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

Form 10-K

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

For the fiscal year ended December 31, 2007

Commission file number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**20-1164345**
(State or Other Jurisdiction of Incorporation or Organization)	*(I.R.S. Employer Identification No.)*

11465 Sunset Hills Road
5th Floor
Reston, Virginia 20190
(703) 883-1700
(Address, including zip code, and telephone number, including area code, of principal executive offices)

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

None

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

Class A common stock, par value $.01 per share
(Title of Class)

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (check one) Large Accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☑

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

The aggregate market value of voting and non-voting common equity held by nonaffiliates of the registrant (11,979,045 shares) based on the last reported sale price of the registrant's common equity on the NASDAQ Global Market on June 30, 2007, which was the last business day of the registrant's most recently completed second fiscal quarter, was $33,301,745. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

As of February 29, 2008, there were outstanding 13,552,567 shares of the registrant's Class A common stock, par value $.01 per share, and 2,733,500 shares of the registrant's Class B common stock, par value $.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2007 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

COMSTOCK HOMEBUILDING COMPANIES, INC.

ANNUAL REPORT ON FORM 10-K
For the Fiscal Year Ended December 31, 2007

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PART I

Item 1. Business

Overview

We are a real estate developer that has substantial experience building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family buildings and mixed-use (residential and commercial) developments in suburban communities and high density urban infill areas. We build projects with the intent that they be sold either as fee-simple properties, condominiums, or investment properties. We focus on geographic areas, products and price points where we believe there will be significant demand for new housing and potential for attractive returns. We currently develop and build in the Washington, D.C., Raleigh, North Carolina, and Atlanta, Georgia markets where we target a diverse range of home buyers including first-time, early move-up, secondary move-up, and empty nester move-down buyers. We focus on the "middle-market" meaning that we tend to offer products in the middle price points in each market, avoiding the very low-end and high-end products. We believe that our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our markets. Since our founding in 1985, and as of December 31, 2007, we have built and delivered more than 5,000 homes generating revenue of over $1.3 billion.

Our markets have generally been characterized by strong population and economic growth trends that have led to strong demand for traditional housing. However, the housing industry is currently in a cyclical downturn, suffering the effects of reduced demand brought on by significant increases in existing home inventory, resistance to appreciating prices of new homes, turmoil in the mortgage markets, reduced liquidity levels in the world financial markets and concerns about the health of the national economy. We believe that over the past two decades we have gained experience that will be helpful to us as we seek to manage our business through the current difficult market environment. We believe that we have taken, and are continuing to take, steps that will assist us in managing our business through the current cycle until market conditions stabilize and eventually improve.

As a result of deteriorating market conditions, we have adjusted certain aspects of our business strategy. In 2007, we focused our energy on repositioning projects, reducing debt, reducing costs, managing liquidity, renegotiating loans with current period maturities, refinancing projects and enhancing our balance sheet. We have cancelled or postponed plans to start several new projects and renegotiated contracts to purchase certain other projects. As a result, we have purchased very little new land in recent months. We have sold certain land and other assets and taken steps to significantly reduce our inventory of homes as well. Until market conditions stabilize, we will continue to focus on working through the land inventory that we currently own. This will include continuing efforts to sell certain land parcels where we believe it is the best strategy relative to that particular asset.

While we have always preferred to purchase finished building lots that are developed by others, we have also been active in entitling and developing land for many of our home building projects. We believe it is important to have the capabilities to manage the entitlement and development of land in order to position our company to be able to recognize opportunities to enhance the value of the real estate we develop and to be opportunistic in our approach to acquisitions. Nonetheless, our interest in acquiring new development projects will be focused on finished building lots until market conditions and circumstances warrant otherwise.

In addition, our business has included the development, redevelopment (condominium conversions) and construction of residential mid-rise and high-rise condominium complexes. The majority of our multi-family projects are in our core market of the greater Washington, D.C. area. We believe that the demographics and housing trends in the Washington, DC area will continue to produce demand for high density housing and mixed-use developments in the long term. However, condominium sales in the greater Washington, D.C. area

have declined significantly as a result of current economic conditions. In order to reduce the cost associated with carrying our condominium inventory in the Washington, DC region we are temporarily operating certain of our multi-family projects as hydrid for-sale and for-rent properties. This provides us regular cash flow which we use to offset a portion of the carry costs associated with the applicable multi-family assets. In addition, we believe the value of the assets will be enhanced when market conditions stabilize or improve. In Raleigh, North Carolina and Atlanta, Georgia, we are currently focused on lower density housing such as single family homes and townhomes.

Our business was founded in 1985 by Christopher Clemente, our current Chief Executive Officer, as a residential land developer and home builder focused on the move-up home market in the northern Virginia suburbs of the Washington, D.C area. Prior to our initial public offering in December 2004, we operated our business through four primary holding companies. In connection with our initial public offering, these primary holding companies were consolidated and merged into Comstock Homebuilding Companies, Inc., which was incorporated in Delaware in May 2004. Our principal executive offices are located at 11465 Sunset Hills Road, 5th floor, Reston, Virginia 20190, and our telephone number is (703) 883-1700. Our Web site is *www.comstockhomebuilding.com.* References to "Comstock," "we," "our" and "us" refer to Comstock Homebuilding Companies, Inc. together in each case with our subsidiaries and any predecessor entities unless the context suggests otherwise.

Our Markets

We operate in the greater Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia markets. We believe that demand for housing (existing homes, new homes, and rental homes) in these markets historically has been driven by job growth and population growth. We also believe that when consumers view the national economy in a favorable light, demand for new homes increases and demand for rental homes decreases. Conversely, when consumers are concerned about the health of the economy, demand for new homes suffers as consumers opt for rental homes. We believe that current concerns about the health of the economy at both a regional and national level is having a negative effect on demand for new homes while also increasing demand for rental homes.

In each of our markets job growth over the past several years has lead to population growth. This in turn led to increased demand for new homes and home price appreciation. The double digit pace of price appreciation in some areas led to inflationary pressures on the costs associated with producing homes (increases in cost of land, labor and materials). Appreciating home values also attracted small time investors who were not committed to ownership of the homes and condominiums they sought to purchase. As a result when market conditions cooled, contract cancellations increased which led to an increased inventory of speculative homes held by builders. The number of existing homes available for sale by individuals also increased significantly. This supply/demand imbalance created significant pressure on homebuilders to increase selling concessions and to reduce prices. At the same time turmoil in the mortgage markets created uncertainty regarding the availability of mortgage financing and concerns about the reduced liquidity levels in the U.S. financial system and the health of the national economy caused prospective home buyers to stay out of the market. Although job growth and population growth has continued in our markets, demand for new homes continues to be soft. We believe that the increased overall occupancy rate of rental apartments over the past several years is a direct result of these factors.

Our Business Strategy

Our general business strategy is to focus on for-sale residential real estate development opportunities, in the Southeastern United States, that afford us the ability to produce products at price points where we believe there is significant long-term demand for new housing. Recognizing that the housing industry is cyclical in nature and that current challenging market conditions may take time to stabilize, we have adapted our business plan and strategy with the goal of protecting liquidity, enhancing our balance sheet and positioning the Company for

future growth and profitability when market conditions improve. In connection with this strategy, we have adopted a conservative approach to land acquisition and capital investment, which favors acquisitions of finished building lots, and we have postponed previous plans for continued market expansion. We remain committed to disposing of assets that do not allow for adequate return on invested capital. We believe that this approach will assist us in managing our business through today's challenging market conditions. In today's real estate market our general operating business strategy has the following key elements:

Attract and retain experienced personnel at all levels. We believe the key to success in our business in difficult times is attracting and retaining experienced professionals at all levels within the organization. We work to identify, recruit, train and retain the most qualified management and support personnel available. At the same time we are committed to balancing and aligning our staffing levels with the size of our business and continue to work to reduce general and administrative expenses to be aligned with current market conditions.

Focus on our core markets in the Mid-Atlantic and Southeast region of the United States. We believe that, after current homebuilding industry and general economic conditions eventually stabilize and then improve, there may be attractive opportunities for long term growth in our existing markets. Accordingly, we will focus our business in our current markets until such time as the condition of the national economy and the housing industry warrant a broader focus.

Focus on our current land inventory in our core markets. We plan to focus on the inventory of land that we currently hold in our core markets while utilizing our strong local presence and our extensive experience in our core markets to enhance our access to building lots that are developed by others. We believe that, after current homebuilding industry and general economic conditions eventually stabilize and then improve, homebuilders will have better access to reasonably priced developed building lots and that by focusing future land acquisition efforts on developed lots we will reduce risks associated with land development and enhance returns on capital invested. Our experience in previous economic downturns is that land purchase terms improve as a result of soft demand for new homes.

Focus on a broad segment of the home buying market, aka the "middle market". Our single-family homes, townhouses and condominiums are deliberately designed to be priced in the middle range of the market. This is because we believe that by focusing on products that are affordable to the largest segment of the prospective home buying population we reduce risk to market fluctuations.

Create opportunities in areas overlooked by our competitors. We believe that our market knowledge and experience in land entitlement and development enable us to successfully identify attractive real estate opportunities, efficiently manage the process of obtaining development rights and maximize land value. We plan to maintain these capabilities because we believe that this expertise allows us to protect the value of the assets that we hold while also positioning us to react quickly to new, favorable opportunities. As current homebuilding industry and general economic conditions eventually stabilize and then improve, we believe there will be attractive market opportunities for well-designed, quality homes and condominiums in urban and suburban areas in close proximity to transportation facilities. Local governments in our markets, especially the greater 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 high density townhouse and condominium products, along with our substantial experience in dealing with both the market and regulatory requirements of urban mixed-use developments, assist us as we seek to identify and create value in land parcels often overlooked by traditional home builders.

Position our inventory for the growing move-down markets. We expect the large and aging baby boom population in the United States to fuel growth in the move-down market of the home building industry. As the

baby boom generation ages, we anticipate that home builders that recognize and address the unique interests of the aging home buyer will capture a larger share of the market. We believe this growing segment of the population will also likely be attracted to the convenience and activities available in upscale urban mixed-use developments. We believe that because of our experience and capabilities and our focus on the Southeastern United States that we are well positioned to benefit from this growing demand.

Maximize our economies of scale. We apply a production home builder approach to all of our product categories. In many instances, we utilize plans across multiple markets which we have built numerous times. This repetitive manufacturing process 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.

In light of current depressed market conditions in the homebuilding industry we have adopted the following additional business strategies which we will focus on throughout 2008 and into 2009:

Protect liquidity and maximize capital availability. For as long as market demand for housing remains depressed we will remain highly focused on maintaining liquidity by limiting our investments in long term real estate projects. We will again seek to build our pipeline of new development opportunities when market conditions warrant through a cautious and measured approach focused on acquisition of developed building lots. The acquisition of finished building lots often has reduced equity requirements, as compared to raw land parcels that require entitlement and development, which enhances return on invested capital. In addition, in order to maintain sufficient operating liquidity and capital availability we will continue to sell certain assets that are either highly leveraged or have significant cash equity.

Create a highly qualified sales force capable of closing sales in difficult times. We believe that continued focus on training that enhances the capabilities and efficiency of our sales force is critical to success in a difficult market. We believe this will increase conversion ratios, decrease cancellations, and improve pricing power.

Maximize the realized value of our real estate owned. Due to our depth of experience in many different aspects of real estate development we believe that we are able to continuously evaluate and re-evaluate the use of the real estate we own and therefore are well positioned to identify alternative uses for the inventory that may increase the value of such properties. We have been successful in selling certain condominium assets as for-rent properties where the subject property holds a higher total value for a rental property owner that it otherwise would for individual homeowners in the aggregate. In properties where a bulk sale is impractical we are attempting to maximize short term cash flow and minimize net debt service obligations by temporarily operating certain properties as hydrid for-sale and for-rent properties.

Utilize technology to streamline operations, reduce costs, enhance customer communications and facilitate sales. During 2007, we continued advancing our technological capabilities with a focus on reducing costs, attracting sales and communicating with our customers. Upgrades of our information management, purchasing, customer relationship management and accounting systems that began prior to 2007 were either completed or substantially completed during the period. These enhanced platforms will allow us to manage our business more efficiently and better seek to reduce and control costs.

Our Operations

We operate a separate homebuilding division in each of our core markets. Each divisional operation is wholly owned by Comstock Homebuilding Companies, Inc., or a subsidiary thereof. Each division is made up of a local division management team, production team and sales team. Each division relies on services provided by the corporate parent covering land underwriting and acquisition, legal, accounting, information technology,

human resources, marketing, sales training, purchasing, and finance. We believe this is an efficient manner of operating our Company because each divisional operation is staffed locally based on the size of the subject division while the core services provided by the corporate parent help minimize repetitive staffing requirements. Previous acquisitions of Parker Chandler Homes (Atlanta) and Capitol Homes (Raleigh) have been fully integrated into our operational structure.

Each division management team is compensated based on the performance results of the respective division. Sales team compensation is commission based. As market conditions have deteriorated, we have carefully reduced the size of our staff at each division and at the corporate parent. We continuously monitor market conditions to ensure that we only staff at warranted levels. We utilize industry standard performance standards to measure the performance results of individuals and divisional operations.

We endeavor to sell a majority of the homes we build in advance of construction. We seek to minimize costs associated with customer service requirements by integrating quality assurance programs in the production process. We integrate the process of building a home by carefully controlling each phase of the process from land underwriting and acquisition, to construction, marketing and sale of a home. During every stage of the process we seek to mitigate risk and increase return on invested capital. We focus on locations within our core markets that we believe will provide the best opportunity to manage risk and maximize profit potential.

Land Identification and Acquisition

We believe that by controlling and managing a land inventory through options we will be better able to manage our growth in accordance with our business plan and long term growth objectives. In the past we have acquired land for our home building operations both as finished building lots and as raw land that we develop. Through the acquisition of Parker Chandler Homes (Atlanta) and Capitol Homes (Raleigh) our land inventory expanded significantly. Due to the focus the acquired companies had on developing raw land, the amount of raw land in our land inventory increased. As market conditions deteriorated, we have sold certain land and other assets to reduce interest expense and risks associated with land development. We will continue to manage our land inventory in a manner that we believe will reduce risks and enhance operating results.

We will continue to focus on the land inventory that we currently control while shifting our focus for future land acquisitions towards finished building lots. Our goal is to contract to purchase land from land developers who will maintain ownership of the land through the entitlement and development process. When we contract to purchase land in this manner, we typically will provide our home building and entitlement 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 during the entitlement and development process that will be delivered to us upon completion of development, we seek to reduce the financial risks associated with owning land while seeking entitlements and performing land development.

Currently we own land that must be developed into building lots. While market conditions remain difficult, we will continue to utilize our strategy of seeking to sell certain of these assets to other developers and will only develop these raw parcels of land as needed for our home building operations where we believe market conditions and the potential return on capital invested warrants the development process.

In the past we have purchased existing rental apartment properties in the Washington, DC region with the intent of converting them to for-sale condominium projects. We have completed some of these conversion developments and sold others as market conditions deteriorated. We currently own one partially complete condominium conversion property, Penderbrook, in Fairfax County, Virginia. We continue to sell converted condominiums at the Penderbrook development; however, we also operate Penderbrook as a rental apartment community. This approach provides cash flow from rents to offset interest costs and operating expenses associated with the property. We have not abandoned our intent to sell the units as condominiums over time but we have chosen to temporarily manage a portion of the property as rental assets to offset the debt service

associated with holding the assets for sale. In certain cases we have sold condo conversion units in bulk to rental project investors and operators. We do not currently plan to acquire additional condominium conversion projects.

In the Washington, DC region we have developed several new condominium projects, including high density mixed use projects. We believe that the demographics of the Washington, DC region will continue to lead to demand for high quality, high density housing after current market conditions eventually stabilize and then improve. These types of projects tend to require a greater capital investment, higher levels of debt and longer construction cycles than typical low density single family developments. Due to current market conditions we will be focused on projects that require lower levels of invested capital. Accordingly, we have cancelled plans to commence additional high density projects and will not undertake any such development until we believe market conditions warrant.

Our land acquisition and disposition process is overseen by an executive land committee that includes representatives from our various business departments. This committee meets regularly to evaluate prospective land acquisitions, project financing options, underperforming projects and asset dispositions. During much of 2007, the primary focus of the committee was disposing of assets where we believed it to be the best course of action given market conditions. Currently the committee is focused on evaluating existing projects and land holdings with the goal of seeking means of enhancing the potential for improved operating results.

When market conditions improve, and assuming our level of land inventory and availability of capital warrant additional acquisitions, the committee will again focus on new land acquisitions. To the extent the committee approves any such acquisitions, we will focus on acquiring new projects that we believe have the potential to generate an attractive return on capital invested. The committee 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 location factors; and
- competitive market positioning.

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 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 development and entitlement processes. Entitlement is the process by which a local government determines the density it will permit to be developed on a particular property and approves the development plans. Obtaining entitlements and development permits often requires significant negotiations with local governmental authorities, and various other parties, including local homeowner associations, environmental protection groups and federal governmental agencies. Our extensive experience and knowledge allow us to effectively negotiate with all concerned parties in an attempt to ensure the costs of developing the subject property are commensurate with the profit potential of the proposed development.

Our experience and in-house capabilities enable us to quickly assess the likelihood of obtaining necessary approvals on a particular property, the estimated costs associated with development of a particular property, and the potential development challenges associated with a particular property. As a result, we can control the details of development, from the design of each community entryway to the placement of streets, utilities and amenities, in order to efficiently design a development that we believe will maximize the potential return on our investment in the property.

Because of our experience in obtaining entitlements and because of our in-house land development capability we believe we are well suited to work with land developers to ensure their development plans are efficient and designed in keeping with our development objectives. Further, we believe that these capabilities position us well to work with financial institutions seeking to sell land assets that they have foreclosed on.

In current market conditions we seek to manage development risk by acquiring options to purchase properties after the approval of the necessary entitlements and development of the land. We seek to utilize our capabilities with regard to land entitlement and land development to provide a service to land owners in an effort to obtain options to acquiring the subject land after the entitlement and development process is complete, thereby avoiding market risks associated with raw land acquisitions.

Sales, Marketing and Production

We seek diversification through multiple product offerings that can be utilized in just a few core markets rather than seeking to grow into as many markets as possible. We believe this minimizes risks associated with entering new markets and operating in second or third tier markets.

Our primary target markets are first-time; early-move up and first move-down home buyers. 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 seek to design products that can, whenever possible, be utilized in each of our core markets. We believe that our diversified product strategy enables us to best serve a wide range of home buyers in our target demographics 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 1,400 square feet to over 6,000 square feet with target pricing from the $100,000s to the $600,000s. Our townhouses range in size from approximately 1,200 square feet to over 4,500 square feet and are typically priced from the $100,000s to the $500,000s. Our condominiums range in size from approximately 400 square feet to over 2,400 square feet and are priced from the $100,000s to over $1 million. Our average new order price over all product types, was $240,000, $257,000 and $362,000 for the years ended December 31, 2007, 2006 and 2005, respectively.

We typically act as the general contractor in the construction of our wood frame single-family homes, townhouses and mid-rise condominium buildings. On projects where we offer these product lines our employees provide land development management, construction management, material purchasing and quality control supervision on the homes we build. Substantially all construction work on these types of projects is done by subcontractors that contract directly with us and with whom we typically have an established relationship. On our

high-rise and mixed-use developments where we typically build concrete structures, we engage a general contractor for the site preparation and construction management, and typically we have a bonded 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 by 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 certain construction management services. In all instances we follow generally accepted management procedures and construction techniques which are consistent with local market practices. We believe that we comply with local and state building codes on all of our developments.

Our goal is to commence construction on a majority of our single-family homes after a contract is 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 pre-sale commitments for a significant percentage of the units in the building. Depending on the market conditions and the specific community, we may also build a controlled number of speculative homes. Current market conditions have caused us to significantly limit the construction of unsold inventory, including model homes. We closely monitor our inventory of speculative units applying a measured approach to unit production in keeping with sales absorption. We will continue to have reduced speculative building at our projects as we work through the process of selling existing inventory first. On occasion we will sell a completed model home to a third party investor purchaser who is willing to lease back the home to us for use during the marketing phase of a project.

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

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

- DownRight[tm] — a program designed to help identify ways to meet the down payment requirements of a new home purchase;
- Tailor Made[tm] — 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[tm] — 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[tm] — a program enabling our customers to design technology solutions for their new Comstock home to meet their individual specifications;
- Built Right[tm] — a quality assurance program incorporating quality assurance inspections with high-quality materials; and
- Home Style[tm] — an optional upgrade program providing hundreds of options to choose from to customize a new Comstock home to suit the specific desires of our customers.

All personnel involved in the sale of our homes receive extensive training on the product they are selling. In addition, our sales professionals are trained on the specialized programs offered by us in connection with the purchasing, customizing and financing of a Comstock home and the warranty we provide. We intend to 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 continuity has a positive impact on sales.

Our corporate and local marketing directors work with local project and sales managers to develop marketing objectives, sales strategies, and advertising and public relations programs for our projects. 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. Where warranted, we sell certain projects from a centralized location in an effort to reduce capital investment requirements in particular projects.

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 consumer confidence, media hype relating to homebuilding and adverse economic conditions which lower consumer confidence, increase mortgage interest rates and negatively affect the sale of our existing homes. During the first half of 2007 our cancellation rate increased across all of our products in all of our markets which caused an increase in the level of speculative inventory we were carrying in inventory. During the fourth quarter of 2007 we were successful in reducing inventory through an aggressive marketing campaign.

During 2007 we increased our focus on marketing through the internet in an effort to reduce marketing costs associated with local print advertisements. We believe that the home buying population will continue to increase their reliance on information available on the internet to help guide their home buying decision. Accordingly, our marketing efforts will continue to seek to leverage this trend in an effort to maximize potential sales.

During 2006 we opened an innovative centralized sales center located in Reston, Virginia. This facility was not designed to sell options; rather its purpose was to support cross-product and cross-community shopping in one central location. In 2007 we closed the sales center and will not reopen it until market conditions improve.

Our Communities

At December 31, 2007 we had active communities under development in the following states and counties:

State	County
Georgia	Cherokee, Forsyth, Fulton, Gwinnett, Jackson, Paulding
Maryland	Frederick
North Carolina	Johnson, Wake
Virginia	Arlington, Fairfax, Loudoun, Prince William

The following chart summarizes certain information for our current and planned communities at December 31, 2007:

			As of December 31, 2007					
Project	State	Product Type(2)	Estimated Units at Completion	Units Settled	Backlog(3)	Lots Owned Unsold	Lots under Option Agreement Unsold	Average New Order Revenue to Date
Status: Active(1)								
Allen Creek	GA	SF	26	23	—	3	—	$ 204,987
Arcanum	GA	SF	34	20	2	12	—	380,011
Brentwood Estates	GA	SF	31	21	—	10	—	138,311
Falling Water	GA	SF	22	15	1	6	—	424,409
Gates of Luberon	GA	SF	31	3	1	27	—	582,444
Glenn Ivey	GA	SF	65	16	2	47	—	227,611
Highland Station	GA	SF	105	39	1	65	—	279,094
James Road	GA	SF	49	3	9	37	—	328,961
Maristone	GA	SF	40	17	1	22	—	321,428
Senators Ridge	GA	SF	61	25	—	36	—	245,036
Wyngate	GA	SF	28	2	1	25	—	416,923
Sub-Total /Weighted Average(4)			492	184	18	290	—	$ 284,507
Emerald Farm	MD	SF	84	78	—	6	—	$ 452,347
Sub-Total /Weighted Average(4)			84	78	—	6	—	$ 452,347
Allyn's Landing	NC	TH	108	75	8	25	—	$ 236,610
Brookefield Station	NC	SF	62	6	5	51	—	231,276
Haddon Hall	NC	Condo	90	12	2	76	—	174,043
Holland Road	NC	SF	81	6	13	62	—	444,511
Kelton at Preston	NC	TH	56	51	1	4	—	311,522
North Farms	NC	SF	47	44	—	3	—	181,802
Providence-SF	NC	SF	58	15	4	39	—	193,723
Riverbrooke	NC	SF	66	43	3	20	—	166,437
Wakefield Plantation	NC	TH	77	47	3	27	—	487,661
Wheatleigh Preserve	NC	SF	28	18	—	10	—	279,204
Sub-Total /Weighted Average(4)			673	317	39	317	—	$ 275,306
Barrington Park	VA	Condo	148	—	—	148	—	n/a
Beacon Park at Belmont Bay 8&9	VA	Condo	600	—	2	110	488	$ 300,177
Commons on Potomac Sq	VA	Condo	191	73	2	116	—	243,541
Commons on Williams Sq	VA	Condo	180	130	4	46	—	343,788
Penderbrook	VA	Condo	424	298	—	126	—	257,350
River Club at Belmont Bay 5	VA	Condo	84	83	1	—	—	446,133
The Eclipse on Center Park	VA	Condo	465	337	4	124	—	393,903
Woodlands at Round Hill	VA	SF	46	28	—	18	—	745,169
Sub-Total /Weighted Average(4)			2,138	949	13	688	488	$ 347,489
Total Active			**3,387**	**1,528**	**70**	**1,301**	**488**	**$ 328,565**
Status: Development(1)								
Highland Avenue	GA	SF	28	—	—	28	—	n/a
Post Road	GA	SF	60	—	—	60	—	n/a
Post Road II	GA	TH	62	—	—	62	—	n/a
Settingdown Circle	GA	SF	172	—	—	172	—	n/a
Shiloh Road I	GA	SF	60	—	—	60	—	n/a
Tribble Lakes	GA	SF	167	—	—	167	—	n/a
Sub-Total /Weighted Average(4)			549	—	—	549	—	n/a
Massey Preserve	NC	SF	187	—	—	187	—	n/a
Providence-TH	NC	TH	18	—	—	18	—	n/a
Sub-Total /Weighted Average(4)			205	—	—	205	—	n/a
Station View	VA	TH	47	—	—	47	—	n/a
Sub-Total /Weighted Average(4)			47	—	—	47	—	n/a
Total Development			**801**	**—**	**—**	**801**	**—**	**n/a**
Total Active & Development			**4,188**	**1,528**	**70**	**2,102**	**488**	**$ 328,565**

(1) “Active” communities are open for sales. “Development” communities are in the development process and have not yet opened for sales.

(2) “SF” means single family home, “TH” means townhouse and “Condo” means condominium.

(3) “Backlog” means we have an executed order with a buyer but the settlement has not yet taken place.

(4) “Weighted Average” means the weighted average new order sale price.

Greater Washington DC Area

Northern Virginia Market

Barrington Park is a 148-unit, walk-up, garden-style condominium development in Manassas, Virginia. We acquired the land in 2005 and expected to start delivering units in the first quarter of 2007. However, as the for-sale housing market cooled and the rental market warmed in late 2006, we chose to preserve the value of the project as an intact, rental community. We currently manage the property as a rental community and seek to maximize occupancy and rental cashflow that is used to offset the interest carry costs and operating expenses. We will continue to operate Barrington as a rental community until market conditions warrant commencement of individual unit sales. We may also consider selling the asset in bulk as a rental community.

Beacon Park at Belmont Bay 8&9 was initially planned as a 600-unit active adult condominium community located at the confluence of the Potomac and Occoquan Rivers in the master-planned, urban-style community of Belmont Bay in Woodbridge, Virginia. The project was planned to include two phases, the first being 112 units situated in four 28-unit mid-rise buildings and the second phase including three high-rise buildings containing approximately 488 units. Initially all 600 units were planned as active-adult units, where the majority of buyers would be 55 years of age or older. As market conditions deteriorated it became difficult to sell an adequate number of units to a limited prospective pool of buyers. Accordingly, to broaden the potential pool of prospective buyers we sought, and obtained the necessary governmental approvals to allow the first phase of the project to be marketed without age restrictions (see River Club II below) and began the process of rebranding this phase of the project to River Park II. Currently, we have purchased and developed the 112 lots in phase I (River Club II) and have a long-term option on the remaining 488 lots which we may, or may not, exercise.

The Commons on Potomac Square is a four building, 191-unit, mid-rise condominium complex in Loudoun County, Virginia. The project is positioned well for first-time homeowners in a market where the cost of single-family homes and townhouses are prohibitive for most renters. Sales began in late 2004, settlements began in early 2006.

The Commons on Williams Square is a 180-unit, two-over-two townhouse style condominium development in Prince William County, Virginia. Sales began in 2004, settlements began in 2005.

The Eclipse on Center Park is a 465-unit, high-rise condominium complex in Arlington County, Virginia. Located at Potomac Yard, formerly one of the East Coast’s major railway yards, it is just minutes from downtown Washington DC, the Pentagon, and Reagan National Airport. The project is an upscale, urban-style, mixed-use complex with residential condominiums above an 80,000 square foot retail center, which includes a gourmet grocery store and other convenience-oriented retailers. A club room and rooftop deck, as well as numerous upper-floor units, offer panoramic views of the Potomac River, Ronald Reagan National Airport, and Washington monuments. Sales for Phase I began in the second quarter of 2004, sales for Phase II began in December 2005, and settlements began in November 2006.

Penderbrook Square is a 424-unit rental apartment complex in the Fair Oaks area of Fairfax County, Virginia that we purchased as condominium conversion project. We acquired the property in 2005 and made significant improvements to common areas, building exteriors, and heating and air-conditioning systems within units and have completed the conversion of a majority of the units to condominiums. Sales and settlements began in 2005. Sales are continuing, however, we currently also manage a rental program at the project to help offset

carrying costs and operating expenses. At December 31, 2007, we had 79 units rented, generating monthly gross revenue of approximately $96,000.

River Club at Belmont Bay 5 is a three building, 84-unit, mid-rise condominium development located at the confluence of the Potomac and Occoquan Rivers in the master-planned, urban-style community of Belmont Bay in Woodbridge, Virginia. Belmont Bay amenities include a community pool and access to an 18-hole championship golf course, a marina, restaurants, and shopping. Sales began in 2003 and settlements began in 2004. At December 31, 2007, we had only one available unit remaining at this project.

River Club II, the rebranded, first phase of Beacon Park at Belmont Bay 8&9 is a four building, 112-unit mid-rise, condominium development located in the planned community of Belmont Bay. Located at the confluence of the Potomac and Occoquan Rivers in Woodbridge, Virginia, the property has river and golf course views. This project was originally Phase I of Beacon Park at Belmont Bay (see above). As market conditions deteriorated it became difficult to sell an adequate number of units to an age restricted pool of prospective buyers. Accordingly, to broaden the potential pool of prospective buyers we sought and obtained the necessary governmental approvals to allow the first phase of the Beacon Park project to be marketed without age restrictions and began the process of re-branding this phase of the project to River Park II. Currently, we have purchased and developed the 112 lots and commenced sales without age restrictions.

Station View is a 47-unit townhouse development in Loudoun County, Virginia. Our products will have spacious floor plans, two-car garages, and will be affordable alternatives to single-family homes in the desirable Ashburn area. We expect to begin land development and sales in 2008.

Woodlands at Round Hill is an estate lot, single-family home development in a country setting located in western Loudoun County, Virginia. We developed the property as 65 lots of three or more acres each and sold 19 of them as finished lots to another homebuilder in 2005. Sales began in 2004, settlements began in 2005.

Maryland

Emerald Farm is an 84-unit development of single-family homes in Frederick, Maryland conveniently located near major transportation routes. Currently, a water moratorium has substantially limited availability of building permits in the area. Sales and settlements began in 2001 and will continue on the remaining lots as the availability of building permits allows.

North Carolina Market

Raleigh, North Carolina

Allyn's Landing is a 108-unit townhouse development 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 and walking trails. Sales and settlements began in 2002. In late 2006, we repositioned the product offerings from three-story townhouses to two-story, master-bedroom-down townhouses, which resulted in increased sales and settlement activity in 2007.

Brookfield Station is a 62-unit, single-family development in Knightdale, North Carolina. Community amenities include easy access to I-540, shopping, restaurants, and downtown Raleigh. Sales and settlements began in 2007.

Haddon Hall is our only condominium project outside of the Washington, DC region. It is a three building, 90-unit condominium development in Apex, North Carolina that is positioned well for first-time homebuyers. Sales and settlements for the first 30-unit building began in 2007.

Holland Road is an 81-unit, single-family home development in Apex, North Carolina. The community features large, wooded lots, a community pool, and easy access to the Research Triangle. Sales began in 2006, settlements began in late 2007.

Kelton at Preston is a 56-unit, upscale townhouse development in the prestigious Kelton golf course community in Wake County near Cary, North Carolina. Community amenities include three 18-hole courses, a swimming complex, and a clubhouse with fitness, tennis, and dining facilities. Sales and settlements began in 2001 and we currently expect the few remaining units to settle in 2008.

North Farm is a 47-unit, single-family home development in the Flowers Plantation community of Clayton, North Carolina. Community amenities include shopping and recreation facilities within walking distance of the project. We have ceased building operations in this community and currently are working on selling our remaining lot inventory in the project.

Massey Preserve is a 187-unit, single-family home development in Raleigh, North Carolina. When sales open, we plan to utilize existing product lines. Land development permits are currently available but land development for this project is on hold until market conditions warrant.

Providence is a 58-unit single family home development located in Raleigh, North Carolina. Its location is convenient to downtown Raleigh and North Hills and Crabtree Valley malls. Sales and settlements began in 2007.

Providence Towns is an 18-unit townhouse development in Raleigh, North Carolina adjacent to the Providence single-family project. The lots were developed by the seller but the project is currently on hold until market conditions warrant.

Riverbrooke II is the 66-unit second phase of a single-family home development in Raleigh, North Carolina. The project is located in an established neighborhood with easy access to interstates I-40, I-440, and North Hills and Crabtree Valley malls. Sales and settlements began in 2006.

Wakefield Plantation is a 77-unit, carriage-style, luxury townhouse development in Raleigh, North Carolina. Our unique carriage-home product offers as much as 5,300 square feet of finished living space in three-unit and four-unit attached configurations with two-car garages and interior courtyards. Sales began in 2001 and settlements began in 2002.

Wheatleigh Preserve is a 28-unit, single-family home development in Raleigh, North Carolina. Lots are one-quarter acre. Sales and settlements began in 2006.

Greater Atlanta Market

Atlanta, Georgia

Allen Creek is a 26-unit, single-family home development in Talmo, Georgia. The community has easy access to interstate I-85 in the northeast of Atlanta. Sales and settlements began in 2006.

Arcanum is a 34-unit, single-family home development in Cumming, Georgia. The community has access the Polo Golf and Country Club amenities and is conveniently located near Highway 400. Sales and settlements began in 2006.

Brentwood Estates is a 31-unit, single-family home development in Commerce, Georgia. The community has easy access to interstate I-85 northeast of Atlanta. Sales and settlements began in 2006.

Falling Water is a 22-unit, single-family home development with large, wooded lots in Woodstock, Georgia. The community is conveniently located just ten minutes from Alpharetta with easy access to Highway 400. Sales and settlements began in 2006.

Gates of Luberon is a 31-unit, single-family home development in Cumming, Georgia. Amenities include a community pool and a nature area. The community has easy access to downtown Atlanta via Highway 141. Sales and settlements began in 2006. Plans for this project are unclear at this time as the lender, Haven Trust, has indicated an unwillingness to negotiate adequate extensions to the existing project loan.

Glen Ivey is a 65-unit, single-family home development in Cumming, Georgia. Amenities include a community pool and nature trails. Located just west of Lake Lanier, the community has easy access to Highway 400. Sales and settlements began in 2006.

Highland Avenue is a 28-unit, single-family home development located adjacent to the Beltline transit and rail system in the Inman Park section of downtown Atlanta, Georgia. Currently, we are finalizing development plans for the project.

Highland Station is a 105-unit, single-family home development in Suwanee, Georgia. Amenities include a pool. The community is conveniently located just west of interstate I-85. Sales and settlements began in 2006.

James Road is a 49-unit, single-family home development in Alpharetta, Georgia with easy access to Highway 400. Sales and settlements began in 2007.

Maristone is a 40-unit, single-family home development in Cumming, Georgia with easy access to Highway 400. Community amenities include a swimming pool and tennis courts. Sales and settlements began in 2006.

Post Road is a 60-unit, single-family home development in Cumming, Georgia with easy access to Highway 400. Currently, we are finalizing the development of the lots and preparing the project for opening.

Post Road II is a 62-unit, townhouse development in Cumming, Georgia with easy access to Highway 400. Currently we do not plan to commence land development at the project until market conditions warrant.

Senators Ridge is a 61-unit, single-family home development in Dallas, Georgia. Community amenities include a clubhouse, swimming pool, tennis and basketball courts. Sales and settlements began in 2006.

Settingdown Circle is a 172-unit, single-family home development Cumming, Georgia. Located just west of Lake Lanier, the community has easy access to Highway 400. Currently we do not plan to commence land development at the project until market conditions warrant.

Shiloh Road is a 60-unit, single-family home development in Alpharetta, Georgia with easy access to Highway 400. Currently we do not plan to commence land development at the project until market conditions warrant.

Tribble Lakes is a 167-unit, single-family home development in Cumming, Georgia located around a large lake. The project is easily accessible via Highway 400. Land development began in 2006 but is currently on hold until market conditions warrant.

Wyngate is a 28-unit, single-family home development in Alpharetta, Georgia with easy access to Highway 400. Sales and settlements began in 2007.

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 accruals as necessary. When deemed appropriate by us, we will accrue additional warranty reserves. We require our sub-contractors to warrant their work and they are contractually obligated to fix defects in their work that arise during the warranty period. We seek to minimize our risk associated with warranty repairs through our quality assurance program and by selecting sub-contractors known for quality work. Beyond our sub-contractor warranties we self-insure the balance of all of our warranties.

Competition

The real estate development and home building industries are highly competitive and fragmented. Competitive overbuilding in local markets, among other competitive factors, has adversely affected home builders in our markets. Home builders compete for financing, raw materials and skilled labor, as well as for the sale of homes. Additionally, competition for prime properties, especially those with developed building lots, is usually 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. Some of the builders against which we compete include Pulte Homes, Centex, DR Horton, Toll Brothers, Ashton Woods, Ryan Homes, Hovnanian and Lennar.

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

Additionally, we compete with the resale market of existing homes. The dramatic increase of inventory of existing homes available for sale has created significant competition among builders and home sellers for home buyers. This has lead to downward pressure on prices in all of our markets. Many of our competitors have used very aggressive price discounts to sell homes. To be competitive, and to reduce our inventory of completed homes, we utilized aggressive discounting to move product in 2007. It is impossible to predict future pricing trends currently.

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, communicating with our customers, and marketing our projects. For customer relationship management, we use Builder's Co-Pilot, a management information system that was custom developed in accordance with our needs and requirements. This system allows for online and collaborative efforts between our sales and marketing functions and integrates our sales, production and divisional office operations in tracking the progress of construction on each of our projects. We believe that 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 customers and prospects receive automatic electronic communications from us on a regular basis. We believe this application of technology has and will continue to greatly enhance our conversion rates.

In January 2007 we commenced use of our new accounting and purchasing management software, the JD Edwards, Enterprise One software system. This highly scaleable purchasing and accounting system has positioned us to be more cost competitive and will, we hope, contribute to future cost reductions and margin expansion.

We rely primarily on a combination of copyright, trade secret and trademark laws to protect our proprietary rights. We license the "Comstock" brand from our founder, and CEO, Christopher Clemente. The license is a perpetual, royalty-free license agreement. We have filed a U.S. federal trademark application with respect to "Comstock Homes Worthy of the Investment" and we will file a U.S. federal trademark application with respect to "Comstock Homebuilding Companies." We believe the strength of these trademarks benefits our business. In addition, as a result of recent acquisitions, we now own the Capitol Homes and Parker-Chandler brands which we do not currently use in our marketing efforts.

Employees

At December 31, 2007, we had 142 full-time and part-time employees. Our employees are not represented by any collective bargaining agreement and we have never experienced a work stoppage. We believe we have good relations with our employees.

Executive Officers

Our executive officers and other management employees and their respective ages and positions as of December 31, 2007 are as follows:

Name	Age	Current Position
Christopher Clemente*	47	Chairman and Chief Executive Officer
Gregory V. Benson*	53	Regional President, Southeast
Bruce J. Labovitz*	39	Chief Financial Officer
Jeffrey R. Dauer*	45	Director, Accounting and Financial Reporting
Jubal R. Thompson	38	General Counsel and Secretary

* Section 16 officers.

Executive Officers and Key Employees

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

Gregory V. Benson joined us in 1991 as President and Chief Operating Officer and has been director since May 2004. Mr. Benson is also a member of our board of directors. Mr. Benson has over 30 years of home building experience including over 13 years at national home builders, including NVHomes, Ryan Homes and Centex Homes.

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

Jeffrey R. Dauer has served as our Director of Accounting and Financial Reporting since June 2007. Mr. Dauer was Director of Financial Reporting from March 2007 to June 2007. From October 2004 to March 2007, Mr. Dauer was retained to lead the Sarbanes-Oxley Section 404 implementation and assist in the Company's JD Edwards ERP system conversion.

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

Other Information

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

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

CAUTIONARY NOTES REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements contained in this report include forward-looking statements. These forward-looking statements can be identified by the use of words such as "anticipate," "believe," "estimate," "may," "intend,"

“expect,” “will,” “should,” “seeks” or other similar expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties including certain risks described in this report. When considering those forward-looking statements, you should keep in mind the risks, uncertainties and other cautionary statements made in this report. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include, without limitation: general economic and market conditions, including interest rate levels; our ability to service our substantial debt; inherent risks in investment in real estate; our ability to compete in the markets in which we operate; regulatory actions; fluctuations in operating results; our anticipated growth strategies; shortages and increased costs of labor or building materials; the availability and cost of land in desirable areas; natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis; and our continuing relationships with affiliates.

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

Item 1A. Risk Factors

Risks Relating to Our Business

Going concern — The occurrence of recent adverse developments in the housing and credit markets has adversely affected our business and our liquidity and has resulted in our auditors issuing an opinion that reflects substantial doubt about our ability to continue as a going concern.

The for-sale residential construction industry has come under enormous pressure due to numerous economic and industry-related factors. Several companies operating in the residential construction sector of the economy have failed and others are facing serious operating and financial challenges. At the same time, many others have been downgraded by credit rating agencies and credit conditions in the industry continue to deteriorate. We faced significant challenges during 2007 due to these adverse conditions and expect to continue to face challenges in 2008. These conditions may not stabilize in the near term and may worsen. Recent adverse changes in the economy, consumer sentiment, mortgage finance and credit markets have given rise to concerns that we may not be able to achieve favorable modifications to our debt which are necessary for us to continue operating.

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 end-loan mortgage financing;
- interest rates; and
- consumer confidence.

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

- delays in construction schedules;
- cost overruns;

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

Failure to successfully negotiate extensions to our credit facilities could adversely affect our liquidity.

Our subsidiaries have a significant amount of secured debt which matures during 2008. In our industry it is usual and customary for lenders to renew and extend project facilities until the project is complete. Since we are the guarantor of our subsidiaries' debt, any significant failure to negotiate renewals and extensions to this debt would severely compromise our liquidity and could jeopardize our ability to satisfy our capital and cash flow requirements. Our previously reported and cured loan covenant violations, in connection with liquidity limitations of our banks, may impact our ability to renew and extend our debt. The current slowdown in residential real estate demand and reduced availability of consumer mortgage financing could compromise our cash flow to a point where we would be unable to service our debt. If that happens and our lenders do not provide assistance in the form of additional borrowing capacity or waivers, our ability to continue operating would be seriously compromised.

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

Most home buyers finance their purchase of a new home through third-party mortgage financing. As a result, 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 consumer mortgage financing;
- increasing housing costs;
- unemployment; and
- changes in federally sponsored financing programs.

Increases in interest rates or decreases in the availability of consumer 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. For instance, recent initiatives to tighten underwriting standards could make mortgage financing more difficult to obtain for some of our entry-level home buyers, as well as decrease future demand from these 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 existing homes. This could adversely affect our operating results and financial condition.

Our operations require significant capital, which may not continue to be available.

The real estate development industry is capital intensive and requires significant expenditures for land purchases, land development and construction as well as potential acquisitions of other homebuilders. In order to maintain our operations and execute our growth strategy in the future, we anticipate that we will need to obtain
additional financing as we expand our operations. These funds may be obtained through public or private debt or

equity financings, additional bank borrowings or from strategic alliances or joint ventures. We may not be successful in obtaining additional funds in a timely manner, on favorable terms or at all. Moreover, certain of our bank financing agreements contain provisions that limit the type and amount of debt we may incur in the future without our lenders' consent. In addition, the availability of borrowed funds, especially for land acquisition and construction financing, may be greatly reduced, and lenders may require us to invest increased amounts of equity in a project in connection with both new loans and the extension of existing loans. If we do not have access to additional capital, we may be required to delay, scale back or abandon some or all of our acquisition plans or growth strategies or reduce capital expenditures and the size of our operations and as a result may experience a material adverse affect on our business, results of operations and cash flows.

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

Currently, we have multiple construction, acquisition and development loans. These credit facilities tend to be project-oriented and generally have variable rates and require significant management time to administer them. 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 source of financing becomes unavailable or accelerated repayment is demanded, we may not be able to meet our obligations and our ability to continue operating would be seriously compromised.

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

We are subject to the potential for significant fluctuations in the market value of our land and home inventories. We must constantly locate and acquire new tracts of undeveloped and developed land if we are to support growth in 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 predict with certainty in advance the length of time it will take to obtain governmental approvals and building permits. The risk of owning undeveloped land, developed land and homes can be substantial. The market value of undeveloped land, buildable lots and housing inventories can fluctuate significantly as a result of changing economic and market conditions. Inventory carrying costs can be significant and can result in losses in a poorly performing development or market. Material write-downs of the estimated value of our land and home inventories could occur if market conditions deteriorate or if we purchase land or build home inventories at higher prices during stronger economic periods and the value of those land or home inventories subsequently declines during weaker economic periods. We could also be forced to sell homes, land or lots for prices that generate lower profit than we anticipate, or at a loss, and may not be able to dispose of an investment in a timely manner when we find dispositions advantageous or necessary. Furthermore, a decline in the market value of our land or home inventories may give rise to additional impairments of our inventory and write-offs of contract deposits and feasibility cost, which may result in a breach of financial covenants contained in one or more of our credit facilities, which could cause a default under those credit facilities. Defaults in these credit facilities are the responsibility of the Company where the Company is the guarantor of its subsidiary's debts.

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company in 2007 resulting in reduced sales prices, increased customer concessions, reduced gross margins and extended estimates for project completion dates. As a result, the Company evaluated all 41 of its projects to determine if recorded carrying amounts were recoverable. This evaluation resulted in an aggregate 2007 impairment charge of $68,788 at 29 projects, with $29,958 in the Washington D.C. region, $29,600 in the Atlanta, Georgia region and $9,230 in the Raleigh, N.C. region. Impairment charges are recorded as a reduction in our capitalized land and/or house costs. The impairment charge was calculated using a discounted cash flow analysis model, which is dependent upon several subjective

factors, including the selection of an appropriate discount rate, estimated average sales prices and estimated sales rates. In performing its impairment modeling the Company must select what it believes is an appropriate discount rate based on current market cost of capital and returns expectations. The Company has used its best judgment in determining an appropriate discount rate based on anecdotal information it has received from marketing its deals for sale in recent months. The Company has elected to use a rate of 17% in its discounted cash flow model. While the selection of a 17% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market. The estimates used by the Company are based on the best information available at the time the estimates are made. If market conditions continue to deteriorate additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

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

Home prices and sales activities in the Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia geographic markets have a large impact on our results of operations because we conduct substantially all of our business in these markets. Although demand in these geographic areas historically has been strong, the current slowdown in residential real estate demand and reduced availability of consumer mortgage financing have reduced the likelihood of consumers seeking to purchase new homes which will likely have a negative impact on the pace at which we receive orders for our new homes. As a result of the foregoing, potential customers may be less willing or able to buy our homes, or we may take longer or incur more costs to build them. We may not be able to recapture increased costs by raising prices in many cases because of market conditions or because we fix our prices in advance of delivery by signing home sales contracts. We may be unable to change the mix of our homes or our offerings or the affordability of our homes to maintain our margins or satisfactorily address changing market conditions in other ways. This has and could continue to adversely affect our results of operations and cash flows.

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

Even in the current depressed housing market, we experience competition for available land and developed home sites in the Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia 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. If competition for land increases, the cost of acquiring it may rise, and the availability of suitable parcels at acceptable prices may decline. Any need for increased pricing could increase the rate at which consumer demand for our homes declines and, consequently, reduce the number of homes we sell and lead to a decrease in our revenues, earnings and cash flows.

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

We are subject to extensive and complex laws and regulations that affect the land development and home building process, including laws and regulations related to zoning, permitted land uses, levels of density (number of dwelling units per acre), building design, access to water and other utilities, water and waste disposal and use of open spaces. In addition, we and our subcontractors are subject to laws and regulations relating to worker health and safety. We also are subject to a variety of local, state and federal laws and regulations concerning the protection of health and the environment. In some of our markets, we are required to pay environmental impact fees, use energy saving construction materials and give commitments to provide certain infrastructure such as roads and sewage systems. We must also obtain permits and approvals from local authorities to complete

residential development or home construction. The laws and regulations under which we and our subcontractors operate, and our and their obligations to comply with them, may result in delays in construction and development, cause us to incur substantial compliance and other increased costs, and prohibit or severely restrict development and home building activity in certain areas in which we operate. If we are unable to continue to develop communities and build and deliver homes as a result of these restrictions or if our compliance costs increase substantially, our revenues, earnings and cash flows may be reduced.

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

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

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

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

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

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

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

- make it difficult for us to acquire suitable land or home sites in desirable locations at acceptable prices and terms, which could adversely affect our ability to build homes;

- require us to increase selling commissions and other incentives, which could reduce our profit margins;

- result in delays in construction if we experience delays in procuring materials or hiring trades people or laborers;
- result in lower sales volume and revenues; and
- increase our costs and reduce our earnings.

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

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

We currently develop and sell homes principally in the Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia 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 and cash flows or our ability to grow our business.

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 Christopher Clemente, our Chairman and Chief Executive Officer; 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 possess valuable industry knowledge, experience and leadership abilities that would be difficult in the short term to replicate. The loss of these or other key employees could harm our operations, business plans and cash flows.

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

We are actively involved in the 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 continue to 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 fully completed any projects managed by these persons. If we are unable to successfully manage the challenges of this portion of our business, we may incur additional costs and our results of operations and cash flows could be adversely affected.

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

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

- work stoppages, labor disputes and shortages of qualified trades people, such as carpenters, roofers, electricians and plumbers;

- lack of availability of adequate utility infrastructure and services;
- transportation cost increases;
- our need to rely on local subcontractors who may not be adequately capitalized or insured; and
- shortages or fluctuations in prices of building materials.

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

We depend on the availability and skill of subcontractors.

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

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

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

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

Insurance and surety companies have reassessed many aspects of their business and, as a result, may take actions that could negatively affect our business. These actions could include increasing insurance premiums,

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

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

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

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

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

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

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

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

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

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

Our operating results may vary.

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

- the uncertain timing of real estate closings;
- our ability to continue to acquire additional land or options thereon on acceptable terms and the timing of all necessary regulatory approvals required for development;
- the condition of the real estate market and the general economy in the markets in which we operate;
- the cyclical nature of the home building industry;
- the changing regulatory environment concerning real estate development and home building;
- changes in prevailing 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 on several factors, including the stages of development of our projects, weather and other factors beyond our control. In the early stages of a project’s development, we incur significant start-up costs associated with, among other things, project design, land acquisition and development, construction and marketing expenses. Since revenues from sales of properties are generally recognized only upon the transfer of title at the closing of a sale, no revenue is recognized during the early stages of a project unless land parcels or residential home sites are sold to other developers. Periodic sales of properties may be insufficient to fund operating expenses. Further, if sales and other revenues are not adequate to cover operating expenses, we will be required to seek sources of additional operating funds. Accordingly, our financial results will vary from community to community and from time to time.

Acts of war or terrorism may seriously harm our business.

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

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

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

Risks Related to our Common Stock and the Securities Markets

Volatility of our stock price could adversely affect stockholders.

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

- quarterly variations in our operating results;
- general conditions in the home building industry;
- interest rate changes;
- changes in the market's expectations about our operating results;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning our Company or the home building industry in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- news reports relating to trends in our markets;
- changes in laws and regulations affecting our business;
- material announcements by us or our competitors;

- material announcements by our construction lenders or the manufacturers and suppliers we use;
- sales of substantial amounts of Class A common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions and acts of war or terrorism.

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

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

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

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

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

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

Messrs. Clemente and Benson own 100% of our outstanding Class B common stock, which, together with their shares of Class A common stock, represent approximately 78.1% of the combined voting power of all classes of our voting stock. As a result, Messrs. Clemente and Benson, acting together, have control over us, the election of our board of directors and our management and policies. Messrs. Clemente and Benson, acting together, also have control over all matters requiring stockholder approval, including the amendment of certain provisions of our certificate of incorporation and bylaws, the approval of any equity-based employee compensation plans and the approval of fundamental corporate transactions, including mergers. In light of this control, other companies could be discouraged from initiating a potential merger, takeover or any other transaction resulting in a change of control. Such a transaction potentially could be beneficial to our business or to our stockholders. This may in turn reduce the price that investors are willing to pay in the future for shares of our Class A common stock.

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

The holders of our Class A and Class B common stock generally have identical rights, except that holders of our Class A common stock are entitled to one vote per share and holders of our Class B common stock are entitled to 15 votes per share on all matters to be voted on by stockholders. The difference in the voting rights of

the Class A and Class B common stock could diminish the value of the Class A common stock to the extent that investors or any potential future purchasers of our Class A common stock ascribe value to the superior voting rights of the Class B common stock.

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

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

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

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

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

Our Board of Directors has the authority to cause us to issue, without any further vote or action by the stockholders, up to 20,000,000 shares of preferred stock, par value $.01 per share, in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. The issuance of shares of preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by the stockholders, even where stockholders are offered a premium for their shares. The issuance of shares of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of Class A common stock, including the loss of voting control. We have no present plans to issue any shares of preferred stock.

Item 1B. ***Unresolved Staff Comments***

None.

Item 2. ***Properties***

Our principal administrative, sales and marketing facilities are located at our headquarters in Reston, Virginia. We currently lease 25,515 square feet of office space in the Reston facility from Comstock Asset Management, L.C., an affiliate wholly-owned by Christopher Clemente. Pursuant to this five-year headquarters lease which we entered into on October 1, 2004 and modified on August 1, 2005 for an additional 8,424 square feet, we pay annual rental rates of $709,567, subject to a 4% annual increase.

We also lease office space in Raleigh, North Carolina where we occupy approximately 3,300 square feet of office space. On October 1, 2005 we entered into a five-year lease agreement for approximately 4,351 square feet of office space in Reston, Virginia. This office space was originally intended to be a sales office. However due to unfavorable market conditions, we discontinued using the sales office in December 2007 and are currently attempting to locate sublease tenants.

Item 3. ***Legal Proceedings***

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a $147.0 million project loan for the Eclipse at Potomac Yard project. The claim in the base amount of approximately $2.0 million plus interest and costs was based on breach of contract. In February 2007 the Company received a ruling by a panel of arbiters to pay approximately $3.0 million under this claim. The Company posted a cash bond and filed an appeal in the amount of the judgment. The Company's writ for appeal with the Virginia Supreme Court was denied in December 2007; resulting in final judgment being rendered against the Company and the release of the cash bond to satisfy payment of the claim in February 2008.

In accordance with the provisions of its sales agreements, the Company's subsidiary retained the earnest money purchase deposits from Eclipse project buyers who defaulted on their obligation to settle. Certain buyers are seeking to obtain a refund of their forfeited deposits and have filed a series of lawsuits in Virginia Circuit Courts and arbitration claims commencing on or around June 28, 2007. Disputed deposits in an aggregate amount of approximately $1.1 million remain in a segregated escrow account and are included in the accompanying financial statements as Restricted Cash as of December 31, 2007. The Company has filed counterclaims against the majority of the Eclipse buyers in the referenced actions.

On December 7, 2007, the Company and a subsidiary were served with a complaint and notice of lis pendens in the District of Columbia Courts resulting from an allegation of the subsidiary's failure to pay $0.7 million allegedly due to the seller of property in the District of Columbia known as the East Capitol project. The Company's subsidiary posted a cash escrow for 1.5 times the amount sought in the complaint in order to complete conveyance of the property without exception to title and intends to vigorously defend the matter.

The Company has asserted claims against former controlling shareholders of Parker-Chandler Homes, Inc., a homebuilder the Company acquired pursuant to a stock purchase agreement (SPA), dated January 19, 2006. The Company has made timely claims against the $1.0 million holdback escrow account established pursuant to the SPA to secure reimbursement and indemnification as a result of a series of claims and liabilities created by certain omissions and/or misrepresentations allegedly made by the controlling shareholders in the SPA. The Company has reserved all rights and remedies with respect to the foregoing and certain additional matters.

On February 29, 2008, a subsidiary of the Company, Mathis Partners, LLC ("Mathis Partners"), received notices of acceleration and foreclosure from Haven Trust Bank (Lender) pursuant to existing acquisition and construction credit facilities at its Gates of Luberon project. The aggregate outstanding balance of the indebtedness was approximately $5.2 million as of the date of the notices. The notices were issued after maturity of the indebtedness and Mathis Partners' inability to negotiate an extension of the credit facilities with Lender pursuant to terms and conditions Mathis Partners deemed satisfactory. If the process of foreclosure proceeds as currently noticed by Lender, Mathis Partners and the Company, pursuant to a guaranty by the Company of Mathis Partners' obligations, may be held responsible for either the outstanding balance of the indebtedness or a deficiency judgment should the proceeds of a foreclosure sale be less than the outstanding balance of the indebtedness. Mathis Partners and the Company are in the process of analyzing their strategic options, which may include a Chapter 11 reorganization of Mathis Partners, the special purpose entity that owns the Gates of Luberon project.

Other than the foregoing, we are not currently subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we

cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions currently pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows. We believe that we have obtained adequate insurance coverage, rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

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

None.

PART II

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

Market for Common Stock

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

	High	Low
Fiscal Year Ended 2005		
Fourth quarter	$19.97	$13.34
Fiscal Year Ended 2006		
First quarter	$14.69	$ 8.77
Second quarter	$11.60	$ 5.45
Third quarter	$ 7.20	$ 3.65
Fourth quarter	$ 6.24	$ 3.94
Fiscal Year Ended 2007		
First quarter	$ 6.92	$ 3.99
Second quarter	$ 4.29	$ 2.55
Third quarter	$ 2.95	$ 1.21
Fourth quarter	$ 2.00	$ 0.50

On February 28, 2007, there were approximately 26 record holders and approximately 5,074 beneficial owners of our Class A common stock. On February 28, 2007 there were two holders of our Class B common stock.

Dividends

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

Issuer Purchases of Equity Securities

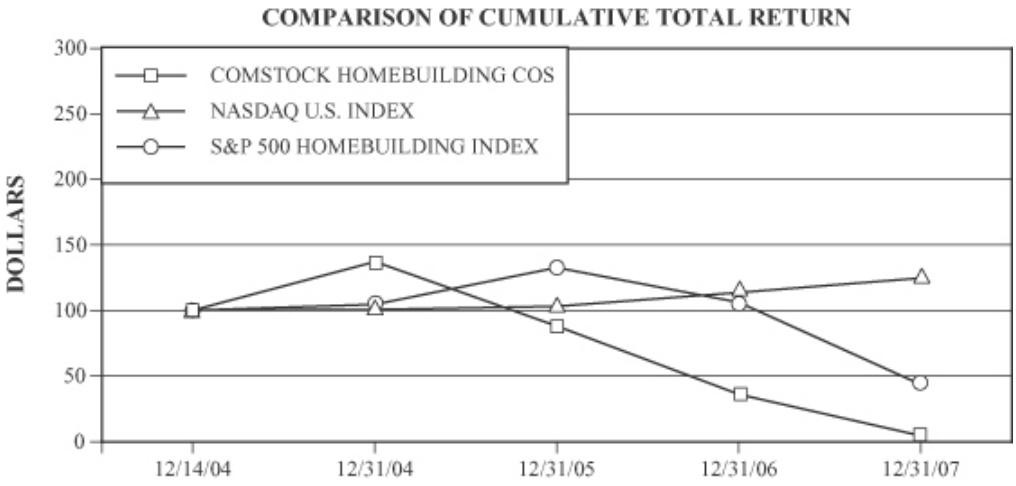
Our board of directors has previously authorized the repurchase of up to 1 million shares of our Class A common stock in one or more open market or privately negotiated transactions.

During the twelve months ended December 31, 2007, we did not repurchase any of our outstanding Class A common stock. We have no immediate plans to resume stock repurchases under this authorization.

Stock Performance Graph

The following line graph compares cumulative total stockholder returns for the period from December 14, 2004, the date of our initial public offering, through December 31, 2007 for (1) our Class A common stock; (2) the Nasdaq Stock Market (U.S.) Index; and (3) the Standard & Poor's Homebuilding Index. The graph assumes an investment of $100 on December 14, 2004, which was the first day on which our stock was listed on the Nasdaq Global Market. The calculations of cumulative stockholder return on the Nasdaq Stock Market (U.S.)

Index and Standard & Poor's Homebuilding Index include reinvestment of dividends, but the calculation of cumulative stockholder return on our Class A common stock does not include reinvestment of dividends because we did not pay dividends during the measurement period. The performance shown is not necessarily indicative of future performance.



Company/Index	Base Period 12/14/04	Indexed Returns Years Ending			
		12/31/04	12/31/05	12/31/06	12/31/07
COMSTOCK HOMEBUILDING COS	100	137.31	88.19	35.94	4.13
NASDAQ U.S. INDEX	100	100.73	102.94	113.51	124.77
S&P 500 HOMEBUILDING INDEX	100	104.68	132.52	106.01	43.58

Item 6. Selected Financial Data

The following table contains selected consolidated and combined financial information and is supplemented by the more detailed financial statements and notes thereto included elsewhere in this report. We derived the selected historical financial data shown below for 2007, 2006, 2005, 2004 and 2003 from our audited financial statements. You should read the following financial information in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Business” and our combined consolidated financial statements and the related notes, included elsewhere in this report.

FIVE YEAR COMPARISON OF SELECTED FINANCIAL DATA

Dollars in thousands (except per share data)

	Year ended December 31,				
	2007	2006	2005	2004	2003
Revenues	$266,159	$245,881	$224,305	$ 96,045	$55,521
Expenses Cost of sales	245,309	216,657	156,490	63,993	41,756
Impairments and write-offs(1)	78,264	57,426	1,216	—	—
Selling, general and administrative	34,671	37,500	24,190	11,940	5,712
Operating (loss) income	(92,085)	(65,702)	42,409	20,112	8,053
Other (income) expense, net	(1,886)	(1,487)	(1,450)	908	(44)
(Loss) Income before minority interest and equity in earnings of real estate partnerships	(90,199)	(64,215)	43,859	19,204	8,097
Minority interest	(137)	15	30	5,260	2,297
(Loss) Income before equity in (loss) earnings of real estate partnerships	(90,062)	(64,230)	43,829	13,944	5,800
Equity in (loss) earnings of real estate partnerships	—	(135)	99	118	139
Total pre-tax (loss) income	(90,062)	(64,365)	43,928	14,062	5,939
Income tax (benefit) provision	(2,552)	(24,520)	16,366	(241)	—
Net (loss) income	$ (87,510)	$ (39,845)	$ 27,562	$ 14,303	$ 5,939
Basic (loss) earnings per share	$ (5.42)	$ (2.63)	$ 2.14	$ 1.95	$ 0.84
Basic weighted average shares outstanding(2)	16,140	15,148	12,870	7,347	7,067
Dilutive (loss) earnings per share	$ (5.42)	$ (2.63)	$ 2.12	$ 1.95	$ 0.84
Dilutive weighted average shares outstanding(2)	16,140	15,148	13,022	7,351	7,067

	December 31,				
	2007	2006	2005	2004	2003
Balance Sheet Data:					
Cash and cash equivalents	$ 6,822	$ 21,263	$ 42,167	$ 67,559	$17,160
Real estate held for development and sale(1)(3)	203,861	405,144	263,802	104,326	65,272
Total assets	258,976	517,429	431,319	304,507	90,184
Notes payable	141,214	265,403	143,657	76,628	61,062
Subordinated debt	30,000	30,000	—	—	—
Total liabilities	212,226	393,173	285,843	239,586	71,746
Minority interest	231	371	400	2,695	11,413

(1) During the years ended December 31, 2007 and 2006, the Company recorded impairment charges and write-offs of option deposits and related feasibility costs. The inclusion of these charges makes year to year comparisons difficult and should be considered when evaluating results of operations in relation to earlier years.

(2) Shares outstanding of our predecessor for prior years have been adjusted to account for shares issued to the owners of our predecessor in connection with the initial public offering of our common stock.

(3) During 2006 the Company acquired Parker Chandler Homes, Inc. in Atlanta, GA and Capitol Homes, Inc. in Raleigh, NC.

Item 7. 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 consolidated and combined financial statements and related notes appearing elsewhere in this report. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see "Cautionary Notes Regarding Forward-looking Statements" for more information. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including, but not limited to, those discussed below and elsewhere in this report, particularly under the headings "Risk Factors" and "Cautionary Notes Regarding Forward-looking Statements."

Overview

We are a real estate developer that has substantial experience building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family buildings and mixed-use (residential and commercial) developments in suburban communities and high density urban infill areas. We build projects with the intent that they be sold either as fee-simple properties, condominiums, or investment properties. We focus on geographic areas, products and price points where we believe there will be significant demand for new housing and potential for attractive returns. We currently develop and build in the Washington, D.C., Raleigh, North Carolina, and Atlanta, Georgia markets where we target a diverse range of home buyers including first-time, early move-up, secondary move-up, and empty nester move-down buyers. We focus on the "middle-market" meaning that we tend to offer products in the middle price points in each market, avoiding the very low-end and very high-end products. We believe that our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our markets.

Our markets have generally been characterized by strong population and economic growth trends that have led to strong demand for traditional housing. However, the housing industry is currently in a cyclical downturn, suffering the effects of reduced demand brought on by significant increases in existing home inventory, resistance to appreciating prices of new homes, turmoil in the mortgage markets, and concerns about the health of the national economy. We believe that over the past two decades we have gained the experience necessary to manage our business through the current difficult market environment. We believe that we have taken, and are continuing to take, the steps necessary to manage our business until market conditions stabilize and eventually improve.

As a result of deteriorating market conditions we have adjusted certain aspects of our business strategy. In 2007 we focused our energy on repositioning projects, reducing debt, reducing costs, managing liquidity, renegotiating loans with current period maturities, refinancing projects and enhancing our balance sheet. We have cancelled or postponed plans to start several new projects and renegotiated contracts to purchase certain other projects. As a result we have purchased very little new land over the past 18 months. We have sold certain land and other assets and taken steps to significantly reduce our inventory of homes as well. Until market conditions stabilize we will continue to focus on working through the land inventory that we currently own. This will include continuing efforts to sell certain land parcels where we believe it is the best strategy relative to that particular asset. However, the cyclical nature of our industry tends to create opportunities to acquire properties at reduced costs. Under the right circumstances, when our financial condition warrants, we would consider acquiring new development opportunities.

While we have always preferred to purchase finished building lots that are developed by others we have also been active in entitling and developing land for many of our home building projects. We believe it is important to have the capabilities to manage the entitlement and development of land in order to position our company to be able to recognize opportunities to enhance the value of the real estate we develop and to be opportunistic in our approach to acquisitions. Nonetheless, our interest in acquiring new development projects will be focused on finished building lots until market conditions and circumstances warrant otherwise.

In addition, our business has included the development, redevelopment (condominium conversions) and construction of residential mid-rise and high-rise condominium complexes. The majority of our multi-family projects are in our core market of the greater Washington, D.C. area. We believe that the demographics and housing trends in the Washington, DC area will continue to produce demand for high density housing and mixed-use developments. In Raleigh, North Carolina and Atlanta, Georgia, we are currently focused on lower density housing such as single family homes and townhomes. In order to reduce the cost associated with carrying our condominium inventory in the Washington, DC region we operate certain of our multi-family projects as rental properties. This provides us regular cash flow which we use to offset a significant portion of the carry costs associated with the applicable multi-family assets. In addition, we believe the value of the assets will be enhanced when market conditions stabilize or improve.

We operate in the greater Washington, D.C., Raleigh, North Carolina and Atlanta, Georgia markets. We believe that demand for housing (existing homes, new homes, and rental homes) in these markets is driven by job growth and population growth. We also believe that when consumers view the national economy in favorable light that demand for new homes increases and demand for rental homes decreases. Conversely, when consumers are concerned about the health of the economy demand for new homes suffers as consumers opt for rental homes. We believe that current concerns about the health of the national economy are having a negative effect on demand for new homes while also increasing demand for rental homes. Our experience leads us to conclude that over the long term, demand for new homes will improve in our core markets as each of our primary markets continues to experience job growth.

In each of our markets job growth over the past several years has led to population growth. This in turn led to increased demand for new homes and home price appreciation. The double digit pace of price appreciation in some areas led to inflationary pressures on the costs associated with producing homes (increases in cost of land, labor and materials). Appreciating home values also attracted small time investors who were not committed to ownership of the homes and condominiums they sought to purchase. As a result when market conditions cooled, contract cancellations increased which led to an increased inventory of speculative homes held by builders. The number of existing homes available for sale by individuals also increased significantly. This supply/demand imbalance created significant pressure on homebuilders to increase selling concessions and to reduce prices. At the same time turmoil in the mortgage markets created uncertainty regarding the availability of mortgage financing and concerns about the health of the national economy caused prospective home buyers to stay out of the market. Although job growth and population growth has continued in our markets, demand for new homes continues to be soft. We believe that the increased overall occupancy rate of rental apartments over the past several years is a direct result of these factors.

While market conditions continue to be challenging, we believe that the natural cyclical nature of our industry will again lead to stabilized market conditions and eventually to improved market conditions. By shedding certain assets, and operating certain other assets as rental properties we believe we will be able to weather the downturn in our industry and we will be well positioned to capitalize on new opportunities when market conditions stabilize.

Our general business strategy is to focus on for-sale residential real estate development opportunities, in the Southeastern United States, that afford us the ability to produce products at price points where we believe there is significant long-term demand for new housing. Recognizing that the housing industry is cyclical in nature and that current challenging market conditions may take time to stabilize we have adapted our business plan and strategy with the goal of protecting liquidity, enhancing our balance sheet and positioning the Company for future growth and profitability when market conditions improve. In connection with this strategy, we have adopted a conservative approach to land acquisition and capital investment, which favors acquisition of finished building lots, and have postponed previous plans for continued market expansion. We remain committed to disposing of assets that do not allow for adequate return on invested capital. We believe that this approach enhances our ability to manage through challenging market conditions and better positions us to take advantage

of attractive opportunities in our core markets as market conditions improve. In today's real estate market our general operating business strategy has the following key elements:

- *Attract and retain experienced personnel at all levels*
- *Focus on our core markets in the Mid-Atlantic and Southeast region of the United States.*
- *Focus on our current land inventory in our core markets*
- *Focus on a broad segment of the home buying market, aka the "middle market"*
- *Create opportunities in areas overlooked by our competitors*
- *Position our inventory for the growing move-down markets*
- *Maximize our economies of scale.*

In light of current depressed market conditions in the homebuilding industry we have adopted the following additional business strategies which we will focus on throughout 2008 and into 2009:

- *Protect liquidity and maximize capital availability*
- *Create a highly qualified sales force capable of closing sales in difficult times*
- *Maximize the realized value of our real estate owned*
- *Utilize technology to streamline operations, reduce costs, enhance customer communications and facilitate sales*

At December 31, 2007, we either owned or controlled under option agreements over 3,000 building lots. The following tables summarize certain information related to new orders, settlements, and backlog for the twelve month periods ended December 31, 2007, 2006, and 2005:

	Twelve months ended December 31, 2007			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	559	152	116	827
Cancellations	162	28	24	214
Net new orders	397	124	92	613
Gross new order revenue	$ 123,909	$38,017	$35,936	$197,862
Cancellation revenue	$ 69,974	$ 8,476	$ 7,594	$ 86,044
Net new order revenue	$ 53,935	$29,541	$28,342	$ 111,818
Average gross new order price	$ 222	$ 250	$ 310	$ 239
Settlements	669	131	86	886
Settlement revenue — homebuilding	$ 174,584	$31,644	$26,577	$232,805
Average settlement price	$ 261	$ 242	$ 309	$ 263
Backlog units	13	39	18	70
Backlog revenue	$ 4,112	$12,684	$ 6,051	$ 22,847
Average backlog price	$ 316	$ 325	$ 336	$ 326

	Twelve months ended December 31, 2006			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	625	175	165	965
Cancellations	122	6	43	171
Net new orders	503	169	122	794
Gross new order revenue	$ 159,498	$45,213	$43,236	$247,947
Cancellation revenue	$ 39,621	$ 2,956	$10,631	$ 53,208
Net new order revenue	$ 119,877	$42,257	$32,605	$194,739
Average gross new order price	$ 255	$ 258	$ 262	$ 257
Settlements	675	132	107	914
Settlement revenue — homebuilding	$ 180,182	$32,255	$27,656	$240,093
Average settlement price	$ 267	$ 244	$ 258	$ 263
Backlog units	285	45	15	345
Backlog revenue	$ 123,080	$13,245	$ 4,948	$141,273
Average backlog price	$ 432	$ 294	$ 330	$ 409

	Twelve months ended December 31, 2005			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	700	40	—	740
Cancellations	102	7	—	109
Net new orders	598	33	—	631
Gross new order revenue	$ 253,807	$14,416	$ —	$268,223
Cancellation revenue	$ 35,123	$ 2,841	$ —	$ 37,964
Net new order revenue	$ 218,684	$11,575	$ —	$230,259
Average gross new order price	$ 363	$ 360	$ —	$ 362
Settlements	570	33	—	603
Settlement revenue — homebuilding	$ 204,934	$11,331	$ —	$216,265
Average settlement price	$ 360	$ 343	$ —	$ 359
Backlog units	466	9	—	475
Backlog revenue	$ 186,939	$ 3,443	$ —	$190,382
Average backlog price	$ 401	$ 383	$ —	$ 401

Recent accounting pronouncements

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

In February 2007, the FASB issued Statement of Financial Accounting Standard No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment to FASB Statement No. 115* (“SFAS 159”), which permits entities to measure various financial instruments and certain other items at fair value at specified election dates. The election must be made at the initial recognition of the financial instrument, and any unrealized gains or losses must be reported at each reporting date. SFAS 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company is currently reviewing the effect of SFAS 159 on its consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141R, *“Business Combinations”* (“SFAS 141R”), which establishes principles and requirements for the reporting entity in a

business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after fiscal years beginning after December 15, 2008. The Company is currently evaluating the effect that the adoption of SFAS 141R will have on our consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "*Noncontrolling Interests in Consolidated Financial Statements, an Amendment of ARB No. 51*" ("SFAS 160"). SFAS 160 establishes accounting and reporting standards pertaining to ownership interests in subsidiaries held by parties other than the parent; the amount of net income attributable to the parent and to the noncontrolling interest; changes in a parent's ownership interest; and the valuation of any retained noncontrolling equity investment when a subsidiary is deconsolidated. SFAS 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS 160 is required to be adopted prospectively for the first annual reporting period after December 15, 2008. The Company is currently reviewing the effect that the adoption of this statement will have on our consolidated financial statements.

Critical Accounting Policies and Estimates

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

A summary of significant accounting policies is provided in Note 2 to our audited consolidated 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*," ("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-R to determine if we are deemed to be the primary beneficiary of the variable interest entity.

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

Revenue Recognition

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

Impairment of Real Estate Held for Development and Sale

Real estate held for development and sale includes land, land development costs, interest and other construction costs and is stated at cost or, when circumstances or events indicate that the real estate held for development or sale is impaired, at estimated fair value. Circumstances or events we consider important which could trigger an impairment review include the following:

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

Real estate is stated at the lower of cost or estimated fair value using the methodology described as follows. A write-down to estimated fair value is recorded when we determine that the net book value exceeds the

estimated selling prices less cost to sell. These evaluations are made on a property-by-property basis. When we determine that the net book value of an asset may not be recoverable based upon the estimated undiscounted cash flow, an impairment write-down is recorded. The evaluation of future cash flows and fair value of individual properties requires significant judgment and assumptions, including estimates regarding expected sales prices, development absorption and remaining development costs. Significant adverse changes in circumstances affecting these judgments and assumptions in future periods could cause a significant impairment adjustment to be recorded. As discussed in Note 5 in the accompanying financial statements, we recorded impairment charges of zero in the first quarter of 2007, $7.4 million in the second quarter of 2007, $61.4 million in the third quarter of 2007 and zero in the fourth quarter of 2007.

Warranty Reserve

Warranty reserves for houses sold are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by us or within the five-year statutorily mandated structural warranty period. Since we generally subcontract our home building work, subcontractors are required to provide us with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Although management considers the warranty reserve to be adequate, there can be no assurance that this reserve will prove to be adequate over time to cover losses due to increased costs for material and labor, the inability or refusal of manufacturers or subcontractors to financially participate in corrective action, unanticipated adverse legal settlements, or other unanticipated changes to the assumptions used to estimate the warranty reserve.

Environmental Liability Exposure

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

Results of Operations

Year ended December 31, 2007 compared to year ended December 31, 2006

Orders, backlog and cancellations

Gross new order revenue for the year ended December 31, 2007 decreased $50.0 million, or 20.2%, to $197.9 million on 827 homes as compared to $247.9 million on 965 homes for the year ended December 31,

2006. Net new orders for the year ended December 31, 2007 decreased $82.9 million, or 42.6%, to $111.8 million on 613 homes as compared to $194.7 million on 794 homes for the year ended December 31, 2006. The 181 unit decrease in net new orders was primarily attributable to increased cancellations of 214 units for the twelve months ended December 31, 2007 as compared to 171 units for the twelve months ended December 31, 2006, and decreases in sales at our Eclipse project which was substantially pre-sold in 2005 and 2006. In addition, the Company's 2006 acquisitions of Parker Chandler Homes Inc., and Capitol Homes Inc., in the Georgia and North Carolina markets, contributed approximately 122 and 91 new order units, respectively in 2006. Our customers experienced increasing difficulty in 2007 obtaining mortgage financing, a factor which also contributed to reduced new orders and increased cancellations.

The average gross new order revenue per unit for the year ended December 31, 2007 decreased by $18,000 to $239,000 as compared to $257,000 for the year ended December 31, 2006. The decrease in average sales price per new order is attributable to lower priced product offerings in our North Carolina and Georgia markets, increased sales of lower priced condominiums, discounted bulk sales of condominium conversion units at Bellemeade, and price decreases throughout our markets in response to slower demand as compared to 2006. This decrease was offset by higher per unit new orders at the Company's Eclipse on Center Park at Potomac Yard project as a result of more sales in the East Tower. Our backlog at December 31, 2007 decreased $118.4 million, or 83.8%, to $22.8 million on 70 homes as compared to our backlog at December 31, 2006 of $141.3 million on 345 homes. The decrease in backlog is primarily the result of 203 deliveries valued at $86.8 million at the Eclipse during the twelve months ended December 31, 2007.

Our average cancellation rate for the year ended December 31, 2007 was approximately 25.9% on 827 gross new orders compared to cancellation rate of 17.7% on 965 gross new orders for the comparable period in 2006. Cancellations were most prevalent in the greater Washington, DC market where we experienced 162 cancellations on 559 gross new orders or 29.0%. At the Eclipse project we experienced 123 cancellations on 72 new orders although most of the cancellations were related to contracts entered into prior to 2007. In the Raleigh market our cancellation rate was 18.4%, or 28 cancellations on 152 gross new orders, and in the Atlanta market our cancellation rate was 20.7%, or 24 cancellations on 116 gross new orders. We believe that the high rate of cancellations in our Atlanta and Raleigh markets was due in part to the first-time buyer orientation of our products as well as a slowing of the resale market for our move-up buyers.

Revenues

The number of homes delivered for the year ended December 31, 2007 decreased by 3.1%, or 28 homes, to 886 as compared to 914 homes for the year ended December 31, 2006. Average revenue per home delivered was unchanged at $263,000 for the year ended December 31, 2007 as compared to $263,000 for the year ended December 31, 2006. The decrease in units settled was the result of higher cancellations and reduced new orders which were offset by 203 settlements at the Eclipse valued at $86.8 million and the bulk sale of our Bellemeade condominium conversion project.

Homebuilding revenues decreased by $7.3 million, or 3.0%, to $232.8 million for the year ended December 31, 2007 as compared to $240.1 million for the year ended December 31, 2006. The decrease in homebuilding revenue is primarily attributable to weaker market conditions, reduced availability or mortgage financing in the second half of the year and reduced pricing of our homes in an effort to sell speculative inventory.

Other Revenues

Other revenue for the year ended December 31, 2007 increased by $27.6 million, or 475.9% to $33.4 million, as compared to $5.8 million for the year ended December 31, 2006. Other revenue for the year ended December 31, 2007 and 2006 includes lot sales made to third parties, revenue associated with the Company's Settlement Title Services division, management fees received from Comstock Asset Management

Inc. (as discussed in Note 12 to the consolidated financial statements), and revenue received from a marketing services alliance. The increase is attributable to increased lot sales and bulk project sales during 2007 as compared to 2006. The Company considers a sale to be from homebuilding when there is a structure built on the lot when it is sold. Sales of lots occur, and are included in other revenues, when the Company sells raw or finished home sites in advance of any substantial home construction. Projects where other revenue was generated include: Massey Preserve finished lot sales ($7.2 million), Blake Culpepper raw lot sales ($3.6 million), East Capital Street raw lot sales ($6.0 million) and the Potomac Yard Retail complex sale ($14.5 million).

Cost of sales and cost of sales other

Cost of sales for the year ended December 31, 2007 decreased $0.3 million, or 0.1%, to $211.1 million, or 90.7% of homebuilding revenue, as compared to $211.4 million, or 88.1% of revenue, for the year ended December 31, 2006. The 2.6 percentage point increase in cost of sales as a percentage of homebuilding revenue for the year ended December 31, 2007 is attributable to several factors. Due to weakening market conditions, we have extended the sales cycle of many of our projects, which has in turn increased direct costs per unit by increasing the amount of real estate tax, interest and overhead capitalized to the project. In many cases, since we relieve our capitalized costs pro-rata to the individual lots, fewer remaining lots must absorb the increased costs. As a result, per unit costs go up. In addition, we have experienced pricing concessions and increases in seller closing cost contributions. This percentage point increase in cost of sales was partially offset by the classification of a portion of the cost of sales as impairments and write-offs during the first three quarters of 2007. Cost of sales other for the year ended December 31, 2007 increased by $29.0 million, or 557.7% to $34.2 million, as compared to $5.2 million for the year ended December 31, 2006. Cost of sales other for the year ended December 2007 and 2006 includes expenses associated with lot and bulk project sales made to third parties and expenses associated with the management of the Company's Settlement Title Services division. Cost of sales other as a percentage of other revenue was 102.7% and 90.7% for the year ended December 31, 2007 and 2006 respectively. The 12.0 percentage point increase in cost of sales other as a percentage of other revenue is due to the Company selling lots at book value to exit underperforming projects as compared to sales of lots for a gain in 2006. This percentage point increase in cost of sales other was partially offset by the classification of a portion of the cost of sales other as impairments and write-offs during the first three quarters of 2007.

Impairments and write-offs

As discussed in Note 5 in the accompanying notes to the consolidated financial statements, the Company, for the year ended December 31, 2007 and 2006, recorded impairment charges of $68.8 and $51.2 million, respectively. For the year ended December 31, 2007 the Company wrote-off $9.5 million related to deposits on forfeited option contacts, value assigned to forfeited option contracts and related feasibility costs as compared to $6.2 million for the year ended December 31 2006. Based on management's assessment of current market conditions and estimates for the future, the Company believes there are no additional impairments warranted at this time. However, if market conditions continue to deteriorate or actual costs are higher than budgeted, the Company would be required to re-evaluate the recoverability of its real estate held for development and sale and may incur additional impairment charges. Total impairments and write-offs were taken in all of our geographic regions, with approximately $35.0 million, $10.2 million and $33.1 million in the Washington metro area, North Carolina and Georgia, respectively. The majority of the Company's impairments, $61.4 million, were recorded at September 30, 2007 based on the continuing need for price concession the weakening of pricing power and increasing inventory costs resulting from the capitalization of interest, overheads and real estate taxes.

At December 31, 2007, the Company had approximately $0.2 million related to non-refundable option deposits to purchase real estate. The Company is in the process of re-negotiating its remaining option contracts for both price concessions and deferral of scheduled lot purchases. The Company could incur additional write downs in the event the Company is not successful in renegotiating terms of existing option contracts and chooses to cancel its option and not close on the underlying land.

Selling, general and administrative expenses

Selling, general and administrative costs for the year ended December 31, 2007 decreased $2.8 million or 7.5% to $34.7 million, as compared to $37.5 million for the year ended December 31, 2006. Selling, general and administrative expenses represented 13.0% of total revenue for the year ended December 31, 2007, as compared to 15.3% for the year ended December 31, 2006.

This decrease in selling, general and administrative costs was principally the result of staffing reductions and related compensation costs of $4.4 million. Selling expenses represented $11.5 million of total selling, general and administrative costs for the year ended December 31, 2007 as compared to $12.7 million for the year ended December 31, 2006. Reductions in recurring general and administrative costs were offset by the recognition of a one-time charge of $3.9 million non-cash stock compensation in December 2007 resulting from the acceleration of certain unvested stock grants. General and administrative expenses also included other non-cash charges including depreciation and amortization of $0.9 million.

Operating loss

Operating loss for the year ended December 31, 2007 increased $26.4 million to $(92.1) million as compared to $(65.7) million for the year ended December 31, 2006. Operating margin for the year ended December 31, 2007 was (34.6)% compared to (26.7)% for the year ended December 31, 2006. The increase in operating loss is primarily attributable to $78.3 million of non-cash impairments and write-offs for the year ended December 31, 2007 as compared to $57.4 million for the year ended December 31, 2006. Net of impairments and write-offs, operating loss for the year ended December 31, 2007 was $(13.8) million which represents a decrease of $5.5 million as compared to a $(8.3) million operating loss net of impairments and write-offs for the year ended December 31, 2006. Operating margin was negatively impacted by an increase in impairments and write-offs as a percentage of revenue and loss on other revenue of $(0.9) million for the year ended December 31, 2007 as compared to profit on other revenue of $0.5 million for the year ended December 31, 2006.

Other (income) expense, net

Other (income) expense, net increased by $0.4 million to income of $1.9 million for the year ended December 31, 2007 as compared to income of $1.5 million for the year ended December 31, 2006. The increase in other income is attributable to the forfeiture of $1.0 million of buyer earnest money deposits at the Eclipse project primarily offset by the loss on disposal of assets of $0.4 million.

Loss before minority interest

Loss before minority interest decreased by $26.0 million, or 40.5%, to $(90.2) million for the year ended December 31, 2007 as compared to $(64.2) million for the year ended December 31, 2006. The decrease is consistent with the decrease in operating income detailed above.

Minority interest

Minority interest income of $137,000 for the year ended December 31, 2007 as compared to expense of $15,000 for the year ended December 31, 2006 is primarily due to impairments recorded at the Company’s Barrington Park and Comstock North Carolina subsidiaries in which there are 1% and 2.3% minority partners, respectively.

Income taxes

Income tax benefit for the year ended December 31, 2007 was $2.6 million compared to $24.5 million for the year ended December 31, 2006. Our combined effective tax rate including both current and deferred

provisions for the year ended December 31, 2007 was 2.8% as compared to 38.1% for the year ended December 31, 2006. The decrease is primarily a result of our establishment of a full $29.2 million valuation allowance against our net deferred tax assets based on the uncertainty regarding the future realization through future taxable income or carryback opportunities. If in the future the Company believes that it is more likely than not that these deferred tax benefits will be realized, the valuation allowance will be reversed.

Year ended December 31, 2006 compared to year ended December 31, 2005

Orders, backlog and cancellations

Gross new order revenue for the year ended December 31, 2006 decreased $20.3 million, or 7.6%, to $247.9 million on 965 homes as compared to $268.2 million on 740 homes for the year ended December 31, 2005. Net new order revenue for the year ended December 31, 2006 decreased $35.5 million, or 15.4%, to $194.7 million on 794 homes as compared to $230.3 million on 631 homes for the year ended December 31, 2005. The 163 unit increase in net new order was primarily attributable to increased condominium and bulk condominium conversion sales at Carter Lake which were offset by decreases in sales at our Eclipse project which was substantially pre-sold in 2005. The Company's 2006 acquisitions of Parker Chandler Homes Inc., and Capitol Homes Inc., in the Georgia and North Carolina markets, contributed approximately 122 and 91 new order units, respectively.

The average gross new order revenue per unit for the year ended December 31, 2006 decreased by $105,000 to $257,000 as compared to $362,000 for the year ended December 31, 2005. The decrease in average sales price per new order is attributable to lower priced product offerings in our North Carolina and Georgia markets, higher sales of lower priced condominiums, discounted bulk sales of condominium conversion units and general price decreases throughout in response to slower demand throughout our markets as compared to 2005. Our backlog at December 31, 2006 decreased $49.1 million, or 25.8%, to $141.3 million on 345 homes as compared to our backlog at December 31, 2005 of $190.4 million on 475 homes. Of the Company's December 31, 2006 backlog, approximately $116.5 million is derived from 258 orders at the Company's Eclipse on Center Park at Potomac Yard project, of which $46.1 million on 134 units settled in the fourth quarter of 2006.

Our average cancellation rate for the year ended December 31, 2006 was approximately 17.7% on 965 gross new orders compared to cancellation rate of 14.7% on 740 gross new orders for the comparable period in 2005. Cancellations were most prevalent in the greater Washington, DC market where we experienced 122 cancellations on 625 gross new orders or 19.5%. At the Eclipse project we experienced 35 cancellations on 46 new orders although most of the cancellations we related to contracts entered into in 2004. In the Raleigh market our cancellation rate was 3.4% on 6 cancellations out of 175 gross new orders and in the Atlanta market our cancellation rate was 26.1% on 43 cancellations out of 165 gross new orders. We believe that the high rate of cancellations in our Atlanta market was due in part to the first-time buyer orientation of our products as well as a slowing of the resale market for our move-up buyers.

Revenues

The number of homes delivered in the year ended December 31, 2006 increased by 51.6%, or 311 homes, to 914 from 603 homes in the year ended December 31, 2005. Average revenue per home delivered decreased by approximately $96,000 or 26.7% to $263,000 for the year ended December 31, 2006 as compared to $359,000 for the year ended December 31, 2005. In December 2006, the Company delivered an additional 30 bulk sale units at its Countryside condominium project to a related party purchaser who is a former officer of the Company for $4.2 million and subsequently entered into a marketing and sales agreement with the buyer to sell the units on his behalf. Because the Company will participate in the profits of the sales, the Company is deemed to have an on-going involvement and as such the revenue from the sale of these units was deferred and will be recognized along with the revenue generated from the marketing agreement at the time the units are delivered to subsequent purchasers.

Homebuilding revenues increased by $23.8 million, or 11.0%, to $240.1 million for the year ended December 31, 2006 as compared to $216.3 million for the year ended December 31, 2005. The total number of homes delivered and total homebuilding revenue for the year ended December 31, 2006 includes 259 homes and $40.0 million in revenue related to the bulk sale of the Company's Carter Lake condominium conversion project. The Company delivered this project in its entirety to a rental operator during November 2006.

Excluding the sale of Carter Lake, the increase in the number of units delivered is attributable to the company's Eclipse project which delivered 134 units, and the Company's expansion in the North Carolina and Atlanta markets as a result of the acquisition of Capitol Homes Inc. and Parker Chandler Homes Inc. During the year ended December 31, 2006 we delivered 132 homes in Raleigh and 107 homes in Atlanta as compared to 33 homes in Raleigh and zero homes in Atlanta for the year ended December 31, 2005. The decrease in revenues and average revenue per home is attributable to lower priced product offerings in our North Carolina and Georgia markets, higher sales of lower priced condominiums and condominium conversion units and general decreases in the prices of homes as compared to 2005.

Other revenues

Other revenue for the year ended December 31, 2006 decreased by $2.2 million, or 27.5% to $5.8 million, as compared to $8.0 million for the year ended December 31, 2005. Other revenue for the year ended December 31, 2006 and 2005 includes lot sales made to third parties, revenue associated with the Company's Settlement Title Services division, management fees received from Comstock Asset Management Inc. (as discussed in Note 12 to the consolidated financial statements), and revenue received from a marketing services alliance. The decrease is attributable to lower overall lot sales during 2006 as compared to 2005. The Company considers a sale to be from homebuilding when there is a structure built on the lot when it is sold. Sales of lots occur, and are included in other revenues, when the Company sells raw or finished home sites in advance of any substantial home construction.

Cost of sales and cost of sales other

Cost of sales for the year ended December 31, 2006 increased $58.5 million, or 38.3%, to $211.4 million, or 88.1% of homebuilding revenue, as compared to $152.9 million, or 70.7% of revenue, for the year ended December 31, 2005. The 17.4 percentage point increase in cost of sales as a percentage of homebuilding revenue for the year ended December 31, 2006 is attributable to several factors. Due to weakening market conditions, we have extended the sales cycle of many of our projects, which in turn has increased direct costs per unit by increasing the amount of real estate tax, interest and overhead capitalized to the project. In many cases, since we relive our capitalized costs pro-rata to the individual lots, fewer remaining lots must absorb increased costs. In addition, we have experienced pricing concessions and increases in material and labor costs throughout our markets. Due to the factors stated above, the Company expects costs of sales as a percentage of revenue to continue to face additional upward pressure until general market conditions improve, costs of materials moderate and new inventory is acquired. Cost of sales other for the year ended December 31, 2006 increased by $1.6 million, or 44.4% to $5.2 million, as compared to $3.6 million for the year ended December 31, 2005. Cost of sales other for the year ended December 2006 and 2005 includes expenses associated with lot sales made to third parties and expenses associated with the management of the Company's Settlement Title Services division. Cost of sales other as a percentage of other revenue was 90.7% and 44.8% for the year ended December 31, 2006 and 2005 respectively. The 45.9 percentage point increase in cost of sales other as a percentage of other revenue is due to the Company selling lots at book value to exit underperforming projects as compared to sales of lots for a gain in 2005.

Impairments and write-offs

As discussed in Note 5 in the accompanying notes to the consolidated financial statements, the Company, for the year ended December 31, 2006 and 2005, recorded impairment charges of $51.2 and $1.2 million, respectively. For the year ended December 31, 2006 the Company wrote-off $6.2 million related to deposits on

forfeited option contacts, value assigned to forfeited option contracts and related feasibility costs. Based on management's assessment of current market conditions and estimates for the future, the Company believes there are no additional impairments warranted at this time. However, if market conditions continue to deteriorate or actual costs are higher than budgeted, the Company would be required to re-evaluate the recoverability of its real estate held for development and sale and may incur additional impairment charges. Total impairments and write-offs were taken in all of our geographic regions, with approximately $26.8 million, $7.5 million and $23.1 million in the Washington metro area, North and South Carolina and Georgia, respectively. The bulk of the Company's impairments, $39.9 million, were recorded at December 31, 2006 based on the continuing need for price concession the weakening of pricing power and increasing inventory costs resulting from the capitalization of interest, overheads and real estate taxes.

At December 31, 2006, the Company had approximately $3.8 million related to non-refundable option deposits to purchase real estate. In addition, the Company has approximately $7.9 million related to feasibility costs incurred on projects under option agreements or under feasibility study periods. The Company is in the process of re-negotiating its remaining option contracts for both price concessions and deferral of scheduled lot purchases. The Company could incur additional write downs in the event the Company is not successful in renegotiating terms of existing option contracts and choose to cancel its option and not close on the underlying land.

Selling, general and administrative expenses

Selling, general and administrative costs for the year ended December 31, 2006, increased $13.3 million or 55.0% to $37.5 million, as compared to $24.2 million for the year ended December 31, 2005. Selling, general and administrative expenses represented 15.3% of total revenue for the year ended December 31, 2006, as compared to 10.8% for the year ended December 31, 2005.

This increase was the result of additional staffing and related compensation costs of $5.2 million, increased media and other marketing related costs of $2.5 million, office and model rent of $1.2 million, feasibility and consulting fees of $2.4 million, and legal fees of $ 0.4 million, and general administrative expenses including depreciation and amortization of $1.6 million.

In addition, our acquisition during the year of both Parker Chandler Homes and Capitol Homes increased our selling, general and administrative expenses by $4.7 million and $1.2 million, respectively.

Operating (loss) income

Operating (loss) income for the year ended December 31, 2006 decreased $108.1 million to $(65.7) million as compared to $42.4 million for the year ended December 31, 2005. Operating margin for the year ended December 31, 2006 was (26.7%) compared to 18.9% for the year ended December 31, 2005. The decrease in operating margin is primarily attributable to $57.4 million of impairments and write-offs for the year ended December 31, 2006 as compared to $1.2 million for the year ended December 31, 2005. Net of impairments and write-offs, operating loss for the year ended December 31, 2006 was $(8.3) million which represents a decrease of $50.7 million as compared to the year ended December 31, 2005. The additional decrease over the impairments and write-offs is attributable to higher costs of sales as a percentage of revenue and increased selling, general and administrative expenses as a percentage of total revenue.

Other (income) expense, net

Other (income) expense, net increased by $37,000 to net other income of $1.5 million for the year ended December 31, 2006 as compared to net other income of $1.5 million for the year ended December 31, 2005.

(Loss) income before minority interest

(Loss) income before minority interest decreased by $108.1 million, or 246.4%, to $(64.2) million for the year ended December 31, 2006 as compared to $43.9 million for the year ended December 31, 2005. The decrease is consistent with the decrease in operating income detailed above.

Minority interest

Minority interest expense decreased by $15,000 to $15,000 for the year ended December 31, 2006 as compared to $30,000 for the year ended December 31, 2005. This decrease is the primarily the result of a slower pace of deliveries at the Company's Comstock North Carolina subsidiary in which there is a small minority partner who retained its interest at the initial public offering when all other minority interests were purchased by Comstock Homebuilding Companies, Inc.

Income taxes

Income tax (benefit) expense for the year ended December 31, 2006 was $(24.5) million compared to $16.4 million for the year ended December 31, 2005. Our combined effective tax rate including both current and deferred provisions for the year ended December 31, 2006 was 38.1% as compared to 37.3% for the year ended December 31, 2005.

Liquidity and Capital Resources

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

In production home building, it is common for builders such as us to employ revolving credit facilities whereby the maximum funding available under the facility exceeds the maximum outstanding balance allowed at any given time. 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 availability than would be required if we built each project with long-term amortizing debt. At December 31, 2007, we had approximately $171.2 million of outstanding indebtedness and $6.8 million of unrestricted cash.

In the second half of 2007 the banking and credit markets experienced severe disruption as a result of a collapse in the sub-prime and securitized debt markets. As a result, commercial banks and other unregulated lenders have experienced a liquidity crunch which has made funding for real estate lending more constrained. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, construction and land development efforts. In addition, this disruption is affecting our customers' ability to secure mortgage financing for the purchase of our homes. This limitation on available credit could have a disruptive effect on our sales and revenue in 2008 which would further undermine our ability to generate enough cash to meet our obligations.

Our overall borrowing capacity may, from time to time, be constrained by loan covenants which require maximum loan-to-value ratios, minimum ratios of interest to EBITDA, minimum tangible net worth, and maximum ratios of total liabilities to total equity. Our non-compliance with certain of these covenants have, for the period ending December 31, 2007, been waived in one form or another. There is no assurance that either we will return to compliance in the future or that our banks will continue to provide us waivers of our covenants. In the event our banks discontinue funding, accelerate the maturities of their facilities or refuse to renew the facilities at maturity we could experience an unrecoverable liquidity crisis in the future. While we can make no assurances to this effect, we currently believe that internally generated cash advances available under our credit facilities, refunds of income taxes paid in prior years, refinancing of existing underleveraged projects and access to public debt and equity markets will provide us with access to sufficient capital to meet our existing and expected capital needs in 2008.

Both the Company and its subsidiaries have secured debt which either matures or has curtailment obligations during 2008 and beyond. In our industry it is customary for lenders to renew and extend project facilities until the project is complete provided the loans are kept current. Since we are the guarantor of our subsidiaries' debt, any significant failure to negotiate renewals and extensions to this debt would severely compromise our liquidity and could jeopardize our ability to satisfy our capital requirements. Our recently reported and cured loan covenant violations, may at some point negatively impact our ability to renew and extend our debt.

Credit Facilities

A majority of our debt is variable rate, based on LIBOR or the prime rate plus a specified number of basis points, typically ranging from 220 to 600 basis points over the LIBOR rate and from 25 to 220 basis points over the prime rate. As a result, we are exposed to market risk in the area of interest rate changes. At December 31, 2007, the one-month LIBOR and prime rates of interest were 4.60% and 7.25%, respectively, and the interest rates in effect under our existing secured revolving acquisition, development and construction credit facilities ranged from 6.75% to 10.6%. During the first quarter of 2008 these rates have been significantly reduced. For information regarding risks associated with our level of debt and changes in interest rates, see "Business-Risk Factors" and "Quantitative and Qualitative Disclosures About Market Risk."

In the past 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 and numerous lenders.

On May 26, 2006 we entered into $40.0 million Secured Revolving Borrowing Base Credit Facility with Wachovia Bank for the financing of entitled land, land under development, construction and letters of credit. All letters of credit issued will also be secured by collateral in the facility. Funding availability will be limited to compliance with a borrowing base and facility covenants. As of December 31, 2007, $27.4 million was outstanding with this facility. In February 2007 we entered into a Forbearance Agreement with the lender which reduced the covenants and eliminated the ability of the lender to claim an event of default as a result of non-compliance with the financial covenants of the original loan. The Forbearance Agreement runs until March 31, 2008.

On May 4, 2006 we closed on a $30.0 million Junior Subordinated Note Offering. The term of the note was thirty years and it could be retired after five years with no penalty. The rate was fixed at 9.72% the first five years and LIBOR plus 420 basis points the remaining twenty-five years. In March 2007 we retired the Junior Subordinated Note with no penalty and entered into a new 10-year, $30.0 million Senior Unsecured Note Offering with the same lender at the same interest rate. In connection with the new notes, the lender loosened the financial covenants through September 30, 2007 and permanently modified the underlying definitions used to calculate the covenants. The lender was also granted the right to require a $2.0 million principal reduction after September 30, 2007. During the third quarter of 2007, the lender's rights were assumed by the originator's creditor(s). We have received waivers from the note holder's creditor(s) regarding any defaults that may result from covenant compliance calculations for the year ending December 31, 2007. In December 2007 we entered into a letter of intent whereby we received an option to retire either $23.0 million by making an $8.0 million cash payment in March 2008 and granting the noteholder a warrant to purchase one million shares of our Class A common stock at $0.70 per share or retire $30.0 million by making a $15.0 million cash payment in March 2008. This option was formalized by an agreement in January 2008 which was amended in March 2008 to limit our option to making a $6.0 million cash payment in exchange for a $15.0 million reduction in the outstanding balance of the notes. We executed on this option in March 2008 (see Subsequent Events).

As of December 31, 2007, we had $2.8 million outstanding to Key Bank in one secured facility. Under the terms of the original loan agreement, we were required to maintain certain financial covenants. In May 2007 we entered into loan modification agreements which extended the maturities and waived the interest coverage ratio through December 31, 2007. In February 2008 KeyBank extended the maturity of the facility and eliminated all financial covenants of the facility. In March 2008 we entered into a new loan with KeyBank that refinanced this $2.8 million loan and permanently eliminated the financial covenants (see Subsequent Events).

As of December 31, 2007 we had $10.6 million outstanding to M&T Bank. Under the terms of the loan agreements, we are required to maintain certain financial covenants. In March 2007 we entered into loan modification agreements lowering the minimum interest coverage ratio and the minimum tangible net worth covenants. As of December 31, 2007 we are not in compliance with the tangible net worth covenant. On October 25, 2007 the Company entered into loan modification agreements which extended maturities and provided for a forbearance agreement with respect to all financial covenants. The forbearance runs until March 31, 2008.

In December 2005 the Company entered into a $147.0 million secured, limited recourse loan with Corus Bank related to our Eclipse project. Under the terms of the loan there is a single deed of trust covering two loan tranches. The two tranches have varying interest rates with Tranche A at LIBOR plus 375 basis points and Tranche B fixed at 16.0%. In April 2007 the loan maturity was extended to January 2008 and provided a mechanism for reallocation from Tranche B into Tranche A which reduces the interest cost to the Company. In September 2007 the Company exercised its reallocation right leaving approximately $1.0 million in Tranche B. At December 31, 2007 our outstanding balance under this loan was $22.3 million. There are no financial covenants associated with this loan. This loan was paid in full in March 2008 (see Subsequent Events).

In February 2007 we entered into a $28.0 million secured, three-year limited recourse loan with Guggenheim Capital Partners related to our Penderbrook project. Under the terms of the loan the borrower (Comstock Penderbrook, LLC) distributed $11.0 million of the proceeds to the Company and established a $2.5 million cash interest escrow to provide for interest costs in excess of the net operating income being generated by the temporary rental operations at the project. The loan bears an interest rate of LIBOR plus 500 basis points. Under the terms of the loan there are two tranches, Tranche A at three months LIBOR plus 400 basis points and Tranche B at three months LIBOR plus 600 basis points. As of December 31, 2007 our outstanding balance under the Tranche A portion of the loan was $1.3 million and the Tranche B portion of the loan was $14.0 million. There are no financial covenants associated with this loan.

On May 31, 2007 we entered into $4.5 million secured revolving credit facility with First Charter Bank. The loan matures on June 10, 2008 bearing an interest rate of Prime plus 0.25% per annum As of December 31, 2007 we had $1.4 million outstanding on the loan. There are no financial covenants associated with this loan.

At September 30, 2007 we had approximately $5.7 million outstanding with Regions Bank under multiple secured master loan agreements. The loans carried varying maturities starting December 2007 with the majority of the loans maturing in 2008. There are no financial covenants associated with these loans. The loans have been extended until January 2009.

On June 28, 2007 we entered into various loan modification agreements with Bank of America securing the remaining $4.6 million balance of the Company's $15.0 million unsecured revolver, extending the curtailment schedule of the unsecured revolver and extending the maturities of the Company's Atlanta debt facilities into 2008 by adding a balancing requirement which resulted in an approximately $150,000 paydown in December 2007. There are no financial covenants associated with these loans.

At September 30, 2007 we had $1.8 million outstanding on a seller financing loan related to, but not secured by, our Beacon Park at Belmont Bay 8&9 project. The loan matured but remains unpaid. We are in discussions with the lender, who is also the project's developer, regarding loan modifications and other project related contract modifications.

In May 2006 we entered into $6.8 million loan facility with Haven Trust Bank in Atlanta related to our Gates at Luberon project. The loan matured in November 2007. Haven Trust was not willing to grant an extension on terms we felt were reasonable so this loan is now in default. We are in the process of negotiating with Haven Trust Bank regarding this disputed facility. At December 31, 2007 we had $4.8 million outstanding under this disputed facility. Haven Trust has initiated foreclosure proceedings. We intend to protect our equity in the project.

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 December 31, 2007, there were no outstanding variable rate unsecured loans. We intend to continue to use these types of facilities on a selected basis to supplement our capital resources.

Many of our loan facilities contain Material Adverse Effect clauses which, if invoked, could create an event of default under the loan. In the event all our loans were deemed to be in default as a result of a Material Adverse Effect, our ability to meet our capital and debt obligations would be compromised and we would not be able to continue operations without bankruptcy protection.

The Company's senior management continues to work closely with its lenders on both temporary and permanent modifications to the Company's lending facilities. These modifications are principally related to financial covenants and maturity dates. During the course of 2008, the Company will be seeking to standardize or eliminate financial covenants among the lenders with whom it has existing covenants. The Company will also continue to work with its lenders to extend the maturities and associated cash obligations of its facilities. The Company cannot at this time provide any assurances that it will be successfully in these efforts. In the event we are not successful we may not be able to continue operations without court imposed protections.

As illustrated by the following debt maturity schedule, we have a significant amount of debt maturing in 2008. In our industry, it is customary for secured debt to be renewed until a project is complete but we have no assurance that this will be the case with our debts. Our recently reported and cured loan covenant violations, may impact our ability to renew and extend our debt.

As of December 31, 2007, maturities and/or scheduled curtailments under our borrowings are as follows:

Year ending December 31,	
2007 (past due*)	$ 6,576
2008	92,005
2009	27,379
2010	15,254
2011 and thereafter	30,000
Total	$ 171,214

* past due is comprised of Haven Trust Bank ($4.8 million) and an unsecured seller financing at Belmont Bay ($1.8 million).

We are considering consolidating our credit facilities with one or more larger facilities, in which we would be advanced cash now against future cash flow of the collateral. This may increase our aggregate debt financing costs as a result of new origination fees. We would be the borrower and primary obligor under these larger facility or facilities, and we anticipate the indebtedness would be secured and based on the value of the collateral.

Cash Flow

Net cash provided by/(used in) operating activities was $116.5 million for the year ended December 31, 2007, $(86.4) million for the year ended December 31, 2006 and $(131.1) million for the year ended December 31, 2005. In 2007, the primary source of cash provided by operating activities was the sale of real estate assets. In 2006, the primary use of cash operating activities was attributable to increased investments in real estate held for development and sale. In 2005, the primary use of cash in operating activities was attributable to increased investments in real estate held for development and sale.

Net cash provided by/(used in) investing activities was $(0.1) million for the year ended December 31, 2007, $(17.9) million for the year ended December 31, 2006 and $0.7 million for the year ended December 31,

2005. In 2007, the primary use of cash in investing activities was the purchase of property, plant and equipment. In 2006, the primary source of cash used in investing activities was the acquisitions of Parker Chandler Homes and Capitol Homes. In 2005, the primary source of cash provided from investing activities was the receipt of capital distributed from various limited partnerships formed prior to our initial public offering which were liquidated after we became public.

Net cash provided by/(used in) financing activities was $(130.8) million for the year ended December 31, 2007, $83.3 million for the year ended December 31, 2006 and $105.0 million for the year ended December 31, 2005. The primary source of cash used in financing activities for the year ended December 31, 2007 was the reduction of notes and other indebtedness. The primary source of cash provided by financing activities for the period ended December 31, 2006 were proceeds from additional borrowings under our credit facilities. The primary source of cash provided by financing activities for the period ended December 31, 2005 was the proceeds from an equity offering in May 2006 attributable to our follow-on stock offering and increased borrowings from our credit facilities.

Recent Acquisitions

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

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

Subsequent Events

In January 2008 we entered into an agreement with Wachovia Bank whereby Wachovia agreed to reset the borrowing base aging dates of certain projects in our borrowing base and we agreed to temporarily limit our borrowings under the borrowing base to $30 million dollars. This agreement expires March 31, 2008.

In February 2008 we filed for an approx. $11.2 million federal tax refund and an approx. $1.8 million state tax refund. In connection with these refunds we entered into a $4.0 million short-term loan with Stonehenge LC, an entity wholly owned by Christopher Clemente, our Chairman and CEO. Greg Benson, our Regional President and a member of our board of directors and Tracy Schar, Mr. Clemente’s wife participated in the loan as a non-members. The loan was secured by an interest in our tax refund and was payable upon receipt of the refund. In March 2008 we received both tax refunds and paid the Stonehenge loan in full.

In February 2007 we received a ruling from a panel of arbitrators ordering payment of approximately $3.0 million with respect to an allegation of a loan brokerage fee being owed for placement of a $147.0 million project loan for the Eclipse at Potomac Yard project and a $67.0 million project loan at Penderbrook. In February 2007 our appeal was denied and the judgment was released from escrow in February 2008.

In February 2008 we entered into a loan modification and extension agreement with KeyBank related to our Station View project loan. Under the terms of the modification the maturity was extended to May 2008 and the financial covenants were permanently waived. In March 2008 the loan was paid in full.

In February 2008 we entered into a loan modification and extension agreement with Corus Bank related to our Eclipse project construction loan. Under the terms of the loan modification the maturity of the loan was

extended to July 2008 and the release rates for payoff were lowered. The Company agreed to establish an escrows with excess settlement proceeds to cover unfunded project costs including interest and real estate taxes. In March 2008 the loan was paid in full.

In March 2008 we entered into a new $40.0 million loan with KeyBank National Association. The loan provided funding to refinance the Corus loan at Potomac Yard and the KeyBank loan at Station View. Excess proceeds from the loan were used to finance the restructure of the Company's senior unsecured notes, pay fees and costs of the new loan, and provide the Company with working capital. The loan has a three year term and bears interest at a rate of LIBOR plus 400 basis points. The new loan has no financial covenants other than minimum periodic curtailments from settlement proceeds commencing March 31, 2009.

In January 2008 we entered into an agreement with the noteholder of our $30.0 million senior secured notes by which we were granted the option to either retire $23.0 million of the note by paying $8.0 million in cash to the noteholder in March 2008 and issue a warrant to purchase one million shares of our Class A common stock at $0.70 or to reduce the note by $30.0 million by paying noteholder $15.0 million in cash in March 2008. In March 2008 we amended the agreement to limit our option to making a $6.0 million payment to the Noteholder, entering into a $9.0 million amended and restated indenture with the Noteholder and issuing the Noteholder a warrant to purchase 1.5 million shares of our Class A Common Stock at $0.70 per share. In exchange the Noteholder would grant the Company a $15.0 million discount to the outstanding balance. The Company executed on its option in March 2008. Under the terms of the amended and restated five year note the Company is subject to a $35.0 minimum tangible net worth, a 0.5 to 1.0 interest coverage ratio and a 3.0 to 1.0 maximum leverage ratio.

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, 2007, and the effect such obligations are expected to have on liquidity and cash flow in future periods:

	Payments due by period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
			(In thousands)		
Notes payable(1)	$171,214	$98,581	$ 42,633	$ —	$ 30,000
Operating leases	$ 3,260	$ 1,080	$ 1,741	$ 439	$ —
Capital leases	$ 151	$ 86	$ 65	$ —	$ —
Total	$174,625	$ 7,742	$136,444	$ 439	$ 30,000

(1) Notes payable includes estimated interest payments based on interest rates in effect at December 31, 2007.

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

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

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

As discussed in Note 3 in the accompanying consolidated financial statements as of December 31, 2007, the Company has posted aggregate non-refundable deposits of $0.2 million on $19.0 million worth of land purchase options.

Seasonality and Weather

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

Inflation

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

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. A majority of our debt is variable rate based on LIBOR and prime rate, and, therefore, affected by changes in market interest rates. Based on current operations, as of December 31, 2007, an increase/decrease in interest rates of 100 basis points on our variable rate debt would have resulted in a corresponding increase/decrease in interest actually incurred by us of approximately $1.4 million in a fiscal year, which would be capitalized and included in cost of sales as homes are delivered. As a result, the effect on net income would be deferred until the underlying units settled and the interest was released to cost of goods sold. Changes in the prices of commodities that are a significant component of home construction costs, particularly lumber, may result in unexpected short-term increases in construction costs. Because the sales price of our homes is fixed at the time a buyer enters into a contract to acquire a home and we generally contract to sell our homes before construction begins, any increase in costs in excess of those anticipated at the time of each sale may result in lower consolidated operating income for the homes in our backlog. We attempt to mitigate the market risks of the price fluctuation of commodities by entering into fixed price option contracts with our subcontractors and material suppliers for a specified period of time, generally commensurate with the building cycle. These contracts afford us the option to purchase materials at fixed prices but do not obligate us to any specified level of purchasing.

Item 8. Financial Statements and Supplementary Data

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

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

Not applicable.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have evaluated, with the participation of our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act as of December 31, 2007. Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer have each concluded that our disclosure controls and procedures as of December 31, 2007 are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (ii) accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Limitations on the Effectiveness of Controls

We do not expect that our disclosure controls and internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

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

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2007, based on criteria set forth in the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Our management determined that, as of December 31, 2007, our internal control over financial reporting is effective.

Item 9B. Other Information

Not applicable.

PART III

Item 10. Directors and Executive Officers of the Registrant

The information required by this Item relating to our directors is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2008 Annual Meeting of Stockholders. The information required by this Item relating to our executive officers is included in Item 1, “Business — Executive Officers” of this report.

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2008 Annual Meeting of Stockholders.

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

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2008 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2008 Annual Meeting of Stockholders.

Item 14. Principal Accountant Fees and Services

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2008 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibit and Financial Statement Schedules

(a) Financial Statements

(1) Financial Statements are listed in the Index to Financial Statements on page F-1 of this report.

(2) Schedules have been omitted because they are not applicable or because the information required to be set forth therein is included in the consolidated and combined financial statements or notes thereto.

(b) Exhibits

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

Exhibit Number	Exhibit
10.17(2)	Purchase and Sale Agreement, dated as of November 9, 2004, as amended, with Fair Oaks Penderbrook Apartments L.L.C.
10.18(2)	Real Estate Purchase Contract, dated as of February 4, 2005, with Westwick Apartments LLC
10.19(2)	Services Agreement, dated March 4, 2005, with Comstock Asset Management, L.C.
10.20(1)	Employment Agreement with Christopher Clemente
10.21(1)	Employment Agreement with Gregory Benson
10.22(1)	Employment Agreement with Bruce Labovitz
10.23(1)	Confidentiality and Non-Competition Agreement with Christopher Clemente
10.24(1)	Confidentiality and Non-Competition Agreement with Gregory Benson
10.25(1)	Confidentiality and Non-Competition Agreement with Bruce Labovitz
10.26(2)	Description of Arrangements with William Bensten
10.27(2)	Description of Arrangements with David Howell
10.28(1)	Trademark License Agreement
10.29(2)	Purchase Agreement, dated as of November 12, 2004 with Comstock Asset Management, L.C.
10.30(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.31(3)	Agreement of Purchase and Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.32(3)	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.
10.33(3)	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
10.34(4)	Life Insurance Reimbursement Agreement with William P. Bensten
10.35(4)	Life Insurance Reimbursement Agreement with Bruce Labovitz
10.36(4)	Description of Reimbursement and Indemnification Arrangement with Christopher Clemente and Gregory Benson
10.37(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.38(5)	Stock Purchase Agreement with Parker-Chandler Homes, Inc. and the Selling Stockholders identified therein, dated as of January 19, 2006
10.39(5)	Loan Agreement, dated January 31, 2006, by and between Comstock Carter Lake, L.C. and Bank of America, N.A.
10.40(5)	Guaranty Agreement, dated January 31, 2006, by the Registrant in favor of Bank of America, N.A.
10.41(6)	Form of purchase agreement, dated as of May 5, 2006, as amended as of May 9, 2006, by and between the Company and the purchasers identified therein
10.42(6)	Form of warrant.
10.43(7)	Note Purchase Agreement with Kodiak Warehouse LLC, dated as of May 4, 2006
10.44(7)	Junior Subordinated Indenture with Wells Fargo Bank, N.A., dated as of May 4, 2006

Exhibit Number	Exhibit
10.45(7)	Credit Agreement with Wachovia Bank, N.A., dated as of May 26, 2006
10.46(7)	Stock Purchase Agreement with Capitol Homes, Inc. and the Selling Shareholders identified therein, dated as of May 1, 2006
10.47(8)	Letter, dated October 18, 2007, from Friedlander, Misler, Sloan, Kletzkin & Ochsman, PLLC to the Registrant and Comstock Bellemeade, L.C.
10.48(8)	Purchase and Sale Agreement by and between Comstock Countryside L.C. and Merion-Loudon, LC, dated as of December 21, 2006
10.49(8)	Marketing and Sale Agreement by and between Comstock Countryside LC and Merion-Loudon, L.C., dated as of December 21, 2006
10.50(8)	Consulting Agreement with The Merion Group, LC, dated as of December 21, 2006
10.51(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Highland Avenue Properties, LLC and Bank of America, N.A.
10.52(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.53(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Homes of Atlanta, LLC, Comstock Homes of Myrtle Beach, LLC and Bank of America, N.A.
10.54(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.55(8)	First Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Bellemeade, L.C., Bank of America, N.A. and Lenka E. Lundsten
10.56(8)	Second Loan Modification Agreement, dated as of December 22, 2006, by and between the Registrant and Bank of America, N.A.
10.57*	Loan and Security Agreement, dated as of February 2008, by and between the Registrant and Stonehenge Funding, LC.
10.58*	Guaranty Agreement, dated as of February 2008, by Comstock Potomac Yard, L.C. in favor of Stonehenge Funding, LC.
10.59*	Supplement to Indenture, dated as of January 7, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.60*	Amended and Restated Indenture, dated as of March 14, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.61*	Loan Agreement, dated as of March 14, 2008, by and among Comstock Station View, L.C., Comstock Potomac Yard, L.C., and KeyBank National Association.
10.62*	Unconditional Guaranty of Payment and Performance, dated as of March 2008, by the Registrant in favor of KeyBank National Association.
14.1(2)	Code of Ethics
21.1*	List of subsidiaries
23.1*	Consent of PricewaterhouseCoopers LLP
24.1*	Power of Attorney (see signature page to this Annual Report on Form 10-K.)
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

* Filed herewith.

(1) Incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193).

(2) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005.

(3) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2005.

(4) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2005.

(5) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2006.

(6) Incorporated by reference to an exhibit to the Current Report on Form 8-K of the Registrant filed with the Commission on May 10, 2005.

(7) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2006.

(8) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2007.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

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

In our opinion, the consolidated financial statements listed in on page F-1 present fairly, in all material respects, the financial position of Comstock Homebuilding Companies, Inc. and subsidiaries at December 31, 2007 and December 31, 2006, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2007 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included 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. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has experienced declining market conditions and has significant debt maturing during 2008 that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

/s/ PricewaterhouseCoopers LLP

McLean, Virginia
March 16, 2008

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

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

	December 31, 2007	December 31, 2006
ASSETS		
Cash and cash equivalents	$ 6,822	$ 21,263
Restricted cash	4,985	12,326
Receivables	370	4,555
Due from related parties	92	4,053
Real estate held for development and sale	203,860	405,144
Inventory not owned — variable interest entities	19,250	43,234
Property, plant and equipment	1,539	2,723
Investment in real estate partnership	—	(171)
Deferred income tax	—	10,188
Other assets	22,058	14,114
TOTAL ASSETS	$ 258,976	$ 517,429
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	$ 21,962	$ 55,680
Due to related parties	—	1,140
Obligations related to inventory not owned	19,050	40,950
Notes payable	141,214	265,403
Senior unsecured debt	30,000	30,000
TOTAL LIABILITIES	212,226	393,173
Commitments and contingencies (Note 15)		
Minority interest	231	371
SHAREHOLDERS' EQUITY		
Class A common stock, $0.01 par value, 77,266,500 shares authorized, 15,120,955 and 14,129,081 issued and outstanding, respectively	151	141
Class B common stock, $0.01 par value, 2,733,500 shares authorized, 2,733,500 issued and outstanding	27	27
Additional paid-in capital	155,998	147,528
Treasury stock, at cost (391,400 Class A common stock)	(2,439)	(2,439)
Accumulated deficit	(107,219)	(21,372)
TOTAL SHAREHOLDERS' EQUITY	46,519	123,885
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 258,976	$ 517,429

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except per share data)

	Twelve Months Ended December 31,		
	2007	2006	2005
Revenues			
Revenue — homebuilding	$232,805	$240,093	$216,265
Revenue — other	33,354	5,788	8,040
Total revenue	266,159	245,881	224,305
Expenses			
Cost of sales — homebuilding	211,068	211,408	152,886
Cost of sales — other	34,241	5,249	3,604
Impairments and write-offs	78,264	57,426	1,216
Selling, general and administrative	34,671	37,500	24,190
Operating (loss) income	(92,085)	(65,702)	42,409
Other (income) expense, net	(1,886)	(1,487)	(1,450)
(Loss) income before minority interest and equity in (loss) earnings of real estate partnership	(90,199)	(64,215)	43,859
Minority interest	(137)	15	30
(Loss) income before equity in (loss) earnings of real estate partnership	(90,062)	(64,230)	43,829
Equity in (loss) earnings of real estate partnership	—	(135)	99
Total pre tax (loss) income	(90,062)	(64,365)	43,928
Income taxes (benefit) provision	(2,552)	(24,520)	16,366
Net (loss) income	$ (87,510)	$ (39,845)	$ 27,562
Basic (loss) earnings per share	$ (5.42)	$ (2.63)	$ 2.14
Basic weighted average shares outstanding	16,140	15,148	12,870
Diluted (loss) income per share	$ (5.42)	$ (2.63)	$ 2.12
Diluted weighted average shares outstanding	16,140	15,148	13,022

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(Amounts in thousands, except per share data)

	The Comstock Companies		Class A		Class B		Additional paid-in capital	Treasury stock	Retained earnings (deficit)	Total
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance at December 31, 2004	**—**	**$ —**	**9,162**	**$ 92**	**2,733**	**$ 27**	**$ 71,196**	**$ —**	**$ (9,089)**	**$ 62,226**
Stock compensation and issuances			3	0	—	—	2,346		—	2,346
Issuance of common stock under employee stock purchase plans			8	0	—	—	133		—	133
Issuances of common stock in follow on offering on June 22, 2005 (less transactions costs)	—	—	2,360	23	—	—	52,786	—	—	52,809
Net income									27,562	27,562
Balance at December 31, 2005	**—**	**—**	**11,533**	**115**	**2,733**	**27**	**126,461**	**—**	**18,473**	**145,076**
Stock compensation and issuances			457	5	—	—	2,386		—	2,391
Issuance of common stock under employee stock purchase plans			18	—			142			142
Treasury stock purchases					—	—	—	(2,439)	—	(2,439)
Share issuance—private placement of equity (less transaction costs)	—	—	2,121	21	—	—	18,539	—	—	18,560
Net loss									(39,845)	(39,845)
Balance at December 31, 2006	**—**	**—**	**14,129**	**141**	**2,733**	**27**	**147,528**	**(2,439)**	**(21,372)**	**123,885**
Stock compensation and issuances			971	10	—	—	8,416	—	—	8,425
Issuance of common stock under employee stock purchase plans			21	0			55		—	55
FIN 48 cumulative effect of adoption									1,663	1,663
Net loss									(87,510)	(87,510)
Balance at December 31, 2007	**—**	**$ —**	**15,121**	**$ 151**	**2,733**	**$ 27**	**$ 155,998**	**$ (2,439)**	**$ (107,219)**	**$ 46,519**

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands, except per share data)

	Twelve Months Ended December 31,		
	2007	**2006**	**2005**
Cash flows from operating activities:			
Net (loss) income	$ (87,510)	$ (39,845)	$ 27,562
Adjustment to reconcile net (loss) income to net cash provided by (used in) operating activities			
Amortization and depreciation	852	1,080	172
Impairments and write-offs	78,264	57,426	1,216
Loss on disposal of assets	461	24	9
Minority interest	(137)	15	30
Equity in (loss) earnings of real estate partnership	—	136	(99)
Distributions from investment in real estate partnership	—	—	163
Board of Directors compensation	198	—	—
Amortization of stock compensation	6,141	2,390	2,346
Deferred income tax	10,657	(21,816)	(1,724)
Changes in operating assets and liabilities:			
Restricted cash	7,341	(1,526)	(3,300)
Receivables	4,185	3,593	(7,376)
Due from related parties	3,467	(1,154)	(1,452)
Real estate held for development and sale	133,542	(71,444)	(160,692)
Other assets	(8,192)	1,338	(11,141)
Accounts payable and accrued liabilities	(31,629)	(14,247)	23,599
Income tax payable	—	—	(290)
Due to related parties	(1,140)	(2,333)	(108)
Net cash provided by (used in) operating activities	116,501	(86,363)	(131,085)
Cash flows from investing activities:			
Purchase of property, plant and equipment	(129)	(2,392)	(298)
Distributions of capital from investing in real estate partnership	—	—	1,000
Business acquisitions, net of cash acquired	—	(15,490)	—
Net cash provided by (used in) investing activities	(129)	(17,882)	702
Cash flows from financing activities:			
Proceeds from notes payable	84,570	216,551	212,408
Proceeds from senior unsecured debt	30,000	—	—
Payments on junior subordinated debt	(30,000)	—	—
Proceeds from junior subordinated debt	—	30,000	—
Proceeds from related party notes payable	—	4,200	444
Payments on notes payable	(215,434)	(182,199)	(135,098)
Payments on related party notes payable	—	(1,430)	(10,725)
Contributions from minority shareholders	—	—	87
Distributions paid to minority shareholders	(3)	(44)	(2,412)
Payment of distribution payable	—	—	(12,655)
Proceeds from shares issued under employee stock purchase plan	55	141	133
Purchase of treasury stock	—	(2,438)	—
Proceeds from equity offerings		18,561	52,809
Net cash provided by (used in) financing activities	(130,812)	83,342	104,991
Net (decrease) in cash and cash equivalents	(14,441)	(20,904)	(25,392)
Cash and cash equivalents, beginning of period	21,263	42,167	67,559
Cash and cash equivalents, end of period	$ 6,822	$ 21,263	$ 42,167
Supplemental cash flow information:			
Interest paid (net of interest capitalized)	$ —	$ —	$ —
Income taxes paid	$ 27	$ 45	$ 22,274
Supplemental disclosure for non-cash activity:			
Interest incurred but not paid in cash	$ 6,674	$ 13,689	$ 8,036

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

1. ORGANIZATION

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

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

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

The Company's Class A common stock is traded on the NASDAQ National market under the symbol "CHCI" and has no public trading history prior to December 17, 2004.

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

The homebuilding industry is cyclical and significantly affected by changes in national and local economic, business and other conditions. During 2006, new home sales in our markets began to slow and that trend has continued through 2007, resulting in the impairments discussed in Note 5. In response to these conditions, the Company has significantly reduced selling, general and administrative expenses in order to align our cost structure with the current level of sales activity, slowed all land acquisition, delayed land development and construction activities except where required for near term sales and has offered for sale various developed lots and land parcels that the Company believes are not needed based on current absorption rates.

Both the Company and its subsidiaries have secured debt which either matures or has curtailment obligations during 2008 and beyond. In our industry it is customary for lenders to renew and extend project facilities until the project is complete provided the loans are kept current. Since we are the guarantor of our subsidiaries' debt, any significant failure to negotiate renewals and extensions to this debt would severely compromise our liquidity and could jeopardize our ability to satisfy our capital requirements. Our recently reported and cured loan covenant violations, may at some point negatively impact our ability to renew and extend our debt.

The accompanying financial statements have been prepared assuming that the company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. No adjustments have been provided as if the company were unable to continue as a going concern.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

Basis of presentation

As discussed in Note 1, the Company and the Predecessor effected the Consolidation on December 17, 2004. The Company and the Predecessor were entities that had a high degree of common ownership, common management and common corporate governance as they were owned by the same individuals each holding substantially the same ownership. As a result, the Company has determined that, based on the high degree of common ownership that resulted in substantially the same ownership interests before and after the transaction, the common nature of the businesses, the long-term business relationships between the companies and other related factors, the exchange lacked substance, and therefore, they accounted for the consolidation on a historical cost basis in accordance with FASB Technical Bulletin FTB 85-5, *"Issues Related to Accounting for Business Combinations."* Further, Statement of Financial Accounting Standards No. 141, *Business Combinations* ("SFAS 141") states that, in transactions between parties under common control, the receiving entity should account for the assets and liabilities received at their historical carrying values. Additionally, such transfers should be accounted for by the receiving entity as of the beginning of the period in which the transaction occurs. Accordingly, the Company has reflected the assets and liabilities acquired in the transaction at their historical carrying values and the results of operations are presented as if the transaction occurred on January 1, 2004.

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

Principles of consolidation

The consolidated financial statements include all controlled subsidiaries. In addition, the Company reviews its relationships with other entities to assess whether the Company is the primary beneficiary of a variable interest entity. If the determination is made that the Company is the primary beneficiary, then that entity is consolidated in accordance with FASB Interpretation No. 46-R: *Consolidation of Variable Interest Entities, an interpretation of ARB No. 51* ("FIN 46-R"). See Note 3 for additional discussion on the consolidation of variable interest entities. Minority interest reflects third parties' ownership interest in entities the Company has consolidated. All material inter-company balances and transactions are eliminated in consolidation.

Reclassification

Certain amounts in the prior years' financial statements have been reclassified to conform to the current year's presentation. These reclassifications have no impact on previously reported net income (loss) or shareholders' equity.

Cash and cash equivalents and restricted cash

Cash and cash equivalents are comprised of cash and short-term investments with maturities when purchased of three months or less. At times, the Company may have deposits with institutions in excess of federally insured limits. Banking institutions with which the Company does business are considered credit worthy; therefore, credit risk associated with cash and cash equivalents is considered low.

At December 31, 2007 and 2006, the Company had restricted cash of $4,985 and $12,326, respectively, which primarily includes certain customer deposits related to future home sales and cash reserved to cover the Company's general liability insurance policy deductible.

Receivables

Receivables include amounts in transit or due from title and settlement companies for residential property closings. The Company has determined that all amounts are collectible at December 31, 2007 and 2006 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 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, and are assigned based upon the relative sales value, unit or area methods. 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 (see Note 5).

Capitalized interest and real estate taxes

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

The following table is a summary of interest incurred and capitalized:

	Years Ended December 31,		
	2007	2006	2005
Total interest incurred	$ 23,214	$ 27,758	$12,272
Interest incurred on related party notes payable	—	40	310
Interest expensed as a component of cost of sales	$(24,605)	$(12,094)	$ (4,996)

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 fixtures	7 years
Office equipment	5 years
Computer equipment and capitalized software	3 years
Leasehold improvements	Life of related lease

When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from their separate accounts and any gain or loss on sale is reflected in operations. Expenditures for maintenance and repairs are charged to expense as incurred.

Investment in real estate partnership

Real estate partnerships in which the Company has significant influence but has less than a controlling interest, and is not the primary beneficiary under FIN 46-R, 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 (see Note 7).

Warranty reserve

Warranty reserves for houses settled are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by the Company or within the five-year statutorily mandated structural warranty period. Since the Company subcontracts its homebuilding work, subcontractors are required to provide the Company with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Warranty claims are directly charged to the reserve as they arise. The following table is a summary of warranty reserve activity which is included in accounts payable and accrued liabilities:

	Years Ended December 31,		
	2007	2006	2005
Balance at beginning of period	$ 1,669	$ 1,206	$ 916
Additions(a)	1,010	1,524	888
Releases and/or charges incurred	(1,142)	(1,061)	(598)
Balance at end of period	$ 1,537	$ 1,669	$1,206

(a) As discussed in Note 4, 2006 includes additions of $360, assumed in connection with the acquisition of Parker Chandler Homes. Inc. and Capitol Homes Inc.

Revenue recognition

The Company recognizes revenues and related profits or losses from the sale of residential properties, including multiple units to the same buyer, finished lots and land sales 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 include revenue from land sales and from management and administrative support services provided to related parties, which are recognized as the services are provided.

Advertising costs

The total amount of advertising costs charged to selling, general and administrative expense was $3,350, $4,223 and $1,602 for the years ended December 31, 2007, 2006 and 2005, respectively.

Stock compensation

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

Income taxes

Prior to December 17, 2004, the Predecessor company had elected to be treated as an S corporation under Subchapter S of the Internal Revenue Code and therefore was not subject to income taxes. Taxable income or loss was passed through to and reported by the individual shareholders. Subsequent to the consolidation the Company was reorganized as a C corporation under which income taxes are accounted for under the asset and liability method in accordance with Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes* ("FAS 109"). Deferred tax assets and liabilities are recognized for the future tax consequences attributable to the differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded when it is more likely than not that some of the deferred tax assets will not be realized.

In June 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109, Accounting for Income Taxes* ("FIN 48"). FIN 48 provides detailed guidance for the financial statement recognition, measurement and disclosure of uncertain tax positions recognized in an enterprise's financial statements in accordance with FAS 109. Income tax positions must meet a more-likely-than-not recognition threshold at the effective date to be recognized upon the adoption of FIN 48 and in subsequent periods. The Company adopted the provisions of FIN 48 effective January 1, 2007 and the provisions of FIN 48 have been applied to all income tax positions commencing from that date. As a result of this adoption, the Company recorded a benefit to the opening accumulated deficit in the amount of $1,663. We recognize interest accrued related to unrecognized tax benefits in interest expense. Penalties, if incurred, would be recognized as a component of general and administrative expense.

Prior to 2007, we determined our tax contingencies in accordance with Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* ("FAS 5"). We recorded estimated tax liabilities to the extent the contingencies were probable and could be reasonably estimated.

Earnings per share

The following weighted average shares and share equivalents are used to calculate basic and diluted EPS for the years ended December 31, 2007, 2006 and 2005:

	Years Ended December 31,		
Basic earnings per share	**2007**	**2006**	**2005**
Net (loss) income	$(87,510)	$(39,845)	$27,562
Basic weighted-average shares outstanding	16,140	15,148	12,870
Per share amounts	$ (5.42)	$ (2.63)	$ 2.14
Dilutive Earnings Per Share			
Net (loss) income	$(87,510)	$(39,845)	$27,562
Basic weighted-average shares outstanding	16,140	15,148	12,870
Stock options and restricted stock grants	—	—	152
Dilutive weighted-average shares outstanding	16,140	15,148	13,022
Per share amounts	$ (5.42)	$ (2.63)	$ 2.12

For the year ended December 31, 2007, 55 shares were excluded from the diluted shares outstanding because inclusion would have been anti-dilutive. For the year ended December 31, 2006 stock grant issuances in the amount of 587 shares and options and warrants to purchase 843 shares of Class A common stock were excluded from the calculation of dilutive earnings per share. The exclusion was due to the options and warrants having an exercise price greater than the average market price of the common shares. In addition, as a result of a net loss for the year ended December 31, 2006, stock grant issuances were excluded from the computation of dilutive earnings per share because their inclusion would have been anti-dilutive. For the year ended December 31, 2005, options to purchase 107 shares of Class A common stock were excluded from the calculation of dilutive earnings per share.

Comprehensive income

For the years ended December 31, 2007, 2006 and 2005, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

Segment reporting

Statement of Financial Accounting Standards No. 131, *Disclosures about Segments of an Enterprise and Related Information* (“SFAS 131”) establishes standards for the manner in which companies report information about operating segments. The Company determined it provides one single type of business activity, homebuilding, which operates in multiple geographic or economic environments. In addition, as a result of the Company’s acquisitions in Georgia and North Carolina, which became fully integrated in the fourth quarter of 2006, the Company modified how it analyzes its business during the fourth quarter of 2006. As such, the Company has determined that its homebuilding operations now primarily involve three reportable geographic segments: Washington DC Metropolitan Area, Raleigh, North Carolina and Atlanta, Georgia. The aggregation criteria are based on the similar economic characteristics of the projects located in each of these regions.

The table below summarizes revenue and operating (loss) income for each of the Company's geographic segments:

	Years Ended December 31,		
	2007	2006	2005
Revenues:			
Washington DC Metropolitan Area	$200,622	$181,058	$212,973
Raleigh, North Carolina(a)	38,935	32,297	11,332
Atlanta, Georgia(b)	26,602	32,526	—
Total	$266,159	$245,881	$224,305
Operating (loss) income			
Washington DC Metropolitan Area	$ (25,890)	$ (10,729)	$ 57,738
Raleigh, North Carolina	(10,044)	(7,811)	(1,022)
Atlanta, Georgia	(37,784)	(29,121)	—
Segment operating (loss) income	(73,718)	(47,661)	56,716
Corporate expenses unallocated	18,367	(18,041)	(14,307)
Total operating (loss) income	(92,085)	(65,702)	42,409
Other income	1,886	1,487	1,450
Equity in (loss) earnings of real estate partnership	—	(135)	99
Minority interest expense	137	(15)	(30)
(Loss) income before income taxes	$ (90,062)	$ (64,365)	$ 43,928

(a) As discussed in Note 1, the Company entered the North and South Carolina market on December 14, 2004 as a result of the merger with Comstock Service. In May of 2006, the Company acquired Capital Homes Inc. and expanded its presence in the North Carolina region.

(b) In January of 2006, the Company entered the Georgia region, by acquiring Parker Chandler Homes Inc.

The following table summarizes impairment and write-offs by segment. These expense amounts are included in the segment operating income (loss) as reflected in the table above.

	Twelve Months Ended December 31,		
	2007	2006	2005
Washington DC Metropolitan Area	$ 35,005	$ 26,779	$ —
Raleigh, North Carolina	10,190	7,526	1,216
Atlanta, Georgia	33,069	23,120	—
	$ 78,264	$ 57,426	$ 1,216

The table below summarizes total assets for each of the Company's segments at December 31,

Total Assets	2007	2006
Washington DC Metropolitan Area	$ 150,593	$ 317,349
Raleigh, North Carolina	28,514	61,617
Atlanta, Georgia	50,888	94,133
Corporate	28,980	44,330
Total Assets	$ 258,976	$ 517,429

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. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate held for development and sale, valuation of deferred tax assets, capitalization of costs, consolidation of variable interest entities and warranty reserves.

Recent accounting pronouncements

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

In February 2007, the FASB issued Statement of Financial Accounting Standard No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment to FASB Statement No. 115* ("SFAS 159"), which permits entities to measure various financial instruments and certain other items at fair value at specified election dates. The election must be made at the initial recognition of the financial instrument, and any unrealized gains or losses must be reported at each reporting date. SFAS 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company is currently reviewing the effect of SFAS 159 on its consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141R, *"Business Combinations"* ("SFAS 141R"), which establishes principles and requirements for the reporting entity in a business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after fiscal years beginning after December 15, 2008. The Company is currently evaluating the effect that the adoption of SFAS 141R will have on our consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "*Noncontrolling Interests in Consolidated Financial Statements, an Amendment of ARB No. 51*" ("SFAS 160"). SFAS 160 establishes accounting and reporting standards pertaining to ownership interests in subsidiaries held by parties other than the parent; the amount of net income attributable to the parent and to the noncontrolling interest; changes in a parent's ownership interest; and the valuation of any retained noncontrolling equity investment when a subsidiary is deconsolidated. SFAS 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS 160 is required to be adopted prospectively for the first annual reporting period after December 15, 2008. The Company is currently reviewing the effect that the adoption of this statement will have on our consolidated financial statements.

3. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

The Company typically acquires land for development at market prices from various entities under fixed price purchase agreements. The purchase agreements require deposits that may be forfeited if the Company fails to perform under the agreements. The deposits required under the purchase agreements are in the form of cash or letters of credit in varying amounts. The Company may, at its option, choose for any reason and at any time not

to perform under these purchase agreements by delivering notice of its intent not to acquire the land under contract. The Company's sole legal obligation and economic loss for failure to perform under these purchase agreements is typically limited to the amount of the deposit pursuant to the liquidated damages provision contained within the purchase agreement. As a result, none of the creditors of any of the entities with which the Company enters into forward fixed price purchase agreements have recourse to the general credit of the Company.

The Company also does not share in an allocation of either the profit earned or loss incurred by any of these entities with which the Company has fixed price purchase agreements. The Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit as described above, a variable interest entity is created under the provisions of FIN 46-R. This is because the Company has been deemed to have provided subordinated financial support, which creates a variable interest which limits the equity holders' returns and may absorb some or all of an entity's expected theoretical losses if they occur. The Company, therefore, examines the entities with which it has fixed price purchase agreements for possible consolidation by the Company under FIN 46-R. This requires the Company to compute expected losses and expected residual returns based on the probability of future cash flows as outlined in FIN 46-R. This calculation requires substantial management judgments and estimates. In addition, because the Company does not have any contractual or ownership interests in the entities with which it contracts to buy the land, the Company does not have the ability to compel these development entities to provide financial or other data to assist the Company in the performance of the primary beneficiary evaluation.

The Company has evaluated all of its fixed price purchase agreements and has determined that it is the primary beneficiary of some of those entities. As a result, at December 31, 2007 and 2006, the Company has consolidated 1 entity and 9 entities, respectively in the accompanying consolidated balance sheets. The effect of the consolidation at December 31, 2007 and 2006 was the inclusion of $19,250 and $43,234, respectively, in "Inventory not owned — variable interest entities" with a corresponding inclusion of $19,050 (net of land deposits paid of $200) and $40,950 (net of land deposits paid of $2,284), respectively, to "Obligations related to inventory not owned." Creditors, if any, of these Variable Interest Entities have no recourse against the Company.

During December 2006 a Company senior vice president voluntarily resigned. As part of his voluntary resignation, the former senior vice president negotiated his purchase of the remaining 30 condominium units in the Company's Countryside development for a purchase price of $4,200. Simultaneously with the purchase, the Company entered into a marketing and sale agreement with the special purpose entity ("SPE") created by the former senior vice president that purchased the units, whereby the Company would bear the cost associated with marketing and selling the units and pay the SPE a monthly option payment that allows the Company to share in the revenue of the units as they settle. The monthly option payments have created a variable interest in the SPE, and as such the Company has performed an analysis under the provisions of FIN 46-R and has determined that the entity is a variable interest entity and the Company is the primary beneficiary of this entity. As a result, the Company has consolidated the SPE. At December 31, 2006 the SPE had $3,600 of assets, which are included in "Inventory not owned-variable interest entities" and $3,600 of third party debt, which is included in "Obligations related to inventory not owned" in the accompanying consolidated balance sheets. The SPE is not included in the December 31, 2007 accompanying consolidated balance sheet since all of its assets were sold and all of its debt had been extinguished.

4. ACQUISITIONS

On January 19, 2006, the Company acquired all of the issued and outstanding capital stock of Parker Chandler Homes, Inc., a homebuilder in the Atlanta, Georgia metropolitan market, for a cash purchase price of $10,400 (including transaction costs) and the assumption of $63,800 in liabilities. The results of Parker Chandler Homes are included in the accompanying consolidated financial statements beginning January 19, 2006. The

Company accounted for this transaction in accordance with SFAS 141. Approximately $700 of the purchase price was allocated to intangibles with a weighted average life of 4.6 years. The intangibles are related to the Parker Chandler trade name, employment and non-compete agreements entered into with certain selling shareholders. The remainder of the purchase price was allocated to real estate held for development and sale and land option agreements. There was no goodwill recorded.

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

Subsequent to each acquisition, as a result of the Company releasing the restrictive terms under the employment and non-complete agreements and the decision to no longer use the respective trade names, all amounts assigned to intangibles were written off during the fourth quarter of 2006. During the third quarter of 2007, the Company elected to terminate numerous land option agreements acquired in both acquisitions. As a result, the purchase price allocated to land option agreements were substantially written off during the third quarter of 2007.

5. 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 project and allocated to various lots or housing units within that project 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 net carrying value of the property exceeds its estimated discounted fair value. These evaluations are made on a property-by-property basis as seen fit by management whenever events or changes in circumstances indicate that the net book value may not be recoverable.

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company in 2007 resulting in reduced sales prices, increased customer concessions, reduced gross margins and extended estimates for project completion dates. As a result, the Company evaluated all 41 of its projects to determine if recorded carrying amounts were recoverable. This evaluation resulted in an aggregate 2007 impairment charge of $68,788 at 29 projects, with $29,958 in the Washington D.C. region, $29,600 in the Atlanta, Georgia region and $9,230 in the Raleigh, N.C. region. Impairment charges are recorded as a reduction in our capitalized land and/or house costs. The impairment charge was calculated using a discounted cash flow analysis model, which is dependent upon several subjective

factors, including the selection of an appropriate discount rate, estimated average sales prices and estimated sales rates. In performing its impairment modeling the Company must select what it believes is an appropriate discount rate based on current market cost of capital and returns expectations. The Company has used its best judgment in determining an appropriate discount rate based on anecdotal information it has received from marketing its deals for sale in recent months. The Company has elected to use a rate of 17% in its discounted cash flow model. While the selection of a 17% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market. The estimates used by the Company are based on the best information available at the time the estimates are made. If market conditions continue to deteriorate additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

In addition, from time to time, the Company will write-off deposits it has made for options on land that it has decided not to purchase. These deposits and any related capitalized pre-acquisition feasibility or project costs are written off at the earlier of the option expiration or the decision to terminate the option. In 2007 option deposits and related pre-development costs of $9,476 were written off with $5,047 in the Washington D.C. region, $3,469 in the Atlanta, Georgia region and $960 in the Raleigh, N.C. region.

During 2006, the Company evaluated its projects to determine if recorded carrying amounts were recoverable. This evaluation resulted in impairment charges of $51,200 for the year ended December 31, 2006. Of the $51,200 in impairment charges during 2006, $39,900 was incurred during the fourth quarter of 2006.

The following table summarizes impairment charges and write-offs for the twelve months ended December 31, 2007, 2006 and 2005:

	Twelve Months Ended December 31,		
	2007	2006	2005
Impairments	$ 68,788	$ 51,200	$ 1,216
Write-offs	9,476	6,226	—
	$ 78,264	$ 57,426	$ 1,216

After impairments and write-offs, real estate held for development and sale consists of the following:

	December 31,	
	2007	2006
Land and land development costs	$ 84,448	$ 232,693
Cost of construction (including capitalized interest and real estate taxes)	119,413	172,451
Total	$ 203,861	$ 405,144

6. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment consist of the following:

	December 31,	
	2007	2006
Computer equipment and capitalized software	$ 2,145	$2,228
Furniture and fixtures	336	371
Office equipment	309	282
Leasehold improvements	78	640
	2,868	3,521
Less: accumulated depreciation	(1,329)	(798)
	$ 1,539	$2,723

Depreciation expense, included in “selling, general, and administrative” in the consolidated financial statements of operations, amounted to $852, $357 and $172 for the years ended December 31, 2007, 2006 and 2005, respectively. During 2007 the Company wrote off approximately $604 of leasehold improvement costs related to the reduction of leased office space.

7. INVESTMENT IN REAL ESTATE PARTNERSHIP

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

On June 28, 2005 the Company received a capital call from North Shore in the amount of $719 so that North Shore could comply with certain debt repayments. Because the Company could have been obligated to provide future financial support to cover certain debt repayments, the Company recorded its share of losses incurred by North Shore in the accompanying financial statements in the amount of $171.

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

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

On April 10, 2007, the parties executed a settlement agreement whereby a company associated with the non-affiliated 50% owner of the North Shore project purchased the Company’s development rights to North Shore for approximately $3,750 to settle all claims against the Company and its investors. All litigation has been dismissed with prejudice and the Company received the proceeds from the settlement in April 2007. As a result of the settlement, during the three month ended March 31, 2007 the Company recorded a charge of approximately $357 to write off its investment in North Shore and reduce amounts due from North Shore to the net realizable value. During the three months ended June 30, 2007, additional costs of $132 related to the North Shore settlement were incurred and written off. During the six months ended December 31, 2007, no additional costs related to the North Shore settlement were incurred. No additional costs related to the North Shore settlement are expected to be incurred.

8. OTHER ASSETS

Other assets consist of the following:

	December 31, 2007	December 31, 2006
Contract land deposits	$ —	$ 2,528
Restricted escrow deposits	4,650	2,231
Prepaid income taxes(1)	13,742	4,460
Miscellaneous prepaid and other	3,666	4,895
	$ 22,058	$ 14,114

(1) Prepaid income taxes include approximately $2,705 in expected tax benefits as a result of a taxable loss incurred for the twelve months ended December 31, 2006. Prepaid income tax represents $13,801 in expected tax benefits as a result of a taxable loss incurred for the twelve months ended December 31, 2007.

9. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following:

	December 31, 2007	December 31, 2006
Trade payables	$ 14,141	$ 32,990
Warranty	1,537	1,669
Customer deposits	3,020	14,935
Other	3,264	6,086
	$ 21,962	$ 55,680

10. NOTES PAYABLE, SENIOR UNSECURED DEBT AND COVENANTS

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:

Debt	Due	December 31, 2007	December 31, 2006
Secured acquisition, development and construction notes(a)	Various	$ 111,255	$ 218,461
Secured revolving credit line(b)	May 2009	28,062	39,981
Senior unsecured note(c)	June 2017	30,000	30,000
Unsecured term loans(d)	Various	1,797	6,764
Subordinate secured notes	Various	100	197
Total		$ 171,214	$ 295,403

(a) Secured acquisition, development and construction notes

We have several loans with various banks that provide us with specific project financing. These loans are secured by specific project assets and are used for land acquisition, development and construction. The loans bear interest at various rates, based on Prime or LIBOR benchmarks with a certain amount of additional basis points

added. At December 31, 2007 the weighted average stated rate was approximately 8.2%. The Company is required to maintain certain financial covenants with these various institutions. Under the terms of the agreement, the Company is required to maintain a specified EBITDA to debt service ratio, a minimum tangible net worth, and maximum leverage ratio. At December 31, 2007, the Company was not in compliance with the covenants. In February of 2008 the Company successfully re-negotiated all covenants for the period covering December 31, 2007 such that the Company was in compliance at December 31, 2007. The notes mature at various times between March 2008 and December 2008.

(b) Secured revolving credit line

In May 2006 the Company entered into a $40,000 borrowing base revolving credit agreement secured by certain project assets. The interest rate is 30 day LIBOR plus 2.75% maturing May 2009. At December 31, 2007 the interest rate was 7.35%. Under the terms of the agreement, the Company is required to maintain a specified EBITDA to debt service ratio, a minimum tangible net worth, a maximum leverage ratio and a global sold to unsold ratio. As of December 31, 2007, approximately $27,400 was outstanding with this facility. In February 2007 the Company entered into a Forbearance Agreement with the lender which reduced the covenants and eliminated the ability of the lender to claim an event of default as a result of non-compliance with certain financial covenants of the original loan. The Forbearance Agreement runs until March 31, 2008.

(c) Senior unsecured note

In May 2006 the company closed on a $30,000 senior subordinated note offering. The term of the note was thirty years, maturing June 2036, and could have been retired after five years with no penalty. The interest rate was fixed at 9.72% for the first five years after which it converted to a floating rate of LIBOR plus 4.2% for the remaining twenty-five years. In March of 2007, the Company retired the notes and closed on a new Senior Unsecured note offering with the same lender in the same amount at the same rate of interest. The new $30,000 note had a term of 10 years and required a lower fixed charge coverage ratio and a lower tangible net worth with a phased increase to levels consistent with the original junior subordinated note. The new notes also required the Company to create and maintain an interest reserve in the amount equivalent to three quarters of interest payments until the original fixed charge coverage ratio was sustained for four consecutive quarters. The original purchasers of the newly issued note had a right, at their option, to force a $2,000 pay down on or after September 30, 2007 for so long as they were the owners of the notes. During the third quarter of 2007, the lender’s rights were assumed by the note holder’s creditor. In October 2007 and again in February 2008, the Company received a waiver from the note holder’s creditor(s) regarding any defaults that resulted from covenant compliance calculations for the quarter ending September 30, 2007 and December 31, 2007. In addition, the waiver extended to March 14, 2008 the date after which the note holder could require a $2,000 principal reduction.

(d) Unsecured term loans

At December 31, 2007 we had $1,797 outstanding under unsecured term loan agreements with two lending institutions. These unsecured loans have a weighted average stated rate of interest of approximately 7.6%. There are no financial covenants associated with these loans. The notes mature at various times between March 2007 and December 2007.

As of December 31, 2007, maturities of all of our borrowings are as follows:

Year ending December 31,	
2007 (past due)	6,576
2008	92,005
2009	27,379
2010	15,254
2011 and thereafter	30,000
Total	$ 171,214

For the years ended December 31, 2007, 2006 and 2005, aggregate debt had a weighted average annual effective interest rate of 8.4%, 9.7%, and 9.2%, respectively.

11. COMMON STOCK

As discussed in Note 1, the Company immediately prior to the IPO as a result of its merger with Comstock Holdings, had 4,333 and 2,734 shares Class A and B common stock outstanding. Class A and B common stock shares bear the same economic rights. However for voting purposes, Class A stock holders are entitled to one vote for each share held while Class B stock holders are entitled to fifteen votes for each share held.

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

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

On May 12, 2006 (the "Closing Date"), the Company completed a private placement (the "PIPE") to institutional and other accredited investors of 2,121,048 shares of Class A common stock and warrants exercisable into 636,316 shares of Class A common stock. The Company sold the securities for $9.43 per share for total proceeds of approximately $20,000 and net proceeds of approximately $18,700. The per share price of $9.43 represented a premium of approximately 14.6% to the closing price of the Company's common stock on the date the purchase was completed. The net proceeds were used for general corporate purposes. The warrants issued in connection with the PIPE were five-year warrants exercisable at any time after November 10, 2006 with an exercise price of $11.32 per share.

Under EITF 00-19 "*Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock*", the fair value of the warrants issued under the PIPE have been reported as equity instruments because the liquidated damages, which are capped at 10%, reasonably represent the difference between the value of a registered share and an unregistered share of the Company's common stock.

In February 2006 the Company's Board of Directors authorized the Company to purchase up to 1,000,000 shares of the Company's Class A common stock in the open market or in privately negotiated transactions. The authorization did not include a specified time period in which the shares repurchase would remain in effect. During the twelve months ended December 31, 2006, the Company repurchased an aggregate of 391,000 shares of Class A common stock for a total of $2,439 or $6.23 per share. The Company has no other repurchase programs at this time

12. RELATED PARTY TRANSACTIONS

In April 2002 and January 2004, the Predecessor entered into lease agreements for approximately 7.7 and 8.8 square feet, respectively, for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia from Comstock Partners, L.C. (now known as 11465 SH-I, LC), an affiliate of our Predecessor in which executive officers of the Company, Christopher Clemente, Gregory Benson, and others are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 5% interest, an entity which is owned or controlled by Christopher Clemente's father-in-law owns a 45% interest, and an unrelated third party owns a 5% interest in Comstock Partners. On September 30, 2004, the lease agreements were canceled and replaced with new leases for a total of 20.6 square feet with Comstock Asset Management, L.C., an entity wholly owned by Christopher Clemente. Total payments made under this lease agreement were $142 as of December 31, 2004. On August 1, 2005, the lease agreement was amended for an additional 8.4 square feet. On March 31, 2007 the lease agreement was amended decreasing the total square footage from 29.0 to 24.1 and extending the term for two additional years. Total payments made under this lease agreement were $720 and $751, respectively for the twelve months ended December 31, 2007 and 2006.

In May 2003, the Predecessor 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 the Company's Belmont Bay developments. For the twelve months ended December 31, 2007, 2006 and 2005, total payments made to the construction company were $3,249, $6,523 and $10,038, respectively.

During 2003, the Predecessor entered into agreements with I-Connect, L.C., a company in which Investors Management, LLC, an entity wholly owned by Gregory Benson, holds a 25% interest, for information technology consulting services and the right to use certain customized enterprise software developed with input from the Company. The intellectual property rights associated with the software solution developed by I-Connect, along with any improvements made thereto by the Company, remain the property of I-Connect. For the twelve months ended December 31, 2007, 2006 and 2005, the Company paid $509, $471 and $485, respectively to I-Connect.

In October 2004, the Predecessor entered into an agreement with Comstock Asset Management, L.C. (CAM), where CAM assigned the Company first refusal rights to purchase a portion of their Loudoun Station properties. In partial consideration for this performance the Company agreed to provide management services for a fee of $20 per month. This agreement was terminated effective December 31, 2006. For the twelve months ended December 31, 2007 and 2006 the Company recorded $0 and $240 in revenue, respectively, from this entity.

In addition, the Company, in November 2004, entered into an agreement with CAM to sell certain retail condominium units at the Eclipse at Potomac Yard project for a total purchase price of $14,500. In connection with this sale, the Company received a non-refundable deposit of $8,000 upon execution of the agreement. The agreement was modified in 2005, which reduced the deposit amount to $6,000. During the year ended December 31, 2006, the Company incurred $579 in costs associated with the construction of the retail units and recorded a receivable of $377 which is reimbursable by CAM. On December 21, 2007, the Company completed the delivery of the retail units. The receivable balance outstanding as of December 31, 2007 is $40.

During the twelve months ended December 31, 2007, 2006 and 2005, the Company entered into sales contracts to sell homes to certain employees of the Company. The Company, in order to attract, retain, and motivate employees maintains a home ownership benefit program. Under the home ownership benefits, an employee receives certain cost benefits provided by us when purchasing a home or having one built by us. Sales of homes to employees for investment purposes do not qualify for any cost benefits.

In June 2007, in connection with the bulk sale of the Bellemeade condominiums the Company repurchased a single condominium in the community which was owned by an entity controlled by Christopher Clemente. The purchase price was $205.

In September 2005, Comstock Foundation, Inc., was created. Comstock Foundation is a not-for-profit organization organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and is an affiliate of the Company. The affairs of Comstock Foundation are managed by a five-person board of directors with Christopher Clemente, Gregory Benson, Bruce Labovitz and Tracy Schar (employee of the Company and spouse of Christopher Clemente) being four of the five. The Company also provides bookkeeping services to Comstock Foundation at no charge. During the year ended December 31, 2007, 2006 and 2005 the Company donated $2, $59 and $100, respectively, to Comstock Foundation.

13. EMPLOYEE BENEFIT PLANS

The Company maintains a defined contribution retirement savings plan pursuant to Section 401(k) of the Internal Revenue Code (the "Code"). Eligible participants may contribute a portion of their compensation to their respective retirement accounts in an amount not to exceed the maximum allowed under the Code. In January

2006, the Company began matching employee contributions. The total amount matched for the twelve months 2007 and 2006, was $121 and $135, respectively. The Company also maintains an Employee Stock Purchase Plan in which eligible employees have the opportunity to purchase common stock of the Company at a discounted price of 85% of the fair market value of the stock on the designated dates of purchase. Under the terms of the plan, the total fair market value of the common stock that an eligible employee may purchase each year is limited to the lesser of 15% of the employee's annual compensation or $15. Under the plan, employees of the Company purchased 20,763, 18,231 and 7,817 shares of Class A common stock, for the twelve months ending December 31, 2007, 2006 and 2005, respectively.

14. RESTRICTED STOCK, STOCK OPTIONS AND OTHER STOCK PLANS

Effective January 1, 2004, the Company adopted the fair value recognition provisions of SFAS 123(R). Prior to December 14, 2004, the Company did not sponsor any stock based plans.

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

The Plan provided for an initial authorization of 1,550 shares of Class A common stock for issuance thereunder, plus an additional annual authorization effective January 1, 2006 equal to the lesser of (i) 3% of the Class A common stock outstanding on the date of determination, (ii) 500 shares or (iii) such lesser amount as may be determined by the Company's Board of Directors. In September 2007 shareholders approved an amendment to The Plan increasing the number of shares reserved and available for grant from 1,550 to 2,550 and an automatic annual increase provision that increases the number of Plan shares reserved and available for grant by the lesser of the number of shares outstanding or 750 shares.

In December 2007, the Company's Board of Directors authorized the accelerated vesting of substantially all outstanding unvested restricted stock awards held by employees representing approximately 845 shares. As a result of the acceleration, the Company recognized approximately $4,200 of compensation expense during the 4th quarter of 2007, thereby eliminating the need to recognize these expenses in future periods.

In December 2007, the Company's Board of Directors authorized the cancellation of all outstanding vested and unvested stock options representing approximately 200 shares. In connection therewith, the Company recognized approximately $176 of compensation expense associated with the subject options during the 4th quarter of 2007, thereby eliminating the need to recognize these expenses in future periods.

In December 2007, the Company's Board of Directors authorized the granting of 647 new stock option awards to certain Company employees, with a $1.00 per share exercise price. The new stock options were issued to employees at all levels of the company (excluding the CEO) with the $1.00 exercise price set above the then current market price in an effort to further align the interests of the workforce as a whole with the interests of shareholders. The new stock options will vest over a four year period. Over the four year vesting period the Company will recognize compensation expense of approximately $200 associated with the new options during 2008-2011.

The following equity awards were outstanding at December 31,

	2007	2006	2005
Stock options	647,000	207,144	213,993
Restricted stock grants	196,084	617,827	273,891
Total outstanding equity awards	843,084	824,971	487,884

On December 31, 2007 the following amounts were available for issuance under the plan:

Shares available for issuance at December 31, 2006	927
Additions to plan	1,707
Restricted stock grants and options — Issued	(1,692)
Shares issued under employee stock purchase plan	(21)
Restricted stock grants and options — Forfeited or cancelled	320
Shares available for issuance at December 31, 2007	1,241

The fair value of each option award is calculated on the date of grant using the Black-Scholes option pricing model and certain subjective assumptions. Because the Company does not have sufficient trading history, expected volatilities are based on historical volatilities of comparable companies within our industry. We estimate forfeitures using a weighted average historical forfeiture rate. Our estimates of forfeitures will be adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from their estimate. Due to lack of history, the expected lives are based on management's best estimates at the time of grant. The risk-free rate for the periods is based on the U.S. Treasury rates in effect at the time of grant. The following table summarizes the assumptions used to calculate the fair value of options during 2007. There were no option grants during 2006.

	2007	2006
Weighted average fair value of options granted	$0.33	N/A
Dividend yields	N/A	N/A
Expected volatility	58.3% - 60.1%	N/A
Weighted average expected volatility	59.4%	N/A
Risk free interest rates	3.56% - 3.87%	N/A
Weighted average expected lives (in years)	6.26	N/A

The following table summarizes information about stock option activity:

	Shares	Weighted average exercise price
Outstanding at December 31, 2005	213,993	$ 19.94
Granted	—	—
Exercised	—	—
Forfeited or expired	(6,849)	23.00
Outstanding at December 31, 2006	207,144	19.81
Granted	647,000	1.00
Exercised	—	—
Cancelled	(200,295)	19.67
Forfeited or expired	(6,849)	23.90
Outstanding at December 31, 2007	$ 647,000	$ 1.00
Exercisable at December 31, 2007	—	$ —

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

	Shares	Weighted average fair value at date of grant
Restricted shares outstanding at December 31, 2004	275,317	$ 16.00
Granted	16,188	24.55
Vested	(4,068)	18.12
Forfeited	(13,545)	16.28
Restricted shares outstanding at December 31, 2005	273,892	16.46
Granted	597,940	9.71
Vested	(129,800)	(15.05)
Forfeited	(155,347)	15.62
Restricted shares outstanding at December 31, 2006	586,685	$ 9.83
Granted	1,023,603	4.25
Vested	(462,827)	(5.94)
Accelerated	(845,321)	(7.24)
Forfeited	(106,055)	5.41
Restricted shares outstanding at December 31, 2007	196,084	$ 8.87

As of December 31, 2007, there was $138 of total unrecognized compensation cost related to non-vested restricted stock issuances granted under the Plan. This cost is expected to be fully recognized by September 30, 2008.

Total compensation expense for share based payment arrangements for the year ended December 31, 2007 and 2006 was $6,191 and $2,186 respectively, of which $569 and $347 was capitalized to real estate held for development and sale. The total deferred tax (liability) benefit related to stock compensation as of December 31, 2007 and 2006 amounted to $(273) and $760 respectively.

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

15. COMMITMENTS AND CONTINGENCIES

Litigation

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a $147,000 project loan for the Eclipse at Potomac Yard project. The claim in the base amount of $2,000 plus interest and costs was based on breach of contract. In February 2007 the Company received a ruling by a panel of arbiters to pay $3,000 under this claim. The Company posted a cash bond and filed an appeal in the amount of the judgment. The Company's writ for appeal was denied in December 2007; resulting in final judgment being rendered against the Company and the release of the cash bond to satisfy payment of the claim in February 2008.

In accordance with the provisions of its sales agreements, the Company's subsidiary retained the earnest money purchase deposits from Eclipse project buyers who defaulted on their obligation to settle. Certain buyers are seeking to obtain a refund of their forfeited deposits and have filed a series of lawsuits and arbitration claims commencing on or around June 28, 2007. Disputed deposits in an aggregate amount of approximately $1.1 million remain in a segregated escrow account and are included in the accompanying financial statements as Restricted Cash as of December 31, 2007. The Company has filed counterclaims against the majority of the Eclipse buyers in the referenced actions.

On December 7, 2007, the Company and a subsidiary were served with a complaint and notice of lis pendens resulting from an allegation of the subsidiary's failure to pay $712 allegedly due to the seller of property

in the District of Columbia known as the East Capitol project. The Company's subsidiary posted a cash escrow for 1.5 times the amount sought in the complaint in order to complete conveyance of the property without exception to title and intends to vigorously defend the matter.

The Company has asserted claims against former controlling shareholders of Parker-Chandler Homes, Inc., a homebuilder the Company acquired pursuant to a stock purchase agreement (SPA), dated January 19, 2006. The Company has made timely claims against the $1,000 holdback escrow account established pursuant to the SPA to secure reimbursement and indemnification as a result of a series of claims and liabilities created by certain omissions and/or misrepresentations allegedly made by the controlling shareholders in the SPA. The Company has reserved all rights and remedies with respect to the foregoing and certain additional matters.

On February 29, 2008, a subsidiary of the Company, Mathis Partners, LLC ("Mathis Partners"), received notices of acceleration and foreclosure from Haven Trust Bank (Lender) pursuant to existing acquisition and construction credit facilities at its Gates of Luberon project. The aggregate outstanding balance of the indebtedness was approximately $5,221 as of the date of the notices. The notices were issued after maturity of the indebtedness and Mathis Partners' inability to negotiate an extension of the credit facilities with Lender pursuant to terms and conditions Mathis Partners deemed satisfactory. If the process of foreclosure proceeds as currently noticed by Lender, Mathis Partners and the Company, pursuant to a guaranty by the Company of Mathis Partners' obligations, may be held responsible for either the outstanding balance of the indebtedness or a deficiency judgment should the proceeds of a foreclosure sale be less than the outstanding balance of the indebtedness. Mathis Partners and the Company are in the process of analyzing their strategic options, which may include a Chapter 11 reorganization of Mathis Partners, the special purpose entity that owns the Gates of Luberon project.

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

Letters of credit and performance bonds

The Company has commitments as a result of contracts entered into with certain third parties to meet certain performance criteria as outlined in such contracts. The Company is required to issue letters of credit and performance bonds to these third parties as a way of ensuring that such commitments entered into are met by the Company. At December 31, 2007, the Company has issued $1,284 in letters of credit and $13,595 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

Operating leases

The Company leases office space and model homes under non-cancelable operating leases. Future minimum annual lease payments under these leases at December 31, 2007:

Year Ended:	Amount
2008	$ 1,080
2009	981
2010	760
2011	439
Thereafter	—
Total	$ 3,260

Office and model home operating lease rental expense aggregated $2,151, $2,209 and $1,416 respectively, for years ended December 31, 2007, 2006 and 2005.

16. FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts reported in the 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 are as follows:

	December 31,	
	2007	2006
Carrying amount	$ 33,259	$ 60,097
Fair value	$ 31,338	$ 61,924

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

17. INCOME TAXES

Income taxes are accounted for under the asset and liability method in accordance with SFAS 109 “Accounting for Income Taxes.” Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

For the twelve months ended December 31, 2007, the Company generated a current year net operating loss (“NOL”) of approximately $40,200 for federal and state tax purposes, of which approximately $35,900 will be carried back to 2005 and is expected to result in cash refunds of federal and state taxes to the Company of approximately $13,200. The remaining NOL of approximately $4,200 will be available to carry forward to offset potential future taxable income generated over the next twenty years.

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

	2007	2006	2005
Current:			
Federal	$(11,251)	$ (2,281)	$15,160
State	(1,958)	(424)	2,885
	(13,209)	(2,705)	18,045
Deferred:			
Federal	(17,890)	(18,833)	(1,417)
State	(3,391)	(3,552)	(262)
	(21,281)	(22,385)	(1,679)
Other			
Valuation allowance	29,209	—	—
Tax shortfall related to the vesting of equity awards	2,729	570	—
Total Income Tax Expense	$ (2,552)	$(24,520)	$16,366

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

	2007	2006
Deferred tax assets:		
Inventory	$ 26,632	$ 9,642
Warranty	560	612
Investment in Affiliates	38	25
Net operating loss and tax credit carryforwards	2,543	—
Accrued expenses	531	1,213
Stock based compensation	(273)	762
	30,031	12,254
Less — valuation allowance	(29,209)	(470)
Net deferred tax assets	822	11,784
Deferred tax liabilities:		
Inventory	—	—
Investment in Affiliates	—	—
Depreciation and amortization	(822)	(1,596)
Net deferred tax liabilities	(822)	(1,596)
Net deferred tax assets (liabilities)	$ —	$10,188

As of December 31, 2007, the Company has recorded valuation allowances for certain tax attributes and other deferred tax assets. At this time, sufficient uncertainty exists regarding the future realization of these deferred tax assets through future taxable income or carry back opportunities. If in the future the Company believes that it is more likely than not that these deferred tax benefits will be realized, the valuation allowances will be reversed.

As discussed in Note 1, we adopted the provisions of FIN 48 as of January 1, 2007. As a result of this adoption, we recorded a benefit to the opening accumulated deficit in the amount of $1,663. At December 31, 2007, we had gross unrecognized tax benefits of $77, which was fully reserved. The reserve was limited to interest on the net timing difference. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

Balance as of January 1, 2007	$—
Additions for tax positions related the current year	—
Additions for tax positions of prior years	77
Reductions for tax positions of prior years	—
Settlements	—
Balance as of December 31, 2007	$77

The unrecognized tax benefits of $77 at December 31, 2007, would not reduce our annual effective tax rate if recognized. We have accrued interest and recorded a liability of $77 related to these unrecognized tax benefits during 2007. We do not expect our unrecognized tax benefits to change significantly over the next 12 months.

We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2004 through 2007 tax years generally remain subject to examination by federal and most state tax authorities.

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

	2007	2006	2005
Statutory Rate	35.00%	35.00%	35.00%
State income taxes — net of federal benefit	3.97%	4.03%	3.95%
Permanent differences	0.09%	0.02%	(1.75)%
Change in effective tax rate	(0.02)%	(0.04)%	(0.03)%
Tax reserve	(0.75)%	(0.61)%	1.67%
Tax shortfall related to the vesting of certain equity awards	(3.03)%	(0.88)%	0.00%
Change in valuation allowance	(32.43)%	0.58%	(1.58)%
	2.83%	38.10%	37.26%

18. QUARTERLY RESULTS (unaudited)

Quarterly results for the years ended December 31, 2007 and 2006 follow (in thousands, except per share amounts):

	Three months ended			
	March 31, 2007	June 30, 2007	September 30, 2007	December 31, 2007
Revenues	$46,723	$114,300	$ 51,986	$ 53,151
Operating income	(2,884)	(7,899)	(70,282)	(11,020)
Pretax income	(2,539)	(7,594)	(69,565)	(10,365)
Net Income	(1,669)	(4,668)	(42,468)	(38,706)
Basic earnings per share	(0.11)	(0.29)	(2.63)	(2.35)
Diluted earnings per share	(0.11)	(0.29)	(2.63)	(2.35)

	Three months ended			
	March 31, 2006	June 30, 2006	September 30, 2006	December 31, 2006
Revenues	$36,595	$ 50,697	$ 35,280	$ 123,309
Operating income	1,778	(11,962)	(9,709)	(45,808)
Pretax income	1,991	(11,645)	(9,404)	(45,306)
Net Income	1,240	(7,123)	(5,754)	(28,207)
Basic earnings per share	0.09	(0.47)	(0.36)	(1.79)
Diluted earnings per share	0.09	(0.47)	(0.36)	(1.79)

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

As discussed in Note 4, the company acquired Parker Chandler Homes Inc., during the first quarter of 2006 and Capitol Homes Inc., during the second quarter of 2006.

During 2007, the Company recorded total impairment and write-off charges of $78,264. Of this amount, $891, $7,492, $69,017 and $864 was recorded during the first, second, third and fourth quarter of 2007, respectively. During 2006, the Company recorded total impairment and write-off charges of $57,426. Of this amount, $0, $12,914, $1,802 and $42,710 was recorded in the first, second, third and forth quarter of 2006, respectively.

19. SUBSEQUENT EVENTS

In January 2008 we entered into an agreement with Wachovia Bank whereby Wachovia agreed to reset the borrowing base aging dates of certain projects in our borrowing base and we agreed to temporarily limit our borrowings under the borrowing base to $30,000 dollars. This agreement expires March 31, 2008.

In February 2008 we filed for an approx. $11,200 federal tax refund and an approx. $10,800 state tax refund. In connection with these refunds we entered into a $4,000 short-term loan with Stonehenge LC, an entity wholly owned by Christopher Clemente, our Chairman and CEO. Greg Benson, our Regional President and a member of our board of directors and Tracy Schar, Mr. Clemente's wife participated in the loan as a non-members. The loan was secured by an interest in our tax refund and was payable upon receipt of the refund. In March 2008 we received both tax refunds and paid the Stonehenge loan in full.

In February 2007 we received a ruling from a panel of arbitrators ordering payment of approximately $3,000 with respect to an allegation of a loan brokerage fee being owed for placement of a $147,000 project loan for the Eclipse at Potomac Yard project and a $67,000 project loan at Penderbrook. In February 2007 our appeal was denied and the judgment was released from escrow in February 2008.

In February 2008 we entered into a loan modification and extension agreement with KeyBank related to our Station View project loan. Under the terms of the modification the maturity was extended to May 2008 and the financial covenants were permanently waived. In March 2008 the loan was paid in full.

In February 2008 we entered into a loan modification and extension agreement with Corus Bank related to our Eclipse project construction loan. Under the terms of the loan modification the maturity of the loan was extended to July 2008 and the release rates for payoff were lowered. The Company agreed to establish an escrows with excess settlement proceeds to cover unfunded project costs including interest and real estate taxes. In March 2008 the loan was paid in full.

In March 2008 we entered into a new $40,000 loan with KeyBank National Association. The loan provided funding to refinance the Corus loan at Potomac Yard and the KeyBank loan at Station View. Excess proceeds from the loan were used to finance the restructure of the Company's senior unsecured notes, pay fees and costs of the new loan, and provide the Company with working capital. The loan has a three year term and bears interest at a rate of LIBOR plus 400 basis points. The new loan has no financial covenants other than minimum periodic curtailments from settlement proceeds commencing March 31, 2009.

In January 2008 we entered into an agreement with the noteholder of our $30,000 senior secured notes by which we were granted the option to either retire $23,000 of the note by paying $8,000 in cash to the noteholder in March 2008 and issue a warrant to purchase one million shares of our Class A common stock at $0.70 or to reduce the note by $30,000 by paying noteholder $15,000 in cash in March 2008. In March 2008 we amended the agreement to limit our option to making a $6,000 payment to the Noteholder, entering into a $9,000 amended and restated indenture with the Noteholder and issuing the Noteholder a warrant to purchase 1.5 million shares of our Class A Common Stock at $0.70 per share. In exchange the Noteholder would grant the Company a $15,000 discount to the outstanding balance. The Company executed on its option in March 2008. Under the terms of the amended and restated five year note the Company is subject to a $35.0 minimum tangible net worth, a 0.5 to 1.0 interest coverage ratio and a 3.0 to 1.0 maximum leverage ratio.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 to the annual report be signed on its behalf by the undersigned, thereunto duly authorized.

COMSTOCK HOMEBUILDING COMPANIES, INC.

Date: March 24, 2008

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

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

Signature	Capacity	Date
/s/ CHRISTOPHER CLEMENTE Christopher Clemente	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	March 24, 2008
* Gregory V. Benson	Regional President, Southeast	March 24, 2008
/s/ BRUCE J. LABOVITZ Bruce J. Labovitz	Chief Financial Officer (Principal Financial Officer)	March 24, 2008
/s/ JEFFREY R. DAUER Jeffrey R. Dauer	Chief Accounting Officer (Principal Accounting Officer)	March 24, 2008
* A. Clayton Perfal	Director	March 24, 2008
* David M. Guernsey	Director	March 24, 2008
* James A. MacCutcheon	Director	March 24, 2008
* Norman D. Chirite	Director	March 24, 2008
* Robert P. Pincus	Director	March 24, 2008
* Socrates Verses	Director	March 24, 2008

By: /s/ BRUCE J. LABOVITZ
Bruce J. Labovitz
Attorney-in-Fact

March 24, 2008

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

Exhibit Number	Exhibit
10.27(2)	Description of Arrangements with David Howell
10.28(1)	Trademark License Agreement
10.29(2)	Purchase Agreement, dated as of November 12, 2004 with Comstock Asset Management, L.C.
10.30(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.31(3)	Agreement of Purchase and Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.32(3)	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.
10.33(3)	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
10.34(4)	Life Insurance Reimbursement Agreement with William P. Bensten
10.35(4)	Life Insurance Reimbursement Agreement with Bruce Labovitz
10.36(4)	Description of Reimbursement and Indemnification Arrangement with Christopher Clemente and Gregory Benson
10.37(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.38(5)	Stock Purchase Agreement with Parker-Chandler Homes, Inc. and the Selling Stockholders identified therein, dated as of January 19, 2006
10.39(5)	Loan Agreement, dated January 31, 2006, by and between Comstock Carter Lake, L.C. and Bank of America, N.A.
10.40(5)	Guaranty Agreement, dated January 31, 2006, by the Registrant in favor of Bank of America, N.A.
10.41(6)	Form of purchase agreement, dated as of May 5, 2006, as amended as of May 9, 2006, by and between the Company and the purchasers identified therein
10.42(6)	Form of warrant.
10.43(7)	Note Purchase Agreement with Kodiak Warehouse LLC, dated as of May 4, 2006
10.44(7)	Junior Subordinated Indenture with Wells Fargo Bank, N.A., dated as of May 4, 2006
10.45(7)	Credit Agreement with Wachovia Bank, N.A., dated as of May 26, 2006
10.46(7)	Stock Purchase Agreement with Capitol Homes, Inc. and the Selling Shareholders identified therein, dated as of May 1, 2006
10.47(8)	Letter, dated October 18, 2007, from Friedlander, Misler, Sloan, Kletzkin & Ochsman, PLLC to the Registrant and Comstock Bellemeade, L.C.
10.48(8)	Purchase and Sale Agreement by and between Comstock Countryside L.C. and Merion-Loudon, LC, dated as of December 21, 2006
10.49(8)	Marketing and Sale Agreement by and between Comstock Countryside LC and Merion-Loudon, L.C., dated as of December 21, 2006
10.50(8)	Consulting Agreement with The Merion Group, LC, dated as of December 21, 2006
10.51(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Highland Avenue Properties, LLC and Bank of America, N.A.
10.52(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.53(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Homes of Atlanta, LLC, Comstock Homes of Myrtle Beach, LLC and Bank of America, N.A.

Exhibit Number	Exhibit
10.54(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.55(8)	First Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Bellemeade, L.C., Bank of America, N.A. and Lenka E. Lundsten
10.56(8)	Second Loan Modification Agreement, dated as of December 22, 2006, by and between the Registrant and Bank of America, N.A.
10.57*	Loan and Security Agreement, dated as of February 2008, by and between the Registrant and Stonehenge Funding, LC.
10.58*	Guaranty Agreement, dated as of February 2008, by Comstock Potomac Yard, L.C. in favor of Stonehenge Funding, LC.
10.59*	Supplement to Indenture, dated as of January 7, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.60*	Amended and Restated Indenture, dated as of March 14, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.61*	Loan Agreement, dated as of March 14, 2008, by and among Comstock Station View, L.C., Comstock Potomac Yard, L.C., and KeyBank National Association.
10.62*	Unconditional Guaranty of Payment and Performance, dated as of March 2008, by the Registrant in favor of KeyBank National Association.
14.1(2)	Code of Ethics
21.1*	List of subsidiaries
23.1*	Consent of PricewaterhouseCoopers LLP
24.1*	Power of Attorney (see signature page to this Annual Report on Form 10-K.)
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

* Filed herewith.

(1) Incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193).

(2) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005.

(3) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2005.

(4) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2005.

(5) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2006.

(6) Incorporated by reference to an exhibit to the Current Report on Form 8-K of the Registrant filed with the Commission on May 10, 2005.

(7) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2006.

(8) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2007.

Exhibit 10.57

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") is made as of the __ day of February, 2008 by and between **STONEHENGE FUNDING, LC**, a Virginia limited liability company, ("Lender"), whose address is 11465 Sunset Hills Road, #620, Reston, Virginia 20190 and **COMSTOCK HOMEBUILDING COMPANIES, INC.,** a Delaware corporation ("Borrower"), whose address is 11465 Sunset Hills Road, Suite 500, Reston, Virginia 20190. All capitalized terms otherwise undefined herein shall have the meanings specified in Article I of this Agreement, unless the context otherwise requires.

BACKGROUND:

A. To provide a source of funds for the purposes described in Section 2.1, the Borrower has requested that the Lender enter into this Agreement and agree to make the Loan to the Borrower.

B. The Lender has agreed to make the Loan to the Borrower subject to the terms and conditions set forth herein.

NOW, THEREFORE, with the foregoing background incorporated below by reference and made a part hereof, and intending to be legally bound, the Lender and the Borrower agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. **Definitions**. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), defined terms may be used in the singular or plural, the use of any gender includes all other genders, and the following terms have the meanings specified in the foregoing recitals:

Borrower

Lender

In addition, the following terms shall have the meanings specified in this Article, unless the context otherwise requires:

"Affiliate" shall have the meaning as defined in 11 U.S.C. §101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein.

"Agreement" means this Loan and Security Agreement (including schedules and exhibits annexed hereto), as originally executed or, if amended, varied or supplemented from time to time, as so amended, varied or supplemented.

"Business Day" means a day of the year other than a Saturday, Sunday or any day which shall be in the Commonwealth of Virginia a legal holiday or a day on which banking institutions are required or authorized to close.

"Closing Date" means the date of the execution and delivery of this Agreement by the Lender and the Borrower.

"Code" means the Uniform Commercial Code, as presently and hereafter enacted in the Commonwealth of Virginia. Any term used in this Agreement and in any financing statement filed in connection herewith which is defined in the Code and not otherwise defined in this Agreement or in any other Loan Document has the meaning given to the term in the Code.

"Collateral" means the anticipated refund of Borrower's 2007 federal income tax as shown on Borrower's 2007 federal income tax return attached hereto as Schedule 5.5(d). If the anticipated refund is denied, or Lender reasonably believes that receipt of the anticipated refund will be delayed beyond the Maturity Date of the Note, Lender may request in writing that Borrower, within fifteen (15) days after receipt of Lender's request, provide substitute collateral satisfactory to Lender, as determined by Lender in its sole and absolute discretion.

"CORUS Loan" means that certain loan in the original amount of $147,5000,000 by and between Comstock Potomac Yard, L.C., as Borrower, and CORUS Bank, N.A., as Lender, as more particularly described and set forth in that certain Construction Loan Agreement made as of the 22nd day of November, 2004, as amended.

"Default Amount" means (a) the aggregate amount of all sums for principal and interest, including late charges thereon with respect to the Loan, and all other sums which are then due and unpaid in connection therewith; and (b) the interest on the foregoing sums, at the Default Rate.

"Default Rate" has the meaning set forth in the Note.

"Environmental Activity" has the meaning set forth in Section 3.19 hereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder, including any amendments and successor provisions thereto.

"Event of Default" means any event specified in Article VIII, provided that there shall have been satisfied any requirement in connection with such event for the giving of notice or the lapse of time or both; "Default" or "default" means any of such events, whether or not the giving of notice or the lapse of time or the happening of any further condition, event or act shall have been satisfied.

"GAAP" means, as of the date of any determination with respect thereto, those accounting principles applicable in the preparation of financial statements, as promulgated by, or not inconsistent with, those of the Financial Accounting Standards Board, or such other body or bodies as may be recognized as authoritative by the American Institute of Certified Public Accountants, or any successor body, consistently applied and maintained throughout the relevant period and from period to period.

"Governmental Authority" means the United States government, any State or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to, government.

"Guarantor" means Comstock Potomac Yard, L.C.

"Guaranty" means the guaranty to be given by Comstock Potomac Yard, L.C. for the benefit of the Lender in respect of the Loan, the form of which is attached here as Schedule 1.

"Hazardous Substances" has the meaning set forth in Section 3.19 hereof.

"Indebtedness" means all of the obligations of the Borrower which, in accordance with GAAP, should be classified upon the Borrower's balance sheet as liabilities, or to which reference should be made by footnotes thereto, including without limitation, in any event and whether or not so classified: (a) all debt and similar monetary obligations of the Borrower, whether direct or indirect; (b) all obligations of the Borrower arising or incurred under or in respect of any guaranties (whether direct or indirect) by the Borrower of the indebtedness, obligations or liabilities of any other Person; and (c) all obligations of the Borrower arising or incurred under or in respect of any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in property owned by such Person, even though such Person has not assumed or become liable for the payment of such obligations.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement or preferential arrangement, charge or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Code or comparable law of any jurisdiction to evidence any of the foregoing).

"Loan' means the loan made by the Lender to the Borrower in the principal sum of Four Million and 00/100 Dollars ($4,000,000), the proceeds of which will be utilized by the Borrower for working capital and payroll.

"Loan Documents" means any and all agreements, instruments and other documents delivered to the Lender pursuant to or incident to this Agreement, as each may

be amended, supplemented, restated or otherwise modified from time to time (a) by or on behalf of the Borrower or (b) by or on behalf of any pledgor or guarantor of a Lien or other right. "Loan Document" means any of the Loan Documents.

"Materially Adverse Effect" means with respect to the Borrower and the Collateral any fact or circumstance, which singly or in the aggregate, materially adversely affects the ability of the Borrower to utilize the Collateral for repayment of the Loan or materially diminishes the value of the Collateral.

"Note" means the secured promissory note executed by the Borrower in favor of the Lender to evidence the Loan.

"Permitted Indebtedness" means: (a) indebtedness existing on the date hereof and shown on the Borrower's most recent balance sheet submitted to the Lender (b) indebtedness incurred under this Agreement and under the other Loan Documents; (c) current accounts payable arising out of transactions (other than borrowings) in the ordinary course of business; and (d) indebtedness incurred in the ordinary course of business.

"Permitted Liens" means: (a) Liens for taxes, assessments, charges or other governmental levies not yet due; (b) Pledges or deposits in connection with worker's compensation, unemployment insurance or other social security legislation; (c) Liens in favor of the Lender, pursuant to this Agreement and the other Loan Documents; (d) Liens created in connection with the incurrence of Permitted Indebtedness; (e) the Liens described on Schedule 1.1 attached hereto; and (f) statutory Liens of landlords and Liens of carriers, warehousemen and other Liens imposed by law incurred in the ordinary course of business for sums not delinquent or being contested in good faith, if reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor.

"Person" means an individual, a partnership, a limited partnership, a limited liability partnership, a corporation, a limited liability company, a business trust, a joint stock company, a trust, an unincorporated association, a joint venture or other entity or a Governmental Authority.

"Proceeds" has the meaning set forth in the Code.

"Subsidiary" means any corporation, partnership or other entity in which the Borrower, directly or indirectly, owns more than fifty percent (50%) of the stock, capital or income interests, or other beneficial interests, or which is effectively controlled by such Person.

"Supporting Obligations" has the meaning set forth in the Code.

Section 1.2. **Rules of Construction; Time of Day**. The words "hereof", "herein", "hereto", "hereby" and "hereunder" and other equivalent words refer to the

entire Agreement. Unless otherwise indicated, all references to particular Articles or Sections (as capitalized terms) are references to the Articles or Sections of this Agreement. Any pronoun used herein shall be deemed to cover all genders. References to any time of day in this Agreement shall refer to Eastern standard time or Eastern daylight savings time.

Section 1.3. **Accounting Terms and Determinations**. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP.

ARTICLE II
TERMS OF LOAN

Section 2.1 **Terms of Loan**. The Loan shall bear interest at the rate, be for the term and shall be repaid in accordance with the provisions of the Note, which are incorporated herein by reference as if set forth at length. The proceeds of the Loan shall be used for the purposes described in the definition of Loan set forth in Section 1.1 hereof. Each payment made by the Borrower to the Lender under this Agreement shall be made in United States dollars at the Lender's office set forth in the preamble to this Agreement not later than 2:00 p.m. on the due date of such payment.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to the Lender, knowing and intending that the Lender shall rely thereon in making the Loan contemplated hereby, that:

Section 3.1. **Corporate Existence; Good Standing**.

(a) Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business in the Commonwealth of Virginia, and (ii) has all requisite corporate power and authority and full legal right to own or to hold under lease its properties and to carry on the business in which it is presently engaged.

(b) Borrower has the corporate power and authority and has full legal right to enter into each of the Loan Documents to which it is a party, and to perform, observe and comply with all of its agreements and obligations under each of such documents.

Section 3.2. **Corporate Authority, Etc.** The execution and delivery by the Borrower of each of the Loan Documents to which it is a party, and the performance by the Borrower of all of its agreements and obligations under each of such documents have been duly authorized by all necessary actions on the part of the Board of Directors of the Borrower and do not and will not (a) contravene any provisions of the Borrower's

Certificate of Incorporation, By-Laws or this Agreement (each as from time to time in effect), (b) conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any mortgage, lien, pledge, charge, security interest or other encumbrance upon any of the property of the Borrower (other than as provided herein), under any material agreement, mortgage or other instrument to which the Borrower is or may become a party, except as provided herein, (c) violate or contravene any provision of any law, regulation, order, ruling or court or Governmental Authority (all as from time to time in effect and applicable to such entity), or (d) require any waivers, consents or approvals by any of the creditors or trustees for creditors of the Borrower, or (e) require any approval, consent, order, authorization, or license by, or giving of notice to, or taking any other action with respect to, any Governmental Authority except those actions that have been taken or will be taken prior to the Closing Date, under any provision of any applicable law.

Section 3.3. **Binding Effect of Documents, Etc**. The Borrower has executed and delivered each of the Loan Documents to which it is a party, and each of such documents is in full force and effect. The agreements and obligations of the Borrower as contained in each of the Loan Documents to which the Borrower is a party constitutes or upon execution and delivery thereof will constitute legal, valid and binding obligations of the Borrower enforceable by the Lender against the Borrower in accordance with their respective terms.

Section 3.4. **No Events of Default, Etc**.

(a) No Event of Default or Default has occurred and is continuing.

(b) Except as set forth on Schedule 3.4(b), the Borrower is not in default in any material respect under any contract, agreement or instrument to which it is a party or by which it or any of its property is bound, the consequence of which default will have a Materially Adverse Effect.

Section 3.5. **No Governmental Consent Necessary**. No consent or approval of, giving of notice to, registration with or taking of any other action in respect of, any Governmental Authority is required with respect to the execution, delivery and performance by the Borrower of this Agreement and the Loan Documents to which it is a party.

Section 3.6. **No Proceedings**. There are no actions, suits, or proceedings pending, or to the knowledge of the Borrower, threatened against the Borrower in any court or before any Governmental Authority which, if adversely determined, will have a Materially Adverse Effect.

Section 3.7. **Financial Statements**.

(a) Subject to any limitation stated therein, all balance sheets, income statements and other financial data which have been or shall hereafter be furnished to the Lender to induce it to enter into this Agreement, do and will truly and accurately in all material respects represent the financial condition of the Borrower as at the respective dates

thereof and the results of its operations for the periods for which the same are furnished to Lender. All other information, reports and other papers and data furnished to the Lender are, or will be at the time the same are so furnished, true, accurate and complete in all material respects. Unless provided otherwise herein, all such financial statements and other information have been, or will have been at the time of issuance, prepared on an audited basis by certified public accountants in accordance with GAAP consistently applied during all periods.

(b) Except as shown on the most recent financial statements which have been delivered to the Lender, the Borrower has no other Indebtedness as of the date hereof which will have a Materially Adverse Effect.

Section 3.8. **Intentionally Omitted.**

Section 3.9. **Taxes and Assessments**. The Borrower has paid and discharged when due all taxes, assessments and other governmental charges which may lawfully be levied or assessed upon its income and profits, or upon all or any portion of any property belonging to it, whether real, personal or mixed, to the extent that such taxes, assessments and other charges have become due. The Borrower has filed all tax returns, federal, state and local, and all related information, required to be filed by it. The Borrower does not know of any proposed tax deficiency, assessment, charge or levy against it, the payment of which is not adequately provided for on its books.

Section 3.10. **Title to Intangible Personal Property**. The Borrower has good and marketable title to all patents, copyrights, trademarks, service marks, licenses and franchises used in the conduct of its business, and it has not received any notice or claim, or has reason to believe, that any such rights of others are infringed by any product or activity of the Borrower.

Section 3.11. **ERISA**. As of the date hereof, the Borrower does not maintain any employee benefit plan which is subject to ERISA.

Section 3.12. **Location**. The chief executive office of the Borrower where it maintains its business records, all of the Borrower's other places of business and any other places where any Collateral is kept, are all located at the addresses set forth on Schedule 3.12. The Collateral is located and shall at all times be kept and maintained only at the Borrower's location or locations as described on Schedule 3.12. No Collateral is attached to or affixed to any real property so as to be classified as a fixture unless the Lender has otherwise agreed in writing. The Borrower has not moved its chief executive office within the five (5) years preceding the date hereof.

Section 3.13. **Other Liens**. The Borrower has good and marketable title to and owns all of the Collateral free and clear of any and all Liens whatsoever except for Permitted Liens. None of the Collateral is subject to any prohibition against encumbering, pledging, hypothecating or assigning the same or requires notice or consent in connection therewith.

Section 3.14. **Names**. The Borrower currently conducts business only under its legal name as set forth in the heading of this Agreement. Except as disclosed on Schedule 3.14, during the preceding five (5) years, the Borrower has not (a) been known as or used any other corporate, fictitious or trade name, (b) been the surviving entity of a merger or consolidation or (c) acquired all or substantially all of the assets of any Person.

Section 3.15. **Permits and Approvals**. The Borrower has and is lawfully possessed of all franchises, registrations, accreditations, certificates, licenses and permits, federal, state and local, and all other authorizations, consents and approvals of Governmental Authorities necessary to (a) the conduct of the activities of the Borrower, and (b) the ownership, use, operation or maintenance of its properties, and the same grant sufficient legal rights for the purposes for which acquired, are validly issued and in full force and effect at the date hereof and the Borrower is not in default in any respect thereunder.

Section 3.16. **Use of Loan Proceeds; Regulations G and U**. The Borrower does not own any "margin security" as defined in Regulation G (12 C.F.R. Part 207) of the Board of Governors of the Federal Reserve System (the "Board") or any "margin stock" as defined in Regulation U (12 C.F.R. Part 221) of the Board (collectively, a "Margin Security"). The proceeds of the Loan will be used by the Borrower for the purposes stated in Section 2.1 above. None of such proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Security or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry a Margin Security or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulation G and Regulation U. The Borrower has not taken any action nor will the Borrower take any action which might cause this Agreement or any of the documents or instruments delivered pursuant hereto to violate any regulation of the Board or to violate the Securities Exchange Act of 1934, in each case as in effect as of the date hereof.

Section 3.17. **Judgment Liens**. Except as set forth in Schedule 3.17 attached hereto, neither the Borrower nor any of the Borrower's assets are subject to any pending litigation, unpaid judgments (whether or not stayed) or any judgment liens in any jurisdiction.

Section 3.18. **Investment Company Act**. The Borrower is not an "investment company" as defined in the Investment Company Act of 1940, as amended.

Section 3.19. **Environmental Matters**. Except as disclosed on Schedule 3.19, neither the Borrower, nor to the best of the Borrower's knowledge any other Person, has ever caused or permitted any Hazardous Substance to be placed, held, located or disposed of, or otherwise engaged in any Environmental Activity from, on, under or at any real property owned, leased or otherwise occupied by the Borrower, or any part thereof, in violation of any Environmental Law, and none of such real property has been used (whether by the Borrower or, to the best knowledge of the Borrower, by any other Person) as a dump site or storage site (whether permanent or temporary) for any Hazardous Substance or any

other Environmental Activity, except in compliance with Environmental Laws. There are no pending claims or litigation or any other Environmental Complaint, and the Borrower has not received any written communication from any Person concerning the presence or possible presence of any Hazardous Substance or any other Environmental Activity at any of such real property or concerning any violation or alleged violation of any Environmental Law. For the purposes of the Agreement (a) "Environmental Activity" means any generation, processing, abatement, existence, manufacture, refining, transportation, treatment, storage, handling, release, emission, discharge or disposal of any Hazardous Substance or any threat of such activity; (b) "Environmental Complaint" means any complaint, order, citation, notice or other written or express oral communication from any Person with respect to the existence or alleged existence of a violation of any Environmental Law or legal liability resulting from any Hazardous Substance, any Environmental Activity or any other environmental matter at, upon, under, within or from any real property owned, leased or otherwise occupied by the Borrower or otherwise relating to such real property or the ownership, use, operation or occupancy thereof, or any business, activity or other property of the Borrower; (c) "Environmental Laws" means all applicable federal, state and local statutes, rules, regulations, orders, judgments, permits, licenses, and other provisions of law relating to any one or more of the following: air emissions, water discharge, noise emissions, solid and liquid disposal, Hazardous Substances, any Environmental Activity and other environmental, health and safety matters; and (d) "Hazardous Substance" means (i) any flammable, explosive, radioactive material or friable asbestos, (ii) any "Hazardous Substance" as such term is presently defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, (iii) any "Hazardous Material" as such term is presently defined in the Hazardous Material Transportation Act, as amended, (iv) any "Hazardous Waste" as presently defined in the Resource Conservation and Recovery Act of 1976, as amended, (v) any additional substances or materials which are hereafter defined as, incorporated in or added to the definition of "Hazardous Substance", "Hazardous Material" or "Hazardous Waste" pursuant to, or for the purposes of, any Environmental Law, and (vi) any additional substances or materials which are now or hereafter regulated or considered to be hazardous or toxic under any Environmental Law relating to any real and/or personal property owned, leased, used or, in the case of real property otherwise occupied by the Borrower, the ownership, use, operation or occupancy thereof or any business, activity or other property of the Borrower.

Section 3.20. **Full Disclosure**. There is no material fact which is known or which should be known by the Borrower that the Borrower has not disclosed to the Lender that could have a Materially Adverse Effect. None of the representations, warranties or statements made to the Lender pursuant hereto or in connection with this Agreement or the transactions contemplated hereby contains any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances in which they are made, not misleading.

Section 3.21. **Survival**. All of the representations and warranties contained in this Agreement or in any other writing delivered to the Lender in connection with this Agreement or the Loan shall survive until all sums due under the Note have been paid in full.

ARTICLE IV
CONDITIONS TO CLOSING THE LOAN

Section 4.1. **Conditions Precedent to Closing**. The obligation of the Lender to close the Loan shall be subject to the satisfaction or waiver by the Lender, prior thereto or concurrently therewith, of each of the following conditions precedent:

(a) **Loan Documents**. The Borrower and each other party to any Loan Documents, as applicable, shall have executed and delivered this Agreement, the Note and other required Loan Documents, all in form and substance satisfactory to the Lender;

(b) **Supporting Documents**. The Borrower shall cause to be delivered to the Lender the following documents:

(i) A copy of the Certificate of Incorporation of the Borrower, certified by the Delaware Secretary of State to be true, correct and complete, and a copy of the By-Laws of the Borrower certified by its secretary or assistant secretary to be true, correct and complete;

(ii) A Certificate of Good Standing for the Borrower, issued by the Delaware Secretary of State dated within ninety (90) days of the date hereof;

(iii) A Certificate from the Secretary of State of the Commonwealth of Virginia that the Borrower is qualified to transact business in the Commonwealth of Virginia as a foreign corporation;

(iv) A Certificate of Good Standing for the Borrower as a foreign corporation issued by the Secretary of State of the Commonwealth of Virginia dated within ninety (90) days of the date hereof;

(v) Incumbency Certificate and certified resolutions of the Board of Directors of the Borrower authorizing the execution, delivery and performance of the Loan Documents to which the Borrower is a party;

(vi) A copy of the Articles of Organization or Certificate of Formation of the Guarantor, certified by the appropriate governmental official of the Guarantor’s state of formation to be true, correct and complete;

(vii) A copy of the Operating Agreement of the Guarantor certified by its manager(s) or member(s) to be true, correct and complete;

(viii) A Certificate of Good Standing for the Guarantor issued by the appropriate governmental official of the state of the Guarantor's formation dated within ninety (90) days of the date hereof; and

(xi) Incumbency certificate and certified resolutions of the manager(s) or member(s) authorizing the execution, delivery and performance of the Guaranty.

(c) **Representations and Warranties**. Each of the representations and warranties made by or on behalf of the Borrower to the Lender in Article III or elsewhere in this Agreement or in other Loan Documents shall be true and correct in all material respects on the Closing Date.

(d) **Collateral**.

(i) All of the obligations of the Borrower to the Lender under or in respect of this Agreement shall be entitled to all of the benefits of and be secured by this Agreement and the other Loan Documents and the Lender shall have obtained a perfected security interest in the Collateral of the Borrower.

(ii) The Loan Documents and all other documents in respect thereof, which shall create and maintain a first, prior and perfected security interest in favor of the Lender, and the appropriate financing statements and other documents in respect thereto and necessary to enable the Lender to perfect its security interest thereunder, shall have been duly executed and delivered by the Borrower to the Lender.

(e) **Payment of Fees**. The Borrower shall have paid all fees, costs and expenses as required by the Loan Documents in connection with the Closing including, but not limited to, payment of a $200,000 credit facility fee to the Lender.

ARTICLE V
AFFIRMATIVE COVENANTS

Until payment in full of the Loan and termination of this Agreement, the Borrower covenants and agrees that it will:

Section 5.1. **Pay Taxes and Other Obligations**. Pay (a) before they become delinquent, all taxes, assessments and governmental charges imposed upon the Borrower or its property or required to be collected by it, and (b) when due, all other indebtedness and liabilities of any kind now or hereafter owing by the Borrower, provided that the Borrower shall not be required to pay any such amount so long as (i) it is being contested diligently in good faith by appropriate proceedings, and any levy or execution upon or sale of assets, if threatened, has been effectively stayed, (ii) adequate provision therefor has been made on the books of the Borrower in accordance with GAAP, and (iii) such amount, when combined with all other amounts not paid as required by this subsection (b), does not and will not in the aggregate, if determined adversely to the Borrower, have a Materially Adverse Effect.

Section 5.2. **Notice of Adverse Events**. Promptly notify the Lender in writing of the occurrence or existence of any of the following: (a) any Event of Default or Default; (b) any matter or event which has resulted in, or may result in, a Materially Adverse Effect or any adverse determination in any material pending action, proceeding or investigation affecting the Borrower; (c) any loss from casualty or theft in excess of $50,000.00, whether or not insured, affecting the Borrower; (d) whether or not otherwise reportable under this Section 5.2, any notice of a violation or a claim involving any of the following, if the liability or penalty therefor may exceed $50,000.00 singly or in the aggregate for the Borrower: any applicable federal, state or local statute, rule, regulation, order or other provision of law relating to air emissions, water discharge, noise emissions, solid or liquid disposal, hazardous waste or substances, or other environmental, health or safety matters; or (e) if any of the representations and warranties contained in this Agreement or in any of the other Loan Documents ceases to be true, correct and complete in all material respects.

Section 5.3. **Observe Covenants, Etc**. Observe, perform and comply with all covenants, terms and conditions of this Agreement, the other Loan Documents and any other agreement or document entered into between the Borrower and the Lender.

Section 5.4. **Maintain Existence and Qualifications**. The Borrower will maintain and preserve in full force and effect its existence and rights and all licenses, franchises, and qualifications necessary to continue its business, and comply with all applicable statutes, rules and regulations pertaining to the operation, conduct and maintenance of its existence and all businesses of the Borrower including, without limitation, all federal, state and local laws relating to environmental safety, or health matters, and hazardous or liquid waste or chemicals or other liquids (including use, sale, transport or disposal thereof). The Borrower shall promptly deliver to the Lender copies of any amendments or modifications to its governing documents.

Section 5.5. **Information and Documents to be Furnished to the Lender**. The Borrower hereby covenants to the Lender that it will furnish to the Lender or the Lender's attorneys, accountants or duly authorized agents:

(a) **Financial Statements**. At Lender's request, the balance sheet of the Borrower and the Borrower's Affiliates and Subsidiaries as at the end of each quarterly period, the income and surplus statement of the Borrower for such quarterly period, the statement of changes in cash flows for such quarterly period (all in reasonable detail and with all notes and supporting schedules), all prepared by independent certified public accountants acceptable to the Lender. The Borrower shall obtain such written acknowledgments from the Borrower's independent certified public accountants as the Lender may require permitting the Lender to rely on such financial statements. Any management letter, supplemental letter or other document accompanying the report will also be provided to the Lender.

(b) **Certificates Regarding Financial Statements**. Concurrently with the delivery of the financial statements referred to in subsection (a), a certificate of the chief financial officer of the Borrower stating that to his knowledge, no Event of Default or no Default has occurred, except as specified in such certificate.

(c) **Auditor's Management Letters**. Promptly upon receipt thereof, copies of each report submitted to the Borrower by independent certified public accountants in connection with any annual, interim or special audit made by them of the books of the Borrower including, without limitation, each report submitted to the Borrower concerning its accounting systems and practices and any final comment letter submitted by such accountants to management in connection with its annual audit of the Borrower.

(d) **Tax Returns**. Within fifteen (15) days of the filing thereof with the Internal Revenue Service, the federal income tax and state tax returns of the Borrower. A true, complete and correct copy, together with all schedules and related forms, of Borrower's 2007 federal income tax return is attached hereto as Schedule 5.5(d) ("2007 Tax Return").

(e) **Other Information**. Such other information requested by the Lender at any time and from time to time concerning the business, properties or financial condition of the Borrower and its Affiliates and Subsidiaries.

(f) **Borrower's Good Standing Certificates**. No later than ten (10) days after the execution and delivery hereof, deliver to Lender a Certificate of Good Standing for the Borrower issued by the Delaware Secretary of State and a Certificate of Good Standing for the Borrower as a foreign corporation issued by the Secretary of State of the Commonwealth of Virginia, each dated within ten (10) days of the date hereof.

(g) **Guarantor's Good Standing Certificate**. No later than ten (10) days after the execution and delivery hereof, deliver to Lender a Certificate of Good Standing for the Guarantor issued by the appropriate governmental official of the state of the Guarantor's formation, dated within ten (10) days of the date hereof.

(h) **Searches**. Within fifteen (15) days of the execution and delivery hereof, deliver to Lender Uniform Commercial Code, federal tax lien, state tax lien and judgment searches in all states and counties where the Borrower is located or does business and upper court judgment searches against the Guarantor.

Section 5.6. **Insurance**. Maintain such insurance policies as may be required by law and as is currently in force. Said policy or policies shall not be terminable except upon thirty (30) days' written notice to the Borrower and Borrower shall immediately furnish to lender a copy of any such notice of termination. The Borrower shall furnish to the Lender copies of all such policies, upon Lender's request.

Section 5.7. **Access to Records and Property**. At any time and from time to time, upon request by the Lender, the Borrower shall give any representatives of the Lender access during normal business hours to, and permit any of them to examine, audit, copy or

make extracts from, any and all books, records, documents and any and all other information and materials in the possession of Borrower or any independent contractor relating to Borrower's and its Subsidiaries' and Affiliates' business affairs, properties, financial condition and the Collateral (to the extent the Borrower has the right to grant such access), and to inspect any of its properties wherever located.

Section 5.8. **Comply With Laws**. The Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, compliance with which is necessary to maintain its existence as a corporation or conduct of its business or with which non-compliance would have a Materially Adverse Effect.

Section 5.9. **Covenants Regarding Collateral** The Borrower makes the following covenants with the Lender regarding the Collateral:

(a) The Borrower will not permit the Collateral to be used in violation of any applicable law or policy of insurance;

(b) The Borrower, as agent of the Lender, will defend the Collateral against all claims and demands of all Persons, except for Permitted Liens;

(c) The Borrower will, at the Lender's request, obtain and deliver to the Lender such waivers as the Lender may require waiving a lienholder's enforcement rights against the Collateral and assuring the Lender's access to the Collateral in exercise of its rights hereunder;

(d) The Borrower will not sell, assign, lease, transfer, pledge, hypothecate or otherwise dispose of or encumber the Collateral or any interest therein; and

(e) The Borrower shall promptly notify the Lender of any material loss or damage to, or material diminution in the value of any Collateral.

Section 5.10. **Pay Legal Fees and Expenses**. The Borrower shall pay to the Lender, upon demand, together with interest at the Default Rate, from the date when incurred or advanced by the Lender until repaid by the Borrower all reasonable costs, expenses or other sums incurred or advanced by the Lender (including legal fees and disbursements) to preserve, collect, protect Lender's interest in or realize on the Collateral, and to enforce the Lender's rights as against the Borrower, the Guarantor or any account debtor, or in the prosecution or defense of any action or proceeding relating to the subject matter of this Agreement or the Loan Documents. All such expenses, costs and other sums shall be deemed secured by the Collateral.

Section 5.11. **Records**. The Borrower shall at all times keep proper books of record and account in which full and correct entries shall be made of each of its financial transactions, assets and operations in accordance with GAAP.

Section 5.12. **Name Changes; Location Changes**.

(a) The Borrower shall immediately notify the Lender if it is known by or conducting business under any names other than those set forth in Section 3.14 hereof.

(b) The Borrower shall immediately notify the Lender if the Borrower is conducting any of its businesses or operations at or out of offices or locations other than those set forth on Schedule 3.12 hereto, or it if changes the location of its chief executive office.

Section 5.13. **Subordination**. All debt, management fees, advances, payables and fees (collectively, "Fees") now or hereafter owed to any Affiliate, members, shareholders, managers, officers and directors of Borrower are hereby subordinated in right of payment and security to the Loan, except that any such Affiliate, members, shareholders, managers, officers and directors may receive such Fees in accordance with their existing, respective payment terms, provided no Event of Default shall have occurred hereunder which continues uncured.

Section 5.14. **Future Assurances**. The Borrower at anytime or from time to time, upon request of the Lender, shall take such steps and execute and deliver such financing statements and other documents, all in form and substance satisfactory to the Lender relating to the creation, validity or perfection of the security interest provided for herein, under the Code or other laws of the Commonwealth of Virginia or of another state or states.

Section 5.15. **Refinance of CORUS Loan or Incurrence of Subordinate Loan**. Borrower and its Affiliates will not (i) enter into, agree, or permit a refinancing of the CORUS Loan, or (ii) obtain a loan consented to by CORUS Bank, N.A., which is subject and subordinate to the CORUS Loan, without, in either instance, the express written consent of Lender, which consent shall not be unreasonably withheld. It shall not be deemed unreasonable for Lender to withhold its consent to either of the circumstances set forth in subdivisions (i) and (ii) above if either of such circumstances will materially diminish the value of the Collateral or materially impair the Borrower's ability to repay the Loan.

Section 5.16. **Delivery of Guaranty.** The Borrower shall immediately cause the Guarantor to execute and deliver the Guaranty to Lender upon full payment and satisfaction of the CORUS Loan.

ARTICLE VI
NEGATIVE COVENANTS

Until payment in full of the Loan and the termination of this Agreement, the Borrower covenants and agrees that it shall not:

Section 6.1. **Liquidation, Mergers, Consolidations, etc.** Dissolve or liquidate, or become a party to any merger or consolidation, or acquire by purchase, lease or otherwise, all or a substantial part (more than 10% in the aggregate during the term hereof) of the assets of any Person, or sell, transfer, lease or otherwise dispose of all or a substantial part (more than 10% in the aggregate during the term hereof) of its property or assets.

Section 6.2. **Indebtedness**. Create or permit to exist any Indebtedness, including any guaranties or other contingent obligations, except Permitted Indebtedness.

Section 6.3. **Liens**. Create, incur or permit to exist any Lien on any of its property or assets, whether now owned or hereafter acquired, except Permitted Liens.

Section 6.4. **Loans and Other Investments**. Make or permit to exist any advances on loans to, or guarantee or become contingently liable, directly or indirectly, in connection with the obligations, leases, stocks or dividends of, or own, purchase or make any commitment to purchase any stock, bonds, notes, debentures or other securities of, or any interest in, or make any capital contributions to (all of which are sometimes collectively referred to herein as "Investments") any Person except for (a) purchases of direct obligations of the federal government, (b) deposits in commercial banks, (c) commercial paper of any U. S. corporation having the highest ratings then given by Moody's Investor Services, Inc. or Standard & Poor's Corporation, (d) endorsement of negotiable instruments in the ordinary course of business, (e) advances to employees for business travel and other expenses incurred in the ordinary course of business, and (f) Investments allowed under the terms of existing agreements underlying Permitted Indebtedness, including, but not limited to, the repurchase of corporate debentures.

Section 6.5 **Change State of Formation, Location or Name**: (a) change the state of its formation; (b) change the place where its books and records are maintained, (c) change its chief executive office, or (d) change its name or transact business under any other name without giving the Lender thirty (30) days' prior written notice with respect to the matters set for in subsections (b), (c) and (d).

Section 6.6 **Modification of Documents**. Materially change, alter or modify, or permit any material change, alteration or modification of its governing documents.

Section 6.7 **Change in Business**. Materially change or alter the nature of its business.

Section 6.8. **Settlements**. Compromise, settle or adjust any claims in a material amount relating to any of the Collateral.

Section 6.9. **Change in Ownership**. Change the composition of its ownership if such change will result in a Change of Control (as defined in the Note).

Section 6.10. **Change of Fiscal Year or Accounting Methods**. Change its fiscal year or its accounting practices or principles, except as may be required by changes in GAAP.

Section 6.11. **Inconsistent Agreement**. Enter into an agreement containing any provisions that would be violated by the performance of the Borrower's obligations under this Agreement or any of the other Loan Documents.

Section 6.12. **Hazardous Substances.** Release, discharge or otherwise dispose of, or permit the manufacture, storage, transmission or presence of, any Hazardous Substances or otherwise cause or permit any Environmental Activity to be conducted at or exist at, over or upon any real property owned, leased or occupied by the Borrower (a) which constitutes a material violation of any Environmental Law or (b) which may be harmful or create a foreseeable risk of unreasonable harm to public health or welfare or to natural resources.

Section 6.13. **Default on Other Contracts or Obligations.** Except for existing defaults as disclosed on Schedule 3.4(b), default on any material contract with or obligations when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed.

Section 6.14. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under any Government Authority by which the management of the Borrower is displaced of its authority in the conduct of its business or such business is curtailed or materially impaired.

Section 6.15. **Judgment Entered.** Except for existing judgments as disclosed on Schedule 3.17, permit or suffer the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of the Borrower.

ARTICLE VII
EVENTS OF DEFAULT

Section 7.1. **Events of Default**. Each of the following shall constitute an Event of Default:

(a) The occurrence of any Default or Event of Default under the Note; or

(b) The Borrower shall default under any obligation, except for those set forth in Schedule 3.4(b) attached hereto, in excess of $100,000 owed to any obligee other than the Lender, which default entitles the obligee to accelerate any such obligation or exercise other remedies with respect thereto; or

(c) There shall occur any material loss or theft of the Collateral, which loss is not fully insured; or

(d) A judgment, except for those set forth in Schedule 3.17 attached hereto, in excess of $50,000.00 shall be rendered against the Borrower and shall remain undischarged, undismissed and unstayed for more than thirty (30) days (except judgments validly covered by insurance with a deductible of not more than $50,000.00) or there shall occur any levy upon, or attachment, garnishment or other seizure of, any material portion of the Collateral or other assets of the Borrower by reason of the issuance of any tax levy, judicial attachment or garnishment or levy or execution; or

(e) The making of any levy, seizure or attachment upon any material part of the Collateral; or

(f) There shall be a Change of Control (as defined in the Note); or

(g) Failure of the Guarantor to execute and deliver the Guaranty to Lender contemporaneously with full satisfaction of the CORUS Loan.

ARTICLE VIII
REMEDIES

Section 8.1. **Acceleration; Proceed Against Collateral**.

(a) Upon the occurrence of an Event of Default, the Default Amount shall, at the option of the Lender, become immediately due and payable without notice or demand; and

(b) The Lender may forthwith give written notice to the Borrower, whereupon the Borrower shall, at its expense, promptly deliver any or all Collateral to such place as the Lender may designate, or the Lender shall have the right to enter upon the premises where the Collateral is located and take immediate possession of and remove the Collateral without liability. In the event the Lender obtains possession of the Collateral, the Lender may sell any or all of the Collateral at public or private sale, at such price or prices as the Lender may deem best, either for cash, on credit, or for future delivery, in bulk or in parcels and/or lease or retain the Collateral repossessed using it or keeping it idle. Notice of any sale or other disposition of the Collateral shall be given to the Borrower at least ten (10) days before the time of any intended sale or disposition of the Collateral is to be made, which the Borrower hereby agrees shall be reasonable notice of such sale or other disposition. The Lender may also elect to retain the Collateral. The proceeds, if any, of any such sale or leasing by the Lender shall be applied: First to the payment of all fees and expenses including, without limitation, any legal fees and expenses incurred in repossessing the Collateral and selling and/or leasing it; Second to pay the Default Amount to the extent not previously paid by the Borrower; and Third, to pay any excess remaining thereafter to the Borrower. The Borrower acknowledges and agrees that it shall remain liable to the extent of any deficiency between the amount of the proceeds of the Collateral and all other payments received under this Agreement and the aggregate amounts of the sums referred to in clauses First and Second above.

Section 8.2. **Intentionally Omitted.**

Section 8.3. **Cumulative Remedies; Waivers**. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lender at law or in equity. No express or implied waiver by the Lender or any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. The failure or delay of the Lender in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lender shall not exhaust the same or constitute a waiver of any other right provided herein. The Events of Default and remedies thereon are not restrictive of and shall be in addition to any and all other rights and remedies of the Lender provided for by this Agreement and applicable law.

Section 8.4. **Costs and Expenses**. The Borrower shall be liable for all costs, charges and expenses, including reasonable attorneys' fees, disbursements and court costs, incurred by the Lender by reason of the occurrence of any Event of Default or the exercise of the Lender's remedies with respect thereto.

Section 8.5. **No Marshalling**. The Lender shall be under no obligation whatsoever to proceed first against any part of the Collateral before proceeding against any other part of the Collateral. It is expressly understood and agreed that all of the Collateral stands as equal security for the Loan, and that the Lender shall have the right to proceed against any or all of the Collateral in any order, or simultaneously, as in its sole and absolute discretion it shall determine. It is further understood and agreed that the Lender shall have the right, as it in its sole and absolute discretion shall determine, to sell any or all of the Collateral in any order or simultaneously.

Section 8.6. **No Implied Waivers; Rights Cumulative**. No delay on the part of the Lender in exercising any right, remedy, power or privilege hereunder or under any of the Loan Documents or provided by statute or at law or in equity or otherwise shall impair, prejudice or constitute a waiver of any such right, remedy, power or privilege or be construed as a waiver of any Event of Default or as an acquiescence therein. No right, remedy, power or privilege conferred on or reserved to the Lender hereunder or under any of the Loan Documents or otherwise is intended to be exclusive of any other right, remedy, power or privilege. Each and every right, remedy, power and privilege conferred on or reserved to the Lender hereunder or under any of the Loan Documents or otherwise shall be cumulative and in addition to each and every other right, remedy, power or privilege so conferred on or reserved to the Lander and may be exercised by the Lender at such time or times and in such order and manner as the Lender shall, in its sole and absolute discretion, deem expedient.

ARTICLE IX
MISCELLANEOUS RIGHTS AND DUTIES OF LENDER

Section 9.1. **Collections; Modifications Of Terms**. Provided an Event of Default shall have occurred which continues uncured, the Lender may, with respect to any of the Collateral, demand, sue for, collect or receive any money or property, at any time payable or receivable on account of or in exchange for, or make any compromises it deems desirable including, without limitation, extending the time of payment, arranging for payment in installments, or otherwise modifying the terms or rights with respect to any of the Collateral, all of which may be effected without notice to or consent by the Borrower and without otherwise discharging or affecting the Note, the Collateral or the security interests granted hereunder.

Section 9.2. **Uniform Commercial Code**. At all times prior and subsequent to an Event of Default, the Lender shall be entitled to all the rights and remedies of a secured party under the Code with respect to all Collateral.

Section 9.3. **Preservation Of The Collateral**. At all times prior and subsequent to an Event of Default, the Lender may take any and all action which in its sole and absolute discretion is necessary and proper to preserve its interest in the Collateral, including, without limitation, the payment of debts of the Borrower, which might, in the Lender's sole and absolute discretion, impair the Collateral or the Lender's security interest therein, purchasing insurance on the Collateral, repairing the Collateral, or paying taxes or assessments thereon, and the sums so expended by the Lender shall be secured by the Collateral, shall be added to the amount of the Loan due the Lender and shall be payable on demand with interest at the Default Rate from the date expended by the Lender until repaid by the Borrower.

Section 9.4. **Lender's Right to Cure**. In the event the Borrower shall fail to perform any of its obligations hereunder or under any of the Loan Documents, then the Lender, in addition to all of its rights and remedies hereunder, may perform the same, but shall not be obligated to do so, at the cost and expense of the Borrower. In any such event, the Borrower shall promptly reimburse the Lender together with interest at the Default Rate from the date such sums are expended until repaid by the Borrower.

Section 9.5. **Power of Attorney**. The Lender is hereby irrevocably appointed by the Borrower, as its lawful attorney and agent in fact to execute financing statements (if required) and other documents and agreements as the Lender may deem necessary for the purpose of perfecting any security interest, mortgages or Liens under any applicable law. Further, the Lender is hereby authorized to file on behalf of the Borrower, in its name and at its expense, such financing statements, continuation statements, documents or agreements in any appropriate governmental office. The Lender shall give the Borrower five (5) days' prior written notice of any filings made hereunder. The Borrower hereby grants a power of attorney to the Lender, which shall be exercisable only following an Event of Default that continues uncured beyond any applicable cure

period, to endorse the Borrower's name on checks, notes, acceptances, drafts and any other instruments requiring the Borrower's endorsement, to change the address where the Borrower's mail should be sent and to open all mail and to do such other acts and things necessary to effectuate the purposes of this Agreement. All acts by the Lender or its designee are hereby ratified and approved, and neither the Lender nor its designee shall be liable for any acts of omission or commission, or for any error of judgment or mistake. Notwithstanding the foregoing, the Lender shall be liable to the Borrower for any damages proximately caused the Borrower by the Lender's willful misconduct or gross negligence. The Borrower hereby grants a power of attorney to the Lender to file proofs of loss respecting the Collateral with the appropriate insurer and to endorse any checks or drafts constituting insurance proceeds. The powers of attorney granted to the Lender in this Agreement are irrevocable so long as this Agreement is in force.

ARTICLE X
SECURITY INTEREST

Section 10.1. **Grant of Security Interest**.

(a) **Security Interest**. As collateral security for (i) the due and punctual payment of the Loan, all interest thereon and any and all extensions, renewals, substitutions and changes in form thereof; and (ii) all costs and expenses incurred or paid by the Lender to enforce its rights pursuant to this Agreement, the Loan Documents or otherwise (including, without limitation, attorneys' fees), the Borrower hereby pledges, transfers, assigns, sets over and grants to the Lender, a security interest in the Collateral wherever located.

(b) All Collateral heretofore, herein or hereinafter given to the Lender shall secure payment of the Loan. The Lender shall be under no obligation to proceed against any or all of the Collateral before proceeding directly against the Borrower.

Section 10.2. **Continuation of Security Interest**. The security interest granted in this Agreement shall continue in full force and effect until the Borrower has fully paid and discharged all sums due under the Note and until this Agreement is terminated.

Section 10.3. **Construction**. This Agreement constitutes a security agreement under the Code. The Borrower shall execute, file and refile such financing statements, continuation statements, or file security agreements as the Lender shall require from time to time.

ARTICLE XI
PROVISIONS OF GENERAL APPLICATION

Section 11.1. **Waivers**. The Borrower waives demand, presentment, notice of dishonor or protest of any instrument either of the Borrower or others which may be included in the Collateral.

Section 11.2. **Consents**. The Borrower consents:

(a) To any extension, postponement of time of payment, indulgence or to any substitution, exchange or release of Collateral.

(b) To any addition to, or release of, any party or persons primarily or secondarily liable, or acceptance of partial payments on any Accounts or instruments and the settlement, compromising or adjustment thereof.

Section 11.3. **Survival**. All covenants, agreements, representations and warranties made by the Borrower herein or in any of the Loan Documents or in any certificate or instrument contemplated hereby shall survive any independent investigation made by Lender and the execution and delivery of this Agreement, and said certificates or instruments and shall continue so long as any sums due under the Note are outstanding and unsatisfied, applicable statutes of limitations to the contrary notwithstanding.

Section 11.4. **Notices, Written; Effective Date**. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given only if delivered in person or sent by certified or registered mail, postage prepaid, return receipt requested or by Federal Express or other reputable overnight mail or delivery service or hand delivery to Lender or the Borrower, as the case may be, at the addresses set forth below:

(a) If to the Lender:

Stonehenge Funding, LC
11465 Sunset Hills Road, #620
Reston, Virginia 20190
Attention: Beau Schweikert

(b) If to the Borrower:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 500
Reston, Virginia 20190
Attention: Jubal Thompson

Notice shall have been deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by certified or registered mail, return receipt requested, upon receipt or rejection; and (iii) if by overnight mail or delivery service, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

Section 11.5. **Amendments**. The terms of this Agreement shall not be waived, altered, modified, supplemented or terminated in any manner whatsoever except by a written instrument signed by the Lender and the Borrower.

Section 11.6. **Binding on Successors**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that the Borrower shall not assign or delegate any of its rights, remedies, warranties, representations or covenants arising under this Agreement or any other Loan Document without the prior written consent of the Lender, and any purported assignment or delegation without such consent shall be void.

Section 11.7. **Invalidity.** Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

Section 11.8. **Section and Paragraph Headings**. Section and paragraph headings are for convenience only and shall not be construed as part of this Agreement.

Section 11.9. **Governing Law**. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the Commonwealth of Virginia, without regard to principles of conflict of laws.

Section 11.10. **No Liability; Indemnification**.

(a) The Lender shall not be deemed to have assumed any liability or responsibility to the Borrower or any Person for the correctness, validity or genuineness of any instruments or documents that may be released or endorsed to the Borrower by the Lender (which shall automatically be deemed to be without recourse to the Lender in any event), or for the existence, character, quantity, quality, condition, value or delivery of any goods purporting to be represented by any such documents; and the Lender shall not be deemed to have assumed any obligation or liability to any supplier or account debtor or to any other Person. The Borrower hereby agrees to indemnify and defend the Lender and hold it harmless in respect of any claim or proceeding arising out of any matter referred to in this Section 11.10 (a).

(b) The Borrower hereby agrees to indemnify and defend the Lender and to hold the Lender and each of its respective officers, directors, attorneys, agents and employees harmless from and against any and all claims, damages, liabilities, costs and expenses (including, without limitation, reasonable fees, expenses and disbursements of counsel) which may be incurred by or asserted against the Lender or any such other indemnified Person in connection with or arising out of any investigation, litigation or proceeding related to this Agreement or the Loan Documents, whether or not the Lender is a party thereto, provided, however, that the Borrower shall not be required to

indemnify or hold harmless the Lender from any claims, damages, liabilities, costs and expenses to the extent, but only to the extent, a court of competent jurisdiction, in a final, non-appealable judgment against the Lender determines that such claims, damages, liabilities, costs and expenses were caused, in whole or in part, by the Lender's willful misconduct or gross negligence in performing its obligations under this Agreement or any of the Loan Documents.

(c) The Borrower agrees to indemnify and defend the Lender and hold the Lender harmless from and against any taxes, liabilities, claims and damages, including attorneys' fees and disbursements and other expenses incurred or arising by reason of the taking or the failure to take action by the Lender in respect of any transaction effected under this Agreement or in connection with the Lien provided for herein, including, without limitation, any taxes payable in connection with the delivery or registration of any of the Collateral as provided herein.

(d) The obligations of the Borrower under this Section 11.10 shall survive the termination of this Agreement.

Section 11.11. **Days**. Any and all references to "days" in this Agreement shall mean "calendar days" except as otherwise specifically provided in this Agreement or by law.

Section 11.12. **Agreement and Other Loan Documents Complementary**. The provisions of this Agreement shall be in addition to the Guaranty, the Note or other evidence of liability held by the Lender, all of which shall be construed as complementary to each other. In the event of ambiguity or inconsistency between this Agreement and any other Loan Document, then the terms of this Agreement will govern.

Section 11.13. **Lender's Relationship**. The Lender and the Borrower expressly agree that the relationship of the Lender to the Borrower is that of a lender only. The intent of this provision is to clarify and stipulate that the Lender is not a partner or a co-venturer of the Borrower and the Lender's sole interest in the Collateral is for the purpose of security for repayment of the Loan.

Section 11.14. **Expenses of Lender**. The Borrower agrees to pay the Lender's facility fees of $200,000 and out-of-pocket expenses of counsel for the Lender, including, but not limited to, financing statement filing fees.

Section 11.15. **Waiver of Jury Trial**.

(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER BY EXECUTION HEREOF AND LENDER BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE LOAN DOCUMENTS OR ANY

AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THE NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO MAKE THE LOAN.

(b) BORROWER AND LENDER AGREE THAT THEY SHALL NOT HAVE A REMEDY OF PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER IN ANY DISPUTE AND HEREBY WAIVE ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY HAVE NOW OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY DISPUTE WHETHER THE DISPUTE IS RESOLVED BY ARBITRATION OR JUDICIALLY.

Section 11.16. **Further Acknowledgments and Agreements of Borrower and Lender**.

(a) The Borrower and the Lender acknowledge and agree that they (i) have independently reviewed and approved each and every provision of this Agreement, including the Schedules and Exhibits attached hereto and any and all other documents and items as they or their counsel have deemed appropriate, and (ii) have entered into this Agreement and have executed the Loan Documents to which each is a party voluntarily, without duress or coercion, and have done all of the above with the advice of their legal counsel.

(b) The Borrower acknowledges and agrees that, to the extent deemed necessary by it or its counsel, it and its counsel have independently reviewed, investigated and/or have full knowledge of all aspects of the transactions and the basis for the transactions contemplated by this Agreement and/or have chosen not to so review and investigate (in which case, the Borrower acknowledges and agrees that it has knowingly and upon the advice of counsel waived any claims or defenses based on any fact or any event of the transaction that any investigation would have disclosed), including, without limitation:

(i) the risks and benefits of the various waivers of rights contained in this Agreement, including, but not limited to, the waiver of the right to jury trial; and

(ii) the adequacy of the consideration being transferred under this Agreement.

(c) The Borrower has made its own investigation as to all matters it deems material to this transaction and has not relied on any statement of fact or opinion, disclosure or non-disclosure by the Lender in any way, except for the consideration recited herein, in entering into this Agreement and executing the Loan Documents, and

further acknowledges that the Lender has not made any warranties or representations of any kind with respect to this transaction, except as may be specifically set forth herein or in the documents executed in conjunction with this Agreement, and the Borrower is not relying on any such representations or warranties.

Section 11.17. **CONFESSION OF JUDGMENT. BORROWER IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF VIRGINIA OR WITHIN ANY JURISDICTION IN WHICH BORROWER OR ITS AFFILIATES OPERATE TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS AND TO CONFESS JUDGMENT AGAINST BORROWER FOR ALL OR ANY PART OF THE SUMS DUE UNDER THE NOTE AND/OR UNDER THE LOAN AGREEMENT; AND IN EITHER CASE FOR INTEREST, COSTS, AND FEES TOGETHER WITH AN ATTORNEY COMMISSION OF FIVE PERCENT (5%) OR $15,000, WHICHEVER IS GREATER. BORROWER FURTHER AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR AND ENTER JUDGMENT AGAINST BORROWER IN AN ACTION OF REPLEVIN OR ANY OTHER ACTION TO RECOVER POSSESSION OF ANY COLLATERAL SECURING THIS NOTE. FOR PURPOSES OF CONFESSING JUDGMENT IN THE COMMONWEALTH OF VIRGINIA, BORROWER HEREBY APPOINTS AND DESIGNATES J. PHILLIP LONDON, JR. AND GEORGE E. KOSTEL, ESQUIRE, EITHER OF WHOM MAY ACT AS BORROWER'S DULY CONSTITUTED ATTORNEY-IN-FACT, TO CONFESS JUDGMENT AGAINST BORROWER PURSUANT TO THE PROVISIONS OF THIS NOTE AND OF SECTION 8.01-432 OF THE CODE OF VIRGINIA (1950), AS AMENDED, WHICH JUDGMENT SHALL BE CONFESSED IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. UPON LENDER'S REQUEST, BORROWER (i) SHALL NAME SUCH ADDITIONAL OR ALTERNATIVE PERSONS DESIGNATED BY LENDER AS BORROWER'S DULY CONSTITUTED ATTORNEY OR ATTORNEY-IN-FACT TO CONFESS JUDGMENT AGAINST BORROWER IN ACCORDANCE WITH THE TERMS OF THIS NOTE; AND (ii) SHALL AGREE TO THE DESIGNATION OF ANY ADDITIONAL CIRCUIT COURTS IN THE COMMONWEALTH OF VIRGINIA IN WHICH JUDGMENT MAY BE CONFESSED AGAINST BORROWER. NO SINGLE EXERCISE OF THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION SHALL EXHAUST THE POWER, REGARDLESS OF WHETHER SUCH EXERCISE IS RULED INVALID VOID OR VOIDABLE BY ANY COURT. THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS THE HOLDER OF THIS NOTE MAY ELECT. SUCH CONFESSIONS OF JUDGMENT OR ACTIONS SHALL BE WITH RELEASE OF ERRORS, WAIVERS OF APPEALS, WITHOUT STAY OF EXECUTION AND BORROWER WAIVES ALL RELIEF FROM ANY AND ALL APPRAISEMENT OR EXEMPTION LAWS NOW IN FORCE OR HEREAFTER ENACTED. IF A COPY OF THE NOTE, VERIFIED BY AN OFFICIAL OR AN**

OFFICER OF LENDER, SHALL BE FILED IN ANY PROCEEDING OR ACTION WHEREIN JUDGMENT IS TO BE CONFESSED, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL HEREOF AND SUCH VERIFIED COPY SHALL BE SUFFICIENT WARRANT FOR ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR AND CONFESS JUDGMENT AGAINST BORROWER AS PROVIDED HEREIN. JUDGMENT MAY BE CONFESSED FROM TIME TO TIME UNDER THE AFORESAID POWERS AND NO SINGLE EXERCISE OF THE AFORESAID POWERS TO CONFESS JUDGMENT, OR A SERIES OR JUDGMENTS, SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS, AFTER AND AS LENDER SHALL ELECT UNTIL SUCH TIME AS LENDER SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL SUMS DUE UNDER THE NOTE AND UNDER THE LOAN AGREEMENT, TOGETHER WITH INTEREST, COSTS AND FEES. THE PROVISIONS OF THIS SECTION 13 ARE EXERCISABLE BY LENDER ONLY IF A DEFAULT OR AN EVENT OF DEFAULT UNDER THE NOTE OR ANY OF THE LOAN DOCUMENTS OCCURS.

Section 11.18. **WAIVER REGARDING CONFESSION OF JUDGMENT. THE NOTE PROVIDES FOR THE REMEDY OF CONFESSION OF JUDGMENT BY LENDER. IN CONNECTION THEREWITH, BORROWER INTENTIONALLY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVES ITS RIGHT, IF ANY, TO NOTICE AND TO BE HEARD BEFORE THE ENTRY OF JUDGMENT BY CONFESSION. BORROWER ACKNOWLEDGES THAT IT IS REPRESENTED BY INDEPENDENT LEGAL COUNSEL AND THAT COUNSEL HAS EXPLAINED THE MEANING OF THIS WAIVER AND REMEDY TO BORROWER.**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

LENDER:

STONEHENGE FUNDING, LC

BY: _____
Name:
Title:

BORROWER:

COMSTOCK HOMEBUILDING COMPANIES, INC.

BY: _____
Name:
Title:

SCHEDULE 3.12

CHIEF EXECUTIVE OFFICE; PLACES OF BUSINESS

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SCHEDULE 3.14

OTHER NAMES

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SCHEDULE 3.19

EXCEPTIONS TO ENVIRONMENTAL REPRESENTATIONS

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SCHEDULE 5.5(d)

BORROWER'S 2007 FEDERAL INCOME TAX RETURN
[attached]

Exhibit 10.58

GUARANTY AGREEMENT

THIS GUARANTY dated February __, 2008 (together with any amendments or modifications hereto in effect from time to time, the **"Guaranty"**), made by **COMSTOCK POTOMAC YARD, L.C.**, a Virginia limited liability company having an address at _____ (**"Guarantor"**), in favor of **STONEHENGE FUNDING, LC**, having an office at 11465 Sunset Hills Road, #620, Reston, Virginia 20190 (**"Lender"**).

To induce Lender to make loans, extensions of credit or other financial accommodations to **COMSTOCK HOLDING COMPANIES, INC.** (**"Borrower"**), now or in the future, to secure the observance, payment and performance of the Liabilities (as defined below), and with full knowledge that Lender would not make the said loans, extensions of credit or financial accommodations without this Guaranty Agreement, which shall be construed as a contract of suretyship, Guarantor jointly and severally, and unconditionally agrees as follows:

1. **LIABILITIES GUARANTEED**.

1.1. Guarantor, jointly and severally, hereby guarantees and becomes surety to Lender for the full, prompt and unconditional payment of the Liabilities (as defined below), when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each term and condition to be performed by Borrower under the Loan Documents (as defined below). This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible Guaranty. This is a guaranty of payment and not of collection. Lender may require Guarantor to pay and perform its liabilities and obligations under this Guaranty and may proceed immediately against Guarantor without being required to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto, the liability of Guarantor hereunder being joint and several, and independent of and separate from the liability of Borrower, any other guarantor or person, and the availability of other collateral security for the Note and the other Loan Documents.

2. **DEFINITIONS**.

2.1. **"Note"** means that certain Promissory Note of even date herewith in the principal amount of Four Million and 00/100 Dollars ($4,000,000) from Borrower to Lender.

2.2. **"Loan Documents"** shall have the meaning set forth in the Note. The terms of the Loan Documents are hereby made a part of this Guaranty to the same extent and with the same effect as if fully set forth herein.

2.3 **"Liabilities"** means, collectively: (i) the repayment of all sums due under the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents; (ii) the performance of all terms, conditions and covenants set forth in the

Loan Documents; and (iii) all other obligations or indebtedness of Borrower to Lender whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including reasonable attorneys' fees.

2.4 All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

3. **REPRESENTATION AND WARRANTIES**. Guarantor represents and warrants to Lender as follows:

3.1. **Organization, Powers**. Guarantor (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the Commonwealth of Virginia; (ii) has the power and authority as a limited liability company to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority as a limited liability company to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

3.2. **Execution of Guaranty**. This Guaranty and each other Loan Document to which Guarantor is a party have been duly executed and delivered by Guarantor. Execution, delivery and performance of this Guaranty and each other Loan Document to which Guarantor is a party will not: (i) violate any provision of law, order of any court, agency or instrumentality of government, or any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound; (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents; and (iii) require any authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority.

3.3. **Obligations of Guarantor**. This Guaranty and each other Loan Document to which Guarantor is a party are the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally. The loans or credit accommodations made by Lender to Borrower and the assumption by Guarantor of its obligations hereunder and under any other Loan Document to which Guarantor is a party will result in material benefits to Guarantor. This Guaranty was entered into by Guarantor for commercial purposes.

3.4. **Litigation**. There is no action, suit, or proceeding at law or in equity or by or before any governmental authority, agency or other instrumentality now pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor or any of its properties or rights which, if adversely determined, would materially impair or affect: (i) the value of any collateral securing the Liabilities; (ii) Guarantor's right to carry on its business substantially as now conducted (and as now contemplated); (iii) its financial condition; or (iv) its capacity to consummate and perform its obligations under this Guaranty or any other Loan Document to which Guarantor is a party.

3.5. **No Defaults**. Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained herein.

3.6. **No Untrue Statements**. No Loan Document or other document, certificate or statement furnished to Lender by or on behalf of Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. Guarantor acknowledges that all such statements, representations and warranties shall be deemed to have been relied upon by Lender as an inducement to make the Loan to Borrower.

4. **NO LIMITATION OF LIABILITY**.

4.1. Without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor to Lender, and without reducing the amount due under the terms of this Guaranty, Lender may at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions, and in whole or in part:

4.1.1. Change the manner, place or terms of payment of (including, without limitation, the interest rate and monthly payment amount), and/or change or extend the time for payment of, or renew or modify, any of the Liabilities, any security therefor, or any of the Loan Documents evidencing same, and the Guaranty herein made shall apply to the Liabilities and the Loan Documents as so changed, extended, renewed or modified;

4.1.2. Sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property securing the Liabilities;

4.1.3. Exercise or refrain from exercising any rights against Borrower or other obligated parties (including Guarantor) or against any security for the Liabilities;

4.1.4. Settle or compromise any Liabilities, whether in a proceeding or not, and whether voluntarily or involuntarily, dispose of any security therefor (with or without consideration), and subordinate the payment of any of the Liabilities, whether or not due, to the payment of liabilities owing to creditors of Borrower other than Lender and Guarantor;

4.1.5. Apply any sums it receives, by whomever paid or however realized, to any of the Liabilities;

4.1.6. Add, release, settle, modify or discharge the obligation of any maker, endorser, guarantor, surety, obligor or any other party who is in any way obligated for any of the Liabilities;

4.1.7. Accept any additional security for the Liabilities; and/or

4.1.8. Take any other action which might constitute a defense available to, or a discharge of, Borrower or any other obligated party (including Guarantor) in respect of the Liabilities.

4.2. The invalidity, irregularity or unenforceability of all or any part of the Liabilities or any Loan Document, or the impairment or loss of any security therefor, whether caused by any action or inaction of Lender, or otherwise, shall not affect, impair or be a defense to Guarantor's obligations under this Guaranty.

5. **LIMITATION ON SUBROGATION.** Until such time as the Liabilities are paid in full, Guarantor waives any present or future right to which Guarantor is or may become entitled to be subrogated to Lender's rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Lender against Borrower or any security which Lender now has or hereafter acquires, whether or not such claim, right or remedy arises under contract, in equity, by statute, under common law or otherwise. If, notwithstanding such waiver, any funds or property shall be paid or transferred to Guarantor on account of such subrogation, contribution, reimbursement, or indemnification at any time when all of the Liabilities have not been paid in full, Guarantor shall hold such funds or property in trust for Lender and shall forthwith pay over to Lender such funds and/or property to be applied by Lender to the Liabilities.

6. **COVENANTS**.

6.1. **Financial Statements; Compliance Certificate**.

6.1.1. Guarantor shall furnish to Lender the following financial information, in each instance prepared in accordance with generally accepted accounting principles consistently applied:

(a) Not later than thirty (30) days after the filing with the Internal Revenue Service, a true, complete and signed copy of the federal tax return, including all schedules, of Guarantor.

(b) Such other information respecting the financial condition of Guarantor as Lender may from time to time reasonably request including, but not limited to, a financial statement.

6.1.2. Guarantor shall promptly notify Lender of the occurrence of any Default, Event of Default under this Guaranty or any other Loan Document, adverse litigation or material adverse change in its financial condition.

6.2. **Subordination of Other Debts**. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor (**"Subordinated Debt"**) to any and all obligations of Borrower to Lender now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest

payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Lender have been paid in full on or prior to such date, and (ii) no event which is or, with the passage of time or giving of notice or both, could become an Event of Default shall have occurred and be continuing; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Lender; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Lender by Guarantor, properly endorsed to the order of Lender, to apply to the Liabilities.

7. **EVENTS OF DEFAULT**.

Each of the following shall constitute a default (each, an **"Event of Default"**) hereunder:

7.1. Non-payment when due of any sum required to be paid to Lender under any of the Loan Documents or of any of the other Liabilities;

7.2. A breach by Guarantor of any other term, covenant, condition, obligation or agreement under this Guaranty, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Guarantor;

7.3. Any representation or warranty made by Guarantor in this Guaranty shall prove to be false, incorrect or misleading in any material respect as of the date when made;

7.4. An Event of Default under any of the Loan Documents.

8. **REMEDIES**.

8.1. Upon an Event of Default, all liabilities of Guarantor hereunder shall become immediately due and payable without demand or notice and, in addition to any other remedies provided by law, Lender may:

8.1.1. Enforce the obligations of Guarantor under this Guaranty.

8.1.2. To the extent not prohibited by and in addition to any other remedy provided by law, setoff against any of the Liabilities any sum owed by Lender in any capacity to Guarantor whether due or not.

8.1.3. Perform any covenant or agreement of Guarantor in default hereunder (but without obligation to do so) and in that regard pay such money as may be required or as Lender may reasonably deem expedient. Any costs, expenses or fees, including reasonable attorneys' fees and costs, incurred by Lender in connection with the foregoing shall be included in the Liabilities guaranteed hereby, and shall be due and payable on demand, together with interest at the Default Rate (as defined and described in the Note), such interest to be calculated from the

date of such advance to the date of repayment thereof. Any such action by Lender shall not be deemed to be a waiver or release of Guarantor hereunder and shall be without prejudice to any other right or remedy of Lender.

8.2. Settlement of any claim by Lender against Borrower, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Guaranty, except to the extent of the amount actually paid by Borrower or any other obligated party and legally retained by Lender in connection with the settlement (unless otherwise provided for herein).

9. **MISCELLANEOUS**.

9.1. **CONFESSION OF JUDGMENT. GUARANTOR DOES HEREBY AUTHORIZE AND EMPOWER ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES TO APPEAR FOR GUARANTOR IN ANY COURT LOCATED WITHIN A JURISDICTION WHERE BORROWER OR AFFILIATES OF BORROWER OPERATE AND CONFESS JUDGMENT AGAINST GUARANTOR FOR THE PRINCIPAL SUM AND ANY AND ALL INTEREST DUE TO THE DATE OF CONFESSION OF JUDGMENT AND FOR COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF FIVE PERCENT (5%) OR FIFTEEN THOUSAND ($15,000.00) DOLLARS, WHICHEVER IS GREATER. FOR PURPOSES OF CONFESSING JUDGMENT IN THE COMMONWEALTH OF VIRGINIA, GUARANTOR HEREBY APPOINTS AND DESIGNATES J. PHILLIP LONDON, JR. AND GEORGE E. KOSTEL, ESQUIRE, EITHER OF WHOM MAY ACT AS GUARANTOR'S DULY CONSTITUTED ATTORNEY-IN-FACT, TO CONFESS JUDGMENT AGAINST GUARANTOR PURSUANT TO THE PROVISIONS OF THIS GUARANTY AND SECTION 8.01-432 OF THE CODE OF VIRGINIA (1950), AS AMENDED, WHICH JUDGMENT SHALL BE CONFESSED IN THE CIRCUIT COURT OF FAIRFAX COUNTY OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. UPON LENDER'S REQUEST, GUARANTOR (i) SHALL NAME SUCH ADDITIONAL OR ALTERNATIVE PERSONS DESIGNATED BY LENDER AS GUARANTOR'S DULY CONSTITUTED ATTORNEY OR ATTORNEY-IN-FACT TO CONFESS JUDGMENT AGAINST GUARANTOR IN ACCORDANCE WITH THE TERMS OF THIS GUARANTY; AND (ii) SHALL AGREE TO THE DESIGNATION OF ANY ADDITIONAL CIRCUIT COURTS IN THE COMMONWEALTH OF VIRGINIA IN WHICH JUDGMENT MAY BE CONFESSED AGAINST GUARANTOR. NO SINGLE EXERCISE OF THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION SHALL EXHAUST THE POWER, REGARDLESS OF WHETHER SUCH EXERCISE IS RULED INVALID, VOID OR VOIDABLE BY ANY COURT. THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS THE HOLDER OF THIS GUARANTY MAY ELECT. FURTHER, GUARANTOR HEREBY WAIVES AND RELEASES ALL ERRORS AND ALL RIGHTS TO EXEMPTION, APPEAL, STAY OF EXECUTION, OR INQUISITION OR EXTENSION UPON ANY LEVY UPON REAL ESTATE OR PERSONAL PROPERTY TO WHICH GUARANTOR**

MAY OTHERWISE BE ENTITLED UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA OR ANY OTHER STATE WITHIN THE UNITED STATES NOW IN FORCE OR WHICH MAY HEREAFTER BE PASSED. THIS POWER AND AUTHORIZATION MAY BE USED AND REUSED AND SHALL NOT BE EXHAUSTED BY USE. THE PROVISIONS OF THIS SECTION 9.1 SHALL BE EXERCISABLE BY LENDER ONLY FOLLOWING AN EVENT OF DEFAULT HEREUNDER.

9.2. **Remedies Cumulative**. The rights and remedies of Lender, as provided herein and in any other Loan Document, shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Lender at law or in equity. The failure, at any one or more times, of Lender to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Lender shall have the right to take any action it deems appropriate without the necessity of resorting to any collateral securing this Guaranty.

9.3. **Integration**. This Guaranty and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto.

9.4. **Attorneys' Fees and Expenses**. If Lender retains the services of counsel by reason of a claim of a default or an Event of Default hereunder or under any of the other Loan Documents, or on account of any matter involving this Guaranty, or for examination of matters subject to Lender's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by Lender shall forthwith, on demand, become due and payable and shall be secured hereby.

9.5. **No Implied Waiver**. Lender shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.6. **Waiver**. Guarantor waives notice of acceptance of this Guaranty and notice of the Liabilities and waives notice of default, non-payment, partial payment, presentment, demand, protest, notice of protest or dishonor, and all other notices to which Guarantor might otherwise be entitled or which might be required by law to be given by Lender. Guarantor waives the right to marshalling of Borrower's assets or any stay of execution and the benefit of all exemption laws, to the extent permitted by law, and any other protection granted by law to guarantors, now or hereafter in effect with respect to any action or proceeding brought by Lender against it. Guarantor irrevocably waives all claims of waiver, release, surrender, alteration or compromise and the right to assert against Lender any defenses, set-offs, counterclaims, or claims that Guarantor may have at any time against Borrower or any other party liable to Lender.

9.7. **No Third Party Beneficiary**. Except as otherwise provided herein, Guarantor and Lender do not intend the benefits of this Guaranty to inure to any third party and no third party (including Borrower) shall have any status, right or entitlement under this Guaranty.

9.8. **Partial Invalidity**. The invalidity or unenforceability of any one or more provisions of this Guaranty shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.9. **Binding Effect**. The covenants, conditions, waivers, releases and agreements contained in this Guaranty shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Guaranty cannot be assigned by Guarantor without the prior written consent of Lender, and any such assignment or attempted assignment by Guarantor shall be void and of no effect with respect to the Lender.

9.10. **Modifications**. This Guaranty may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.11. **Jurisdiction**. **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE COMMONWEALTH OF VIRGINIA OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA; PROVIDED THAT NOTHING IN THIS GUARANTY SHALL BE DEEMED OR OPERATE TO PRECLUDE THE LENDER FROM BRINING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION IN WHICH BORROWER OR AFFILIATES OF BOROWER OPERATE. GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF VIRGINIA AND OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE, GUARANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE COMMONWEALTH OF VIRGINIA. GUARANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY SUCH CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

9.12. **Notices**. All notices and communications under this Guaranty shall be in writing and shall be given by either (a) hand-delivery, (b) certified or registered mail, post

prepaid, return receipt requested, or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Guaranty. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by certified or registered mail, return receipt requested, upon receipt or rejection; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.13. **Governing Law**. This Guaranty shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Virginia without reference to conflict of laws principles.

9.14. **Continuing Enforcement**. If, after receipt of any payment of all or any part of the Liabilities, Lender is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Guaranty shall continue in full force and effect or be reinstated, as the case may be, and Guarantor shall be liable for, and shall indemnify, defend and hold harmless Lender with respect to the full amount so surrendered. The provisions of this Section shall survive the termination of this Guaranty and shall remain effective notwithstanding the payment of the Liabilities, the cancellation of the Notes, this Guaranty or any other Loan Document, the release of any security interest, lien or encumbrance securing the Liabilities or any other action which Lender may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the Liabilities having become final and irrevocable.

9.15. **WAIVER OF JURY TRIAL. GUARANTOR AND LENDER AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY LENDER OR GUARANTOR ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. LENDER AND GUARANTOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS GUARANTY.**

9.16. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO, INCLUDING LENDER BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN**

THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS GUARANTY, ANY OTHER LOAN DOCUMENT OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL EITHER PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES IT MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound, has duly executed and delivered this Guaranty Agreement as of the day and year first above written.

WITNESS:

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

By: Comstock Homebuilding Companies, Inc., its Manager

_____

By: _____
Name:
Title:

Exhibit 10.59

SUPPLEMENT TO INDENTURE

This SUPPLEMENT TO INDENTURE, dated as of January 7, 2008 (this "Supplement"), is between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, the Company and the Trustee have executed and delivered the Indenture, dated as of March 15, 2007 (the "Indenture"), pursuant to which the Company's Senior Notes due 2017 (the "Original Notes") were issued;

WHEREAS, J.P. Morgan Ventures Corporation, the beneficial holder of the Original Notes (the "Original Noteholder"), has consented to amend and restate the Indenture and the Original Notes, subject to the terms and provisions of this Supplement;

WHEREAS, the Company has duly authorized the execution and delivery of this Supplement; and

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

NOW, THEREFORE, THIS SUPPLEMENT WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the equal and proportionate benefit of all Holders of the Original Notes, the Indenture is hereby supplemented as follows:

1. Upon execution and delivery of this Supplement, the Company shall pay to the Original Noteholder a cash deposit (the "Deposit") in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00). The Original Noteholder shall hold the Deposit until the Closing Date (as hereinafter defined) and apply it to the payment described in Section 3(a) or Section 4(a) of this Supplement, as the case may be, provided that the Original Noteholder may take from the Deposit for its own account an amount (the "Expense Payment") up to One Hundred Thousand Dollars ($100,000.00) to pay or reimburse itself for its fees and expenses in connection with the Letter of Intent dated December 21, 2007 (the "Letter of Intent") between the Company and the Original Noteholder and the Transaction Documents (as defined in the Letter of Intent), including, without limitation, expenses of attorneys, accountants, or advisors retained by or representing the Original Noteholder.

2. Prior to the Closing Date, the Original Noteholder shall not issue a Put Election Notice (as defined in the Indenture) unless an Event of Default (as defined in the Indenture) under the Indenture which is not currently existing occurs. There shall be no notices of default issued prior to the Closing Date for the failure of the Company to make a deposit into the Interest Reserve Account (as defined in the Indenture) on December 30, 2007, pursuant to Section 10.5(f) of the Indenture.

3. On or before the Closing Date (as hereinafter defined), the Company shall either (a) pay to the Original Noteholder or its designee in cash the amount of Fifteen Million Dollars ($15,000,000.00) or (b) cause, subject to the satisfaction of the conditions precedent set forth in Section 4 of this Supplement, the Company and the Trustee to execute an Amended and Restated Indenture in the form of Exhibit A hereto (the "Amended Indenture") and issue new Senior Notes (as defined in the Amended Indenture) in exchange for the Original Notes held by the Original Noteholder. The Company shall give to the Original Noteholder and Trustee an irrevocable and binding notice in the form of Exhibit B hereto (the "Closing Date Notice") of whether it will make the payment under clause (a) of this Section 3 or cause the execution and delivery of the Amended Indenture and issuance of the new Senior Notes, specifying the date (the "Closing Date") on which such events shall occur, provided that the Closing Date shall be not later than ten (10) days after the date of the Closing Date Notice and in no event shall be later than March 10, 2008. If the Company fails to deliver the Closing Date Notice by 5:00 PM, New York time, on February 29, 2008, it shall be deemed to have elected to make the payment under clause (a) of this Section 3. To the extent the Deposit exceeds the Expense Payment at the time a payment under clause (a) of this Section 3 is payable, the Original Noteholder shall apply such excess against the Company's obligations to make such a payment. On the date any payment under clause (a) of this Section 3 is payable, the Company shall (i) pay all accrued and unpaid interest accruing with respect to the Original Notes through and including such date, in cash and not from funds in the Interest Reserve Account, and (ii) cause the Trustee to pay from the Interest Reserve Account to the Original Noteholder a restructuring fee in the amount of One Hundred Thousand Dollars ($100,000.00), which payment shall be deemed not to be a payment of, and shall not affect the Company's obligations to pay, principal or interest with respect to the Original Notes. Upon the Original Noteholder's receipt of the payment under clause (a) of this Section 3 and any other amounts payable under this Paragraph, the Company and the Original Noteholder shall deliver a notice to the Trustee in the form of Exhibit C hereto and the Original Notes shall be surrendered to the Trustee for cancellation.

4. The obligations of the Original Noteholder to consent to the execution and delivery of the Amended Indenture, and the obligations of the Trustee to execute and deliver the Amended Indenture, are subject to the satisfaction of the following conditions precedent on or before the Closing Date:

(a) the Company shall have paid a restructuring payment in the amount of Eight Million Dollars ($8,000,000) in cash to the Original Noteholder or its designee; provided that to the extent the Deposit then exceeds the Expense Payment, the Original Noteholder shall apply such excess against the Company's obligations under this Section 4(a);

(b) the Company shall have (i) issued and duly executed and delivered Senior Notes (the "New Notes") in accordance with the Amended Indenture in the aggregate principal amount of Seven Million Dollars ($7,000,000), and (ii) instructed the Trustee to exchange the Original Notes for the New Notes, in accordance with Section 9.5 of the Indenture;

(c) the Company shall have directed the Trustee to transfer to the Original Noteholder, and the Original Noteholder shall have received, the entire balance of the Interest Reserve Account, in the amount of at least $866,700, as a pre-payment of the interest due with respect to the New Notes until December 31, 2008, with the balance of such funds constituting a

restructuring fee paid to the Original Noteholder which payment shall be deemed not to be a payment of, and shall not affect the Company's obligations to pay, principal or interest with respect to the New Notes;

(d) the Company shall have paid all accrued and unpaid interest accruing with respect to the Original Notes through and including the Closing Date, in cash and not from funds in the Interest Reserve Account;

(e) the Company shall have issued warrants (the "Warrants") to the Original Noteholder or its designee to purchase 1,000,000 shares of Class A common stock of the Company (the "Stock") exercisable at the Original Noteholder's option at any time within seven (7) years from the Closing Date at an exercise price equal to $.70 per share of Stock, which Warrants shall be in the form of Exhibit D hereto; and

(f) the Company shall have certified to the Trustee and the Original Noteholder that each of the Amended Indenture, the New Notes and the Warrants have been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms;

5. Until the execution and delivery of the Amended Indenture and the satisfaction of the conditions precedent set forth in Section 4 of this Supplement, the Trustee shall not withdraw, transfer or apply any funds in the Interest Reserve Account except in accordance with this Supplement.

6. If for any reason other than the Original Noteholder's material breach of its obligations under the Transaction Documents, either the Company fails to proceed to the Closing (as defined in the Letter of Intent) on the date set forth in the Closing Notice or the Closing Date does not occur by March 10, 2008, then in either such event (a) the Original Noteholder shall be entitled to apply the Deposit (less any costs, fees and expenses paid from the Deposit) to the outstanding principal amount of the Original Notes and (b) the Original Noteholder shall be entitled to receive a restructuring fee in the amount of One Hundred Thousand Dollars ($100,000.00). Notwithstanding anything to the contrary in the Indenture or the Control Agreement, if the Original Noteholder notifies the Trustee that the Original Noteholder is entitled to the restructuring fee in accordance with the preceding sentence, the Trustee shall immediately pay One Hundred Thousand Dollars ($100,000.00) from the Interest Reserve Account to the Original Noteholder without any further direction or consent of the Company, which payment shall not be deemed to be a payment of principal or interest with respect to the Original Notes, and the Company shall remain obligated to pay all such principal and interest with respect to the Original Notes.

7. The Company hereby represents and warrants, for the benefit of the Trustee and the Original Noteholder, that:

(a) this Supplement has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms;

(b) the Company has no unencumbered assets;

(c) the Company has paid interest with respect to the Original Notes through December 31, 2007; and

(d) the average closing price of the Stock during the month of December 2007, as reported on The NASDAQ Stock Market was $.70 per share of the Stock.

[signature page follows]

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

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name:
Title:

EXHIBIT A

Form of Amended Indenture

[see next page]

EXHIBIT B

Form of Closing Date Notice

_____, 2008

Wells Fargo Bank, N.A., as Trustee
[address]

J.P. Morgan Ventures Corporation
c/o JPMorgan Chase Bank, N.A.
277 Park Avenue, 8th Floor
New York, New York 10172
Attention: Mr. John P. McDonagh

Re: Closing Date Notice

Ladies and Gentlemen:

We refer to the Supplement to Indenture, dated as of January 7, 2008 (the "Supplement"), between Comstock Homebuilding Companies, Inc. (the "Company") and Wells Fargo Bank, N.A., as Trustee. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Supplement.

Pursuant to Section 3 of the Supplement, the Company hereby notifies you that [the Company will make the payment under clause (a) of Section 3 of the Supplement] [the Company will cause the execution and delivery of the Amended Indenture and issuance of the New Notes]. The Closing Date shall be _____, 2008.[1]

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name:
Title:

[1] The Closing Date shall be not later than ten (10) days after the date of the Closing Date Notice and in no event shall be later than March 10, 2008.

EXHIBIT C

Form of Notice to Trustee

_____, 2008

Wells Fargo Bank, N.A., as Trustee
[address]

Ladies and Gentlemen:

We refer to the Supplement to Indenture, dated as of January 7, 2008 (the "Supplement"), between Comstock Homebuilding Companies, Inc. (the "Company") and Wells Fargo Bank, N.A., as Trustee. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Supplement.

Pursuant to Section 3 of the Supplement, the Company and the Original Noteholder hereby notify you that the Original Noteholder has received the payment under clause (a) of the Section 3 of the Supplemental and all other amounts payable under the Supplement and the Original Notes will be surrendered to the Trustee for cancellation.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name:
Title:

J.P. MORGAN VENTURES CORPORATION

By: _____
Name:
Title:

EXHIBIT D

Form of Warrants
[see next page]

Exhibit 10.60

AMENDED AND RESTATED INDENTURE

between

COMSTOCK HOMEBUILDING COMPANIES, INC.

and

WELLS FARGO BANK, N.A.,
as Trustee

Dated as of March 14, 2008

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SCHEDULE AND EXHIBITS

AMENDED AND RESTATED INDENTURE

This AMENDED AND RESTATED INDENTURE, dated as of March 14, 2008, is between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, the Company and the Trustee have executed and delivered the Indenture, dated as of March 15, 2007, as supplemented by the Supplement to Indenture, dated as of January 7, 2008 (as so supplemented, the "Original Indenture"), pursuant to which the Company's Senior Notes due 2017 (the "Original Notes") were issued;

WHEREAS, J.P. Morgan Ventures Corporation, the beneficial holder of the Original Notes (the "Original Noteholder"), has consented to the amendments to the Original Indenture and the Original Notes contained herein, subject to the terms and provisions of this Indenture;

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

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

"Affiliate" of any specified Person means, with respect to such Person or any of its officers or directors, (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or any officer or director of any such other Person or (ii) with respect to any natural Person, any Person having a relationship with such Person by blood, marriage or adoption. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For the avoidance of doubt, any natural Person having a relationship by blood, marriage or adoption to any officer or director of the specified Person shall be an "Affiliate" of the specified Person.

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

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

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

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

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

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

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

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

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

"Change-of-Control" means (i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), including a "group" as defined in Section 1 3(d)(3) of the Exchange Act (but excluding a director or other fiduciary holding securities under an employee benefit plan of the Company), becomes the beneficial owner of Equity Interests of the Company having at least fifty percent (50%) of the total number of votes that may be cast for the election of directors of the Company; (ii) the merger or other business combination of the Company, sale of all or substantially all of the Company's assets or combination of the foregoing transactions (a "Transaction"), other than a Transaction immediately following which the shareholders of the Company immediately prior to the Transaction continue to have a majority of the voting power in the resulting entity (excluding for this purpose any shareholder owning directly or indirectly more than ten percent (10%) of the shares of the other company involved in the Transaction); or (iii) the persons who were directors of the Company on the date hereof (the "Incumbent Directors") shall cease to constitute at least a majority of the Board or a majority of the board of directors of any successor to the Company; provided, that, any director who was not a director as

of the date hereof shall be deemed to be an Incumbent Director if such director was elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of this provision, unless such election, recommendation or approval was the result of an actual or threatened election contest of the type contemplated by Regulation 14a-11 promulgated under the Exchange Act or any successor provision.

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

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

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

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

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

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

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

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

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

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

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

"Debt" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar

instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the types referred to in clauses (i) through (vii).

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

"Defeasance" has the meaning specified in Section 13.1.

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

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

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

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

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

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

"EBITDA" means, for any period, the net income (or loss) of the Company and its Subsidiaries for such period, excluding (a) any gains from the sale, lease, assignment or other transfer for value (each, a "Disposition") by the Company or any Subsidiary to any Person (other than the Company or any Subsidiary) of any asset or right of the Company or such Subsidiary (including, the loss, destruction or damage of any thereof or any actual or threatened (in writing to the Company or any Subsidiary) condemnation, confiscation, requisition, seizure or taking thereof) other than (i) the Disposition of any asset which is to be replaced, and is in fact replaced, within thirty (30) days with another asset performing the same or a similar function, (ii) the sale or lease of inventory in the ordinary course of business and (iii) other Dispositions in any fiscal year the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance or by way of deferred payment of principal pursuant to a note, installment receivable

or otherwise, but only as and when received) received by the Company or any Subsidiary pursuant to such Disposition net of (A) the direct costs relating to such sale, transfer or other disposition (including sales commissions and legal, accounting and investment banking fees), (B) taxes paid or reasonably estimated by the Company to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and (C) amounts required to be applied to the repayment of any Debt secured by a Lien on the asset subject to such Disposition (other than the Senior Notes) do not in the aggregate exceed $1,000,000, (b) any extraordinary gains not related to the extinguishment of debt, (c) any gains from discontinued operations and (d) with respect to calculating the Fixed Charge Coverage Ratio in connection with Section 10.5(e)(i), (ii) and (iii) only, the aggregate amount of all other non-cash items reducing net income (including any non-cash charge incurred as a result of a permanent write-down or impairment of an asset) for such period, to the extent deducted in determining such net income (or loss), Interest Expense, income tax expense, depreciation and amortization and non-cash management compensation expense for such period.

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

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

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

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

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

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

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

"Fixed Charge Coverage Ratio" means, for each period of determination, which period shall be either the four consecutive fiscal quarters or the one fiscal quarter ending on the last day of a particular fiscal quarter as otherwise indicated herein, the ratio of (a) the total for such period of EBITDA minus the sum of (i) the income taxes paid minus carryback refunds received by the Company and each of its Subsidiaries and (ii) all unfinanced expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Company, including expenditures in respect of any Capital Lease to (b) the sum for such period of (i) cash interest paid by the Company during the period plus (ii) management fees paid in cash.

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

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

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

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

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

"Interest Expense" means consolidated interest expense of the Company and its Subsidiaries for such period (including all imputed interest on Capital Leases) as reflected on the Company's income statement for the period.

"Interest Payment Date" means March 30, June 30, September 30 and December 30 of each year, commencing on March 30, 2009 during the term of this Indenture.

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

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

"LIBOR" has the meaning specified in Schedule A.

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

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

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

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

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

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

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

"Original Indenture" has the meaning set forth in the recitals.

"Original Issue Date" means the date of original issuance of each Senior Note or, in the case of the Senior Notes issued in exchange for the Original Notes, the date of such exchange.

"Original Noteholder" has the meaning set forth in the recitals.

"Original Notes" has the meaning set forth in the recitals.

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

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

(ii) Senior Notes for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company and/or its Affiliate shall act as its own Paying Agent) for the Holders of such Senior Notes; provided, that if the Company is acting as Paying Agent, Senior Notes for which payment or redemption money has been so deposited in trust with the Paying Agent shall be considered to remain Outstanding until such time as such payment or redemption money has actually been paid in full to the Holders of such Senior Notes; and provided, further, that, if such Senior Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made~ and (iii) Senior Notes that have been paid or in substitution for or in lieu of which other Senior Notes have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Senior Notes are held by Holders in whose hands such Senior Notes are valid, binding and legal obligations of the Company; provided, that in determining whether the Holders of the requisite principal amount of Outstanding Senior Notes have given any request, demand,

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

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

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

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

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

"Predecessor Senior Note" of any particular Senior Note means every previous Senior Note evidencing all or a portion of the same debt as that evidenced by such particular Senior Note. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Senior Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Senior Note.

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

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

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

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

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

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

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

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

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

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

"Rights Plan" means a plan of the Company providing for the issuance by the Company to all holders of its common Equity Interests of rights entitling the holders thereof to subscribe for or purchase shares or units of any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

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

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

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

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

"Stated Maturity" means the fifth anniversary of the date of this Indenture.

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

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

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

Section 1.2 Compliance Certificate and Opinions.

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

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

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

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

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

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

Section 1.3 Forms of Documents Delivered to Trustee.

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

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

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

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

Section 1.4 Acts of Holders.

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

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

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

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

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

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

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Senior Notes entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in

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

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

Section 1.5 Notices, Etc. to Trustee and Company.

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

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

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

Section 1.6 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it

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

Section 1.7 Effect of Headings and Table of Contents.

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

Section 1.8 Successors and Assigns.

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

Section 1.9 Separability.

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

Section 1.10 Benefits of Indenture.

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

Section 1.11 Governing Law.

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

Section 1.12 Submission to Jurisdiction.

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

Section 1.13 Non-Business Days.

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

Section 1.14 Counterparts.

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

ARTICLE II

SENIOR NOTE FORMS

Section 2.1 Form of Senior Note.

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

COMSTOCK HOMEBUILDING COMPANIES, INC.

Senior Note due 2013

No. _____ $ _____

Comstock Homebuilding Companies, Inc., a corporation organized and existing under the laws of Delaware (hereinafter called the "Company," which term includes any successor Person

under the Indenture hereinafter referred to), for value received, hereby promises to pay to **[_____]**, or registered assigns, the principal sum of **[PRINCIPAL AMOUNT] ($[_____]) [IF THE SECURITY IS A GLOBAL SECURITY, THEN INSERT: or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture]** on _____, 2013 [insert fifth anniversary of the date of the Indenture]. The Company further promises to pay interest on said principal sum from and including January 1, 2009, or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly in arrears, to but excluding the succeeding Interest Payment Date, on March 30, June 30, September 30 and December 30 of each year, commencing March 30, 2009, or if any such day is not a Business Day, on the next succeeding Business Day (and interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a fixed rate equal to 9.72% per annum through _____, 2010 [insert second anniversary of the date of the Indenture] ("Fixed Rate Period") and thereafter at a variable rate, reset quarterly, equal to LIBOR plus (i) 6.20% per annum, until _____, 2012 [insert fourth anniversary of the date of the Indenture], and (ii) 8.20% per annum thereafter until the principal hereof is paid or duly provided for or made available for payment; provided, that any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the rate of interest then borne by the Senior Notes (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from and including the dates such amounts are due to but excluding the dates such amounts are paid or made available for payment, and such interest shall be payable on demand.

During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (3 0)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Senior Note (or one or more Predecessor Senior Notes) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Senior Note (or one or more Predecessor Senior Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Senior Notes not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Senior Notes may be listed, traded or quoted and upon such notice as may be required by such exchange or automated quotation system, all as more fully provided in the Indenture.

During an Event of Default, the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise) or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any Debt of the Company other than Permitted Debt (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or Equity Interests purchase plan or (3) the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for, of or with any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks *pari passu* with or junior to such Equity Interest).

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

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

hereof, by his, her or its acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Permitted Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

[FORM OF REVERSE OF SECURITY]

This Senior Note is one of a duly authorized issue of securities of the Company (the "Senior Notes") issued under the Amended and Restated Indenture, dated as of _____, 2008 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as Trustee (in such capacity, the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Senior Notes, and of the terms upon which the Senior Notes are, and are to be, authenticated and delivered. All terms used in this Senior Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Senior Notes, subject to the terms and conditions of Article XI of the Indenture, redeem this Senior Note in whole at any time or, subject to the consent of the Holders, in part from time to time in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof (or of the redeemed portion hereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs.

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

In the event of redemption of this Senior Note in part only, a new Senior Note or Senior Notes for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Senior Notes are to be redeemed, the particular Senior Notes to be redeemed shall be selected not more than sixty (60) days prior to the Redemption

Date by the Trustee from the Outstanding Senior Notes not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Senior Note.

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

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

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

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

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

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

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

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

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

COMSTOCK HOMEBUILDING
COMPANIES, INC.

By: _____
Name: _____
Title: _____

Section 2.2 Restrictive Legend.

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

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

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN

AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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

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

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN B LOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN $100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN $100,000 AND MULTIPLES OF $1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL

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

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

Section 2.3 Form of Trustee's Certificate of Authentication.

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

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

Dated:

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

By: _____
Name:
Title:

Section 2.4 Temporary Senior Notes.

(a) Pending the preparation of definitive Senior Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Senior Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Senior Notes in lieu of which they are

issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Senior Notes may determine, as evidenced by their execution of such Senior Notes.

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

Section 2.5 Definitive Senior Notes.

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

ARTICLE III

THE SENIOR NOTES

Section 3.1 Payment of Principal and Interest.

(a) The unpaid principal amount of the Senior Notes shall bear interest at a fixed rate equal to 9.72% per annum through the second anniversary of the date of this Indenture ("Fixed Rate Period") and thereafter at a variable rate, reset quarterly, equal to LIBOR plus (i) 6.20% per annum, until the fourth anniversary of the date of this Indenture, and (ii) 8.20% per annum thereafter until the principal thereof is paid or duly provided for, such interest to accrue from and including January 1, 2009 or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for to but excluding the succeeding Interest Payment Date, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at the rate of interest then borne by the Senior Notes, compounded quarterly from and including the dates such amounts are due to but excluding the dates such amounts are paid or funds for the payment thereof are made available for payment.

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

of the principal of a Senior Note or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Senior Note that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Senior Note.

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

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Senior Notes (or their respective Predecessor Senior Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Senior Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Senior Note at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Senior Notes (or their respective Predecessor Senior Notes) are registered on such Special Record Date; or

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

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

sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period.

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

(f) The parties hereto acknowledge and agree that the Holders have certain rights to direct the Company to modify the Interest Payment Dates and corresponding Redemption Date and Stated Maturity of the Senior Notes or a portion of the Senior Notes pursuant to the Purchase Agreement. In the event any such modifications are made to the Senior Notes or a portion of the Senior Notes, appropriate changes to the form of Senior Note set forth in Article II hereof shall be made prior to the issuance and authentication of new or replacement Senior Notes. Any such modification of the Interest Payment Dates and corresponding Redemption Date and Stated Maturity with respect to any Senior Notes or tranche of Senior Notes shall not require or be subject to the consent of the Trustee.

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

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

Section 3.2 Denominations.

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

Section 3.3 Execution, Authentication, Delivery and Dating.

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Senior Notes in an aggregate principal amount (including all then Outstanding Senior Notes) not in excess of Seven Million Dollars ($7,000,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Senior Notes, and the Trustee in accordance with the

Company Order shall authenticate and deliver such Senior Notes. In authenticating such Senior Notes, and accepting the additional responsibilities under this Indenture in relation to such Senior Notes, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

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

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

(b) The Senior Notes shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Senior Notes may be manual or facsimile. Senior Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Senior Notes or did not hold such offices at the date of such Senior Notes.

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

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

Section 3.4 Global Senior Notes.

(a) The Senior Notes issued on the Original Issue Date shall be in the form of Global Senior Notes. Upon the election of any Holder holding a definitive Senior Note after the Original Issue Date, which election need not be in writing, the Senior Notes owned by such Holder shall be issued in the form of one or more Global Senior Notes registered in the name of the Depositary or its nominee. Each Global Senior Note issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Senior Note

or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor (which may be the Trustee), and each such Global Senior Note shall constitute a single Senior Note for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Senior Note may be exchanged in whole or in part for registered Senior Notes, and no transfer of a Global Senior Note in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Senior Note or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Senior Note, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i) (ii) (iii) or (iv) above in this Section 3.4(b), the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Senior Note of the occurrence of such event and of the availability of Senior Notes to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Senior Notes and the registration in the Securities Register of such Senior Notes in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

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

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

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

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

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

Section 3.5 Registration, Transfer and Exchange Generally.

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

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

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

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

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

(f) No service charge shall be made to a Holder for any transfer or exchange of Senior Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Senior Notes.

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

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

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

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

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

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

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

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

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

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

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

Section 3.7 Persons Deemed Owners.

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

Section 3.8 Cancellation.

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

Section 3.9 Agreed Tax Treatment.

Each Senior Note issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Senior Note or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Senior Note, intend and agree to treat such Senior Note as indebtedness of the Company for United States federal, state and local tax' purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

Section 3.10 CUSIP Numbers.

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

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

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

(a) either

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

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

(A) have become due and payable; or

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

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

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

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

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

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

Section 4.2 Application of Trust Money.

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

ARTICLE V

REMEDIES

Section 5.1 Events of Default.

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

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

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

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

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

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

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

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

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

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

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

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

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

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

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

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

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

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

(a) The Company covenants that if:

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

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

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

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

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

Section 5.4 Trustee May File Proofs of Claim.

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Senior Notes), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

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

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

Section 5.6 Application of Money Collected.

Any money or property collected or to be applied by the Trustee with respect to the Senior Notes pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Senior Notes and the notation thereon of the payment if only partially paid arid upon surrender thereof if fully paid:

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

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

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

Section 5.7 Limitation on Suits.

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

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

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

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

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

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

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

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

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

Section 5.9 Restoration of Rights and Remedies.

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

Section 5.10 Rights and Remedies Cumulative.

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

Section 5.11 Delay or Omission Not Waiver.

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

Section 5.12 Control by Holders.

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

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

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

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

Section 5.13 Waiver of Past Defaults.

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

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

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

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

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

Section 5.14 Undertaking for Costs.

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

Section 5.15 Waiver of Usury, Stay or Extension Laws.

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

ARTICLE VI

THE TRUSTEE

Section 6.1 Corporate Trustee Required.

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

Section 6.2 Certain Duties and Responsibilities.

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

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

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

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Senior Notes, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

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

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

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

Section 6.3 Notice of Defaults.

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or any premium or interest on any Senior Notes, the Trustee shall be fully protected in withholding the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Section 6.4 Certain Rights of Trustee.

Subject to the provisions of Section 6.2:

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

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

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

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

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

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

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

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of

Default specified in Section 5.1, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

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

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

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

Section 6.5 May Hold Senior Notes.

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

Section 6.6 Compensation; Reimbursement; Indemnity.

(a) The Company agrees:

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

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

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

or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

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

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

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

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

Section 6.7 Resignation and Removal; Appointment of Successor.

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

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

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

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when no Event of Default shall have occurred and be continuing, the Company, by a Board Resolution, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when an Event of Default shall have occurred and be continuing, the Holders, by Act of

the Holders of a majority in aggregate principal amount of the Outstanding Senior Notes, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Senior Note for at least six (6) months may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

Section 6.8 Acceptance of Appointment by Successor.

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

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

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

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

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

the Trustee may authenticate such Senior Notes either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Senior Notes or in this Indenture that the certificate of the Trustee shall have.

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

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

Section 6.11 Appointment of Authenticating Agent.

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Senior Notes, which shall be authorized to act on behalf of the Trustee to authenticate Senior Notes issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Senior Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Senior Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be an entity organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.11 the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

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

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an

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

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

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

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

Dated:

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

By: _____
Authenticating Agent

By: _____
Authenticating Agent

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

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

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

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

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished; in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

Section 7.2 Preservation of Information, Communications to Holders.

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

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

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

Section 7.3 Reports by Company.

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

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Senior Notes, (iii) JPMorgan Chase Bank, N.A., 277 Park Avenue, 8th Floor, New York, New York 10172, Attention: Mr. John P. McDonagh or such other address as designated by the Original Noteholder) and (iv) any beneficial owner of the Senior Notes reasonably identified to the Company (which identification may be made either by such beneficial owner or by JPMorgan Chase Bank, N.A.), a duly completed and executed officer's financial certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, or, if applicable, such shorter respective periods as may then be required by the Commission for the filing by the Company of quarterly reports on Form 10-Q and annual reports on Form 10-K.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "Commission") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial

statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c) shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act, and shall not relieve the Company of the requirement to deliver the certificate referred to in Section 7.3(b). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

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

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

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

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

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

Section 8.2 Successor Company Substituted.

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

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

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

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures without Consent of Holders.

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

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

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

(c) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other

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

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

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

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

Section 9.2 Supplemental Indentures with Consent of Holders.

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

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

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

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

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

Section 9.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder promptly after the execution thereof.

Section 9.4 Effect of Supplemental Indentures.

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

Section 9.5 Reference in Senior Notes to Supplemental Indentures.

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

ARTICLE X

COVENANTS

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

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

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

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

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

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

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

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of and any premium or interest (including any Additional Interest) on any Senior Note and remaining unclaimed for two (2) years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Senior Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily

published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.3 Statement as to Compliance.

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

Section 10.4 Calculation Agent.

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

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

Section 10.5 Additional Covenants.

(a) The Company covenants and agrees with each Holder of Senior Notes that if an Event of Default shall have occurred and be continuing, it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any Equity Interests of the Company, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any preferred Equity Interests of such Subsidiaries or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred Equity Interests are perpetual or otherwise), or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any Debt of the Company other than Permitted Debt (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or Equity Interests purchase plan or in connection with the issuance of Equity Interests in the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the applicable Event of Default, (B) as a result of an exchange, conversion reclassification or combination of any class or series of the Company's Equity Interests (or any Equity Interests in a Subsidiary of the Company) for any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in the Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interest or the Equity Interest issuable upon exercise of such warrants, options or other rights is the same Equity Interest as that on which the dividend is being paid or ranks pan passu with or junior to such Equity Interest).

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

(c) The Company hereby covenants and agrees that the Company shall maintain, as of the end of each fiscal quarter commencing with the Company's second fiscal quarter during 2008, a Consolidated Tangible Net Worth (as reported in the Company's balance sheet contained in the most recent periodic report filed with the Commission) in excess of $35,000,000.

(d) The Company will not permit the Leverage Ratio, as of the end of each fiscal quarter, to be greater than 3.00 to 1.00 commencing with the Company's second fiscal quarter during 2008.

(e) The Company will not permit the Fixed Charge Coverage Ratio, as of the end of each fiscal quarter commencing with the Company's second fiscal quarter during 2008, to be less than 0.50 to 1.00.

(f) Until such time as the Company shall (x) have maintained a Fixed Charge Coverage Ratio of not less than 2.0 to 1.0 as of the two (2) immediately preceding fiscal quarters, in each case, for, collectively, such quarter together with the preceding three (3) quarters and (y) be in compliance with all other covenants contained herein, the Company shall not repurchase any Equity Interests of the Company unless in connection with such repurchase of Equity Interests (an "Acceptable Repurchase") (i) the Company will redeem pursuant to Section 11.l(d) an amount of Senior Notes having an outstanding principal amount equal to the purchase price of such Equity Interests to be repurchased up to a maximum of $7,000,000, (ii) the redemption and defeasance of such Senior Notes shall be in increments of $1,000,000 and (iii) the redemption and defeasance, if any, of such Senior Notes shall be consummated and all payments or deposits made with respect thereto shall be made prior to the consummation of the repurchase of any Equity Interests.

(g) The Company covenants and agrees with each Holder of Senior Notes that it shall not issue any Equity Interests of the Company to any Affiliate of the Company which are preferred in any manner to the Company's shares of Class A common stock.

(h) The Company shall not, and shall not permit any Subsidiary to, directly or indirectly, enter into or conduct any transaction or series of related transactions with an Affiliate of the Company on terms that are less favorable to the Company or such Subsidiary, as the case may be, than those that could be obtained at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate.

Section 10.6 Waiver of Covenants.

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

Section 10.7 Treatment of Senior Notes.

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

Section 10.8 Limitation on Issuance of Debt.

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

ARTICLE XI

REDEMPTION OF SENIOR NOTES

Section 11.1 Optional Redemption and Mandatory Redemptions.

(a) The Company may, at its option, on any Interest Payment Date redeem the Senior Notes in whole at any time or, subject to the consent of the Holders, in part from time to time, in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date and plus all Breakage Costs (the "Optional Redemption Price").

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

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

Section 11.2 [Reserved].

Section 11.3 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Senior Notes, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Senior Notes to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Senior Notes, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Senior Notes or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Senior Notes, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

Section 11.4 Selection of Senior Notes to be Redeemed.

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

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

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

Section 11.5 Notice of Redemption.

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60th) day, prior to the Redemption Date to each Holder of Senior Notes to be redeemed, in whole or in part.

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

(i) the Redemption Date;

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

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

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

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

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

Section 11.6 Deposit of Redemption Price.

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

Section 11.7 Payment of Senior Notes Called for Redemption.

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

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

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

ARTICLE XII

SUBORDINATION OF SECURITIES

Section 12.1 Senior Notes Subordinate to Permitted Debt.

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

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

(a) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default specified in Section 5.1 (each such event, if any, herein sometimes referred to as a "Proceeding"), all Permitted Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Senior Notes on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Senior Notes, to the payment of all Permitted Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Senior Notes shall be paid or delivered directly to the holders of Permitted Debt in accordance with the priorities then existing among such holders until all Permitted Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(b) In the event of any Proceeding, after payment in full of all sums owing with respect to Permitted Debt, the Holders of the Senior Notes, together with the holders of any obligations of the Company ranking on a parity with the Senior Notes, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of

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

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

(d) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

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

Section 12.3 Payment Permitted if No Proceeding.

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

Section 12.4 Subrogation to Rights of Holders of Permitted Debt.

Subject to the payment in full of all amounts due or to become due on all Permitted Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Permitted Debt, the Holders of the Senior Notes shall be subrogated to the extent of the payments or distributions made to the holders of such Permitted Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Permitted Debt of the Company to substantially the same extent as the Senior Notes are subordinated to the Permitted Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Permitted Debt) to the rights of the holders of such Permitted Debt to receive payments and distributions of cash, property and securities applicable to the Permitted Debt until the principal of and any premium and interest (including any Additional Interest) on the Senior Notes shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Permitted Debt of any cash, property or securities to which the Holders of the Senior Notes or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Permitted Debt by Holders of the Senior Notes or the Trustee, shall, as among the Company, its creditors other than holders of Permitted Debt, and the Holders of the Senior Notes, be deemed to be a payment or distribution by the Company to or on account of the Permitted Debt.

Section 12.5 Provisions Solely to Define Relative Rights.

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

Section 12.6 Trustee to Effectuate Subordination.

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

Section 12.7 No Waiver of Subordination Provisions.

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

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Permitted Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Senior Notes, without incurring responsibility to such Holders of the Senior Notes and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of such Holders of the Senior Notes to the holders of Permitted Debt, do any one or more of the following, so long as such Permitted Debt shall remain Permitted Debt thereafter: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Permitted Debt, or otherwise amend or supplement in any manner Permitted Debt or any instrument evidencing the same or any agreement under which Permitted Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Permitted Debt, (iii) release any Person liable in any manner for the payment of Permitted Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 12.8 Notice to Trustee.

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

The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself, herself or itself to be a holder of Permitted Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Permitted Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Permitted Debt to participate in any payment or distribution

pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Permitted Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

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

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Senior Notes shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Senior Notes, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Permitted Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

Section 12.10 Trustee Not Fiduciary for Holders of Permitted Debt.

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

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

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

Section 12.12 Article Applicable to Paying Agents.

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

ARTICLE XIII

DEFEASANCE

Section 13.1 Defeasance and Discharge.

In the event of the exercise of the option provided in Section 10.5(b) by a Holder of the Senior Notes as a result of the receipt of a Change-of-Control Election on or prior to June 30, 2011, and the result that this Section 13.1 shall be applied to the Outstanding Senior Notes (the "Defeasance Senior Notes"), the Company shall, within thirty (30) days following its receipt of the Change-of-Control Election, satisfy the conditions set forth in Section 13.2. The Company shall be deemed to have been discharged from its obligations with respect to the Defeasance Senior Notes as provided in this Section 13.1 on and after the date the conditions set forth in the Section 13.2 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Defeasance Senior Notes and to have satisfied all of its other obligations under the Defeasance Senior Notes and this Indenture insofar as the Defeasance Senior Notes are concerned (and the Trustee, upon written request and at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following, which shall survive until otherwise terminated or discharged hereunder (1) the rights of Holders of the Defeasance Senior Notes to receive, solely from the trust fund described in Section 13.2 and as more fully set forth in such Section 13.2, payments in respect of the principal of~ premium, if any, and interest on the Defeasance Senior Notes when payments are due, (2) the Company's obligations with respect to the Defeasance Senior Notes under Sections 2.4, 3.5, 3.6, and 10.2, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article XIII.

Section 13.2 Conditions to Defeasance.

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

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

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

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

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

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

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

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

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

Section 13.4 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article XIII with respect to the Defeasance Senior Notes by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Defeasance Senior Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIII with respect to the Defeasance Senior Notes until such time as the Trustee or Paying Agent

is permitted to apply all money held in trust pursuant to Section 13.3 with respect to the Defeasance Senior Notes in accordance with this Article XIII provided, however, that if the Company makes any payment of principal of, premium, if any, or interest on any Defeasance Senior Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of Defeasance Senior Notes to receive such payment from the money so held in trust.

[signature page follows]

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

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: /s/ Bruce Labovitz
Name: Bruce Labovitz
Title: Chief Financial Officer

WELLS FARGO BANK, N.A., as Trustee

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

DETERMINATION OF LIBOR

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

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

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

(3) As used herein: "Reference Banks" means four (4) major banks in the London interbank market selected by the Calculation Agent; "LIBOR Business Day" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London; the "Base Rate" on any day shall equal the greater of the arithmetic mean of (i) the "prime rate" for dollar denominated loans quoted by leading banks in the City of New York selected by the Calculation Agent and (ii) the Federal Funds Rate (as defined below) plus 0.50% per annum; and the "Federal Funds Rate" on any day equals the rate per annum equal to the weighted average (rounded upwards to the nearest 0.00000 1) of the rate on overnight federal funds transactions with members of the Federal Reserve System only arranged by federal funds brokers, as published as of such day by the Federal Reserve Bank of New York.

EXHIBIT A

FORM OF OFFICER'S FINANCIAL CERTIFICATE

The undersigned, the **[CHIEF FINANCIAL OFFICER / TREASURER / ASSISTANT TREASURER / SECRETARY / ASSISTANT SECRETARY, CHAIRMAN / VICE CHAIRMAN / CHIEF EXECUTIVE OFFICE / PRESIDENT / VICE PRESIDENT]** of Comstock Homebuilding Companies, Inc. (the "Company") hereby certifies, pursuant to Section 7.3(b) of the Amended and Restated Indenture, dated as of _____, 2008 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as trustee, that, as of **[DATE], [YEAR]**, the Company, if applicable, and its subsidiaries had the following ratios and balances:

As of [QUARTERLY/ANNUAL FINANCIAL DATE], [YEAR]

Consolidated Net Worth	_____
Leverage Ratio	_____
Fixed Charge Coverage Ratio	_____
Senior secured indebtedness for borrowed money ("Debt")	$_____
Senior unsecured Debt	$_____
Subordinated Debt	$_____
Total Debt	$_____
Ratio of (x) senior secured and unsecured Debt to (y) total Debt	_____ %
Ratio of (x) Subordinated Debt to (y) Consolidated Tangible Net Worth	_____

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three (3) years ended [DATE], [YEAR].]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries for the fiscal quarter ended [DATE], [YEAR].]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the **[QUARTER] [YEAR]** ended **[DATE], [YEAR]**, and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (expect as otherwise noted therein).

[ANNUALLY AND, IF THE COMPANY IS NO LONGER SUBJECT TO AND IN COMPLIANCE WITH SECTION 13 OR 15(d) OF THE EXCHANGE ACT:] There has been no default with respect to any indebtedness owed by the Company and/or its subsidiaries in a principal amount in excess of $2,000,000 (other than those defaults cured prior to the earlier to occur of (i) the expiration of any applicable cure period and (ii) thirty (30) days after the occurrence of the same) **[except as set forth below:]**.

Attached hereto is a current organizational chart of the Company and its subsidiaries as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this **[DAY]** day of **[MONTH], [YEAR].**

COMSTOCK HOMEBUILDING
COMPANIES, INC.

By: _____
Name: _____
Title: _____

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 510
Reston, Virginia 20190
(703) 883-1700

EXHIBIT B

FORM OF
OFFICERS' CERTIFICATE
PURSUANT TO SECTION 10.3

Pursuant to Section 10.3 of the Amended and Restated Indenture, dated as of _____, 2008 (as modified, supplemented or amended from time to time, the "Indenture") among Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company") and Wells Fargo Bank, N.A., as Trustee, each of the undersigned hereby certifies that, to the knowledge of the undersigned, the Company is not in default in the performance or observance of any of the terms, provisions and conditions of the Indenture (without regard to any period of grace or requirement of notice provided under the Indenture) for the fiscal period ending on **[DATE], [YEAR], [except as follows: SPECIFY EACH SUCH DEFAULT AND THE NATURE AND STATUS THEREOF].**

Capitalized terms used herein, and not otherwise defined herein, have the respective meanings assigned thereto in the Indenture.

[signatures page follows]

IN WITNESS WHEREOF, the undersigned have executed this Officers' Certificate as of **[DATE], [YEAR].**

By: _____

Name: _____

Title: **[Must be the CHIEF EXECUTIVE OFFICER, the PRESIDENT or a SENIOR VICE PRESIDENT]** of Comstock Homebuilding Companies, Inc.

By: _____

Name: _____

Title: **[Must be the CHIEF FINANCIAL OFFICER, the CHIEF ACCOUNTING OFFICER, the TREASURER or an ASSISTANT TREASURER]** of Comstock Homebuilding Companies, Inc.

Exhibit 10.61

LOAN AGREEMENT

DATED AS OF MARCH 14, 2008

by and among

COMSTOCK STATION VIEW, L.C.,

COMSTOCK POTOMAC YARD, L.C.,

AS BORROWERS,

KEYBANK NATIONAL ASSOCIATION,

THE OTHER LENDERS THAT MAY BECOME

PARTIES TO THIS AGREEMENT,

AND

KEYBANK NATIONAL ASSOCIATION,

AS AGENT

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EXHIBITS AND SCHEDULES

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made as of the 14th day of March, 2008 by and among **COMSTOCK STATION VIEW, L.C.**, a Virginia limited liability company ("Station View"), **COMSTOCK POTOMAC YARD, L.C.**, a Virginia limited liability company ("Potomac"; Station View and Potomac are sometimes hereinafter referred to individually as "Borrower" and collectively as "Borrowers"), **KEYBANK NATIONAL ASSOCIATION** ("KeyBank") and the other lending institutions that may become parties hereto pursuant to §18 (together with KeyBank, the "Lenders"), and **KEYBANK NATIONAL ASSOCIATION**, as Agent for the Lenders (the "Agent").

RECITALS

WHEREAS, Borrowers have requested that the Lenders provide a loan to Borrowers; and

WHEREAS, the Agent and the Lenders are willing to provide such loan to Borrowers on and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the recitals herein and mutual covenants and agreements contained herein, the parties hereto hereby covenant and agree as follows:

§1. DEFINITIONS AND RULES OF INTERPRETATION.

§1.1 Definitions. The following terms shall have the meanings set forth in this §l or elsewhere in the provisions of this Agreement referred to below:

Affiliate. An Affiliate, as applied to any Person, shall mean any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means (a) the possession, directly or indirectly, of the power to vote ten percent (10%) or more of the stock, shares, voting trust certificates, beneficial interest, partnership interests, member interests or other interests having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise, or (b) the ownership of (i) a general partnership interest, (ii) a managing member's or manager's interest in a limited liability company or (iii) a limited partnership interest or preferred stock (or other ownership interest) representing ten percent (10%) or more of the outstanding limited partnership interests, preferred stock or other ownership interests of such Person.

Agent. KeyBank National Association, acting as administrative agent for the Lenders, and its successors and assigns.

Agent's Head Office. The Agent's head office located at 127 Public Square, Cleveland, Ohio 44114-1306, or at such other location as the Agent may designate from time to time by notice to the Borrowers and the Lenders.

Agent's Special Counsel. McKenna Long & Aldridge LLP or such other counsel as selected by Agent.

Agreement. This Loan Agreement, including the Schedules and Exhibits hereto.

Agreement Regarding Fees. See §4.2.

Appraisal. An MAI appraisal of the value of the Mortgaged Property, determined on an "as-is" market value basis, performed by an independent appraiser selected by the Agent who is not an employee of the Borrowers, the Guarantor or any of their Affiliates, the Agent or a Lender, the form and substance of such appraisal and the identity of the appraiser to be in compliance with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto and all other regulatory laws and policies (both regulatory and internal) applicable to the Lenders and otherwise acceptable to the Agent.

Appraised Value. The "as is" market value of the Mortgaged Property as reflected in the Appraisal of the Mortgaged Property; subject, however, to such reasonable adjustments to the value determined thereby as may be required by the appraisal department of the Agent in its good faith business judgment. The Appraised Value of the Mortgaged Property shall be determined based only upon permits for the development of the Mortgaged Property that have been issued and are in full force and effect.

Assignment and Acceptance Agreement. See §18.1.

Assignment of Interests. The Assignment of Interests dated of even date herewith by the Guarantor in favor of Agent for the benefit of the Lenders, as the same may be hereafter modified or amended.

Assignment of Potomac Loan Documents. The Assignment dated of even date herewith from Corus Bank, N.A. to Agent.

Assignment of Sales Contracts and Deposits. The Assignment of Sales Contracts and Deposits dated of even date herewith by Potomac in favor of Agent for the benefit of the Lenders, as the same may be hereafter modified or amended.

Assignment of Station View Loan Documents. The Assignment dated of even date herewith from KeyBank National Association to Agent.

Authorized Officer. Christopher Clemente and Bruce Labovitz as to Station View, and Christopher Clemente and Bruce Labovitz as to Potomac.

Balance Sheet Date. December 31, 2007.

Bankruptcy Code. Title 11, U.S.C.A., as amended from time to time or any successor statute thereto.

Base Rate. The greater of (a) the fluctuating annual rate of interest announced from time to time by the Agent at the Agent's Head Office as its "prime rate" or (b) one half of one percent (0.5%) above the Federal Funds Effective Rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate being charged to any customer. Any change in the rate of interest payable hereunder resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change in the Base Rate becomes effective, without notice or demand of any kind.

Base Rate Loans. Collectively, Loans bearing interest calculated by reference to the Base Rate.

Borrowers. As defined in the preamble hereto.

Breakage Costs. The cost to any Lender of re-employing funds bearing interest at LIBOR (calculated based on the change in LIBOR) for the balance of an applicable Interest Period (actual or requested), incurred (or reasonably expected to be incurred) in connection with (i) any payment of any portion of the Loans bearing interest at LIBOR prior to the termination of any applicable Interest Period, (ii) the conversion of a LIBOR Rate Loan to any other applicable interest rate on a date other than the last day of the relevant Interest Period, or (iii) the failure of a Borrower to draw down, on the first day of the applicable Interest Period, any amount as to which such Borrower has elected a LIBOR Rate Loan.

Business Day. Any day on which banking institutions located in the same city and State as the Agent's Head Office are located are open for the transaction of banking business and, in the case of LIBOR Rate Loans, which also is a LIBOR Business Day.

Capitalized Lease. A lease under which the discounted future rental payment obligations of the lessee or the obligor are required to be capitalized on the balance sheet of such Person in accordance with GAAP.

CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

CHCI Subordinate Notes. The promissory notes issued pursuant to that certain Indenture dated March 15, 2007, by and between Guarantor and Wells Fargo Bank, N.A. ("Trustee"), as amended and restated pursuant to that certain Amended and Restated Indenture dated March 14, 2008, by and between Guarantor and Trustee.

Closing Date. The first date on which all of the conditions set forth in §10 and §11 have been satisfied.

Code. The Internal Revenue Code of 1986, as amended.

Collateral. All of the property, rights and interests of the Borrowers and the Guarantor which are subject to the security interests, security title, liens and mortgages created by the Security Documents, including, without limitation, the Mortgaged Property, the Guaranty and the Assignment of Interests.

Commitment. With respect to each Lender, the amount set forth on Schedule 1.1 hereto as the amount of such Lender's Commitment to make or maintain Loans to the Borrowers, as the same may be changed from time to time in accordance with the terms of this Agreement.

Commitment Percentage. With respect to each Lender, the percentage set forth on Schedule 1.1 hereto as such Lender's percentage of the aggregate Commitments of all of the Lenders, as the same may be changed from time to time in accordance with the terms of this Agreement.

Compliance Certificate. See §7.4(i).

Condemnation Proceeds. All compensation, awards, damages, judgments and proceeds awarded to a Borrower by reason of any Taking, net of all reasonable and customary amounts actually expended to collect the same.

Condominium Declaration. Declaration of The Eclipse on Center Park Condominium dated as of October 20, 2006, by Comstock Potomac Yard, L.C., a Virginia limited liability company ("Declarant"), recorded on October 20, 2006 at Book 4033, Page 290, in the Office of the Clerk of the Circuit Court of Arlington County, Virginia; as amended by that certain Corrective Amendment to Condominium Instruments to The Eclipse on Center Park Condominium, dated November 27, 2006, by Declarant, recorded on November 29, 2006, at Book 4045, Page 1819, aforesaid records; as further amended by that certain Corrective Amendment to Condominium Instruments to The Eclipse on Center Park Condominium dated June 19, 2007, by Declarant, recorded on June 20, 2007, at Book 4109, Page 110, aforesaid records; as further amended by that certain Corrective Amendment to Condominium Instruments to The Eclipse on Center Park Condominium dated May 18, 2007, by Declarant, recorded on December 19, 2007, at Book 4156, Page 891, aforesaid records; as further amended by that certain Corrective Amendment to Condominium Instruments to The Eclipse on Center Park Condominium dated December 27, 2007, by Declarant, recorded on December 28, 2007 at Book 4158, Page 1412, aforesaid records; as further amended by that certain Amendment to

Condominium Instruments of The Eclipse on Center Park Condominium Assigning Storage Spaces, dated December 27, 2007, by Declarant, recorded on December 28, 2007, at Book 4158, Page 1515, aforesaid records.

Contribution Agreement. That certain Contribution Agreement dated of even date herewith among the Borrowers and the Guarantor, as the same may be modified, amended or ratified from time to time.

Conversion/Continuation Request. A notice given by a Borrower to the Agent of its election to convert or continue a Loan in accordance with §4.1.

Declaration. The instrument, and all amendments or supplements thereto, recorded in among the land records of the jurisdiction in which the Station View Project or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area.

Default. See §12.1.

Default Rate. See §4.12.

Delinquent Lender. See §14.5(c).

Derivatives Contract. Any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement. Not in limitation of the foregoing, the term “Derivatives Contract” includes any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement.

Distribution. With respect to any Person, the declaration or payment of any cash, cash flow, dividend or distribution on or in respect of any shares of any class of capital stock, partner’s interest, member’s interest or other beneficial interest of such Person; the purchase, redemption, exchange or other retirement of any shares of any class of capital stock, partner’s interest, member’s interest or other beneficial interest of such Person, directly or indirectly through a subsidiary of such Person or otherwise; the return of capital by a Person to its shareholders, partners, members or other beneficial owners as such; any payment made to retire,

or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any capital stock, partner's interest, member's interest or other beneficial interest in a Person; or any other distribution on or in respect of any shares of any class of capital stock, partner's interest, member's interest or other beneficial interest of such Person.

Dollars or $. Dollars in lawful currency of the United States of America.

Domestic Lending Office. Initially, the office of each Lender designated as such on Schedule 1.1 hereto; thereafter, such other office of such Lender, if any, located within the United States that will be making or maintaining Base Rate Loans.

Drawdown Date. The date on which any Loan is made or is to be made, and the date on which any Loan which is made prior to the Maturity Date is converted in accordance with §4.1.

Employee Benefit Plan. Any employee benefit plan within the meaning of §3(3) of ERISA maintained or contributed to by either Borrower or any ERISA Affiliate, other than a Multiemployer Plan.

Environmental Engineer. A firm of independent professional engineers or other scientists generally recognized as expert in the detection, analysis and remediation of Hazardous Substances and related environmental matters and acceptable to the Agent in its reasonable discretion.

Environmental Laws. As defined in the Indemnity Agreement.

Equity Interests. With respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

ERISA. The Employee Retirement Income Security Act of 1974, as amended and in effect from time to time.

ERISA Affiliate. Any Person which is treated as a single employer with a Borrower or the Guarantor under §414 of the Code.

ERISA Reportable Event. A reportable event with respect to a Guaranteed Pension Plan within the meaning of §4043 of ERISA and the regulations promulgated thereunder as to which the requirement of notice has not been waived.

Event of Default. See §12.1.

Federal Funds Effective Rate. For any day, the rate per annum (rounded upward to the nearest one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of Cleveland on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate."

GAAP. Generally accepted accounting principles that are (a) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time and (b) consistently applied with past financial statements of the Person adopting the same principles.

General Contractor Dispute. The disputes relating to Potomac's and Balfour Beatty Construction LLC (as successor-in-interest to Centex Construction LLC) obligations for the Potomac Project under the AIA construction contract and exhibits executed on November 4, 2004 by Potomac and Centex Construction LLC and related Agreement dated January 30, 2008 by and between Potomac and Balfour Beatty Construction LLC.

Governmental Authority. The United States of America, the Commonwealth of Virginia, any political subdivision thereof, and any agency, authority, department, commission, board, bureau, or instrumentality of any of them.

Guaranteed Pension Plan. Any employee pension benefit plan within the meaning of §3(2) of ERISA maintained or contributed to by a Borrower or any ERISA Affiliate the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

Guarantor. Comstock Homebuilding Companies, Inc., a Delaware corporation.

Guaranty. The Unconditional Guaranty of Payment and Performance dated of even date herewith made by Guarantor in favor of the Agent and the Lenders, as the same may be modified, amended, or ratified, such Guaranty to be in form and substance satisfactory to Agent.

Hazardous Substances. As defined in the Indemnity Agreement.

Holdbacks. The Interest Holdback.

Indebtedness. With respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed (other than trade debt incurred in the ordinary course of business which is not more than thirty (30) days past due); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or services rendered; (c) obligation

of such Person as a lessee or obligor under a Capitalized Lease; (d) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement; (f) obligations under any Derivatives Contract; (g) all Indebtedness of other Persons which such Person has guaranteed or is otherwise recourse to such Person, including liability of a general partner in respect of liabilities of a partnership in which it is a general partner which would constitute "Indebtedness" hereunder, any obligation to supply funds to or in any manner to invest directly or indirectly in a Person, to maintain working capital or equity capital of a Person or otherwise to maintain net worth, solvency or other financial condition of a Person, to purchase indebtedness, or to assure the owner of indebtedness against loss, including, without limitation, through an agreement to purchase property, securities, goods, supplies or services for the purpose of enabling the debtor to make payment of the indebtedness held by such owner or otherwise; and (h) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation.

Indemnity Agreement. The Indemnity Agreement Regarding Hazardous Materials made by the Borrowers and Guarantor in favor of the Agent and the Lenders, as the same may be modified, amended or ratified, such agreement to be in form and substance satisfactory to Agent.

Insurance Proceeds. All insurance proceeds, damages and claims and the right thereto under any insurance policies relating to any portion of any Collateral, net of all reasonable and customary amounts actually expended to collect the same.

Interest Holdback. See §9(a).

Interest Payment Date. As to each Loan, the first (1st) day of each calendar month during the term of such Loan.

Interest Period. With respect to each LIBOR Rate Loan (a) initially, the period commencing on the Drawdown Date of such LIBOR Rate Loan and ending one, two or three months (subject to availability) thereafter, and (b) thereafter, each period commencing on the day following the last day of the next preceding Interest Period applicable to such Loan and ending on the last day of one of the periods set forth above, as selected by a Borrower in a Loan Request or Conversion/Continuation Request; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period with respect to a LIBOR Rate Loan would otherwise end on a day that is not a LIBOR Business Day, such Interest Period shall end on the next succeeding LIBOR Business Day, unless such next succeeding LIBOR Business Day occurs in the next calendar month, in which case such Interest Period shall end on the next preceding LIBOR Business Day, as determined conclusively by the Agent in accordance with the then current bank practice in London;

(ii) if a Borrower shall fail to give notice as provided in §4.1, such Borrower shall be deemed to have requested a conversion of the affected LIBOR Rate Loan to a Base Rate Loan on the last day of the then current Interest Period with respect thereto;

(iii) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the applicable calendar month; and

(iv) no Interest Period relating to any LIBOR Rate Loan shall extend beyond the Maturity Date.

KeyBank. As defined in the preamble hereto.

Lenders. KeyBank and any other Person which becomes an assignee of any rights of a Lender pursuant to §18 (but not including any participant as described in §18).

LIBOR. For any LIBOR Rate Loan for any Interest Period, the average rate (rounded upwards to the nearest 1/16th) as shown in Reuters Screen LIBOR01 Page at which deposits in U.S. dollars are offered by first class banks in the London Interbank Market at approximately 11:00 a.m. (London time) on the day that is two (2) LIBOR Business Days prior to the first day of such Interest Period with a maturity approximately equal to such Interest Period and in an amount approximately equal to the amount to which such Interest Period relates, adjusted for reserves and taxes if required by future regulations. If Reuters no longer reports such rate, then the rate shall be determined by reference to such other comparable publicly available service displaying such rate as selected by Agent in its sole discretion. If Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Agent in the London Interbank Market, Loans shall accrue interest based upon the Base Rate. For any period during which a Reserve Percentage shall apply, LIBOR with respect to LIBOR Rate Loans shall be equal to the amount determined above divided by an amount equal to 1 minus the Reserve Percentage.

LIBOR Business Day. Any day on which commercial banks are open for international business (including dealings in Dollar deposits) in London, England.

LIBOR Lending Office. Initially, the office of each Lender designated as such on Schedule 1.1 hereto; thereafter, such other office of such Lender, if any, that shall be making or maintaining LIBOR Rate Loans.

Lien. See §8.2.

Loan or Loans. An individual Loan or the aggregate Loans, as the case may be, made by the Lenders hereunder to Borrowers.

Loan Documents. This Agreement, the Notes, the Security Documents and all other documents, instruments or agreements now or hereafter executed or delivered by or on behalf of a Borrower or the Guarantor in connection with the Loans.

Loan Request. See §2.3.

Loan to Value Ratio. See §2.6.

Majority Lenders. As of any date, the Lender or Lenders whose aggregate Commitment Percentage is greater than fifty percent (50%) of the Total Commitment; provided that if there shall only be two (2) Lenders, the Majority Lenders shall mean both of such Lenders; and provided further that in determining said percentage at any given time, all then existing Delinquent Lenders will be disregarded and excluded and the Commitment Percentages of the Lenders shall be redetermined for voting purposes only to exclude the Commitment Percentages of such Delinquent Lenders.

Material Adverse Effect. A material adverse effect on (a) the business activities, properties, assets, prospects, condition (financial or otherwise) or results of operations of a Borrower; (b) the ability of any Borrower or the Guarantor to perform any of its obligations under the Loan Documents; or (c) the validity or enforceability of any of the Loan Documents or the rights or remedies of Agent or the Lenders thereunder; provided, however, that none of the following shall constitute, or shall be considered in determining whether there has occurred, and no event, circumstance, change or effect resulting from or arising out of any of the following shall constitute, a Material Adverse Effect: (i) the announcement of the execution of this Agreement; (ii) changes in the national or world economy or financial markets as a whole (but excluding changes in economic conditions that affect the industries or markets in which Borrowers or Guarantor conduct their business) so long as such changes or conditions do not adversely affect Borrowers or Guarantor, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries or markets in which Borrowers or Guarantor operate; and (iii) a decline in the price, or a change in the trading volume or listing status, of the common stock of Guarantor on the NASDAQ.

Maturity Date. March 14, 2011, or such earlier date on which the Loans shall become due and payable pursuant to the terms hereof.

Moody's. Moody's Investor Service, Inc.

Mortgage. The Deed of Trust from a Borrower to the trustees named therein acting on behalf of the Agent for the benefit of the Lenders, as the same may be modified or amended, pursuant to which such Borrower has conveyed or granted a mortgage lien upon or a conveyance in fee simple of the Mortgaged Property as security for the Obligations.

Mortgaged Property or Mortgaged Properties. The real estate owned by a Borrower which is security for the Obligations pursuant to the Mortgage.

Mortgaged Property Qualification Documents. See Schedule 1.2 attached hereto.

Multiemployer Plan. Any multiemployer plan within the meaning of §3(37) of ERISA maintained or contributed to by a Borrower or any ERISA Affiliate.

Net Sales Proceeds. With respect to the sale of any portion of the Mortgaged Property in accordance with the provisions of §5.2, all gross proceeds of such sale plus all other

consideration received in conjunction with such sale less all reasonable, ordinary and customary costs, expenses and commissions incurred as a direct result of such sale and paid to any Person; provided that if such commissions are to a Person related to the Borrowers, Guarantor or any of their respective partners, members, managers, officers or directors or any Person affiliated with the Borrowers, Guarantor or any their respective partners, members, managers, officers or directors, then such commissions shall be reasonable and customary in the market in which the Mortgaged Property is located. Net Sales Proceeds shall under no circumstances be less than ninety percent (90%) of the sales price set forth in the Purchase Contract without the prior written consent of Agent.

Notes. See §2.1(b).

Notice. See §19.

Obligations. All indebtedness, obligations and liabilities of the Borrowers or the Guarantor to any of the Lenders or the Agent, individually or collectively, under this Agreement or any of the other Loan Documents or in respect of any of the Loans or the Notes, or other instruments at any time evidencing any of the foregoing, whether existing on the date of this Agreement or arising or incurred hereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise.

OFAC. Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

Original Potomac Loan Agreement. The “Loan Agreement,” as defined in the Assignment of Potomac Loan Documents.

Original Potomac Note. The “Note,” as defined in the Assignment of Potomac Loan Documents.

Original Station View Loan Agreement. The “Loan Agreement,” as defined in the Assignment of Station View Loan Documents.

Original Station View Note. The “Note,” as defined in the Assignment of Station View Loan Documents.

Outstanding. With respect to any Loan, the aggregate unpaid principal thereof as of any date of determination.

Patriot Act. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

PBGC. The Pension Benefit Guaranty Corporation created by §4002 of ERISA and any successor entity or entities having similar responsibilities.

Person. Any individual, corporation, limited liability company, partnership, trust, unincorporated association, business, or other legal entity, and any government or any governmental agency or political subdivision thereof.

Plan Assets. Assets of any employee benefit plan subject to Part 4, Subtitle A, Title I of ERISA.

Potomac. As defined in the preamble hereto.

Potomac Loans. The portion of the Loans that are not Station View Loans.

Potomac Project. A completed 465-unit condominium project located in Alexandria, Virginia between U.S. Route 1 and the Potomac River, subject only to minor customary punchlist items in connection with the sale of Potomac Units and warranty work typical for a condominium project.

Potomac Units. Each of the residential condominium units within the Potomac Project established by the Condominium Declaration, together with any appurtenant undivided interest in the common elements created under the Condominium Declaration and easements for the use of any appurtenant limited common elements.

Purchase Contract. A purchase and sale agreement between a Borrower and the purchaser of a Unit for the purchase of a Unit (and appurtenant percentage interests in the limited common elements and common elements, if any), whether now or hereafter existing.

Record. The grid attached to any Note, or the continuation of such grid, or any other similar record, including computer records, maintained by the Agent with respect to any Loan referred to in such Note.

Register. See §18.2.

Release. See §6.16(c)(iii).

Rent Roll. A report prepared by Potomac Yard showing for the Potomac Project owned or leased by Potomac Yard, its occupancy, lease expiration dates, lease rent and other information in substantially the form presented to Agent prior to the date hereof or in such other form as may be reasonably acceptable to the Agent.

Requirements. Any law, ordinance, code, order, rule or regulation of any Governmental Authority relating in any way to the acquisition and ownership of the Potomac Project or the Station View Project, or the use, occupancy, operation or sale of the Potomac Project or Station View Project, including those relating to subdivision control, zoning, building, use and occupancy, fire prevention, health, safety, sanitation, handicapped access, historic preservation and protection, tidelands, wetlands, flood control, access and earth removal, interstate land sales and all Environmental Laws.

Reserve Percentage. For any Interest Period, that percentage which is specified three (3) Business Days before the first day of such Interest Period by the Board of Governors of

the Federal Reserve System (or any successor) or any other governmental or quasi-governmental authority with jurisdiction over Agent or any Lender for determining the maximum reserve requirement (including, but not limited to, any marginal reserve requirement) for Agent or any Lender with respect to liabilities constituting of or including (among other liabilities) Eurocurrency liabilities in an amount equal to that portion of the Loan affected by such Interest Period and with a maturity equal to such Interest Period.

Salable Inventory. The total amount of unsold Potomac Units on a square foot basis.

SEC. The federal Securities and Exchange Commission.

Security Documents. Collectively, the Guaranty, the Mortgage, the Indemnity Agreement, the Assignment of Interests, the Assignment of Sales Contracts and Deposits, UCC-1 financing statements and any further collateral assignments to the Agent for the benefit of the Lenders.

Single Purpose Entity. See §7.14(b).

S&P. Standard & Poor's Ratings Group.

Station View. As defined in the preamble hereto.

Station View Loans. The portion of the loans used to refinance existing indebtedness secured by the Station View Project.

Station View Project. A 7.4 acre parcel of land in Ashburn, Virginia on which Station View intends to construct a residential community consisting of forty-seven (47) fee simple residential townhomes.

Subsidiary. For any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

Survey. An instrument survey of the Mortgaged Property prepared by a registered land surveyor which shall show the location of all buildings, structures, easements and utility lines on such property, shall be sufficient to remove the standard survey exception from the Title Policy, shall show that all buildings and structures are within the lot lines of the Mortgaged Property and shall not show any encroachments by others (or to the extent any encroachments are shown, such encroachments shall be acceptable to the Agent in its reasonable discretion), shall show rights of way, adjoining sites, establish building lines and street lines, the distance to and names of the nearest intersecting streets and such other details as the Agent may reasonably require; and shall show whether or not the Mortgaged Property is located in a flood

hazard district as established by the Federal Emergency Management Agency or any successor agency or is located in any flood plain, flood hazard or wetland protection district established under federal, state or local law and shall otherwise be in form and substance reasonably satisfactory to the Agent.

Surveyor Certification. With respect to the Mortgaged Property, a certificate executed by the surveyor who prepared the Survey with respect thereto, dated as of a recent date and containing such information relating to such parcel as the Agent or the Title Insurance Company may reasonably require, such certificate to be reasonably satisfactory to the Agent in form and substance.

Taking. The taking or appropriation (including by deed in lieu of condemnation) of any Mortgaged Property, or any part thereof or interest therein, whether permanently or temporarily, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner or any damage or injury or diminution in value through condemnation, inverse condemnation or other exercise of the power of eminent domain.

Title Insurance Company. Lawyers Title Insurance Company and/or any other title insurance company or companies approved by the Agent and the Borrowers.

Title Policy. With respect to the Mortgaged Property, an ALTA standard form title insurance policy (or, if such form is not available, an equivalent, legally promulgated form of mortgagee title insurance policy reasonably acceptable to the Agent) issued by a Title Insurance Company (with such reinsurance as the Agent may reasonably require, any such reinsurance to be with direct access endorsements to the extent available under applicable law) in an amount as the Agent may reasonably require based upon the fair market value of the applicable Mortgaged Property insuring the priority of the Mortgage thereon and that a Borrower holds marketable fee simple title to such parcel, subject only to the encumbrances acceptable to Agent in its reasonable discretion and which shall not contain standard exceptions for mechanics liens, persons in occupancy or matters which would be shown by a survey, shall not insure over any matter except to the extent that any such affirmative insurance is acceptable to the Agent in its reasonable discretion, and shall contain such endorsements and affirmative insurance as the Agent may reasonably require and is available in the State in which the Mortgaged Property is located.

Total Commitment. The sum of the Commitments of the Lenders, as in effect from time to time.

Transfer. See §5.4.

Type. As to any Loan, its nature as a Base Rate Loan or a LIBOR Rate Loan.

Unit or Units. Any or all of the Potomac Units.

§1.2 Rules of Interpretation.

(a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms and the terms of this Agreement.

(b) The singular includes the plural and the plural includes the singular.

(c) A reference to any law includes any amendment or modification of such law.

(d) A reference to any Person includes its permitted successors and permitted assigns.

(e) Accounting terms not otherwise defined herein have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(f) The words “include”, “includes” and “including” are not limiting.

(g) The words “approval” and “approved”, as the context requires, means an approval in writing given to the party seeking approval after full and fair disclosure to the party giving approval of all material facts necessary in order to determine whether approval should be granted.

(h) All terms not specifically defined herein or by GAAP, which terms are defined in the Uniform Commercial Code as in effect in the Commonwealth of Virginia, have the meanings assigned to them therein.

(i) Reference to a particular “§”, refers to that section of this Agreement unless otherwise indicated.

(j) The words “herein”, “hereof”, “hereunder” and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.

§2. THE LOAN FACILITIES.

§2.1 Loans.

(a) Subject to the terms and conditions set forth in this Agreement, each of the Lenders severally agrees to lend to Borrowers on the Closing Date, and Borrowers agree to borrow on the Closing Date, such Lender’s Loan Commitment Percentage of the total Loan Commitment (except the portion allocated to the Interest Holdback, which shall be advanced as provided in §9(a)).

(b) The Loans shall be evidenced by notes of the Borrowers in substantially the form of Exhibit A hereto (collectively, the “Notes”), dated of even date with this Agreement (except as otherwise provided in §18.3) and completed with appropriate insertions. One Note shall be payable to the order of each Lender in the principal amount equal to such Lender’s Loan

Commitment, respectively, or, if less, the outstanding amount of all Loans made by such Lender, plus interest accrued thereon, as set forth below. The Borrowers irrevocably authorize Agent to make or cause to be made, at or about the time of the Drawdown Date of any Loan or the time of receipt of any payment of principal thereof, an appropriate notation on Agent's Record reflecting the making of such Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Loans set forth on Agent's Record shall be prima facie evidence of the principal amount thereof owing and unpaid to each Lender, but the failure to record, or any error in so recording, any such amount on Agent's Record shall not limit or otherwise affect the obligations of the Borrowers hereunder or under any Note to make payments of principal of or interest on any Note when due.

§2.2 Interest on Loans.

(a) Each Base Rate Loan shall bear interest for the period commencing with the Drawdown Date thereof and ending on the date on which such Base Rate Loan is repaid or converted to a LIBOR Rate Loan at the rate per annum equal to the sum of the Base Rate plus one and one-half percent (1.5%).

(b) Each LIBOR Rate Loan shall bear interest for the period commencing with the Drawdown Date thereof and ending on the last day of each Interest Period with respect thereto at the rate per annum equal to the sum of LIBOR determined for such Interest Period plus four percent (4%).

(c) Borrowers promise to pay interest on the Loans in arrears on each Interest Payment Date with respect thereto.

(d) Base Rate Loans and LIBOR Rate Loans may be converted to Loans of the other Type as provided in §4.1.

§2.3 Requests for Loans. A Borrower shall give to the Agent written notice executed by an Authorized Officer of such Borrower in the form of Exhibit B hereto (or telephonic notice confirmed in writing in the form of Exhibit B hereto) of each Loan requested hereunder (including a request for a disbursement from the Interest Holdback) (a "Loan Request") by 11:00 a.m. (Cleveland time) one (1) Business Day prior to the proposed Drawdown Date with respect to Base Rate Loans and two (2) Business Days prior to the proposed Drawdown Date with respect to LIBOR Rate Loans. Each such notice shall specify with respect to the requested Loan, the proposed principal amount of such Loan, the Type of Loan, the initial Interest Period (if applicable) for such Loan and the Drawdown Date. Promptly upon receipt of any such notice, the Agent shall notify each of the Lenders thereof. Each such Loan Request shall be irrevocable and binding on such Borrower and shall obligate such Borrower to accept the Loan requested from the Lenders on the proposed Drawdown Date. There shall be no more than six (6) LIBOR Rate Loans outstanding at any one time. Notwithstanding anything herein to the contrary, Lenders shall not be required to advance any Loans if such advance would cause the Loan to Value Ratio to exceed the thresholds permitted under §2.6.

§2.4 Funds for Loans.

(a) Not later than 1:00 p.m. (Cleveland time) on the proposed Drawdown Date of any Loans, each of the Lenders will make available to the Agent, at the Agent's Head Office, in immediately available funds, the amount of such Lender's Loan Commitment or Loan Commitment Percentage, as applicable, of the amount of the requested Loan which may be disbursed pursuant to §2.1 or §9. Upon receipt from each Lender of such amount, and upon receipt of the documents required by §10 and §11, as applicable, and the satisfaction of the other conditions set forth therein, to the extent applicable, the Agent will make available to a Borrower (or to the Agent for the benefit of the Lenders with respect to disbursements from the Holdbacks for the payment of interest) the aggregate amount of such Loans made available to the Agent by the Lenders by crediting such amount to the account of a Borrower maintained at the Agent's Head Office.

(b) Unless the Agent shall have been notified by any Lender prior to the applicable Drawdown Date that such Lender will not make available to Agent such Lender's Commitment Percentage of a proposed Loan, Agent may in its discretion assume that such Lender has made such Loan available to Agent in accordance with the provisions of this Agreement and the Agent may, if it chooses, in reliance upon such assumption make such Loan available to a Borrower (or to the Agent for the benefit of the Lenders with respect to disbursements from the Holdbacks for the payment of interest), and such Lender shall be liable to the Agent for the amount of such advance. If such Lender does not pay such corresponding amount upon the Agent's demand therefor, the Agent will promptly notify the Borrowers, and the Borrowers shall promptly pay such corresponding amount to the Agent; provided, however, such obligation of Borrowers shall be deemed satisfied if Agent's demand is not made to, Borrowers within five (5) Business Days following the applicable Drawdown Date. The Agent shall also be entitled to recover from the Lender or the Borrowers, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Agent to the Borrowers to the date such corresponding amount is recovered by the Agent at a per annum rate equal to (i) from the Borrowers at the applicable rate for such Loan or (ii) from a Lender at the Federal Funds Effective Rate.

§2.5 Use of Proceeds. The Borrowers will use the proceeds of the Loans as follows: solely to (i) pay closing costs in connection with this Agreement, (ii) refinance existing indebtedness secured by the Station View Project, (iii) refinance existing indebtedness secured by the Potomac Project, (iv) fund interest due on the Loans, (v) fund to Potomac for the repurchase by Guarantor of the CHCI Subordinate Notes the amount identified on the Loan settlement statement for such purpose, and (vi) the remainder not specifically used by the foregoing item (v) shall be available for general working capital purposes. The Borrowers and Guarantor each represent and warrant that the amounts advanced or to be advanced under the Notes and Loans are greater than $5,000.00 and are being made exclusively in connection with loans made for business or investment purposes within the meaning and intent of Section 6.1-330.75 of the Code of Virginia (1950), as amended.

§2.6 Remargining. Borrowers will not at any time permit the ratio of (a) the Outstanding Loans as of such date to (b) the aggregate Appraised Value as of such date (such ratio, the "Loan to Value Ratio") to exceed seventy-two percent (72%); provided, however, from and after December 31, 2008, such Loan to Value Ratio may not exceed seventy percent (70%) at any time. Borrowers acknowledge that in the event that following the receipt of a new

Appraisal Agent determines that the Outstanding Loans is greater than seventy percent (70%) of the aggregate Appraised Value, the Outstanding Loans shall be reduced such that the Outstanding Loans does not exceed seventy percent (70%) of the aggregate Appraised Value, and Borrowers shall within thirty (30) days of notice from Agent pay to Agent as a prepayment of the Loans (to be applied pro rata among the Potomac Loan and the Station View Loan) such amount as is necessary so that the sum of the Outstanding Loans does not exceed seventy percent (70%) of the aggregate Appraised Value. If the Borrowers fail to remargin the Loan within such thirty (30) day period, then Borrowers shall have an additional sixty (60) days to make the required prepayment hereunder so long as Borrowers are diligently and continuously attempting to cure such Default. The Agent on behalf of the Banks shall have the right to obtain from time to time, at the Borrowers' cost and expense, updated Appraisals of the Project which will be ordered by the Agent, provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrowers shall only be obligated to pay for the costs and expenses associated with one such Appraisal during any twelve (12) month period prior to the occurrence of the Maturity Date. The reasonable actual out-of-pocket costs and expenses incurred by the Agent in obtaining such Appraisals shall be paid by the Borrowers forthwith upon billing or request by the Agent for reimbursement therefor. Notwithstanding the foregoing, provided no Event of Default has occurred and is continuing, then Agent shall not have the right to obtain an updated Appraisal prior to December 31, 2008; provided, further, however that in the event Agent determines in its reasonable discretion that Potomac Units are not going under contract or are not being released pursuant to §5.2 at a frequency and sales price that would support the mandatory prepayments required by §3.3, then Agent shall have the right to obtain an Appraisal of the Potomac Project as of December 31, 2008 at the Borrowers' expense.

§2.7 Reborrowing for Purposes of Paying Interest. Notwithstanding anything herein to the contrary, Borrowers may reborrow (and repay and reborrow) from time to time between the Closing Date and the Maturity Date funds not to exceed the amount in the Interest Holdback from the Interest Holdback at such time as the Interest Holdback is fully funded pursuant to §5.2(d)(ii). Borrowers may only reborrow such amounts for the purpose of paying interest on the Loans.

§2.8 Revolving Credit Facility. Provided that no Default or Event of Default shall have occurred and be continuing, on the date the total Outstanding Loans reduce to $30,000,000, Borrowers may give written notice to the Agent within thirty (30) days of the Outstanding Loans reducing to $30,000,000 that Borrowers desire to modify this Agreement to permit reborrowings. Borrowers and Agent agree to enter into good-faith discussions regarding a modification of this Agreement and the other Loan Documents permitting reborrowings for projects other than the Potomac Project and Station View Project and establishing a borrowing base pursuant to such documents and terms as are satisfactory to Borrowers, Agent and the Lenders in their sole discretion. Additionally, inclusion of any new projects as Collateral shall be at the sole discretion of Agent and the Lenders.

§3. REPAYMENT OF THE LOANS.

§3.1 Stated Maturity. Borrowers promise to pay on the Maturity Date and there shall become absolutely due and payable on the Maturity Date all of the Loans outstanding on such date, together with any and all accrued and unpaid interest thereon.

§3.2 Optional Prepayments. Borrowers shall have the right, at their election, to prepay the outstanding amount of the Loans, as a whole or in part, at any time without penalty or premium; provided, that if any prepayment of the outstanding amount of any LIBOR Rate Loans pursuant to this §3.2 is made on a date that is not the last day of the Interest Period relating thereto, such prepayment shall be accompanied by the payment of any amounts due pursuant to §4.8. A Borrower shall give the Agent, no later than 10:00 a.m. (Cleveland time) at least three (3) days prior written notice of any prepayment pursuant to this §3.2, in each case specifying the proposed date of prepayment of the Loans and the principal amount to be prepaid.

§3.3 Mandatory Prepayments. Beginning on March 31, 2009 and on each of September 30, 2009 and March 30, 2010, Potomac shall immediately pay the amounts set forth on Schedule 3.3 hereto to the Agent for the respective accounts of the Lenders for application to the outstanding principal balance of the Loans; provided, however, Potomac shall receive a credit against any amounts due pursuant to this §3.3 for release proceeds paid to Agent pursuant to §5.2(d) for application to the outstanding principal balance of the Potomac Loans, such credit to carry over to subsequent prepayment dates.

§3.4 Partial Prepayments. Except with respect to the sale of Units pursuant to §5.2, each partial prepayment of the Loans under §3.2 shall be in a minimum amount of $100,000.00 or an integral multiple of $50,000.00 in excess thereof, and shall be accompanied by the payment of accrued interest on the principal prepaid to the date of payment. Each partial payment under §3.2, §3.3 or §5.2 shall, in the absence of instruction by the Borrowers, be applied first to the principal of Base Rate Loans of such Borrower, and then to the principal of LIBOR Rate Loans of such Borrower. Each partial payment under §5.2(d) or §5.2(e) shall reduce the outstanding principal balance of the Potomac Loans or Station View Loans, respectively.

§3.5 Effect of Prepayments. Amounts of the Loans prepaid prior to the Maturity Date may not be reborrowed, except as expressly permitted in §2.7 of this Agreement.

§4. CERTAIN GENERAL PROVISIONS.

§4.1 Conversion Options.

(a) The Borrowers may elect from time to time to convert any of their respective outstanding Loans to a Loan of another Type and such Loans shall thereafter bear interest as a Base Rate Loan or a LIBOR Rate Loan, as applicable; provided that (i) with respect to any such conversion of a LIBOR Rate Loan to a Base Rate Loan, a Borrower shall give the Agent at least one (1) Business Day's prior written notice of such election, and such conversion shall only be made on the last day of the Interest Period with respect to such LIBOR Rate Loan; (ii) with respect to any such conversion of a Base Rate Loan to a LIBOR Rate Loan, a Borrower shall give the Agent at least two (2) LIBOR Business Days' prior written notice of such election and the Interest Period requested for such Loan, the principal amount of the Loan so converted

shall be in a minimum aggregate amount of $100,000.00 or an integral multiple of $50,000.00 in excess thereof and, after giving effect to the making of such Loan, there shall be no more than six (6) LIBOR Rate Loans outstanding at any one time; and (iii) no Loan may be converted into a LIBOR Rate Loan when any Default or Event of Default has occurred and is continuing. All or any part of the outstanding Loans of any Type may be converted as provided herein, provided that no partial conversion shall result in a Base Rate Loan in a principal amount of less than $100,000.00 or an integral multiple of $50,000.00 or a LIBOR Rate Loan in a principal amount of less than $100,000.00 or an integral multiple of $50,000.00. On the date on which such conversion is being made, each Lender shall take such action as is necessary to transfer its Commitment Percentage of such Loans to its Domestic Lending Office or its LIBOR Lending Office, as the case may be. Each Conversion/Continuation Request relating to the conversion of a Base Rate Loan to a LIBOR Rate Loan shall be irrevocable by the Borrowers.

(b) Any LIBOR Rate Loan may be continued as such Type upon the expiration of an Interest Period with respect thereto by compliance by a Borrower with the terms of §4.1; provided that no LIBOR Rate Loan may be continued as such when any Default or Event of Default has occurred and is continuing, but shall be automatically converted to a Base Rate Loan on the last day of the Interest Period relating thereto ending during the continuance of any Default or Event of Default.

(c) In the event that a Borrower does not notify the Agent of its election hereunder with respect to any LIBOR Rate Loan, such Loan shall be automatically converted to a Base Rate Loan at the end of the applicable Interest Period.

§4.2 Closing Fee. The Borrowers agree to pay to KeyBank certain fees for services rendered or to be rendered in connection with the Loans as provided pursuant to an Agreement Regarding Fees dated as of even date herewith between the Borrowers and KeyBank (the “Agreement Regarding Fees”). All such fees shall be fully earned when paid and nonrefundable under any circumstances.

§4.3 [Intentionally omitted].

§4.4 Funds for Payments.

(a) All payments of principal, interest, facility fees, Agent’s fees, closing fees and any other amounts due hereunder or under any of the other Loan Documents shall be made to the Agent, for the respective accounts of the Lenders and the Agent, as the case may be, at the Agent’s Head Office, not later than 2:00 p.m. (Cleveland time) on the day when due, in each case in lawful money of the United States in immediately available funds. The Agent is hereby authorized to charge the accounts of the Borrowers with KeyBank, on the dates when the amount thereof shall become due and payable, with the amounts of the principal of and interest on the Loans and all fees, charges, expenses and other amounts owing to the Agent and/or the Lenders under the Loan Documents. Subject to the foregoing, all payments made to Agent on behalf of the Lenders, and actually received by Agent, shall be deemed received by the Lenders on the date actually received by Agent.

(b) All payments by the Borrowers hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless the Borrowers are compelled by law to make such deduction or withholding. If any such obligation is imposed upon the Borrowers with respect to any amount payable by it hereunder or under any of the other Loan Documents, the Borrowers will pay to the Agent, for the account of the Lenders or (as the case may be) the Agent, on the date on which such amount is due and payable hereunder or under such other Loan Document, such additional amount in Dollars as shall be necessary to enable the Lenders or the Agent to receive the same net amount which the Lenders or the Agent would have received on such due date had no such obligation been imposed upon the Borrowers. The Borrowers will deliver promptly to the Agent certificates or other valid vouchers for all taxes or other charges deducted from or paid with respect to payments made by the Borrowers hereunder or under any other Loan Document.

(c) Each Lender organized under the laws of a jurisdiction outside the United States, if requested in writing by the Borrowers (but only so long as such Lender remains lawfully able to do so), shall provide the Borrowers with such duly executed form(s) or statement(s) which may, from time to time, be prescribed by law and, which, pursuant to applicable provisions of (i) an income tax treaty between the United States and the country of residence of such Lender, (ii) the Code, or (iii) any applicable rules or regulations in effect under (i) or (ii) above, indicates the withholding status of such Lender; provided that nothing herein (including without limitation the failure or inability to provide such form or statement) shall relieve the Borrowers of their obligations under §4.4(b). In the event that the Borrowers shall have delivered the certificates or vouchers described above for any payments made by the Borrowers and such Lender receives a refund of any taxes paid by the Borrowers pursuant to §4.4(b), such Lender will pay to the Borrowers the amount of such refund promptly upon receipt thereof; provided that if at any time thereafter such Lender is required to return such refund, the Borrowers shall promptly repay to such Lender the amount of such refund.

§4.5 Computations. All computations of interest on the Loans and of other fees to the extent applicable shall be based on a 360 day year and paid for the actual number of days elapsed. Except as otherwise provided in the definition of the term “Interest Period” with respect to LIBOR Rate Loans, whenever a payment hereunder or under any of the other Loan Documents becomes due on a day that is not a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and interest shall accrue during such extension. The Outstanding Loans as reflected on the records of the Agent from time to time shall be considered prima facie evidence of such amount absent manifest error.

§4.6 Suspension of LIBOR Rate Loans. In the event that, prior to the commencement of any Interest Period relating to any LIBOR Rate Loan, the Agent shall determine that adequate and reasonable methods do not exist for ascertaining LIBOR for such Interest Period, or the Agent shall reasonably determine that LIBOR will not accurately and fairly reflect the cost of the Lenders making or maintaining LIBOR Rate Loans for such Interest Period, the Agent shall forthwith give notice of such determination (which shall be conclusive and binding on the Borrowers and the Lenders absent manifest error) to the Borrowers and the Lenders. In such

event (a) any Loan Request with respect to a LIBOR Rate Loan shall be automatically withdrawn and shall be deemed a request for a Base Rate Loan and (b) each LIBOR Rate Loan will automatically, on the last day of the then current Interest Period applicable thereto, become a Base Rate Loan, and the obligations of the Lenders to make LIBOR Rate Loans shall be suspended until the Agent determines that the circumstances giving rise to such suspension no longer exist, whereupon the Agent shall so notify the Borrowers and the Lenders.

§4.7 Illegality. Notwithstanding any other provisions herein, if any present or future law, regulation, treaty or directive or the interpretation or application thereof shall make it unlawful, or any central bank or other governmental authority having jurisdiction over a Lender or its LIBOR Lending Office shall assert that it is unlawful, for any Lender to make or maintain LIBOR Rate Loans, such Lender shall forthwith give notice of such circumstances to the Agent and the Borrowers and thereupon (a) the commitment of the Lenders to make LIBOR Rate Loans shall forthwith be suspended and (b) the LIBOR Rate Loans then outstanding shall be converted automatically to Base Rate Loans on the last day of each Interest Period applicable to such LIBOR Rate Loans or within such earlier period as may be required by law. Notwithstanding the foregoing, before giving such notice, the applicable Lender shall designate a different lending office if such designation will void the need for giving such notice and will not, in the judgment of such Lender, be otherwise materially disadvantageous to such Lender or increase any costs payable by Borrowers hereunder.

§4.8 Additional Interest. If any LIBOR Rate Loan or any portion thereof is repaid or is converted to a Base Rate Loan for any reason on a date which is prior to the last day of the Interest Period applicable to such LIBOR Rate Loan, or if repayment of the Loans has been accelerated as provided in §12.1, a Borrower will pay to the Agent upon demand for the account of the applicable Lenders in accordance with their respective Commitment Percentages, in addition to any amounts of interest otherwise payable hereunder, the Breakage Costs. Borrowers understand, agree and acknowledge the following: (i) no Lender has any obligation to purchase, sell and/or match funds in connection with the use of LIBOR as a basis for calculating the rate of interest on a LIBOR Rate Loan; (ii) LIBOR is used merely as a reference in determining such rate; and (iii) Borrowers have accepted LIBOR as a reasonable and fair basis for calculating such rate and any Breakage Costs. Borrowers further agree to pay the Breakage Costs, if any, whether or not a Lender elects to purchase, sell and/or match funds.

§4.9 Additional Costs, Etc. Notwithstanding anything herein to the contrary, if any present or future applicable law, which expression, as used herein, includes statutes, rules and regulations thereunder and interpretations thereof by any competent court or by any governmental or other regulatory body or official charged with the administration or the interpretation thereof and requests, directives, instructions and notices at any time or from time to time hereafter made upon or otherwise issued to any Lender or the Agent by any central bank or other fiscal, monetary or other authority (whether or not having the force of law), shall:

(a) subject any Lender or the Agent to any tax, levy, impost, duty, charge, fee, deduction or withholding of any nature with respect to this Agreement, the other Loan Documents, such Lender's Commitment or the Loans (other than taxes based upon or measured by the gross receipts, income or profits of such Lender or the Agent or its franchise tax), or

(b) materially change the basis of taxation (except for changes in taxes on gross receipts, income or profits or its franchise tax) of payments to any Lender of the principal of or the interest on any Loans or any other amounts payable to any Lender under this Agreement or the other Loan Documents, or

(c) impose or increase or render applicable any special deposit, reserve, assessment, liquidity, capital adequacy or other similar requirements (whether or not having the force of law and which are not already reflected in any amounts payable by Borrowers hereunder) against assets held by, or deposits in or for the account of, or loans by, or commitments of an office of any Lender, or

(d) impose on any Lender or the Agent any other conditions or requirements with respect to this Agreement, the other Loan Documents, the Loans, such Lender's Commitment or any class of loans or commitments of which any of the Loans or such Lender's Commitment forms a part; and the result of any of the foregoing is:

(i) to increase the cost to any Lender of making, funding, issuing, renewing, extending or maintaining any of the Loans or such Lender's Commitment, or

(ii) to reduce the amount of principal, interest or other amount payable to any Lender or the Agent hereunder on account of such Lender's Commitment or any of the Loans, or

(iii) to require any Lender or the Agent to make any payment or to forego any interest or other sum payable hereunder, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by such Lender or the Agent from the Borrowers hereunder,

then, and in each such case, the Borrowers will, within fifteen (15) days of demand made by such Lender or (as the case may be) the Agent at any time and from time to time and as often as the occasion therefor may arise, pay to such Lender or the Agent such additional amounts as such Lender or the Agent shall determine in good faith to be sufficient to compensate such Lender or the Agent for such additional cost, reduction, payment or foregone interest or other sum. Each Lender and the Agent in determining such amounts may use any reasonable averaging and attribution methods generally applied by such Lender or the Agent.

§4.10 Capital Adequacy. If after the date hereof any Lender determines that (a) the adoption of or change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies or any change in the interpretation or application thereof by any governmental authority charged with the administration thereof, or (b) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's commitment to make Loans hereunder to a level below that which such Lender or holding company could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount

deemed by such Lender to be material, then such Lender may notify the Borrowers thereof. The Borrowers agree to pay to such Lender the amount of such reduction in the return on capital as and when such reduction is determined, upon presentation by such Lender of a statement of the amount setting forth the Lender's calculation thereof. In determining such amount, such Lender may use any reasonable averaging and attribution methods generally applied by such Lender.

§4.11 Breakage Costs. Borrowers shall pay all Breakage Costs required to be paid by them pursuant to this Agreement and incurred from time to time by any Lender upon demand within fifteen (15) days from receipt of written notice from Agent, or such earlier date as may be required by this Agreement.

§4.12 Default Interest; Late Charge. Following the occurrence and during the continuance of any Event of Default, and regardless of whether or not the Agent or the Lenders shall have accelerated the maturity of the Loans, all Loans shall bear interest payable on demand at a rate per annum equal to six percent (6.0%) above the Base Rate (the "Default Rate"), until such amount shall be paid in full (after as well as before judgment), or if such amount shall exceed the maximum rate permitted by law, then at the maximum rate permitted by law. In addition, Borrowers shall pay a late charge equal to four percent (4.0%) of any amount of interest and/or principal payable on the Loans to it or any other amounts payable hereunder or under the other Loan Documents, which is not paid by the Borrowers within ten (10) days of the date when due.

§4.13 Certificate. A certificate setting forth any amounts payable pursuant to §4.8, §4.9, §4.10, §4.11 or §4.12 and a reasonably detailed explanation of such amounts which are due, submitted by any Lender or the Agent to the Borrowers, shall be conclusive in the absence of manifest error.

§4.14 Limitation on Interest. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, all agreements between or among the Borrowers, the Guarantor, the Lenders and the Agent, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity of any of the Obligations or otherwise, shall the interest contracted for, charged or received by the Lenders exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to the Lenders in excess of the maximum lawful amount, the interest payable to the Lenders shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance the Lenders shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Obligations and to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Obligations, such excess shall be refunded to the Borrowers. All interest paid or agreed to be paid to the Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal of the Obligations (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This Section shall control all agreements between or among the Borrowers, the Guarantor, the Lenders and the Agent.

§4.15 Certain Provisions Relating to Increased Costs. If a Lender gives notice of the existence of the circumstances set forth in §4.7 or any Lender requests compensation for any losses or costs to be reimbursed pursuant to any one or more of the provisions of §4.9 or §4.10, then, upon request of Borrowers, such Lender, as applicable, shall use reasonable efforts in a manner consistent with such institution's practice in connection with loans like the Loan of such Lender to eliminate, mitigate or reduce amounts that would otherwise be payable by Borrowers under the foregoing provisions, provided that such action would not be otherwise prejudicial to such Lender, including, without limitation, by designating another of such Lender's offices, branches or affiliates; the Borrowers agreeing to pay all reasonably incurred costs and expenses incurred by such Lender in connection with any such action. Notwithstanding anything to the contrary contained herein, if no Default or Event of Default shall have occurred and be continuing, and if any Lender has given notice of the existence of the circumstances set forth in §4.7 or has requested payment or compensation for any losses or costs to be reimbursed pursuant to any one or more of the provisions of §4.9 or §4.10 (each, an "Affected Lender"), then, within thirty (30) days after such notice or request for payment or compensation, Borrowers shall have the one-time right as to such Affected Lender to be exercised by delivery of written notice delivered to the Agent and the Affected Lender within thirty (30) days of receipt of such notice to elect to cause the Affected Lender to transfer its Commitment. The Agent shall promptly notify the remaining Lenders that each of such Lenders shall have the right, but not the obligation, to acquire a portion of the Commitment, pro rata based upon their relevant Commitment Percentages, of the Affected Lender (or if any of such Lenders does not elect to purchase its pro rata share, then to such remaining Lenders in such proportion as approved by the Agent). In the event that the Lenders do not elect to acquire all of the Affected Lender's Commitment, then the Agent shall endeavor to obtain a new Lender to acquire such remaining Commitment. Upon any such purchase of the Commitment of the Affected Lender, the Affected Lender's interest in the Obligations and its rights hereunder and under the Loan Documents shall terminate at the date of purchase, and the Affected Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest. The purchase price for the Affected Lender's Commitment shall equal any and all amounts outstanding and owed by Borrowers to the Affected Lender, as applicable, including principal and all accrued and unpaid interest or fees.

§5. COLLATERAL SECURITY.

§5.1 Collateral. The Obligations shall be secured by a perfected first priority lien and security interest to be held by the Agent for the benefit of the Lenders in the Collateral pursuant to the Security Documents.

§5.2 Release of Mortgaged Property. Provided no Default or Event of Default shall have occurred hereunder and be continuing (or would exist immediately after giving effect to the transactions contemplated by this §5.2), the Agent shall release a Unit or Units included in the Mortgaged Property to be conveyed pursuant to a Purchase Contract from the lien or security title of the Security Documents encumbering the same upon the request of a Borrower subject to and upon the following terms and conditions:

(a) such Borrower shall deliver to the Agent written notice of its desire to obtain such release no later than three (3) Business Days prior to the date on which such release is to be effected. Such request shall be accompanied by a copy of the sales contract, closing statement and any related documents reasonably requested by the Agent;

(b) all release documents to be executed by the Agent shall be in form and substance reasonably satisfactory to the Agent;

(c) Borrowers shall pay all reasonable costs and expenses of the Agent in connection with such release, including without limitation, reasonable attorney's fees;

(d) with respect to the Potomac Units, Potomac shall cause the settlement agent to contemporaneously with each sale of a Unit pay to the Agent for the account of the Lenders an amount equal to one hundred percent (100%), as may be adjusted below in this §5.2(d), of the Net Sales Proceeds for such Potomac Unit, which payment shall be applied by Agent as follows:

(i) First, to reduce the Outstanding Potomac Loans as provided in §3.4 in an amount equal to one hundred ten percent (110%) of the portion of the Potomac Loans allocated to such Potomac Unit on a square foot basis as set forth on Schedule 5.2 hereto multiplied by the square footage of such Potomac Unit to be released;

(ii) Second, any remaining Net Sales Proceeds shall be applied as a prepayment of the Potomac Loan and increase the Interest Holdback to an amount not greater than seven and one-half percent (7.5%) of the total amount of the Potomac Loans which may be borrowed by Potomac (including the Interest Holdback);

(iii) Third, any remaining Net Sales Proceeds shall be used to reduce the outstanding principal balance of the Potomac Loans as provided in §3.4.

Notwithstanding the foregoing, once the Interest Holdback reaches an amount equal to seven and one-half percent (7.5%) of the total amount of the Potomac Loans which may be borrowed by Potomac (including the Interest Holdback), then the percentage of Net Sales Proceeds to be applied by Agent pursuant to this §5.2(d) shall decrease as the Outstanding Potomac Loans per square foot of Salable Inventory reduces as follows:

Outstanding Potomac Loans per Square Foot of Salable Inventory	**Percentage of Net Sales Proceeds Applied by Agent**
Greater than or equal to $150.00	100.0%
Greater than or equal to $100.00 but less than $150.00	65.0%
Less than $100.00	50.0%

(e) Intentionally Omitted;

(f) in no event shall Agent release a Unit if following such sale portions of the remaining Mortgaged Property (i) shall be without access to a public street over remaining Mortgaged Property or over a perpetual easement for ingress and egress, or (ii) shall no longer be

able to tap into, connect with, utilize or maintain all utilities necessary to serve such portions of the Mortgaged Property, to the extent applicable, including without limitation, storm sewer, sanitary sewer, water, electricity and gas, either over remaining Mortgaged Property or over a perpetual easement with respect thereto;

(g) prior to any sale hereunder, such Borrower shall have taken such actions as may be required to cause the portion of the Mortgaged Property to be sold to be taxed separately from the remaining portion of the Mortgaged Property;

(h) both the portion of the Mortgaged Property to be sold and any improvements thereon and the Mortgaged Property remaining after such sale and any improvements thereon will be in compliance with all zoning laws, building codes, parking laws and regulations, subdivision laws or approvals, set-back lines or any other governmental regulation, requirement or agreement, including, without limitation, environmental laws, and any recorded covenants, conditions or restrictions; and

(i) the sale of such property shall not cause any Borrower to be in violation of or result in a breach under any other agreement or instrument by which it or any portion of the Mortgaged Property is bound.

§5.3 Release of Collateral. Upon the refinancing or repayment of the Obligations in full, then the Agent shall release the Collateral from the lien and security interest of the Security Documents. Notwithstanding the foregoing, provided no Default or Event of Default shall have occurred hereunder and be continuing (or would exist immediately after giving effect to the transactions contemplated by this §5.3), upon the bulk sale of the Station View Project, Agent shall release the Station View Project from the lien and security interests of the Security Documents upon a payment of the sum of $2,820,000 as a prepayment of principal, plus any amounts drawn under the Interest Holdback which are allocable to the Station View Loans; provided, however, in the event the Potomac Loans have been paid in full, Borrowers shall be required to repay the Obligations in full to obtain a release of the Station View Project.

§5.4 Sale of Mortgaged Property or Change in Borrowers.

(a) Borrowers acknowledge that the Lenders have examined and relied on the creditworthiness and experience of Borrowers in agreeing to make the Loan, and that the Lenders have a valid interest in maintaining the value of the Mortgaged Property and the other Collateral so as to ensure that should Borrowers default in the repayment of the Loans, the Lenders can recover the Obligations by a sale of the Collateral.

(b) Borrowers may not Transfer the Collateral (except as permitted in §5.2, §7.12, or §8.4), nor allow any Change in Ownership.

(c) A "Transfer" is defined as any sale, conveyance, assignment, alienation, mortgage, hypothecation, encumbrance, grant of a lien over or a security interest in, pledge or other transfer of the Mortgaged Property, any other Collateral or any part thereof or interest therein, whether voluntary or involuntary. Without limiting the generality of the foregoing, a Transfer is deemed to include: (i) an installment sales agreement wherein a Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an

agreement by a Borrower leasing all or any part of the Mortgaged Property; or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, any Borrower's right, title and interest in and to any rents, issues or profits from the Collateral.

(d) A "Change in Ownership" shall occur (i) upon any transfer of any direct or indirect ownership or economic interests in any Borrower or the creation of new or additional Equity Interests in any Borrower; or (ii) upon the addition, change, removal, resignation or transfer of a managing member, general partner or similar controlling person or entity of any Borrower.

§6. REPRESENTATIONS AND WARRANTIES.

The Borrowers represent and warrant to the Agent and the Lenders as follows.

§6.1 Corporate Authority, Etc.

(a) Incorporation; Good Standing. Each of the Borrowers and the Guarantor (i) is a corporation, limited partnership, general partnership, limited liability company or trust duly organized under the laws of its State of organization and is validly existing and in good standing under the laws thereof, (ii) has all requisite power to own its property and conduct its business as now conducted and as presently contemplated and (iii) is in good standing and is duly authorized to do business in the jurisdiction where the Mortgaged Property is located (to the extent required by applicable law) and in each other jurisdiction where a failure to be so qualified could have a Material Adverse Effect.

(b) Authorization. The execution, delivery and performance of this Agreement and the other Loan Documents to which any Borrower or the Guarantor is a party and the transactions contemplated hereby and thereby (i) are within the authority of such Person, (ii) have been duly authorized by all necessary proceedings on the part of such Person, (iii) do not and will not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which such Person is subject or any judgment, order, writ, injunction, license or permit applicable to such Person, (iv) do not and will not conflict with or constitute a default (whether with the passage of time or the giving of notice, or both) under any provision of the partnership agreement, articles of incorporation, operating agreement or other charter documents or bylaws of, or any agreement or other instrument binding upon, such Person or any of its properties, (v) do not and will not result in or require the imposition of any lien or other encumbrance on any of the properties, assets or rights of such Person other than the liens and encumbrances in favor of Agent contemplated by this Agreement and the other Loan Documents, and (vi) do not require the approval or consent of any Person other than those already obtained and delivered to Agent.

(c) Enforceability. The execution and delivery of this Agreement and the other Loan Documents to which any Borrower or the Guarantor is a party are valid and legally binding obligations of such Person enforceable in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and general principles of equity.

§6.2 Governmental Approvals. The execution, delivery and performance of this Agreement and the other Loan Documents to which the Borrowers or the Guarantor is a party and the transactions contemplated hereby and thereby do not require the approval or consent of, or filing or registration with, or the giving of any notice to, any court, department, board, governmental agency or authority other than those already obtained and the filing of the Security Documents in the appropriate records office with respect thereto.

§6.3 Financial Statements. The Borrowers have furnished to Agent: (a) the balance sheet of each Borrower as of the Balance Sheet Date certified by the chief financial or accounting officer of each Borrower, and (b) certain other financial information relating to the Borrowers, the Guarantor and the Mortgaged Property. Such balance sheet and statements have been prepared in accordance with GAAP and fairly present the financial condition of each Person covered thereby as of such dates. There are no liabilities, contingent or otherwise, of the Borrowers or Guarantor involving material amounts not disclosed in said financial statements and the related notes thereto.

§6.4 No Material Changes. Since the Balance Sheet Date there has occurred no materially adverse change in the financial condition or business of any Borrower or the Guarantor as shown on or reflected in the balance sheet of such Person as of the Balance Sheet Date, other than changes in the ordinary course of business that have not and could not reasonably be expected to have a Material Adverse Effect.

§6.5 Franchises, Patents, Copyrights, Etc. The Borrowers possess all franchises, patents, copyrights, trademarks, trade names, service marks, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of their business substantially as now conducted without known conflict with any rights of others. The Mortgaged Property is not owned or operated under or by reference to any registered or protected trademark, trade name, service mark or logo.

§6.6 Litigation. Except as stated on Schedule 6.6, there are no actions, suits, proceedings or investigations of any kind pending or to the knowledge of the Borrowers threatened against any Borrower or the Guarantor before any court, tribunal, arbitrator, mediator or administrative agency or board which question the validity of this Agreement or any of the other Loan Documents, any action taken or to be taken pursuant hereto or thereto or any lien, security title or security interest created or intended to be created pursuant hereto or thereto, or which if adversely determined could reasonably be expected to have a Material Adverse Effect or impair the right or ability of such Person to carry on business substantially as now conducted. Except as set forth on Schedule 6.6, there are no judgments, final orders or awards outstanding against or affecting any Borrower, the Guarantor or the Mortgaged Property.

§6.7 No Material Adverse Contracts, Etc. None of the Borrowers or the Guarantor is subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a Material Adverse Effect. None of the Borrowers or the Guarantor is a party to any contract or agreement that has or could reasonably be expected to have a Material Adverse Effect.

§6.8 Compliance with Other Instruments, Laws, Etc. None of the Borrowers or the Guarantor is in violation of any provision of its charter or other organizational documents, bylaws, or any agreement or instrument to which it is subject or by which it or any of its properties is bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that has had or could reasonably be expected to have a Material Adverse Effect.

§6.9 Tax Status. Each of the Borrowers and the Guarantor (a) has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject or has obtained an extension for filing, (b) has paid prior to delinquency all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings and (c) has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers or partners of such Person know of no basis for any such claim. There are no audits pending or to the knowledge of Borrowers threatened with respect to any tax returns filed by Borrowers or the Guarantor. The taxpayer identification numbers or social security numbers for the Borrowers and the Guarantor is as set forth in Schedule 6.9 hereto.

§6.10 No Event of Default. No Default or Event of Default has occurred and is continuing.

§6.11 Investment Company Act. None of the Borrowers is an “investment company”, or an “affiliated company” or a “principal underwriter” of an “investment company”, as such terms are defined in the Investment Company Act of 1940.

§6.12 Employee Benefit Plans. None of the Borrowers or any ERISA Affiliate maintains or contributes to any Employee Benefit Plan, Multiemployer Plan or Guaranteed Pension Plan. None of the assets of the Borrowers constitute a “plan asset” of any Employee Plan, Multiemployer Plan or Guaranteed Pension Plan.

§6.13 Disclosure. All of the representations and warranties made by or on behalf of the Borrowers and the Guarantor in this Agreement and the other Loan Documents or any document or instrument delivered to the Agent or the Lenders pursuant to or in connection with any of such Loan Documents are true and correct in all material respects, and neither the Borrowers nor the Guarantor has failed to disclose such information as is necessary to make such representations and warranties not misleading. There is no material fact or circumstance that has not been disclosed to the Agent and the Lenders, and the written information, reports and other papers and data with respect to the Borrowers, the Guarantor or the Mortgaged Property (other than projections and estimates) furnished to the Agent or the Lenders in connection with this Agreement or the obtaining of the Commitments of the Lenders hereunder was, at the time so furnished, complete and correct in all material respects, or has been subsequently supplemented by other written information, reports or other papers or data, to the extent necessary to give in all material respects a true and accurate knowledge of the subject matter in all material respects; provided that such representation shall not apply to (a) the accuracy of any appraisal or

environmental reports prepared by third parties or legal conclusions or analysis provided by the Borrowers' and/or the Guarantor's counsel (although the Borrowers and the Guarantor have no reason to believe that the Agent and the Lenders may not rely on the accuracy thereof) or (b) budgets, projections and other forward-looking speculative information prepared in good faith by the Borrowers (except to the extent the related assumptions were when made manifestly unreasonable).

§6.14 Trade Name; Place of Business. Neither of the Borrowers uses any trade name and conducts business under any name other than its actual name set forth in the Loan Documents. The principal place of business of the Borrowers is 11465 Sunset Hills Road, 5th Floor, Reston, Virginia 20190.

§6.15 Regulations T, U and X. No portion of any Loan is to be used for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 220, 221 and 224. Neither of the Borrowers is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 220, 221 and 224.

§6.16 Environmental Compliance. The Borrowers have taken all commercially reasonable steps to investigate the past and present conditions and usage of the Mortgaged Property and the operations conducted thereon and, except as specifically set forth in the written environmental site assessment reports of the Environmental Engineer and all other soil, construction, forensic site reports, surveys and assessments relating to and documenting the condition and history of the Mortgaged Property provided to the Agent on or before the date hereof, make the following representations and warranties:

(a) Neither any Borrower nor any operator of the Mortgaged Property, nor any operations thereon or any prior use thereof, nor the Mortgaged Property, is in violation or alleged violation of any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under any Environmental Law.

(b) There are no claims by former owners or occupants of the Mortgaged Property, or by owners of other properties, or by any other third parties, or by any government agencies, relating to or arising out of the presence of Hazardous Materials on, in, under, or migrating from the Mortgaged Property.

(c) (i) No portion of the Mortgaged Property has been used for the handling, processing, storage or disposal of Hazardous Substances, and no underground tank or other underground storage receptacle for Hazardous Substances is located on any portion of the Mortgaged Property; (ii) in the course of any activities conducted by the Borrowers or the operators of the Mortgaged Property, no Hazardous Substances have been generated or are being used on the Mortgaged Property; (iii) there has been no past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping (a "Release") or threatened Release of Hazardous Substances on, upon, into or from the

Mortgaged Property; (iv) there have been no Releases on, upon, from or into any real property in the vicinity of the Mortgaged Property which, through soil or groundwater contamination or otherwise, may have come to be located on the Mortgaged Property; and (v) any Hazardous Substances that have been generated on the Mortgaged Property have been transported off site in accordance with all applicable Environmental Laws.

(d) None of the Borrowers nor the Mortgaged Property is subject to any applicable Environmental Law requiring the performance of Hazardous Substances site assessments, or the removal or remediation of Hazardous Substances, or the giving of notice to any governmental agency or the recording or delivery to other Persons of an environmental disclosure document or statement in each case by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the recording of the Mortgages or to the effectiveness of any other transactions contemplated hereby except for such matters that shall be complied with as of the Closing Date.

(e) There are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Mortgaged Property, and the Mortgaged Property has never been used for the disposal of solid waste, trash or debris.

(f) Neither of the Borrowers has received notice of any claim by any party that any use, operation, or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property, nor is there any knowledge of any basis for such a claim.

(g) There are no Hazardous Materials in, on, or under the Mortgaged Property in any concentration or in any condition that would limit, restrict, or otherwise affect any future use of the Mortgaged Property, including without limitation: any residential use; use of groundwater for any purpose, including drinking water; or grading, excavation, and disposal of soil.

(h) The Mortgaged Property is not subject to any orders, decrees, or notices that would require the owner to take any action under any applicable Environmental Laws, nor are there conditions on the Mortgaged Property that could subject the owner of the Property to any such order, decree, or notice.

(i) The Mortgaged Property contains no wetlands (as that term is defined in the Clean Water Act) except as shown on the Survey, endangered or threatened species (as those terms are defined in the Endangered Species Act), listed critical habitat or property that is eligible for listing as critical habitat (under the Endangered Species Act), and is not subject to any other ecological condition or classification that would limit, restrict, or otherwise affect any future use of the Mortgaged Property.

§6.17 Subsidiaries; Organizational Structure. Neither of the Borrowers has any Subsidiaries. Schedule 6.17 sets forth the form and jurisdiction of organization of each Person that directly or indirectly owns an interest in the Borrowers and such Person's ownership interest therein. No Person owns any legal, equitable or beneficial interest in any of the Persons set forth on Schedule 6.17 except as set forth on such Schedules.

§6.18 Mortgaged Property. The Borrowers have obtained the approvals, consents, orders, agreements, authorizations, permits and licenses from applicable governmental authorities or under the terms of any restriction, covenant or easement affecting the portion of the Mortgaged Property on which the Potomac Project is located, to permit the development of the Potomac Project for use as a mixed use condominium, and all such approvals are in full force and effect. The Mortgaged Property is in compliance with all applicable federal and state law and governmental regulations and any local ordinances, orders or regulations, including without limitation, laws, regulations and ordinances relating to zoning, building codes, subdivision, fire protection, health, safety, historic preservation and protection, wetlands, tidelands, and Environmental Laws. None of the Mortgaged Property is subject to any lease, license or other occupancy agreement, except as expressly permitted in §7.12. There is no violation or asserted violation of any agreements or restrictions concerning the Mortgaged Property or the existing or contemplated use thereof. The Borrowers have no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation or restriction, or any judicial, administrative, governmental or quasi-governmental action, or any action by adjacent landowners, or of any natural or artificial conditions existing upon the Mortgaged Property, which would materially limit or restrict or prevent the contemplated or intended use and purpose of the Mortgaged Property. All water, sewer, electric, gas, telephone and other utilities necessary for the development, use and operation of the Potomac Project for its current and intended use are installed to the property lines of the Potomac Project through dedicated public rights-of-way or through perpetual private easements approved by the Agent with respect to which the Mortgage creates a valid and enforceable first lien or security title, and there is sufficient existing capacity for each of such utilities to provide service to the Potomac Project in accordance with the anticipated use thereof. The streets abutting the Potomac Project are dedicated and accepted public roads, to which the Potomac Project has direct access by trucks and other motor vehicles and by foot, or are perpetual private ways (with direct access by trucks and other motor vehicles and by foot to public roads) to which the Potomac Project has direct access approved by the Agent and with respect to which the applicable Mortgage creates a valid and enforceable first lien. All private ways providing access to the Mortgaged Property are zoned in a manner which will permit access to the Mortgaged Property over such ways by trucks and other commercial, industrial and personal vehicles. There are no unpaid or outstanding real estate or other taxes or assessments on or against any of the Mortgaged Property which are payable by the Borrowers (except only real estate or other taxes or assessments, that are not yet delinquent or are being protested as permitted by this Agreement). The Mortgaged Property is separately assessed for purposes of real estate tax assessment and payment and is covered by a tax parcel or parcels which pertain to such Mortgaged Property only and not to any property which is not subject to the Mortgages. There are no pending, or to the knowledge of Borrowers threatened or contemplated, eminent domain proceedings against any of the Mortgaged Property. None of the Mortgaged Property is now damaged as a result of any fire, explosion, accident, flood or other casualty. Neither of the Borrowers has received any outstanding notice from any insurer or its agent requiring performance of any work with respect to any of the Mortgaged Property or canceling or threatening to cancel any policy of insurance, and the Mortgaged Property complies with the requirements of all of the Borrowers' insurance carriers. No Person has any right or option to acquire the Mortgaged Property or any portion thereof or interest therein except as set forth on Schedule 6.18(c).

§6.19 Brokers. No Borrower nor Guarantor has engaged or otherwise dealt with any broker, finder or similar entity in connection with this Agreement or the Loans contemplated hereunder.

§6.20 Other Debt. Neither of the Borrowers has any Indebtedness other than Indebtedness that will be satisfied on the Closing Date.

§6.21 Solvency. As of the Closing Date and after giving effect to the transactions contemplated by this Agreement and the other Loan Documents, including all Loans made or to be made hereunder, neither any Borrower nor the Guarantor is insolvent on a balance sheet basis such that the sum of such Person's assets exceeds the sum of such Person's liabilities, each Borrower and the Guarantor is able to pay its debts as they become due, and each Borrower and the Guarantor has sufficient capital to carry on its business.

§6.22 No Bankruptcy Filing. None of the Borrowers or Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or property, and the Borrowers have no knowledge of any Person contemplating the filing of any such petition against either Borrower or the Guarantor.

§6.23 No Fraudulent Intent. Neither the execution and delivery of this Agreement or any of the other Loan Documents nor the performance of any actions required hereunder or thereunder is being undertaken by any Borrower or the Guarantor with or as a result of any actual intent by any of such Persons to hinder, delay or defraud any entity to which any of such Persons is now or will hereafter become indebted.

§6.24 OFAC. None of the Borrowers or the Guarantor is (or will be) a person with whom any Lender is restricted from doing business under OFAC (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide to the Lenders any additional information that a Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

§6.25 Transaction in Best Interests of Borrowers; Consideration. The transaction evidenced by this Agreement and the other Loan Documents is in the best interests of each Borrower. The direct and indirect benefits to inure to the Borrowers pursuant to this Agreement and the other Loan Documents constitute substantially more than "reasonably equivalent value" (as such term is used in Section 548 of the Bankruptcy Code) and "valuable consideration," "fair value," and "fair consideration" (as such terms are used in any applicable state fraudulent conveyance law), in exchange for the benefits to be provided by the Borrower pursuant to this Agreement and the other Loan Documents, and but for the willingness of Guarantor to guaranty

the Loans, Borrowers would be unable to obtain the financing contemplated hereunder which financing will enable the Borrowers to have available financing to refinance existing indebtedness and to conduct and expand their business. Borrowers further acknowledge and agree that Borrowers constitute a single integrated and common enterprise and that each receives a benefit from the availability of credit under this Agreement.

§6.26 Purchase Contracts. Schedule 6.26 hereto sets forth as of the date hereof all of the Purchase Contracts for the Potomac Project. Potomac has not entered into any other agreements for the sale of the Potomac Units other than the Purchase Contracts on such schedule. Potomac has delivered to the Agent a true, correct and complete copy of the Purchase Contracts. Each of the Purchase Contracts is in full force and effect and both the Borrower and the purchaser thereunder are in compliance with their respective obligations under such Purchase Contract. Potomac has obtained all approvals and otherwise satisfied any requirement of any applicable Governmental Authority or Requirement to market and sell the Potomac Units.

§6.27 Contribution Agreement. The Borrowers and the Guarantor have executed and delivered the Contribution Agreement, and the Contribution Agreement constitutes the valid and legally binding obligations of such parties enforceable against them in accordance with the terms and provisions thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

§6.28 Potomac Project. The Potomac Project has been fully completed in accordance with its plans and specifications and has all permits and approvals for the occupancy thereof, including certificates of occupancy from the Governmental Authority in which the Potomac Project is located, other than those certificates of occupancy for the Potomac Units set forth on Schedule 6.28 hereto, so that Potomac Units may be sold by Potomac for immediate occupancy. No material claim or other request for payment has been made by any purchaser of any Potomac Unit with respect to any express or implied warranty provided to it in connection with the construction, development or sale of Units at the Potomac Project.

§7. AFFIRMATIVE COVENANTS.

The Borrowers covenant and agree that, so long as any Loan or Note is outstanding or any Lender has any obligation to make any Loans:

§7.1 Punctual Payment. The Borrowers will duly and punctually pay or cause to be paid the principal and interest on their respective Loans and all interest and fees provided for in this Agreement, all in accordance with the terms of this Agreement and the Notes, as well as all other sums owing pursuant to the Loan Documents.

§7.2 Maintenance of Office. The Borrowers will maintain their respective chief executive offices at 11465 Sunset Hills Road, Reston, Virginia 20190, or at such other place in the United States of America as each Borrower shall designate upon thirty (30) days prior written notice to the Agent and the Lenders, where notices, presentations and demands to or upon the Borrowers in respect of the Loan Documents may be given or made.

§7.3 Records and Accounts. The Borrowers will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with GAAP and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies and other reserves.

§7.4 Financial Statements, Certificates and Information. Borrowers will deliver to the Agent with sufficient copies for each of the Lenders:

(a) as soon as practicable, but in any event not later than ninety (90) days after the end of each fiscal year of each Borrower, the unaudited consolidated balance sheet of Borrowers, at the end of such year, and the related unaudited statements of income, changes in capital and cash flows for such year, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with GAAP, together with a certification by the chief financial officer or accounting officer of each Borrower that the information contained in such financial statements fairly presents the financial position of such Borrower on the date thereof;

(b) not later than thirty (30) days after the end of each month, copies of the unaudited balance sheet of each Borrower as at the end of such month, and the related unaudited statements of income and cash flows for the portion of each Borrower's fiscal year then elapsed, all in reasonable detail and prepared in accordance with GAAP, together with a certification by the chief financial officer or accounting officer of each Borrower that the information contained in such financial statements fairly presents the financial position of such Borrower on the date thereof;

(c) within five (5) days of the filing of Guarantor's Form 10-K with the SEC, if applicable, but in any event within one hundred five (105) days after the end of each fiscal year of each Guarantor, the audited consolidated balance sheet of Guarantor, at the end of such year, and the related audited statements of income and debt, changes in capital and cash flows for such year, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with GAAP, together with a certification by the chief financial officer or accounting officer of Guarantor that the information contained in such financial statements fairly presents the financial position of Guarantor on the date thereof, and accompanied by an auditor's report prepared without qualification by an accounting firm reasonably acceptable to the Agent, a statement of any Distributions made by Guarantor in the fourth calendar quarter, and any other information the Agent may reasonably require to complete a financial analysis of Guarantor, together with a written statement from such accountants to the effect that they have read a copy of this Agreement, and that, in making the examination necessary to said certification, they have obtained no knowledge of any Default or Event of Default, or, if such accountants shall have obtained knowledge of any then existing Default or Event of Default they shall disclose in such statement any such Default or Event of Default;

(d) within five (5) days of the filing of Guarantor's Form 10-Q with the SEC, if applicable, but in any event within forty-five (45) days after the end of each of the three calendar quarters of each year, an unaudited consolidated balance sheet of the Guarantor as of the end of such quarter for which a Form 10-Q is filed and the related statement of income and debt and statement of cash flows for such quarter and for the portion of the year ended at the end of such quarter, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of the previous year, all in reasonable detail and prepared in accordance with GAAP, together with a certification by the chief financial officer or accounting officer of Guarantor that the information contained in such financial statements fairly presents the financial position of Guarantor on the date thereof and a statement of any Distributions made by Guarantor in the each of the first three calendar quarters;

(e) simultaneously with the delivery of the financial statements referred to in clause (a) above, the statement of all contingent liabilities which are not reflected in such financial statements or referred to in the notes thereto (including, without limitation, all guaranties, endorsements and other contingent obligations in respect of the indebtedness of others, and obligations to reimburse the issuer in respect of any letters of credit);

(f) promptly after they are filed with the Internal Revenue Service, copies of all annual federal income tax returns and amendments thereto of each Borrower and each Guarantor;

(g) evidence reasonably satisfactory to Agent of the timely payment of all real estate taxes for the Mortgaged Property;

(h) not later than January 31 of each year, a budget and business plan for the Borrowers and Guarantor for the next calendar year; and

(i) simultaneously with the delivery of the financial statements referred to in subsections (a) and (b) above, a statement (a "Compliance Certificate") certified by the chief financial officer of Borrower in the form of Exhibit E hereto evidencing compliance with the covenants contained in §2.6, and (if applicable) reconciliations to reflect changes in GAAP since the Balance Sheet Date;

(j) monthly sales reports for the Potomac Project and the Station View Project, including, without limitation, notices of default under the Purchase Contracts and a schedule of upcoming closings;

(k) simultaneously with the delivery of the financial statements referred to in subsections (a) and (b) above, and in the event the Borrower has actually rented units at Potomac Yard, (i) a Rent Roll for the Potomac Project and a summary thereof in form satisfactory to Agent as of the end of each calendar quarter, together with a listing of each tenant that has taken occupancy of the Potomac Project during each calendar quarter, (ii) an operating statement for the Potomac Project for each such calendar quarter and year to date (such statements and reports to be in form reasonably satisfactory to Agent), and (iii) a copy of each Lease or amendment to any Lease entered into with respect to the Potomac Project during such calendar quarter;

(l) from time to time such other financial data and information in the possession of any Borrower or the Guarantor (including without limitation auditors' management letters, status of litigation or investigations against a Borrower and any settlement discussions relating thereto, property inspection and environmental reports and information as to zoning and other legal and regulatory changes affecting any Borrower or the Guarantor) as the Agent may reasonably request.

Any material to be delivered pursuant to this §7.4 may be delivered electronically directly to Agent and the Lenders provided that such material is in a format reasonably acceptable to Agent, and such material shall be deemed to have been delivered to Agent and the Lenders upon Agent's receipt thereof. Upon the request of Agent, Borrowers shall deliver paper copies thereof to Agent and the Lenders. Borrowers authorize Agent to disseminate any such materials through the use of Intralinks, SyndTrak or any other electronic information dissemination system, and the Borrowers release Agent and the Lenders from any liability in connection therewith.

§7.5 Notices.

(a) Defaults. The Borrowers will promptly upon obtaining actual knowledge of same notify the Agent in writing of the occurrence of any Default or Event of Default, which notice shall describe such occurrence with reasonable specificity and shall state that such notice is a "notice of default". If any Person shall give any notice or take any other action in respect of a claimed default (whether or not constituting an Event of Default) under this Agreement or under any note, evidence of indebtedness, indenture or other obligation to which or with respect to which any Borrower or the Guarantor is a party or obligor, whether as principal or surety, and such default would permit the holder of such note or obligation or other evidence of indebtedness to accelerate the maturity thereof, which acceleration would either cause a Default or have a Material Adverse Effect, the Borrowers shall forthwith give written notice thereof to the Agent and each of the Lenders, describing the notice or action and the nature of the claimed default.

(b) Environmental Events. The Borrowers will give notice to the Agent within five (5) Business Days of becoming aware of (i) any potential or known Release, or threat of Release, of any Hazardous Substances in violation of any applicable Environmental Law; (ii) any violation of any Environmental Law that any Borrower or the Guarantor reports in writing or is reportable by such Person in writing (or for which any written report supplemental to any oral report is made) to any federal, state or local environmental agency or (iii) any inquiry, proceeding, investigation, or other action, including a notice from any agency of potential environmental liability, of any federal, state or local environmental agency or board, that in either case involves (A) any Mortgaged Property, or (B) or the Agent's liens or security title on the Collateral pursuant to the Security Documents.

(c) Notification of Claims Against Collateral. The Borrowers will give notice to the Agent in writing within five (5) Business Days of becoming aware of any material setoff, claims (including, with respect to the Mortgaged Property, environmental claims), withholdings or other defenses to which any of the Collateral, or the rights of the Agent or the Lenders with respect to the Collateral, are subject.

(d) Notice of Litigation and Judgments. The Borrowers will give notice to the Agent in writing within five (5) Business Days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting any Borrower or the Guarantor or to which any Borrower or the Guarantor is or is to become a party involving an uninsured claim against any Borrower or the Guarantor that could either cause a Default or could reasonably be expected to have a Material Adverse Effect and stating the nature and status of such litigation or proceedings. The Borrowers and the Guarantor will give notice to the Agent, in writing, in form and detail reasonably satisfactory to the Agent and each of the Lenders, within ten (10) days of any judgment not covered by insurance, whether final or otherwise, against any Borrower or the Guarantor in an amount in excess of $100,000.00.

(e) ERISA. The Borrowers will give notice to the Agent within five (5) Business Days after any Borrower or any ERISA Affiliate (i) gives or is required to give notice to the PBGC of any "reportable event" (as defined in §4043 of ERISA) with respect to any Guaranteed Pension Plan, Multiemployer Plan or Employee Benefit Plan, or knows that the plan administrator of any such plan has given or is required to give notice of any such reportable event; (ii) gives a copy of any notice of complete or partial withdrawal liability under Title IV of ERISA; or (iii) receives any notice from the PBGC under Title IV or ERISA of an intent to terminate or appoint a trustee to administer any such plan.

(f) Notification of Lenders. Within five (5) Business Days after receiving any notice under this §7.5, the Agent will forward a copy thereof to each of the Lenders, together with copies of any certificates or other written information that accompanied such notice.

§7.6 Existence. Each Borrower will preserve and keep in full force and effect its corporate or limited liability company existence, and will cause the Guarantor to preserve and keep in full force and effect its legal existence in the jurisdiction of its incorporation or formation. The Borrowers will preserve and keep in full force all of their respective rights and franchises, the preservation of which is necessary to the conduct of their business.

§7.7 Insurance; Condemnation.

(a) The Borrowers will, at their expense, procure and maintain for the benefit of the Borrowers and the Agent, insurance policies issued by such insurance companies, in such amounts, in such form and substance, and with such coverages, endorsements, deductibles and expiration dates as are acceptable to the Agent, providing the following types of insurance covering the Mortgaged Property:

(i) "All Risks" property insurance (including broad form flood, broad form earthquake, and comprehensive boiler and machinery coverages) on any improvement and the contents therein of the Borrowers in an amount not less than one hundred percent (100%) of the full replacement cost of such improvements and the contents therein of the Borrowers or such other amount as the Agent may approve, with deductibles not to exceed $10,000.00 for any one occurrence, with a replacement cost coverage endorsement, an agreed amount endorsement, and, if requested by the Agent, a contingent liability from operation of building laws endorsement in such amounts as the Agent may require. Full replacement cost as used herein means the cost of replacing such improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and the contents therein of the Borrowers without deduction for physical depreciation thereof;

(ii) During the course of construction or repair of any improvements, the insurance required by clause (i) above shall be written on a builders risk, completed value, non-reporting form, meeting all of the terms required by clause (i) above, covering the total value of work performed, materials, equipment, machinery and supplies furnished, existing structures, and temporary structures being erected on or near the Mortgaged Property, including coverage against collapse and damage during transit or while being stored off-site, and containing a soft costs (including loss of rents) coverage endorsement and a permission to occupy endorsement;

(iii) Flood insurance if at any time any improvements are located in any federally designated "special hazard area" (including any area having special flood, mudslide and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map published by the Federal Emergency Management Agency as Zone A, AO, Al-30, AE, A99, AH, VO, V1-30, VE, V, M or E) and the broad form flood coverage required by clause (i) above is not available, in an amount equal to not less than $25,000,000 or the maximum amount then available under the National Flood Insurance Program;

(iv) Commercial general liability insurance against claims for personal injury (to include, without limitation, bodily injury and personal and advertising injury) and property damage liability, all on an occurrence basis, if commercially available, with such coverages as the Agent may reasonably request (including, without limitation, contractual liability coverage, completed operations coverage for a period of two (2) years following completion of construction of any improvements on the Mortgaged Property, and coverages equivalent to an ISO broad form endorsement), with a general aggregate limit of not less than $2,000,000.00, a completed operations aggregate limit of not less than $2,000,000.00, and a combined single "per occurrence" limit of not less than $1,000,000.00 for bodily injury, property damage and medical payments;

(v) During the course of construction or repair of any improvements on the Mortgaged Property, owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the insurance required by clause (iv) above;

(vi) Employer's liability insurance with respect to the Borrowers' employees;

(vii) Umbrella liability insurance with limits of not less than $1,000,000.00 to be in excess of the limits of the insurance required by clauses (iv), (v) and (vi) above, with coverage at least as broad as the primary coverages of the insurance required by clauses (iv), (v) and (vi) above, with any excess liability insurance to be at least as broad as the coverages of the lead umbrella policy. All such policies shall be endorsed to provide defense coverage obligations;

(viii) Workers' compensation insurance for all employees of the Borrowers engaged on or with respect to the Mortgaged Property with limits as required by applicable law; and

(ix) Such other insurance in such form and in such amounts as may from time to time be reasonably required by the Agent against other insurable hazards and casualties which at the time are commonly insured against in the case of properties of similar character and location to the Mortgaged Property.

The Borrowers shall pay all premiums on insurance policies. The insurance policies with respect to the Mortgaged Property provided for in clauses (iv), (v) and (vii) above shall name the Agent and each Lender as an additional insured and shall contain a cross liability/severability endorsement. The insurance policies provided for in clauses (i), (ii) and (iii) above shall name the Agent as mortgagee and loss payee, shall be first payable in case of loss to the Agent, and shall contain mortgage clauses and lender's loss payable endorsements in form and substance acceptable to the Agent. The Borrowers shall deliver duplicate originals or certified copies of all such policies to the Agent, and the Borrowers shall promptly furnish to the Agent all renewal notices and evidence that all premiums or portions thereof then due and payable have been paid. At least thirty (30) days prior to the expiration date of the policies, the Borrowers shall deliver to the Agent evidence of continued coverage, including a certificate of insurance, as may be satisfactory to the Agent.

(b) All policies of insurance required by this Agreement shall contain clauses or endorsements to the effect that (i) no act or omission of the Borrowers or anyone acting for the Borrowers (including, without limitation, any representations made in the procurement of such insurance), which might otherwise result in a forfeiture of such insurance or any part thereof, no occupancy or use of the Mortgaged Property for purposes more hazardous then permitted by the terms of the policy, and no foreclosure or any other change in title to the Mortgaged Property or any part thereof, shall affect the validity or enforceability of such insurance insofar as the Agent is concerned, (ii) the insurer waives any right of set off, counterclaim, subrogation, or any deduction in respect of any liability of the Borrowers and the Agent, (iii) such insurance is primary and without right of contribution from any other insurance which may be available, (iv) such policies shall not be modified, canceled or terminated prior to the scheduled expiration date thereof without the insurer thereunder giving at least thirty (30) days prior written notice to the Agent by certified or registered mail, and (v) that the Agent or the Lenders shall not be liable for any premiums thereon or subject to any assessments thereunder, and shall in all events be in amounts sufficient to avoid any coinsurance liability.

(c) The insurance required by this Agreement may be effected through a blanket policy or policies covering additional locations and property of the Borrowers and other Persons not included in the Mortgage Property, provided that such blanket policy or policies comply with all of the terms and provisions of this §7.7 and contain endorsements or clauses assuring that any claim recovery will not be less than that which a separate policy would provide, including, without limitation, a priority claim provision with respect to property insurance and an aggregate limits of insurance endorsement in the case of liability insurance.

(d) All policies of insurance required by this Agreement shall be issued by companies licensed to do business in the State where the policy is issued and also in the States where the Mortgaged Property is located and having a rating in Best's Key Rating Guide of at least "A" and a financial size category of at least "X."

(e) Neither of the Borrowers shall carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Agreement unless such insurance complies with the terms and provisions of this §7.7.

(f) In the event of any loss or damage to the Mortgaged Property, a Borrower shall give prompt written notice to the insurance carrier and the Agent. Each Borrower hereby irrevocably authorizes and empowers the Agent, at the Agent's option and in the Agent's sole discretion or at the request of the Majority Lenders in their sole discretion, as its attorney in fact, to make proof of such loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds and Condemnation Proceeds, and to deduct therefrom the Agent's reasonable expenses incurred in the collection of such Insurance Proceeds; provided, however, that so long as no Default or Event of Default has occurred and is continuing and so long as such Borrower shall in good faith diligently pursue such claim, such Borrower may make proof of loss and appear in any proceedings or negotiations with respect to the adjustment of such claim, except that such Borrower may not settle, adjust or compromise any such claim without the prior written consent of the Agent, which consent shall not be unreasonably withheld or delayed; provided, further, that such Borrower may make proof of loss and adjust and compromise any claim under casualty insurance policies which is in an amount less than $500,000.00 so long as no Default or Event of Default has occurred and is continuing and so long as such Borrower shall in good faith diligently pursue such claim. The Borrowers further authorize the Agent, at the Agent's option, to (i) apply the balance of such Insurance Proceeds and Condemnation Proceeds to the payment of the Obligations (and among the Loans as Agent determines in its sole discretion) whether or not then due, or (ii) if the Agent shall require the reconstruction or repair of the Mortgaged Property, to hold the balance of such proceeds as trustee to be used to pay taxes, charges, sewer use fees, water rates and assessments which may be imposed on the Mortgaged Property and the Obligations (and among the Loans as Agent determines in its sole discretion) as they become due during the course of reconstruction or repair of the Mortgaged Property and to reimburse such Borrower, in accordance with such terms and conditions as the Agent may prescribe, for the costs of reconstruction or repair of the Mortgaged Property, and upon completion of such reconstruction or repair to apply any excess to the payment of the Obligations (and among the Loans as Agent determines in its sole discretion).

§7.8 Liens. Neither Borrower will suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Potomac Project or the Station View Project, and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, provided, however, that such Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim provided that such Borrower posts a statutory lien bond which removes such lien from title to the Potomac Project or Station View Project, as applicable, within twenty (20) days of written notice by Agent to such Borrower of the existence of the lien; provided, however, such time period shall be extended to sixty (60) days in the event such Borrower delivers to Agent a bond, letter of credit, or other security reasonably acceptable to Agent.

§7.9 Inspection of Properties and Books. The Borrowers will, and will cause the Guarantor to, permit the Agent and the Lenders, upon reasonable prior notice, to visit and inspect any of the properties of the Borrowers and the Guarantor, to examine the books of account of such Person (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of such Person with, and to be advised as to the same by, their respective officers, partners or members, all at such reasonable times and intervals as the Agent or any Lender may reasonably request. The Lenders shall use good faith efforts to coordinate such visits and inspections so as to minimize the interference with and disruption to the normal business operations of the Borrowers and the Guarantor.

§7.10 Compliance with Laws, Contracts, Licenses, and Permits. The Borrowers will comply with (i) all applicable laws and regulations now or hereafter in effect wherever its business is conducted, including all Environmental Laws, (ii) the provisions of its corporate charter, partnership agreement, limited liability company agreement or declaration of trust, as the case may be, and other charter documents and bylaws, (iii) all agreements and instruments to which it is a party or by which it or any of its properties may be bound, (iv) all applicable decrees, orders, and judgments, and (v) all licenses and permits relating to the Mortgaged Property or required by applicable laws and regulations for the conduct of its business or the ownership, use, development, sale or operation of its properties. Borrowers shall develop and implement such programs, policies and procedures as are necessary to comply with the Patriot Act and shall promptly advise Agent in writing in the event that a Borrower shall determine that any investors in such Borrower are in violation of such act.

§7.11 Further Assurances. The Borrowers will, and will cause the Guarantor to, cooperate with the Agent and the Lenders and execute such further instruments and documents as the Lenders or the Agent shall reasonably request to carry out to their satisfaction the transactions contemplated by this Agreement and the other Loan Documents.

§7.12 Leases. The Borrowers shall not enter into any lease, license or other occupancy agreement for any of the Mortgaged Property without the prior written consent of Agent other than those agreements consistent with the leasing parameters for the Potomac Project set forth on Schedule 7.12 attached hereto. Any rent or other income received during the term of the Loan by or on behalf of Potomac Yard in connection with such agreements shall be used solely for the payment of principal, interest or other charges due in connection with the Loans, amounts payable with respect to the operation of the Potomac Project, or the increasing of the Interest Holdback in accordance with §9; it being acknowledged and agreed by Borrowers that no such amounts may be distributed by Potomac Yard.

§7.13 Plan Assets. The Borrowers will do, or cause to be done, all things necessary to ensure that none of the Mortgaged Property nor any of their other assets will be deemed to be Plan Assets at any time.

§7.14 Single Purpose Entity Requirements. The Borrowers hereby represent, warrant and covenant, as of the date hereof and until such time as the Obligations are paid in full and the obligation to make further Loans has terminated, as follows:

(a) Obligation to be a Single Purpose Entity.

(i) Each Borrower has been a Single Purpose Entity at all times since its formation and will continue to be a Single Purpose Entity at all times until the Loan has been paid in full and the Lenders have no further obligations to make Loans.

(ii) The "single purpose entity" provisions included in the organizational documents of each Borrower shall not, without Agent's prior written consent, be amended, rescinded or otherwise revoked until the Loan has been paid in full and the Lenders have no obligation to make Loans.

(b) Definition of Single Purpose Entity.

(i) General Criteria. With respect to the Borrowers, a "Single Purpose Entity" means a corporation, limited partnership or limited liability company which, at all times since its formation and thereafter:

(A) shall not engage in any business or activity, other than with respect to each Borrower, the ownership, operation, development and sale of the Mortgaged Property and activities incidental thereto;

(B) shall not acquire or own any assets other than with respect to the Borrowers, the Mortgaged Property and such incidental personal property as may be necessary for the development and sale of the Mortgaged Property;

(C) [Intentionally Omitted.];

(D) shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization;

(E) shall not merge or consolidate with any other Person;

(F) shall not take, any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other Equity Interests, as applicable; issue additional partnership, membership or other Equity Interests, as applicable; or seek to accomplish any of the foregoing;

(G) shall not, without the unanimous written consent of all a Borrower's partners, members, or shareholders, as applicable, and the written consent of one hundred percent (100%) of the members of the board of directors or board of managers in the case of a single member limited liability company: (1) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (2) seek or consent to the appointment of a receiver, liquidator or any similar official; or (3) make an assignment for the benefit of creditors;

(H) shall not amend or restate its organizational documents if such change would adversely impact the requirements set forth in this §7.14;

(I) shall not own any Subsidiary or make any investment in, any other Person;

(J) shall not commingle its assets with the assets of any other Person;

(K) shall not, incur any Indebtedness, other than the Loan and customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property provided the same are not evidenced by a promissory note, do not (as to each Borrower) exceed, in the aggregate, at any time a maximum amount of two percent (2%) of the outstanding principal amount of the Loan to such Borrower and are paid within sixty (60) days of the date incurred;

(L) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

(M) shall only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of any Borrower, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties;

(N) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person, other than the obligations of the Borrowers under the Loan;

(O) shall not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person (other than the obligations of the other Borrower);

(P) shall not make any loans or advances to any other Person;

(Q) shall file its own tax returns as required under federal and state law;

(R) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name and shall correct any known misunderstanding regarding its separate identity;

(S) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(T) shall allocate shared expenses (including, without limitation, shared office space);

(U) shall pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds; and

(V) shall not acquire obligations or securities of its partners, members or shareholders, as applicable.

§7.15 Potomac Project.

(a) Potomac shall have a period of twelve (12) months from the date of this Agreement to obtain the certificates of occupancy for the Potomac Units described on Schedule 6.28 hereto.

(b) In the event that Potomac shall be required to pay any amounts that become due in connection with the General Contractor Dispute or otherwise in connection with the completion of the Potomac Project, then such amounts shall be paid from funds of the Borrowers or the Guarantor, but in no event shall be paid from the Holdbacks or from Net Sales Proceeds.

§8. NEGATIVE COVENANTS.

The Borrowers covenant and agree that, so long as any Loan or Note is outstanding or any of the Lenders has any obligation to make any Loans:

§8.1 Restrictions on Indebtedness. Neither Borrower will create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(a) Indebtedness to the Lenders and Agent arising under any of the Loan Documents;

(b) current liabilities of such Persons incurred in the ordinary course of business but not incurred through (i) the borrowing of money, or (ii) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services;

(c) Indebtedness in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made in accordance with the provisions of §7.8;

(d) Indebtedness in respect of judgments or awards only to the extent, for the period and in an amount not resulting in a Default; and

(e) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the ordinary course of business.

§8.2 Restrictions on Liens, Etc. The Borrowers will not (a) create or incur or suffer to be created or incurred or to exist any lien, security title, encumbrance, mortgage, pledge, negative pledge, charge, restriction or other security interest of any kind upon any of their respective property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (b) transfer any of their property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment of its general creditors; (c) acquire, or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (d) suffer to exist for a period of more than sixty (60) days after the same shall have been incurred any Indebtedness or claim or demand against any of them that if unpaid could by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over any of their general creditors; (e) sell, assign, pledge or otherwise transfer any accounts, contract rights, general intangibles, chattel paper or instruments, with or without recourse; or (f) incur or maintain any obligation to any holder of Indebtedness of any of such Persons which prohibits the creation or maintenance of any lien securing the Obligations (collectively, "Liens"); provided that notwithstanding anything to the contrary contained herein, the Borrowers may create or incur or suffer to be created or incurred or to exist:

(i) Liens on properties to secure taxes, assessments and other governmental charges (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) or claims for labor, material or supplies in respect of obligations not then delinquent or not otherwise required to be paid or discharged under the terms of this Agreement or any of the other Loan Documents;

(ii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, old age pensions or other social security obligations;

(iii) Liens in favor of the Agent and the Lenders under the Loan Documents to secure the Obligations; and

(iv) Liens and encumbrances on a Mortgaged Property expressly permitted under the terms of the Mortgage relating thereto.

§8.3 Merger, Consolidation. None of the Borrowers or Guarantor nor any member, partner or shareholder thereof shall become a party to any dissolution, liquidation, disposition of all or substantially all of its assets or business, merger, reorganization, consolidation or other business combination or agree to effect any asset acquisition, stock acquisition or other acquisition individually or in a series of transactions which may have a similar effect as any of the foregoing, in each case without the prior written consent of the Majority Lenders.

§8.4 Sale and Leaseback. Neither Borrower will enter into any arrangement whereby such Borrower shall sell or transfer any of the Mortgaged Property owned by it in order that then

or thereafter such Borrower shall lease back such Mortgaged Property; provided, however, Potomac may, subject to the release requirements of §5.2, sell to the Guarantor or any Affiliate such number of Potomac Units that are necessary for Borrowers to meet the mandatory prepayment requirements set forth in §3.3 provided that the sales price of such Potomac Units is the greater of (i) the minimum release price for such Unit as set forth on Schedule 8.8 hereto, or (ii) an amount per square foot equal to the average price per square foot of the last ten (10) Potomac Units sold by Potomac.

§8.5 Compliance with Environmental Laws. Neither Borrower will, nor will either of them permit any other Person to, do any of the following: (a) use any of the Mortgaged Property or any portion thereof as a facility for the handling, processing, storage or disposal of Hazardous Substances, solid waste, trash or debris, except for small quantities of Hazardous Substances used in the ordinary course of business and in compliance with all applicable Environmental Laws, (b) cause or permit to be located on any of the Mortgaged Property any underground tank or other underground storage receptacle for Hazardous Substances, (c) generate any Hazardous Substances on any of the Mortgaged Property except in full compliance with Environmental Laws, (d) conduct any activity at the Mortgaged Property or use the Mortgaged Property in any manner that could reasonably be contemplated to cause a Release of Hazardous Substances on, upon or into the Mortgaged Property or any surrounding properties or any threatened Release of Hazardous Substances which might give rise to liability under CERCLA or any other Environmental Law, or (e) directly or indirectly transport or arrange for the transport of any Hazardous Substances (except in compliance with all Environmental Laws).

The Borrowers shall:

(i) in the event of any change in Environmental Laws governing the assessment, release or removal of Hazardous Substances, take all reasonable action (including, without limitation, the conducting of engineering tests at the sole expense of a Borrower) to confirm that no Hazardous Substances are or ever were Released or disposed of on the Mortgaged Property in violation of applicable Environmental Laws; and

(ii) if any Release or disposal of Hazardous Substances which any Person may be legally obligated to contain, correct or otherwise remediate or which may otherwise expose it to liability shall occur or shall have occurred on the Mortgaged Property (including without limitation any such Release or disposal occurring prior to the acquisition of such Mortgaged Property by such Borrower), a Borrower shall, after obtaining knowledge thereof, cause the prompt containment and removal of such Hazardous Substances and remediation of the Mortgaged Property in full compliance with all applicable Environmental Laws. The Agent may engage its own Environmental Engineer to review the environmental assessments and the compliance with the covenants contained herein.

At any time after an Event of Default shall have occurred hereunder the Agent may at its election (and will at the request of the Majority Lenders) obtain such environmental assessments of any or all of the Mortgaged Property prepared by an Environmental Engineer as may be necessary or advisable for the purpose of evaluating or confirming (i) whether any Hazardous Substances are present in the soil or water at or adjacent to the Mortgaged Property and (ii) whether the use, development and operation of the Mortgaged Property complies with all

Environmental Laws to the extent required by the Loan Documents. Additionally, at any time that the Agent or the Majority Lenders shall have reasonable grounds to believe that a Release or threatened Release of Hazardous Substances which any Person may be legally obligated to contain, correct or otherwise remediate or which otherwise may expose such Person to liability may have occurred, relating to the Mortgaged Property, or that any of the Mortgaged Property is not in compliance with Environmental Laws to the extent required by the Loan Documents, a Borrower shall promptly upon the request of Agent obtain and deliver to Agent such environmental assessments of the Mortgaged Property prepared by an Environmental Engineer as may be necessary or advisable for the purpose of evaluating or confirming (i) whether any Hazardous Substances are present in the soil or water at or adjacent to the Mortgaged Property and (ii) whether the use and operation of the Mortgaged Property comply with all Environmental Laws to the extent required by the Loan Documents. Environmental assessments may include detailed visual inspections of the Mortgaged Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, as well as such other investigations or analyses as are reasonably necessary or appropriate for a complete determination of the compliance of the Mortgaged Property and the use and operation thereof with all applicable Environmental Laws. All environmental assessments contemplated by this §8.5 shall be at the sole cost and expense of a Borrower.

§8.6 Distributions. Provided no Default or Event of Default has occurred or is continuing, or would arise as a result thereof, the Borrowers shall be permitted to make Distributions solely for (i) reimbursement of costs incurred in connection with the Mortgaged Properties, and (ii) once the percentage of Net Sales Proceeds applied by Agent reduces to less than one hundred percent (100%) as set forth in §5.2(d), then any excess Net Sale Proceeds may be distributed to Guarantor. Notwithstanding the foregoing, Borrowers shall not make any Distributions until all amounts then due and payable to Agent and the Lenders under the Loan Documents have been paid, including, without limitation, the mandatory prepayment requirement set forth in §3.3, and all amounts then payable with respect to the development, ownership, sale and operation of the Station View Project and the Potomac Project have been paid.

§8.7 Zoning and Contract Changes and Compliance. Neither Borrower shall initiate or consent to any zoning reclassification of any of the Mortgaged Property or seek any variance under any existing zoning ordinance or use or permit the use of the Mortgaged Property in any manner that could result in such use becoming a non-conforming use under or violating or not being in compliance with any zoning ordinance or any other applicable land use law, rule or regulation and any agreements applicable to the Mortgaged Property. Neither Borrower shall initiate any change in any laws, requirements of governmental authorities or obligations created by private contracts which now or hereafter may affect the Mortgaged Property. The Borrowers will give all such notices to, duly perform and comply with and otherwise take all such other actions with respect to, any applicable governmental authority as may be required under laws, regulations, approvals, permits or agreements to maintain all entitlements, permits and other approvals with respect to the Mortgaged Property in full force and effect.

§8.8 Contracts.

(a) The Borrowers will take or cause to be taken all commercially reasonable steps to market the Units. Borrowers shall use the standard form of purchase contract approved by Agent in its reasonable discretion, with such changes thereto as Borrowers may make in the ordinary course of business, provided that the purchase price for any Unit shall not, without the prior written consent of Agent, be less than the minimum release price for such Unit as set forth on Schedule 8.8 hereto.

(b) The Borrowers shall not modify, amend, terminate or cancel any of the Purchase Contracts without the prior written approval of the Agent, which consent shall not be unreasonably withheld. The Borrowers shall perform each and every of their respective obligations under the Purchase Contracts. The Borrowers will not, directly or indirectly, waive or agree or consent to the waiver of, the performance of any material obligations of any other party under the Purchase Contracts. The Borrowers will not do any act or allow any condition to occur which would relieve any purchaser of its obligation to purchase under the Purchase Contracts. The Borrowers shall undertake reasonable steps, as determined in the reasonable discretion of Potomac Yard, to compel performance by each other parties to the Purchase Contracts of all obligations, covenants and agreements by such other party to be performed thereunder. Any deposit or other monies forfeited by any buyer under the Purchase Contracts shall within two (2) Business Days be applied to reduce the Outstanding Potomac Loans or Station View Loans, as applicable. Notwithstanding anything herein to the contrary, Borrowers shall not be deemed to have breached the covenants contained in this §8.8 in the event that a buyer cancels or terminates a Purchase Contact. Borrowers shall comply with all applicable laws, rules and regulations governing the retention of the deposits made under the Purchase Contracts. Borrowers shall assign to Agent all of Borrowers' right, title and interest in and to such deposits to be held in accordance with applicable law. Agent shall have no responsibility or liability for the security or safety of such deposits so held by Borrowers. If applicable laws require that earnest money deposits made by contract purchasers be held in an institution in the Commonwealth of Virginia, then Borrowers shall within (15) Business Days from the date Agent delivers a draft to Borrowers provide to Agent a written and signed account control agreement or similar agreement in form and substance reasonably satisfactory from the depository holding such deposits providing that until the Loan is paid in full, any and all such deposits which are payable to a borrower as a result of a contract purchaser's default or forfeiture as permitted by the Purchase Contract, by law, or by a final judgment, arbitration award or settlement and release agreement, thereof shall be paid directly to Agent.

§8.9 Restrictions on Easements, Covenants and Restrictions. The Borrowers will not create or suffer to be created or to exist any easement, right of way, restriction, covenant, condition, license or other right in favor of any Person which affects or might affect title to the Mortgaged Property or the development, sale or use of the Mortgaged Property or any part thereof without (i) submitting to the Agent the proposed instrument creating such easement, right of way, covenant, condition, license or other right, accompanied by a survey showing the exact proposed location thereof and such other information as the Agent may reasonably request, and (ii) obtaining the prior approval of the Agent, which approval shall not be unreasonably withheld.

§9. HOLDBACKS.

(a) The Loan includes an initial interest holdback of $1,000,000, which initial holdback may be increased as the result of the application of release proceeds as set forth in §5.2(d) to an amount not greater than seven and one-half percent (7.5%) of the total amount of Potomac Loans which may be borrowed by Potomac including the Interest Holdback (the "Interest Holdback"). In the event release proceeds are applied to the Interest Holdback as set forth in §5.2(d), then such application shall be deemed to be a repayment of the Potomac Loan and the Commitment shall be reinstated for such amounts actually received by Agent; provided, however, that in no event shall the Commitment ever exceed $40,391,200. In the event that the amount of the Interest Holdback exceeds seven and one-half percent (7.5%) of the total amount of Potomac Loans which may be borrowed by Potomac including the Interest Holdback, then such excess shall no longer be part of the Interest Holdback and the Commitment shall be accordingly permanently reduced. Borrowers may request a disbursement from the Interest Holdback pursuant to §2.3 to be applied against the interest due on the Outstanding Loans. By execution hereof, each Borrower irrevocably authorizes the Agent, without the necessity of any further authorization, to cause the Lenders to disburse directly to itself for the account of the Lenders rather than to a Borrower out of the Interest Holdback such sums as are necessary to pay, on a monthly basis, accrued interest on the Loans (and any amount so advanced by the Lenders without the submission by a Borrower of a Loan Request shall be Base Rate Loans). Upon disbursement, the amount that is disbursed shall be disbursed pro rata by the Lenders and shall be added to the then outstanding principal sum of the Loans and shall bear interest at the rate provided for in this Agreement. Upon the occurrence of an Event of Default under this Agreement or any other Loan Document, the Agent shall have the right but not the obligation to continue to cause disbursements of monthly interest installments from the Interest Holdback. Establishment of the Interest Holdback shall in no way relieve the Borrowers of their obligation to make interest payments. Upon the occurrence of a Default or an Event of Default under any Loan Document, the Agent may, at its option, cease making any further disbursement from the Interest Holdback.

(b) Intentionally Omitted.

§10. CLOSING CONDITIONS.

The obligation of the Lenders to make the Loans shall be subject to the satisfaction of the following conditions precedent:

§10.1 Loan Documents. Each of the Loan Documents shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Agent shall have received a fully executed counterpart of each such document, except that each Lender shall have received the fully executed original of its Note.

§10.2 Certified Copies of Organizational Documents. The Agent shall have received from the Borrowers and the Guarantor a copy, certified as of a recent date by the appropriate officer of each State in which such Person is organized and in which the Mortgaged Property is located and a duly authorized officer, partner or member of such Person, as applicable, to be true and complete, of the partnership agreement, corporate charter or operating agreement and/or other organizational agreements of such Borrower and the Guarantor, as applicable, and its qualification to do business, as applicable, as in effect on such date of certification.

§10.3 Resolutions. All action on the part of the Borrowers and the Guarantor necessary for the valid execution, delivery and performance by such Person of this Agreement and the other Loan Documents to which such Person is or is to become a party shall have been duly and effectively taken, and evidence thereof reasonably satisfactory to the Agent shall have been provided to the Agent.

§10.4 Incumbency Certificate; Authorized Signers. Unless covered by the resolutions described in §10.3, the Agent shall have received from each Borrower and the Guarantor that is not an individual an incumbency certificate, dated as of the Closing Date, signed by a duly authorized officer of such Person and giving the name and bearing a specimen signature of each individual who shall be authorized to sign, in the name and on behalf of such Person, each of the Loan Documents to which such Person is or is to become a party. The Agent shall have also received from each Borrower a certificate, dated as of the Closing Date, signed by a duly authorized representative of such Borrower and giving the name and specimen signature of each Authorized Officer who shall be authorized to make Loan Requests and Conversion/Continuation Requests and to give notices and to take other action on behalf of the Borrowers under the Loan Documents.

§10.5 Opinion of Counsel. The Agent shall have received an opinion addressed to the Lenders and the Agent and dated as of the Closing Date from counsel to the Borrowers and the Guarantor in form and substance reasonably satisfactory to the Agent.

§10.6 Payment of Fees. The Borrowers shall have paid to the Agent the fees payable pursuant to §4.2.

§10.7 Performance; No Default. Borrowers and the Guarantor shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the Closing Date, and on the Closing Date there shall exist no Default or Event of Default.

§10.8 Representations and Warranties. The representations and warranties made by the Borrowers and the Guarantor in the Loan Documents or otherwise made by or on behalf of the Borrowers and the Guarantor in connection therewith or after the date thereof shall have been true and correct in all material respects when made and shall also be true and correct in all material respects on the Closing Date.

§10.9 Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be reasonably satisfactory to the Agent and the Agent's counsel in form and substance, and the Agent shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions, assurances, consents, approvals or documents as the Agent and the Agent's counsel may reasonably require.

§10.10 Mortgaged Property Qualification Documents. The Mortgaged Property Qualification Documents for the Mortgaged Property shall have been delivered to the Agent at the Borrowers' expense and shall be in form and substance satisfactory to the Agent.

§10.11 Appraisal. The Agent shall have received the Appraisal of the Mortgaged Property in form and substance satisfactory to the Agent and determined the Appraised Value, and the ratio of the Total Commitment to the Appraised Value shall not exceed seventy-two percent (72%).

§10.12 Consents. The Agent shall have received evidence reasonably satisfactory to the Agent that all necessary stockholder, partner, member or other consents required in connection with the consummation of the transactions contemplated by this Agreement and the other Loan Documents have been obtained.

§10.13 Purchase Contracts. The Agent shall have received a certified copy of each executed Purchase Contract.

§10.14 CHCI Subordinate Notes. The Agent shall have received evidence reasonably satisfactory to the Agent that Guarantor's payment obligation under the CHCI Subordinate Notes has reduced to aggregate principal amount of Nine Million and No/100 Dollars ($9,000,000).

§10.15 Other. The Agent shall have reviewed such other documents, instruments, certificates, opinions, assurances, consents and approvals as the Agent or the Agent's Special Counsel may reasonably have requested.

§11. CONDITIONS TO ALL BORROWINGS.

The obligations of the Lenders to make any Loan, whether on or after the Closing Date, shall also be subject to the satisfaction of the following conditions precedent:

§11.1 Prior Conditions Satisfied. All conditions set forth in §10 shall continue to be satisfied as of the date upon which any Loan is to be made.

§11.2 Representations True; No Default. Each of the representations and warranties made by or on behalf of the Borrowers and the Guarantor contained in this Agreement, the other Loan Documents or in any document or instrument delivered pursuant to or in connection with this Agreement shall be true in all material respects both as of the date as of which they were made and shall also be true in all material respects as of the time of the making of such Loan, with the same effect as if made at and as of that time, except to the extent of changes resulting from transactions permitted by the Loan Documents (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date), and no Default or Event of Default shall have occurred and be continuing.

§11.3 Borrowing Documents. The Agent shall have received a fully completed Loan Request for such Loan and the other documents and information as required by §2.3, fully completed, as applicable.

§11.4 Endorsement to Title Policy. At such times as Agent shall determine in its discretion prior to each funding, to the extent available under applicable law, a "date down" endorsement to each Title Policy indicating no change in the state of title and containing no survey exceptions not approved by the Agent, which endorsement shall, expressly or by virtue of

a proper "pending disbursements" clause or endorsement in each Title Policy, increase the coverage of each Title Policy to the aggregate amount of all Loans advanced and outstanding on or before the effective date of such endorsement (provided that the amount of coverage under an individual Title Policy for an individual Mortgaged Property need not equal the aggregate amount of all Loans), or if such endorsement is not available, such other evidence and assurances as the Agent may reasonably require (which evidence may include, without limitation, an affidavit from a Borrower stating that there have been no changes in title from the date of the last effective date of the Title Policy).

§11.5 Future Advances Tax Payment. As a condition precedent to any Lender's obligations to make any Loans available to the Borrowers hereunder, the Borrowers will pay to the Agent any mortgage, recording, intangible, documentary stamp or other similar taxes and charges which the Agent reasonably determines to be payable as a result of such Loan to any state or any county or municipality thereof in which the Mortgaged Property is located, and deliver to the Agent such affidavits or other information which the Agent reasonably determines to be necessary in connection with such payment in order to insure that the Mortgages on the Mortgaged Property located in such state secure the Borrowers' obligation with respect to the Loans then being requested by the Borrowers. The provisions of this §11.5 shall not limit the Borrowers' obligations under other provisions of the Loan Documents, including without limitation §15 hereof.

§12. EVENTS OF DEFAULT; ACCELERATION; ETC.

§12.1 Events of Default and Acceleration. If any of the following events ("Events of Default" or, if the giving of notice or the lapse of time or both is required, then, prior to such notice or lapse of time, "Defaults") shall occur:

(a) the Borrowers shall fail to pay any principal of the Loans when the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment;

(b) the Borrowers shall fail to pay any interest on the Loans or any fees or other sums due hereunder or under any of the other Loan Documents, within ten (10) days of the date the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment, provided that no such grace period shall apply to any such payments due at maturity;

(c) the Borrowers shall fail to remargin the Loan as required in §2.6;

(d) [Intentionally Omitted.];

(e) any of the Borrowers or the Guarantor shall fail to perform any other term, covenant or agreement contained herein or in any of the other Loan Documents which they are required to perform (other than those specified in the other subclauses of this §12 or in the other Loan Documents);

(f) any representation or warranty made by or on behalf of the Borrowers or the Guarantor in this Agreement or any other Loan Document, or any report, certificate, financial

statement, request for a Loan, or in any other document or instrument delivered pursuant to or in connection with this Agreement, any advance of a Loan or any of the other Loan Documents shall prove to have been false in any material respect upon the date when made or deemed to have been made or repeated;

(g) without limiting the provisions of this Agreement prohibiting the incurrence of Indebtedness by the Borrowers, any of the Borrowers (i) shall fail to pay when due (including, without limitation, at maturity) any principal, interest or other amount on account any obligation for borrowed money or credit received or other Indebtedness, or (ii) shall fail to observe or perform any term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any obligation for borrowed money or credit received or other Indebtedness for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof;

(h) any of the Borrowers or the Guarantor (i) shall make an assignment for the benefit of creditors, or admit in writing its general inability to pay or generally fail to pay its debts as they mature or become due, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver for it or any substantial part of its assets, (ii) shall commence any case or other proceeding relating to it under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or (iii) shall take any action to authorize or in furtherance of any of the foregoing;

(i) a petition or application shall be filed for the appointment of a trustee or other custodian, liquidator or receiver of any of the Borrowers or the Guarantor or any substantial part of the assets of any thereof, or a case or other proceeding shall be commenced against any such Person under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, and any such Person shall indicate its approval thereof, consent thereto or acquiescence therein or such petition, application, case or proceeding shall not have been dismissed within sixty (60) days following the filing or commencement thereof;

(j) a decree or order is entered appointing a trustee, custodian, liquidator or receiver for any of the Borrowers or the Guarantor or adjudicating any such Person, bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of any such Person in an involuntary case under federal bankruptcy laws as now or hereafter constituted;

(k) there shall remain in force, undischarged, unsatisfied and unstayed, for more than sixty (60) days, whether or not consecutive, one or more uninsured or unbonded final judgments against any of the Borrowers or Guarantor that, either individually or in the aggregate, exceed $250,000.00;

(l) any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or the express prior written agreement, consent or approval of the Lenders, or any action at law, suit in equity or other legal

proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of any of the Borrowers or the Guarantor, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination, or issue a judgment, order, decree or ruling, to the effect that any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;

(m) with respect to any Guaranteed Pension Plan, an ERISA Reportable Event shall have occurred and the Majority Lenders shall have determined in their reasonable discretion that such event reasonably could be expected to result in liability of any of the Borrowers or the Guarantor to the PBGC or such Guaranteed Pension Plan in an aggregate amount exceeding $250,000.00 and such event in the circumstances occurring reasonably could constitute grounds for the termination of such Guaranteed Pension Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer such Guaranteed Pension Plan; or a trustee shall have been appointed by the United States District Court to administer such Plan; or the PBGC shall have instituted proceedings to terminate such Guaranteed Pension Plan;

(n) any Borrower, the Guarantor or any Person so connected with any of them shall be indicted for a federal crime, a punishment for which could include the forfeiture of any assets of any Borrower or the Guarantor;

(o) the Guarantor denies that it has any liability or obligation under the Guaranty or any other Loan Document, or shall notify the Agent or any of the Lenders of Guarantor's intention to attempt to cancel or terminate the Guaranty, or any other Loan Document, or shall fail to observe or comply with any term, covenant, condition or agreement under the Guaranty, or any other Loan Document;

(p) any event, act, condition or occurrence of whatever nature, whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, that causes a Material Adverse Effect including, without limitation, the acceleration of the debt evidenced by the CHCI Subordinate Notes or any other Indebtedness of Guarantor individually or in the aggregate in excess of $30,000,000 or any adverse determination in any litigation, arbitration, or governmental investigation or proceeding involving Borrowers or the Guarantor;

(q) any Change of Control shall occur; or

(r) an Event of Default under any of the other Loan Documents shall occur;

then, and in any such event, the Agent may, and upon the request of the Majority Lenders shall, by notice in writing to the Borrowers declare all amounts owing with respect to this Agreement, the Notes and the other Loan Documents to be, and they shall thereupon forthwith become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers; provided that in the event of any Event of Default specified in §12.1(h), §12.1(i) or §12.1(j), all such amounts shall become immediately due and payable automatically and without any requirement of presentment, demand, protest or other notice of any kind from any of the Lenders or the Agent.

§12.2 Certain Cure Periods; Limitation of Cure Periods. No Event of Default shall exist hereunder upon the occurrence of any failure described in §12.1(e) in the event that the Borrowers cure such Default within thirty (30) days following receipt of written notice of such default, provided that the provisions of this §12.2 shall not pertain to defaults consisting of a failure to provide insurance as required by §7.7, to any default consisting of a failure to comply with §5.4, §7.14, §7.15, §8.1, §8.2, §8.6, §8.7 or §8.8 or to any Default excluded from any provision of cure of defaults contained in any other of the Loan Documents.

§12.3 Termination of Commitments. If any one or more Events of Default specified in §12.1(h), §12.1(i) or §12.1(j) shall occur, then immediately and without any action on the part of the Agent or any Lender any unused portion of the credit hereunder shall terminate and the Lenders shall be relieved of all obligations to make Loans to the Borrowers. If any other Event of Default shall have occurred, the Agent may, and upon the election of the Majority Lenders shall, by notice to the Borrowers terminate the obligation to make Loans to the Borrowers. No termination under this §12.3 shall relieve the Borrowers of their obligations to the Lenders arising under this Agreement or the other Loan Documents.

§12.4 Remedies. In case any one or more Events of Default shall have occurred and be continuing, and whether or not the Lenders shall have accelerated the maturity of the Loans pursuant to §12.1, the Agent on behalf of the Lenders may, and upon the direction of the Majority Lenders shall, proceed to protect and enforce their rights and remedies under this Agreement, the Notes and/or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, including to the full extent permitted by applicable law the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents, the obtaining of the ex parte appointment of a receiver, and, if any amount shall have become due, by declaration or otherwise, the enforcement of the payment thereof. No remedy herein conferred upon the Agent or the holder of any Note is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law. Notwithstanding the provisions of this Agreement providing that the Loans may be evidenced by multiple Notes in favor of the Lenders, the Lenders acknowledge and agree that only the Agent may exercise any remedies arising by reason of a Default or Event of Default. If any Borrower or the Guarantor fails to perform any agreement or covenant contained in this Agreement or any of the other Loan Documents beyond any applicable period for notice and cure, Agent may itself perform, or cause to be performed, any agreement or covenant of such Person contained in this Agreement or any of the other Loan Documents which such Person shall fail to perform, and the out-of-pocket costs of such performance, together with any reasonable expenses, including reasonable attorneys' fees actually incurred (including attorneys' fees incurred in any appeal) by Agent in connection therewith, shall be payable by Borrowers upon demand and shall constitute a part of the Obligations and shall if not paid within five (5) Business Days after demand bear interest at the rate for overdue amounts as set forth in this Agreement. In the event that all or any portion of the Obligations is collected by or through an attorney-at-law, the Borrowers shall pay all costs of collection including, but not limited to, reasonable attorney's fees.

§12.5 Distribution of Collateral Proceeds. In the event that, following the occurrence and during the continuance of any Event of Default, any monies are received in connection with

the enforcement of any of the Loan Documents, or otherwise with respect to the realization upon any of the Collateral or other assets of Borrowers or the Guarantor, such monies shall be distributed for application as follows; provided that the proceeds realized from the sale of the Mortgaged Property pursuant to the Mortgage shall be applied in the order set forth therein:

(a) First, to the payment of, or (as the case may be) the reimbursement of the Agent for or in respect of, all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or sustained by the Agent to protect or preserve the Collateral or in connection with the collection of such monies by the Agent, for the exercise, protection or enforcement by the Agent of all or any of the rights, remedies, powers and privileges of the Agent or the Lenders under this Agreement or any of the other Loan Documents or in respect of the Collateral or in support of any provision of adequate indemnity to the Agent against any taxes or liens which by law shall have, or may have, priority over the rights of the Agent or the Lenders to such monies;

(b) Second, to all other Obligations (including any interest, expenses or other obligations incurred after the commencement of a bankruptcy in such order or preference as the Majority Lenders shall determine; provided, that (i) in the event that any Lender shall have wrongfully failed or refused to make an advance under §2.4 or §9 and such failure or refusal shall be continuing, advances made by other Lenders during the pendency of such failure or refusal shall be entitled to be repaid as to principal and accrued interest in priority to the other Obligations described in this subsection (b), and (ii) except as otherwise provided in clause (i), Obligations owing to the Lenders with respect to each type of Obligation such as interest, principal, fees and expenses shall be made among the Lenders pro rata; and provided, further that the Majority Lenders may in their discretion make proper allowance to take into account any Obligations not then due and payable; and

(c) Third, the excess, if any, shall be returned to the Borrowers or to such other Persons as are entitled thereto.

§13. SETOFF.

Regardless of the adequacy of any Collateral, during the continuance of any Event of Default, any deposits (general or specific, time or demand, provisional or final, regardless of currency, maturity, or the branch where such deposits are held) or other sums credited by or due from any Lender to the Borrowers and any securities or other property of the Borrowers in the possession of such Lender may, without notice to any Borrower (any such notice being expressly waived by Borrowers) but with the prior written approval of Agent, be applied to or set off against the payment of Obligations and any and all other liabilities, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of the Borrowers to such Lender. Each of the Lenders agrees with each other Lender that if such Lender shall receive from the Borrowers or the Guarantor, whether by voluntary payment, exercise of the right of setoff, or otherwise, and shall retain and apply to the payment of the Note or Notes held by such Lender any amount in excess of its ratable portion of the payments received by all of the Lenders with respect to the Notes held by all of the Lenders, such Lender will make such disposition and arrangements with the other Lenders with respect to such excess, either by way of distribution, pro tanto assignment of claims, subrogation or otherwise as shall result in each Lender receiving

in respect of the Notes held by it its proportionate payment as contemplated by this Agreement; provided that if all or any part of such excess payment is thereafter recovered from such Lender, such disposition and arrangements shall be rescinded and the amount restored to the extent of such recovery, but without interest.

§14. THE AGENT.

§14.1 Authorization. The Agent is authorized to take such action on behalf of each of the Lenders and to exercise all such powers as are hereunder and under any of the other Loan Documents and any related documents delegated to the Agent, together with such powers as are reasonably incident thereto, provided that no duties or responsibilities not expressly assumed herein or therein shall be implied to have been assumed by the Agent. The obligations of the Agent hereunder are primarily administrative in nature, and nothing contained in this Agreement or any of the other Loan Documents shall be construed to constitute the Agent as a trustee for any Lender or to create an agency or fiduciary relationship. Agent shall act as the contractual representative of the Lenders hereunder, and notwithstanding the use of the term "Agent", it is understood and agreed that Agent shall not have any fiduciary duties or responsibilities to any Lender by reason of this Agreement or any other Loan Document and is acting as an independent contractor, the duties and responsibilities of which are limited to those expressly set forth in this Agreement and the other Loan Documents. The Borrowers and any other Person shall be entitled to conclusively rely on a statement from the Agent that it has the authority to act for and bind the Lenders pursuant to this Agreement and the other Loan Documents.

§14.2 Employees and Agents. The Agent may exercise its powers and execute its duties by or through employees or agents and shall be entitled to take, and to rely on, advice of counsel concerning all matters pertaining to its rights and duties under this Agreement and the other Loan Documents. The Agent may utilize the services of such Persons as the Agent may reasonably determine, and all reasonable fees and expenses of any such Persons shall be paid by the Borrowers.

§14.3 No Liability. Neither the Agent nor any of its shareholders, directors, officers or employees nor any other Person assisting them in their duties nor any agent, or employee thereof, shall be liable for (a) any waiver, consent or approval given or any action taken, or omitted to be taken, in good faith by it or them hereunder or under any of the other Loan Documents, or in connection herewith or therewith, or be responsible for the consequences of any oversight or error of judgment whatsoever, except that the Agent or such other Person, as the case may be, shall be liable for losses due to its willful misconduct or gross negligence as finally determined by a court of competent jurisdiction after the expiration of all applicable appeal periods or (b) any action taken or not taken by Agent with the consent or at the request of the Majority Lenders. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Agent for the account of the Lenders, unless the Agent has received notice from a Lender or the Borrowers referring to the Loan Documents and describing with reasonable specificity such Default or Event of Default and stating that such notice is a "notice of default".

§14.4 No Representations. The Agent shall not be responsible for the execution or validity or enforceability of this Agreement, the Notes, any of the other Loan Documents or any instrument at any time constituting, or intended to constitute, collateral security for the Notes, or for the value of any such collateral security or for the validity, enforceability or collectability of any such amounts owing with respect to the Notes, or for any recitals or statements, warranties or representations made herein, or any agreement, instrument or certificate delivered in connection therewith or in any of the other Loan Documents or in any certificate or instrument hereafter furnished to it by or on behalf of the Borrowers or the Guarantor, or be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or in any of the other Loan Documents. The Agent shall not be bound to ascertain whether any notice, consent, waiver or request delivered to it by the Borrowers or the Guarantor or any holder of any of the Notes shall have been duly authorized or is true, accurate and complete. The Agent has not made nor does it now make any representations or warranties, express or implied, nor does it assume any liability to the Lenders, with respect to the creditworthiness or financial condition of the Borrowers or the Guarantor, or the value of the Collateral or any other assets of the Borrowers or the Guarantor. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender, based upon such information and documents as it deems appropriate at the time, continue to make its own credit analysis and decisions in taking or not taking action under this Agreement and the other Loan Documents. Agent's Special Counsel has only represented Agent and KeyBank in connection with the Loan Documents and the only attorney client relationship or duty of care is between Agent's Special Counsel and Agent or KeyBank. Each Lender has been independently represented by separate counsel on all matters regarding the Loan Documents and the granting and perfecting of liens in the Collateral.

§14.5 Payments.

(a) A payment by any Borrower or the Guarantor to the Agent hereunder or under any of the other Loan Documents for the account of any Lender shall constitute a payment to such Lender. The Agent agrees to distribute to each Lender not later than one Business Day after the Agent's receipt of good funds, determined in accordance with the Agent's customary practices, such Lender's pro rata share of payments received by the Agent for the account of the Lenders except as otherwise expressly provided herein or in any of the other Loan Documents. In the event that the Agent fails to distribute such amounts within one Business Day as provided above, the Agent shall pay interest on such amount at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

(b) If in the opinion of the Agent the distribution of any amount received by it in such capacity hereunder, under the Notes or under any of the other Loan Documents might involve it in liability, it may refrain from making such distribution until its right to make such distribution shall have been adjudicated by a court of competent jurisdiction. If a court of competent jurisdiction shall adjudge that any amount received and distributed by the Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to the Agent its proportionate share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.

(c) Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, any Lender that fails (i) to make available to the Agent its pro rata share of any Loan, (ii) to comply with the provisions of §13 with respect to making dispositions and arrangements with the other Lenders, where such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of the Lenders, in each case as, when and to the full extent required by the provisions of this Agreement, or (iii) to perform any other obligation within the time period specified for performance, or if no time period is specified, if such failure continues for a period of five (5) Business Days after notice from the Agent shall be deemed delinquent (a "Delinquent Lender") and shall be deemed a Delinquent Lender until such time as such delinquency is satisfied. In addition to the rights and remedies that may be available to the Agent at law and in equity, a Delinquent Lender's right to participate in the administration of the Loan Documents, including, without limitation, any rights to consent to or direct any action or inaction of the Agent pursuant to this Agreement or otherwise, or to be taken into account in the calculation of Majority Lenders or any matter requiring approval of all of the Lenders, shall be suspended while such Lender is a Delinquent Lender. A Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Borrowers or the Guarantor, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining nondelinquent Lenders for application to, and reduction of, their respective pro rata shares of all outstanding Loans. The Delinquent Lender hereby authorizes the Agent to distribute such payments to the nondelinquent Lenders in proportion to their respective pro rata shares of all outstanding Loans. The provisions of this Section shall apply and be effective regardless of whether an Event of Default occurs and is then continuing, and notwithstanding (i) any other provision of this Agreement to the contrary or (ii) any instruction of Borrowers as to its desired application of payments. The Agent shall be entitled to (i) withhold or set off, and to apply to the payment of the obligations of any Delinquent Lender any amounts to be paid to such Delinquent Lender under this Agreement, (ii) to collect interest from such Lender for the period from the date on which the payment was due at the rate per annum equal to the Federal Funds Effective Rate plus one percent (1%), for each day during such period, and (iii) bring an action or suit against such Delinquent Lender in a court of competent jurisdiction to recover the defaulted obligations of such Delinquent Lender. A Delinquent Lender shall be deemed to have satisfied in full a delinquency when and if, as a result of application of the assigned payments to all outstanding Loans of the nondelinquent Lenders or as a result of other payments by the Delinquent Lenders to the nondelinquent Lenders, the Lenders' respective pro rata shares of all outstanding Loans have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency.

§14.6 Holders of Notes. Subject to the terms of §18, the Agent may deem and treat the payee of any Note as the absolute owner or purchaser thereof for all purposes hereof until it shall have been furnished in writing with a different name by such payee or by a subsequent holder, assignee or transferee.

§14.7 Indemnity. The Lenders ratably agree hereby to indemnify and hold harmless the Agent from and against any and all claims, actions and suits (whether groundless or otherwise),

losses, damages, costs, expenses (including any expenses for which the Agent has not been reimbursed by the Borrowers as required by §15), and liabilities of every nature and character arising out of or related to this Agreement, the Notes, or any of the other Loan Documents or the transactions contemplated or evidenced hereby or thereby, or the Agent's actions taken hereunder or thereunder, except to the extent that any of the same shall be directly caused by the Agent's willful misconduct or gross negligence as finally determined by a court of competent jurisdiction after the expiration of all applicable appeal periods. The agreements in this §14.7 shall survive the payment of all amounts payable under the Loan Documents.

§14.8 Agent as Lender. In its individual capacity, KeyBank shall have the same obligations and the same rights, powers and privileges in respect to its Commitment and the Loans made by it, and as the holder of any of the Notes as it would have were it not also the Agent.

§14.9 Resignation. The Agent may resign at any time by giving thirty (30) calendar days' prior written notice thereof to the Lenders and the Borrowers. The Majority Lenders (calculated without including the Commitment of the Lender acting as Agent) may remove the Agent from its capacity as Agent in the event of the Agent's gross negligence or willful misconduct. Upon any such resignation or removal, the Majority Lenders, subject to the terms of §18.1, shall have the right to appoint as a successor Agent any Lender or any bank whose senior debt obligations are rated not less than "A" or its equivalent by Moody's or not less than "A" or its equivalent by S&P and which has a net worth of not less than $500,000,000.00. Unless a Default or Event of Default shall have occurred and be continuing, such successor Agent shall be reasonably acceptable to the Borrowers. If no successor Agent shall have been appointed and shall have accepted such appointment within thirty (30) days after the retiring Agent's giving of notice of resignation or the Majority Lenders' removal of the Agent, then the retiring or removed Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be any Lender or any financial institution whose senior debt obligations are rated not less than "A2" or its equivalent by Moody's or not less than "A" or its equivalent by S&P and which has a net worth of not less than $500,000,000.00. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent, and the retiring or removed Agent shall be discharged from its duties and obligations hereunder as Agent. After any retiring or removed Agent's resignation, the provisions of this Agreement and the other Loan Documents shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent. Upon any change in the Agent under this Agreement, the resigning or removed Agent shall execute such assignments of and amendments to the Loan Documents as may be necessary to substitute the successor Agent for the resigning Agent.

§14.10 Duties in the Case of Enforcement. In case one or more Events of Default have occurred and shall be continuing, and whether or not acceleration of the Obligations shall have occurred, the Agent may and, if (a) so requested by the Majority Lenders and (b) the Lenders have provided to the Agent such additional indemnities and assurances in accordance with their respective Commitment Percentages against expenses and liabilities as the Agent may reasonably request, shall proceed to exercise all or any legal and equitable and other rights or remedies as it may have; provided, however, that unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from

taking such action, with respect to such Default or Event of Default as it shall deem to be in the best interests of the Lenders. Without limiting the generality of the foregoing, if Agent reasonably determines payment is in the best interest of all the Lenders, Agent may without the approval of the Lenders pay taxes and insurance premiums and spend money for maintenance, repairs or other expenses which may be necessary to be incurred, and Agent shall promptly thereafter notify the Lenders of such action. Each Lender shall, within thirty (30) days of request therefor, pay to the Agent its Commitment Percentage of the reasonable costs incurred by the Agent in taking any such actions hereunder to the extent that such costs shall not be promptly reimbursed to the Agent by the Borrowers or the Guarantor or out of the Collateral within such period with respect to the Mortgaged Property. The Majority Lenders may direct the Agent in writing as to the method and the extent of any such exercise, the Lenders hereby agreeing to indemnify and hold the Agent harmless in accordance with their respective Commitment Percentages from all liabilities incurred in respect of all actions taken or omitted in accordance with such directions, provided that the Agent need not comply with any such direction to the extent that the Agent reasonably believes the Agent's compliance with such direction to be unlawful in any applicable jurisdiction or commercially unreasonable under the UCC as enacted in any applicable jurisdiction.

§14.11 Bankruptcy. In the event a bankruptcy or other insolvency proceeding is commenced by or against any Borrower or the Guarantor with respect to the Obligations, the Agent shall have the sole and exclusive right to file and pursue a joint proof claim on behalf of all Lenders. Any votes with respect to such claims or otherwise with respect to such proceedings shall be subject to the vote of the Majority Lenders or all of the Lenders as required by this Agreement. Each Lender irrevocably waives its right to file or pursue a separate proof of claim in any such proceedings unless Agent fails to file such claim within thirty (30) days after receipt of written notice from the Lenders requesting that Agent file such proof of claim.

§14.12 Request for Agent Action. Agent and the Lenders acknowledge that in the ordinary course of business of the Borrowers (a) the Mortgaged Property may be subject to a Taking, or (b) Borrowers may desire to enter into easements or other agreements affecting the Mortgaged Property, or take other actions or enter into other agreements in the ordinary course of business which similarly require the consent, approval or agreement of the Agent. In connection with the foregoing, the Lenders hereby expressly authorize the Agent to (x) execute releases of liens in connection with any Taking, (y) execute consents or subordinations in form and substance satisfactory to Agent in connection with any easements or agreements affecting the Mortgaged Property, or (z) execute consents, approvals, or other agreements in form and substance satisfactory to the Agent in connection with such other actions or agreements as may be necessary in the ordinary course of Borrowers' business.

§14.13 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by any Person purporting to have authority to act on behalf of another Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms

must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

§14.14 Approvals. If consent is required for some action under this Agreement, or except as otherwise provided herein an approval of the Lenders or the Majority Lenders is required or permitted under this Agreement, each Lender agrees to give the Agent, within ten (10) days of receipt of the request for action together with all reasonably requested information related thereto (or such lesser period of time required by the terms of the Loan Documents), notice in writing of approval or disapproval (collectively "Directions") in respect of any action requested or proposed in writing pursuant to the terms hereof. To the extent that any Lender does not approve any recommendation of Agent, such Lender shall in such notice to Agent describe the actions that would be acceptable to such Lender. If consent is required for the requested action, any Lender's failure to respond to a request for Directions within the required time period shall be deemed to constitute a Direction to take such requested action. In the event that any recommendation is not approved by the requisite number of Lenders and a subsequent approval on the same subject matter is requested by Agent, then for the purposes of this paragraph each Lender shall be required to respond to a request for Directions within five (5) Business Days of receipt of such request. Agent and each Lender shall be entitled to assume that any officer of the other Lenders delivering any notice, consent, certificate or other writing is authorized to give such notice, consent, certificate or other writing unless Agent and such other Lenders have otherwise been notified in writing.

§14.15 Borrowers Not Beneficiary. Except for the provisions of §14.9 relating to the appointment of a successor Agent, the provisions of this §14 are solely for the benefit of the Agent and the Lenders, may not be enforced by the Borrowers or the Guarantor, and except for the provisions of §14.9, may be modified or waived without the approval or consent of the Borrowers and the Guarantor.

§15. EXPENSES.

The Borrowers agree to pay (a) the reasonable costs of producing and reproducing this Agreement, the other Loan Documents and the other agreements and instruments mentioned herein, (b) any taxes (including any interest and penalties in respect thereto) payable by the Agent or any of the Lenders (other than taxes based upon the Agent's or any Lender's gross or net income, except that the Agent and the Lenders shall be entitled to indemnification for any and all amounts paid by them in respect of taxes based on income or other taxes assessed by any State in which Mortgaged Property or other Collateral is located, such indemnification to be limited to taxes due solely on account of the granting of Collateral under the Security Documents and to be net of any credit allowed to the indemnified party from any other State on account of the payment or incurrence of such tax by such indemnified party), including any recording, mortgage, documentary or intangibles taxes in connection with the Mortgages and other Loan Documents, or other taxes payable on or with respect to the transactions contemplated by this Agreement, including any such taxes payable by the Agent or any of the Lenders after the

Closing Date (the Borrowers hereby agreeing to indemnify the Agent and each Lender with respect thereto), (c) all title insurance premiums, engineer's fees, environmental reviews and the reasonable fees, expenses and disbursements of the counsel to the Agent and any local counsel to the Agent incurred in connection with the preparation, administration, or interpretation of the Loan Documents and other instruments mentioned herein, and amendments, modifications, approvals, consents or waivers hereto or hereunder, (d) to the extent that the Commitment is ever increased pursuant to a written amendment to this Agreement, the out-of-pocket fees, costs, expenses and disbursements of Agent incurred in connection with the syndication and/or participation of the Loans, (e) all other reasonable out of pocket fees, expenses and disbursements of the Agent incurred by the Agent in connection with the preparation or interpretation of the Loan Documents and other instruments mentioned herein, and the syndication of the Commitments pursuant to §18 to the extent that the Commitment is ever increased pursuant to a written amendment to this Agreement (without duplication of those items addressed in subparagraph (d), above), (f) all out of pocket expenses (including attorneys' fees and costs, and the fees and costs of appraisers, engineers, investment bankers or other experts retained by any Lender or the Agent) incurred by any Lender or the Agent in connection with (i) the enforcement of or preservation of rights under any of the Loan Documents against the Borrowers or the Guarantor or the administration thereof after the occurrence of a Default or Event of Default and (ii) any litigation, proceeding or dispute whether arising hereunder or otherwise, in any way related to the Agent's or any of the Lenders' relationship with the Borrowers or the Guarantor, (g) all reasonable fees, expenses and disbursements of the Agent incurred in connection with UCC searches, UCC filings, title rundowns, title searches or mortgage recordings, (h) all reasonable out-of-pocket fees, expenses and disbursements (including reasonable attorneys' fees and costs) which may be incurred by KeyBank in connection with the execution and delivery of this Agreement and the other Loan Documents (without duplication of any of the items listed above), and (i) all expenses relating to the use of Intralinks, SyndTrak or any other similar system for the dissemination and sharing of documents and information in connection with the Loans. The covenants of this §15 shall survive for one hundred twenty (120) calendar days following the repayment of the Loans and the termination of the obligations of the Lenders hereunder.

§16. INDEMNIFICATION.

The Borrowers, jointly and severally, agree from the date hereof to indemnify and hold harmless the Agent, the Lenders and the Arranger and each director, officer, employee, agent and Person who controls the Agent or any Lender or the Arranger against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages and expenses of every nature and character arising out of or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby and thereby including, without limitation, (a) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Mortgaged Property or the Loans, (b) any condition of the Mortgaged Property, (c) any actual or proposed use by the Borrowers of the proceeds of any of the Loans, (d) any actual or alleged infringement of any patent, copyright, trademark, service mark or similar right of the Borrowers or the Guarantor, (e) the Borrowers and the Guarantor entering into or performing this Agreement or any of the other Loan Documents, (f) any actual or alleged violation of any law, ordinance, code, order, rule, regulation, approval, consent, permit or license relating to the Mortgaged Property, (g) with respect to the Borrowers, the violation of any

Environmental Law, the Release or threatened Release of any Hazardous Substances or any action, suit, proceeding or investigation brought or threatened with respect to any Hazardous Substances (including, but not limited to, claims with respect to wrongful death, personal injury, nuisance or damage to property), and (h) any use of Intralinks, SyndTrak or any other system for the dissemination and sharing of Loan Documents and information pertaining to the Loans, in each case including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding; provided, however, that the Borrowers shall not be obligated under this §16 to indemnify or hold harmless any Person for all liabilities, claims, actions, suits, losses, damages and expenses of every nature and character arising from such Person's own gross negligence or willful misconduct as determined by a court of competent jurisdiction after the exhaustion of all applicable appeal periods. If, and to the extent that the obligations of the Borrowers under this §16 are unenforceable for any reason, the Borrowers hereby agree to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law. The provisions of this §16 shall survive the repayment of the Loans and the termination of the obligations of the Lenders hereunder.

§17. SURVIVAL OF COVENANTS, ETC.

Except as otherwise provided in §15, all covenants, agreements, representations and warranties made herein, in the Notes, in any of the other Loan Documents or in any documents or other papers delivered by or on behalf of the Borrowers or the Guarantor pursuant hereto or thereto shall be deemed to have been relied upon by the Lenders and the Agent, notwithstanding any investigation heretofore or hereafter made by any of them, and shall survive the making by the Lenders of any of the Loans, as herein contemplated, and shall continue in full force and effect so long as any amount due under this Agreement or the Notes or any of the other Loan Documents remains outstanding or any Lender has any obligation to make any Loans. Except as otherwise provided in §15, the indemnification obligations of the Borrowers provided herein and in the other Loan Documents shall survive the full repayment of amounts due and the termination of the obligations of the Lenders hereunder and thereunder to the extent provided herein and therein. All statements contained in any certificate delivered to any Lender or the Agent at any time by or on behalf of the Borrowers or the Guarantor pursuant hereto or in connection with the transactions contemplated hereby shall constitute representations and warranties by such Person hereunder.

§18. ASSIGNMENT AND PARTICIPATION.

§18.1 Conditions to Assignment by Lenders. Except as provided herein, each Lender may assign to one or more banks or other entities all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment Percentage and Commitment and the same portion of the Loans at the time owing to it and the Notes held by it); provided that (a) the Agent and, so long as no Default or Event of Default exists hereunder, the Borrowers shall have each given their prior written consent to such assignment, which consent shall not be unreasonably withheld or delayed (provided that such consent shall not be required for any assignment to another Lender, to a lender which is and remains under common control with the assigning Lender or to a wholly-owned Subsidiary of such Lender, provided that such assignee shall remain a wholly-owned Subsidiary of such Lender), (b) each such assignment

shall be of a constant, and not a varying, percentage of all the assigning Lender's rights and obligations under this Agreement, (c) the parties to such assignment shall execute and deliver to the Agent, for recording in the Register (as hereinafter defined) an Assignment and Acceptance Agreement in the form of Exhibit C annexed hereto, together with any Notes subject to such assignment, (d) in no event shall any assignment be to any Person controlling, controlled by or under common control with, or which is not otherwise free from influence or control by, any Borrower or the Guarantor, (e) such assignee shall have a net worth as of the date of such assignment of not less than $100,000,000.00 (unless otherwise approved by Agent and, so long as no Default or Event of Default exists hereunder, Borrowers), (f) such assignee shall acquire an interest in the Loans of not less than $5,000,000.00 and integral multiples of $1,000,000.00 in excess thereof (or if less, the remaining Loans of the assignor), unless waived by the Agent, and so long as no Default or Event of Default exists hereunder, the Borrowers, and (g) such assignee shall be subject to the terms of any intercreditor agreement among the Lenders and the Agent. Upon execution, delivery, acceptance and recording of such Assignment and Acceptance Agreement, (i) the assignee thereunder shall be a party hereto and all other Loan Documents executed by the Lenders and, to the extent provided in such Assignment and Acceptance Agreement, have the rights and obligations of a Lender hereunder, (ii) the assigning Lender shall, upon payment to the Agent of the registration fee referred to in §18.2, be released from its obligations under this Agreement arising after the effective date of such assignment with respect to the assigned portion of its interests, rights and obligations under this Agreement, and (iii) the Agent may unilaterally amend Schedule 1.1 to reflect such assignment. In connection with each assignment, the assignee shall represent and warrant to the Agent, the assignor and each other Lender as to whether such assignee is controlling, controlled by, under common control with or is not otherwise free from influence or control by, any Borrower or the Guarantor.

§18.2 Register. The Agent shall maintain on behalf of the Borrowers a copy of each assignment delivered to it and a register or similar list (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment Percentages of and principal amount of the Loans owing to the Lenders from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrowers, the Guarantor, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and the Lenders at any reasonable time and from time to time upon reasonable prior notice. Upon each such recordation, the assigning Lender agrees to pay to the Agent a registration fee in the sum of $3,500.00.

§18.3 New Notes. Upon its receipt of an Assignment and Acceptance Agreement executed by the parties to such assignment, together with each Note subject to such assignment, the Agent shall record the information contained therein in the Register. Within five (5) Business Days after receipt of notice of such assignment from Agent, the Borrowers, at their own expense, shall execute and deliver to the Agent, in exchange for each surrendered Note, a new Note to the order of such assignee in an amount equal to the amount assigned to such assignee pursuant to such Assignment and Acceptance Agreement and, if the assigning Lender has retained some portion of its obligations hereunder, a new Note to the order of the assigning Lender in an amount equal to the amount retained by it hereunder. Such new Notes shall provide that they are replacements for the surrendered Notes, shall be in an aggregate principal amount equal to the aggregate principal amount of the surrendered Notes, shall be dated the effective

date of such Assignment and Acceptance Agreement and shall otherwise be in substantially the form of the assigned Notes. The surrendered Notes shall be canceled and returned to the Borrowers.

§18.4 Participations. Each Lender may sell participations to one or more Lenders or other entities in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents; provided that (a) any such sale or participation shall not affect the rights and duties of the selling Lender hereunder, (b) such participation shall not entitle such participant to any rights or privileges under this Agreement or any Loan Documents, (c) such participation shall not entitle the participant to the right to approve waivers, amendments or modifications, (d) such participant shall have no direct rights against the Borrowers, (e) such sale is effected in accordance with all applicable laws, and (f) such participant shall not be a Person controlling, controlled by or under common control with, or which is not otherwise free from influence or control by any Borrower or the Guarantor. Any Lender which sells a participation shall promptly notify the Agent of such sale and the identity of the purchaser of such interest.

§18.5 Pledge by Lender. Any Lender may at any time pledge all or any portion of its interest and rights under this Agreement (including all or any portion of its Note) to any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act, 12 U.S.C. §341 or to such other Person as the Agent may approve to secure obligations of such lenders. No such pledge or the enforcement thereof shall release the pledgor Lender from its obligations hereunder or under any of the other Loan Documents.

§18.6 No Assignment by Borrowers. Neither Borrower shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each of the Lenders.

§18.7 Disclosure. Borrowers agree to promptly cooperate with any Lender in connection with any proposed assignment or participation of all or any portion of its Commitment. The Borrowers agree that in addition to disclosures made in accordance with standard banking practices any Lender may disclose information obtained by such Lender pursuant to this Agreement to assignees or participants and potential assignees or participants hereunder; provided, however, Lender and Agent acknowledge that all information disseminated by Borrower or Guarantor that is not filed with the SEC is deemed confidential. Each Lender agrees for itself that it shall use reasonable efforts in accordance with its customary procedures to hold confidential all non-public information obtained from Borrowers or the Guarantor, and shall use reasonable efforts in accordance with its customary procedures to not disclose such information to any other Person, it being understood and agreed that, notwithstanding the foregoing, a Lender may make (a) disclosures to its participants (provided such Persons are advised of the provisions of this §18.7), (b) disclosures to its directors, officers, employees, Affiliates, accountants, appraisers, legal counsel and other professional advisors of such Lender (provided that such Persons who are not employees of such Lender are advised of the provision of this §18.7), (c) disclosures customarily provided or reasonably required by any potential or actual bona fide assignee, transferee or participant or their respective directors, officers, employees, Affiliates, accountants, appraisers, legal counsel and other professional advisors in connection with a potential or actual assignment or transfer by such Lender of any Loans or any participations therein (provided such Persons are advised of the provisions of this §18.7),

(d) disclosures to bank regulatory authorities or self-regulatory bodies with jurisdiction over such Lender, or (e) disclosures required or requested by any other governmental authority or representative thereof or pursuant to legal process; provided that, unless specifically prohibited by applicable law or court order, each Lender shall notify Borrowers of any request by any governmental authority or representative thereof prior to disclosure (other than any such request in connection with any examination of such Lender by such government authority) for disclosure of any such non-public information prior to disclosure of such information. Non-public information shall not include any information which is or subsequently becomes publicly available other than as a result of a disclosure of such information by a Lender, or prior to the delivery to such Lender is within the possession of such Lender if such information is not known by such Lender to be subject to another confidentiality agreement with or other obligations of secrecy to any Borrower or the Guarantor, as applicable, or is disclosed with the prior approval of Borrowers. Nothing herein shall prohibit the disclosure of non-public information to the extent necessary to enforce the Loan Documents.

§18.8 Amendments to Loan Documents. Upon any such assignment or participation, the Borrowers and the Guarantor shall, upon the request of the Agent, enter into such documents as may be reasonably required by the Agent to modify the Loan Documents to reflect such assignment or participation.

§19. NOTICES.

Each notice, demand, election or request provided for or permitted to be given pursuant to this Agreement (hereinafter in this §19 referred to as "Notice"), but specifically excluding to the maximum extent permitted by law any notices of the institution or commencement of foreclosure proceedings, must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing same in the United States Mail, postpaid and registered or certified, return receipt requested, or as expressly permitted herein, by telegraph, telecopy, telefax or telex, and addressed as follows:

If to the Agent or KeyBank:

KeyBank National Association
1200 Abernathy Road, N.E.
Suite 1550
Atlanta, Georgia 30328
Attn: Ms. Jennifer Wells
Telecopy No.: (770) 510-2195

With a copy to:

McKenna Long & Aldridge LLP
Suite 5300
303 Peachtree Street, N.E.
Atlanta, Georgia 30308
Attn: William F. Timmons, Esq.
Telecopy No.: (404) 527-4198

If to the Borrowers:

c/o Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
Telecopy No.: (703) 760-1520

With a copy to:

c/o Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Jubal Thompson, Esq.
Telecopy No.: (703) 760-1520

to any other Lender which is a party hereto, at the address for such Lender set forth on its signature page hereto, and to any Lender which may hereafter become a party to this Agreement, at such address as may be designated by such Lender. Each Notice shall be effective upon being personally delivered or upon being sent by overnight courier or upon being deposited in the United States Mail as aforesaid, or if transmitted by telegraph, telecopy, telefax or telex is permitted, upon being sent and confirmation of receipt. The time period in which a response to such Notice must be given or any action taken with respect thereto (if any), however, shall commence to run from the date of receipt if personally delivered or sent by overnight courier, or if so deposited in the United States Mail, the earlier of three (3) Business Days following such deposit or the date of receipt as disclosed on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given shall be deemed to be receipt of the Notice sent. By giving at least fifteen (15) days prior Notice thereof, a Borrower, a Lender or Agent shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

§20. RELATIONSHIP.

Neither the Agent nor any Lender has any fiduciary relationship with or fiduciary duty to the Borrowers or the Guarantor arising out of or in connection with this Agreement or the other Loan Documents or the transactions contemplated hereunder and thereunder, and the relationship between each Lender and Agent, and the Borrowers is solely that of a lender and borrower, and nothing contained herein or in any of the other Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

§21. GOVERNING LAW; CONSENT TO JURISDICTION AND SERVICE.

THIS AGREEMENT AND EACH OF THE OTHER LOAN DOCUMENTS, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN OR THEREIN, SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF VIRGINIA. THE BORROWERS AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF VIRGINIA (INCLUDING ANY FEDERAL COURT SITTING THEREIN). EACH BORROWER FURTHER ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE NON EXCLUSIVE JURISDICTION OF SUCH COURTS AND ANY RELATED APPELLATE COURT AND IRREVOCABLY (i) AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY WITH RESPECT TO THIS AGREEMENT AND ANY OF THE OTHER LOAN DOCUMENTS AND (ii) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH A COURT IS AN INCONVENIENT FORUM. EACH BORROWER FURTHER AGREES THAT SERVICE OF PROCESS IN ANY SUCH SUIT MAY BE MADE UPON SUCH BORROWER BY MAIL AT THE ADDRESS SPECIFIED IN SECTION 19 HEREOF. IN ADDITION TO THE COURTS OF THE COMMONWEALTH OF VIRGINIA OR ANY FEDERAL COURT SITTING THEREIN, THE AGENT OR ANY LENDER MAY BRING ACTION(S) FOR ENFORCEMENT ON A NONEXCLUSIVE BASIS WHERE ANY COLLATERAL OR ASSETS OF BORROWERS OR THE GUARANTOR EXIST AND THE BORROWERS CONSENT TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON THE BORROWERS BY MAIL AT THE ADDRESS SPECIFIED IN SECTION 19 HEREOF.

§22. HEADINGS.

The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

§23. COUNTERPARTS.

This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

§24. ENTIRE AGREEMENT, ETC.

This Agreement and the Loan Documents is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Agreement and the Loan Documents. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superceded by this Agreement and the Loan Documents, and no party is relying on any promise, agreement or understanding not set forth in this Agreement and the Loan Documents. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except as provided in §27.

§25. WAIVER OF JURY TRIAL AND CERTAIN DAMAGE CLAIMS.

EACH OF THE BORROWERS, THE AGENT AND THE LENDERS HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. EACH BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PUNITIVE OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. EACH OF THE BORROWERS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY LENDER OR THE AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH LENDER OR THE AGENT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT THE AGENT AND THE LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH THEY ARE PARTIES BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED IN THIS §25. EACH OF THE BORROWERS, THE AGENT AND THE LENDERS ACKNOWLEDGE THAT IT HAS HAD AN OPPORTUNITY TO REVIEW THIS §25 WITH LEGAL COUNSEL AND THAT EACH OF THE BORROWERS , THE AGENT AND THE LENDERS AGREES TO THE FOREGOING AS ITS FREE, KNOWING AND VOLUNTARY ACT.

§26. DEALINGS WITH THE BORROWERS.

The Agent, the Lenders and their affiliates may accept deposits from, extend credit to, invest in, act as trustee under indentures of, serve as financial advisor of, and generally engage in any kind of banking, trust or other business with the Borrowers and the Guarantor or any of their Affiliates regardless of the capacity of the Agent or the Lender hereunder. The Lenders

acknowledge that, pursuant to such activities, KeyBank or its Affiliates may receive information regarding such Persons (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Agent shall be under no obligation to provide such information to them.

§27. CONSENTS, AMENDMENTS, WAIVERS, ETC.

Except as otherwise expressly provided in this Agreement, any consent or approval required or permitted by this Agreement may be given, and any term of this Agreement or of any other instrument related hereto or mentioned herein may be amended, and the performance or observance by the Borrowers or the Guarantor of any terms of this Agreement or such other instrument or the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Majority Lenders. Notwithstanding the foregoing, none of the following may occur without the written consent of each Lender: (a) a reduction in the rate of interest on the Notes; (b) an increase in the amount of the Commitments of the Lenders; (c) a forgiveness, reduction or waiver of the principal of any unpaid Loan or any interest thereon or fee payable under the Loan Documents; (d) a change in the amount of any fee payable to a Lender hereunder; (e) the postponement of any date fixed for any payment of principal of or interest on the Loan; (f) an extension of the Maturity Date; (g) a change in the manner of distribution of any payments to the Lenders or the Agent; (h) the release of the Borrower or any Guarantor or any Collateral except as otherwise provided in §5.2; (i) an amendment of the definition of Majority Lenders or of any requirement for consent by all of the Lenders; (j) any modification to require a Lender to fund a pro rata share of a request for an advance of the Loan made by a Borrower other than based on its Commitment Percentage; (k) an amendment to this §27; or (l) an amendment of any provision of this Agreement or the Loan Documents which requires the approval of all of the Lenders or the Majority Lenders to require a lesser number of Lenders to approve such action. The provisions of §14 may not be amended without the written consent of the Agent. The Borrowers agree to enter into, and to cause the Guarantor to enter into, such modifications or amendments of this Agreement or the other Loan Documents as reasonably may be requested by KeyBank in connection with the syndication of the Loan, provided that no such amendment or modification materially affects or increases any of the obligations of the Borrowers or Guarantor hereunder. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of the Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon any of the Borrowers or the Guarantor shall entitle the Borrowers or the Guarantor to other or further notice or demand in similar or other circumstances.

§28. SEVERABILITY.

The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

§29. TIME OF THE ESSENCE.

Time is of the essence with respect to each and every covenant, agreement and obligation of the Borrowers and the Guarantor under this Agreement and the other Loan Documents.

§30. NO UNWRITTEN AGREEMENTS.

THE 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 UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. ANY ADDITIONAL TERMS OF THE AGREEMENT BETWEEN THE PARTIES ARE SET FORTH BELOW.

§31. REPLACEMENT NOTES.

Upon receipt of evidence reasonably satisfactory to the Borrowers of the loss, theft, destruction or mutilation of any Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrowers or, in the case of any such mutilation, upon surrender and cancellation of the applicable Note, the Borrowers will execute and deliver, in lieu thereof, a replacement Note, or identical in form and substance to the applicable Note and dated as of the date of the applicable Note and upon such execution and delivery all references in the Loan Documents to such Note shall be deemed to refer to such replacement Note.

§32. NO THIRD PARTIES BENEFITED.

This Agreement and the other Loan Documents are made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, the Agent and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. All conditions to the performance of the obligations of the Agent and the Lenders under this Agreement, including the obligation to make Loans, are imposed solely and exclusively for the benefit of the Agent and the Lenders and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Agent and the Lenders will refuse to make Loans in the absence of strict compliance with any or all thereof and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by the Agent and the Lenders at any time if in their sole discretion they deem it desirable to do so. In particular, the Agent and the Lenders make no representations and assume no obligations as to third parties concerning the quality of the construction by the Borrowers of any development or the absence therefrom of defects.

§33. PATRIOT ACT.

Each Lender and the Agent (for itself and not on behalf of any Lender) hereby notifies Borrowers and Guarantor that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes names and addresses and other information that will allow such Lender or the Agent, as applicable, to identify Borrowers in accordance with the Patriot Act.

§34. JOINT AND SEVERAL LIABILITY

Each of the Borrowers covenants and agrees that each and every covenant and obligation of any Borrower hereunder and under the other Loan Documents shall be the joint and several obligations of each Borrower.

§35. ADDITIONAL AGREEMENTS CONCERNING OBLIGATIONS OF BORROWERS

§35.1 Attorney-in-Fact. For the purpose of implementing the joint borrower provisions of the Loan Documents, the Borrowers hereby irrevocably appoint each other as their agent and attorney-in-fact for all purposes of the Loan Documents, including the giving and receiving of notices and other communications.

§35.2 Accommodation. It is understood and agreed that the handling of this credit facility on a joint borrowing basis as set forth in this Agreement is solely as an accommodation to the Borrowers and at their request. Accordingly, the Agent and the Lenders are entitled to rely, and shall be exonerated from any liability for relying upon, any Loan Request or any other request or communication made by a purported officer of any Borrower without the need for any consent or other authorization of any other Borrower and upon any information or certificate provided on behalf of any Borrower by a purported officer of such Borrower, and any such request or other action shall be fully binding on each Borrower as if made by it.

§35.3 Waiver of Automatic or Supplemental Stay. Each of the Borrowers represents, warrants and covenants to the Lenders and Agent that in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against the other of the Borrowers at any time following the execution and delivery of this Agreement, neither of the Borrowers shall seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision of the Bankruptcy Code, to stay, interdict, condition, reduce or inhibit the ability of the Lenders or Agent to enforce any rights it has by virtue of this Agreement, the Loan Documents, or at law or in equity, or any other rights the Lenders or Agent has, whether now or hereafter acquired, against the other Borrower or against any property owned by such other Borrower.

§35.4 Waiver of Defenses. Each of the Borrowers hereby waives and agrees not to assert or take advantage of any defense based upon:

(a) Any right to require Agent or the Lenders to proceed against the other Borrower or any other Person or to proceed against or exhaust any security held by Agent or the Lenders at any time or to pursue any other remedy in Agent’s or any Lender’s power or under any other agreement before proceeding against a Borrower hereunder or under any other Loan Document;

(b) The defense of the statute of limitations in any action hereunder or the payment or performance of any of the Obligations;

(c) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of Agent or any Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons;

(d) Any failure on the part of Agent or any Lender to ascertain the extent or nature of any Collateral or any insurance or other rights with respect thereto, or the liability of any party liable under the Loan Documents or the obligations evidenced or secured thereby;

(e) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind (except for such notices as are specifically required to be provided to Borrowers pursuant to the Loan Documents), or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of any Borrower, Agent, any Lender, any endorser or creditor of Borrowers or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Agent or any Lender;

(f) Any defense based upon an election of remedies by Agent or any Lender, including any election to proceed by judicial or nonjudicial foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of a Borrower or the rights of a Borrower to proceed against the other Borrower for reimbursement, or both;

(g) Any right or claim of right to cause a marshaling of the assets of Borrowers;

(h) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Agreement;

(i) Any duty on the part of Agent or any Lender to disclose to Borrowers any facts Agent or any Lender may now or hereafter know about Borrowers or the Collateral, regardless of whether Agent or any Lender has reason to believe that any such facts materially increase the risk beyond that which each Borrower intends to assume or has reason to believe that such facts are unknown to Borrowers or has a reasonable opportunity to communicate such facts to Borrowers, it being understood and agreed that each Borrower is fully responsible for being and keeping informed of the financial condition of the other Borrower, of the condition of the Mortgaged Property or the Collateral and of any and all circumstances bearing on the risk that liability may be incurred by Borrowers hereunder and under the other Loan Documents;

(j) Any lack of notice of disposition or of manner of disposition of any Collateral;

(k) Any inaccuracy of any representation or other provision contained in any Loan Document;

(l) Any sale or assignment of the Loan Documents, or any interest therein;

(m) Any sale or assignment by a Borrower or any other Person of any Collateral, or any portion thereof or interest therein, whether or not consented to by Agent or any Lender;

(n) Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Loan Documents;

(o) Any lack of commercial reasonableness in dealing with the Collateral;

(p) Any deficiencies in the Collateral or any deficiency in the ability of Agent or any Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(q) An assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of the other Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Agent or any Lender to enforce any of its rights, whether now or hereafter required, which Agent or any Lender may have against a Borrower or the Collateral owned by it;

(r) Any modifications of the Loan Documents or any obligation of Borrowers relating to the Loan by operation of law or by action of any court, whether pursuant to the Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(s) Any release of a Borrower or of any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Agent's or the Lenders' voluntary act or otherwise;

(t) Any action, occurrence, event or matter consented to by Borrowers under any provision hereof, or otherwise;

(u) The dissolution or termination of existence of any Borrower;

(v) Either with or without notice to Borrowers, any renewal, extension, modification, amendment or another changes in the Obligations, including but not limited to any material alteration of the terms of payment or performance of the Obligations;

(w) Any defense of Borrowers, including without limitation, the invalidity, illegality or unenforceability of any of the Obligations; or

(x) To the fullest extent permitted by law, any other legal, equitable or surety defenses whatsoever to which Borrowers might otherwise be entitled, it being the intention that the obligations of Borrowers hereunder are absolute, unconditional and irrevocable.

§35.5 Waiver. Each of the Borrowers waives, to the fullest extent that each may lawfully so do, the benefit of all appraisement, valuation, stay, extension, homestead, exemption and redemption laws which such Person may claim or seek to take advantage of in order to prevent or hinder the enforcement of any of the Loan Documents or the exercise by Lenders or Agent of any of their respective remedies under the Loan Documents and, to the fullest extent that the Borrowers may lawfully so do, such Person waives any and all right to have the assets comprised in the security intended to be created by the Security Documents (including, without limitation, those assets owned by the other of the Borrowers) marshaled upon any foreclosure of the lien created by such Security Documents. Each of the Borrowers further agrees that the Lenders and Agent shall be entitled to exercise their respective rights and remedies under the Loan Documents or at law or in equity in such order as they may elect. Without limiting the foregoing, each of the Borrowers further agrees that upon the occurrence of an Event of Default, the Lenders and Agent may exercise any of such rights and remedies without notice to either of the Borrowers except as required by law or the Loan Documents and agrees that neither the Lenders nor Agent shall be required to proceed against the other of the Borrowers or any other person or to proceed against or to exhaust any other security held by the Lenders or Agent at any time or to pursue any other remedy in Lender's or Agent's power or under any of the Loan Documents before proceeding against a Borrower or its assets under the Loan Documents.

§35.6 Subordination. Each of the Borrowers hereby expressly waives any right of contribution from or indemnity against the other, whether at law or in equity, arising from any payments made by such Person pursuant to the terms of this Agreement or the Loan Documents, and each of the Borrowers acknowledges that it has no right whatsoever to proceed against the other for reimbursement of any such payments. In connection with the foregoing, each of the Borrowers expressly waives any and all rights of subrogation to the Lenders or Agent against the other of the Borrowers, and each of the Borrowers hereby waives any rights to enforce any remedy which the Lenders or Agent may have against the other of the Borrowers and any rights to participate in any Collateral or any other assets of the other Borrower. In addition to and without in any way limiting the foregoing, each of the Borrowers hereby subordinates any and all indebtedness it may now or hereafter owe to such other Borrower to all indebtedness of the Borrowers to the Lenders and Agent, and agrees with the Lenders and Agent that neither of the Borrowers shall claim any offset or other reduction of such Borrower's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the Collateral or any other assets of the other Borrower.

§36. CONFLICT.

In the event of any express inconsistency between the terms of this Agreement and the other Loan Documents, the terms of this Agreement shall control.

§37. AMENDMENT AND RESTATEMENT OF ORIGINAL LOAN AGREEMENTS.

This Agreement amends and restates in its entirety the Original Potomac Loan Agreement and the Original Station View Loan Agreement. The loan documents relating to the loans contemplated by the Original Station View Loan Agreement and the Original Potomac Loan Agreement other than the loan agreement, promissory note(s) and deeds of trust, which are each being amended and restated, are hereby terminated. Borrowers acknowledges the

assignments evidenced by the Assignment of Potomac Loan Documents and the Assignment of Station View Loan Documents. Furthermore, in order to induce Agent and the Lenders to accept such assignments, each Borrower, for itself and its heirs, successors and assigns, represents and warrants to Agent and the Lenders that such Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever with respect to the loan documents more particularly described therein as of the date hereof, the administration or funding of the existing loans on the Station View Project or the Potomac Project, as applicable or with respect to any acts or omissions of the existing lender, and each Borrower does hereby expressly waive, release and relinquish any and all such defenses, setoffs, claims, counterclaims and causes of action, if any, whether now known or hereafter discovered.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the undersigned have caused this Agreement to be executed by its duly authorized representatives as of the date first set forth above.

BORROWERS:

COMSTOCK STATION VIEW, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____
Name: Bruce Labovitz
Title: Chief Financial Officer
(SEAL)

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

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____
Name: Bruce Labovitz
Title: Chief Financial Officer
(SEAL)

AGENT AND LENDERS:

KEYBANK NATIONAL ASSOCIATION,
individually and as Agent

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF AMENDED AND RESTATED NOTE

$_____ March __, 2008

FOR VALUE RECEIVED, the undersigned, **COMSTOCK STATION VIEW, L.C.**, a Virginia limited liability company, and **COMSTOCK POTOMAC YARD, L.C.**, a Virginia limited liability company (collectively, "Maker"), hereby jointly and severally promise to pay to _____ _____ ("Payee"), or order, in accordance with the terms of that certain Loan Agreement, dated as of March __, 2008, as from time to time in effect, among Maker, KeyBank National Association, for itself and as Agent, and such other Lenders as may be from time to time named therein (the "Loan Agreement"), to the extent not sooner paid, on or before the Maturity Date, the principal sum of _____ ($_____), or such amount as may be advanced by the Payee under the Loan Agreement as a Loan with daily interest from the date thereof, computed as provided in the Loan Agreement, on the principal amount hereof from time to time unpaid, at a rate per annum on each portion of the principal amount which shall at all times be equal to the rate of interest applicable to such portion in accordance with the Loan Agreement, and with interest on overdue principal and, to the extent permitted by applicable law, on overdue installments of interest and late charges at the rates provided in the Loan Agreement. Interest shall be payable on the dates specified in the Loan Agreement, except that all accrued interest shall be paid at the stated or accelerated maturity hereof or upon the prepayment in full hereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

Payments hereunder shall be made to the Agent for the Payee at 127 Public Square, Cleveland, Ohio 44114-1306, or at such other address as Agent may designate from time to time.

This Note is one of one or more Notes evidencing borrowings under and is entitled to the benefits and subject to the provisions of the Loan Agreement. The principal of this Note may be due and payable in whole or in part prior to the Maturity Date and is subject to mandatory prepayment in the amounts and under the circumstances set forth in the Loan Agreement, and may be prepaid in whole or from time to time in part, all as set forth in the Loan Agreement.

Notwithstanding anything in this Note to the contrary, all agreements between the undersigned Maker and the Lenders and the Agent, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity of any of the Obligations or otherwise, shall the interest contracted for, charged or received by the Lenders exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to the Lenders in excess of the maximum lawful amount, the interest payable to the Lenders shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance the Lenders shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Obligations of the undersigned Maker and to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Obligations of the undersigned Maker, such excess shall be refunded to the undersigned

Maker. All interest paid or agreed to be paid to the Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal of the Obligations of the undersigned Maker (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between the undersigned Maker and the Lenders and the Agent.

The undersigned Maker represents and warrants that the proceeds of this Note are being used exclusively for business or investment purposes within the meaning and intent of Section 6.1-330.75 of the Code of Virginia (1950), as amended.

In case an Event of Default shall occur, the entire principal amount of this Note may become or be declared due and payable in the manner and with the effect provided in said Loan Agreement.

This Note shall be governed by the laws of the Commonwealth of Virginia.

The undersigned Maker and all guarantors and endorsers hereby waive presentment, demand, notice, protest, notice of intention to accelerate the indebtedness evidenced hereby, notice of acceleration of the indebtedness evidenced hereby and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note, except as specifically otherwise provided in the Loan Agreement, and assent to extensions of time of payment or forbearance or other indulgence without notice.

This Note is delivered in amendment and restatement of the Original Potomac Note and the Original Station View Note.

IN WITNESS WHEREOF, the undersigned has by its duly authorized officer executed this Note under seal on the day and year first above written.

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

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

[CORPORATE SEAL]

COMSTOCK STATION VIEW, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____

Name: _____

Title: _____

(SEAL)

EXHIBIT B

FORM OF REQUEST FOR LOAN

KeyBank National Association, as Agent
4035 Ridge Top Rd
5th Floor
Fairfax, VA 22030
Attn: Kas Govender

Ladies and Gentlemen:

Pursuant to the provisions of §2.3 of the Loan Agreement dated as of March __, 2008 (as the same may hereafter be amended, the "Loan Agreement"), among Comstock Station View, L.C. and Comstock Potomac Yard, L.C. (collectively, the "Borrowers"), KeyBank National Association for itself and as Agent, and the other Lenders from time to time party thereto, the undersigned Borrower hereby requests and certifies as follows:

1. Loan. The undersigned Borrower hereby requests a Loan under §2.1 of the Loan Agreement:

Principal Amount: $_____
Type (LIBOR Rate, Base Rate): _____
Drawdown Date: _____
Interest Period for LIBOR Rate Loans: _____

by credit to the general account of the undersigned Borrower with the Agent at the Agent's Head Office.

2. Use of Proceeds. Such Loan shall be used for purposes permitted by §2.5 of the Loan Agreement.

3. No Default. The undersigned chief financial officer or chief accounting officer of the undersigned Borrower certifies that the Borrowers and the Guarantor are and will be in compliance with all covenants under the Loan Documents after giving effect to the making of the Loan requested hereby and no Default or Event of Default has occurred and is continuing.

4. Representations True. The undersigned chief financial officer or chief accounting officer of undersigned Borrower certifies, represents and agrees that each of the representations and warranties made by or on behalf of the Borrowers and the Guarantor, contained in the Loan Agreement, in the other Loan Documents or in any document or instrument delivered pursuant to or in connection with the Loan Agreement was true in all material respects as of the date on which it was made and, is true in all material respects as of the date hereof and shall also be true at and as of the Drawdown Date for the Loan requested hereby, with the same effect as if made at and as of such Drawdown Date, except to the extent of changes resulting from transactions permitted by the Loan Documents (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date).

5. Other Conditions. The undersigned chief financial officer or chief accounting officer of the undersigned Borrower certifies, represents and agrees that all other conditions to the making of the Loan requested hereby set forth in the Loan Agreement have been satisfied.

6. Definitions. Terms defined in the Loan Agreement are used herein with the meanings so defined.

IN WITNESS WHEREOF, the undersigned has duly executed this request this _____ day of __, 200_.

COMSTOCK STATION VIEW, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____
(CORPORATE SEAL)

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

By: Comstock Homebuilding Companies, Inc., a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____
(CORPORATE SEAL)

EXHIBIT C

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

THIS ASSIGNMENT AND ACCEPTANCE AGREEMENT (this "Agreement") dated _____, by and between _____ ("Assignor"), and _____ ("Assignee").

WITNESSETH:

WHEREAS, Assignor is a party to that certain Loan Agreement, dated March __, 2008, by and among **COMSTOCK STATION VIEW, L.C.** and **COMSTOCK POTOMAC YARD, L.C.** (collectively, "Borrowers"), the other lenders that are or may become a party thereto, and **KEYBANK NATIONAL ASSOCIATION**, individually and as Agent (the "Loan Agreement"); and

WHEREAS, Assignor desires to transfer to Assignee **[Describe assigned Commitments]** under the Loan Agreement and its rights with respect to the Commitment assigned and its Outstanding Loans with respect thereto;

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Definitions. Terms defined in the Loan Agreement and used herein without definition shall have the respective meanings assigned to such terms in the Loan Agreement.

2. Assignment.

(a) Subject to the terms and conditions of this Agreement and in consideration of the payment to be made by Assignee to Assignor pursuant to Paragraph 5 of this Agreement, effective as of the "Assignment Date" (as defined in Paragraph 7 below), Assignor hereby irrevocably sells, transfers and assigns to Assignee, without recourse, (i) a portion of its Note in the amount of $_____ representing a $_____ Loan Commitment, and a _____ percent (__%) Loan Commitment Percentage, (ii) a $_____ Loan Commitment, and a _____ percent (__%) Loan Commitment Percentage, and (iii) a corresponding interest in and to all of the other rights and obligations under the Loan Agreement and the other Loan Documents relating thereto (the assigned interests being hereinafter referred to as the "Assigned Interests"), including Assignor's share of all outstanding Loans with respect to the Assigned Interests and the right to receive interest and principal on and all other fees and amounts with respect to the Assigned Interests, all from and after the Assignment Date, all as if Assignee were an original Lender under and signatory to the Loan Agreement having a Loan Commitment Percentage equal to the amount of the respective Assigned Interests.

(b) Assignee, subject to the terms and conditions hereof, hereby assumes all obligations of Assignor with respect to the Assigned Interests from and after the Assignment Date as if Assignee were an original Lender under and signatory to the Loan Agreement and the

"Intercreditor Agreement" (as hereinafter defined), which obligations shall include, but shall not be limited to, the obligation to make Loans to the Borrowers with respect to the Assigned Interests and to indemnify the Agent as provided therein (such obligations, together with all other obligations set forth in the Loan Agreement and the other Loan Documents are hereinafter collectively referred to as the "Assigned Obligations"). Assignor shall have no further duties or obligations with respect to, and shall have no further interest in, the Assigned Obligations or the Assigned Interests.

3. Representations and Requests of Assignor.

(a) Assignor represents and warrants to Assignee (i) that it is legally authorized to, and has full power and authority to, enter into this Agreement and perform its obligations under this Agreement; (ii) that as of the date hereof, before giving effect to the assignment contemplated hereby the principal face amount of Assignor's Note is $_____ and Assignor's Note is $_____ and the aggregate outstanding principal balance of the Loans made by it equals $_____ and Loans made by it equals $_____, and (iii) that it has forwarded to the Agent the Notes held by Assignor. Assignor makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness or sufficiency of any Loan Document or any other instrument or document furnished pursuant thereto or in connection with the Loan, the collectability of the Loans, the continued solvency of the Borrowers or the Guarantor or the continued existence, sufficiency or value of the Collateral or any assets of the Borrowers or the Guarantor which may be realized upon for the repayment of the Loans, or the performance or observance by the Borrowers or the Guarantor of any of their respective obligations under the Loan Documents to which it is a party or any other instrument or document delivered or executed pursuant thereto or in connection with the Loan; other than that it is the legal and beneficial owner of, or has the right to assign, the interests being assigned by it hereunder and that such interests are free and clear of any adverse claim.

(b) Assignor requests that the Agent obtain replacement notes for each of Assignor and Assignee as provided in the Loan Agreement.

4. Representations of Assignee. Assignee makes and confirms to the Agent, Assignor and the other Lenders all of the representations, warranties and covenants of a Lender under Articles 14 and 18 of the Loan Agreement. Without limiting the foregoing, Assignee (a) represents and warrants that it is legally authorized to, and has full power and authority to, enter into this Agreement and perform its obligations under this Agreement; (b) confirms that it has received copies of such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement; (c) agrees that it has and will, independently and without reliance upon Assignor, any other Lender or the Agent and based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in evaluating the Loans, the Loan Documents, the creditworthiness of the Borrowers and the Guarantor and the value of the assets of the Borrowers and the Guarantor, and taking or not taking action under the Loan Documents and any intercreditor agreement among the Lenders and the Agent (the "Intercreditor Agreement"); (d) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers as are reasonably

incidental thereto pursuant to the terms of the Loan Documents and the Intercreditor Agreement; (e) agrees that, by this Assignment, Assignee has become a party to and will perform in accordance with their terms all the obligations which by the terms of the Loan Documents and the Intercreditor Agreement are required to be performed by it as a Lender; (f) represents and warrants that Assignee does not control, is not controlled by, is not under common control with and is otherwise free from influence or control by, any Borrower or the Guarantor, (g) agrees that if Assignee is not incorporated under the laws of the United States of America or any State, it has on or prior to the date hereof delivered to Borrowers and Agent certification as to its exemption (or lack thereof) from deduction or withholding of any United States federal income taxes and (h) Assignee has a net worth as of the date hereof of not less than $100,000,000.00 unless waived in writing by Borrowers and Agent as required by the Loan Agreement. Assignee agrees that Borrowers may rely on the representation contained in Section 4(i).

5. Payments to Assignor. In consideration of the assignment made pursuant to Paragraph 1 of this Agreement, Assignee agrees to pay to Assignor on the Assignment Date, an amount equal to $_____ representing the aggregate principal amount outstanding of the Loans owing to Assignor under the Loan Agreement and the other Loan Documents with respect to the Assigned Interests.

6. Payments by Assignor. Assignor agrees to pay the Agent on the Assignment Date the registration fee required by §18.2 of the Loan Agreement.

7. Effectiveness.

(a) The effective date for this Agreement shall be _____ (the "Assignment Date"). Following the execution of this Agreement, each party hereto shall deliver its duly executed counterpart hereof to the Agent for acceptance and recording in the Register by the Agent.

(b) Upon such acceptance and recording and from and after the Assignment Date, (i) Assignee shall be a party to the Loan Agreement and the Intercreditor Agreement and, to the extent of the Assigned Interests, have the rights and obligations of a Lender thereunder, and (ii) Assignor shall, with respect to the Assigned Interests, relinquish its rights and be released from its obligations under the Loan Agreement and the Intercreditor Agreement.

(c) Upon such acceptance and recording and from and after the Assignment Date, the Agent shall make all payments in respect of the rights and interests assigned hereby accruing after the Assignment Date (including payments of principal, interest, fees and other amounts) to Assignee.

(d) All outstanding LIBOR Rate Loans shall continue in effect for the remainder of their applicable Interest Periods and Assignee shall accept the currently effective interest rates on its Assigned Interest of each LIBOR Rate Loan.

8. Notices. Assignee specifies as its address for notices and its Lending Office for all assigned Loans, the offices set forth below:

Notice Address: _____

_____

Attn: _____

Facsimile: _____

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

9. Payment Instructions. All payments to Assignee under the Loan Agreement shall be made as provided in the Loan Agreement in accordance with the separate instructions delivered to Agent.

10. Governing Law. THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT FOR ALL PURPOSES AND TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA (WITHOUT REFERENCE TO CONFLICT OF LAWS).

11. Counterparts. This Agreement may be executed in any number of counterparts which shall together constitute but one and the same agreement.

12. Amendments. This Agreement may not be amended, modified or terminated except by an agreement in writing signed by Assignor and Assignee, and consented to by Agent.

13. Successors. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted by the terms of Loan Agreement and the Intercreditor Agreement.

[signatures on following page]

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, as of the date first above written.

ASSIGNEE:

By: _____
Title:

ASSIGNOR:

By: _____
Title:

RECEIPT ACKNOWLEDGED AND
ASSIGNMENT CONSENTED TO BY:

KEYBANK NATIONAL ASSOCIATION,
as Agent

By: _____
Title:

CONSENTED TO BY:

COMSTOCK STATION VIEW, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

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

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

EXHIBIT D

INTENTIONALLY OMITTED

EXHIBIT E

COMPLIANCE CERTIFICATE

FORM OF COMPLIANCE CERTIFICATE

KeyBank National Association, as Agent
1200 Abernathy Road, N.E., Suite 1550
Atlanta, Georgia 30328
Attn: Jennifer Wells

Ladies and Gentlemen:

Reference is made to the Loan Agreement dated as of March __, 2008 (as the same may hereafter be amended, the "Loan Agreement") by and among Comstock Potomac Yard, L.C., a Virginia limited liability company, Comstock Station View, L.C., a Virginia limited liability company (collectively, "Borrowers"), KeyBank National Association for itself and as Agent, and the other lenders from time to time party thereto. Terms defined in the Loan Agreement and not otherwise defined herein are used herein as defined in the Loan Agreement.

Pursuant to the Loan Agreement, Borrowers are furnishing to you herewith (or have most recently furnished to you) the consolidated financial statements of Borrowers for the fiscal period ended _____ (the "Balance Sheet Date"). Such financial statements have been prepared in accordance with GAAP and present fairly the consolidated financial position of Borrowers at the date thereof and the results of its operations for the periods covered thereby.

This certificate is submitted in compliance with requirements of §7.4(i) of the Loan Agreement. The calculations provided below are made using the consolidated financial statements of Borrowers as of the Balance Sheet Date adjusted in the best good faith estimate of Borrowers to give effect to the making of a Loan, or other event that occasions the preparation of this certificate; and the nature of such event and the estimate of Borrowers of its effects are set forth in reasonable detail in an attachment hereto. The undersigned officer is the chief financial officer or chief accounting officer of each Borrower.

The undersigned representative has caused the provisions of the Loan Documents to be reviewed and have no knowledge of any Default or Event of Default. **[(Note: If the signer does have knowledge of any Default or Event of Default, the form of certificate should be revised to specify the Default or Event of Default, the nature thereof and the actions taken, being taken or proposed to be taken by the Borrower with respect thereto.)]**

The undersigned is providing the attached information to demonstrate compliance as of the date hereof with the covenants described in the attachment hereto.

IN WITNESS WHEREOF, the undersigned have duly executed this Compliance Certificate this __ day of _____, 200_.

COMSTOCK STATION VIEW, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

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

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

[APPENDIX TO COMPLIANCE CERTIFICATE]

SCHEDULE 1.1

LENDERS AND COMMITMENTS

Name and Address	Loan Commitment	Loan Commitment Percentage
KeyBank National Association 1200 Abernathy Road, N.E. Suite 1550 Atlanta, Georgia 30328	$40,391,200.00	100%

LIBOR Lending Office
Same as above

SCHEDULE 1.2

MORTGAGED PROPERTY QUALIFICATION DOCUMENTS

With respect to the Mortgaged Property, each of the following:

(a) Security Documents. Such Security Documents relating to the Mortgaged Property as the Agent shall in good faith require, duly executed and delivered by the respective parties thereto.

(b) Perfection of Liens. Evidence reasonably satisfactory to the Agent that the Security Documents are effective to create in favor of the Agent a legal, valid and enforceable first lien or security title and security interest in the Mortgaged Property and that all filings, recordings, deliveries of instruments and other actions necessary or desirable to protect and preserve such liens or security title or security interests have been duly effected.

(c) Survey and Taxes. The Survey of the Mortgaged Property, together with the Surveyor Certification and evidence of payment of all real estate taxes, assessments and municipal charges on the Mortgaged Property which on the date of determination are required to have been paid under §7.8.

(d) Title Insurance; Title Exception Documents. The Title Policy (or "marked" commitment/pro forma policy for a Title Policy) covering the Mortgaged Property, including all endorsements thereto, and together with proof of payment of all fees and premiums for such policy, and true and accurate copies of all documents listed as exceptions under such policy.

(e) UCC Certification. A certification from the Title Insurance Company, records search firm, or counsel satisfactory to the Agent that a search of the appropriate public records disclosed no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect any property, rights or interests of the Borrowers that are or are intended to be subject to the security interest, security title, assignments, and mortgage liens created by the Security Documents relating to the Mortgaged Property except to the extent that the same are discharged and removed prior to or simultaneously with the inclusion of the Mortgaged Property in the Collateral.

(f) Certificates of Insurance. Each of (i) a current certificate of insurance as to the insurance maintained by the Borrowers on the Mortgaged Property (including flood insurance if necessary) from the insurer or an independent insurance broker dated as of the date of determination, identifying insurers, types of insurance, insurance limits, and policy terms (or certificates therefor signed by the insurer or an agent authorized to bind the insurer); and (ii) such further information and certificates from the Borrowers, their insurers and insurance brokers as the Agent may reasonably request, all of which shall be in compliance with the requirements of this Agreement.

(g) Hazardous Substance Assessments. With respect to the Station View Project, a hazardous waste site assessment report addressed to the Agent (or the subject of a reliance letter addressed to, and in a form reasonably satisfactory to, the Agent) concerning Hazardous Substances and asbestos on the Mortgaged Property dated or updated not more than sixty (60)

days prior to the Closing Date, from the Environmental Engineer, such report to contain no qualifications except those that are acceptable to the Majority Lenders in their reasonable discretion and to otherwise be in form and substance reasonably satisfactory to the Agent in its sole discretion. With respect to the Potomac Project, Agent shall not require all existing reports to be addressed to Agent or a reliance letter.

(h) Zoning and Land Use Compliance. Such evidence regarding zoning and land use compliance as the Agent may require and approve in its reasonable discretion.

(i) Additional Documents. Such other agreements, documents, certificates, reports or assurances as the Agent may reasonably require.

SCHEDULE 3.3

MANDATORY PREPAYMENTS

Prepayment Date	***Prepayment Amount***
March 31, 2009	$ 20,680,380.00
September 30, 2009	$ 9,847,800.00
March 31, 2010	$ 8,863,020.00

SCHEDULE 6.6

PENDING LITIGATION AND JUDGMENTS

[See Attached]

SCHEDULE 6.9

TAXPAYER IDENTIFICATION NUMBERS

Borrowers:

Potomac:	26-0065265
Station View:	20-4615947

Guarantor:

Comstock Homebuilding Companies, Inc.:	20-1164345

SCHEDULE 6.17

ORGANIZATIONAL STRUCTURE

Comstock Homebuilding Companies, Inc., a Delaware corporation, owns one hundred percent (100%) of the membership interests in each of Potomac and Station View.

SCHEDULE 6.18(c)

PURCHASE OPTIONS

None.

SCHEDULE 6.28

OUTSTANDING CERTIFICATES OF OCCUPANCY

Unit Nos.: 154, 155, 156, 157, 246, 1043, 1044, 1149 and 1150

SCHEDULE 7.12

POTOMAC PROJECT LEASING PARAMETERS

In no event shall Potomac, as part of its rental program established for the Potomac Project, enter into leases that would impair the ability of Borrowers to meet mandatory curtailments for the Potomac Project as set forth in Section 3.3 of the Loan Agreement, as determined by Agent in its reasonable discretion. Prior to entering into any such lease, Potomac shall give prior written notice to Agent of its intent to enter into such lease and obtain Agent's confirmation (not to be unreasonably withheld or delayed) that such lease will not impair the ability of Borrowers to meet the curtailment requirements of section 3.3. Prior to entry into any leases for the Potomac Project, Potomac shall submit to Agent its form of lease, approval of which will not be unreasonably withheld or delayed.

SCHEDULE 8.8

RELEASE PRICES

[See Attached]

Exhibit 10.62

UNCONDITIONAL GUARANTY OF PAYMENT AND PERFORMANCE

FOR AND IN CONSIDERATION OF the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration paid or delivered to the undersigned **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("Guarantor"), the receipt and sufficiency whereof are hereby acknowledged by Guarantor, and for the purpose of seeking to induce **KEYBANK NATIONAL ASSOCIATION,** a national banking association (hereinafter referred to as "Lender", which term shall also include each other Lender which may now be or hereafter become a party to the "Loan Agreement" (as hereinafter defined), and shall also include any such individual Lender acting as agent for all of the Lenders), to extend credit or otherwise provide financial accommodations to **COMSTOCK STATION VIEW, L.C.,** a Virginia limited liability company, and **COMSTOCK POTOMAC YARD, L.C.**, a Virginia limited liability company (hereinafter referred to collectively as "Borrower"), which extension of credit and provision of financial accommodations will be to the direct interest, advantage and benefit of Guarantor, Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to Lender the complete payment and performance of the following liabilities, obligations and indebtedness of Borrower to Lender (hereinafter referred to collectively as the "Obligations"):

(a) the full and prompt payment when due, whether by acceleration or otherwise, either before or after maturity thereof, of the "Notes" made by Borrower to the order of the Lenders in the aggregate principal face amount of Forty Million Three Hundred Ninety-One Thousand Two Hundred and No/100 Dollars ($40,391,200.00), together with interest as provided in the Notes and together with any replacements, supplements, renewals, modifications, consolidations, restatements, increases and extensions thereof; and

(b) the full and prompt payment when due, whether by acceleration or otherwise, either before or after maturity thereof, of each other note as may be issued by Borrower under that certain Loan Agreement dated of even date herewith (hereinafter referred to as the "Loan Agreement") among Guarantor, Borrower, KeyBank, for itself and as agent, and the other lenders now or hereafter a party thereto, together with interest as provided in each such note, together with any replacements, supplements, renewals, modifications, consolidations, restatements, increases, and extensions thereof (the Notes, and each of the notes described in this subparagraph (b) is hereinafter referred to collectively as the "Note"); and

(c) the full and prompt payment and performance of any and all obligations of Borrower to Lender under the terms of the Loan Agreement, together with any replacements, supplements, renewals, modifications, consolidations, restatements and extensions thereof, including, without limitation, including, without limitation, Borrower's covenants and agreements with respect to the Construction and completion of the Project free of any claim for mechanics', materialmen's or any other liens, and in accordance with (i) all Laws, (ii) the Plans and Specifications and (iii) the time periods and other requirements set forth in the Loan Documents, including, without limitation, the following:

(i) To perform, complete and pay for (or cause to be performed, completed and paid for) the Construction and to pay all costs of said Construction (including any and all cost overruns) and all other costs associated with the Project (including, without limitation, the costs of any architects' and engineers' fees), if Borrower shall fail to perform, complete or pay for such work, including any commercially reasonable sums expended in excess of the amount of indebtedness incurred by Borrower under the Loan Agreement or with respect to the Construction Loan, whether or not the Construction is actually completed;

(ii) If the Lender exercises their right under the Loan Agreement to take possession of the Project and complete the Construction, to reimburse Lender for all commercially reasonable costs and expenses incurred by the Lender in excess of the applicable Budget Line Items therefor (if any) in so taking possession of the Project and completing the Construction pursuant to the Plans and Specifications;

(iii) If any mechanics' or materialmen's liens should be filed, or should attach, with respect to the Project by reason of the Construction, to immediately cause the removal of such liens, or post security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring the Lender against the consequences of the foreclosure or enforcement of such lien(s);

(iv) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Project and owned by Borrower, attached to the Project or used in connection with the construction of the Improvements, to immediately cause the removal of such lien(s) or post security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring the Borrowers against the consequences of the foreclosure or enforcement of such lien(s);

(v) Before the first to occur of (i) five (5) days after receipt of written notice from Agent and (ii) five (5) days before the lapse of the applicable policy of insurance, to pay the premiums for all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement during the Construction if such premiums are not paid by Borrower;

(d) Borrower's obligation to keep the Loan In Balance and the full and prompt payment of all Deficiency Deposits;

(e) the full and prompt payment and performance of any and all obligations of Borrower and to Lender under the Security Documents, together with any replacements, supplements, renewals, modifications, consolidations, restatements and extensions thereof; and

(f) the full and prompt payment and performance of any and all other obligations of Borrower to Lender under any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note or the other obligations of Borrower under the Loan Agreement (the Note, the Loan Agreement, the Security Documents and said other agreements, documents and instruments are hereinafter collectively referred to as the "Loan Documents" and individually referred to as a "Loan Document").

1. Agreement to Pay and Perform; Costs of Collection. Guarantor does hereby agree that following an Event of Default under the Loan Documents if the Note is not paid by Borrower in accordance with its terms, or if any and all sums which are now or may hereafter become due from Borrower to Lender under the Loan Documents are not paid by Borrower in accordance with their terms, or if any and all other obligations of Borrower to Lender under the

Note or of Borrower under the other Loan Documents are not performed by Borrower in accordance with their terms, Guarantor will immediately upon demand make such payments and perform such obligations. Guarantor further agrees to pay Lender on demand all reasonable costs and expenses (including court costs and reasonable attorneys' fees and disbursements) paid or incurred by Lender in endeavoring to collect the Obligations guaranteed hereby, to enforce any of the Obligations of Borrower guaranteed hereby, or any portion thereof, or to enforce this Guaranty, and until paid to Lender, such sums shall bear interest at the Default Rate set forth in the Loan Agreement unless collection from Guarantor of interest at such rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate which may be collected from Guarantor under applicable law.

2. Reinstatement of Refunded Payments. If, for any reason, any payment to Lender of any of the Obligations guaranteed hereunder is required to be refunded by Lender to Borrower, or paid or turned over to any other person, including, without limitation, by reason of the operation of bankruptcy, reorganization, receivership or insolvency laws or similar laws of general application relating to creditors' rights and remedies now or hereafter enacted, Guarantor agrees to pay to the Lender on demand an amount equal to the amount so required to be refunded, paid or turned over (the "Turnover Payment"), the obligations of Guarantor shall not be treated as having been discharged by the original payment to Lender giving rise to the Turnover Payment, and this Guaranty shall be treated as having remained in full force and effect for any such Turnover Payment so made by Lender, as well as for any amounts not theretofore paid to Lender on account of such obligations.

3. Rights of Lender to Deal with Collateral, Borrower and Other Persons. Guarantor hereby consents and agrees that Lender may at any time, and from time to time, without thereby releasing Guarantor from any liability hereunder and without notice to or further consent from Guarantor or any other Person or entity, either with or without consideration: release or surrender any lien or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing any indebtedness or liability hereby guaranteed; substitute for any collateral so held by it, other collateral of like kind, or of any kind; modify the terms of the Note or the Loan Documents; extend or renew the Note for any period; grant releases, compromises and indulgences with respect to the Note or the Loan Documents and to any persons or entities now or hereafter liable thereunder or hereunder; release any other guarantor, surety, endorser or accommodation party of the Note, the Security Documents or any other Loan Document; or take or fail to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Note or the Loan Documents, or any of them, or any security for the payment of the indebtedness of Borrower to Lender or for the performance of any obligations or undertakings of Borrower or Guarantor, nor any course of dealing with Borrower or any other person, shall release Guarantor's obligations hereunder, affect this Guaranty in any way or afford Guarantor any recourse against Lender. The provisions of this Guaranty shall extend and be applicable to all replacements, supplements, renewals, amendments, extensions, consolidations, restatements and modifications of the Note and the other Loan Documents, and any and all references herein to the Note and the other Loan Documents shall be deemed to include any such replacements, supplements, renewals, extensions, amendments, consolidations, restatements or modifications thereof. Without limiting the generality of the foregoing, Guarantor acknowledges the terms of Section 18.3 of the Loan Agreement and agree that this Guaranty shall extend and be applicable to each new or replacement note delivered by Borrower pursuant thereto without notice to or further consent from Guarantor.

4. No Contest with Lender; Subordination. Guarantor will not, by paying any sum recoverable hereunder (whether or not demanded by Lender) or by any means or on any other ground, claim any set-off or counterclaim against Borrower in respect of any liability of Guarantor to Borrower or, in proceedings under federal bankruptcy law or insolvency proceedings of any nature, prove in competition with Lender in respect of any payment hereunder or be entitled to have the benefit of any counterclaim or proof of claim or dividend or payment by or on behalf of Borrower or the benefit of any other security for any of the Obligations hereby guaranteed which, now or hereafter, Lender may hold or in which it may have any share. Guarantor hereby expressly waives any right of contribution from or indemnity against Borrower, whether at law or in equity, arising from any payments made by Guarantor pursuant to the terms of this Guaranty, and Guarantor acknowledges that Guarantor has no right whatsoever to proceed against Borrower or for reimbursement of any such payments, except for those rights of Guarantor under the Contribution Agreement; provided, however, Guarantor agrees not to pursue or enforce any of its rights under the Contribution Agreement and Guarantor agrees not to make or receive any payment on account of the Contribution Agreement so long as any of the Obligations remain unpaid or undischarged. In the event Guarantor shall receive any payment under or on account of the Contribution Agreement, it shall hold such payment as trustee for Lender and be paid over to Lender on account of the indebtedness of Borrower to Lender but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty except to the extent the principal amount or other portion of such indebtedness shall have been reduced by such payment. In connection with the foregoing, so long as any of the Obligations remain unpaid or undischarged, Guarantor expressly waives any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any rights to participate in any collateral for Borrower's obligations under the Loan Documents. Guarantor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Guarantor to all indebtedness of Borrower to Lender, and agrees with Lender that (a) Guarantor shall not demand or accept any payment from Borrower on account of such indebtedness, (b) Guarantor shall not claim any offset or other reduction of Guarantor's obligations hereunder because of any such indebtedness and (c) Guarantor shall not take any action to obtain any interest in any of the security provided by Borrower described in and encumbered by the Loan Documents; provided, however, that, if Lender so requests, such indebtedness shall be collected, enforced and received by Guarantor as trustee for Lender and be paid over to Lender on account of the indebtedness of Borrower to Lender, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty except to the extent the principal amount or other portion of such outstanding indebtedness shall have been reduced by such payment.

5. Waiver of Defenses. Guarantor hereby agrees that its obligations hereunder shall not be affected or impaired by, and hereby waives and agrees not to assert or take advantage of any defense based on:

(a) (i) any change in the amount, interest rate or due date or other term of any of the obligations hereby guaranteed, (ii) any change in the time, place or manner of payment of all or any portion of the obligations hereby guaranteed, (iii) any amendment or waiver of, or consent to the departure from or other indulgence with respect to, the Loan Agreement, any other

Loan Document, or any other document or instrument evidencing or relating to any obligations hereby guaranteed, or (iv) any waiver, renewal, extension, addition, or supplement to, or deletion from, or any other action or inaction under or in respect of, the Loan Agreement, any of the other Loan Documents, or any other documents, instruments or agreements relating to the obligations hereby guaranteed or any other instrument or agreement referred to therein or evidencing any obligations hereby guaranteed or any assignment or transfer of any of the foregoing;

(b) any subordination of the payment of the obligations hereby guaranteed to the payment of any other liability of Borrower or any other person;

(c) any act or failure to act by Borrower or any other Person which may adversely affect Guarantor's subrogation rights, if any, against Borrower or any other Person to recover payments made under this Guaranty;

(d) any nonperfection or impairment of any security interest or other Lien on any collateral, if any, securing in any way any of the obligations hereby guaranteed or any failure on the part of Lender to ascertain the extent or nature of any Collateral or any insurance or other rights with respect thereto, or the liability of any party liable under the Loan Documents or the obligations evidenced or secured thereby;

(e) any application of sums paid by Borrower or any other Person with respect to the liabilities of Lender, regardless of what liabilities of Borrower remain unpaid;

(f) any defense of Borrower, including without limitation, the invalidity, illegality or unenforceability of any of the Obligations;

(g) either with or without notice to Guarantor, any renewal, extension, modification, amendment or another changes in the Obligations, including but not limited to any material alteration of the terms of payment or performance of the Obligations;

(h) any statute of limitations in any action hereunder or for the collection of the Note or for the payment or performance of any obligation hereby guaranteed;

(i) the incapacity, lack of authority, death or disability of Borrower or any other Person or entity, or the failure of Lender to file or enforce a claim against the estate (either in administration, bankruptcy or in any other proceeding) of Borrower or Guarantor or any other Person or entity;

(j) the dissolution or termination of existence of Borrower, Guarantor or any other Person or entity;

(k) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of Borrower or Guarantor or any other Person or entity;

(l) the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, assignment, composition, or readjustment of, or any similar proceeding affecting, Borrower or Guarantor or any other Person or entity, or any of Borrower's or Guarantor's or any other Person's or entity's properties or assets;

(m) an assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of either Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now or hereafter required, which Lender may have against Guarantor or the Collateral;

(n) any right or claim of right to cause a marshaling of the assets of either Borrower or Guarantor;

(o) the damage, destruction, condemnation, foreclosure or surrender of all or any part of the Collateral or the Mortgaged Property or any of the improvements located thereon;

(p) the failure of Lender to give notice of the existence, creation or incurring of any new or additional indebtedness or obligation of Borrower or of any action or nonaction on the part of any other person whomsoever in connection with any obligation hereby guaranteed;

(q) any failure or delay of Lender to commence an action against Borrower or any other Person, to assert or enforce any remedies against Borrower under the Note or the other Loan Documents, or to realize upon any security;

(r) any failure of any duty on the part of Lender to disclose to Guarantor any facts it may now or hereafter know regarding Borrower (including, without limitation Borrower's financial condition), any other person or entity, the Collateral, or any other assets or liabilities of such person or entity, whether such facts materially increase the risk to Guarantor or not (it being agreed that Guarantor assume responsibility for being informed with respect to such information);

(s) failure to accept or give notice of acceptance of this Guaranty by Lender;

(t) failure to make or give notice of presentment and demand for payment of any of the indebtedness or performance of any of the obligations hereby guaranteed;

(u) failure to make or give protest and notice of dishonor or of default to Guarantor or to any other party with respect to the indebtedness or performance of obligations hereby guaranteed;

(v) any and all other notices whatsoever to which Guarantor might otherwise be entitled;

(w) any lack of diligence by Lender in collection, protection or realization upon any collateral securing the payment of the indebtedness or performance of obligations hereby guaranteed;

(x) the invalidity or unenforceability of the Note, or any of the other Loan Documents, or any assignment or transfer of the foregoing;

(y) the compromise, settlement, release or termination of any or all of the obligations of Borrower under the Note or the other Loan Documents;

(z) any transfer by Borrower or any other Person of all or any part of the security encumbered by the Loan Documents;

(aa) any right to require Lender to proceed against either Borrower or any other Person or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy in Lender's power or under any other agreement before proceeding against Guarantor hereunder or under any other Loan Document;

(bb) the failure of Lender to perfect any security or to extend or renew the perfection of any security;

(cc) any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;

(dd) any inaccuracy of any representation or other provision contained in any Loan Document;

(ee) any sale or assignment of the Loan Documents, or any interest therein;

(ff) any and all rights, benefits and defenses which might otherwise be available under the provisions of Sections 49-25 and 49-26 of the Code of Virginia (1950), as amended; or

(gg) to the fullest extent permitted by law, any other legal, equitable or surety defenses whatsoever to which Guarantor might otherwise be entitled, it being the intention that the obligations of Guarantor hereunder are absolute, unconditional and irrevocable.

6. Guaranty of Payment and Performance and Not of Collection. This is a Guaranty of payment and performance and not of collection. The liability of Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon the pursuit of any remedies against Borrower or any other Person, nor against securities or liens available to Lender, its successors, successors in title, endorsees or assigns. Guarantor hereby waives any right to require that an action be brought against Borrower or any other Person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person.

7. Rights and Remedies of Lender. In the event of an Event of Default under the Note or the Loan Documents, or any of them, that is continuing (it being understood that the Lender has no obligation to accept cure after an Event of Default occurs), Lender shall have the right to enforce its rights, powers and remedies thereunder or hereunder or under any other Loan Document, in any order, and all rights, powers and remedies available to Lender in such event shall be nonexclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. Accordingly, Guarantor hereby authorizes and empowers Lender upon the occurrence of any Event of Default under the Note or the other Loan Documents, at its sole discretion, and without notice to Guarantor, to exercise any right or remedy which Lender may have, including, but not limited to, judicial foreclosure, exercise of rights of power of sale, acceptance of a deed or assignment in lieu of foreclosure, appointment of a receiver to collect rents and profits, exercise of remedies against personal property, or enforcement of any assignment of leases, as to any security, whether real, personal or intangible.

At any public or private sale of any security or collateral for any of the Obligations guaranteed hereby, whether by foreclosure or otherwise, Lender may, in its discretion, purchase all or any part of such security or collateral so sold or offered for sale for its own account and may apply against the amount bid therefor all or any part of the balance due it pursuant to the terms of the Note or Security Documents or any other Loan Document without prejudice to Lender's remedies hereunder against Guarantor for deficiencies. If the Obligations guaranteed hereby are partially paid by reason of the election of Lender to pursue any of the remedies available to Lender, or if such Obligations are otherwise partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the Obligations guaranteed hereby even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy.

8. Application of Payments. Guarantor hereby authorizes Lender, without notice to Guarantor, to apply all payments and credits received from Borrower or from Guarantor or realized from any security in such manner and in such priority as Lender in its sole judgment shall see fit to the Obligations.

9. Business Failure, Bankruptcy or Insolvency. In the event of the business failure of Guarantor or if there shall be pending any bankruptcy or insolvency case or proceeding with respect to Guarantor under federal bankruptcy law or any other applicable law or in connection with the insolvency of Guarantor, or if a liquidator, receiver, or trustee shall have been appointed for Guarantor or Guarantor's properties or assets, Lender may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of Lender allowed in any proceedings relative to Guarantor, or any of Guarantor's properties or assets, and, irrespective of whether the indebtedness or other obligations of Borrower guaranteed hereby shall then be due and payable, by declaration or otherwise, Lender shall be entitled and empowered to file and prove a claim for the whole amount of any sums or sums owing with respect to the indebtedness or other obligations of Borrower guaranteed hereby, and to collect and receive any moneys or other property payable or deliverable on any such claim. Guarantor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Guarantor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Code, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor by virtue of this Guaranty or otherwise.

10. Covenants of Guarantor. Guarantor hereby covenants and agrees with Lender that until all indebtedness guaranteed hereby has been completely repaid and all obligations and undertakings of Borrower under, by reason of, or pursuant to the Note and the other Loan Documents have been completely performed and Lender has no further obligation to make Loans, Guarantor will comply with any and all covenants applicable to Guarantor set forth in the Loan Agreement.

11. Security and Rights of Set-off. Guarantor hereby grants to Lender, as security for the full and prompt payment and performance of Guarantor's obligations hereunder, a continuing lien on and security interest in any and all securities or other property belonging to Guarantor now or hereafter held by Lender and in any and all deposits (general or specific, time or demand, provisional or final, regardless of currency, maturity, or the branch of Lender where the deposits

are held) now or hereafter held by Lender and other sums credited by or due from Lender to Guarantor or subject to withdrawal by Guarantor; and regardless of the adequacy of any collateral or other means of obtaining repayment of such obligations, during the continuance of any Event of Default under the Note or the other Loan Documents, Lender may at any time and without notice to Guarantor set-off and apply the whole or any portion or portions of any or all such deposits and other sums against amounts payable under this Guaranty, whether or not any other person or persons could also withdraw money therefrom. Any security now or hereafter held by or for Guarantor and provided by Borrower, or by anyone on Borrower's behalf, in respect of liabilities of Guarantor hereunder shall be held in trust for Lender as security for the liabilities of Guarantor hereunder.

12. Changes in Writing; No Revocation. This Guaranty may not be changed orally, and no obligation of Guarantor can be released or waived by Lender except as provided in §27 of the Loan Agreement. This Guaranty shall be irrevocable by Guarantor until all indebtedness guaranteed hereby has been completely repaid and all obligations and undertakings of Borrower under, by reason of, or pursuant to the Note, and the Loan Documents have been completely performed and the Lenders have no further obligation to advance Loans under the Loan Agreement.

13. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Guaranty (hereinafter in this paragraph referred to as "Notice") must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing the same in the United States mail, postpaid and registered or certified, return receipt requested, at the addresses set forth below. Each Notice shall be effective upon being delivered personally or upon being sent by overnight courier or upon being deposited in the United States Mail as aforesaid. The time period in which a response to any such Notice must be given or any action taken with respect thereto, however, shall commence to run from the date of receipt if personally delivered or sent by overnight courier or, if so deposited in the United States Mail, the earlier of three (3) Business Days following such deposit and the date of receipt as disclosed on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. By giving at least fifteen (15) days prior Notice thereof, Guarantor or Lender shall have the right from time to time and at any time during the term of this Guaranty to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. For the purposes of this Guaranty:

The address of Lender is:

KeyBank National Association, as Agent
1200 Abernathy Road, N.E.
Suite 1550
Atlanta, GA 30328
Attn: Mr. Dan Silbert

The address of Guarantor is:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 500
Reston, Virginia 20190
Attn: Christopher Clemente

with a copy to:

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 500
Reston, Virginia 20190
Attn: Jubal Thompson, Esq.

14. **GOVERNING LAW. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS GUARANTY AND THE OBLIGATIONS OF GUARANTOR HEREUNDER SHALL BE GOVERNED BY AND INTERPRETED AND DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA.**

15. **CONSENT TO JURISDICTION; WAIVERS. GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO PERSONAL JURISDICTION IN THE COMMONWEALTH OF VIRGINIA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY, AND (B) WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE (I) TO THE RIGHT, IF ANY, TO TRIAL BY JURY (LENDER HAVING ALSO WAIVED SUCH RIGHT TO TRIAL BY JURY), (II) TO OBJECT TO JURISDICTION WITHIN THE COMMONWEALTH OF VIRGINIA OR VENUE IN ANY PARTICULAR FORUM WITHIN THE COMMONWEALTH OF VIRGINIA, AND (III) TO THE RIGHT, IF ANY, TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN OR IN ADDITION TO ACTUAL DAMAGES. EACH LENDER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS UNDER THE LAWS OF ANY STATE TO THE RIGHT, IF ANY, TO TRIAL BY JURY. GUARANTOR AGREES THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT THE ADDRESS SET FORTH IN PARAGRAPH 13 ABOVE, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL BE SO MAILED. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT LENDER FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST ANY SECURITY AND AGAINST GUARANTOR PERSONALLY, AND AGAINST ANY PROPERTY OF GUARANTOR, WITHIN ANY OTHER STATE. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY STATE SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE COMMONWEALTH OF VIRGINIA SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF GUARANTOR AND LENDER HEREUNDER OR OF THE**

SUBMISSION HEREIN MADE BY GUARANTOR TO PERSONAL JURISDICTION WITHIN THE COMMONWEALTH OF VIRGINIA, GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT. GUARANTOR CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND ACKNOWLEDGE THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER LOAN DOCUMENTS TO WHICH THEY ARE PARTIES BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED IN THIS PARAGRAPH 15. GUARANTOR ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO REVIEW THIS PARAGRAPH 15 WITH ITS LEGAL COUNSEL AND THAT GUARANTOR AGREES TO THE FOREGOING AS ITS FREE, KNOWING AND VOLUNTARY ACT.

16. Successors and Assigns. The provisions of this Guaranty shall be binding upon Guarantor and its heirs, successors, successors in title, legal representatives, and assigns, and shall inure to the benefit of Lender, its successors, successors in title, legal representatives and assigns. Guarantor shall not assign or transfer any of its rights or obligations under this Guaranty without the prior written consent of Lender.

17. Assignment by Lender. This Guaranty is assignable by Lender in whole or in part in conjunction with any assignment of the Note or portions thereof, and any assignment hereof or any transfer or assignment of the Note or portions thereof by Lender shall operate to vest in any such assignee the rights and powers, in whole or in part, as appropriate, herein conferred upon and granted to Lender.

18. Severability. If any term or provision of this Guaranty shall be determined to be illegal or unenforceable, all other terms and provisions hereof shall nevertheless remain effective and shall be enforced to the fullest extent permitted by law.

19. Disclosure. Guarantor agrees that in addition to disclosures made in accordance with standard banking practices, any Lender may disclose information obtained by such Lender pursuant to this Guaranty to assignees or participants and potential assignees or participants hereunder subject to the terms of the Loan Agreement.

20. **NO UNWRITTEN AGREEMENTS. THIS GUARANTY REPRESENTS 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 UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

21. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Guarantor under this Guaranty.

22. Ratification. Guarantors do hereby restate, reaffirm and ratify each and every warranty and representation regarding Guarantor set forth in the Loan Agreement as if the same were more fully set forth herein.

23. Distributions.

(a) Guarantor shall not pay any Distribution unless and until:

(i) Agent shall have received and approved a statement (a "Compliance Certificate") certified by the chief financial officer of Guarantor in the form of Exhibit "A" hereto evidencing compliance with the covenants contained in §23(a)(ii) below. The Compliance Certificate shall be delivered to Agent no later than on the fifth (5^{th}) day of each calendar month; it being acknowledged and agreed that Agent shall be deemed to have approved such statements in the event that Agent does not respond within ten (10) calendar days of confirmed receipt of such statement.

(ii) the Guarantor is in compliance with the following covenants on an actual basis, as of the end of the month to which such Compliance Certificate relates and will continue to be in compliance on a pro forma basis after such Distributions:

(1) the ratio of Guarantor's Total Liabilities to Tangible Net Worth is 2.25 to 1.00 or less;

(2) the ratio of Guarantor's EBITDA to Interest Incurred for the Test Period is greater than 2.00 to 1.00; and

(3) Guarantor's Tangible Net Worth exceeds $50,000,000.

(iii) Any amounts available for Distribution to Guarantor's shareholders or other beneficial owners pursuant to this §23 must be distributed within three (3) months following a Monthly Measurement Date as provided herein, provided that the conditions in §23 to the making of Distributions continue to be satisfied at such time. Any amounts available for Distribution to Guarantor's shareholders or other beneficial owners which are not distributed within three (3) months following a Monthly Measurement Date as provided herein shall be retained by Guarantor.

(iv) No Distributions may be made to any of the shareholders or other beneficial owners of Guarantor unless after such Distribution would be made no Default or Event of Default shall have occurred and be continuing or would exist after giving effect to such Distribution.

(b) For the purposes of this Section 23, the terms set forth below shall be defined as follows:

(i) EBITDA. With respect to a Person for any period (without duplication): Net Income (or loss) of such Person for such period determined on a consolidated basis (prior to any impact of adjustments for minority interests in such Person) in accordance with GAAP, exclusive of the following (but only to the extent included in the determination of such Net Income (loss)): (i) depreciation and amortization expense; (ii) interest expense, including interest expensed and previously capitalized interest included as costs of goods sold (to the extent deducted in calculating such Net Income); (iii) income tax expense; (iv) extraordinary or non-recurring gains and losses; and (v) any gains resulting from the forgiveness of such Person's Indebtedness.

(ii) Intangible Assets. Collectively, (i) the amount (to the extent reflected in determining Guarantor's and its Subsidiaries total assets) of all write-ups in the book value of any asset (other than real property assets) owned by Guarantor and its Subsidiaries, and (ii) goodwill, patents, trademarks, service marks, trade names, anticipated future benefit of tax loss carry forwards, copyrights, organization or developmental expenses, deferred financing costs, and other intangible assets.

(iii) Interest Incurred. For any period with respect to Guarantors and its Subsidiaries on a consolidated basis, without duplication, the sum of total interest incurred (both expensed and capitalized), together with the interest portion of payments on Capitalized Leases.

(iv) Monthly Measurement Date. Each calendar month during the term of the Loan Agreement, with the first Monthly Measurement Date occurring April 1, 2008.

(v) Net Income (or Loss). With respect to Guarantor or its Subsidiaries (or any asset of Guarantor or its Subsidiaries) for any period, the net income (or loss) of Guarantor or its Subsidiaries (or attributable to such asset), determined on a consolidated basis in accordance with GAAP.

(vi) Subsidiary. For any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

(vii) Tangible Net Worth. At any date, Guarantor's and its Subsidiaries total assets, adjusted to add back the accumulated depreciation of its real estate assets, less its Intangible Assets, less its Total Liabilities, all as determined on a consolidated basis in accordance with GAAP as determined as of such date.

(viii) Test Period. A period of six (6) consecutive months, treated as a single accounting period.

(ix) Total Liabilities. The sum, without duplication of (i) all consolidated liabilities of the Guarantor or its Subsidiaries determined in accordance with GAAP, including capital leases, accounts payable, accrued expenses, mortgage payables, notes payable, senior notes, convertible debentures, subordinated debentures, and secured or unsecured debt owed to banks or other financial institutions, (ii) all Indebtedness of the Guarantor or its Subsidiaries whether or not so classified, and (iii) the balance available for drawing under letters of credit issued for the account of the Guarantor or its Subsidiaries.

24. Fair Consideration. The Guarantor represents that the Guarantor is engaged in common business enterprises related to those of Borrower and Guarantor will derive substantial direct or indirect economic benefit from the effectiveness and existence of the Loan Agreement.

25. Counterparts. This Guaranty and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Guaranty it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

26. Definitions. All terms used herein and not otherwise defined herein shall have the meanings set forth in the Loan Agreement including, without limitation, Schedule 9(b) thereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of this __ day of March, 2008.

GUARANTOR:

COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

[CORPORATE SEAL]

Lender joins in the execution of this Guaranty for the sole and limited purpose of evidencing its agreement to waiver of the right to trial by jury contained in Paragraph 15 hereof and Section 25 of the Loan Agreement.

KEYBANK NATIONAL ASSOCIATION, as Agent

By: _____

Name: _____

Title: _____

EXHIBIT "A"

FORM OF COMPLIANCE CERTIFICATE

KeyBank National Association, as Agent
1200 Abernathy Road, N.E., Suite 1550
Atlanta, Georgia 30328
Attn: Jennifer Wells

Ladies and Gentlemen:

Reference is made to the Unconditional Guaranty of Payment and Performance from Comstock Homebuilding Companies, Inc., a Delaware Corporation to KeyBank National Association and the other lenders (collectively, the "Lenders") from time to time party to that certain Loan Agreement dated as of March __, 2008, by and among Comstock Potomac Yard, L.C., a Virginia limited liability company, Comstock Station View, L.C., a Virginia limited liability company, KeyBank National Association, as Agent, and the Lenders. Terms not otherwise defined herein are as defined in the Guaranty.

Guarantor desires to make Distributions as permitted by the Guaranty and is submitting evidence of compliance with conditions for making of Distributions by Guarantor set forth in Section 23 thereof. The undersigned is providing the attached information to demonstrate compliance with the covenants for making of Distributions by Guarantor as of the date hereof. Such calculations have been prepared in accordance with the Guaranty. The undersigned officer is the chief financial officer or chief accounting officer of Guarantor.

The undersigned representative has caused the provisions of the Loan Documents to be reviewed and has no knowledge of any Default or Event of Default. Additionally, no Default or Event of Default would exist after giving effect to such Distributions by Guarantor.

IN WITNESS WHEREOF, the undersigned have duly executed this Compliance Certificate this __ day of _____, 200__.

COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Exhibit 21.1

List of Subsidiaries

	Name	State of Incorporation or Organization
1.	Buckhead Overlook, LLC	Georgia
2.	Comstock Acquisitions, L.C.	Virginia
3.	Comstock Airmont, L.C.	Virginia
4.	Comstock Aldie, L.C.	Virginia
5.	Comstock Barrington Park, L.C.	Virginia
6.	Comstock Bellemeade, L.C.	Virginia
7.	Comstock Belmont Bay 5, L.C.	Virginia
8.	Comstock Belmont Bay 89, L.C.	Virginia
9.	Comstock Blair Mill, L.L.C.	Virginia
10.	Comstock Blooms Mill II, L.C.	Virginia
11.	Comstock Brandy Station, L.C.	Virginia
12.	Comstock Carter Lake, L.C.	Virginia
13.	Comstock Cascades, L.C.	Virginia
14.	Comstock Communities, L.C.	Virginia
15.	Comstock Countryside, L.C.	Virginia
16.	Comstock Culpeper, L.C.	Virginia
17.	Comstock Delta Ridge II, L.L.C.	Virginia
18.	Comstock Emerald Farm, L.C.	Virginia
19.	Comstock Fairfax I, L.C.	Virginia
20.	Comstock Flynn’s Crossing, L.C.	Virginia
21.	Comstock Hamlets of Blue Ridge, L.C.	Virginia
22.	Comstock Holland Road, L.L.C.	Virginia
23.	Comstock Homes of North Carolina, L.L.C.	North Carolina
24.	Comstock Homes of Raleigh, L.L.C.	North Carolina
25.	Comstock Homes of Washington, L.C.	Virginia
26.	Comstock Homes of Atlanta, LLC	Georgia
27.	Comstock Kelton II, L.C.	Virginia
28.	Comstock Lake Pelham, L.C.	Virginia
29.	Comstock Landing, L.L.C.	Virginia
30.	Comstock Loudoun Condos 1, L.C.	Virginia
31.	Comstock North Carolina, L.L.C.	North Carolina
32.	Comstock Penderbrook, L.C.	Virginia
33.	Comstock Potomac Yard, L.C.	Virginia
34.	Comstock Ryan Park, L.C.	Virginia
35.	Comstock Sherbrooke, L.C.	Virginia
36.	Comstock Summerland, L.C.	Virginia
37.	Comstock Wakefield, L.L.C.	Virginia
38.	Comstock Wakefield II, L.L.C.	Virginia
39.	Highland Avenue Properties, LLC	Georgia
40.	Highland Station Partners, LLC	Georgia
41.	Mathis Partners, LLC	Georgia
42.	North Shore Raleigh II, L.L.C.	Virginia
43.	Comstock Realty, LLC	Georgia
44.	Comstock James Road, LLC	Georgia
45.	Post Preserve, LLC	Georgia
46.	Raleigh Resolution, L.L.C.	Virginia
47.	Settlement Title Services, L.L.C.	Virginia
48.	TCG Debt Fund II, L.C.	Virginia
49.	TCG Fund I, L.C.	Virginia
50.	Tribble Road Development, LLC	Georgia

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-123709) of Comstock Homebuilding Companies, Inc. of our report dated March 16, 2008 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

McLean, Virginia

March 24, 2008

Exhibit 31.1

CERTIFICATION

I, Christopher Clemente, certify that:

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

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

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

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

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

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

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

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ CHRISTOPHER CLEMENTE
Christopher Clemente
Chairman and Chief Executive Officer

Date: March 24, 2008

Exhibit 31.2

CERTIFICATION

I, Bruce J. Labovitz, certify that:

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

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

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

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

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

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

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

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ BRUCE J. LABOVITZ
Bruce J. Labovitz
Chief Financial Officer

Date: March 24, 2008

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Comstock Homebuilding Companies, Inc. (the "Company") for the year ended December 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Christopher Clemente, Chairman and Chief Executive Officer of the Company and Bruce Labovitz, Chief Financial Officer of the Company, certify, to our best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CHRISTOPHER CLEMENTE
Christopher Clemente
Chairman and Chief Executive Officer

/s/ BRUCE J. LABOVITZ
Bruce J. Labovitz
Chief Financial Officer

March 24, 2008