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

FORM 10-Q

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

For the quarterly period ended September 30, 2010

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

For the transition period from _____ to _____

Commission File Number 1-32375

Comstock Homebuilding Companies, Inc.
(Exact name of registrant as specified in its charter)

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

11465 Sunset Hills Road
4th Floor
Reston, Virginia 20190
(703) 883-1700
(Address including zip code, and telephone number, including area code, of principal executive offices)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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 Exchange Act). YES ☐ NO ☒

As of November 15, 2010, 16,925,954 shares of the Class A common stock, par value $.01 per share, and 2,733,500 shares of Class B common stock, par value $0.01, of the Registrant were outstanding.

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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED BALANCE SHEETS

(Amounts in thousands, except per share data)

	September 30, 2010	December 31, 2009
ASSETS		
Cash and cash equivalents	$ 759	$ 1,085
Restricted cash	3,093	3,249
Real estate held for development and sale	35,953	70,890
Property, plant and equipment, net	57	144
Other assets	1,862	1,963
TOTAL ASSETS	$ 41,724	$ 77,331
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	$ 3,825	$ 5,579
Notes payable - secured by real estate held for development and sale	20,478	50,530
Notes payable - due to affiliates, unsecured	5,008	12,743
Notes payable - unsecured	4,493	4,346
TOTAL LIABILITIES	33,804	73,198
Commitments and contingencies (Note 8)		
SHAREHOLDERS' EQUITY		
Class A common stock, $0.01 par value, 77,266,500 shares authorized, 16,995,031 and 15,608,438 issued and outstanding, respectively	170	156
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	166,417	157,418
Treasury stock, at cost (391,400 Class A common stock)	(2,439)	(2,439)
Accumulated deficit	(156,255)	(151,029)
TOTAL EQUITY	7,920	4,133
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 41,724	$ 77,331

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Revenues				
Revenue - homebuilding	$ 5,153	$ 11,116	$ 16,766	$ 17,053
Revenue - other	436	679	4,390	2,304
Total revenue	5,589	11,795	21,156	19,357
Expenses				
Cost of sales - homebuilding	5,774	10,459	17,138	15,908
Cost of sales - other	382	508	3,666	1,458
Impairments and write-offs	1,548	—	1,548	15,351
Selling, general and administrative	1,341	1,095	4,202	4,984
Interest, real estate taxes and indirect costs related to inactive projects	143	421	1,812	3,015
Operating loss	(3,599)	(688)	(7,210)	(21,359)
Gain on troubled debt restructuring	—	(2,803)	—	(2,803)
Other (income) loss, net	(171)	(86)	(1,047)	(358)
(Loss) income from continuing operations before income taxes	(3,428)	2,201	(6,163)	(18,198)
Income tax expense	—	—	—	—
(Loss) income from continuing operations	(3,428)	2,201	(6,163)	(18,198)
Discontinued operations:				
Income (loss) from discontinued operations, net of taxes	—	78	—	(9,910)
Net (loss) income	$ (3,428)	$ 2,279	$ (6,163)	$ (28,108)
Basic (loss) income per share				
Continuing operations	$ (0.18)	$ 0.13	$ (0.34)	$ (1.04)
Discontinued operations	—	—	—	(0.56)
Net (loss) income per share	$ (0.18)	$ 0.13	$ (0.34)	$ (1.60)
Diluted (loss) income per share				
Continuing operations	$ (0.18)	$ 0.12	$ (0.34)	$ (1.04)
Discontinued operations	—	—	—	(0.56)
Net (loss) income per share	$ (0.18)	$ 0.12	$ (0.34)	$ (1.60)
Basic weighted average shares outstanding	18,567	17,618	18,299	17,575
Diluted weighted average shares outstanding	18,567	19,467	18,299	17,575

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(Amounts in thousands, except per share data)

	Class A		Class B		Additional paid-in capital	Treasury stock	Noncontrolling interest	Retained earnings (deficit)	Total
	Shares	Amount	Shares	Amount					
Balance at December 31, 2009	**15,608**	**$ 156**	**2,733**	**$ 27**	**$157,418**	**$(2,439)**	**$ —**	**$(151,029)**	**$ 4,133**
Cumulative effect of a change in accounting principle								937	937
Stock compensation and issuances	369	4			610				614
Stonehenge capital contribution					7,689				7,689
Warrants	1,018	10			700				710
Net loss								(6,163)	(6,163)
Balance at September 30, 2010	**16,995**	**$ 170**	**2,733**	**$ 27**	**$166,417**	**$(2,439)**	**$ —**	**$(156,255)**	**$ 7,920**
Balance at December 31, 2008	**15,608**	**$ 156**	**2,733**	**$ 27**	**$157,058**	**$(2,439)**	**$ 224**	**$(124,277)**	**$ 30,749**
Stock compensation and issuances					159				159
Net loss							(1)	(28,107)	(28,108)
Balance at September 30, 2009	**15,608**	**$ 156**	**2,733**	**$ 27**	**$157,217**	**$(2,439)**	**$ 223**	**$(152,384)**	**$ 2,800**

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands, except per share data)

	Nine Months Ended September 30,	
	2010	2009
Cash flows from operating activities:		
Net loss	$ (6,163)	$ (28,108)
Adjustment to reconcile net loss to net cash provided by operating activities		
Amortization and depreciation	92	549
Impairments and write-offs	1,548	22,938
Gain on troubled debt restructuring	—	(2,803)
Gain on trade payable settlements	(860)	(333)
Amortization of stock compensation	—	158
Changes in operating assets and liabilities:		
Restricted cash	156	427
Receivables	—	(15)
Real estate held for development and sale	17,982	15,372
Other assets	100	(743)
Accounts payable and accrued liabilities	1,296	2,097
Net cash provided by operating activities	14,151	9,539
Cash flows from investing activities:		
Purchase of property, plant and equipment	(4)	—
Net cash used in investing activities	(4)	—
Cash flows from financing activities:		
Proceeds from notes payable	823	311
Payments on notes payable	(15,917)	(14,732)
Non-controlling interest		(223)
Proceeds from warrant exercise	621	—
Net cash used in financing activities	(14,473)	(14,644)
Net decrease in cash and cash equivalents	(326)	(5,105)
Cash and cash equivalents, beginning of period	1,085	5,977
Cash and cash equivalents, end of period	$ 759	$ 872
Supplemental disclosure for non-cash activity:		
Interest incurred but not paid in cash	$ 1,037	$ 1,513
Reduction in notes payable in connection with troubled debt restructuring	$ 7,689	$ 6,502
Increase in additional paid in capital in connection with troubled debt restructuring	$ 7,689	$ —
Reduction in real estate held for development and sale in connection with deconsolidation of subsidiaries	$ 15,407	$ —
Reduction in notes payable in connection with deconsolidation of subsidiaries	$ 15,893	$ —
Reduction in accrued liabilities in connection with deconsolidation of subsidiaries	$ 449	$ —
Increase in opening retained earnings in connection with deconsolidation of subsidiaries	$ 936	$ —
Reduction in accrued liabilities in connection with issuance of stock compensation	$ 704	$ —
Increase in class A common stock par value in connection with issuance of stock compensation	$ 14	$ —
Increase in additional paid in capital in connection with issuance of stock compensation	$ 690	$ —
Reduction in real estate held for development and sale in connection with troubled debt restructuring	$ —	$ 3,449
Reduction of notes payable in connection with foreclosure of Mathis Gates properties	$ —	$ —
Deconsolidation of variable interest inventory and related debt	$ —	$ 19,050

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

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except per share data)

1. ORGANIZATION AND BASIS OF PRESENTATION

The accompanying unaudited financial statements of Comstock Homebuilding Companies ("Comstock" or the "Company") have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Such financial statements do not include all of the information and disclosures required by GAAP for complete financial statements. In our opinion, all adjustments necessary for a fair presentation have been included in the accompanying financial statements. For further information and a discussion of our significant accounting policies other than as discussed below, refer to our audited consolidated financial statements in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

Comstock Companies, Inc. 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, the Company completed an initial public offering ("IPO") of its Class A common stock.

The Company's Class A common stock is traded on the NASDAQ Capital market ("NASDAQ") under the symbol "CHCI" and has no public trading history prior to December 17, 2004. On April 20, 2010, the Company received notice from NASDAQ stating that the Company had regained compliance with the $1.00 minimum bid price requirement after its shares achieved a closing bid-price exceeding $1.00 for 10 consecutive days ending on April 19, 2010. The Company is now in compliance with all three NASDAQ continued listing requirements which are the minimum bid-price requirement, the market value of publicly held shares requirement and the minimum equity requirement.

The homebuilding industry is cyclical and significantly affected by changes in national and local economic, business and other conditions. Over the past five years, the Company has developed, built and marketed single-family homes, townhouses and condominiums in the Washington, DC, Raleigh, NC and Atlanta, GA metropolitan markets. During 2006, new home sales in these markets began to slow and that trend significantly worsened in 2008 and into 2009. In response to these conditions, the Company significantly reduced selling, general and administrative expenses in order to align its cost structure with the level of sales activity. During 2007 and into 2009, the Company ceased land acquisition and land development and curtailed construction activities (except pre-sold units and where construction was required to generate near term sales) and sold various development assets that the Company believed were not needed based on current absorption rates. The Company also initiated rental operations at its key for-sale condominium projects to generate current cash flow from its standing inventory, enabling the Company to retain the key development assets for sale as market conditions began to improve. In mid 2009, the Company initiated its Strategic Realignment Plan (the "Plan"), a strategy designed to dispose of the remaining development assets that the Company believed had little potential for generating near term revenue or that could contribute to the Company's long term growth plans. Another key component of the Strategic Realignment Plan was to dramatically reduce the Company's overall debt levels, thereby realigning its borrowing facilities with current market realities, through agreements with its lenders and other creditors. As a result of the success of the Strategic Realignment Plan the Company's overall debt was reduced to $30.0 million as of September 30, 2010, a significant reduction from the peak level of $340.0 million in September 2006. Through the process of negotiating arrangements with its primary lenders, the Company was able to retain its key development assets, all of which are located in the Washington, DC area. The Company believes that its renewed focus on the Washington, DC market will provide sufficient opportunity for the Company to return to profitability in the future due to the generally stable overall economic conditions in the nation's capital.

Through the process of executing its Strategic Realignment Plan, the Company successfully eliminated all real estate holdings and associated debts in markets outside the Washington, DC market. An additional objective of the Strategic Realignment Plan was to settle a significant amount of the Company's unsecured vendor and other debts at a principal discount. Although the Company succeeded in reaching arrangements with many of its vendors and other unsecured creditors, it was unable to reach an agreement with respect to a judgment resulting from a land contract the Company cancelled in the Atlanta, Georgia area. As a result, on November 13, 2009, three of the Company's Atlanta, GA subsidiaries (also known as "Parker Chandler Homes") filed petitions to liquidate under chapter 7 of the U.S. Bankruptcy Code. On or about January 21, 2010, the United States Bankruptcy Court, Northern District of Georgia entered an order approving the trustee's report of no distribution, discharged the trustee and closed the estate for all three subsidiary filings. As a result, the judgment debt was discharged and the Company no longer controls any significant real estate positions in Atlanta, GA. During the three months ended March 31, 2010, the Company deconsolidated the entities that held the real estate assets and debt related to the Wachovia foreclosure agreement (much of which was in the Atlanta and Raleigh markets), which was entered into in 2009. See Note 15 for the details on the deconsolidation of these entities.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

Liquidity Developments

In an effort to stabilize the Company, management spent much of 2009 focused on negotiating with lenders to eliminate and restructure debt which temporarily limited our ability to pursue new business opportunities. In mid 2009, management formulated a Strategic Realignment Plan which identified key real estate projects to be retained by the Company and those to be disposed of. The Company then worked to restructure the entirety of its debt. The restructuring was completed in late 2009 and has resulted in improved operating cash flow as the lenders agreed to provide the Company with increased cash from proceeds as units are delivered to purchasers. The cash flow agreements require that the Company settle a minimum number of units per quarter at its Penderbrook and Eclipse projects, on a cumulative basis. As of September 30, 2010, the Company had met these quota requirements, as amended, for each of the preceding five quarters. If the Company is unable to maintain the minimum settlement requirements, while that would not be deemed an event of loan default, it would give the lenders the right to apply substantially all of the unit settlement proceeds to principal reduction until such time as the Company is able to regain compliance with the cumulative quotas. At September 30, 2010, the Company was in compliance with the minimum settlement requirements, as amended.

The Plan also identified real estate projects which it deemed to be non-essential to future growth. The strategic approach to debt secured by non-essential real estate projects was to pursue foreclosure agreements with the related lenders with the goal of transferring the real estate to the lender in return for a release from the related debt obligation. As detailed in the December 31, 2009 Form 10-K, the Company made significant progress in that regard having successfully negotiated settlements with all of its lenders regarding the loans guaranteed by the Company and had reduced the outstanding balance of debt from $102.8 million at December 31, 2008 to $67.6 million at December 31, 2009 to $30.0 million at September 30, 2010. In most cases, the Company has been released from the obligations under the loan in return for its agreement to cooperate in the bank's foreclosure on the real estate assets securing the loan. In a limited number of cases, the Company provided the lenders with non-interest bearing deficiency notes with three year maturities in an amount equal to a fraction of the original debt. The balance of the deficiency notes at September 30, 2010 was $1.1 million.

Following is a summary of liquidity events in 2010:

- As a result of the restructuring effort, the only debt service required in 2010 will be covered by, assuming we are able to maintain sales quotas, settlements of units or land parcels.
- On July 29, 2008, Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately $552 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008, the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of $17,100 due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008, Balfour filed counterclaims in the approximate amount of $2,800. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On March 19, 2010, the Company's subsidiary received a final judgment against Balfour in the amount of $11,963. On March 25, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of $12,500. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward principal curtailment on any remaining outstanding amounts under the Company's loan agreement with KeyBank.
- On September 14, 2010, the Company's Chairman and Chief Executive Officer exercised his right to purchase 855,000 shares of the Company's Class A common stock for an exercise price of $.70 per share tendering approximately $600 to the Company. See Note 13 for details.

The Company continues to engage in discussions with lenders and potential equity investors in an effort to provide additional liquidity to sustain business operations and growth capital to fund various new business opportunities. We are anticipating that through a combination of these negotiations, the additional cash from settlement proceeds, the cash generated by our rental operations and the cash generated by sales of land parcels that the Company will generate sufficient cash to sustain our operations through 2010. However, this outcome is primarily dependent upon our ability to meet the minimum settlement requirements specified by our lenders at the Penderbrook and Eclipse projects. If we are unable to meet the sales quotas, substantially all of the proceeds from any settlements at the Penderbrook and Eclipse projects will be retained by the lenders and applied to principal debt curtailments. We have met the sales quota requirements, as amended, during each of the preceding five quarters and were in compliance with these settlement requirements at September 30, 2010.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

At September 30, 2010, we had $0.8 million in unrestricted cash and $3.1 million in restricted cash. Included in our restricted cash balance, to which we have no access currently, is a $3.0 million deposit with an insurance provider as security for any potential future claims. Our access to external working capital is very limited and we have few other sources of cash as commercial banks and other unregulated lenders have experienced a liquidity crisis of their own which has made funding for real estate investment extremely difficult to secure. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, including any future construction and land development efforts.

If we are unable to maintain compliance with the cumulative minimum settlement requirements for an extended period of time, it would be necessary to seek waivers or additional loan modifications from the project lenders at the Penderbrook and Eclipse projects. If we were unable to secure such waivers or modifications, this would substantially reduce the amount of cash generated through unit settlements and make it necessary for us to attempt to generate alternative sources of revenue to meet our operating cash flow requirements. To do so, we may have to seek to leverage the judgment award which we obtained against Balfour, attempt to sell our remaining parcels of land, seek to raise additional capital or seek to obtain additional financing to meet our operating cash flow requirements. If, in the absence of cash flow being generated from unit settlements, we were unable to generate additional capital through any of these alternative sources, we could deplete our cash reserves and may be forced to seek protections afforded under the bankruptcy code. There can be no assurance that in the event we were forced to seek bankruptcy protection that we would be able to reorganize and, in such an event, we could be forced to liquidate our assets.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

2. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

Real estate held for development and sale includes land, land development costs, interest and other construction costs. Land held for development is stated at cost, or when circumstances or events indicate that the land is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less costs to sell. 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, capitalized interest and real estate taxes. Selling costs are expensed as incurred.

For projects where the Company expects to sell the remaining lots in bulk or convey the remaining lots to a lender where the loans have matured, the fair value is determined based on offers received from third parties, comparable sales transactions, and/or cash flow valuation techniques.

If the project meets the GAAP accounting criteria of held for sale, the project is valued at the lower of cost or fair value less estimated selling costs. Currently all of the Company's projects meet these criteria. If the project sales are expected to extend over a period of time, the Company calculates fair value utilizing a discounted cash flow model as discussed below using a discount rate that reflects a reduced level of risk as these assets are no longer under construction.

For assets held for development, 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. In the normal course of business, dispositions of large land holdings can 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 undiscounted future cash flows. 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.

During the third quarter of 2009, the Company executed a foreclosure agreement with Wachovia Bank in exchange for the Company's agreement to cooperate in the bank's foreclosure process on assets that secured the debt. Wachovia Bank had not foreclosed on the real estate assets as of March 31, 2010. However, with the Company's January 1, 2010 adoption of SFAS No. 167, "Amendment to FASB Interpretation No. 46(R)," (codified in "ASC 810"), the Company concluded that it no longer possessed the controlling financial interest in the entities that own the Wachovia assets, nor did it have an obligation to absorb losses that may be significant to the variable interest entities. As a result, the Company was no longer the primary beneficiary of the entities that own the Wachovia assets. Therefore, the Company deconsolidated the entities, including the debt outstanding as of the effective date of the pronouncement. See Note 15 for details.

Difficult market conditions characterized by high unemployment, elevated supplies of unsold home inventory, high levels of foreclosures and increased price competition have continued to challenge the Company during the first nine months of 2010. This has resulted in flat sales prices, selling concessions, reduced gross margins and extended estimates for project sell-off dates. As of September 30, 2010, the Company has classified its projects as held for sale as discussed above and accordingly, written the projects down to fair value less costs to sell as determined by discounted cash flow models. Discounted cash flow models are dependent upon several subjective factors, primarily estimated average sales prices, estimated sales pace, and the selection of an appropriate discount rate. While current market conditions make the estimated timeframe for sales in a community challenging, the Company has generally assumed sales prices equal to or less than current prices and the remaining duration of the community sales process were estimated to be one to two years. These assumptions are often interrelated as price reductions can generally be assumed to increase the sales pace. In addition, the Company must select what it believes to be 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 information it has received from marketing its communities for sale in recent periods, and accordingly has elected to use a rate of 13% in its discounted cash flow model. While the selection of a 13% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market and appropriately reflects the economics of the market, current return expectations, the cash flow characteristics of the projects and the substantially completed nature of its for sale inventory. The estimates of sales prices, sales pace, and discount rates used by the Company are based on the best information available at the time the estimates were made. In recent months, market conditions affecting the Company's Washington, DC area projects have improved; however, if market conditions deteriorate again, additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

The Company has recorded an impairment charge of $1.5 million in the three month period ended September 30, 2010, to properly record its for sale projects at fair market value less costs to sell consistent with the provisions of ASC 360.

The following table summarizes impairment charges and write-offs for the three and nine months ended:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Impairments	$ 1,548	$ —	$1,548	$15,351
Write-offs	—	—	—	—
	$ 1,548	$ —	$1,548	$15,351

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

	September 30, 2010	December 31, 2009
Land and land development costs	$ 9,349	$ 28,173
Cost of construction (including capitalized interest and real estate taxes)	26,604	42,717
	$ 35,953	$ 70,890

3. 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 typical five-year statutorily mandated structural warranty period. Since the Company subcontracts the majority of 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. Additional provisions are made periodically based on an ongoing review of the projects. This reserve is an estimate and actual warranty costs could vary from these estimates. During the three months ended September 30. 2010, the Company provided an additional $639 in warranty reserves to cover future potential costs and/or claims made with respect to its remaining projects. Warranty claims are directly charged to the reserve as they arise. The following table is a summary of warranty reserve activity which is included in accounts payable and accrued liabilities:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Balance at beginning period	$ 576	$ 828	$ 692	$ 1,031
Additions	663	63	711	100
Releases and/or charges incurred	(78)	(114)	(242)	(354)
Balance at end of period	$ 1,161	$ 777	$1,161	$ 777

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

4. 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 or the property becomes inactive. A project becomes inactive when development and construction activities have been suspended indefinitely. 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 and interest expensed for units settled:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Total interest incurred and capitalized	$ —	$ —	$ —	$ 12
Interest expensed as a component of cost of sales	$ 828	$ 1,551	$2,774	$2,442

During 2009 and 2010, all of the Company's projects were determined to be inactive for accounting purposes as they were either substantially complete or management elected to suspend construction activities indefinitely. When a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period in which they are incurred. Following is a breakdown of the interest, real estate taxes and indirect costs related to inactive projects reported in real estate held for development and sale:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Total interest incurred and expensed for inactive projects (1)	$ —	$ 161	$1,316	$2,452
Total real estate taxes incurred and expensed for inactive projects	87	199	403	801
Total production overhead incurred and expensed for inactive projects	45	94	82	555
	$ 132	$ 454	$1,801	$3,808

(1) Under the terms of the loan agreement with Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook condominium project, interest is accrued at 12% unless and until certain unit settlement thresholds are achieved. Once a threshold is achieved, the interest rate is decreased and a reduction in the interest liability is recorded. In September 2010, the Company reached 24 settlements at the Penderbrook project for the nine months ended September 30, 2010. Under the terms of the loan agreement, 24 settlements entitle the Company to an interest rate reduction from 12% to 3% on the principal balance outstanding from January 1, 2010 to September 30, 2010. The amount of that interest liability reduction was approximately $730,000 and was recorded at September 30, 2010. To the extent the Company settles additional units at Penderbrook in the fourth quarter of 2010, the interest rate could potentially be reduced from 3% to 2%, which would result in further reductions in the interest liability recorded at December 31, 2010.

5. LOSS PER SHARE

The weighted average shares and share equivalents used to calculate basic and diluted loss per share for the three and nine months ended September 30, 2010 and 2009 are presented on the consolidated statement of operations. As a result of net losses during the three and nine months ended September 30, 2010 and 2009, restricted stock awards, stock options and warrants were excluded from the computation of dilutive earnings per share because their inclusion would have been anti-dilutive.

Comprehensive income

For the three and nine months ended September 30, 2010 and 2009, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

6. INCOME TAX

Income taxes are accounted for under the asset and liability method in accordance with ASC 740, "Accounting for Income Taxes," ("ASC 740"). 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 of a change in tax rates on the deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

The Company is projecting a tax loss for the twelve months ended December 31, 2010. Therefore, an effective tax rate of zero was assumed in calculating the current income tax expense at September 30, 2010. This results in a zero current income tax expense for the three and nine months ended September 30, 2010.

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. At December 31, 2007, the Company 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. With a full valuation allowance, any change in the deferred tax asset or liability is fully offset by a corresponding change in the valuation allowance. This results in a zero deferred tax benefit or expense for the three and nine months ended September 30, 2010.

We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2007 through 2009 tax years generally remain subject to examination by federal and most state tax authorities.

7. STOCK REPURCHASE PROGRAM

In February 2006, the Company's Board of Directors authorized the Company to purchase up to 1,000 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 shares of Class A common stock for a total of $2,439 or $6.23 per share. There were no shares repurchased in 2007, 2008, 2009 or during the nine months ended September 30, 2010. The Company has no immediate plans to repurchase any additional shares under the existing authorization.

8. COMMITMENTS AND CONTINGENCIES

Litigation

On July 29, 2008, Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately $552 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008, the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of $17,100 due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008, Balfour filed counterclaims in the approximate amount of $2,800. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On March 19, 2010, the Company's subsidiary received a final judgment against Balfour in the amount of $11,963. On March 25, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of $12,500. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward principal curtailment on any amounts outstanding under the Company's loan agreement with KeyBank.

On December 30, 2009, Lawyers Title Insurance Corporation filed an indemnification claim against a Company subsidiary in an amount of $126, seeking reimbursement of fees and costs allegedly incurred as a result of mechanic's liens improperly filed by Balfour Beatty at The Eclipse on Center Park Condominium project. The Company subsidiary disputes the allegations and intends to vigorously defend the claim. A trial in the matter was scheduled for October 2010. Lawyers Title Insurance Corporation non-suited their indemnification claim in September 2010.

Other than the foregoing, we are not 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 pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results and 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, primarily local governmental authorities, 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. The letters of credit and performance bonds issued in favor of the Company and/or its subsidiaries mature on a revolving basis, and if called into default, would be deemed material if assessed against the Company and/or its subsidiaries for the full amounts claimed. Although in some circumstances we have negotiated with our lenders in connection with foreclosure agreements for the lender to assume certain liabilities with respect to the letters of credit and performance bonds, we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to maturing or defaulted letters of credit or performance bonds and it is anticipated that any such liability would likely have a material adverse effect on our financial position, operating results or cash flows. At September 30, 2010 the Company has issued $528 in letters of credit and $2,726 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

9. RELATED PARTY TRANSACTIONS

The Company entered into a lease agreement for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia with Comstock Asset Management, L.C. (CAM), an entity wholly owned by our Chief Executive Officer. In October 2007, the lease agreement was amended decreasing the total square footage from 24.1 to 17.1 and extending the term to four years through September 2011. For the three months ended September 30, 2010 and 2009, total payments made under this lease agreement were $33 and $91, respectively. During the nine months ended September 30, 2010 and 2009 total payments were $180 and $348, respectively. During the second quarter of 2009, the Company began deferring a portion of the base salary payments to our Chief Executive Officer and our Chief Operating Officer. At September 30, 2010 the balance of the deferred compensation is $601.

On or about January 15, 2010, Comstock Property Management, L.C. (“CPM”), a subsidiary of Comstock Homebuilding Companies, Inc. (the “Company”), agreed to enter into a new three year lease with CAM, for the use of approximately 8.2 square feet of office space at the Company’s existing headquarters (the “Lease”). Pursuant to the terms of a separate early termination of Lease by and between CAM and the Company (the “Lease Termination”), the Company surrendered approximately 15.7 square feet of space to CAM in exchange for (i) CPM’s agreement to enter into the Lease for the reduced space and at a reduced rate; and (ii) the issuance of a warrant to purchase up to 55 shares of the Company’s Class A common stock at a strike price equal to the average of the closing stock price for the twenty days immediately preceding the effective date of the Lease Termination in exchange for the forgiveness of approximately $110 in delinquent rent. The fair value of the 55 warrants was $25 which resulted in a gain of $85 recorded in the first quarter of 2010. Although CAM has no obligation to do so, it has allowed us to accrue portions of our payment obligations from time to time and has reduced the amount due from us under the agreements.

The Company is party to agreements with I-Connect, L.C. (I-Connect), a company in which Investor Management, LLC, an entity wholly owned by our Chief Operating Officer, holds a 25% interest, for information technology and website 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 three months ended September 30, 2010 and 2009, total payments made under this agreement were $18 and $29, respectively. During the nine months ended September 30, 2010 and 2009 total payments were $66 and $73, respectively. Although I-Connect has no obligation to do so, it has allowed us to accrue portions of our payment obligations from time to time and has reduced the amount due from us under the agreements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

Effective January 1, 2010, the Company entered into a new software license agreement with I-Connect for the use of I-Connect's proprietary Builder's Co-Pilot software (the "Agreement"). Pursuant to the terms of the Agreement, I-Connect has agreed to forgive approximately $12 in delinquent payments in exchange for a warrant to purchase up to 6 shares of the Company's Class A common stock at a strike price equal to the average of the closing stock price for the twenty days immediately preceding the effective date of the Agreement and the Company will agree to make reduced monthly payments of $6 for the use of the software for a term of 24 months.

See Note 11 for disclosure of a related party transaction with Stonehenge Funding, LLC.

10. DISCONTINUED OPERATIONS

As described in Note 15, as of January 1, 2010, the company deconsolidated its remaining real estate held for development and sale inventory in its Atlanta, GA and Raleigh, NC markets. The Company has historically reported this business as the Southeast region. The deconsolidated inventory constitutes all of the Company's assets in the Southeast region. As such, the results of operations associated with the Southeast region are included as a discontinued operation.

As the Southeast region represented a component of the Company's business, the consolidated financial statements have been reclassified for all periods presented to present this business segment as discontinued operations. Costs and expenses directly associated with this business have been reclassified as discontinued operations in the consolidated statements of operations. Corporate expenses such as general corporate overhead have not been allocated to discontinued operations. Interest expense in cost of sales was $0 and $20 for the three months ended September 30, 2010 and 2009, respectively and was $0 and $64 for the nine months ended September 30, 2010 and 2009, respectively. No interest was incurred or capitalized during the three and nine months ended September 30, 2010 or September 30, 2009.

Summarized financial information for the Southeast region is set forth below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Revenue from homebuilding	$ —	$ 829	$ —	$ 1,754
Cost of sales	—	(732)	—	(1,365)
Impairment of real estate	—	—	—	(7,587)
Selling, general and administrative	—	(33)	—	(496)
Interest, real estate taxes and indirect costs related to inactive projects	—	(34)	—	(795)
Other (loss) income	—	48	—	(1,421)
Gain (loss) from discontinued operations	$ —	$ 78	$ —	$ (9,910)

No tax expense or benefit was recorded for the three and nine months ended September 30, 2010 or September 30, 2009. Discontinued operations have not been segregated in the consolidated statement of cash flows. Therefore, amounts for certain captions will not agree with the respective data in the consolidated statement of operations.

As a result of the deconsolidation of the Atlanta, GA and Raleigh, NC assets, the Company's Washington, DC operation is its only reportable segment.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

11. TROUBLED DEBT RESTRUCTURING

On February 12, 2010, the Company executed a loan modification agreement with Stonehenge Funding ("Stonehenge"), an entity wholly-owned by Christopher Clemente, the Chairman and Chief Executive Officer of the Company, with respect to approximately $9.0 million of unsecured debt. Under the terms of the agreement, Stonehenge agreed to forgive $4.5 million of the principal balance due from the Company, reducing the remaining principal balance by fifty percent (50%) to $4.5 million; and to forgive all past due interest, late fees and penalties accruing through the date of the agreement. The agreement further provides that effective January 1, 2010, the interest rate is reduced by approximately fifty percent (50%) to 300 basis points above the one year LIBOR rate. Stonehenge may, on a quarterly basis, elect to receive stock of the Company (or warrants for the purchase thereof) in an amount equal to the value of the scheduled interest payment. Stonehenge has also agreed to eliminate or forbear upon the enforcement of all financial covenants. The maturity date of the debt remains unchanged at March 14, 2013. The negotiations regarding the loan modification agreement were handled by the independent members of the Board of Directors of the Company. The gain on this transaction was accounted for as a troubled debt restructuring modification of terms pursuant to ASC 470.

Principal amount of debt prior to restructure	$ 9,000
Interest	3,743
Carrying amount of debt at December 31, 2009	12,743
Less: principal amount of debt after restructure	4,500
Less: future interest liability	554
Gain on troubled debt restructuring	$ 7,689

Cancellation of indebtedness by a related party is accounted for as a capital contribution. As a result, the gain on troubled debt restructuring of $7,689 was credited to additional paid in capital during the three months ended March 31, 2010.

To date Comstock has issued to Stonehenge 32,516 shares of the Company's Class A Common Stock with a stock price of $1.40 in satisfaction of approximately $46 in interest. At September 30, 2010 the Company had $5,008 outstanding to Stonehenge Funding, which represents the December 31, 2009 balance of $12,743 less the gain on troubled debt restructuring of $7,689 recognized in the first quarter of 2010, and the $46 in interest paid in Comstock shares.

12. COMMON STOCK, STOCK OPTIONS AND OTHER STOCK PLANS

In 2009, the Company's Board of Directors approved the issuance of up to 600,000 warrants of the Company's Class A Common Stock to settle outstanding trade debt. For the three month period ended September 30, 2010, 41,032 warrants at an average strike price of $1.50 were issued to settle outstanding trade debt. The Company recognized a gain of approximately $48 and $251 during the three months and nine months ended September 30, 2010, respectively, which is recorded in Other Income in the Company's Statement of Operations. Total debt eliminated under the program is approximately $702. Since the inception of the program, 412,646 warrants have been issued at an average strike price of $1.04. There are 187,354 warrants remaining under the authorization.

13. WARRANT EXERCISE

In connection with the purchase of the unsecured debt discussed in Note 11, Stonehenge acquired a warrant for the purchase of 1,500,000 shares of the Company's Class A Common Stock at an exercise price of $.70 per share. Thereafter, Stonehenge surrendered a portion of the warrant representing 500,000 shares to the Company. On September 14, 2010, the Company's Chairman and Chief Executive Officer exercised his right to purchase 855,000 shares of the Company's Class A Common Stock for an exercise price of $.70 per share tendering approximately $600 to Comstock. The purchase was accomplished through Stonehenge.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

14. CREDIT FACILITIES

The Company has outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate property. As of September 30, 2010, maturities of all of our borrowings are as follows:

2010	—
2011	19,982
2012	1,127
2013	5,008
2014 and thereafter	3,862
Total	$29,979

The Company is exploring options with its existing lenders, as well as new debt and equity sources to address its 2011 maturities. While the Company believes it has available options to address the maturities as discussed below, there can be no assurances that the Company will be successful in these efforts.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

All of the Company's 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 200 basis points over the prime rate. As a result, we are exposed to market risk in the event of interest rate increases. At September 30, 2010, the one-month LIBOR and prime rates of interest were 0.26% and 3.25%, respectively, and the interest rates in effect under the existing secured revolving development and construction credit facilities ranged from 3.5% to 15.2%. During the past twelve months, these rates were relatively stable. Based on current operations, as of September 30, 2010, an increase/decrease in interest rates of 100 basis points on our variable rate debt would result in a corresponding increase/decrease in interest actually incurred by us of approximately $0.3 million in a fiscal year. Since all projects are currently inactive by accounting standards, any change in interest would be expensed in the period incurred.

In the past, the Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each project or collection of projects the Company develops and builds to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders. As described in more detail below, at September 30, 2010 our outstanding debt by lender was as follows:

Bank	Balance as of 9/30/10	Recourse
KeyBank	$ 11,406	Secured
Wachovia	205	Unsecured
Guggenheim Capital Partners	7,197	Secured
M&T Bank – Cascades	1,016	Secured
M&T Bank	496	Secured
Cornerstone	400	Unsecured
Bank of America	3,863	Unsecured
Fifth Third	25	Unsecured
Branch Banking & Trust	263	Secured
Seller – Emerald Farm	100	Secured
	24,971	
Due to affiliates – Stonehenge Funding	5,008	Unsecured
Total	$ 29,979	

At September 30, 2010, the Company had $11.4 million outstanding to KeyBank under a credit facility secured by the Company's Potomac Yard project. This note matures in March, 2011. Under the terms of the note there is an interest reserve which represents the amount by which we can avoid cash payments of future monthly interest obligations by adding them to the principal balance. At September 30, 2010 the available balance in the interest reserve was approximately $0.9 million. While there are no financial covenants associated with the loan, there are curtailment requirements which the Company has been covering with the proceeds from settlements at the Eclipse project. The interest rate is the higher of LIBOR plus 5.0% or the prime rate plus 2.0% subject to a LIBOR floor of 2.0%. KeyBank has agreed to increase the cash flow available to the Company from settlements at the Potomac Yard project by providing the Company with accelerated releases equal to fifteen percent of the net sales price. However, these accelerated releases are subject to meeting a cumulative minimum sales requirement. Failure to meet the cumulative minimum sales requirement will not result in an event of default but may result in a reversion of the unit release provisions whereby KeyBank will retain the entire net sales price of sold units. On March 17, 2010, the Company completed the sale of land at its Station View project located in Loudoun County, Virginia for $2.8 million. Since the KeyBank debt is secured by the Potomac Yard project and the Station View land, the Company made a $2.2 million principal payment to KeyBank related to the Station View sale.

At September 30, 2010, the Company had approximately $7.2 million outstanding to Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook Condominium project. On August 20, 2008, Guggenheim issued a notice of default to the Company regarding a purported default. The Company subsequently entered into a loan modification and forbearance agreement whereby Guggenheim agreed to forgo any remedies it may have had with respect to the alleged default. On September 16, 2009, the Company entered into a third amendment to the loan agreement with Guggenheim in which Guggenheim agreed to continue to forbear from exercising its rights related to the defaults and make certain other modifications to the loan agreement. Other than a minimum number of sales per month and sales per

quarter requirement, the Guggenheim loan agreement and the three loan amendments contain no significant financial covenants. The key financial terms of the third amendment increase the cash flow available to the Company through reduced principal payments to Guggenheim as units are settled. Specifically, the third amendment will provide the Company with cash equal to 25% of the net sales price provided the Company meets the cumulative minimum sales requirements on a monthly and quarterly basis. If the Company is unable to meet the minimum sales requirements, it will not constitute an event of default but may result in a reversion to the unit release provisions to ten percent (10%) of the net sales price of sold units in accordance with the loan agreement and first two amendments. The Company has met the minimum sales requirement, as amended, as of September 30, 2010. This note matures on March 6, 2011, but can be extended based upon the satisfaction of a certain number of units sold 14 days prior to this date, but in no event will extend beyond March 2012.

As of September 30, 2010, $5.0 million was outstanding to Stonehenge Funding ("Stonehenge"), which includes its principal amount of $4.5 million plus the total estimated future interest payments of $0.6 million. See details at Note 11.

At September 30, 2010, the Company had $1.5 million outstanding to M&T Bank. On September 28, 2009, the Company entered into a series of agreements with M&T with respect to the $7.6 million of outstanding debt plus accrued interest and late fees. As a result of the agreements, the Belmont Bay loan, with a principal balance of $6.1 million plus $0.5 million of accrued interest and fees, was released in its entirety and the Cascades Loan, with a principal balance of $1.0 million, was extended through January 31, 2011. The Company also entered into a non-interest bearing subordinated promissory note in connection with the Belmont Loan in the amount of $0.5 million with a three-year maturity secured by the Cascades Project. Under the terms of the agreements, M&T Bank agreed to extend the maturity date of the Cascades Loan by forbearing on enforcing its rights with respect to collection of the debt until January 31, 2011. The Company also agreed to commence current payment of interest due M&T Bank related to the current principal balance of the Cascades Loan. The Cascades Project contains a total of 191 condominium units with the first phase of the Cascades Project (88 units) being completed by the Company in 2007.

At September 30, 2010, the Company had $3.9 million outstanding to Bank of America ("BOA") in a 10-year unsecured note. In February 2010, the Company announced that it had reached an agreement in principle with BOA regarding the modification of the note's curtailment terms. In connection therewith, the Company agreed to pay an extension fee of $100 and BOA agreed to delay for one year, until January 2011, the commencement of interest payments. The maturity date remains unchanged at December 28, 2018.

15. DECONSOLIDATION OF SUBSIDIARIES

On August 17, 2009, the Company entered into a foreclosure agreement ("Agreement") with Wachovia Bank with respect to approximately $17.8 million of secured debt, accrued interest and fees. Under the terms of the Agreement, the Company agreed to cooperate with Wachovia with respect to its foreclosure on certain of the Company's real estate assets. In return, Wachovia agreed to release the Company from their obligations and guarantees relating to the $17.8 million of indebtedness contemporaneous with the execution by the Company of a non-interest bearing, unsecured deficiency note payable to Wachovia in the amount of approximately $1.8 million. The deficiency note was reduced by the principal payments related to certain homes sold by the Company. As of December 31, 2009, the deficiency note balance was $205 and the debt from which the Company was released upon deconsolidation of the assets was $15.9 million.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," (codified in "ASC 810"). ASC 810 amends existing consolidation guidance for variable interest entities, requires ongoing reassessment to determine whether a variable interest entity must be consolidated, and requires additional disclosures regarding involvement with variable interest entities and any significant changes in risk exposure due to that involvement. ASC 810 was adopted by the Company on January 1, 2010. As a result of the adoption of this new accounting principle, the Company determined that it was no longer the primary beneficiary of the variable interest entities that held the real estate assets and related Wachovia debt. This conclusion was based on the Company's loss of power, as a result of the foreclosure agreement, to direct the development and sale activities most significant to the economic performance of the entities whose primary asset is the land. Further, as a result of the foreclosure agreement, the Company has been relieved of any obligations with respect to the assets of the property and will not participate in any of the profits or losses related to the ultimate disposition of the property. The Company's obligations are limited to the $205 deficiency note (which is an obligation of the parent not the subsidiary) and certain warranty liabilities described below. As these gains or losses will be absorbed by Wachovia, it appears that they have the controlling financial interest and an obligation to absorb losses that may be significant to the variable interest entities. Since the Company is no longer the primary beneficiary of the variable interest entities, it is required to deconsolidate them, including the debt outstanding collateralized by the real estate assets as of January 1, 2010, the effective date of the pronouncement. In accordance with ASC 810, the Company recognized a gain on the deconsolidation measured as the difference between the carrying value of the net liabilities deconsolidated and their fair value which was deemed to be zero. The Company has recognized a noncontrolling interest of $123 related to warranty reserves on previously sold homes for which the Company is still responsible. This amount has been included in accounts payable and other liabilities. As required by the transition provisions of ASC 810, the gain has been recorded as a cumulative effect of a change in accounting principle to the January 1, 2010 opening retained earnings balance. The amount of the gain is calculated in the table below:

Fair value of consideration received	$ —
Fair value of any retained noncontrolling investment in former subsidiaries	123
Carrying amount of any noncontrolling interest in the former subsidiaries	(123)
Total consideration received	—
Carrying amount of former subsidiaries net liabilities	936
Gain on deconsolidation of subsidiaries	$ 936

16. FAIR VALUE OF FINANCIAL INSTRUMENTS

There are three measurement input levels for determining fair value: Level 1, Level 2, and Level 3. Fair values determined by Level 1 inputs utilize quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Fair values determined by Level 2 inputs utilize inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets and liabilities in active markets, and inputs other than quoted prices that are observable for the asset or liability, such as interest rates and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability and include situations where there is little, if any, market activity for the asset or liability. An asset's or liability's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

The carrying amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities are reasonable estimates of their fair values based on their short maturities. The carrying amount of floating rate debt approximates fair value.

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.

The Company may also value its real estate held for development and sale at fair value on a nonrecurring basis if it is determined that an impairment has occurred. Such fair value measurements use significant unobservable inputs and are classified as Level 3. See Note 2 for a further discussion of the valuation techniques and the inputs used.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

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

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

FORWARD-LOOKING STATEMENTS AND FACTORS THAT MAY AFFECT RESULTS

The following discussion of our financial condition and results of operations should be read in conjunction with the accompanying unaudited consolidated interim financial statements and the notes thereto appearing elsewhere in this report and our audited consolidated financial statements and the notes thereto for the year ended December 31, 2009, appearing in our Annual Report on Form 10-K for the year then ended (the "2009 Form 10-K").

This report includes forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by the use of words such as "anticipate," "believe," "estimate," "may," "intend," "expect," "will," "should," "seeks" or other similar expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties, many of which are beyond our control. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include, without limitation: general economic and market conditions, including interest rate levels; our ability to service our substantial debt; inherent risks in investment in real estate; our ability to compete in the 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. Additional information concerning these and other important risk and uncertainties can be found under the heading "Risk Factors" in our Form 10-K filed for the fiscal year ended December 31, 2009. Our actual results could differ materially from these projected or suggested by the forward-looking statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

Overview

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

Comstock is a multi-faceted real estate development company engaged in the development of for-sale residential and mixed use products. Our substantial experience in building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments has positioned Comstock as a prominent real estate developer and home builder in the Washington, DC market place. References in this Form 10-Q to "Comstock," "Company", "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 business was founded in 1985 as a residential land developer and home builder focused on the Northern Virginia suburbs of the Washington, DC area. In the 1990's we expanded our business to include home building operations in Maryland and North Carolina and a title insurance agency in Virginia. Prior to our initial public offering in December 2004, we operated our business through multiple holding companies each focused on a distinct geographic area or business operation. 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. Subsequent to our initial public offering, we conducted our operations through wholly owned subsidiaries. Comstock Homes is the brand name of our for sale home building operations. Since our founding in 1985, and as of September 30, 2010, we have built and delivered more than 5,200 homes generating total revenue in excess of $1.5 billion.

Our core market of Washington, DC has experienced significant job and population growth over the past two decades, creating demand for a wide range of housing products. Our expertise in developing traditional and non-traditional housing products enables us to focus on a wide range of opportunities within our core market. We have built homes in suburban communities, where we focus on low density products such as single family detached homes, and in urban areas, where we focus on high density multi-family and mixed use products. We develop properties with the intent that they be sold either as fee-simple properties or condominiums to individual unit buyers or as investment properties sold to private or institutional investors. Currently we operate only in the Washington, DC market where we target first-time, early move-up, and secondary move-up buyers. We focus on products that we are able to offer for sale in the middle price points within the markets where we operate, avoiding the very low-end and high-end products. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market. In 2007, 2008, and 2009 the average price of the homes we delivered was $263,000, $300,000, and $289,000, respectively. For the three and nine months ended September 30, 2010, the average price of the homes we delivered was $303,000 and $329,000, respectively.

We seek to minimize risk associated with fluctuating market conditions by primarily building pre-sold units and limiting the number of spec units held in inventory. In each new community that we develop we build model homes to demonstrate our products and to house our on-site sales operations. We limit the building of spec units to locations where there is a demonstrated demand for immediate delivery homes or where the majority of the units within a multi-family building (such as townhouses or condominiums) have been pre-sold. We believe that by limiting the number of spec units held in inventory we reduce our exposure to cyclical fluctuations in market values and minimize costs associated with holding inventory, such as debt service. We believe that our strategy of limiting spec inventory and converting our standing condominium inventory to rental properties contributed to our ability to manage the current downturn in the housing market.

In certain communities we continue to offer units for sale and for rent. In the difficult market conditions that have persisted over the past few years, this strategy has dramatically enhanced our ability to maintain adequate operating cash flow. It has also contributed to our ability to negotiate arrangements with all of our lenders regarding necessary modifications to our borrowing facilities as we worked to align our portfolio with market realities. Additionally, by operating key properties as rental communities during the housing downturn, we have been able to position valuable assets for sale in improving market conditions.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

In 2005, we began executing expansion plans with the goal of establishing operations in key markets throughout the Southeast where job growth and population growth created increased demand for new housing. During 2006, we expanded our Raleigh, North Carolina operation and we entered the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets, increasing revenues to approximately $266.2 million in 2007. However, during 2007 it became clear that the unprecedented span of growth in the housing sector was ending. Changing economic conditions were negatively affecting demand for new housing. Drawing on the experience we gained in previous downturns, we curtailed our expansion plans and adopted a defensive strategy to ensure our ability to survive the housing downturn, should it prove to be protracted, which it has. We quickly sold certain assets where we believed market values would continue to erode, and we began working with our lenders to renegotiate the terms of our project related and corporate borrowings, which peaked at approximately $340.0 million as of September 30, 2006. Throughout 2007 and 2008, market conditions continued to deteriorate which made it necessary to significantly scale back operations while continuing efforts to renegotiate terms of our debt while seeking to retain certain properties in our portfolio.

With market conditions remaining difficult as 2009 began and liquidity becoming an increasing concern, we established our Strategic Realignment Plan. This Plan was designed to eliminate debt, further reduce expenses, enhance our balance sheet, conserve cash, and protect our key Washington, DC market assets. By the end of 2009 we successfully renegotiated all secured debt obligations and reduced total debt to $67.6 million as of December 31, 2009. In early 2010 we restructured our debt with Stonehenge Funding, LC and secured a debt interest payment deferral with Bank of America. Due to the adoption of a new accounting principle, we deconsolidated the assets and debt related to the Wachovia foreclosure agreement in Q1 2010 thereby reducing our total debt at September 30, 2010 to $30.0 million.

In keeping with our defensive strategy we did not purchase any land in 2008, 2009 or the first nine months of 2010. As of December 31, 2009, we had previously completed our exit from the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets and suspended our operations in the Raleigh, North Carolina market. We also eliminated all spec inventory (other than those units held as rental properties) and disposed of properties where we believed market conditions did not warrant protecting the asset. We reduced debt, reduced general and administrative expenses (from $37.5 million in 2006 to $8.1 million in 2009), enhanced operating cash flow, and protected key properties in the Washington, DC area around which we will seek to rebuild our business.

We believe that our significant experience over the past 25 years, combined with our ability to navigate through two major housing downturns (early 1990's and late 2000's) have provided us the experience necessary to capitalize on attractive opportunities in our core market of Washington, DC and to rebuild shareholder value. We are confident that our focus on the Washington, DC market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, will provide opportunity to generate attractive returns on investment while also providing opportunity for growth.

Further, we believe the recent court decision resulting in our favor regarding litigation we brought against the general contractor on our Eclipse high-rise condominium project in Arlington, Virginia will ultimately enhance liquidity and reduce indebtedness to KeyBank, once the appeal of the award by the defendant concludes.

The homebuilding industry continues to experience demand levels well below the record levels experienced in 2005. Although market conditions are showing signs of improvement, as compared to 2009, demand continues to be well below the robust levels experienced earlier in this decade. The economic recession and the well documented turmoil in the financial markets continue to create challenging market conditions for most industries. Among the challenges facing the home building industry is availability of capital, availability of mortgage financing, increased levels of existing home inventory fueled by foreclosures, and reduced demand for new homes. In today's real estate market our general operating business strategy has the following key elements:

- protect liquidity and maximize capital availability;
- maximize the realized value of our real estate owned;
- maintain rationalized overhead expenses;
- focus on our current inventory and emerging opportunities in the Washington, DC market;
- focus on a broad segment of the home buying market, aka the "middle market"; and
- seek opportunities to rebuild our business in a measured and controlled fashion.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

At September 30, 2010, we either owned or controlled approximately 229 building lots. The following table summarizes certain information related to new orders, settlements, and backlog for the three and nine month period ended September 30, 2010 and 2009 ($000s):

	Three months ended September 30,	
Washington DC Metro Area	**2010**	**2009**
Gross new orders	18	29
Cancellations	—	2
Net new orders	18	27
Gross new order revenue	$ 5,383	$ 8,995
Cancellation revenue	$ —	$ 460
Net new order revenue	$ 5,383	$ 8,535
Average gross new order price	$ 299	$ 310
Settlements	17	39
Settlement revenue - homebuilding	$ 5,153	$ 11,116
Average settlement price	$ 303	$ 285
Backlog units	1	6
Backlog revenue	$ 230	$ 1,541
Average backlog price	$ 230	$ 257

	Nine months ended September 30,	
	2010	**2009**
Gross new orders	50	63
Cancellations	1	7
Net new orders	49	56
Gross new order revenue	$15,922	$19,999
Cancellation revenue	$ 445	$ 2,128
Net new order revenue	$15,477	$17,871
Average gross new order price	$ 318	$ 317
Settlements	51	53
Settlement revenue - homebuilding	$16,766	$17,053
Average settlement price	$ 329	$ 322
Backlog units	1	6
Backlog revenue	$ 230	$ 1,541
Average backlog price	$ 230	$ 257

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

We currently have communities in four counties throughout the Washington, DC market. The following table summarizes certain information for our current communities as of September 30, 2010:

		As of September 30, 2010					
Project	State	Product Type (2)	Estimated Units at Completion	Units Settled	Backlog (3)	Lots Owned Unsold	Average New Order Revenue to Date
Emerald Farm (4)	MD	SF	84	78	—	6	$ 452,347
Commons on Potomac Sq – Cascades (4)	VA	Condo	191	88	—	103	231,891
Penderbrook (1)	VA	Condo	424	351	1	72	250,045
Eclipse at Potomac Yard (1)	VA	Condo	465	418	—	47	406,048
Total			1,164	935	1	228	$ 334,864

(1) For sale communities
(2) "SF" means single family home and "Condo" means condominium.
(3) "Backlog" means we have an executed order with a buyer but the settlement has not yet taken place.
(4) Developed land communities are land available for sale

Results of Operations

Three and nine months ended September 30, 2010 compared to three and nine months ended September 30, 2009

Orders, cancellations and backlog

Gross new order revenue for the three months ended September 30, 2010 decreased $3.6 million, or 40.0%, to $5.4 million on 18 homes as compared to $9.0 million on 29 homes for the three months ended September 30, 2009. For the nine months ended September 30, 2010, gross new order revenue decreased $4.1 million, or 20.5% to $15.9 million on 50 homes, as compared to $20.0 million on 63 homes for the nine months ended September 30, 2009. Net new order revenue for the three months ended September 30, 2010 decreased $3.1 million, or 36.5%, to $5.4 million on 18 homes as compared to 8.5 million on 27 homes for the three months ended September 30, 2009. Net new order revenue for the nine months ended September 30, 2010 decreased $2.4 million, or 13.4%, to $15.5 million on 49 homes as compared to $17.9 million on 56 homes for the nine months ended September 30, 2009. Average gross new order revenue per unit for three months ended September 30, 2010 decreased $11,000 to $299,000, as compared to $310,000 for the three months ended September 30, 2009. The average gross new order revenue per unit for the nine months ended September 30, 2010 increased $1,000 to $318,000, as compared to $317,000 for the nine months ended September 30, 2009. The combination of reduced available for-sale inventory and the expiration of the federal homebuyer tax credit on April 30, 2010 contributed to the reduction in new order revenue.

As a result of winding down our divisions in the Atlanta, GA and Raleigh, NC markets, we began 2010 with two Washington, DC condominium projects where we have units available for sale and for rent: Penderbrook Square in Fairfax, VA and the Eclipse at Potomac Yard in Arlington, VA. Our other two Washington, DC projects, Cascades in Loudoun County, VA and Emerald Farm in Frederick County, MD, are finished lots that have previously been prepared for unit construction and which we plan to either sell the finished building lots or commence construction of units as conditions warrant. Therefore, we were only able to generate orders and backlog at the two condominium projects in the first nine months of 2010. Because our unit sales are generated from completed inventory we do not need to construct units after a sales contract is executed with a unit purchaser. As a result we are able to quickly execute on a sales contract and deliver the unit to the purchaser. Typically, unit deliveries are made within thirty days of contract execution. As a result, we do not tend to generate significant order backlog. At September 30, 2010, we had 1 unit in backlog at Penderbrook to generate revenue of $230,000.

Revenue – homebuilding

The number of homes delivered for the three months ended September 30, 2010 decreased to 17 as compared to 39 homes for the three months ended September 30, 2009. For the nine months ended September 30, 2010 we delivered 51 homes as compared to 53 homes delivered during the nine months ended September 30, 2009. Average revenue per home delivered increased by approximately $18,000 or 6.3% to $303,000 for the three months ended September 30, 2010 as compared to $285,000 for the three months ended September 30, 2009. Average revenue per home delivered increased by approximately $7,000 or 2.2% to $329,000 for the nine months ended September 30, 2010 as compared to $322,000 for the nine months ended September 30, 2009.

Revenue from homebuilding decreased by $5.9 million, or 53.2%, to $5.2 million for the three months ended September 30, 2010 as compared to $11.1 million for the three months ended September 30, 2009. For the nine months ended September 30, 2010 revenue from homebuilding decreased by $0.3 million, or 1.8% to $16.8 million as compared to $17.1 million for the nine months ended September 30, 2009. The combination of reduced available for-sale inventory and the expiration of the federal homebuyer tax credit on April 30, 2010, contributed to the reduction in unit sales and revenue.

Revenue – other

Other revenue for the three months ended September 30, 2010 decreased by $243,000 to $436,000, as compared to $679,000 for the three months ended September 30, 2009. Other revenue for the three months ended September 30, 2010 and 2009 is primarily rental revenue from our Penderbrook and Eclipse communities. Other revenue for the nine months ended September 30, 2010 increased by $2.1 million, to $4.4 million, as compared to $2.3 million for the nine months ended September 30, 2009. Other revenue for the nine months ended September 30, 2010 includes $1.5 million of rental revenue from our Penderbrook and Eclipse communities as compared to $2.1 million of rental revenue for the nine months ended September 30, 2009. The decrease in rental revenue is not a result of decreases in per unit rental rates but rather is correlated to the reduced number of units we made available for rent due to continued sales of inventory units. Other revenue for the nine months ended September 30, 2010 also includes $2.8 million related to the sale of land at our Station View project in Q1 2010.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

Cost of sales – homebuilding

Cost of sales – homebuilding for the three months ended September 30, 2010 decreased by $4.7 million, to $5.8 million, or 111.5% of homebuilding revenue, as compared to $10.5 million, or 94.6% of revenue, for the three months ended September 30, 2009. Cost of sales—homebuilding for the nine months ended September 30, 2010 increased by $1.2 million, to $17.1 million, or 101.8% of homebuilding revenue, as compared to $15.9 million, or 93.0% of revenue, for the nine months ended September 30, 2009. The decrease in gross margin for the three and nine months ended September 30, 2010 is partially attributable to our minimum unit settlement requirements in the KeyBank and Guggenheim loan agreements. Additionally, we provided $639 in warranty reserves in the three month period ended September 30, 2010, to reflect expected future potential costs at the Company's remaining projects. The combination of severe weather in Q1 2010, the expiration of the federal homebuyer tax credit on April 30, 2010, continued competition from foreclosure sales in the market and our efforts to meet sales quota covenants has required us to sell units at prices which have negatively impacted our 2010 margins.

Cost of sales – other

Cost of sales – other for the three months ended September 30, 2010 decreased $126,000 to $382,000 as compared to $508,000 for the three months ended September 30, 2009. This is consistent with the decrease in rental revenue for the period. Cost of sales – other for the nine months ended September 30, 2010 increased approximately $2.2 million to $3.7 million as compared to $1.5 million for the nine months ended September 30, 2009. This increase is due to the sale of our Station View land in the first quarter of 2010. Cost of sales – other is principally comprised of operating expenses incurred in generating rental revenue at our rental communities, but also includes land sales when they occur.

Impairments and write-offs

Real estate held for development and sale includes land, land development costs, interest and other construction costs. Land held for development is stated at cost, or when circumstances or events indicate that the land is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less costs to sell. 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, capitalized interest and real estate taxes. Selling costs are expensed as incurred.

For projects where the Company expects to sell the remaining lots in bulk or convey the remaining lots to a lender where the loans have matured, the fair value is determined based on offers received from third parties, comparable sales transactions, and/or cash flow valuation techniques.

If the project meets the GAAP accounting criteria of held for sale, the project is valued at the lower of cost or fair value less estimated selling costs. Currently all of the Company's projects meet these criteria. If the project sales are expected to extend over a period of time, the Company calculates fair value utilizing a discounted cash flow model as discussed below, although the Company would select a discount rate to reflect the relative construction and other risks.

For assets held for development, 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. In the normal course of business, dispositions of large land holdings can 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 undiscounted future cash flows. 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. During the third quarter of 2009, the Company executed a foreclosure agreement with Wachovia Bank in exchange for the Company's agreement to cooperate in the bank's foreclosure process on assets that secured the debt. Wachovia Bank had not foreclosed on the real estate assets as of March 31, 2010. However, with the Company's January 1, 2010 adoption of SFAS No. 167, "Amendment to FASB Interpretation No. 46(R)," (codified in "ASC 810"), the Company concluded that it no longer possessed the controlling financial interest in the entities that own the Wachovia assets, nor did it have an obligation to absorb losses that may be significant to the variable interest entities. As a result, the Company was no longer the primary beneficiary of the entities that own the Wachovia assets. Therefore, the Company deconsolidated the entities, including the debt outstanding as of the effective date of the pronouncement. See Note 15 for details.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

Difficult market conditions characterized by high unemployment, elevated supplies of unsold home inventory, high levels of foreclosures and increased price competition have continued to challenge the Company during the first nine months of 2010. This has resulted in flat sales prices, customer concessions, reduced gross margins and extended estimates for project sell off dates. The Company evaluates its projects on a quarterly basis to determine if recorded carrying amounts are recoverable. For projects where the Company expects to continue sales, these impairment evaluations are based on discounted cash flow models as discussed above. Discounted cash flow models are dependent upon several subjective factors, primarily estimated average sales prices, estimated sales pace, and the selection of an appropriate discount rate. While current market conditions make the selection of a timeframe for sales in a community challenging, the Company has generally assumed sales prices equal to or less than current prices and the remaining lives of the communities were estimated to be one to two years. These assumptions are often interrelated as price reductions can generally be assumed to increase the sales pace. In addition, the Company must select what it believes to be 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 information it has received from marketing its deals for sale in recent months, and accordingly has elected to use a rate of 13% in its discounted cash flow model. While the selection of a 13% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market and appropriately reflects the economics of the market, current return expectations and the cash flow characteristics of the projects. The estimates of sales prices, sales pace, and discount rates used by the Company are based on the best information available at the time the estimates were made. In recent months, market conditions affecting the Company's Washington, DC area projects have improved; however, if market conditions deteriorate again, additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

The Company has recorded an impairment charge of $1.5 million in the three month period ended September 30, 2010, to properly record its for sale projects at fair market value less costs to sell consistent with the provisions of ASC 360.

The following table summarizes impairment charges and write-offs for the three and nine months ended:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Impairments	$1,548	$—	$1,548	$15,351
Write-offs	—	—	—	—
	$1,548	$—	$1,548	$15,351

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

	September 30, 2010	December 31, 2009
Land and land development costs	$ 9,349	$ 28,173
Cost of construction (including capitalized interest and real estate taxes)	26,604	42,717
	$ 35,953	$ 70,890

Selling, general and administrative

Selling general and administrative expenses for the three months ended September 30, 2010 increased $0.2 million to $1.3 million, as compared to $1.1 million for the three months ended September 30, 2009. Selling general and administrative expenses for the nine months ended September 30, 2010 decreased $0.8 million to $4.2 million, as compared to $5.0 million for the nine months ended September 30, 2009. The reduction in expenses over the nine month period is attributable to decreased salary, bonus and other personnel related expenses in conjunction with a continuing effort to make strategic reductions in personnel and related costs. Cost reduction initiatives have also resulted in decreases in office rent, legal, accounting and consulting expenses.

Interest, real estate taxes and indirect costs related to inactive projects

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 or the property becomes inactive which means that development and construction activities have been suspended indefinitely. 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.

When a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period in which they are incurred. During the nine months ended September 30, 2010, all of the Company's projects were determined to be inactive for accounting purposes. The decrease in interest incurred and expensed for inactive projects is due to the reduction in the Company's indebtedness. Real estate tax expense has decreased as the Company's inventory of real estate assets decreases. As real estate development and construction activities have ceased, production overhead has also decreased. Following is a breakdown of the interest, real estate taxes and indirect costs related to inactive projects reported on the statement of operations related to the inactivation of certain real estate projects held for development and sale ($000s):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Total interest incurred and capitalized	$—	$ —	$ —	$ 12
Interest expensed as a component of cost of sales	$828	$1,551	$2,774	$2,442

Discontinued operations

As described in Note 13 to the consolidated financial statements, as of January 1, 2010, the company deconsolidated its remaining real estate held for development and sale inventory in its Atlanta, GA and Raleigh, NC markets. The Company has historically reported this business as the Southeast region. The deconsolidated inventory constitutes all of the Company's assets in the Southeast region. As such, the results of operations associated with the Southeast region are included as a discontinued operation.

As the Southeast region represented a component of the Company's business, the consolidated financial statements have been reclassified for all periods presented to present this business segment as discontinued operation. Costs and expenses directly associated with this business have been reclassified as discontinued operations in the consolidated statements of operations. Corporate expenses such as general corporate overhead have not been allocated to discontinued operations. Interest expense in cost of sales was zero and $20 for the three months ended September 30, 2010 and 2009, respectively and was zero and $64 for the nine months ended September 30, 2010 and 2009, respectively. No interest was incurred or capitalized during the three and nine months ended September 30, 2010 or September 30, 2009.

Summarized financial information for the Southeast region is set forth below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2010	2009	2010	2009
Revenue from homebuilding	$ —	$ 829	$ —	$ 1,754
Cost of sales	—	(732)	—	(1,365)
Impairment of real estate	—	—	—	(7,587)
Selling, general and administrative	—	(33)	—	(496)
Interest, real estate taxes and indirect costs related to inactive projects	—	(34)	—	(795)
Other (loss) income	—	48	—	(1,421)
Loss from discontinued operations	$ —	$ 78	$ —	$ (9,910)

No tax expense or benefit was recorded for the three and nine months ended September 30, 2010 or September 30, 2009. Discontinued operations have not been segregated in the consolidated statement of cash flows. Therefore, amounts for certain captions will not agree with the respective data in the consolidated statement of operations.

As a result of the deconsolidation of the Atlanta, GA and Raleigh, NC assets, the Company's Washington, DC operation is its only reportable segment.

Income taxes

Income taxes are accounted for under the asset and liability method in accordance with ASC 740, "Accounting for Income Taxes," ("ASC 740"). 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.

The Company is projecting a tax loss for the twelve months ended December 31, 2010. Therefore, an effective tax rate of zero was assumed in calculating the current income tax expense at September 30, 2010. This results in a zero current income tax expense for the three and nine months ended September 30, 2010.

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. At December 31, 2007, the Company 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. With a full valuation allowance, any change in the deferred tax asset or liability is fully offset by a corresponding change in the valuation allowance. This results in a zero deferred tax benefit or expense for the three and nine months ended September 30, 2010.

We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2007 through 2009 tax years generally remain subject to examination by federal and most state tax authorities.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

Liquidity and Capital Resources

In an effort to stabilize the Company, management spent much of 2009 focused on negotiating with lenders to eliminate and restructure debt which temporarily limited our ability to pursue new business opportunities. In mid-2009, management formulated a Strategic Realignment Plan (the "Plan") which identified key real estate projects to be retained by the Company. The Company then worked to restructure the entirety of its debt. The restructuring was completed in late 2009 and has resulted in improved operating cash flow as the lenders agreed to provide the Company with increased cash from proceeds as units are delivered to purchasers. The cash flow agreements require that the Company settle a minimum number of units per quarter at its Penderbrook and Eclipse projects, on a cumulative basis. As of September 30, 2010 the Company had met these quota requirements, as amended, for each of the preceding five quarters. If the Company is unable to maintain the minimum settlement requirements, while that would not be deemed an event of loan default, it would give the lenders the right to apply substantially all of the unit settlement proceeds to principal reduction until such time as the Company is able to regain compliance with the cumulative quotas. At September, 30 2010, the Company was in compliance with the minimum settlement requirements, as amended.

The Plan also identified real estate projects which it deemed to be non-essential to future growth. The strategic approach to debt secured by non-essential real estate projects was to pursue foreclosure agreements with the related lenders with the goal of transferring the real estate to the lender in return for a release from the related debt obligation. As detailed in the December 31, 2009 Form 10-K, the Company has made significant progress in that regard. As of March 31, 2010 the Company had successfully negotiated settlements with all of its lenders regarding the loans guaranteed by the Company and had reduced the outstanding balance of debt from $102.8 million at December 31, 2008 to $67.6 million at December 31, 2009 to $30.0 million at September 30, 2010. In most cases, the Company has been released from the obligations under the loan in return for its agreement to cooperate in the bank's foreclosure on the real estate assets securing the loan. In a limited number of cases, the Company provided the lenders with non-interest bearing deficiency notes with three year maturities in an amount equal to a fraction of the original debt. The balance of the deficiency notes at September 30, 2010 was $1.1 million.

Following is a summary of liquidity events in 2010:

- As a result of the restructuring effort, the only debt service required in 2010 will be covered by, assuming we are able to maintain sales quotas, settlements of units or land parcels.
- On July 29, 2008, Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately $552 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008, the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of $17,100 due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008, Balfour filed counterclaims in the approximate amount of $2,800. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On March 19, 2010, the Company's subsidiary received a final judgment against Balfour in the amount of $11,963. On March 25, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of $12,500. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward any outstanding balances remaining under the Company's loan agreement with KeyBank.
- On September 14, 2010, the Company's Chairman and Chief Executive Officer exercised his right to purchase 855,000 shares of the Company's Class A common stock for an exercise price of $.70 per share tendering approximately $600 to Comstock. See Note 13 for details.

The Company continues to engage in discussions with lenders and potential equity investors in an effort to provide additional liquidity to sustain business operations and growth capital to fund various new business opportunities. We are anticipating that through a combination of these negotiations, the additional cash from settlement proceeds, the cash generated by our rental operations and the cash generated by sales of land parcels that the Company will generate sufficient cash to sustain our operations through 2010. However, this outcome is primarily dependent upon our ability to meet the minimum settlement requirements specified by our lenders at the Penderbrook and Eclipse projects. If we are unable to meet the sales quotas, substantially all of the proceeds from any settlements at the Penderbrook and Eclipse projects will be retained by the lenders and applied to principal debt curtailments. We have met the sales quota requirements, as amended, during each of the preceding four quarters and were in compliance with these settlement requirements at September 30, 2010.

At September 30, 2010, we had $0.8 million in unrestricted cash and $3.1 million in restricted cash. Included in our restricted cash balance, to which we have no access currently, is a $3.0 million deposit with an insurance provider as security for any potential future claims. Our access to external working capital is very limited and we have few other sources of cash as commercial banks and other unregulated lenders have experienced a liquidity crisis of their own which has made funding for real estate investment extremely difficult to secure. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, including any future construction and land development efforts.

If we are unable to maintain compliance with the cumulative minimum settlement requirements for an extended period of time, it would be necessary to seek waivers or additional loan modifications from the project lenders at the Penderbrook and Eclipse projects. If we were unable to secure such waivers or modifications, this would substantially reduce the amount of cash generated through unit settlements and make it necessary for us to attempt to generate alternative sources of revenue to meet our operating cash flow requirements. To do so, we may have to seek to leverage the judgment award which we obtained against Balfour, attempt to sell our remaining parcels of land, seek to raise additional capital or seek to obtain additional financing to meet our operating cash flow requirements. If, in the absence of cash flow being generated from unit settlements, we were unable to generate additional capital through any of these alternative sources, we could deplete our cash reserves and may be forced to seek protections afforded under the bankruptcy code. There can be no assurance that in the event we were forced to seek bankruptcy protection that we would be able to reorganize and, in such an event, we could be forced to liquidate our assets.

Credit Facilities

The Company has outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate property. As of September 30, 2010, maturities of all of our borrowings are as follows ($000s):

2010	—
2011	20,008
2012	1,101
2013	5,008
2014 and thereafter	3,862
Total	$29,979

The Company is exploring options with its existing lenders, as well as new debt and equity sources to address its 2011 maturities. While the Company believes it has available options to address the maturities as discussed below, there can be no assurances that the Company will be successful in these efforts.

All of the Company's 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 200 basis points over the prime rate. As a result, we are exposed to market risk in the event of interest rate increases. At September 30, 2010, the one-month LIBOR and prime rates of interest were 0.26% and 3.25%, respectively, and the interest rates in effect under the existing secured revolving development and construction credit facilities ranged from 3.5% to 15.2%. During the past twelve months, these rates were relatively stable. Based on current operations, as of September 30, 2010, an increase/decrease in interest rates of 100 basis points on our variable rate debt would result in a corresponding increase/decrease in interest actually incurred by us of approximately $0.3 million in a fiscal year. Since all projects are currently inactive by accounting standards, any change in interest would be expensed in the period incurred.

In the past, the Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each project or collection of projects the Company develops and builds to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders. As described in more detail below, at September 30, 2010 our outstanding debt by lender was as follows ($000s):

Bank	Balance as of 9/30/10	Recourse
KeyBank	$ 11,406	Secured
Wachovia	205	Unsecured
Guggenheim Capital Partners	7,197	Secured
M&T Bank – Cascades	1,016	Secured
M&T Bank	496	Secured
Cornerstone	400	Unsecured
Bank of America	3,863	Unsecured
Fifth Third	25	Unsecured
Branch Banking & Trust	263	Secured
Seller – Emerald Farm	100	Secured
	24,971	
Due to affiliates – Stonehenge Funding	5,008	Unsecured
Total	$ 29,979	

At September 30, 2010, the Company had $11.4 million outstanding to KeyBank under a credit facility secured by the Company's Eclipse project. This note matures in March, 2011. Under the terms of the note there is an interest reserve which represents the amount by which we can avoid cash payments of future monthly interest obligations by adding them to the principal balance. At September 30, 2010 the available balance in the interest reserve was approximately $0.9 million. While there are no financial covenants associated with the loan, there are curtailment requirements which the Company has been covering with the proceeds from settlements at the Eclipse project. The interest rate is the higher of LIBOR plus 5.0% or the prime rate plus 2.0% subject to a LIBOR floor of 2.0%. KeyBank has agreed to increase the cash flow available to the Company from settlements at the Potomac Yard project by providing the Company with accelerated releases equal to fifteen percent of the net sales price. However, these accelerated releases are subject to meeting a cumulative minimum sales requirement. Failure to meet the cumulative minimum sales requirement will not result in an event of default but may result in a reversion of the unit release provisions whereby KeyBank will retain the entire net sales price of sold units. On March 17, 2010 the Company completed the sale of land at its Station View project located in Loudoun County, Virginia for $2.8 million. Since the KeyBank debt is secured by the Potomac Yard project and the Station View land, the Company made a $2.2 million principal payment to KeyBank related to the Station View sale.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

At September 30, 2010, the Company had approximately $7.2 million outstanding to Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook Condominium project. On August 20, 2008 Guggenheim issued a notice of default to the Company regarding a purported default. The Company subsequently entered into a loan modification and forbearance agreement whereby Guggenheim agreed to forgo any remedies it may have had with respect to the alleged default. On September 16, 2009 the Company entered into a third amendment to the loan agreement with Guggenheim in which Guggenheim agreed to continue to forbear from exercising its rights related to the defaults and make certain other modifications to the loan agreement. Other than a minimum number of sales per month and sales per quarter requirement, the Guggenheim loan agreement and the three loan amendments contain no significant financial covenants. The key financial terms of the third amendment increase the cash flow available to the Company through reduced principal payments to Guggenheim as units are settled. Specifically, the third amendment will provide the Company with cash equal to 25% of the net sales price provided the Company meets the cumulative minimum sales requirements on a monthly and quarterly basis. If the Company is unable to meet the minimum sales requirements, it will not constitute an event of default but may result in a reversion to the unit release provisions to ten percent (10%) of the net sales price of sold units in accordance with the loan agreement and first two amendments. The Company has met the minimum sales requirement, as amended, as of September 30, 2010. This note matures on March 6, 2011, but can be extended based upon the satisfaction of a certain number of units sold 14 days prior to this date, but in no event will extend beyond March 2012.

As of September 30, 2010, $5.0 million was outstanding to Stonehenge Funding ("Stonehenge"), which includes its principal amount of $4.5 million plus the total estimated future interest payments of $0.6 million. See details at Note 11.

At September 30, 2010, the Company had $1.5 million outstanding to M&T Bank. On September 28, 2009 the Company entered into a series of agreements with M&T with respect to the $7.6 million of outstanding debt plus accrued interest and late fees. As a result of the agreements, the Belmont Bay loan, with a principal balance of $6.1 million plus $0.5 million of accrued interest and fees, was released in its entirety and the Cascades Loan, with a principal balance of $1.0 million, was extended through January 31, 2011. The Company also entered into a non-interest bearing subordinated promissory note in connection with the Belmont Loan in the amount of $0.5 million with a three-year maturity secured by the Cascades Project. Under the terms of the agreements, M&T Bank agreed to extend the maturity date of the Cascades Loan by forbearing on enforcing its rights with respect to collection of the debt until January 31, 2011. The Company also agreed to commence current payment of interest due M&T Bank related to the current principal balance of the Cascades Loan. The Cascades Project contains a total of 191 condominium units with the first phase of the Cascades Project (88 units) being completed by the Company in 2007.

At September 30, 2010, the Company had $3.9 million outstanding to Bank of America ("BOA") in a 10-year unsecured note. In February 2010, the Company reached an agreement with BOA regarding the modification of the note's curtailment terms. In connection therewith, the Company agreed to pay an extension fee of $100 and BOA agreed to delay for one year, until January 2011, the commencement of interest payments. The maturity date remains unchanged at December 28, 2018.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

Cash Flow

Net cash provided by operating activities was $14.2 million for the nine months ended September 30, 2010 as compared to $9.5 million for the nine months ended September 30, 2009. The increase in cash provided is primarily a result of a decrease in net loss from $28,108 in the first nine months of 2009 to $6,163 in the same period of 2010, reflecting a reduction in the Company's staff and operations during that time. The primary source of cash provided by operating activities for the first nine months of 2010 was the rental and sale of real estate assets.

Net cash used in financing activities was $14.5 million for the nine months ended September 30, 2010 as compared to $14.6 million for the nine months ended September 30, 2009. For the nine months ended September 30, 2010 repayments of indebtedness from the proceeds of unit settlements and the sale of the Station View land was the primary use of cash in financing activities.

Recent Accounting Pronouncements

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," (codified in "ASC 810"). ASC 810 amends existing consolidation guidance for variable interest entities, requires ongoing reassessment to determine whether a variable interest entity must be consolidated, and requires additional disclosures regarding involvement with variable interest entities and any significant changes in risk exposure due to that involvement. ASC 810 was effective for the Company's fiscal year beginning January 1, 2010 and resulted in the deconsolidation of subsidiaries as discussed in Note 13 to the Company's consolidated financial statements.

Critical Accounting Policies and Estimates

There have been no significant changes to our critical accounting policies and estimates during the nine months ended September 30, 2010 compared with those disclosed in Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our annual report on Form 10-K for the year ended December 31, 2009.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. All 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 September 30, 2010, 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 $0.3 million in a fiscal year, which would be expensed as incurred since all of our projects are inactive for accounting purposes. As a result, the effect on net income would be immediate. 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 4. CONTROLS AND PROCEDURES

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

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.

There has been no change in the Company's internal control over financial reporting during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS—(Continued)

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

On July 29, 2008, Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately $552,000 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008 the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of $17.1 million due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008, Balfour filed counterclaims in the approximate amount of $2.8 million. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On March 19, 2010, the Company's subsidiary received a final judgment against Balfour in the amount of $11.9 million. On March 25, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of $12.5 million. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward any remaining balances outstanding under the Company's loan agreement with KeyBank.

On December 30, 2009, Lawyers Title Insurance Corporation filed an indemnification claim against a Company subsidiary in an amount of $126,000 seeking reimbursement of fees and costs allegedly incurred as a result of mechanic's liens improperly filed by Balfour Beatty at The Eclipse on Center Park Condominium project. The Company subsidiary disputes the allegations and intends to vigorously defend the claim. A trial in the matter was scheduled for October 2010. Lawyers Title Insurance Corporation non-suited their indemnification claim in September 2010.

Other than the foregoing, we are not 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 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 1A. RISK FACTORS

We previously disclosed risk factors under "Item 1A. Risk Factors" in its Annual Report on Form 10-K for the year ended December 31, 2009. There have been no material changes to these risk factors.

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

In 2009, the Company's Board of Directors approved the issuance of up to 600,000 warrants of the Company's Class A Common Stock to settle outstanding trade debt. For the three month period ended September 30, 2010, 41,032 warrants at an average strike price of $1.50 were issued to settle outstanding trade debt. Since the inception of the program, 412,646 warrants have been issued at an average strike price of $1.04. There are 187,354 warrants remaining under the authorization.

No general solicitation or advertising was involved, the number of recipients of the shares was limited and such recipients were accredited and/or sophisticated.

ITEM 6. EXHIBITS

10.91*	Second Amended and Restated Indenture, dated as of February 12, 2010, by and among the Registrant and Comstock Asset Management, L.C.
10.92*	Amended and Restated Senior Note, effective February 12, 2010, by and among, Stonehenge Funding, LC, the Registrant and Comstock Asset Management, L.C.
10.93*	Employment Agreement with Joseph M. Squeri
10.94*	Confidentiality and Non-Competition Agreement with Joseph M. Squeri
31.1	Certification of Chairman and Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Act of 1934, as amended.
32.1	Certification of Chairman and Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Filed herewith.

SIGNATURES

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

COMSTOCK HOMEBUILDING COMPANIES, INC.

Date: November 12, 2010

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

Date: November 12, 2010

By: /s/ JOSEPH M. SQUERI
Joseph M. Squeri
Chief Financial Officer

SECOND AMENDED AND RESTATED INDENTURE

between

COMSTOCK HOMEBUILDING COMPANIES, INC.

and

COMSTOCK ASSET MANAGEMENT, L.C.,
as Trustee

Dated as of February 12, 2010

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SECOND AMENDED AND RESTATED INDENTURE

This SECOND AMENDED AND RESTATED INDENTURE, dated as of February 12, 2010, is between Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company"), and Comstock Asset Management, L.C., as Trustee (in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, the Company and the Trustee have executed and delivered the Amended and Restated Supplement to Indenture dated as of March 14, 2008 (as so supplemented and amended, the "Original Indenture"), pursuant to which the Company's Senior Notes due 2017 (the "Original Notes") were issued;

WHEREAS, Stonehenge Funding, LC, the beneficial holder of the Original Notes, has consented to the amendments to the Original Indenture and the Original Notes contained herein, subject to the terms and provisions of this Second Amended and Restated Indenture (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, it is mutually covenanted and agreed 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 specified or determined as specified in the Senior Notes, 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.

"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.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the Commonwealth of Virginia 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, unless with respect to (iii) the offices of nationally recognized corporate trustees are usually and customarily open for business on such day.

"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); (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; or (iv) Chris Clemente and Greg Benson cease to have at least fifty percent (50%) of the total number of votes that may be cast for the election of any and all directors of the Company.

"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.

"Consent of Holders" means the written consent or approval of Holders of not less than fifty percent (50%) in aggregate principal amount of outstanding Senior Notes.]

"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 this Indenture shall be administered, which office at the date of this Indenture is located at 11465 Sunset Hills Road, Suite 400, Reston, Virginia 20190.

"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).

"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.

"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.

"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.

"Fixed Rate Period" shall have the meaning specified in any Senior Notes issued under this Indenture.

"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.

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

"Indenture" means this Second 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, 2010 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.

"Key & Guggenheim Loan Documents" shall mean that certain Subordination and Standstill Agreement by and among Key Bank, N.A., the Company and Holder dated December 23, 2009 as amended from time to time; and (ii) that certain Subordination and Standstill Agreement by and among Guggenheim Corporate Funding, LLC, the Company and Holder dated December 23, 2009, 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 the Senior Notes, means the date on which the principal of the Senior Notes 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 Notes or, in the case of the Senior Notes issued in exchange for the Original Notes, the date of such exchange.

"Original Notes" has the meaning set forth in the recitals.

"Paying Agent" means the Trustee, the Company (if the Company is acting as its own Paying Agent), or any Person authorized by the Holders of not less than fifty percent (50%) in aggregate principal amount of outstanding Senior Notes (with notice to the Company and the Trustee) to pay the principal of or any premium or interest on, or other amounts in respect of, the Senior Notes on behalf of the Company. The Company will be the initial Paying Agent under this Indenture.

"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 of the Company or its Subsidiaries or membership interests of Subsidiaries (to the extent such Subsidiaries' assets primarily consist of real property) of the Company and such Debt is used by the Company or such Subsidiaries for the development of said real property, including the agreed to Debt under the Key & Guggenheim Loan Documents or, (ii) Debt identified in item (i) 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 of the Company to the extent existing on the Effective Date, including but not limited to that certain line of credit outstanding with Bank of America, N.A. with a current maturity date of December 2018.

"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, or upon election of any Holder holding at least $100,000 in Senior Notes, including in any case Stonehenge, at the offices of such Holder designated in such election to the Company (with copy to any Trustee).

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

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

"Redemption Price" means, when used with respect to the Senior Notes 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 the Senior Notes or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

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

"Responsible Officer" means, when used with respect to the Trustee, the officer 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 Note" or "Senior Notes" means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture, including the Stonehenge Note. Notwithstanding the foregoing and any provision to the contrary in this Indenture, the Company agrees that the Stonehenge Note, is a valid Senior Note for any and all purposes and is entitled to any and all benefits under the Indenture notwithstanding that the Trustee did not execute the certificate of authentication on or after the date of the Stonehenge Note.

"Stated Maturity" means the Maturity Date as set forth in the Senior Notes.

"Stonehenge" means Stonehenge Funding, LC, the initial Holder of the Senior Note under this Indenture.

"Stonehenge Note" means that Amendment and Restated Senior Note No. 1A, issued and delivered to Stonehenge in the amount of $4,500,000.

"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 Certificates.

(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, 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 need be furnished.

(b) Every certificate 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 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 of such individual contained in such certificate 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 of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate of, 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 is based 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, or Officers' Certificate 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.

Section 1.4 Acts of Holder.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by a Holder may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by the Holder 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 Holder 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 Notes shall bind every future Holder of the same Senior Notes and the Holder of every Senior Notes 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 Notes.

(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 part of any 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) If necessary or otherwise reasonably requested by any Holders, 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 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 Senior Notes on such record date, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after 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 any applicable expiration date with respect to such record 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.

Section 1.5 Notices, Etc. to Trustee and Company.

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

(a) the Trustee by a 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 a 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 Holder; Waiver.

Where this Indenture provides for notice to a Holder of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to the Holder to the address of the 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 a Holder 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. 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 Holder 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; Third Party Beneficiaries.

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 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. To the extent any Holder, including Stonehenge, is otherwise determined not to be a direct beneficiary under this Indenture, such entity shall be a direct third party beneficiary in interest under this Indenture.

Section 1.11 Governing Law.

This Indenture and the rights and obligations of each of the Holder, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Virginia without reference to its conflict of laws provisions.

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 COMMONWEALTH OF VIRGINIA, IN AND FOR THE COUNTY OF FAIRFAX, OR OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF VIRGINIA. 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 Notes 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 Notes 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 NOTES FORMS

Section 2.1 Form of Senior Notes.

Any Senior Notes issued hereunder will be substantially in the form set forth in Exhibit A hereto.

Section 2.2 Restrictive Legend.

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

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), (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) ,(IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT (AND THAT CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER) OR (IV) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

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.

(b) The above legends shall not be removed from the Senior Notes unless there is delivered to the Company satisfactory evidence 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, one or more Senior Notes, as applicable, that do 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 the Senior Notes referred to in the within-mentioned Indenture.

Dated: _____, ____.

_____, not in its individual capacity, but solely as Trustee

By: _____
Name:
Title:

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 as described in the Senior Notes. Payments of interest on the Senior Notes shall include interest accrued to but excluding the respective Interest Payment Dates

(b) Interest and Additional Interest on the Senior Notes that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Holders in accordance with the Senior Notes, 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 Notes or on a Redemption Date shall be paid to the Person to whom principal is paid.

(c) 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 Company at least ten (10) Business Days prior to the date for payment by the Holder.

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

(e) The Senior Notes will rank pari passu with each other (to the extent there is more than one Senior Note issues).

Section 3.2 Registered Form.

The Senior Notes shall be in registered form without coupons.

Section 3.3 Execution, Authentication, Delivery and Dating.

(a) The Company has delivered the initial Senior Note to Stonehenge in the amount of $4,500,000.

(b) At any time and from time to time under this Indenture, the Company may deliver additional Senior Notes but only in connection with any transfer, replacement or exchange of the Stonehenge Note (and any division, supplement or replacement thereof) pursuant to the terms of this Indenture. Any such additional Senior Notes will be 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.

(c) 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.

(d) 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. Notwithstanding the foregoing and any provision to the contrary in this Indenture, the Company agrees that the Stonehenge Note is valid and binding for any and all purposes and is entitled to any and all benefits under this Indenture notwithstanding that the Trustee did not execute the certificate of authentication on or after the date of the Stonehenge Note.

Section 3.4 Intentionally Deleted.

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 the Senior Notes and of transfers and exchanges of the 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) Any Senior Note issued upon any transfer or exchange of a Senior Note shall be the valid obligation of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Senior Note 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 the Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of the Senior Note, 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 of the Senior Note.

(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 such Senior Note 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 the Senior Notes may be surrendered for 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 Holder of any change in the location of any such office or agency.

(i) The Senior Notes may only be transferred (i) to the company, (ii) to a person whom the seller reasonably believes is (a) a "qualified institutional buyer" (as defined in Rule 144A under The Securities Act) and (b) a "qualified purchaser" (as defined in section 2(a)(51) of the Investment Company Act), (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), (iv) pursuant to an effective registration statement under the Securities Act (that continues to be effective at the time of such transfer) or (iv) pursuant to another available exemption from the registration requirements of the Securities 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, the applicable laws of any other jurisdiction, or the Code; 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 Notes, 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 the benefits of the Indenture to the same extent as the replaced mutilated, destroyed, lost or stolen Senior Note.

(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 a 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 Notes is registered as the owner of such Senior Notes for the purpose of receiving payment of principal of and any interest on such Senior Notes 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, exchange or transfer, shall if surrendered to any Person other than the Trustee, be delivered to the Trustee, and the 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 customary practices for corporate trustees and the Trustee shall, if requested, deliver to the Company a certificate of such disposition.

Section 3.9 Agreed Tax Treatment.

The Senior Notes 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.

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 transfer or exchange of the 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) All Senior Notes not previously delivered to the Trustee for cancellation have been delivered to the Trustee for cancellation (other than any Senior Notes that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6);

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

(c) the Company has delivered to the Trustee an Officers' Certificate 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, and the obligations of the Trustee 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 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 Notes at its Maturity; or

(c) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Senior Notes not currently in forbearance as expressly agreed in this Indenture and/or the Senior Notes 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 any Holders of at least fifty percent (50%) in aggregate principal amount of 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 Holder to deliver a Notice of Default) and a Holder shall have the immediate right to exercise all remedies granted to a Holder 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 fifty percent (50%) in aggregate principal amount of the outstanding Senior Notes may declare the principal amount of the Senior Notes to be immediately due and payable, by a notice in writing to the Company (and to the Trustee if given by Holder).

(b) At any time after such a declaration of acceleration with respect to the 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 not less than fifty (50%) in aggregate principal amount of the outstanding Senior Notes, by written notice to the Trustee, may rescind and annul such declaration and its consequences, including upon any conditions that the Holders of not less than fifty percent (50%) in aggregate principal amount of the outstanding Senior Notes may impose in their discretion.

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 the Senior Notes 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 the Senior Notes at the Maturity thereof;

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holder, the whole amount then due and payable on the 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 the 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 the 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 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 the Holders 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 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, the Holders of the Senior Notes shall have no 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) the Holders have 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 fifty percent (50%) 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) 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 fifteen (15) days; and

(e) no direction inconsistent with such written request has been given to the Trustee during such fifteen (15)-day period by the Holders.

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 Holder to Receive Principal, Premium, if any, and Interest.

Notwithstanding any other provision in this Indenture, any Holder of a 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 the 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 the Holder, then and in every such case the Company, the Trustee and the 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 the 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 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 Holder.

The Holders of not less than fifty percent (50%) 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 any 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 fifty percent (50%) 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 valid 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 the Holder of any Senior Notes 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 the Holders of not less than fifty percent (50%) in aggregate principal amount of the outstanding Senior Notes, or to any suit instituted by a Holder for the enforcement of the payment of the principal of or premium, if any, on the Senior Notes after the Stated Maturity or any interest (including any Additional Interest) on any Senior Notes 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 Trustee Required.

There shall at all times be a Trustee hereunder with respect to the Senior Notes. The Trustee may in no event be the Company.

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 not less than fifty percent (50%) 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 the Holders 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 not less than fifty percent (50%) in aggregate principal amount of the outstanding Senior Notes 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 the 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 Holder pursuant to this Indenture, unless the 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 or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent or Securities Registrar.

Section 6.5 May Hold Senior Notes.

The Trustee, 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 the Senior Notes and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Securities Registrar or such other agent.

Section 6.6 Compensation; Reimbursement; Indemnity.

(a) The Company agrees:

(i) to pay to the Trustee and the Paying Agent (if other than the Trustee or the Company (or an Affiliate thereof)) from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee or Paying Agent, as applicable, 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 and the Paying Agent (if other than the Trustee or the Company (or an Affiliate thereof)) upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee or the Paying Agent, if applicable, 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 and the Paying Agent (if other than the Company (or an Affiliate thereof)) (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 or Paying Agent'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 the 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 or Paying Agent.

(d) In no event shall the Trustee or Paying Agent 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 or Paying Agent 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 and the Holders.

(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 not less than fifty (50%) 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 of not less than fifty (50%) 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, as applicable, 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, the Holders of not less than fifty (50%) in aggregate principal amount of the outstanding Senior Notes may, 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 the 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 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 eligible under this Article VI.

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 the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Senior Notes. The Trustee shall be not accountable for the use or application by the Company of the Senior Notes or the proceeds thereof

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 (i) promptly at such times as the Company becomes aware that the list of Holders maintained by the Securities Registrar is or is likely to be different that the actual Holders of outstanding Senior Notes or (ii) at such other times that the Trustee may request in writing (within thirty (30) days after the receipt by the Company of any such request) 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 time such list is furnished; provided that 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 Holder.

(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) A Holder, by receiving and holding the Senior Notes, 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 Holder made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Company.

(a) The Company shall furnish to the Holder and to prospective purchasers of the 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 Holder and to subsequent Holders of the Senior Notes, and (iii) any beneficial owner of the Senior Notes reasonably identified to the Company, the financial statements of 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 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, 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) 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 Holder.

Without the consent of any Holder, 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 Holder 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 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 (d) shall not adversely affect in any material respect the interests of any Holders; or

(e) 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 (e) shall not adversely affect in any material respect the interests of any Holders.

Section 9.2 Supplemental Indentures with Consent of all Holders.

(a) Subject to Section 9.1, with the consent of the all Holders of outstanding Senior Notes, by Act of the 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 Holder.

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 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 the Holders 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 all parties (including the Holders) shall be bound thereby.

ARTICLE X

COVENANTS

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

The Company covenants and agrees for the benefit of the Holder of any 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 Notes 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., Reston, Virginia time, on each due date of the principal of and any premium or interest (including any Additional Interest) on the 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 Notes 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 Notes 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 County of Fairfax, Virginia, 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 Officers' Certificate.

The Company shall deliver to the Holders and 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 of LIBOR Rate.

(a) The Company hereby agrees that for so long as the Senior Notes remains outstanding, LIBOR shall be calculated in respect of each Interest Payment Date in accordance with the terms of Schedule A.

(b) LIBOR shall be calculated by the Holders, with the Consent of the Holders if there is more than one Holder, no event later than 11:00 A.M. (London time) on the Business Day immediately following each LIBOR Determination Date (the interest payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date. 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. Absent manifest error the Holders determination of the LIBOR rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties (including all Holders).

Section 10.5 Additional Covenants.

(a) The Company covenants and agrees with the Holders 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 the Holder 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, then the Company shall 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 the Senior Notes having an outstanding principal amount equal to the purchase price of such Equity Interests to be repurchased up to a maximum of Eleven Million Dollars ($11,000,000), and (iii) the redemption, if any, of the 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 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 Consent of Holders shall 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. The Company hereby acknowledges that it is or has been in violation of the covenants set forth in 10.5(c), (d) or (e). The Trustee and the Holders agrees to forbear upon the enforcement of the financial covenants set forth in 10.5(c), (d) or (e) for so long as there is no other Event of Default occurring hereunder.

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, issue, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, any other Debt unless (a) 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 (b) (i) such Debt is Permitted Debt or (ii) such Debt (A) shall be expressly subordinate by its terms to the Senior Notes and the holders of such Debt, at the request of the Holders, shall have executed subordination agreements documenting such in favor of the Holders reasonably satisfactory to the Holders 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 Holder, 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 (the "Optional Redemption Price").

(b) The Company shall, upon a Change-of-Control, redeem the Senior Notes in whole on a date no more than thirty (30) days after the Change-of-Control, 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 outstanding principal amount of the redeemed portion of the Senior Notes, together with, in the case of any such redemption, any accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date (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 the 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 ten (10) 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, if requested by the Trustee, the Company shall furnish the Trustee with an Officers' Certificate 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.

(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.

Section 11.5 Notice of Redemption.

(a) Notice of redemption shall be given not later than the tenth (10th) day prior to the Redemption Date to the Holders, 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 the Senior Notes or portion thereof, and that any interest (including any Additional Interest) on the Senior Notes or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place where the Senior Notes is to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of the 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 a Holder receives such notice.

Section 11.6 Deposit of Redemption Price.

Prior to 10:00 A.M., Reston, Virginia 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, the Senior Notes (or portion 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 the 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 the Senior Notes at a Place of Payment specified in such notice, the Senior Notes or the specified portion thereof shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Upon presentation of the Senior Notes 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 Notes, in aggregate principal amount equal to the unredeemed portion of the Senior Notes so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If a Senior Note is called for redemption and is not 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, 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 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 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 Holder, 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.

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 (other than any express restrictions with respect to payments under the terms of the Key & Guggenheim Loan Documents) 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 a Holder, 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 Holder 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 Holder 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 or the Trustee, shall, as among the Company, its creditors other than holders of Permitted Debt, and the Holders, 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 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, the obligations of the Company, which are absolute and unconditional, to pay to the Holders 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 and creditors of the Company other than their rights in relation to the holders of Permitted Debt or (c) prevent the Trustee or the Holders 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 the Holders.

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 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, without incurring responsibility to the Holders and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of the Holders 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 Notes), 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 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 any Holder, 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 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.

[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: _____
Name:
Title:

COMSTOCK ASSET MANAGEMENT, L.C.,
as Trustee

By: _____
Name:
Title:

Exhibit A

FORM OF SENIOR NOTE

See attached.

Exhibit B

FORM OF
OFFICERS' CERTIFICATE
PURSUANT TO SECTION 10.3

Pursuant to Section 10.3 of the Second Amended and Restated Indenture, dated as of _____, 2010 (as modified, supplemented or amended from time to time, the "Indenture") among Comstock Homebuilding Companies, Inc., a Delaware corporation (the "Company") and Comstock Asset Management, L.C., 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: Chief Financial Officer of
Comstock Homebuilding Companies, Inc.

By: _____

Name: _____

Title: Secretary of
Comstock Homebuilding Companies, Inc.

Schedule A

DETERMINATION OF LIBOR

With respect to the Senior Notes, the London interbank offered rate ("LIBOR") shall be determined by the Holders pursuant to Section 10.4 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 Holders 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 Holders 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 Holders by reference to requests for quotations as of approximately 11:00 A.M. (London time) on the LIBOR Determination Date made by the Holders 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 Holders are quoting on the relevant LIBOR Determination Date for three (3)-month Eurodollar deposits in an amount determined by the Holders by reference to the principal London offices of leading banks in the London interbank market; provided, that if the Holders are required but are 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 Holders; "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 Holders 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.

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

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY (AS DEFINED BELOW) 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 I44A UNDER THE SECURITIES ACT) AND (b) A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED), (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), (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT (AND THAT CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER) OR (IV) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM THE HOLDER OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

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.

COMSTOCK HOMEBUILDING COMPANIES, INC.
Amended and Restated Senior Note due 2013

No. 1A (Amended and Restated) $4,500,000.00

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 STONEHENGE FUNDING, LC, or registered assigns (the "Holder"), the

principal sum of Four Million Five Hundred Thousand Dollars ($4,500,000.00) (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 Second Amended and Restated Indenture dated as of February 12, 2010 between (the "Indenture") between the Company and Comstock Asset Management, L.C., as Trustee (in such capacity, the "Trustee," which term includes any successor trustee under the Indenture)), on the date (the "Maturity Date") that is the earlier of (i) the date that is 90 days after the restrictions applicable to interest payments under the Key and Guggenheim Loan Documents (as defined below) (the "Payment Restrictions") expire or otherwise cease to be in effect, or (ii) the date this Senior Note would otherwise be subject to mandatory prepayment with the next available proceeds of future equity or debt financings as more particularly set forth in this Senior Note or the Indenture; or (iii) the current maturity date of March 14, 2013 (the "Current Maturity Date"), unless otherwise extended strictly in accordance with the terms set forth hereafter. Capitalized terms used but not defined in this Senior Note shall have the meaning ascribed to them in the Indenture.

If, on the Current Maturity Date the Payment Restrictions are still in effect, then the Maturity Date will automatically be extended by six calendar months to September 14, 2013 (the "First Extended Maturity Date"). The Borrower will notify the Holder and the Trustee in writing of such extension prior to the Current Maturity Date. If the Current Maturity Date is so extended to the First Extended Maturity Date, and on the First Extended Maturity Date the Payment Restrictions are still in effect, then the First Extended Maturity Date will automatically be extended by an additional six calendar months to March 14, 2014 (the "Second Extended Maturity Date"). The Borrower will notify the Holder and the Trustee in writing of such extension prior to the First Extended Maturity Date. For the avoidance of doubt, the extensions set forth in this paragraph only extend the Current Maturity Date set forth in (iii) of the preceding paragraph of this Senior Note and do not extend any Maturity Date occurring under sections (i) or (ii) of the preceding paragraph of this Senior Note to the extent any such events in (ii) or (iii) occur earlier then the Current Maturity Date, the First Extended Maturity Date or the Second Extended Maturity Date, as applicable. With respect to both of the extensions set forth in this paragraph, Company shall pay for said extensions by delivering, within 30 days of the commencement of each extension period, at no cost to Stonehenge, warrants for the purchase of Class A common stock in Company with a net cumulative value (the value above the cumulative exercise price applicable to the warrants) equal to 9% of the then outstanding balance due Stonehenge under this Senior Note on the Maturity Date (with respect to the Company's election to extend to the First Extended Maturity Date) and on the First Extended Maturity Date (with respect to the Company's election to extend to the Second Extended Maturity Date). Such warrants shall be immediately exercisable and expire seven years after the date of their issuance and shall be in addition to the continued obligation to pay principal, premium if any, and interest hereunder and to the accrual of any shares, warrants or other rights in connection with the Reduced Interest Rate. The Company will reserve a sufficient number of authorized but unissued Class A shares of common stock to fulfill any exercise of such warrants.

Subject to the terms of the Key & Guggenheim Loan Documents (as defined below), Company may prepay this Senior Note in whole or in part at any time without penalty or premium. "Key & Guggenheim Loan Documents" shall mean that certain Subordination and Standstill Agreement by and among Key Bank, N.A., the Company and Holder dated December 23, 2009 as amended from time to time; and (ii) that certain Subordination and Standstill Agreement by and among Guggenheim Corporate Funding, LLC, the Company and Holder dated December 23, 2009, as amended from time to time.

The Company further promises to pay interest on said principal sum from and including January 1, 2010, quarterly in arrears, to but excluding the succeeding Interest Payment Date, on March 30, June 30, September 30 and December 30 of each year (the "Interest Payment Date"), commencing March 30, 2010, 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 March 14, 2010 (the "Fixed Rate Period") and thereafter at a variable rate, reset quarterly, equal to the sure of (i) the greater of LIBOR and 3.52% plus (ii) (A) 6.20% per annum, until March 14, 2012, and (B) 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 this Senior Note (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.

Commencing January 1, 2010, the interest rate set forth in the preceding paragraph shall be reduced to a variable rate, reset monthly, equal to LIBOR plus 3.00% per annum (the "Reduced Interest Rate") and shall accrue through the Maturity Date, including any extensions thereof (the "Interest Rate Reduction Termination Date"). On the Interest Rate Reduction Termination Date, the interest rate shall reset to the original interest rates set forth above. Notwithstanding the foregoing, if a Bankruptcy Event (as defined below) occurs prior to the full repayment of all amounts due under this Senior Note or the Indenture, the Reduced Interest Rate shall be null and void as it relates to any accrued but unpaid interest accruing after January 1, 2010. Bankruptcy Event means any of the Events of Default set forth in Sections 5.1(d) and (e) of the Indenture.

Holder shall and does hereby forgive and release all interest, late charges and other fees due under this Senior Note and any predecessor note to this Senior Note through and including December 31, 2009 (including past due interest of approximately $874,800 as of December 31, 2009). Holder also agrees to make no claim for such interest, late charges and fees against Company. Holder additionally agrees to forbear upon the enforcement of all financial covenants contained in Sections 10.5 (c), (d), (e) and (f) of the Indenture for so long as there is no Event of Default (other than Events of Default under said financial covenants) occurring under this Senior Note or the Indenture.

During the Fixed Rate Period, the amount of interest payable for any interest period shall be computed on the basis of a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months and the amount payable for any partial period shall be computed on the basis of the actual number of days elapsed in a three hundred sixty (360)-day year of twelve (12) thirty (30)-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any interest period will be computed on the basis of a three hundred sixty (360)-day year and the actual number of days elapsed in the relevant interest period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Holder. However, on a quarterly basis within 5 days prior to the date that an interest payment would be due and payable hereunder, Holder may elect to receive shares of Class A common stock of the Company with a cumulative value as determined on the applicable Interest Payment Date equal to the value of the scheduled interest payment and upon the valid issuance of such shares, an amount of interest accrued and payable on such Interest Payment Date equal to the cumulative value (calculated as set forth above) of the shares received by the Holder in accordance herewith on such Interest Payment Date will be satisfied and no longer due and payable (any such interest amounts no longer accrued or payable being "Reclassified Interest"). All shares issued pursuant to an exercise of this provision shall be freely transferable only upon satisfaction of the holding period and related requirements of Rule 144 promulgated under the Securities Act of 1933, as amended, or other exemption to the registration requirements, and the Company shall not be obligated to file a registration statement with the Securities and Exchange Commission.

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 this Senior Note to the Company, 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 Company at least ten (10) Business Days prior to the date for payment by the Holder 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 the Holder 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, in each case subject to the restrictions and limitations in the Indenture. 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.

Notwithstanding the foregoing and any provision to the contrary in the Indenture, the Company agrees that Senior Note No. 1A held by Stonehenge Funding, LC, is valid and obligatory for any and all purposes and is entitled to any and all benefits under the Indenture notwithstanding that the Trustee did not execute the certificate of authentication on or after the date of this Senior Note No. 1A.

This Senior Note is a duly authorized issue of securities of the Company issued under the Indenture to which the 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 Holder, and of the terms upon which this Senior Note is authenticated and delivered.

The Company may, on any Interest Payment Date, at its option, with not less than ten (10) days' written notice to the Holder and in accordance with the terms and conditions of Article XI of the Indenture, redeem this Senior Note in whole or in part 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.

Further, the Company shall upon a Change-of-Control redeem this Senior Note in whole on a date no more than thirty (30) days after the Change-of Control, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together, in the ease of any such redemption, with accrued and unpaid interest, including any Additional Interest, to but excluding the date fixed as the Redemption Date.

The Company shall in connection with an Acceptable Repurchase, redeem this Senior Note or a portion thereof 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.

In the event of redemption of this Senior Note in part only, a new Senior Note for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture contains provisions permitting Holder to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such written 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) (other than Reclassified Interest as expressly set forth in this Senior Note), 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 by the Securities Act and other applicable securities laws 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 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 Commonwealth of Virginia without reference to its conflict of laws provisions.

IN WITNESS WHEREOF, the Company and Holder have caused this instrument to be duly executed on the _____ day of _____, 2010.

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____

Name: _____

Title: _____

STONEHENGE FUNDING, LC

By: _____

Name: _____

Title: _____

This is the Senior Note referred to in the within-mentioned Indenture.

Dated: February 12, 2010.

COMSTOCK ASSET MANAGEMENT, L.C.,
not in its individual capacity but solely as trustee

By: _____

Name: _____

Title: _____

Exhibit 10.93

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is effective this _____ day of August, 2010, between Comstock Homebuilding Companies, Inc. (the "Employer") and Joseph M. Squeri (the "Executive").

WITNESSETH

WHEREAS, the Board of Directors of the Employer (the "Board") wishes to employ the Executive on the terms and conditions in this Agreement and in accordance with the policies established by the Employer for senior executive level employees; and

WHEREAS, the Executive desires to accept such employment;

NOW THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Those words and terms that have special meanings for purposes of this Agreement are specially defined through the use of parenthetical quotations and upper-lower case lettering. In addition, the following words and terms shall have the meanings set forth below for the purposes of this Agreement:

1.1. Cause. Termination of the Executive's employment for "Cause" shall mean termination based on any of the following: (a) conviction (or entering a plea of guilty or nolo contendere) of any felony or other crime involving misuse or misappropriation of money or other property, moral turpitude, or that results in Executive being incarcerated for more than sixty (60) consecutive days upon such conviction; or (b) conduct that is intentional in nature that materially injures the business or reputation of the Employer or that prevents the Executive from being able to adequately perform his job duties; or (c) failure of the Executive to perform to the best of his abilities a substantial portion of the Executive's duties and responsibilities assigned or delegated under this Agreement, which failure is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure; (d) any intentional and material breach by the Executive of any of the covenants set forth in the Confidentiality & Non-Competition Agreement of even date herewith; (e) gross negligence, willful gross misconduct or insubordination of the Executive; or (f) an intentional and material breach of any provision of this Agreement that is not cured, in the reasonable judgment of the Board, within sixty (60) days after written notice given to the Executive by the Board, unless Executive demonstrates during that sixty (60) day period that Executive is taking affirmative steps to cure such failure and in such event Executive shall be entitled to an additional sixty (60) days to cure such failure. Cause shall be determined in good faith by the affirmative vote of a majority of the whole Board (excluding the Executive if he is a member of the Board) after the Executive has been provided the opportunity to make a presentation to the Board (which presentation may be with counsel).

1.2. Change in Control. "Change in Control" shall mean:

(i) the acquisition by any "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (other than (A) the Employer or any subsidiary thereof or (B) any employee benefit plan of the Employer or any subsidiary thereof, directly or indirectly, as "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities of the Employer representing more than fifty percent (50%) of either the then outstanding shares or the combined voting power of the then outstanding securities of the Employer;

(ii) during any period of twenty-four consecutive months, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof unless the election, or the nomination for election by stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period;

(iii) the stockholders of the Employer approve (A) a merger, consolidation or other business combination of the Employer with any other "person" or "group" (as defined in or pursuant to Sections 13(d) and 14(d) of the Exchange Act) or affiliate thereof, other than a merger or consolidation that would result in the outstanding common stock of the Employer immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into common stock of the surviving entity or a parent or affiliate thereof) more than fifty percent (50%) of the outstanding common stock of the Employer or such surviving entity or a parent or affiliate thereof outstanding immediately after such merger, consolidation or other business combination, or (B) a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of it's assets (including if accomplished pursuant to the sale of shares of equity securities (including by any consolidation, merger or reorganization) of one or more subsidiaries of the Employer which collectively constitute all or substantially all of its assets); or

(iv) any other event or circumstance that is not covered by the foregoing subsections but that the Board determines to affect control of the Employer and with respect to which the Board adopts a resolution that the event or circumstance constitutes a Change in Control for purposes of this Agreement.

1.3. Disability. Termination by the Employer of the Executive's employment based on "Disability" shall mean termination because the Executive is unable to perform the essential functions of his/her position with or without accommodation due to a disability (as such term is defined in the Americans with Disabilities Act) for nine (9) months in the aggregate during any twelve month period. This definition shall be interpreted and applied consistent with the Americans with Disabilities Act, the Family and Medical Leave Act, and other applicable law.

1.4. Good Reason. Termination by the Executive of the Executive's employment for "Good Reason" shall mean termination by the Executive based on any one of the following:

1.4.1 Without the Executive's express written consent, a material adverse change made by the Employer in the Executive's functions, duties or responsibilities, including but not limited to, a change in the Executive's reporting function to the Chief Executive Officer;

1.4.2. Without the Executive's express written consent, a reduction by the Employer in the Executive's Base Salary as the same may be increased from time to time; or, except to the extent permitted by Section 3.4.1 hereof, a material reduction in the package of fringe benefits provided to the Executive, taken as a whole;

1.4.3. Without the Executive's express written consent, the Employer fails to provide the Executive with an office and administrative support or requires the Executive to work in an office which is more than thirty (30) miles from the location of the Employer's current principal executive office, except for required travel on business of the Employer to an extent substantially consistent with the Executive's business travel obligations; or

1.4.4. The failure by the Employer to obtain the assumption of and agreement to perform this Agreement by a successor as contemplated in Section 8.1 hereof;

provided however, that any actions taken by the Employer to accommodate a disability of the Executive or pursuant to the Family and Medical Leave Act shall not be a "good reason" for purposes of this Agreement; and ***provided further*** that the continued employment of the Executive shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason.

1.5. Notice of Termination. Any purported termination of the Executive's employment by the Employer for any reason, or by the Executive for any reason shall be communicated by a written "Notice of Termination" to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a dated notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, (iii) specifies a Date of Termination; and (iv) is given in the manner specified in Section 8.2. "Date of Termination" as used in this Agreement shall mean the date specified in the Notice of Termination required by this Section.

2. EMPLOYMENT

2.1. Position and Term. The Employer hereby employs the Executive as Chief Financial Officer, reporting directly to the Chief Executive Officer, and the Executive hereby accepts said employment and agrees to render such services to the Employer, on the terms and conditions set forth in this Agreement. Unless extended as

provided in this Section 2.1, or terminated in accordance with Section 5, this Agreement shall terminate three (3) years after the date first above-written; provided, however, that, while this Agreement is in effect, beginning one year following the date first above-written and continuing on each one year anniversary of the Agreement (the "Annual Renewal Date"), this Agreement shall be automatically extended for an additional one (1) year, unless the parties have re-negotiated the Agreement or one of the parties gives written notice of non-renewal in accordance with Section 8.2 hereof to the other party at least thirty (30) days prior to an Annual Renewal Date, in which event this Agreement shall continue in effect for the remaining term of the Agreement. Reference herein to the "Term" of this Agreement shall refer both to the initial term and any successive term, as the context requires. The parties expressly agree that designation of a term and renewal provisions in this Agreement does not in any way limit the right of the parties to terminate this Agreement at any time as hereinafter provided.

2.2. Duties. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full working time and attention and agrees to use his best efforts to further the interests of the Employer and to perform such services for the Employer as is consistent with his position and as directed, from time to time, by the Board. During the Term, and to the extent reasonably necessary to perform his duties hereunder, the Executive shall devote his full time, attention and energies to the business of the Employer and shall not be employed or involved in any other business activity that prevents the Executive from performing his duties hereunder. Notwithstanding the foregoing, the following activities are permitted activities: (i) volunteer services for or on behalf of such religious, educational or non-profit organization as Executive may wish to serve, and (ii) such other activities as may be specifically approved by the Employer.

3. COMPENSATION AND BENEFITS

3.1. Base Salary. For services rendered hereunder by the Executive, the Employer shall compensate and pay Executive for his services during the Term at a minimum base salary of Two Hundred Fifty Thousand Dollars ($250,000) per year ("Base Salary"), which may be increased from time to time in such amounts as may be determined by the Board. Said Base Salary shall be payable in accordance with the Employer's regular payroll practices.

3.2. Bonus. In addition to his Base Salary, the Executive shall be eligible during the Term to receive an annual cash bonus of up to Fifty Thousand Dollars ($50,000), as may be adjusted from time to time and determined by the Board based on the Employer's performance goals and taking into account a recommendation by the Employer's Compensation Committee ("Bonus"). Any Bonus shall be paid within ninety (90) days of the end of the Employer's fiscal year. The Executive must be employed at the end of the fiscal year but need not be employed by the Employer at the time of payment in order to receive any Bonus to which the Executive is otherwise entitled pursuant to the terms of this Section 3.2. Payment of any Bonus shall be subject to the provisions of Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 hereof. The Executive is also an eligible participant in the Employer's equity incentive, employer stock purchase and any similar executive compensation plans the Employer may adopt from time to time. Any awards under such plans shall be determined by the Board, taking into account a recommendation by the Employer's Compensation Committee.

3.3. Withholding. All payments required to be made by the Employer hereunder to the Executive shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

3.4. Policies and Benefits.

3.4.1 Participation in Policies and Benefit Plans. Except as otherwise provided herein, during the Term, the Executive's employment shall be subject to the personnel policies that apply generally to the Employer's executive employees as the same may be interpreted, adopted, revised or deleted from time to time by the Employer in its sole discretion. Except as otherwise provided herein, during the Term, the Executive shall be entitled to participate in and receive the benefits of any benefit plans, benefits and privileges given to executive level employees of the Employer, to the extent commensurate with his then duties and responsibilities ("Benefit Plans") when and if such Benefit Plans are established by the Employer. The Employer shall not make any changes in such plans, benefits or privileges that would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all executive officers of the Employer and does not result in a proportionately greater adverse change in the rights of or benefits to the Executive as compared with any other executive officer of the Employer. Nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be deemed to be in lieu of the Base Salary payable to the Executive pursuant to Section 3.1 hereof.

3.4.2 Director's and Officer's Liability Insurance. During the Term, the Employer shall provide the Executive with directors' and officers' liability insurance coverage in an amount determined by the Board to be appropriate and affordable.

3.4.3 Life Insurance. During the Term, the Employer shall provide the Executive with Life Insurance in accordance with the terms of any applicable life insurance plan established by the Employer.

3.4.4 Long-term Disability Insurance. During the Term, the Employer shall provide the Executive with Long-Term Disability Insurance in accordance with the terms of any applicable long-term disability plan established by the Employer.

4. SUPPORT AND EXPENSES

4.1. Office. The Employer shall provide the Executive with secretarial and support staff and furnished offices and conference facilities in the Reston, Virginia area, and in such other location, if any, in which the Executive hereafter agrees to perform services on behalf of the Employer, all of which shall be consistent with the Executive's duties and sufficient for the efficient performance of those duties.

4.2. Expenses. The Employer shall reimburse the Executive or otherwise provide for or pay for all reasonable expenses incurred by the Executive in furtherance of, or in connection with the business of the Employer, including, but not by way of limitation, traveling expenses, communication expenses (including, but not limited to, reasonable expenses relating to the acquisition, installation and maintenance of telecommunications and computer networking facilities enabling Executive to perform his duties on behalf of the Employer from Executive's primary residence), and all reasonable entertainment expenses (whether incurred at the Executive's residence, while traveling or otherwise), subject to such reasonable documentation and other limitations as may be established by policies of the Employer and/or the Board.

5. TERMINATION

5.1. Termination Due to Death. If the Executive's employment is terminated by reason of the Executive's death, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which the Executive's death occurs, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's death as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of any beneficiary of the Executive to benefits under any benefit plan shall be determined in accordance with applicable law and the provisions of such plan. In lieu of payments to the Executive's estate following the Executive's death, the Executive may designate a beneficiary or beneficiaries to whom all payments which may be due under this Agreement will be made in the event of the Executive's death. Such designation shall be made on a form delivered to the Employer. The Executive shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Employer, and no notice to any beneficiary nor consent by any beneficiary shall be required to effect any such change or revocation. If the Executive shall fail to designate a beneficiary before the Executive's death, or if no designated beneficiary survives the Executive, any payments which may be due under this Agreement following the Executive's death will be paid to the Executive's estate.

5.2. Termination Due to Disability. If the Executive is terminated due to Disability, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of twelve (12) months after the Date of Termination (after which time the Employer shall have no further obligation to pay Base Salary to the Executive) and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which it is determined that the Executive has a Disability, whichever is earlier, pay, on a prorated basis if applicable, any earned but unpaid Bonus, determined as of the Date of Termination (using calendar days of service to the Company during the year of Executive's Disability as a percentage of 365 calendar days to determine the percentage of Bonus compensation). The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.3. Termination by Executive Other Than for Good Reason. In the event the Executive terminates this Agreement other than for Good Reason, compensation pursuant to Section 3.1 of this Agreement shall end as of the Date of Termination and any unpaid Bonus shall be forfeited by the Executive. The entitlement of the Executive to benefits under any Benefit Plan shall be determined in accordance with applicable law and the provisions of such plan.

5.4. Termination by the Employer Without Cause. If this Agreement is terminated by the Employer Without Cause pursuant to this Section 5.4, effective the Date of Termination, the Employer shall (i) continue to pay the Executive's Base Salary then in effect for a period of six (6) months after the Date of Termination and (ii) within ninety (90) days of the Employer's last payment of Base Salary under this Section, or the end of the Employer's fiscal year during which such Termination Without Cause occurs, whichever is earlier, pay one hundred percent (100%) of the Bonus the Executive would have been entitled to had he remained an employee of Employer until the end of Employer's fiscal year, provided however, upon one year of continuous employment with the Employer, the six month limitation period set forth above shall automatically adjust to a twelve (12) month period without further action of the Executive or Employer. Thereafter, the Employer shall have no further obligation to pay compensation to the Executive under this Agreement. *Provided however*, that upon a termination by the Employer pursuant to this Section 5.4 within the six (6) full calendar month period prior to the effective date of a Change in Control, or within the twelve (12) full calendar months following the effective date of a Change in Control, the cash payment(s) due to Executive as described in this Section 5.4 shall be due and payable in full within thirty (30) days of the effective date of a Change in Control or the effective date of the Executive's Termination Without Cause, whichever is later. The Executive shall continue to be entitled to benefits under Employer's Benefit Plans for six (6) months after the Date of Termination provided that a review of applicable law and the provisions of such plans does not result in a determination to the contrary, provided however, upon one year of continuous employment with the Employer, the six month limitation period set forth above shall automatically adjust to a twelve (12) month period without further action of the Executive or Employer.

5.5. Termination for Cause. Upon a Termination by the Employer for Cause as defined in Section 1.1 pursuant to this Section 5.5, the Employer shall have no further obligation to pay compensation (Base Salary or Bonus) to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.6. Termination by the Executive for Good Reason. If the Executive terminates this Agreement for Good Reason, the Executive shall be entitled to receive the same payments and benefits specified in Section 5.4 of this Agreement. Upon a termination for Good Reason within the six (6) full calendar month period prior to the effective date of a Change in Control or within the twelve (12) full calendar months following the effective date of a Change in Control, the Executive shall be entitled to the same expedited payments provided in Section 5.4. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan.

5.7. Termination Due to Discontinuance of Business. Notwithstanding anything in this Agreement to the contrary, in the event the Employer's business is discontinued because rendered impracticable by substantial financial losses, lack of funding, legal decisions, administrative rulings, declaration of war, dissolution, national or local economic depression or crisis or any reasons beyond the control of the Employer, this Agreement shall terminate as of the day the Employer determines to cease operation with the same force and effect as if such day of the month were originally set as the termination date hereof. In the event this Agreement is terminated pursuant to this Section 5.7, the Employer shall have no further obligation to pay compensation to the Executive effective the Date of Termination. The entitlement of the Executive to benefits under a plan described in Section 3.4.1 upon such termination shall be determined in accordance with applicable law and the provisions of such plan. This Section 5.7 shall be void and of no effect in the event of a discontinuance that occurs within twelve (12) months after the effective date of a Change in Control.

5.8. Termination by Mutual Consent. Notwithstanding any of the foregoing provisions of this Section 5, if at any time during the course of this Agreement the parties by mutual consent decide to terminate it, they shall do so by separate agreement setting forth the terms and conditions of such termination.

5.9. Cooperation with Employer After Termination of Employment. Following termination of the Executive's employment for any reason, the Executive shall fully cooperate with the Employer in all matters relating to the winding up of his pending work on behalf of the Employer including, but not limited to, any litigation in which the Employer is involved, and the orderly transfer of any such pending work to other employees of the Employer as may be designated by the Employer. The Employer agrees to reimburse the Executive for any out-of-pocket expenses he incurs in performing any work on behalf of the Employer following the termination of his employment.

5.10. Withholding. All payments required to be made by the Employer to the Executive under Section 5 of this Agreement shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Employer may reasonably determine should be withheld for payment to the applicable taxing authorities pursuant to any applicable law or regulation. Employer shall make such payments to the applicable taxing authority when due.

6. CONFIDENTIALITY & NON-COMPETITION AGREEMENT

The parties hereto have entered into a Confidentiality & Non-Competition Agreement, dated August __, 2010, which may be amended by the parties from time to time without regard to this Agreement. The Confidentiality & Non-Competition Agreement contains provisions that are intended by the parties to survive and do survive termination or expiration of this Agreement.

7. EXECUTIVE'S REPRESENTATIONS AND WARRANTIES

7.1. No Conflict of Interest. The Executive warrants that he is not, to the best of his knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with his loyalty to or duties for the Employer, except as such may have been previously disclosed to Employer.

7.2. Notification of Materials or Documents from Other Employers. The Executive further warrants that he has not brought and will not bring to the Employer or use in the performance of his responsibilities at the Employer any materials or documents of a former employer that are not generally available to the public, unless he has obtained express written authorization from the former employer for their possession and use.

7.3. Notification of Other Post-Employment Obligations. The Executive also understands that, as part of his employment with the Employer, he is not to breach any obligation of confidentiality that he has to former employers, and he agrees to honor all such obligations to former employers during his employment with the Employer. The Executive warrants that he is subject to no employment agreement or restrictive covenant preventing full performance of his duties under this Agreement.

7.4. Indemnification For Breach. In addition to other remedies that the Employer might have for breach of this Agreement, the Executive agrees to indemnify and hold the Employer harmless from any breach of the provisions of this Section 7.

8. GENERAL PROVISIONS

8.1. Assignment. The Employer shall assign this Agreement and its rights and obligations hereunder in whole, but not in part, to any corporation or other entity with or into which the Employer may hereafter merge or consolidate or to which the Employer may transfer all or substantially all of its assets, if in any such case said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Employer hereunder as fully as if it had been originally made a party hereto, but may not otherwise assign this Agreement or its rights and obligations hereunder. The Executive may not assign or transfer this Agreement or any rights or obligations hereunder.

8.2. Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below:

To the Employer: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 4th floor
Reston, Virginia 20190
Attention: General Counsel

To the Executive: Joseph Squeri
5121 Westpath Way
Bethesda, Maryland 20816

8.3. Amendment and Waiver. No amendment or modification of this Agreement shall be valid or binding upon (i) the Employer unless made in writing and signed by an officer of the Employer designated by the Board, and (ii) upon the Executive unless made in writing and signed by him.

8.4. Non-Waiver of Breach. No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.

8.5. Severability. In the event that any provision or portion of this Agreement, with the exception of Sections 2 and 3, shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

8.6. Governing Law. To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined accordance with the law of the Commonwealth of Virginia.

8.7. Forum Selection and Consent to Jurisdiction. With respect to any litigation based on, arising out of, or in connection with this Agreement, the parties hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. The parties hereby expressly waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.

8.8. Entire Agreement. This Agreement contains all of the terms agreed upon by the Employer and the Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written.

8.9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Employer, including any corporation or entity with which the Employer may merge or consolidate.

8.10. Headings. Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

8.11. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

The Employer: **COMSTOCK HOMEBUILDING COMPANIES, INC.**

By: _____

Christopher Clemente
Chief Executive Officer

The Executive: _____

Joseph M. Squeri

Exhibit 10.94

CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Agreement is between Joseph M. Squeri (hereafter "You") and Comstock Homebuilding Companies, Inc., its affiliates, successors, assigns, parents and subsidiaries (hereafter "the Company"), effective this __ day of August, 2010. You are entering into this Agreement based on consideration to You from the Company, including the grant of equity in the Company to You, Your employment and continued employment with the Company, and such other benefits that You acknowledge to be sufficient consideration for this Agreement.

1. NATURE OF AGREEMENT. You and the Company intend this Agreement to be an Agreement concerning confidentiality and non-competition/non-solicitation. This Agreement does not limit in any way the right of either You or the Company to terminate the employment relationship at any time. This Agreement contains obligations that survive termination of the employment relationship between You and the Company. You agree that neither the provisions set forth in this Agreement nor any other written or oral communications between the Company and You about the subject matter of this Agreement as of the date of this Agreement has created or is intended to create a contract of employment or a promise to provide any benefits. If You and the Company enter into or have entered into an Employment Agreement, this Agreement is to be read and applied consistently with that Agreement.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

2.1 ***"Business Partner"*** means each and every person and/or entity who or that, at any time during the two (2) years prior to termination of Your employment: (i) was either a customer, lender, supplier or subcontractor of or to the Company; (ii) was in contact with You or in contact with any other employee, owner, or agent of the Company, of which contact You either were involved or were or should have been aware, concerning receiving or providing any product or service from the Company; or (iii) was solicited by the Company, or in consideration or planning to be solicited by the Company, in an effort in which You were involved or of which You were or should have been aware.

2.2 ***"Conflicting Services"*** means any service or process of any person or production homebuilding organization, other than the Company, settling in excess of 250 units annually, which directly competes with the Company in the business of designing, constructing and selling for-sale single-family homes, townhomes and condominiums within the Washington, D.C. metropolitan area or in any other geographic area where the Company is conducting operations or has demonstrable plans to commence operations within six (6) months during Your employment by the Company or about which You acquire ***Confidential Information*** during Your employment by the Company.

2.3 ***"Confidential Information"*** means knowledge or information not generally known to the public or in the home construction industry (including information conceived, discovered or developed by You), that You learn of, possess, or to which You have access through Your employment by the Company, related to the Company or its Business Partners, including but not limited to the information

listed on Schedule B to this Agreement. ***Confidential Information*** shall not include information that is or becomes publicly known through no breach of this Agreement or other act or omission of the Employee. The phrase "publicly known" shall mean readily accessible to the public in a written publication, and shall not include information that is only available by a substantial searching of the published literature, and information the substance of which must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not ***Confidential Information*** shall be on the party asserting such exclusion.

3. RETURN OF COMPANY PROPERTY. You agree that at any time requested by the Company and/or at termination of Your employment with the Company for any reason, You will promptly deliver to the Company all property and materials in any form belonging to or relating to the Company, its business and the business of any ***Business Partner***, including but not limited to, the property listed on Schedule A to this Agreement. You agree not to download or keep copies of company property in any hard or soft format. You agree that You have no ownership or interest in any Company property.

4. RESTRICTIONS.

4.1. You agree that while You are employed by the Company, You will not solicit or provide ***Conflicting Services*** except on behalf of or at the direction of the Company.

4.2 At any time during and after Your employment with the Company You agree:

4.2.1 You will not disclose ***Confidential Information*** to any person or entity without first obtaining the Company's consent, and will take all reasonable precautions to prevent inadvertent disclosure of such ***Confidential Information***. You agree to make every effort to ensure that persons working in any capacity for the Company, including without limitation employees, officers, directors, vendors, sub-contractors, attorneys, and agents, subsidiary or parent entities (and the employees, officers, directors, vendors, contractors, attorneys, and agents, thereof) are permitted access to ***Confidential Information*** on a strictly "need to know" basis. This prohibition against Your disclosure of ***Confidential Information*** includes, but is not limited to, disclosing the fact that any similarity exists between ***Confidential Information*** and information independently developed by another person or entity. You understand that the existence of such a similarity does not excuse You from honoring Your obligations under this Agreement.

4.2.2 You will not use any ***Confidential Information*** for Your personal benefit or for the benefit of any person or entity other than the Company. You will not use, copy or transfer ***Confidential Information*** other than as necessary in carrying out Your duties on behalf of the Company, without first

obtaining the Company's written consent, and will take all reasonable precautions to prevent inadvertent use, copying or transfer of ***Confidential Information***. This prohibition against Your use, copying, or transfer of ***Confidential Information*** includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) which embody or are derived from ***Confidential Information***, or exercising judgment in performing analysis based upon knowledge of ***Confidential Information***. Without in any way limiting the generality of this subsection, You agree not to directly or indirectly circumvent or compete with the Company with regard to any ***Confidential Information***.

4.2.3 You will not make any written use of or reference to the Company's name or trademarks (or any name under which the Company does business) for any marketing, public relations, advertising, display or other business purpose unrelated to the express business purposes and interests of the Company or make any use of the Company's facilities for any activity unrelated to the express business purposes and interests of the Company, without the prior written consent of the Company, which consent may be withheld or granted in the Company's sole and absolute discretion.

4.2.4 In the event that You receive a subpoena or order of a court, or other body having jurisdiction over a matter, in which You are compelled to produce any information relevant to the Company, whether confidential or not, You will immediately provide the Company with written notice of this subpoena or order so that the Company may timely move to quash if appropriate.

4.2.5. If a court decides that Section 4.2 or any of its restrictions is unenforceable for lack of reasonable temporal limitation and the Agreement or restriction(s) cannot otherwise be enforced, You and the Company agree that twelve (12) months shall be the temporal limitation relevant to the contested restriction; provided, however, that this Section 4.2.5 shall not apply to trade secrets protected without temporal limitation under applicable law.

4.3 For the six (6) months immediately following the termination of Your employment with the Company for any reason, provided however, upon one year of continuous employment with the Employer, the six month limitation period set forth above shall automatically adjust to a twelve (12) month period without further action of the Executive or Employer, You agree:

4.3.1. You will not solicit or provide ***Conflicting Services*** except on behalf of or at the direction of the Company.

4.3.2. You will not solicit, perform or offer to perform any ***Conflicting Services*** for a ***Business Partner***.

4.3.3. You will not request, induce, or attempt to induce any ***Business Partner*** to terminate its relationship with the Company;

4.3.4 You will not attempt to hire, employ or associate in business with any person employed by the Company or who has left the employment of the Company within the preceding six (6) months and You will not discuss any potential employment or business association with such person, even if You did not initiate the discussion or seek out the contact.

5. REASONABLENESS OF RESTRICTIONS AND SEVERABILITY.

5.1. You represent and agree that You have read this entire Agreement, and understand it. You agree that this Agreement does not prevent You from earning a living or pursuing Your career. You agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. You agree that the restrictions placed on You under this Agreement are reasonable given the nature of the compensation (including any grant of equity) that you have received and may continue to receive from the Company. You represent and agree that You are entering into this Agreement freely and with knowledge of its content and with the intent to be bound by the Agreement and the restrictions contained in it.

5.2. In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, You and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

5.3. If the Court declines to enforce this Agreement in the manner provided in subparagraph 5.2, You and the Company agree that this Agreement will be automatically modified to provide the Company with the maximum protection of its business interests allowed by law and You agree to be bound by this Agreement as modified.

5.4. You and the Company agree that the geographic market for the Company's products and services is the Washington, D.C. and Raleigh, N.C. metropolitan areas, so that this Agreement applies to Your activities throughout those geographic areas. If, however, after applying the provisions of subparagraphs 5.2 and 5.3, a court still decides that this Agreement or any of its restrictions is unenforceable for lack of reasonable geographic limitation and the Agreement or restriction(s) cannot otherwise be enforced You and the Company agree that the fifty (50) miles radius from any office at which You worked for the Company on either a regular or occasional basis during the two years immediately preceding termination of Your employment with the Company shall be the geographic limitation relevant to the contested restriction.

5.5 If any provision of this Agreement is declared to be ambiguous, unenforceable or invalid, the remainder of this Agreement shall remain in full force and effect, and the Agreement shall be read as if the ambiguous, unenforceable or invalid provision was not contained in the Agreement.

6. INJUNCTIVE RELIEF AND REMEDIES.

6.1. You acknowledge that it may be impossible to assess the damages caused by Your violation of this Agreement, or any of its terms. You agree that any threatened or actual violation or breach of this Agreement, or any of its terms, will constitute immediate and irreparable injury to the Company.

6.2. You agree that in addition to any and all other damages and remedies available to the Company if You breach this Agreement, the Company shall be entitled to temporary injunctive relief, without being required to post a bond, and permanent injunctive relief, without the necessity of proving actual damage, to prevent You from violating or breaching this Agreement or any of its terms.

6.3. In the event that the Company enforces this Agreement through a court order, You agree that the restrictions contained in Section 4.3 of this Agreement shall remain in effect for a period of twelve (12) months from the effective date of the Order enforcing the Agreement.

6.4. You agree that if the Company is successful in whole or part in any legal or equitable action against You under this Agreement, the Company shall be entitled to payment of all costs, including reasonable attorneys' fees, from You.

7. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYERS OR BUSINESS ASSOCIATES OF EMPLOYEE.

7.1. If You are offered employment or the opportunity to enter into any business venture (as owner, partner, consultant or other capacity) with a person or entity which provides or is planning to provide ***Conflicting Services*** while the restrictions described in paragraph 4.3 of this Agreement are in effect, You agree to inform Your potential employer, partner, co-owner and/or others involved in managing the business which You have an opportunity to join of Your obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.

7.2. You also authorize the Company to provide copies of this Agreement to any of the persons or entities described in subparagraph 7.1 and to make such persons aware of Your obligations under this Agreement.

8. MISCELLANEOUS.

8.1. This Agreement and the restrictions and obligations in it survive the employment relationship and are binding regardless of the reason for termination of employment.

8.2. The Agreement is for the benefit of You and of the Company, its successor, assigns, parent corporations, subsidiaries, and/or purchasers.

8.3. This Agreement is governed by the laws of the Commonwealth of Virginia without regard to the conflicts of laws or principles thereof. With respect to any litigation based on, arising out of, or in connection with this Agreement, You hereby expressly submit to the personal jurisdiction of the Fairfax County Circuit Court for the Commonwealth of Virginia and of the United States District Court for the Eastern District of Virginia. You hereby expressly waive, to the fullest extent permitted by law, any objection that You may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation any claim that any such litigation has been brought in an inconvenient forum.

8.4. No waiver by the Company of any breach of any of the provisions of this Agreement is a waiver of any preceding or succeeding breach of the same or any other provisions of this Agreement. No waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

8.5. Except as expressly provided otherwise in this Agreement, nothing in this Agreement grants a license or permission to use any intellectual property of Company, whether owned, pending, or currently under development.

8.6. This Agreement may be amended by a writing signed by both parties; ***provided, however***, that Schedules A and B to this Agreement may be amended by the Company at any time and the amended schedules attached to this Agreement and made a part of it.

8.7 You agree that on the subjects covered in this Agreement, it is the entire Agreement between You and the Company, superseding any previous oral or written communications, representations, understanding, or agreements with the Company or with any representative of the Company. **By signing this Agreement You represent that You have read and understand this Agreement, You have had an opportunity to consult legal counsel concerning this Agreement and that You sign it voluntarily.**

Comstock Homebuilding Companies, Inc.	Employee
By: _____	_____
Christopher Clemente Chief Executive Officer	Joseph M. Squeri

SCHEDULE A

COMPANY PROPERTY

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Joseph Squeri dated August __, 2010, Company Property shall include but not be limited to:

1. All lists of and information pertaining to any ***Business Partner.***
2. All ***Confidential Information*** of the Company.
3. All notes, files, correspondence (including copies of e-mail or voice mail messages) and memoranda prepared or received in the course of employment.
4. All manuals reports, records, notebooks, plans, photographs, specifications, technical data and drawings prepared or received in the course of employment.
5. All computers, printers, computer hardware and software, computer programs, program listings, diskettes, CD's, DVD's, audio and videotapes; downloads and source/object codes.

SCHEDULE B

CONFIDENTIAL INFORMATION

For purposes of the Confidentiality and Non-Competition Agreement between Comstock Homebuilding Companies, Inc. and Joseph Squeri dated August __, 2010, ***Confidential Information*** shall include but not be limited to the following information where it is not generally known to the public or in the home construction industry (including information conceived, discovered or developed by Employee):

1. Information relating to the Company's proprietary rights prior to any public disclosure thereof, including but not limited to the nature of the proprietary rights, discoveries, inventions, works of authorship, techniques, improvements and ideas (whether patentable or not), hardware, software, computer programs, source or object codes, documentation, processes, design, concept, development, methods, codes, formulas, production data, technical and engineering data, test data and test results, knowledge of codes for data fields, documentation manuals (including data dictionaries), the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).
2. Work product resulting from or related to work or projects performed or to be performed for the Company or for clients of the Company, including but not limited to the interim and final lines of inquiry, hypotheses, research and conclusions related thereto and the methods, processes, procedures, analyses, techniques and audits used in connection therewith.
3. Marketing and development plans, marketing strategies, product descriptions and program descriptions, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Company which have been or are being discussed.
4. Computer software of any type or form in any stage of actual or anticipated research and development, including but not limited to programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, data models and systems plans, design, application and documentation.
5. Internal Company personnel information, employee lists, compensation data, non-public financial information, financial projections and business plans and strategy, operational plans, financing and capital-raising plans, activities, and agreements,

vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Company's business.

6. Non-public information pertaining to any ***Business Partner*** and its needs or desires with respect to the products and services offered by the Company, including, but not limited to, names of ***Business Partner*** and their representatives, proposals, bids, contracts and their contents and parties, data provided to the Company by ***Business Partner,*** the type, quantity and specifications of products and services purchased, leased, licensed or provided or received by ***Business Partner*** and other non-public information.

7. Any information that a competitor of the Company could use to the competitive disadvantage of the Company.

Exhibit 31.1

CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Christopher Clemente, certify that:

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

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

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

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

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

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

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

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2010

/s/ Christopher Clemente

Christopher Clemente
Chairman and Chief Executive Officer
(Principal executive officer)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Joseph M. Squeri, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the period presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

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

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

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

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2010

/s/ Joseph M. Squeri

Joseph M. Squeri
Chief Financial Officer
(Principal financial officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Comstock Homebuilding Companies, Inc. (the "Company") for the quarter ended September 30, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Christopher Clemente, Chairman and Chief Executive Officer of the Company and Joseph M. Squeri, Chief Financial Officer of the Company, certify, to our best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2010

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

Date: November 12, 2010

/s/ Joseph M. Squeri
Joseph M. Squeri
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.