially adverse to the financial condition of Borrower or any Guarantor, or which would impair the ability of Borrower or any Guarantor to fulfill its material obligations under the Loan Documents;
11. The Improvements shall not have been damaged and not repaired; and
12. The Borrower and or Guarantor has delivered to Lender such other information, documents, supplemental legal opinions, updated lists and other information as may be reasonably required by Lender.

EXHIBIT D

EVENTS OF DEFAULT AND REMEDIES AVAILABLE TO LENDER

Each and every one of the terms and provisions listed in this Exhibit D is hereby incorporated into the Construction Agreement as if fully set forth therein.

EVENTS OF DEFAULT

Any one of the following events below shall constitute a breach of this Construction Agreement and be deemed to be an Event Of Default:

A. If the Borrower fails to timely construct Improvements in accordance with the Plans and Specifications for the Purpose stated herein, substantially within the Construction Budget;

B. If at any time there is discovered or created a defect in title to the Real Property which is not cured or insured over to the reasonable satisfaction of Lender within thirty (30) days after the giving of notice thereof;

C. If the Improvements or any portion thereof encroach upon a street or easement or upon adjoining property or violate any setback restriction, however created, or the requirements of any governmental authority having jurisdiction, or any adjoining structure encroaches upon the Real Property or on any easement appurtenant thereto to an extent deemed material by Lender's attorneys, and the encroachment or violation is not removed within thirty (30) days after the giving of notice thereof, (provided however, if the encroachment or violation is not reasonably capable of being cured within 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice, to cure said encroachment or violation);

D. If Borrower does not erect and equip the Improvements substantially in accordance with the Plans and Specifications and with all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if at any time it becomes apparent, in Lender's judgement, that the Improvements will not be completed by the Completion Date;

E. If Borrower does not permit Lender to enter upon the Real Property to make Inspections of the Real Property, the Improvements and any and all materials to be used in connection with the construction thereof, and to examine all details, plans, shop drawings and similar materials relating to the construction of the Project;

F. If for any reason whatsoever Borrower abandons the Project, or the construction of the Improvements is at any time in the reasonable judgement of Lender, discontinued or not carried on with diligence and dispatch;

G. If Borrower fails to comply with any requirement of any government authority having jurisdiction within thirty (30) days after the giving of notice thereof;

H. If following demand by Lender: (i) Borrower fails to promptly correct or cause the correction of any defects in the Improvements, or (ii) Borrower materially departs and deviates from the Plans and Specifications, without prior written approval from Lender;

I. If Borrower assigns this Construction Agreement or any interest herein, or if the Real Property or Improvements are conveyed or encumbered in any way without the prior written consent of Lender;

J. If Borrower executes any other security agreement, which affects any materials, equipment, fixtures or articles used in the construction or operation of the Improvements or articles of personal property located on the Property, or if any such materials, fixtures or articles

are purchased in a conditional sales transaction or otherwise so that the ownership thereof will not vest unconditionally in Borrower, free from encumbrance, on delivery at the Real Property;

K. (Reserved);

L. (Reserved);

M. If Borrower fails to pay when due all bills for Work performed in connection with construction of the Improvements;

N. If Borrower fails generally to pay their debts when due; or if there is filed by Borrower a petition in bankruptcy under any of the provisions of the United States Bankruptcy Act, as amended, or under any similar state or federal law, or a petition for the appointment of a receiver or trustee of the property of Borrower; or if Borrower makes a general assignment for the benefit of creditors or makes any insolvency assignment or is adjudged insolvent by any court of competent jurisdiction; or if there is filed against Borrower a petition in bankruptcy or for the appointment of a receiver which involuntary petition is not dismissed within forty-five (45) days thereafter;

O. If Borrower shall not deposit with Lender any portion of the Borrower's Funds required hereunder when requested by the Lender within ten (10) days after Lender has notified Borrower to deposit the Borrower's Funds;

P. If any indebtedness due under either of the Notes or under any of the other Loan Documents, is not paid immediately when due;

Q. If any covenant or agreement herein is not fully and timely performed, observed or kept;

R. If the Borrower fails to comply with any of the conditions precedent to the obligation of Lender to make any Loan Disbursements hereunder or under any other Loan Documents;

S. Construction is enjoined or prohibited for a period exceeding 30 days for any reason through no fault of the Lender;

T. A mechanics lien, materialmens' lien or judgment lien is established against the Real Property, and remains unsatisfied, unpaid or unbonded, or not insured over by the Title Company (in a manner satisfactory to the Lender) for a period of thirty (30) days after the date of recordation or docketing;

U. The Lender has determined that a material adverse change has occurred in the financial condition of the Borrower, or in the condition of the Real Property, and Borrower has not remedied same within 20 days after notice thereof;

V. If the Real Property is found to contain any hazardous waste, hazardous substance or toxic waste as those terms are contemplated in any of the Loan Documents;

W. If the Borrower causes a breach of any contracts or agreements that the Lender has contemplated and/or relied upon in its underwriting analysis of the Loan; or

X. If Borrower breaches, or commits a Default or an Event of Default under the Development Loan Agreement, or under any of the other Loan Documents.

A default by the Borrower under any of the other Loan Documents shall be deemed to be a default under this Construction Agreement, and an Event of Default under this Construction Agreement shall automatically be deemed to be a default under each and every one of the other Loan Documents.

REMEDIES OF THE LENDER

Upon an Event of Default, the Lender shall mail notice of the default to the Borrower, and the Borrower shall have fifteen (15) days for any monetary-related default, and thirty (30) days for any non-monetary default, from the date of mailing the notice, to cure said default (provided however, if the non-monetary default is not reasonably capable of being cured within said 30 days, and Borrower is diligently pursuing said cure, Borrower shall have up to sixty (60) days from the date of notice to cure said non-monetary default), whereupon, if remaining uncured at the expiration thereof, the Lender shall immediately be entitled to all remedies as stated herein, in addition to all other remedies provided to Lender under any of the Loan Documents, and under the law or rules of equity, and Lender may, at its election, but without any obligation to do so, without further notice, enjoy any or all of the rights, powers, privileges and remedies listed below, all at the sole cost and expense of the Borrower:

SPECIAL REMEDIES

In furtherance of the remedies herein provided to the Lender, the Borrower hereby expressly grants, empowers, authorizes and consents to the Lender, its successors and/or assigns, by and through any of its officers, attorneys, employees, agents and contractors, with the full unconditional right, power, privilege and authority to do any one or all of the following upon the occurrence of an Event of Default after the expiration of any applicable notice and cure periods:

- (A) Enter upon and take possession of the Real Property and the Project at any time, without any advance notice to the Borrower whatsoever, and to take control of the Real Property;
- (B) Perform any and all Work that is reasonable by the Lender, or that is necessary to complete the Improvements as contemplated herein, or to terminate any Work being performed, and take whatever other action may be necessary or desirable, in the sole opinion of the Lender;
- (C) Perform all Work necessary to complete the construction of the Improvements substantially in accordance with the Plans and Specifications, Contracts, Loan Documents, and governmental requirements, or in accordance with any modifications or Change Orders thereto, as deemed necessary or desirable solely by the Lender, and continue to employ Borrower's architect, engineer, and any contractor pursuant to the applicable Contracts, or otherwise;
- (D) Use and apply any General Accounts, Interest Reserve, funds, deposits, money, or assets, or make any Loan Disbursements as are necessary to:
 - (i) stabilize and secure the Project, the Improvements and/or the Real Property, or
 - (ii) to complete development or construction;
- (E) Set-off any and all General Accounts, Borrower's Funds and any other deposits, funds, money, assets or other indebtedness against the Loan;
- (F) Make such Change Orders or corrections in the Plans and Specifications and Contracts as the Lender may deem acceptable in its sole discretion;
- (G) Employ such architects, engineers, trustees, agents, consultants, managers and contractors as may be required by the Lender for the purpose of:
 - (i) advising the Lender and assessing any problems,
 - (ii) completing the construction of the Improvements substantially in accordance with the Plans and Specifications (as modified as deemed necessary by Lender), Loan Documents, laws and governmental requirements, or as otherwise may be necessary or desirable for purposes of completing such construction,
 - (iii) operating, managing, leasing, controlling and running the Project and/or the Real Property and reviewing the books and records of the Project;
 - (iv) assessing Lender's rights and options, and/or
 - (v) stabilizing the Project;
- (H) Do every act with respect to contracting for the Work, constructing the Improvements on the Project, executing Building Permits, plats, site plans and government approved or required

prints and papers, and all such other acts, or no such other acts, which Borrower may do in connection with the Real Property and the Project on terms acceptable to the Lender;

(I) Prosecute legal action, hire legal counsel and defend and compromise any claim, action or proceeding incident to the Real Property, the construction of Improvements at the Project as the Lender deems proper; and/or

(J) Pay, settle, or compromise all bills and claims so as to clear title to the Real Property in an amount and on such terms as the Lender deems proper;

(K) Seek a refund of all monies paid by the Borrower to any government or business entity, to which the Borrower may be entitled and apply said amount against the outstanding indebtedness in accordance with Loan Documents;

(L) Take over, liquidate and/or use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements; and

(M) Take such other and further action that is ancillary thereto and in furtherance of the rights, powers, privileges and remedies granted under the Special Power of Attorney, and in the Construction Agreement, all on terms, conditions and amounts deemed satisfactory solely to the Lender, and this provision shall be construed liberally and in the broadest sense in favor of the Lender, to hereby provide the Lender with all such rights, power and authority as is necessary and/or desirable to further the purpose, remedies and privileges set forth herein.

OTHER REMEDIES

In addition to the above rights and remedies the Lender shall have any and all of the remedies listed below:

(1) Terminate its commitment to make Loan Disbursements under the Loan and terminate any Loan Disbursement pending;

(2) Terminate its obligation to disburse any of the Borrower's Funds hereunder;

(3) Reduce any claim to judgment;

(4) Exercise any and all rights and remedies afforded by this Construction Agreement, the other Loan Documents, and/or at law, equity or otherwise;

(5) Set-off and apply, to the maximum extent permitted by law, any and all General Accounts and any other deposits, funds, Borrower's Funds, or assets (or any indebtedness at any time owing by Lender to or for the credit or account of Borrower), against the Loan and any indebtedness due the Lender and remaining outstanding under any of the Loan Documents; and

(6) Accelerate the Notes, and foreclose under the terms of the Purchase Money Deed of Trust.

SPECIAL POWER OF ATTORNEY

The Borrower hereby irrevocably makes, constitutes and appoints the Lender, by and through any of its corporate officers, (any one of which has full power to act) as the Borrower's duly appointed agent and/or Attorney-In-Fact, (collectively, the "Attorney In Fact") with the full power, authority and right to act in the name, place and stead of the Borrower, and do all things as the Borrower could do if present, but nevertheless limited to matters and assets relating and/or earmarked solely in connection with the Real Property. This power of attorney and appointment is irrevocable and coupled with an interest, and shall not terminate upon the disability, insolvency or dissolution of the Borrower in

accordance with the Code of Virginia, 1950. Upon the occurrence of an Event of Default, after the expiration of any applicable notice and cure periods, the Attorney In Fact shall have the right, power, privilege and authority to effect and/or do any and all of the rights, privileges, powers, actions, remedies, or acts contemplated herein, including but not limited to accomplishing or effecting the Special Remedies herein, the Other Remedies herein, any of the rights, privileges or remedies of the Lender set forth in any and all of the other Loan Documents, and any or all of the following solely in connection with the Real Property:

(A) To execute all related papers contemplated in this Construction Agreement, including applications, Contracts, notes, plans, drawings, bonds, plats, and certificates, and deliver same for any purpose in connection with the Project which may be required for completion of construction of the Improvements, operation and management of the Project, or to secure the collateral;

(B) To endorse, negotiate, transfer and deliver all checks, drafts, notes, deposits and negotiable instruments and assign or transfer all non-negotiable instruments in the name of Borrower, and to withdraw such cash, deposits, Borrower's Funds, and funds from any General Account, and apply same to: (i) stabilize the Real Property and the Project, (ii) any and all costs and expenses incurred by the Lender in connection with the operations and management of the Project, (iii) any and all Costs incurred in connection with the Work at the Project and the use of the Real Property, (iv) any and all indebtedness that continues to arise under any of the Loan Documents, (v) pay creditors bills, and (vi) for such other matters as the Attorney In Fact shall deem necessary or important in the sole discretion of the Attorney In Fact in connection with the Lender's full realization of any of the Remedies set forth herein; and/or

(C) To endorse the name of Borrower on any checks or drafts representing proceeds of any Insurance Policies, bonds, or other checks, returns of security, deposits or instruments payable to Borrower with respect to the Real Property, and apply said proceeds to: (i) all expenses, fees and costs incurred by the Attorney In Fact in pursuing any of its remedies hereunder, including reasonable attorneys fees incurred by the Attorney In Fact, and (ii) then to payment of the Loan in accordance with the terms of the Notes.

EXHIBIT E

DRAW SCHEDULE

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PURCHASE MONEY DEED OF TRUST AND SECURITY AGREEMENT

Drawn By and After Recording Mail To:
Robinson, Bradshaw & Hinson, P.A.
Attention: Robert C. Sink
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246

Part of RPC No. 34027039

COMMONWEALTH OF VIRGINIA

**PURCHASE MONEY DEED OF TRUST
AND SECURITY AGREEMENT**

ARLINGTON COUNTY

THIS PURCHASE MONEY DEED OF TRUST AND SECURITY AGREEMENT is made and entered into as of December 15, 2003, by and among

COMSTOCK POTOMAC YARD, L.C., a Virginia limited liability company, whose address is c/o Comstock Homes, Inc., 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190, Attention: Christopher D. Clemente (for reference herein and for indexing purposes, "**Grantor**"), and

JONATHAN P. RAK, TRUSTEE, an individual Virginia resident (for reference, "**Trustee**," and for indexing purposes, "**Grantee**"), whose address is 1750 Tysons Blvd., Suite 1800, McLean, Virginia 22102, and

CRESCENT POTOMAC YARD DEVELOPMENT, LLC, a Delaware limited liability company, whose address is 400 N. Tryon Street, Suite 1300, Charlotte, North Carolina 28202, Attention: President (for reference herein, "**Beneficiary**," or for indexing purposes, "**Grantee**").

RECITALS

COLLATERAL IS OR INCLUDES FIXTURES

Grantor is indebted to Beneficiary in the sum of Sixteen Million and 00/100 Dollars (\$16,000,000.00), as evidenced by Grantor's Purchase Money Promissory Note of even date herewith (the "**Note**"), which term shall include any and all renewals, replacements, modifications and extensions thereof.

Grantor desires to secure the following described obligations (the "**Obligations**"): (1) payment of the Note with interest and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made, by the collateral hereinafter described.

NOW, THEREFORE, in consideration of the premises, and the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has given, granted, bargained, sold and conveyed, and by these presents does give, grant, bargain, sell and convey unto Trustee the following property (the "**Premises**"):

- A. The real property lying and being in Arlington County, Virginia, and described in *Exhibit A* attached hereto and incorporated herein by reference (the "**Land**");
 - B. All buildings and other improvements now or hereafter located in, on, or about the Land (the "**Improvements**");
 - C. All leases, rents, issues, profits, royalties, income and other benefits derived from the Land and the Improvements (the "**Rents**"), subject to the right, power and authority hereinafter given to Grantor to collect and apply such Rents, and the proceeds from any condemnation award relating to the Land and the Improvements, subject to Section 7 below;
-

D. All the rights, interests and privileges which Grantor as lessor may have in the leases hereafter made and affecting the Land or the Improvements or any part thereof (collectively, the "**Leases**"); and

E. All easements, rights-of-way and rights used in connection with the Land and the Improvements (including the easement from Beneficiary created by Deed of Easement for Construction of even date herewith) or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, including, without limitation, all entitlements and development rights appurtenant thereto.

TO HAVE AND TO HOLD the Premises unto Trustee in fee simple forever upon the trusts and for the uses and purposes hereinafter set out;

And Grantor represents and warrants to Trustee and Beneficiary that Grantor is seised of the Premises in fee and has the right to convey the same in fee simple; that the same are free and clear of all encumbrances except as may have existed at the time of transfer of the Premises from Beneficiary to Grantor's predecessor, Crescent Resources, Inc., that Grantor has done no act to encumber the Premises and that Grantor will warrant and defend the title to the same against the lawful claims of all persons whomsoever, and that Grantor will execute such further assurances of title to said lands as may be required.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST that if Grantor shall pay the Obligations in accordance with its terms and shall comply with all the covenants, terms and conditions of this Deed of Trust, this conveyance shall be released and cancelled of record. Grantor hereby further covenant and agree with Trustee and Beneficiary as follows:

1.1 Payment of Indebtedness; Impositions. Grantor will pay, when due and payable, the Obligations and all real and personal property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments (hereinafter referred to as "**Impositions**") such as owner association dues or charges or fees and maintenance charges which are assessed or imposed upon the Premises. If Grantor fails to pay any such Impositions and such failure entitles the governmental entity to immediate execution on the Premises, Beneficiary may, but shall not be required to, pay the Impositions (of which payment, amount and validity thereof the official receipt shall be conclusive evidence), and any amounts so expended shall immediately become debts due and payable by Grantor, shall bear interest at the default rate specified in the Note, and such payment shall be secured by this Deed of Trust.

1.2 Maintenance of Premises; Compliance with Laws. Grantor will keep the Premises in good order, repair and condition, reasonable wear and tear excepted and shall not commit or permit any material waste. Grantor will also use commercially reasonable efforts to comply (and after notification of violation shall comply) with all applicable laws, statutes, ordinances, codes, judicial and administrative decisions (the "**Requirements**"). Grantor will not make changes to the Premises or make changes to the use of the Premises that will materially, adversely affect their value, without the Beneficiary's prior written consent.

1.3 Conveyance of Premises. Grantor may not sell, convey, or otherwise transfer the Premises, or any part thereof or interest therein, legal or equitable, except to a competent and reputable condominium developer who agrees to assume, and has the resources to satisfy, all of Seller's remaining obligations under the Development Agreement between Grantor and Beneficiary with respect to the Premises. The determination in respect of the qualifications of the prospective transferee shall be based on a reasonable interpretation of public or private information. Notwithstanding anything contained herein to the contrary, Grantor shall be entitled to encumber the Property by executing and recording an inferior and subordinate deed of trust and security agreement in favor of Comstock Capital Partners, L.C., a Virginia limited liability company, and its assigns (the "**Second**

Mortgage Lender") securing a loan in the amount of Seven Million and 00/100 Dollars (\$7,000,000.00) from Second Mortgage Lender to Grantor.

1.4 Hazardous Material.

(a) **Covenants.** Grantor covenants and agrees that (i) Grantor shall not willfully permit the release of Hazardous Material onto or from the Premises; (ii) Grantor shall use its best efforts to cause the Premises to comply with Environmental Laws and be free and clear of any liens imposed pursuant to Environmental Laws; (iii) all licenses, permits and other governmental or regulatory actions necessary for the Premises to comply with Environmental Laws (the "**Permits**") shall be obtained and maintained and Grantor shall assure compliance therewith; and (iv) Grantor shall give Beneficiary prompt written notice if Grantor receives any notice with regard to Hazardous Material on, from or affecting the Premises and shall (x) conduct and complete all investigations and all cleanup actions necessary to remove or remediate, in accordance with Environmental Laws, such Hazardous Material from the Premises, and (y) indemnify and hold harmless Beneficiary from any loss, claim, or liability arising out of the release of Hazardous Material onto or from the Premises.

(b) **Definitions.** "**Hazardous Material**" means polychlorinated biphenyls, petroleum, flammable explosives, radioactive materials, asbestos, lead and any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) Environmental Laws or listed as such by the Environmental Protection Agency. "**Environmental Laws**" means any current or future federal, state or local law, regulation or ruling applicable to environmental conditions on, under or about the Premises including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Clean Water Act.

1.5 Assignment of Rents, Leases, and Profits. As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Deed of Trust, Grantor hereby sells, transfers and assigns unto Beneficiary all the right, title and interest of Grantor in and to the Rents, and to that end Grantor hereby assigns and sets over unto Beneficiary all Leases of the Premises now made, executed or delivered, whether written or verbal, or hereafter made, whether written or verbal, and Grantor does hereby authorize and empower Beneficiary to collect the Rents when due, and does hereby direct each tenant of the Premises to pay the Rents to Beneficiary, upon demand for payment thereof by Beneficiary; it being understood and agreed, however, that no such demand shall be made absent the occurrence of an Event of Default hereunder; and until such demand is made, Grantor is authorized to collect or continue collecting and using the Rents, including without limitation distribution to Grantor's members; such privilege to collect or continue collecting the Rents by Grantor shall not operate, however, to permit the collection of any Rents more than thirty (30) days in advance of their due date. It is intended that the assignment set forth above be an absolute, present assignment from Grantor to the Beneficiary and not merely the passing of a security interest. The rents, issues, income and profits are hereby assigned absolutely by Grantor to the Beneficiary contingent only upon the occurrence of an Event of Default. Grantor will promptly and fully keep, perform and comply with all the terms and covenants imposed upon or assumed by Grantor as landlord under the Leases to the extent commercially reasonable. Grantor, if requested by Beneficiary, shall furnish promptly to Beneficiary executed copies of all Leases, renewals, and amendments hereafter created.

1.6 Right To Cure; Protection of Security. Following and during continuation of an Event of Default, if Grantor, as applicable, shall fail in any of the covenants and provisions contained in this Deed of Trust, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or cure any such default or failure. Beneficiary shall have the right to enter upon the Premises to such extent and as often as Beneficiary, in its sole discretion, deems

necessary or desirable in order to prevent or cure any such default or failure by Grantor, as applicable. Following and during continuation of an Event of Default, Beneficiary may expend such sums of money as Beneficiary, in its sole discretion, deems necessary for any such purpose, and Grantor hereby agrees to pay to Beneficiary, immediately upon demand, all sums so expended by Beneficiary, together with interest thereon from the date of each such payment at the rate provided for in the Note. All sums so expended by Beneficiary, and the interest thereon, shall be added to and secured by the lien of this Deed of Trust.

1.7 Condemnation. Upon condemnation of the Premises or any part thereof, this Deed of Trust shall become a lien, charge and encumbrance upon the proceeds or award realized as a result of any such proceeding or of any settlement or payment made in lieu of any such proceeding ("**Condemnation Proceeds**"). Grantor hereby grants to Beneficiary a security interest in any Condemnation Proceeds and hereby agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Grantor further covenants and agrees that Beneficiary may (and is hereby authorized and empowered but not required to) collect and receive any Condemnation Proceeds and, if received by Grantor, Grantor shall pay over and deliver immediately to Beneficiary all Condemnation Proceeds to be held by Beneficiary and applied as follows:

(a) In the event the entire Premises shall be taken by condemnation or in settlement of any threat of condemnation, then any Condemnation Proceeds shall be paid to Beneficiary and applied in payment in whole or in part to the Obligations, whether or not then due and payable, and any excess shall be delivered to the parties legally entitled thereto. In the event of a partial taking of the Premises, the portion of the Condemnation Proceeds shall first be applied as necessary (i) to restore the Premises and (ii) satisfy the Grantor's obligations under occupancy leases of the Premises. To the extent necessary to prevent impairment of the security of this Deed of Trust, as determined in the Beneficiary's sole discretion, any additional proceeds shall then be set aside, withheld or paid over to the Beneficiary and applied to the Obligations, whether or not then due and payable, and the excess of such award or proceeds shall be delivered to Grantor or other parties legally entitled thereto. Upon any partial taking of the Premises, this Deed of Trust shall continue in full force as security for the unpaid portion of the Obligations. Upon any partial taking of the Premises, Grantor covenants with Beneficiary to restore the Premises as nearly as possible to the condition thereof immediately prior to such taking and to apply Grantor's portion of any Condemnation Proceeds together with any other necessary funds to complete and pay for the costs of restoration.

(b) Notwithstanding any contrary provision of this Deed of Trust, (i) upon condemnation of the entire Premises, or (ii) upon partial condemnation of the Premises, the entire unpaid balance of the Obligations shall, at the option of Beneficiary, at once become due and payable, whereupon any Condemnation Proceeds shall be paid over to Beneficiary and applied in accordance with the first sentence of subparagraph (a) of this Section 7.

1.8 Inspection. Beneficiary may inspect the Premises at reasonable times to determine compliance with the obligations created by this Deed of Trust.

1.9 Events of Default. Any default or event of default described as such in the Note shall constitute a default or event of default under this Deed of Trust ("**Events of Default**"), and the terms of the Note are incorporated in this Deed of Trust by reference.

1.10 Acceleration. If an Event of Default shall have occurred, the Obligations shall, at the option of Beneficiary, immediately become due and payable without further notice of demand, time being of the essence of this Deed of Trust; and no omission on the part of Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

1.11 Power of Sale. Upon the occurrence of an Event of Default, Beneficiary may notify Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of Trustee, and Trustee is hereby authorized and empowered to expose to sale and to sell the Premises or any part thereof as follows:

(a) Trustee shall proceed to sell the same at auction at the premises or at such other place in the city or county in which the Premises or the greater part thereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the Land was formerly a part, as Trustee may select upon such terms and conditions as Trustee may deem best after first advertising the time, place and terms of sale once a week for two (2) weeks if published on a weekly basis or at least three (3) days if published on a daily basis in advance of the date of such sale, of a newspaper published or having general circulation in the county or city in which the Premises or some portion thereof is located.

(b) The power of sale above granted may be exercised at different times as to different portions of the Premises, and if for any reason any executory contract of sale shall not be performed, then new contracts may be made with respect to the same portion of the Premises (with or without other portions). If the Trustee deems it best for any reason to postpone or continue the sale at any time or from time to time, he may do so, in which event Trustee shall announce, at the time and place last appointed for such sale, the postponement thereof and the time and place for the postponed sale, or shall give such further notice of sale as Trustee may see fit to give, and in either case no other notice shall be required.

(c) Full power and authority is hereby expressly granted and conferred upon the Trustee to make, execute, and deliver all necessary deeds of conveyance for the purpose of vesting in the purchaser or purchasers complete and entire legal and equitable title to the Premises, or the portion thereof so sold, and the recitals therein shall be received in all courts of law and equity as prima facie evidence of the matters therein stated; and at such sale the Beneficiary may become a purchaser, and no purchaser shall be required to see to the proper application of the purchase money.

(d) The proceeds of such sale shall be applied, first, to discharge the expenses of executing the trust, including a reasonable commission to the Trustee not to exceed five percent (5%) of the gross proceeds of sale; next, to discharge all taxes, levies, and assessments on the Premises, with costs and interest if they have priority over the lien of this Deed of Trust, including a proper proration thereof for the current year; next, to reimburse Trustee and Beneficiary or any other holder of the debt secured hereby for all sums expended by them pursuant to the provisions of this Deed of Trust, with interest thereon; next, to pay the accrued interest on the unpaid principal balance due under the Obligations secured by this Deed of Trust; next to pay said unpaid principal balance due under the Obligations secured by this Deed of Trust; next, to discharge in order of their priority, if any, the remaining debts and obligations secured by any liens of record inferior to this Deed of Trust; and any residue of said proceeds shall be paid to Grantor or his assigns, provided, however, that Trustee as to such residue shall not be bound by an inheritance, devise, conveyance, assignment or lien of or upon Grantor's equity, without actual notice thereof prior to distribution.

1.12 Delay Not To Operate as Waiver; Indemnification of Trustee and Beneficiary. No delay or forbearance by Beneficiary in exercising any rights hereunder or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and all such rights shall be cumulative. In case Beneficiary or Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Premises or the lien of this Deed of Trust, Trustee and Beneficiary shall be saved harmless and reimbursed by Grantor for any amounts paid, including all reasonable costs, charges and attorneys' fees incurred in any such suit or proceeding, which obligations shall be secured by this Deed of Trust

1.13 Waivers. To the extent permitted by law, Grantor hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between Beneficiary and any subsequent owner of the Premises. The foregoing waiver shall not be construed as affecting or otherwise amending the covenants of Grantor contained in Section 2 hereof. Grantor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Premises and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations. To the full extent Grantor may do so, Grantor agrees that it will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal, valuation, stay, extension, redemption or extension, and Grantor and its successors and assigns, and for any and all persons claiming any interest in the Premises, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, redemption, stay of execution, notice of election to mature or declared due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Grantor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

1.14 Interest Not To Exceed Maximum Allowed by Law. The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

1.15 Substitution of Trustee. Beneficiary shall at any time have the irrevocable right to remove Trustee herein named without notice or cause and to appoint its successor by an instrument in writing, duly acknowledged and recorded.

1.16 Successors and Assigns. The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "Beneficiary" shall include any payee of the indebtedness hereby secured and any permitted transferee or assignee thereof, whether by operation of law or otherwise.

1.17 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to principles of conflict of laws.

1.18 Severability. If any provisions of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent under applicable law, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

1.19 Replacement of Note. In the event of loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation of the Note, Grantor will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note.

1.20 Greater Estate. In the event that Grantor is the owner of a leasehold estate with respect to any portion of the Premises and Grantor obtains a fee estate in such portions of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of the Grantor, be and become subject to the security title and lien hereof.

1.21 Headings. The headings of the sections, paragraphs, and subparagraphs of this Deed of Trust are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

1.22 Time of Essence. Time is of the essence with respect to all provisions hereof.

1.23 Notices. Whenever any notice, demand, or request is required or permitted hereunder, such notice, demand, or request shall be made in writing and shall be personally delivered, sent via prepaid courier, or by certified United States mail, addressed to the parties at their respective addresses set forth on the first page of this Deed of Trust. Any party may change its address by giving notice to the other parties in accordance with this Section.

1.24 Nonrecourse. The liability of Grantor with respect to the Obligations shall be "nonrecourse" and, accordingly, Beneficiary's source of satisfaction of the Obligations shall be limited to the Premises, and Lender shall not seek to procure payment out of any other assets of Grantor or any person or entity comprising Grantor, or seek judgment for any sums which are or may be payable under the Note or this Deed of Trust or any claim or judgment for any deficiency remaining after foreclosure of this Deed of Trust.

Notwithstanding the foregoing, nothing herein contained shall be deemed to be a release or impairment of the indebtedness evidenced by the Note or the security therefor intended by this Deed of Trust, or be deemed to preclude Beneficiary from exercising its rights to foreclose this Deed of Trust.

Notwithstanding the foregoing, it is agreed that the aforesaid limitation on liability shall in no way affect or apply to Grantor's continued personal liability for all sums due to:

(a) failure to pay taxes and assessments prior to delinquency, or to pay charges for labor, materials or other charges which may create liens on any portion of the Premises;

(b) the intentional misapplication of (i) proceeds of insurance covering any portion of the Premises; or (ii) proceeds of the sale or condemnation of any portion of the Premises.

1.25 Limitation on Attorneys Fees. Notwithstanding any provision to the contrary, recovery of attorneys' fees and expenses by Beneficiary shall be limited to reasonable attorneys' fees and expenses based on actual hours incurred at customary and reasonable rates without regard to any statutory presumption as to the amount of such fees and expenses, any such presumption being hereby waived by Beneficiary.

1.26 Expenses. Grantor shall pay or reimburse Beneficiary for all costs, charges and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in documenting or servicing the Obligations or in any pending or threatened action or proceeding in which Beneficiary is or may become a party and which affects or might affect the Obligations, or the Premises or any part thereof, or the interests of Grantor or Beneficiary therein, including but not limited to the foreclosure of this Deed of Trust, condemnation involving all or part of the Premises or any action to protect the security hereof. The amounts so incurred or paid by Beneficiary, together with interest thereon at the Default Rate set forth in the Reimbursement Agreement from the date incurred until paid by Grantor, shall be added to the indebtedness and secured by the lien of this Deed of Trust.

1.27 Debt Secured Subject To Call. THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR

CONVEYANCE OF THE PROPERTY CONVEYED HEREBY UNLESS SUCH SALE OR CONVEYANCE IS EXPRESSLY AUTHORIZED HEREIN.

1.28 Indemnity. Grantor shall defend, protect, indemnify and save harmless Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by Beneficiary for reason of any and all liability arising from any of the Leases or any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

1.29 Incorporation of Statutes. To the extent not otherwise explicitly stated herein, this Deed of Trust shall be construed to impose and confer upon the parties hereto, and the beneficiaries hereunder, all duties, rights and obligations prescribed in Section 55-59 and Sections 55-59.1 through 55-59.4 of the Code of Virginia, 1950, as amended (the "**Code**"), and to incorporate the following by short form reference to Sections 55-59.2 and 55-60 of the Code:

- Exemptions waived
- Identified by one of the Trustee's signatures
- Advertisement required: once a week for two consecutive weeks
- Subject to all (call) upon default
- Renewal, extension or reinstatement permitted
- Any Trustee may act
- Substitution of any or all of the Trustees may be made at the discretion of Beneficiary for any reason whatsoever.

1.30 Grant of Security Interest in Personalty. Grantor, as debtor, hereby grants to Beneficiary, as secured party, a security interest pursuant to the Uniform Commercial Code in all personal property owned by Grantor hereafter attached to or used in connection with the Improvements to be constructed on the Land which are necessary or useful for the use and occupancy of the proposed Improvements or which may be used in the planning, development, or the operation thereof, including all of Grantor's interest in and to all building plans and specifications and all submittals to governmental authorities; all sewer permits, water permits, rights to water and sewer availability, including, "hook-ups" to water and sewer plants; and all deposits, funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names, subdivision names, office building names, and symbols used in connection therewith).

IN WITNESS WHEREOF, Grantor, pursuant to duly adopted resolutions of Grantor's managers, has caused this Deed of Trust to be executed the day and year first above written,

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

By: **COMSTOCK HOLDING COMPANY, INC.**,
Manager

By: /s/ CHRISTOPHER D. CLEMENTE

Name: Christopher D. Clemente
Title: Chief Executive Officer

STATE/Commonwealth of Virginia
County of Fairfax

I, Kelly L. Wyche, a Notary Public in and for the State and County aforesaid, certify that Christopher D. Clemente, Chief Executive Officer of Comstock Holding Company, Inc., the Manager of Comstock Potomac Yard, L.C., a Virginia limited liability company, signed the writing above, bearing date as of December 15, 2003, and acknowledged the same before me in the County aforesaid.

Witness my hand and notarial stamp or seal, this 12th day of December, 2003.

(Official Seal)

/s/ KELLY L. WYCHE

Notary Public

My term of office expires: 11-30-04

EXHIBIT A

Legal Description of the Land

All of that certain parcel of land lying and being in Arlington County, Virginia, containing approximately 4.8313 acres, and being particularly described and shown as **Parcel 7 (Landbay F)** on the "Plat Showing the Resubdivision of Parcel 3, Potomac Yard, Deed Book 3628, Page 514, Arlington, County, Virginia," prepared by christopher consultants, ltd. dated November 5, 2003, which plat is incorporated by reference in the Deed of Resubdivision dated December , 2003, and recorded as Document Number in Deed Book , Page , in the office of the Clerk of Circuit Court, Arlington County, Virginia.

Being part of the real property conveyed to Crescent Potomac Yard Development, LLC, a Delaware limited liability company, by special warranty deed from Commonwealth Atlantic Land V Inc., a Virginia corporation, dated March 22, 2001, recorded April 4, 2001, in Deed Book 3132, page 34, in the office of the Clerk of Circuit Court, Arlington County, Virginia.

Being also the real property conveyed to Comstock Potomac Yard, L.C., a Virginia limited liability company, by special warranty deed of even date herewith from Crescent Potomac Yard Development, LLC, a Delaware limited liability company, recorded or to be recorded in the office of the Clerk of Circuit Court, Arlington County, Virginia.

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[RECITALS COLLATERAL IS OR INCLUDES FIXTURES](#)

[EXHIBIT A Legal Description of the Land](#)

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of Comstock Homebuilding Companies, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 13, 2004

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of The Comstock Companies, which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 13, 2004

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated August 9, 2004 relating to the financial statements of Comstock Service Corp., Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
August 13, 2004

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