

**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 Quarter Ended September 30, 2005

Commission File Number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

20-1164345

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

11465 Sunset Hills Road

5th Floor Reston, Virginia 20190

(703) 883-1700

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES NO

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

YES NO

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

As of November 10, 2005, 11,257,531 shares of the Class A common stock, par value \$.01 per share, of the Registrant were outstanding.

**COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
FORM 10-Q
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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
UNAUDITED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share data)

	<u>September 30,</u> 2005	<u>December 31,</u> 2004
ASSETS		
Cash and cash equivalents	\$ 64,129	\$ 67,559
Restricted cash	13,147	7,500
Receivables	7,327	239
Due from related parties	3,318	1,447
Real estate held for development and sale	259,994	104,326
Inventory not owned - variable interest entities	68,250	118,558
Property, plant and equipment	521	488
Investment in real estate partnerships	(53)	1,029
Deferred income tax	1,243	821
Other assets	6,130	2,540
TOTAL ASSETS	\$ 424,006	\$ 304,507
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	\$ 59,089	\$ 35,532
Income taxes payable	3,946	290
Due to related parties	40	148
Obligations related to inventory not owned	63,850	114,333
Notes payable	155,004	65,684
Notes payable-related parties	3,263	10,944
Distribution payable	3,205	12,655
TOTAL LIABILITIES	288,397	239,586
Commitments and contingencies (Note 12)		
Minority interest	387	2,695
SHAREHOLDERS' EQUITY		
Class A common stock, \$0.01 par value, 77,266,500 shares authorized, 11,538,609 and 9,160,608 issued and outstanding	115	92
Class B common stock, \$0.01 par value, 2,733,500 shares authorized, 2,733,500 issued and outstanding	27	27
Additional paid-in capital	128,958	75,510
Unearned Compensation	(3,146)	(4,314)
Retained earnings (accumulated deficit)	9,268	(9,089)
TOTAL SHAREHOLDERS' EQUITY	135,222	62,226
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)	\$ 424,006	\$ 304,507

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

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

<u>Three Months Ended Sept 30,</u>		<u>Nine Months Ended Sept 30,</u>	
2005	2004	2005	2004
Predecessor		Predecessor	

Revenues								
Sale of real estate—Homes	\$	72,409	\$	23,395	\$	140,473	\$	67,649
Other revenue		6,028		2,437		6,604		7,165
Total revenue		78,437		25,832		147,077		74,814
Expenses								
Cost of sales of real estate		50,838		13,897		98,087		44,665
Cost of sales of other		3,118		1,773		3,138		5,419
Selling, general and administrative		6,562		2,636		17,222		9,546
Operating income		17,919		7,526		28,630		15,184
Other (income) expense, net		(463)		241		(653)		301
Income before minority interest and equity in earnings of real estate partnerships		18,382		7,285		29,283		14,883
Minority interest		6		1,812		14		4,360
Income before equity in earnings of real estate partnerships		18,376		5,473		29,269		10,523
Equity in earnings of real estate partnerships		48		35		82		93
Total pre tax income		18,424		5,508		29,351		10,616
Income taxes		6,941		—		10,993		—
Net income	\$	11,483	\$	5,508	\$	18,358	\$	10,616
Basic earnings per share		0.82		0.78		1.47		1.50
Basic weighted average shares outstanding		13,987		7,067		12,491		7,067
Diluted earnings per share		0.81		0.78		1.45		1.50
Diluted weighted average shares outstanding		14,168		7,067		12,653		7,067

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 share data)

	Nine Months Ended September 30,	
	2005	2004 Predecessor
Cash flows from operating activities:		
Net income	\$ 18,358	\$ 10,616
Adjustment to reconcile net income to net cash provided by operating activities		
Depreciation	125	75
Loss on disposal of assets	9	—
Minority interest	14	4,360
Equity in earnings of real estate partnerships	(82)	(93)
Distributions from investment in real estate partnerships	164	90
Amortization of stock compensation	1,749	—
Deferred income tax	(422)	—
Changes in operating assets and liabilities:		
Restricted cash	(5,647)	—
Receivables	(7,088)	1,070
Due from related parties	(1,871)	(2,057)
Real estate held for development and sale	(155,668)	(10,487)
Other assets	(3,765)	(2,935)
Accounts payable and accrued liabilities	23,555	5,126
Income tax payable	3,656	—
Due to related parties	(108)	(24)
Net cash (used in) provided by operating activities	(127,021)	5,741
Cash flows from investing activities:		
Purchase of property, plant, and equipment	(167)	(187)
Distributions of capital from investments in real estate partnerships	1,000	—
Net cash provided by (used in) investing activities	833	(187)
Cash flows from financing activities:		
Proceeds from notes payable	182,666	47,825
Proceeds from related party notes payable	444	8,988
Payments on notes payable	(93,346)	(47,900)
Payments on related party notes payable	(8,125)	(144)

Contribution from minority shareholders	87	—
Payment of distribution payable	(9,450)	—
Distributions paid to minority shareholders	(2,409)	(11,901)
Distributions paid to shareholders	—	(4,233)
Proceeds from shares issued under employee stock purchase plan	81	—
Net proceeds from follow on offering	52,810	—
Net cash provided by (used in) financing activities	122,758	(7,365)
Net (decrease) in cash and cash equivalents	(3,430)	(1,811)
Cash and cash equivalents, beginning of period	67,559	17,160
Cash and cash equivalents, end of period	\$ 64,129	\$ 15,349

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

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

1. ORGANIZATION AND BASIS OF PRESENTATION

Comstock Homebuilding Companies, Inc. (the “Company”) was incorporated on May 24, 2004 as a Delaware corporation.

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

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

On June 22, 2005 the Company completed a follow on offering in which 2,360 shares of Class A Common stock were sold to the public at a price of \$23.90 per share. The offering resulted in total proceeds to the Company, net of underwriting discounts, of approximately \$53.4 million.

Our common stock is traded on the NASDAQ National Market under the symbol “CHCI”. We have no public trading history prior to December 17, 2004.

The consolidated financial statements and notes of the Company as of September 30, 2005 and for the three and nine months ended September 30, 2005 and 2004 have been prepared by management without audit, pursuant to rules and regulations of the Securities and Exchange Commission and should be read in conjunction with the December 31, 2004 audited financial statements contained in the Company’s Annual Report on Form 10-K for the year then ended. In the opinion of management, all normal, recurring adjustments necessary for the fair presentation of such financial information have been included. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. Certain amounts in the prior year’s financial statements have been reclassified to conform to the current year’s presentation with no effect on previously reported net income or stockholders’ equity.

The Company historically has experienced and expects to continue to experience variability in quarterly results. The consolidated statement of operations for the three and nine months ended September 30, 2005 is not necessarily indicative of the results to be expected for the full year.

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

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

2. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

Real estate held for development and sale includes land, land development costs, interest and other construction costs and is stated at cost or, when circumstances or events indicate that the real estate held for development or sale is impaired, at estimated fair value.

Land, land development and indirect land development costs are accumulated by specific area and allocated to various lots or housing units using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to housing units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of prepaid local government fees and capitalized interest and real estate taxes. Selling costs are expensed as incurred.

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances which may affect fair value including management's plans for the property. Due to the large acreage of certain land holdings, disposition in the normal course of business is expected to extend over a number of years. A write-down to estimated fair value is recorded when the carrying value of the property exceeds its estimated fair value. These evaluations are made on a property-by-property basis. The Company assesses the impairment of real estate assets whenever events or changes in circumstances indicate that the net book value may not be recoverable.

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

	September 30, 2005	December 31, 2004
Land and land development costs	\$ 133,378	\$ 65,545
Cost of construction (including capitalized interest and real estate taxes)	126,616	38,781
	<u>\$ 259,994</u>	<u>\$ 104,326</u>

3. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

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

The Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit as described above, a variable interest entity is created under the provisions of FIN 46-R. This is because the Company has been deemed to have provided subordinated financial support, which refers to variable interest that will absorb some or all of an entity's expected theoretical losses if they occur. The Company, therefore, examines the entities with which the Company enters into fixed price purchase agreements for possible consolidation by the Company under FIN 46-R. This requires the Company to compute expected losses and expected residual returns based on the probability of future cash flows as outlined in FIN 46-R. This calculation

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requires substantial management judgments and estimates. In addition, because the Company does not have any contractual or ownership interests in the entities with which it contracts to buy the land, the Company does not have the ability to compel these development entities to provide financial or other data to assist the Company in the performance of the primary beneficiary evaluation.

The Company has evaluated all of its fixed price purchase agreements and has determined that it is the primary beneficiary of some of those entities. As a result, at December 31, 2004, the Company has consolidated five entities in the accompanying consolidated balance sheet. The effect of the consolidation at December 31, 2004 was the inclusion of \$118,558 in "Inventory not owned—variable interest entities" with a corresponding inclusion of \$114,333 (net of land deposits paid of \$4,225) to "Obligations related to inventory not owned." During the nine months ended September 30, 2005, the Company consolidated three entities in the accompanying consolidated balance sheet. The effect of the consolidation at September 30, 2005 was the inclusion of \$68,250 in "Inventory not owned—variable interest entities" with a corresponding inclusion of \$63,850 (net of land deposits paid of \$4,400) to "Obligations related to inventory not owned." Creditors, if any, of these variable interest entities have no recourse against the Company.

4. WARRANTY RESERVE

Warranty reserves for houses sold are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by the Company or within the five-year statutorily mandated structural warranty period. Since the Company subcontracts its homebuilding work, subcontractors are required to provide the Company with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Warranty claims are directly charged to the reserve as they arise. The following table is a summary of warranty reserve activity which is included in accounts payable and accrued liabilities for the three and nine months ending September 30, 2005 and 2004:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Balance at beginning of period	\$ 945	\$ 751	\$ 916	\$ 541
Additions	291	138	600	556
Releases and/or charges incurred	(155)	(56)	(435)	(264)
Balance at end of period	<u>\$ 1,081</u>	<u>\$ 833</u>	<u>\$ 1,081</u>	<u>\$ 833</u>

5. CAPITALIZED INTEREST AND REAL ESTATE TAXES

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Total interest incurred	\$ 3,062	\$ 1,070	\$ 8,824	\$ 3,008
Beginning interest capitalized	8,009	\$ 2,796	4,524	\$ 1,428
Plus: Interest incurred on notes payable	3,001	738	8,097	1,950
Plus: Interest incurred on related party notes payable	20	275	289	1,046
Less: Interest expensed as a component of cost of sales	(1,646)	(352)	(3,526)	(967)
Ending interest capitalized	\$ 9,384	\$ 3,457	\$ 9,384	\$ 3,457

6. EARNINGS PER SHARE

The following weighted average shares and share equivalents are used to calculate basic and diluted earnings per share for the three and nine months ended September 30, 2005 and 2004:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Basic earnings per share				
Net Income	\$ 11,483	\$ 5,508	\$ 18,358	\$ 10,616
Basic weighted-average shares outstanding	13,987	7,067	12,491	7,067
Per share amounts	\$ 0.82	\$ 0.78	\$ 1.47	\$ 1.50
Dilutive earnings per share				
Net income	\$ 11,483	\$ 5,508	\$ 18,357	\$ 10,616
Basic weighted-average shares outstanding	13,987	7,067	12,491	7,067
Stock options and restricted stock grants	181	—	162	—
Dilutive weighted-average shares outstanding	14,168	7,067	12,653	7,067
Per share amounts	\$ 0.81	\$ 0.78	\$ 1.45	\$ 1.50

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

Comprehensive income

For the three and nine months ended September 30, 2005 and 2004, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying combined consolidated financial statements.

7. MINORITY INTERESTS

During March 2005, the Company purchased certain noncontrolling minority interests in its consolidated subsidiaries for a total purchase price of \$2,242. Because the underlying book value of the minority interests was \$2,360, the Company allocated \$118 as a reduction in the subsidiary's real estate held for development and sale accounts.

8. INVESTMENT IN REAL ESTATE PARTNERSHIPS

Prior to the Company's acquisition of Comstock Service as discussed in Note 1, Comstock Service in 2001 had invested \$41 in North Shore Investors, LLC ("North Shore") for a 50% ownership interest. North Shore was formed to acquire and develop residential lots and construct single family and townhouse units. In 2002, as a result of recognizing its share of net losses incurred by North Shore, Comstock Service reduced its investment in North Shore, to \$0.

Since the inception to September 30, 2005, North Shore has incurred losses of approximately \$2,135. On June 28, 2005 the Company received a capital call from North Shore in the amount of \$719 so that North Shore may comply with certain debt repayments. Because the Company may be obligated to provide future financial support to cover certain debt repayments, the Company, during the three and nine months ended September 30, 2005 recorded its share of losses incurred by North Shore in the accompanying financial statements in the amount of \$27 and \$53, respectively.

During the third quarter of 2005, the Company, as manager of an affiliated entity, exercised its option rights to purchase the project acquisition, development and construction loan made for the benefit of North Shore. The Company finalized the purchase of the loans on or about September 8, 2005, issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and subsequently filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005.

As of September 30, 2005 the Company carried the following amounts in its financial statements related to North Shore:

Investment in real estate partnerships	\$ (53)
Due from affiliates	\$ 1,491
Development and construction loan receivable	\$ 1,741

In addition the Company may be obligated in certain circumstances to provide additional capital to cover certain debt repayments to North Shore in the amount of \$2 million. As of November 8, 2005 the Company has not paid its share of the capital call and is exploring alternatives with all parties involved to reorganize or restructure the partnership in order to maximize potential returns. The Company has evaluated the carrying value of its investment in and receivables from North Shore. At this time the Company does not believe an impairment reserve is warranted. However, it is possible this may change in future periods. In addition, based on results of negotiations, the Company may, in the future be required to consolidate the North Shore entity.

9. DEBT

In September 2005, the Company completed a purchase of a 316 unit condominium conversion project located in Leesburg, Virginia. To finance this transaction, the Company entered into a promissory note agreement relating to \$47,725 of indebtedness bearing interest at a rate of 1.9% + the one month LIBOR rate (3.86% at September 30, 2005). At September 30, 2005, the Company owed a total of \$35,905 under this note.

10. INCOME TAX

Prior to December 17, 2004, the Predecessor had elected to be treated as an S corporation under Subchapter S of the

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

The Company's income tax provision consists of the following as of September 30, 2005:

Current:	
Federal	9,557
State	1,813
	<u>11,370</u>
Deferred:	
Federal	318
State	59
	<u>(377)</u>
Total income tax expense	<u>10,993</u>

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Components of the Company's deferred tax assets and liabilities at September 30, 2005 were as follows:

	September 30, 2005
Deferred Tax Assets:	
Inventory	1,507
Warranty	363
Deferred rent	19
Accrued expenses	109
Stock-based compensation	534
	<u>2,532</u>
Less — valuation allowance	(1,112)
Net deferred tax assets	<u>1,420</u>
Deferred tax liabilities:	
Depreciation and amortization	(177)
Net deferred tax liabilities	<u>(177)</u>
Net deferred tax assets	<u>1,243</u>

The Company has adequately provided for contingencies related to income taxes in accordance with SFAS No. 5. At September 30, 2005, the Company recorded a \$514 income tax reserve, which is on the balance sheet. This tax reserve relates predominately to a potential dispute by taxing authorities over tax benefits resulting from additional income tax basis in certain residential housing development projects. The Company has also established a valuation allowance of approximately \$1,112 as of September 30, 2005 related to a deferred tax asset of approximately \$1,112 resulting from additional tax basis in residential real estate development projects. In analyzing the need for the provision of tax contingency reserves and the valuation allowance, management reviewed applicable statutes, rules,

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regulations and interpretations and established these reserves based on past experience and judgments about potential actions by taxing jurisdictions.

11. RESTRICTED STOCK, STOCK OPTIONS, AND OTHER STOCK PLANS

On December 13, 2004, the Company adopted the 2004 Long-Term Incentive Compensation Plan (the "Plan"), which provides for the issuance of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, dividend equivalents, bonus stock and awards in lieu of cash compensation, other stock-based awards and performance awards. The Plan provided for an initial authorization of 1,550 shares of Class A Common stock for issuance thereunder, plus an additional annual authorization effective January 1, 2006 equal to the lesser of (i) 3% of the Class A Common Stock outstanding on the date of determination, (ii) 500,000 shares or (iii) such lesser amount as may be determined by the Company's Board of Directors.

Effective January 1, 2004, the Company adopted SFAS No. 123R (revised 2004), "Share-Based Payment" ("SFAS 123R"), which replaces SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements over the vesting period based on their fair values at the date of grant.

On July 6, 2005 the Company issued 106,849 options to the certain officers and employees. The options were issued at an exercise price of \$23.90 per share and vest in increments of 25% on December 31, 2006, June 30, 2007, December 31, 2007, and June 30, 2008.

The following table sets forth information about the fair value of each option grant on the date of grant using the Black-Scholes option-pricing model and the weighted-average assumptions used for such grants:

Weighted-average fair value of options granted	\$	7.61
Dividend yields		N/A
Expected volatility		44.6%
Risk-free interest rates		3.6
Expected lives		2.5 Years

In accordance with the provisions of SFAS No. 123(R) and SFAS No. 148, \$663 and \$0 was recorded for total stock-based compensation expense for the three months ended September 30, 2005 and 2004, respectively, and \$1,749 and \$0 respectively for the nine months ended September 30, 2005 and 2004. Of this amount \$143 and \$254 was related to stock option grants for the three and nine months ended September 30, 2005 and the remainder was related to restricted stock grants.

On September 30, 2005 the following amounts were available for issuance:

Shares Available for issuance at December 31, 2004	1,168
Adjustments:	
Restricted Stock Grants – Issued	(16)
Options – Issued	(107)
Restricted Stock Grants – Forfeited	4
Shares Available for issuance at September 30, 2005	1,049

12. COMMITMENTS AND CONTINGENCIES

Litigation

In the normal course of its business, the Company and/or its subsidiaries are named as defendants in certain legal actions arising from its normal business activities. Management believes that none of the litigation matters in which the Company or any subsidiary is involved would have a material adverse effect on the consolidated financial condition or operations of the Company. Additional disclosures involving legal proceedings are discussed in Part II, Item I in this Form 10-Q.

Letters of credit and performance bonds

The Company has commitments as a result of contracts entered into with certain third parties to meet certain performance criteria as outlined in such contracts. The Company is required to issue letters of credit and performance bonds to these third parties as a way of ensuring that such commitments entered into are met by the Company. At September 30, 2005, the Company has outstanding \$5,069 in letters of credit and \$13,597 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

Operating leases

The Company leases office space under non-cancelable operating leases. Minimum annual lease payments under these leases at September 30, 2005 approximate:

Year Ended: Amount	
2005	\$ 249
2006	837
2007	858
2008	892
2009	721
2010	10
Thereafter	—

Operating lease rental expense aggregated \$492 and \$269, respectively, for nine months ended September 30, 2005 and 2004.

13. RELATED PARTY TRANSACTIONS

In June 2002, the Predecessor entered into a promissory note agreement with TCG Fund I, LC to fund development projects. TCG Fund I, LC, is a related party in which the Company has an equity investment. The promissory note agreement allows for the Company to borrow up to \$4 million. The note bears interest at 12% per annum and was paid in full during June 2005.

In September 2004, the Predecessor entered into a promissory note agreement with TCG Fund II, LC to fund development projects. TCG Fund II, LC is an entity which the company manages as a non-member. The promissory note agreement allows the Company to borrow up to \$10 million. The note bears interest at 12% per annum and is due on September 7, 2007. As of September 30, 2005 and December 31, 2004 the Company owed \$2.6 and

\$2.4 million, respectively, under this promissory agreement. Accrued interest payable on this note totaled \$26 and \$49 at September 30, 2005 and December 31, 2004, respectively.

In April 2002 and January 2004, the Predecessor entered into lease agreements for approximately 7.7 and 8.8 square feet, respectively, for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia from Comstock Partners, L.C., an affiliate of our predecessor in which executive officers of the Company Christopher Clemente, Gregory Benson, and others are principals. Christopher Clemente owns a 45% interest, Gregory Benson owns a 5% interest, an entity which is owned or controlled by Christopher Clemente's father-in-law, Dwight Schar, owns a 45% interest, and an unrelated third party owns a 5% interest in Comstock Partners. For the three and nine months ended September 30, 2004, total payments made under this lease agreement were \$90 and \$231, respectively. On September 30, 2004 the lease agreements were canceled and replaced with new leases for a total of 20.6 square feet with Comstock Asset Management, L.C., an entity owned by Christopher Clemente. On August 1, 2005 the lease agreement was amended for an additional 8.4 square feet. For the three months and nine months ended September 30, 2005, total payments made under this lease agreement were \$131 and \$408, respectively.

In May 2003, the Predecessor hired a construction company, in which Christopher Clemente's brother, Louis Clemente, serves as the President and is a significant shareholder, to provide construction services and act as a general contractor at one of the Company's developments. The Company paid \$7.8 million and \$3.6 million to this construction company during the nine months ended September 30, 2005 and 2004, respectively.

At September 30, 2005 and December 31, 2004, the Company had an outstanding note receivable from Investors Management, LLC of \$0 and \$163 respectively, which accrues interest at a rate of 10% per annum. Investors Management, LLC is a related party, which is owned partially by Christopher Clemente, Gregory Benson and Bruce Labovitz (executive officers and/or shareholders of the Company). At December 31, 2004 accrued interest receivable on this note totaled \$5. During February 2005 the Company received payment in full on this note.

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

During 2003, the Predecessor entered into agreements with I-Connect, L.C., a company in which Investors Management, LLC holds a 25% interest, for information technology consulting services and the right to use certain customized enterprise software developed with input from the Company. The intellectual property rights associated with the software solution that was developed by I-Connect along with any improvements made thereto by the Company remained the property of I-Connect. For the three months ended September 30, 2005 and 2004, the Company paid \$101 and \$87, respectively, to I-Connect. During the nine months ended September 30, 2005 and 2004, the Company paid \$361 and \$326, respectively, to I-Connect. Also, in March 2003, the Predecessor entered into a space sharing agreement with I-Connect, L.C. to occupy and use 3,342 square feet of office space subleased by I-Connect, L.C. from a third party in Reston, Virginia. The Predecessor paid \$0 and \$4, respectively, under this agreement for the three months and nine months September 30, 2005 and 2004. On June 24, 2003, the I-Connect, L.C. sublease was assigned to Comstock Partners, L.C. (as landlord). The space sharing agreement with I-Connect ended on September 30, 2004.

For three months ended September 30, 2005 and 2004, the Predecessor received revenue of approximately \$0 and \$909, respectively, by providing administrative and sales support to Comstock Service Corp., Inc., a related party owned by Christopher Clemente and Gregory Benson. During the nine months ended September 30, 2005 and 2004, the Company received revenue of approximately \$0 and \$3 million, respectively.

For the three months ended September 30, 2005 and 2004, the Predecessor received revenue of approximately \$94 and \$350, respectively, by providing administrative and sales support to other related parties in which Christopher Clemente, Gregory Benson, and Christopher Clemente's father-in-law, Dwight Schar, are shareholders. For the nine months ended September 30, 2005 and 2004, the Predecessor received revenue of approximately \$465 and \$1,060, respectively.

In October 2004, the Predecessor entered into an agreement with Comstock Asset Management Inc., in which the Company would provide management services for a fee of \$20 a month. For the three months and nine months ended September 30, 2005 the Company recorded \$60 and \$180, respectively, in revenue. At September 30, 2005 and December 31, 2004 the Predecessor recorded a receivable for \$20 and \$60, respectively, from this entity. In addition, the Company in November 2004, entered into an agreement with Comstock Asset Management to sell certain retail condominium units at Potomac Yard for a total purchase price of \$14,500. In connection with this sale, the Company received a deposit of \$8,000 upon execution of the agreement.

During the nine months ended September 30, 2005 and 2004, the Company provided bookkeeping services to certain related party entities at no charge.

In August 2004, the Predecessor entered into a \$2,400 promissory note agreement with Belmont Models I, L.C., an entity managed by Investors Management. The note bears an interest rate of 12%, which is payable monthly and matured July 2005. In March 2005, the Company sold four condominium units to Belmont Models I, L.C. under a sale and leaseback arrangement. The four condominium units were delivered for a total purchase price of \$2,000 and leased back at a rate of \$20 per month. The Company expects the lease to continue for a period of twenty-four months. As a result of the deliveries, the promissory note was reduced by the total purchase price. At September 30, 2005 and December 31, 2004 the Company owed \$663 and \$2,400, respectively. Accrued interest payable on this note totaled \$7 and \$49, respectively, at September 30, 2005 and December 31, 2004.

During nine months ended September 30, 2005 and 2004 the Predecessor entered into sales contracts to sell homes to certain employees of the Company. The Company, in order to attract, retain, and motivate employees maintains a home ownership benefit program. Under the home ownership benefits, an employee receives certain cost benefits provided by us when purchasing a home or having one built by us. Sales of homes to employees for investment purposes are conducted at market prices.

In September 2005, Comstock Foundation, Inc., an affiliate, was created. Comstock Foundation is a not-for-profit organization organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The affairs of Comstock Foundation shall be managed by a five

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENTS 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 the this report and our audited consolidated and combined financial statements and the notes thereto for the year ended December 31, 2004, appearing in our Annual Report on Form 10-K for the year then ended (the “2004 Form 10-K”).

This report includes forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by the use of words such as “anticipate,” “believe,” “estimate,” “may,” “intend,” “expect,” “will,” “should,” “seeks” or other similar expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties, many of which are beyond our control. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include, without limitation: general economic and market conditions, including interest rate levels; our ability to service our substantial debt; inherent risks in investment in real estate; our ability to compete in the Washington, D.C. and Raleigh, North Carolina real estate and home building markets; regulatory actions; fluctuations in operating results; our anticipated growth strategies; shortages and increased costs of labor or building materials; the availability and cost of land in desirable areas; natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis; and our continuing relationships with affiliates. Additional information concerning these and other important risk and uncertainties can be found under the heading “Risk Factors” in the 2004 Form 10-K. Our actual results could differ materially from these projected or suggested by the forward-looking statements.

Overview

We engage in the business of residential land development, production home building, high-rise condominium development, condominium conversion and land sales in the greater Washington, D.C. and Raleigh, North Carolina markets. Our business was started in 1985 by Christopher Clemente, our Chief Executive Officer, as a residential land developer and home builder focused on the luxury home market in the northern Virginia suburbs of Washington, D.C. In 1992, we repositioned ourselves as a production home builder focused on moderately priced homes in areas where we could more readily purchase finished building lots through option contracts. In 1997, we entered the Raleigh, North Carolina market.

The following table summarizes certain information related to new orders, settlements, and backlog for the three and nine month periods ended September 30, 2005 and 2004:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
New orders	117	287	523	490
New order revenues	\$ 34,423	\$ 97,484	\$ 197,760	\$ 170,644
Average new order price	\$ 294	\$ 340	\$ 378	\$ 348
Settlements	202	74	403	208
Settlement revenue	\$ 72,409	\$ 23,395	\$ 140,473	\$ 67,649
Average settlement price	\$ 358	\$ 316	\$ 349	\$ 325
Backlog	\$ 231,833	\$ 135,442	\$ 231,833	\$ 135,442

At September 30, 2005, we either owned or controlled under option agreements or non-binding letters of intent over 4,802 building lots including non-consolidating joint ventures in which we are the manager. We currently have communities under development in Arlington, Fairfax, Loudoun, Culpepper and Prince William counties in Virginia. In Maryland we are currently active in Frederick County. In North Carolina we have active communities in Raleigh and Wake counties. The following chart summarizes certain information for our current and planned communities as of September 30, 2005:

As of September 30, 2005							
Project	Status (1)	Estimated Units at Completion	Units Settled	Backlog(2)	Lots Owned Unsold	Lots under Option Agreement Unsold	Average Sales Price
Virginia							
Barrington Park	Active	148	—	—	148	—	n/a
Commons at Bellemeade	Active	316	—	—	316	—	n/a
Blooms Mill TH 22’	Active	113	70	12	31	—	\$ 422,419
Blooms Mill Carriage	Active	91	57	23	11	—	\$ 451,473
Commons on Potomac Sq	Active	192	—	20	172	—	\$ 232,260

Commons on Williams Sq	Active	180	20	58	102	—	\$	360,339
Countryside	Active	102	23	13	66	—	\$	287,904
The Eclipse on Center Park	Active	465	—	371	94	—	\$	397,682
Penderbrook Square	Active	424	143	12	269	—	\$	251,598
River Club at Belmont Bay 5	Active	84	54	19	11	—	\$	459,479
Woodlands at Round Hill	Active	65	23	21	21	—	\$	735,214
Total VA Active and Completed		2,180	390	549	1,241	—	\$	399,818
Total VA Active and Completed Weighted Avg(3)							\$	352,927
Aldie Singles	Development	15	—	—	—	15		n/a
Blakes Crossing	Development	130	—	—	130	—		n/a
Brandy Station	Development	350	—	—	—	350		n/a
Carter Lake	Development	258	—	—	—	258		n/a
Lake Pelham	Development	185	—	—	—	185		n/a
Loudoun Station Condominiums	Development	484	—	—	—	484		n/a
Beacon Park at Belmont Bay 8&9	Development	600	—	—	—	600		n/a
Total VA Development		2,022	—	—	130	1,892		
Total Virginia		4,202	390	549	1,371	1,892		
Maryland								
Emerald Farm	Active	84	58	9	17	—	\$	437,721
Total Maryland		84	58	9	17	—		
North Carolina								
Allyn's Landing	Active	117	12	—	105	—	\$	208,911
Beckett Crossing	Active	115	111	3	1	—	\$	313,914
Delta Rdge II Townhomes	Active	41	40	—	1	—	\$	174,256
Kelton at Preston	Active	56	28	1	27	—	\$	306,968
Wakefield Plantation	Active	57	29	5	23	—	\$	474,379
Total North Carolina Active		386	220	9	157	—	\$	295,685
Total North Carolina Active Weighted Average(3)							\$	289,940
Holland Road	Development	90	—	—	—	90		n/a
Total North Carolina Development		90	—	—	—	90		
Total North Carolina		476	220	9	157	90		
TOTAL ACTIVE AND COMPLETED		2,650	668	567	1,415	—		
TOTAL DEVELOPMENT		2,112	—	—	130	1,982		
TOTAL		4,762	668	567	1,545	1,982		
Joint Ventures								
North Shore Condominiums	Active	196	—	7	189	—	\$	286,361
North Shore Townhomes	Active	163	33	7	123	—	\$	239,107
Total Joint Ventures		359	33	14	312	—		
GRAND TOTAL		5,121	701	581	1,857	1,982		

- (1) "Active" communities are open for sales. "Development" communities are in the development process and have not yet opened for sales. "Completed" communities have settled all units during the three months ended September 30, 2005.
- (2) "Backlog" means we have an executed order with a buyer, inclusive of lot sales, but the settlement has not yet taken place.
- (3) Weighted average is calculated as total estimated homes at completion for projects with average sales prices multiplied by Average sales price divided by total of estimated homes at completion (i.e.: $\frac{\text{estimated homes at completion} \times \text{average sales price}}{\text{estimated homes at completion}}$).

Results of Operations

Three and nine months ended September 30, 2005 compared to three and nine months ended September 30, 2004

Orders and Backlog

New orders for the three months ended September 30, 2005 decreased \$63.1 million, or 64.7%, to \$34.4 million on 117 homes as compared to \$97.5 million on 287 homes for the three months ended September 30, 2004. The decrease was primarily attributable to the Company's Eclipse at Center Park project which opened for sale during the third quarter of 2004 and generated sales of 218 units. The Company has stopped the sales of additional units until the project is near completion. Excluding the effect of the Eclipse at Center Park, new orders for the three months ended September 30, 2005 increased \$14.4 million, or 72%, to \$34.4 million on 117 homes as compared to \$20.0 million on 69 homes for the three months ended September 30, 2004.

New orders for the nine months ended September 30, 2005 increased \$27.1 million, or 15.9%, to \$197.8 million on 523 homes as compared to \$170.6 million on 490 homes for the nine months ended September 30, 2004. This increase in new orders was primarily attributable to an increase in saleable inventory resulting from the opening of new projects including Penderbrook (155 sales), Commons on Williams Square (63 sales), Villas at Countryside (36 sales) and the Eclipse at Center Park (90 sales during the first quarter of 2005).

The following table summarizes our new orders by project for the three and nine months ended September 30, 2005:

	Three months ended	Nine months ended
	September 30, 2005	
River Club as Belmont Bay 5	2	16
Blooms Mill Carriage	(1)	36
Blooms Mill TH 22'	1	46
Blooms Mill Singles	—	1
Blooms Mill TH 20'	—	2
Emerald Farm	3	9
Wescott Ridge	—	3
Commons on Williams Sq	4	63
Commons on Potomac Sq	—	20
The Eclipse on Center Park	—	90
Woodlands at Round Hill	(1)	20
Penderbrook	69	155
Villas at Countryside	36	36
Wakefield Plantation	3	7
Kelton at Preston	—	6
Delta Ridge II Townhomes	—	3
Beckett Crossing	2	11
Allyns Landing	(1)	(1)
Total	117	523

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The average sale price per new order for the three months ended September 30, 2005 decreased by \$46,000 to \$294,000 as compared to \$340,000 for the three months ended September 30, 2004. The decrease was a result of significant amount of unit sales at Penderbrook and Villas at Countryside, condominium conversion projects. Penderbrook and Villas at Countryside are condominium conversion projects in which existing apartment units are being converted to condominiums. By design, sales prices tend to be lower in these conversion projects as compared to our new construction projects. Our strategy with respect to conversion projects, is to identify assets where we can offer lower priced, affordable product to first time home buyers. We focus on older assets where we can add value while maintaining price points which are more attractive to our target buyers. Because we tend to be buying, renovating, and selling older assets that are in prime locations we are able to position the assets to be more affordable, and therefore, average new order prices are lower. Exclusive of the condominium conversion projects, our average sales price per new order was \$543,000 for the three months ended September 30, 2005.

The average sale price per new order for the nine months ended September 30, 2005 increased by \$30,000 to \$378,000 as compared to \$348,000 for the nine months ended September 30, 2004. The increase was attributable to general price appreciation in the Washington, DC area, a shift in product mix that included a significant number of higher-priced newly built condominium and single family sales. The average sales price per new order was negatively affected by the opening of Penderbrook and Villas at Countryside, both condominium conversion projects as discussed above. Exclusive of the condominium conversion projects, our average sales price per new order was \$447,000 for the nine months ended September 30, 2005.

The following table summarizes our average new order sales price by product type for the three and nine months ended September 30, 2005 and 2004:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Townhome	\$ 660	\$ 430	\$ 456	\$ 351
Single family	436	522	606	502
Condominium	575	324	408	330
Condominium conversion	266	n/a	259	n/a

Our backlog at September 30, 2005 increased \$ 96.4 million, or 71.2%, to \$231.8 million on 567 homes as compared to our backlog at September 30, 2004 of \$135.4 million on 490 homes. This increase in backlog is the result of new projects and new order revenue which exceeded settlement revenue. Increases in backlog were incurred at the Eclipse at Center Park (\$70.1 million), Penderbrook (\$2.7million), Villas at Countryside (\$3.7 million), Commons on William Square (\$21.5 million), Commons on Potomac Square (\$4.6 million) and Woodlands at Round Hill (\$13.9 million). In addition, as a result of our merger with Comstock Service on December 17, 2004, our Raleigh operation, which had not previously been included in our reported backlog, represented backlog of \$4.2 million at September 30, 2005.

Revenues.

The number of homes delivered for the three months ended September 30, 2005 increased by 173.0% to 202 from 74 homes for the three months ended September 30, 2004. Average revenue per home delivered increased by approximately \$42,000 to \$358,000 for the three months ended September 30, 2005 as

compared to \$316,000 for the three months ended September 30, 2004. For the three months ended September 30, 2004 the Company sold 18 affordable dwelling units, ("ADU's") at a average price of approximately \$75,000. ADU's are units mandated by state and local authorities to be sold at a discounted price. Excluding the 18 ADU units, average revenue per home delivered, for the three months ended September 31, 2005 decreased by approximately \$35,000 as compared to the three months ended September 30, 2004.

Home building revenues increased by \$49.0 million, or 209.5%, to \$72.4 million for the three months ended September 30, 2005 as compared to \$23.4 million for the three months ended September 30, 2004. The increase in deliveries and revenues for the three months ended September 30, 2005 is primarily attributable to the Company's Penderbrook (69 units), Villas at Countryside (23 units) and Summerland (20 units) projects and the merger with Comstock Service (8 units). Although selling prices have generally increased in the markets the Company is in, the decrease in the average selling price, after excluding the effect of ADU's, is a result of the Penderbrook and Villas at Countryside projects. Penderbrook and Villas at Countryside are condominium conversion projects in which existing apartment units are being converted to condominiums. By design, sales prices tend to be lower in these conversion projects as compared to our new construction projects.

The number of homes delivered for the nine months ended September 30, 2005 increased by 93.8% to 403 from 208 homes for the nine months ended September 30, 2004. Average revenue per home delivered increased by approximately \$23,000 to \$349,000 for the nine months ended September 30, 2005 as compared to \$325,000 for the nine months ended September 30, 2004. Excluding the effect of 18 ADU units, as discussed above, average revenue per home delivered remained consistent at approximately \$349,000 over the respective periods. Home building revenues increased by \$72.8 million, or 107.7%, to \$140.5 million for the nine months ended September 30, 2005 as compared to \$67.6 million for the nine months ended September 30, 2004. The increase in deliveries and revenues for the nine months ended September 30, 2005 is primarily attributable to the opening of the Company's Penderbrook (143 units), Villas at Countryside (23 units), and Summerland (20 units) projects and the merger with Comstock Service (26 units). Increases in average sales prices were effected by general price appreciation and shift in product mix which in turn was offset by our Penderbrook and Villas at Countryside projects as discussed above.

Other Revenue

Other revenue for the three months ended September 30, 2005 increased by \$3.6 million, or 147.4% to \$6.0 million, as compared to \$2.4 million for the three months ended September 30, 2005. For the nine months ended September 30, 2005 other revenue decreased by \$561,000, or 7.8% to \$6.6 million, as compared to \$7.2 million for the nine months ended September 30, 2005. Other revenue for the three and nine months ended September 30, 2005 and 2004 includes lot sales made to third parties, revenue associated with the Company's Settlement Title Services division, management fees received from Comstock Asset Management Inc. (as discussed in Note 13), and revenue received from a marketing services alliance. For the three and nine months ended September 30, 2004, other revenue included revenues associated with the management of Comstock Service, which was merged into Comstock Homebuilding on December 17, 2004. The increase in other revenue for the three months ended September 30, 2005, as compared to 2004, was primarily the result of 19 lots sold by the Company with corresponding revenue of \$5.7 million. The decrease in other revenue for the nine months ended September 30, 2005, as compared to 2004, was primarily the result of not recording management revenues from Comstock Service, which was acquired in December 2004.

Cost of sales

Cost of sales for the three months ended September 30, 2005 increased \$36.9 million, or 265.8%, to \$50.8 million, or 70.2% of homebuilding revenue, as compared to \$13.9 million, or 59.4% of revenue, for the three months ended September 30, 2004. The 10.8 percentage point increase in cost of sales as a percentage of revenue for the three months ended September 30, 2005 is primarily attributable to lower margins on sales in the North Carolina market and the Company's condominium conversion projects. As discussed above, Comstock Service, the Company's North Carolina division, was merged into Comstock Homebuilding on December 17, 2004. Due to current market conditions in the North Carolina market, which have caused extended hold and carry periods between acquisition and delivery, the Company experienced lower margins on its North Carolina settlements primarily due to increasing interest carrying costs and modest revenue concessions. In addition, the Company's newly opened condo conversion projects, experienced lower margins due to the nature of a conversion project in which the Company buys an existing structure, adds value through upgrades and sells the renovated units with a focus on affordability. As a result, costs of sales tend to be higher as a percentage of revenue than our new construction projects.

For the nine months ended September 30, 2005 cost of sales increased \$53.4 million, or 119.6%, to \$98.1 million, or 69.8% of homebuilding revenue, as compared to \$44.7 million, or 66.0% of revenue, for the nine months ended September 30, 2004. The 3.8 percentage point increase in cost of sales for the nine months ended September 30,

2005 was attributable to lower margins in the Company's North Carolina division and the Company's condominium conversion project for reasons discussed above. Because the condominium conversion projects were not as significant a percentage of total deliveries for the nine months ended September 30, 2005 as it was for the three months ended September 30 2005, it did not have material negative impact on overall cost of sales and gross margins.

Cost of sales other

Cost of sales other for the three months ended September 30, 2005 increased by \$1.4 million, or 75.8% to \$3.1 million, as compared to \$1.7 million for the three months ended September 30, 2005. For the nine months ended September 30, 2005 cost of sales other decreased by \$2.3 million, or 42.1% to \$3.1 million, as compared to \$5.4 million for the nine months ended September 30, 2005. Cost of sales for the three and nine months ended September 2005 and 2004 includes expenses associated with lot sales made to third parties and expenses associated with the management of the Company's Settlement Title Services division. For the three and nine months ended September 2004, cost of sales other also included expenses associated with the management of Comstock Service, which was merged into Comstock Homebuilding on December 17, 2004. The increase in cost of sales other for three months ended September 30, 2005, as compared to 2004, was primarily the result of 19 lots sold by the Company with corresponding costs of \$3.1 million. The decrease in cost of sales other for the nine months ended September 30, 2005, as compared to 2004, was primarily the result of not recording costs associated with the management of Comstock Service, which was acquired in December 2004.

Selling, general and administrative

Selling, general and administrative costs for the three months ended September 30, 2005 increased \$4 million or 148.9% to \$6.6 million, as compared to \$2.6 million for the three months ended September 30, 2004. Selling, general and administrative expenses represented 8.4% of total revenue for the three months ended September 30, 2005, as compared to 10.2% for the three months ended September 30, 2004. This increase for the three months ended September 30, 2005 was the result of bonuses under our incentive plans (\$600,000), computer and legal expenses (\$475,000), board fees and stock compensation (\$900,000), commission fees (\$425,000), promotion and model rent (\$600,000), salaries and employee relations (650,000) and other miscellaneous expenses associated with our growth in staffing and land acquisition efforts (\$350,000).

Selling, general and administrative costs for the nine months ended September 30, 2005 increased \$7.7 million, or 80.4% to \$17.2 million, as compared to \$9.5 million, for the nine months ended September 30, 2004. This increase for the nine months ended September 30, was the result of additional staffing costs and compensation (\$2.4 million), legal expenses (\$350,000), board fees and stock compensation (\$1,550,000), insurance costs (\$250,000), consulting fees (\$825,000), office and model rent (\$225,000) and other miscellaneous expenses associated with our growth in staffing and land acquisition efforts (\$1.1 million). In addition, our consolidation with Comstock Service increased our selling, general and administrative expenses by \$1 million. Selling, general and administrative expenses represented 11.7% and 12.8% of total revenue for the nine months ended September 30, 2005 and 2004, respectively.

Operating income

Operating income for the three months ended September 30, 2005 increased \$10.4 million to \$17.9 million, as compared to \$7.5 million for the three months ended September 30, 2004. Operating margin for the three months ended September 31, 2005 was 22.9%, as compared with 29.1% for the three months ended September 30, 2004. The 6.3 percentage point decrease in operating margin is primarily attributable to an increase in cost of sales as a percentage of revenue as discussed above.

Operating income for the nine months ended September 30, 2005 increased \$13.4 to \$28.6 million, as compared to \$15.1 million for the nine months ended September 30, 2004. Operating margin for the nine months ended September 30, 2005 was consistent with the prior comparable period at approximately 20.0%.

Other (income) expense, net

Other (income) expense, net increased by \$704,000 to a net income of \$463,000 for the three months ended September 30, 2005, as compared to net expense of \$241,000 for the three months ended September 30, 2004. For the nine months ended September 30, 2005 other (income) expense, net increased by \$954,000 to net income of \$653,000 for the nine months ended September 30, 2005 as compared to net expense of \$301,000 for the nine months ended September 30, 2004. The increase in other (income) expense is primarily attributable to interest

earned on the Company's cash balances generated as a result of the proceeds from the Company's initial and follow on public offering.

Minority interest

Minority interest expense decreased by \$1.8 million to \$6,000 for the three months ended September 30, 2005, as compared to the three months ended September 30, 2004. For the nine months ended September 30, 2005 minority interest expense decreased by \$4.3 million to \$14,000, as compared to the nine months ended September 30, 2004. This decrease is the result of our repurchase or redemption of substantially all of the minority interests in four of our limited liability company subsidiaries including Comstock Investors V, L.C., Comstock Investors VI, L.C., Comstock Potomac Yard, L.C. and Comstock North Carolina, L.L.C.

Income taxes

On December 17, 2004, the Company reorganized from a group of S corporations to a C corporation. As a result, income tax expense increased \$6.9 and \$11.0 million for the three and nine months ended September 30, 2005, as compared to no income tax expense for the three and nine months ended September 30, 2004. The Company's combined effective tax rate including both current and deferred provisions for the nine months ended September 30, 2005 was 37.5%.

Liquidity and Capital Resources

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

In production home building, it is common for builders such as us to employ revolving credit facilities whereby the maximum funding available under the facility exceeds the maximum outstanding balance allowed at any given time. Our overall borrowing capacity may be constrained by loan covenants which limit the ratio of our total liabilities to our total equity. This revolving debt will typically provide for funding of an amount up to a pre-determined percentage of the cost of each asset funded. The balance of the funding for that asset is provided for by us as equity. The efficiency of revolving debt in production home building allows us to operate with less overall debt capital than would be required if we built each project with long-term amortizing debt. At September 30, 2005, we had approximately \$161.5 million of debt financing (including our distribution payable to our pre-initial public offering stockholders) and \$64.1 million of unrestricted cash. We believe that internally generated cash, borrowings available under our credit facilities and access to public debt and equity markets will provide us with sufficient capital to meet our existing and expected capital needs.

Credit Facilities

At September 30, 2005, we had approximately \$172 million available under existing secured revolving development and construction loans for planned construction and development expenditures. A majority of our debt is variable rate, based on LIBOR or the prime rate plus a specified number of basis points, typically ranging from 190 to 375 basis points over the LIBOR rate and 50 basis points over the prime rate. As a result, we are exposed to market risk in the

area of interest rate changes. At September 30, 2005, the one-month LIBOR and prime rates of interest were 3.86% and 6.75%, respectively, and the interest rates in effect under our existing secured revolving development and construction credit facilities ranged from 5.76% to 9.85%. For information regarding risks associated with our level of debt and changes in interest rates, see Item 3 "Quantitative and Qualitative Disclosures about Market Risk."

We have generally financed our development and construction activities on a project basis so that, for each project we develop and build, we have a separate credit facility. Accordingly, we have numerous credit facilities. During the third quarter 2005 as a result of entering into a \$47.7 million borrowing agreement to finance a condominium project, the Company is now subject to certain financial covenants. The covenants require the Company to: (1) maintain a minimum tangible net worth, adjusted for certain items, in the amount of \$65.0 million and (2) maintain a debt to tangible net worth below 3.5:1. As of September 30, 2005, we were in compliance with the financial covenants set forth in our loan agreements.

From time to time, we employ subordinated and unsecured credit facilities to supplement our capital resources on a particular project or group of projects. Our lenders under these credit facilities will typically charge interest rates that are substantially higher than those charged by the lenders under our senior and secured credit facilities. These credit facilities will vary with respect to terms and costs. As of September 30, 2005, the annual rate of interest on these facilities ranged from 6.86% to 16%. At September 30, 2005, we had approximately \$30.4 million outstanding under these subordinate and unsecured facilities. We intend to continue to use these types of facilities on a selected basis to supplement our capital resources.

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

Cash Flow

Net cash provided by/(used in) operating activities was (\$127.0) million for the nine months ended September 30, 2005, as compared to \$5.7 million for the nine months ended September 30, 2004. For the nine months ended September 30, 2005, the decrease in cash was primarily attributable to the Company's continued investments in real estate held for development and sale. For the nine months ended September 30, 2004, the increase in cash from operating activities was primarily attributable to increases in accounts payable.

Net cash provided by/(used in) investing activities was \$833,000 for the nine months ended September 30, 2005 and \$(187,000) for the nine months ended September 30, 2004. For the nine months ended September 30, 2005 and 2004, the increase in cash from investing activities was attributable to the repayment of the Company's capital investment in TCG Fund I.

Net cash provided by/(used in) financing activities was \$122.8 million for the nine months ended September 30, 2005 and \$(7.4 million) for the nine months ended September 30, 2004. The increase in cash from financing activities for the nine months ended September 30, 2005, was primarily attributable to proceeds from our follow on offering and proceeds from notes payable to finance our acquisitions of real estate held for development and sale. The decrease in cash from financing activities for the nine months ended September 30, 2004 was primarily attributable to the payments made on notes payable as a result of settlements and distributions made to minority share holders.

Material Acquisitions & Subsequent Events

We are currently party to the following option contracts and non-binding letters of intent:

- In June 2005 we entered into an option contract to purchase an existing 258 unit apartment complex in Reston, Virginia to be converted into affordable condominiums. We expect to close in January of 2006 for a purchase price of approximately \$33.0 million;
- In August 2005 we entered into an option contract to purchase a 232 unit to-be-built high rise project in the southern part of Fairfax County, Virginia;
- In November 2005 the Company entered into an agreement to sell its Blakes Crossing project to a third party. Under the terms of the agreement, the selling price is \$4.3 million and is subject to a study period expiring November 15, 2005.

In November 2005 we expect to enter into a contract to purchase land, to build 48 townhouse units, in Bethany, Delaware for a purchase price of approximately \$6.0 million

There is no guarantee that we will execute a purchase contract with respect to any of these properties or that we will complete any of these acquisitions.

Recent Accounting Pronouncements

On June 29, 2005, the Emerging Issues Task Force ("EITF") reached a consensus on EITF Issue No. 04-05, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("EITF 04-05"). The scope of EITF 04-05 is limited to limited partnerships or similar entities (such as limited liability companies that have governing provisions that are the functional equivalent of a limited partnership) that are not variable interest entities under FIN 46 and provides a new framework for addressing when a general partner in a limited partnership, or managing member in the case of a limited liability company, controls the entity. Under EITF 04-05, we may be required to consolidate certain investments, that are not variable interest entities, in which we hold a general partner or managing member interest. EITF 04-05 is effective after June 29, 2005 for new entities formed after such date and for existing entities for which the agreements are subsequently modified and is effective for our fiscal year beginning January 1, 2006 for all other entities. The adoption of EITF 04-05 did not have any impact on our financial statements as of September 30, 2005.

FAS 154 Accounting Changes and Error replace APB Opinion No. 20, and FASB Statement No. 3. Opinion 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting

principle. This Statement requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. When it is impracticable to determine the period-specific effects of an accounting change on one or more individual prior periods presented, this Statement requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings (or other appropriate components of equity or net assets in the statement of financial position) for that period rather than being reported in an income statement. When it is impracticable to determine the cumulative effect of applying a change in accounting principle to all prior periods, this Statement requires that the new accounting principle be applied as if it were adopted prospectively from the earliest date practicable.

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, 2005 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, 2004.

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ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. A majority of our debt is variable rate based on LIBOR and prime rate, and, therefore, affected by changes in market interest rates. Based on current operations, as of September 30, 2005, an increase/decrease in interest rates of 100 basis points on our variable rate debt would have resulted in a corresponding increase/decrease in interest actually incurred by us of approximately \$1.3 million in a fiscal year, a significant portion of which would be capitalized and included in cost of sales as homes are delivered. As a result, the effect on net income would be deferred until the underlying units settled and the interest was released to cost of goods sold. Changes in the prices of commodities that are a significant component of home construction costs, particularly lumber and concrete, may result in unexpected short-term increases in construction costs. Because the sales price of our homes is fixed at the time a buyer enters into a contract to acquire a home and we generally contract to sell our homes before construction begins, any increase in costs in excess of those anticipated at the time of each sale may result in lower consolidated operating income for the homes in our backlog. We attempt to mitigate the market risks of the price fluctuation of commodities by entering into fixed price contracts with our subcontractors and material suppliers for a specified period of time, generally commensurate with the building cycle. These contracts afford us the option to purchase materials at fixed prices but do not obligate us to any specified level of purchasing.

ITEM 4. CONTROLS AND PROCEDURES

As of the end of the period covered by this report, our Chairman and Chief Executive Officer and Chief Financial Officer have reviewed and evaluated the effectiveness of our disclosure controls and procedures, which included inquiries made to certain other employees. Based on their evaluation, our Chairman and Chief Executive Officer and Chief Financial Officer have each concluded that our disclosure controls and procedures are effective and sufficient to ensure that we record, process, summarize, and report information required to be disclosed by us in our periodic reports filed under the Securities Exchange Act within the time periods specified by the Securities and Exchange Commission's rules and forms. During the quarterly period covered by this report, there have not been any changes in our internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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

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

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PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

The Company, as manager of an affiliated entity, exercised its option rights to purchase the project acquisition, development and construction loans made for the benefit of North Shore. The Company subsequently issued a notice of default under the acquisition and development loan at maturity on September 30, 2005 and thereafter filed suit for collection of the loans against one of the individual guarantors under the loan on or about October 21, 2005. The claim amount as of the date of filing was \$1.8 million.

On August 11, 2005, the Company was served with a motion to compel arbitration resulting from an allegation of a loan brokerage fee being owed for placement of a \$147.0 million project loan for the Potomac Yard project. The claim in the base amount of \$2.0 million plus interest and costs is based on breach of contract and equitable remedies of unjust enrichment and quantum meruit. The claims have been denied by the Company.

Other than the foregoing, we are not currently subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to

legal actions currently pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows.

We believe that we have obtained adequate insurance coverage or rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

None.

ITEM 5. OTHER INFORMATION.

None.

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ITEM 6. EXHIBITS

<u>Exhibit Number</u>	<u>Exhibit</u>
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004)
3.2	Amended and Restated Bylaws (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004)
4.1	Specimen Stock Certificate (incorporated by reference to an exhibit to the Registrant's Amendment No. 6 to the Registration Statement on Form S-1 filed with the Commission on December 9, 2004 (No. 333-118193)
10.1	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.2	Agreement of Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.3	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.
10.4	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
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
31.3	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

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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 10, 2005

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

By: /s/ Bruce J. Labovitz
Bruce J. Labovitz

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (“**Agreement**”), dated as of June 23, 2005 (the “**Effective Date**”, as defined in Section 9.14 herein), is by and between ER Carter, L.L.C., a Delaware limited liability company (“**Seller**”), and Comstock Carter Lake, L.C., a Virginia limited liability company (“**Buyer**”).

ARTICLE I

PURCHASE AND SALE OF PROPERTY

Section 1.1 Sale.

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms, covenants and conditions set forth herein, all of Seller’s right, title and interest in and to the following property (collectively, the “**Property**”):

(a) Real Property. That certain real property commonly known as “Carter Lake Apartments” and located in Reston, Virginia as more particularly described in **Exhibit A** attached hereto and made a part hereof (the “**Land**”), together with (1) all improvements located thereon (the “**Improvements**”), (2) all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, including all mineral rights, development rights, air and water rights, and (3) all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land (collectively, the “**Real Property**”);

(b) Leases. All of the Seller’s interest in and to all of the Leases (as defined in Section 2.1 below), including Leases entered into after the date of this Agreement as permitted by this Agreement;

(c) Tangible Personal Property. All of the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located on and used exclusively in the operation, ownership or maintenance of the Real Property (collectively, the “**Tangible Personal Property**”), but specifically excluding from the Tangible Personal Property, except to the extent sold or assigned to Buyer pursuant to the provisions of this Agreement (1) any items of personal property owned by tenants under the Leases, (2) any items of personal property in Seller’s property management office, if any, located on the Real Property, (3) any items of personal property owned by third parties and leased to Seller, and (4) proprietary computer software, systems and equipment and related licenses used in connection with the operation or management of the Property. Seller has provided to Buyer all lists and inventories in Seller’s possession or control of such Tangible Personal Property; and

(d) Intangible Personal Property. To the extent assignable at no cost to Seller, all intangible personal property, if any, owned by Seller and related to the Real Property, including, without limitation: any trade names and trademarks associated with the Real Property (but specifically excluding the name “RREEF” and any derivatives thereof); any plans and specifications and other architectural and engineering drawings for the Improvements; any warranties; any Service Contracts (as defined in Section 2.1 below) and other contract rights

related to the Property (but only to the extent Seller’s obligations thereunder are expressly assumed by Buyer pursuant to the Assignment of Leases as defined in Section 8.3(a)(3) below); and any governmental permits, approvals and licenses (including any pending applications) (collectively, the “**Intangible Personal Property**”). Seller has provided to Buyer all lists and inventories in Seller’s possession or control of such Intangible Personal Property.

Section 1.2 Purchase Price.

(a) The purchase price of the Property is Thirty Six Million Two Hundred Fifty Thousand and No/100 Dollars (\$36,250,000.00) (the “**Purchase Price**”).

(b) The Purchase Price shall be paid as follows:

(1) Within five (5) business days after delivery to Buyer of the necessary approvals required by Section 9.23, Buyer shall deliver to Seller cash or other immediately available funds in the amount of Four Million and No/100 Dollars (\$4,000,000.00) (the “**Deposit**”). Upon delivery the Deposit shall be fully earned by Seller and shall be nonrefundable (except in the event of Seller’s willful refusal to close after Buyer’s full performance hereunder or as otherwise expressly provided in this Agreement) and shall not be subject to any Buyer closing condition.

The full amount of the Deposit paid to the Seller shall be credited against the Purchase Price at the Closing (as defined in Section 1.2(b)(2) below). **IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO SELLER’S WILLFUL FAILURE TO CONVEY THE PROPERTY TO SELLER, THEN BUYER MAY ELECT, AS BUYER’S SOLE AND EXCLUSIVE REMEDY, EITHER TO: (1) TERMINATE THIS AGREEMENT AND, WHERE EXPRESSLY PROVIDED HEREUNDER, RECEIVE A REFUND OF THE DEPOSIT IN WHICH EVENT NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER EXCEPT AS PROVIDED IN SECTIONS 6.1, 9.3 AND 9.9 BELOW, OR (2) ENFORCE SPECIFIC PERFORMANCE OF THIS AGREEMENT. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO ANY OTHER DEFAULT BY SELLER THEN BUYER MAY, AS BUYER’S SOLE AND EXCLUSIVE REMEDY, ENFORCE SPECIFIC PERFORMANCE OF THIS AGREEMENT. BUYER SHALL NOT HAVE ANY OTHER RIGHTS OR REMEDIES HEREUNDER AS A RESULT OF ANY DEFAULT BY SELLER PRIOR TO CLOSING, AND BUYER HEREBY WAIVES ANY OTHER SUCH REMEDY AS A RESULT OF A DEFAULT HEREUNDER BY SELLER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, AND BUYER FAILS TO CURE SUCH DEFAULT WITHIN FIVE (5) DAYS AFTER NOTICE FROM SELLER, THEN SELLER SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES, AS SELLER’S SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH SUCH DEFAULT. THE PARTIES HAVE AGREED THAT SELLER’S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER’S DEFAULT PRIOR TO CLOSING, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES**

EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 6.1, 9.3 AND 9.9.

INITIALS:

SELLER

BUYER

(2) The balance of the Purchase Price (plus or minus the prorations pursuant to Section 8.5 hereof) shall be paid to Seller in cash or by wire transfer of other immediately available funds at the consummation of the purchase and sale contemplated hereunder (the "Closing").

ARTICLE II

CONDITIONS

Section 2.1 Buyer's Conditions Precedent.

Subject to the provisions of Section 9.3 hereof, Buyer acknowledges that Seller has provided Buyer and its consultants and other agents and representatives with access to the Property to perform Buyer's inspections and review and determine the present condition of the Property. Buyer acknowledges that Seller has delivered or made available to Buyer at Seller's offices or at the Real Property copies of all "Due Diligence Materials" in Seller's possession, except as otherwise specifically provided herein. "Due Diligence Materials" shall include, but not be limited to, (i) tenant leases, any guaranties thereof and any other occupancy agreements, and all amendments and modifications thereof affecting the Property (collectively, the "Leases"), (ii) all contracts pertaining to the operation of the Property, including all management, leasing, service and maintenance agreements, and equipment leases (collectively, the "Service Contracts"), (iii) all other contracts, agreements, reports and other items and materials related to the Property, (iv) any environmental reports in Seller's possession and prepared by or on behalf of Seller, and (v) copies of building plans, if any, at the Property. Notwithstanding anything to the contrary contained herein, the Due Diligence Materials shall expressly exclude (i) those portions of the Due Diligence Materials that would disclose Seller's cost of acquisition of the Real Property, or cost of construction of the Improvements and related soft costs, (ii) any reports, presentations, summaries and the like prepared for any of Seller's boards, committees, partners or investors in connection with its consideration of the acquisition of the Real Property, construction of the Improvements or sale of the Property, (iii) any proposals, letters of intent, draft contracts or the like prepared by or for other prospective purchasers of the Property or any part thereof, (iv) Seller's internal memoranda, attorney-client privileged materials, internal appraisals, structural or physical inspection reports, and (v) any information which is the subject of a confidentiality agreement between Seller and a third party

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(the items described in clauses (i), (ii) (iii), (iv) and (v) being collectively referred to as the "Confidential Information"). Buyer's obligation to purchase the Property is conditioned upon title to the Property being conveyed in accordance with the provisions of Section 4.1(e) below. Anything provided in this Agreement to the contrary notwithstanding, the failure of the condition described in the preceding sentence, unless such failure results from the intentional act or omission of Seller, shall not be considered a default by Seller and shall not entitle Buyer to receive a return of the Deposit. The failure of Seller to obtain the necessary approvals as required by Section 9.23 below on or before July 29, 2005 shall entitle either party to terminate this Agreement, unless upon notice from Seller of its intention to terminate this Agreement, Buyer waives the approval requirements contain in Section 9.24.

ARTICLE III

BUYER'S EXAMINATION

Section 3.1 Representations and Warranties of Seller.

Subject to the disclosures contained in Schedule 1 attached hereto and made a part hereof (the "Disclosure Items"), matters contained in the Due Diligence Materials, and any matters of public record where the Property is located, Seller hereby makes the following representations and warranties with respect to the Property. Notwithstanding anything to the contrary contained herein or in any document delivered in connection herewith, Seller shall have no liability with respect to the Disclosure Items.

(a) Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(b) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and any related regulations.

(c) (i) This Agreement has been, and all documents executed by Seller which are to be delivered to Buyer at Closing will be, duly authorized, executed and delivered by Seller, and (ii) this Agreement, and all documents executed by Seller which are to be delivered to Buyer at Closing, do not and will not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or, to the best of Seller's knowledge, the Property is subject.

(d) The only Leases in force for the Property as of the Effective Date are set forth in a tenant list and rent roll, together with information regarding any security deposits held in connection with the same, and current delinquency information, attached hereto as **Exhibit B** and made a part hereof (the "Rent Roll"). To the best of Seller's knowledge, Seller has received

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no written notice of any default by Seller with respect to such Leases which has not been cured. To the best of Seller's knowledge, the updated Rent Roll delivered at closing shall include all of the Leases then in force for the Property.

(e) The only Service Contracts in effect for the Property as of the Effective Date are set forth in a list of Service Contracts attached hereto as **Exhibit G** and made a part hereof. To the best of Seller's knowledge, the updated list of Service Contracts delivered at closing shall include all of the Service Contracts then in effect for the Property.

(f) To the best of Seller's knowledge, as of the Effective Date there is no litigation or governmental proceeding (including, but not limited to any condemnation proceeding) pending or threatened with respect to the Property, or with respect to Seller which impairs Seller's ability to perform its obligations under this Agreement, except for any personal injury or property damage action for which there is adequate insurance coverage.

(g) To the best of Seller's knowledge, as of the Effective Date Seller has received no written notice from any governmental authority of any violation of any law applicable to the Property (including, without limitation, any Environmental Law as defined in Section 3.6(a)(2) below) that has not been corrected.

(h) To the best of Seller's knowledge, all of the Due Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are complete copies of such items in Seller's possession which are used by Seller in the operation of the Property.

(i) Seller has been, and as of the Closing Date shall be, duly organized, validly existing, and in good standing in the state in which it was formed, and, if so required to, qualified to do business in the state in which the Real Property is located.

(j) Other than Seller's Broker (as defined in Section 6.1 below), Seller has had no contact with any broker or finder with respect to the sale of the Property.

(k) Seller has not prepaid, more than thirty (30) days in advance, expenses for the Property other than real estate taxes and payments under Service Contracts which are not terminable without penalty or payment of a fee or other cost to Seller.

Each of the representations and warranties of Seller contained in this Section 3.1: (1) shall be true in all material respects as of the Effective Date or as of such other date as is expressly provided in such representation or warranty, subject in each case to (A) any Exception Matters (as defined below), (B) the Disclosure Items, and (C) other matters expressly permitted in this Agreement or otherwise specifically approved in writing; and (2) shall survive the Closing as provided in Section 3.3 below.

Section 3.2 No Liability for Exception Matters.

As used herein, the term "**Exception Matter**" shall refer to a matter which would make a representation or warranty of Seller contained in this Agreement untrue or incorrect as of a date

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prior to the Effective Date, or as of such other date as is expressly provided in such representation or warranty, and which is disclosed to Buyer in the Due Diligence Materials, the Disclosure Items, or otherwise, or is a matter of public record, or is otherwise discovered by Buyer before the Closing, including, without limitation, matters disclosed in any interviews with tenants, property managers or any other person. If Buyer first obtains knowledge of any material Exception Matter after the Effective Date and prior to the Closing Date and such Exception Matter was not contained in the Due Diligence Materials, the Disclosure Items or is not a matter of public record, Buyer's sole remedy shall be to terminate this Agreement on the basis thereof, upon written notice to Seller within the earlier of (a) five (5) days following Buyer's discovery of such Exception Matter or (b) the Closing Date, which ever occurs first, in which event the Deposit shall be returned to Buyer, unless within five (5) days after receipt of such notice or by the Closing Date, as the case may be, Seller notifies Buyer in writing that it elects to attempt to cure or remedy such Exception Matter, in which event there shall be no return of the Deposit unless and until Seller is unable to so cure or remedy prior to the Closing Date. Buyer's failure to give notice within five (5) days after it has obtained knowledge of a material Exception Matter shall be deemed a waiver by Buyer of such Exception Matter. Seller shall have no obligation to cure or remedy any Exception Matter (other than monetary liens as provided in Section 4.1(c) below), even if Seller has notified Buyer of Seller's election to attempt to cure or remedy any Exception Matter (except as specifically provided in Section 4.1(c) hereof), and, subject to Buyer's right to terminate this Agreement as set forth above, Seller shall have no liability whatsoever to Buyer with respect to any Exception Matters. Upon any termination of this Agreement, neither party shall have any further rights or obligations hereunder, except as provided in Sections 6.1, 9.3 and 9.9 below. If Buyer obtains knowledge of any Exception Matter, but nonetheless elects to proceed with the acquisition of the Property, Seller shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, covenant, representation or warranty contained in this Agreement or in any Other Documents (as defined in Section 9.19 below).

Section 3.3 Survival of Seller's Representations and Warranties of Sale.

The representations and warranties of Seller contained herein or in any Other Documents shall survive for a period of nine (9) months after the Closing. Any claim which Buyer may have against Seller for a breach of any such representation or warranty, whether such breach is known or unknown, which is not specifically asserted by written notice to Seller within such nine (9) month period shall not be valid or effective, and Seller shall have no liability with respect thereto.

Section 3.4 Seller's Knowledge.

For purposes of this Agreement and any document delivered at Closing, whenever the phrase "**to the best of Seller's knowledge**" or the "**knowledge**" of Seller or words of similar import are used, they shall be deemed to mean and are limited to the current actual knowledge only of Peter F. Feinberg and Robert Hanrahan, at the times indicated only, and not any implied, imputed or constructive knowledge of such individual(s) or of Seller or any Seller Related Parties (as defined in Section 3.7 below), and without any independent investigation or inquiry

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having been made or any implied duty to investigate, make any inquiries or review the Due Diligence Materials. Furthermore, it is understood and agreed that such individual(s) shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

Section 3.5 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

- (a) This Agreement and all documents executed by Buyer which are to be delivered to Seller at Closing do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.
- (b) Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
- (c) Buyer has been duly organized, is validly existing and is in good standing in the state in which it was formed, and, if required to do so, is qualified to do business in the state in which the Real Property is located. This Agreement has been, and all documents executed by Buyer which are to be delivered to Seller at Closing will be, duly authorized, executed and delivered by Buyer.
- (d) Omitted.
- (e) Buyer is not a party in interest with respect to any employee benefit or other plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of Section 4975(e)(1) of the Code, which is subject to ERISA or Section 4975 of the Code and which is an investor in Seller.
- (f) Other than Seller's Broker (as defined in Section 6.1 below), Buyer has had no contact with any broker or finder with respect to the Property.

Each of the representations and warranties of Buyer contained in this Section shall be deemed remade by Buyer as of the Closing and shall survive the Closing.

Section 3.6 Buyer's Independent Investigation.

- (a) Buyer hereby acknowledges and agrees that it has been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation:

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- (1) All matters relating to title and survey, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.
 - (2) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the Improvements and within each tenant space therein, the structure, seismic aspects of the Property, the foundation, roof, paving, parking facilities, utilities, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property has included an examination for the presence or absence of Hazardous Materials, as defined below. For purposes of this Agreement, "**Hazardous Materials**" shall mean inflammable explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and any other applicable federal, state or local laws (collectively, "**Environmental Laws**").
 - (3) Any easements and/or access rights affecting the Property.
 - (4) The Leases and all matters in connection therewith, including, without limitation, the ability of the tenants to pay the rent and the economic viability of the tenants.
 - (5) The Service Contracts and any other documents or agreements of significance affecting the Property.
 - (6) All other matters of material significance affecting the Property, including, but not limited to, the Due Diligence Materials.

- (b) Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that all materials, data and information delivered by Seller to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that any reliance on or use of such materials, data or information by Buyer shall be at the sole risk of Buyer, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Buyer shall be for general informational purposes only, (b) Buyer shall not have any right to rely on any such report delivered by Seller to Buyer, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Buyer with respect thereto, (c) neither Seller, any

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affiliate of Seller nor the person or entity which prepared any such report delivered by Seller to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such report and (d) the failure to deliver any report as to the environmental or other condition of the Property, including any proposal for work at the Property which was not performed by Seller, shall not be actionable by Buyer under this Agreement or otherwise.

(c) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.1 ABOVE AND ELSEWHERE IN THIS AGREEMENT, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ANY SELLER RELATED PARTIES, OR THEIR AGENTS OR BROKERS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, seismic aspects of the Property, foundation, roof, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, the square footage within the Improvements and within each tenant space therein, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property’s use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the Real Property, (ix) the condition of title to the Property, (x) the value, economics of the operation or income potential of the Property, or (xi) any other fact or condition which may affect the Property, including without limitation, the physical condition, value, economics of operation or income potential of the Property. In addition, except as expressly provided herein to the contrary, Seller shall have no legal obligation to apprise Buyer regarding any event or other matter involving the Property which occurs after the Effective Date or to otherwise update the Due Diligence Items.

Section 3.7 Release.

Without limiting the above, and subject to the representations and warranties of Seller contained in Section 3.1 hereof and any other matters which expressly survive Closing under this Agreement, Buyer, as of the date of Closing, on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges, Seller, Seller’s affiliates, Seller’s investment advisor, the partners, trustees, beneficiaries, shareholders, members, managers, directors, officers, employees and agents and representatives of each of them, and their respective heirs, successors, personal representatives and assigns (collectively, the “**Seller**”

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Related Parties”), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, court costs and attorneys’ fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and the presence of Hazardous Materials on, under or about the Property, or (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Law and any other federal, state or local law.

Section 3.8 Survival.

The provisions of this Article III shall survive the Closing subject to the limitations and qualifications contained in such provisions and in Sections 9.11 and 9.19 hereof.

ARTICLE IV

TITLE

Section 4.1 Conditions of Title.

(a) Buyer has obtained (i) an updated preliminary title report or commitment (the “**Title Report**”) from Premier Title, 8221 Old Courthouse Road #300, Vienna, Virginia 22182 (the “**Title Company**”) and (ii) any plat or survey of the Property or any update thereto from a duly licensed surveyor (the “**Survey**”) desired by Buyer or necessary to support the issuance of the Title Policy (as defined in Section 4.2 below). If Buyer has not already done so, Buyer shall provide to Seller a copy of (x) the Title Report, together with copies of all underlying documents relating to title exceptions referred to therein and (y) the Survey, which shall be certified to the Title Company, Buyer and Seller. Buyer shall pay the entire cost of the Title Report and the Survey. If Closing does not occur, Buyer shall, if Seller so requests, assign to Seller all contract rights Buyer has with the surveyor (to the extent that such assignment is permitted under Buyer’s contract with the surveyor) and in such event Seller shall reimburse Buyer for the cost of the Survey.

(b) Within one (1) business day after the Effective Date (the “**Title Review Date**”), Buyer shall furnish Seller with a written statement of objections, if any, to conditions to the title to the Property which were not disclosed in the title report and survey previously delivered to Buyer by Seller, including, without limitation, any objections to any matter first disclosed by the Survey (collectively, “**Objections**”). In the event the Title Company amends or updates the Title Report after the Title Review Date (each, a “**Title Report Update**”), Buyer shall furnish Seller with a written statement of Objections to any matter first raised in a Title Report Update within three (3) business days after its receipt of such Title Report Update (each, a “**Title Update Review Period**”). Should Buyer fail to notify Seller in writing of any Objections in the Title Report prior to the Title Review Date, or to any matter first disclosed in a Title Report Update prior to the Title Update Review Period, as applicable, Buyer shall be

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deemed to have approved such matters which shall be considered to be “**Conditions of Title**” as defined in Section 4.1(e) below.

(c) If Seller receives a timely Objection in accordance with Section 4.1(b) (“**Buyer’s Notice**”), Seller shall have the right, but not the obligation, within five (5) business days after receipt of Buyer’s Notice (“**Seller’s Response Period**”), to elect to attempt to cure any such matter upon written notice to Buyer (“**Seller’s Response**”), and may extend the Closing Date for up to fifteen (15) business days to allow such cure. If Seller does not give any Seller’s Response, Seller shall be deemed to have elected not to attempt to cure any such matters. Notwithstanding the foregoing, Seller shall in any event be obligated to cure all matters or items (i) that are mortgage or deed of trust liens or security interests against the Property, in each case granted by Seller (and not tenants of the Property or other third parties), (ii) real estate tax liens, other than liens for taxes and assessments not yet delinquent and (iii) that have been voluntarily placed against the Property by Seller (and not tenants of the Property or other third parties) after the date of this Agreement and that are not otherwise permitted pursuant to the provisions hereof. Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of such liens, and may cure any Objection by causing the Title Company to insure against collection of the same out of the Property.

(d) If Seller elects (or is deemed to have elected) not to attempt to cure any Objections related to defects in title caused by the Seller and raised in any Buyer’s Notice timely delivered by Buyer to Seller pursuant to Section 4.1(b), or if Seller notifies Buyer that it elects to attempt to cure any such Objection but then does not for any reason effect such cure on or before the Closing Date as it may be extended hereunder, then Buyer, as its sole and exclusive remedy, shall have the option of terminating this Agreement by delivering written notice thereof to Seller within three (3) business days after (as applicable) (i) its receipt of Seller’s Response stating that Seller will not attempt to cure any such Objection or (ii) the expiration of Seller’s Response Period if Seller does not deliver a Seller’s Response or (iii) Seller’s failure to cure by the Closing Date (as it may be extended hereunder) any Objection which Seller has previously elected to attempt to cure pursuant to a Seller’s Response. In the event of such a termination, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If no such termination notice is timely received by Seller hereunder, Buyer shall be deemed to have waived all such Objections in which event those Objections shall become “**Conditions of Title**” under Section 4.1(e). If the Closing is not consummated for any reason other than Seller’s default hereunder, Buyer shall be responsible for any title or escrow cancellation charges.

(e) At the Closing, Seller shall convey title to the Property to Buyer by deed in the form of Exhibit C attached hereto (the “**Deed**”) subject to no exceptions other than:

- (i) Interests of tenants in possession under the Leases;
- (ii) Matters created by, or with the written consent of, Buyer;
- (iii) Non-delinquent liens for real estate taxes and assessments; and

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- (iv) Any exceptions disclosed by the Title Report and any Title Report Update which is approved or deemed approved by Buyer in accordance with this Article IV above, and any other exceptions to title disclosed by the public records or which would be disclosed by an inspection and/or survey of the Property.

All of the foregoing exceptions shall be referred to collectively as the “**Conditions of Title.**” Subject to the terms and conditions contained elsewhere in this Agreement, by acceptance of the Deed and the Closing of the purchase and sale of the Property, (x) Buyer agrees it is assuming for the benefit of Seller all of the obligations of Seller with respect to the Conditions of Title from and after the Closing, and (y) Buyer agrees that Seller shall have conclusively satisfied its obligations with respect to title to the Property. The provisions of this Section shall survive the Closing.

Section 4.2 Evidence of Title.

Delivery of title in accordance with the foregoing shall be evidenced by the willingness of the Title Company to issue, at Closing, its Owner’s ALTA Policy of Title Insurance in the amount of the Purchase Price showing title to the Real Property vested in Buyer, subject to the Conditions of Title (the “**Title Policy**”). The Title Policy may contain such endorsements as reasonably required by Buyer provided that the issuance of such endorsements shall not be a condition to Buyer’s obligations hereunder. Buyer shall pay the costs for all such endorsements. Seller shall have no obligation to provide any indemnity or agreement to the Title Company or Buyer to support the issuance of the Title Policy or any such endorsements other than an affidavit as to the existing tenants of the Property and any ongoing construction work at the Property.

ARTICLE V

RISK OF LOSS AND INSURANCE PROCEEDS

Section 5.1 Minor Loss.

Buyer shall be bound to purchase the Property for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any damage to the Property or destruction of any improvements thereon or condemnation of any portion of the Property, provided that: (a) the cost to repair any such damage or destruction does not exceed Four Million Dollars (\$4,000,000), in the estimate of an architect or contractor selected by Seller and reasonably acceptable to Buyer or in the case of a condemnation, the diminution in the value of the remaining Property as a result of a partial condemnation is not material (as defined in Section 5.2 below) and (b) upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by Seller toward the collection of such proceeds or awards and the restoration or repair of the Property (the nature of which restoration or repairs, but not the right of Seller to effect such restoration or repairs, shall be subject to the approval of

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Buyer, which approval shall not be unreasonably withheld, conditioned or delayed). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Buyer, except to the extent needed to reimburse Seller for sums expended to collect such proceeds or awards or to repair or restore the Property (subject to the approval of Buyer, not to be unreasonably withheld, conditioned or delayed provided no such approval shall be

required in the case of repairs which the Seller must make in order to comply with applicable laws, resolve an emergency condition, or avoid default under an agreement to which Seller is a party), and Seller shall retain the rights to such proceeds and awards to such extent.

Section 5.2 Major Loss.

If the cost to repair the damage or destruction as specified above exceeds Four Million Dollars (\$4,000,000) in the estimate of an architect or contractor selected by Seller and reasonably acceptable to Buyer or the diminution in the value of the remaining Property as a result of a condemnation is material (as hereinafter defined), then Buyer may, at its option to be exercised within five (5) days of Seller's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement by delivering written notice thereof to Seller or fails to give Seller notice within such five (5) day period that Buyer will proceed with the purchase, then this Agreement shall terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If Buyer elects to proceed with the purchase, then upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by Seller toward the collection of such proceeds or awards or to restoration or repair of the Property (the nature of which restoration or repairs, but not the right of Seller to effect such restoration or repairs, shall be subject to the approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Buyer, except to the extent needed to reimburse Seller for sums expended to collect such proceeds or awards or to repair or restore the Property (subject to the approval of Buyer, not to be unreasonably withheld, conditioned or delayed provided no such approval shall be required in the case of repairs which the Seller must make in order to comply with applicable laws, resolve an emergency condition, or avoid default under an agreement to which Seller is a party), and Seller shall retain the rights to such proceeds and awards to such extent. A condemnation shall be deemed material if any portion of any net rentable area of the Property, or any parking is taken which would cause the Property to be in violation of any existing laws or regulations, including but not limited to, zoning regulations, or the existing access to the Property is materially and adversely affected, permanently.

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ARTICLE VI

BROKERS AND EXPENSES

Section 6.1 Brokers.

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction except for CB Richard Ellis, Inc. ("**Seller's Broker**"). At Closing, Seller shall pay the commission due, if any, to Seller's Broker, which shall be paid pursuant to a separate agreement between Seller and Seller's Broker. If any other person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "**Indemnified Party**") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, court costs and reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 6.1 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

Section 6.2 Expenses.

Except as expressly provided in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

LEASES AND OTHER AGREEMENTS

Section 7.1 Leasing.

During the period between the Effective Date and the delivery of the Deposit, Seller shall continue to manage and lease the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property. Provided, however, Seller shall have no obligation to lease or market the Property and Seller shall have no liability for Leases which are terminated either by agreement between the Seller and the applicable tenant or as a result of a tenant's default under its Lease.

During the period between the delivery of the Deposit and the Closing Date, Seller hereby agrees to (to the extent permitted by applicable law): (i) not enter into any new Lease, renew any existing Lease, or modify any existing Lease for a unit at the Property unless (a) (1) the term of such Lease expires on or before the dates specified on **Exhibit F** attached hereto for each individual building and (2) the Lease terminates by its express terms on a date certain; and (3) the Lease does not contain any autorenewal or non-termination provisions that benefit the Tenant; or (b) Buyer otherwise waives the requirements of this Section in writing with respect to all or certain tenants; and (ii) cooperate with Buyer in any submissions to governmental authorities relating to Purchaser's intended use and development of the Property. Upon Buyer's request, but only after the Deposit has been made, Seller shall deliver a notice of termination (the "120 Day Notice") to tenants specified by Buyer, provided, however, that Seller shall have no obligation to send the 120 Day Notice if the sending of the 120 Day Notice will result in the Lease being terminated prior to the dates specified on **Exhibit F** or the date the Lease expires according to its own terms (without reference to any tenant holdover or automatic renewal provisions contained in such Lease). In addition, Seller and Buyer agree that Buyer shall have

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the right to cause the Seller to send 120 Day Notices with respect to Leases that expire more than one hundred twenty (120) days after the date of the 120 Day Notice, provided that such notices specify that the Lease shall not be terminated until the later of (x) one hundred twenty (120) days after the date of the 120 Day Notice; and (y) the date the Lease expires according to its own terms (without reference to any tenant holdover or automatic renewal provisions

contained in such Lease). Seller and Purchaser shall jointly draft the 120 Day Notice, which may contain additional information regarding Purchaser's intended plans with respect to the Property. Commencing on the date which is fifteen (15) days after delivery of the Deposit, and monthly thereafter until the Closing Date, Buyer shall pay directly to Seller the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (a "Vacancy Payment"). Each installment of the Vacancy Payment shall be nonrefundable and shall be fully earned by Seller when paid. The Vacancy Payment shall not be credited against the Purchase Price. Buyer's failure to pay an installment of the Vacancy Payment when due shall be a material default under this Agreement and in the event of such default, in addition to any other remedies available to Seller, Seller may cease to comply with the obligations of this Section 7.1.

During the period between the Effective Date and the Closing Date, if Seller becomes aware that a Unit is going to become vacant for the buildings located at 11011, 11013, 11015, 11017 and 11019 Becontree Lake Drive on a date between the Effective Date and the Closing Date (provided that nothing contained in this paragraph shall affect the Seller's obligations with respect to the Lease termination dates set forth in Exhibit F.), then Seller shall give Buyer written notice of such vacancy, describing the Lease, the rent and the terms and conditions of the Lease. All terms and conditions shall be substantially similar to those offered to prospective tenants at the Property. Buyer shall have four (4) business days from the receipt of such notice to agree to lease the unit that will become vacant for the rent and upon the terms and conditions specified in such notice by giving written notice to Seller. If Buyer exercises its rights hereunder to enter into a Lease, the parties shall promptly execute a Lease for said unit, and Buyer and Seller shall thereafter comply with each of their respective obligations under the Lease until the Closing Date (and thereafter if Closing does not occur). If Buyer does not exercise its rights hereunder to enter into a Lease, Seller may enter into a Lease for that Unit with a third party on substantially the same terms as were offered to Buyer and otherwise in compliance with the requirements of this Agreement regarding leasing. All amounts paid by Buyer to Seller under Leases entered into pursuant to this paragraph shall be credited to the Purchase Price at Closing. The provisions of this paragraph shall survive the termination of this Agreement, unless such termination results from a default by Seller under this Agreement.

During the period between the Effective Date and the Closing Date, on a monthly basis Seller shall deliver to Buyer copies of the current rent roll for the Property together with copies of any newly executed Leases or modifications or renewals of Leases. Such rent roll shall be the actual rent roll used by Seller in its operation of the Property.

Section 7.2 Leasing Commissions and Concessions.

With respect to any new Lease entered into by Seller between the Effective Date and the delivery of the Deposit, and with respect to any renewal, extension or modification of any Lease permitted pursuant to Section 7.1, all leasing commissions, legal fees or other expenses or grants

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of any free rent period or other concessions shall be prorated over the term of the lease, renewal or extension, based on the economic benefit to the parties hereto occurring before or after the Closing. Seller's share of such costs shall be based on the portion of economic benefit of the lease term, renewal or extension, as the case may be, occurring prior to Closing, which amount shall be a credit against the Purchase Price, and Buyer shall be responsible for the remainder of such costs. Buyer shall reimburse Seller for all such costs incurred by Seller to the extent Buyer is obligated therefor pursuant to the provisions hereof. Pursuant to the Assignment of Leases Buyer shall assume any then outstanding obligations with respect to such leasing commissions and concessions. The provisions of this Section shall survive the Closing.

Section 7.3 Tenant Notices.

At the Closing, Seller shall furnish Buyer with a signed notice to be given to each tenant of the Property. The notice shall disclose that the Property has been sold to Buyer, that, after the Closing, all rents should be paid to Buyer and that Buyer shall be responsible for the tenant's security deposit. The form of the notice shall be otherwise reasonably acceptable to the parties. Buyer covenants to deliver said notices to each tenant as soon as reasonably possible after Closing. This provision shall expressly survive Closing.

Section 7.4 Maintenance of Improvements and Operation of Property; Removal of Tangible Personal Property.

Seller agrees to keep its customary property insurance covering the Property in effect until the Closing (provided, however, that the terms of any such coverage maintained in blanket form may be modified as Seller deems necessary). Seller shall maintain all Improvements substantially in their present condition (ordinary wear and tear, casualty and condemnation excepted), and shall operate and manage the Property in a manner consistent with Seller's practices in effect prior to the Effective Date (except as provided in Section 7.1 above), provided that Seller shall in no event be obligated to make any capital expenditures or repairs other than those that are necessary to maintain the habitability of, or emergency repairs to, units at the Property which are occupied under then current Leases. Seller shall not remove any Tangible Personal Property, except as may be required for necessary repair or replacement, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

Section 7.5 Service Contracts.

Within five (5) business days after the Effective Date, Buyer will advise Seller in writing which Service Contracts Buyer will assume and which Service Contracts Buyer requests be terminated at Closing, provided Seller shall have no obligation to terminate, and Buyer shall be obligated to assume, any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee or other cost to Seller. Seller shall deliver at Closing notices of termination of all Service Contracts that are not so assumed and Buyer shall be responsible for any charges applicable to periods commencing with the Closing. Notwithstanding the foregoing, Seller shall terminate, as of the Closing Date, all existing management and brokerage agreements with respect to the Property.

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During the period between the Effective Date and the Closing Date, on a monthly basis Seller shall deliver to Buyer a current list of Service Contracts along with copies of any Service Contracts which first appear on such list. Such list shall be the actual list used by Seller in its operation of the Property. Seller shall have no obligation to deliver such list during any month when such list would contain no changes from the list attached to this Agreement as Exhibit G or another list of Service Contracts delivered to Buyer pursuant to this Section 7.5.

CLOSING AND ESCROW

Section 8.1 Intentionally Omitted.**Section 8.2 Closing.**

The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made before 11:00 a.m. prevailing Eastern time at the offices of the Title Company or as otherwise mutually agreed on December 10, 2005, provided that Buyer shall have the automatic right to extend the Closing Date to January 10, 2006 upon written notice to Seller on or before November 30, 2005, or such other earlier date and time as Buyer and Seller may mutually agree upon in writing (the "Closing Date"). Buyer shall have the right to accelerate the Closing Date to any earlier date upon five (5) business days notice to Seller. Except as expressly provided herein, such date and time may not be extended without the prior written approval of both Seller and Buyer.

Section 8.3 Deposit of Documents.

(a) At or before the Closing, Seller shall deposit into escrow the following items:

(1) the duly executed and acknowledged Deed in the form attached hereto as **Exhibit C** conveying the Real Property to Buyer subject to the Conditions of Title;

(2) four (4) duly executed counterparts of the Bill of Sale in the form attached hereto as **Exhibit D** (the "Bill of Sale");

(3) four (4) duly executed counterparts of an Assignment and Assumption of Leases, Service Contracts, Warranties and Other Intangible Property in the form attached hereto as **Exhibit E** pursuant to the terms of which Buyer shall assume all of Seller's obligations under the Leases, Service Contracts, and other documents and agreements affecting the Property (the "Assignment of Leases");

(4) an affidavit pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and

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(5) an updated Rent Roll, certified to Buyer.

(b) At or before Closing, Buyer shall deposit into escrow the following items:

(1) immediately available funds necessary to close this transaction, including, without limitation, the Purchase Price (less the Deposit and interest thereon net of investment fees, if any) and funds sufficient to pay Buyer's closing costs and share of prorations hereunder;

(2) four (4) duly executed counterparts of the Bill of Sale; and

(3) four (4) duly executed counterparts of the Assignment of Leases.

(c) Seller and Buyer shall each execute and deposit a closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Title Company as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

(d) On the Closing Date, Seller shall deliver or make available at the Property to Buyer: originals of the Leases to the extent in Seller's possession, or copies of any Leases not in Seller's possession together with an affidavit from Seller as to such copies being true and complete copies of the applicable Lease(s), copies of the tenant correspondence files (for the three (3) most recent years of Seller's ownership of the Property only and the current year), and originals of any other items which Seller was required to furnish Buyer copies of or make available at the Property pursuant to Section 2.1 above, to the extent in Seller's possession, except for Seller's general ledger and other internal books or records which shall be retained by Seller. Seller shall deliver possession of the Property to Buyer as required hereunder and shall deliver to Buyer or make available at the Property the keys to the Property on the Closing Date.

Section 8.4 Omitted**Section 8.5 Prorations.**

(a) Rents and any additional charges and expenses payable by tenants under Leases, all as and when actually collected; real property taxes and assessments; water, sewer and utility charges; amounts payable under any Service Contracts or other agreements or documents; annual permits and/or inspection fees (calculated on the basis of the period covered); and any other expenses of the operation and maintenance of the Property (including, without limitation, expenses prepaid by Seller and expenses already paid by Seller but which are being amortized over time by Seller and with respect to which Seller shall receive a credit at Closing in the amount of the prepaid or unamortized portion thereof), shall all be prorated as of 11:59 p.m. on the day immediately prior to Closing (i.e., Buyer is entitled to the income and responsible for the expenses of the day of Closing), on the basis of a 365-day year. Buyer shall reimburse Seller for

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All rents collected after the Closing shall be applied and paid as provided in this Section 8.5(a). If a tenant shall specifically designate a payment as being attributable to, or if it is readily ascertainable that a payment received from a tenant is attributable to a specific period of time or for a specific purpose, including, without limitation, for operating expenses or real estate tax payments which were not paid or were underpaid by such tenant or for reimbursement for work performed by Seller on the tenant's premises, such payment shall be so applied. If there is no such designation or if not so readily ascertainable, any payment received from a tenant after Closing shall be deemed a payment of rent due after the Closing until the tenant is current on rents and sums due under the applicable Lease on or after the Closing, and then such payments shall be paid to Seller to the extent of any rent or other sums owing to Seller for periods prior to Closing. Buyer shall use reasonable efforts to collect such rents and other sums owing to Seller. Seller retains the right to collect any such rents and other sums from tenants after Closing; provided, however, that Seller shall have no right to cause any such tenant to be evicted or to exercise any other landlord remedy against such tenant other than to sue for collection.

The amount of any cash security deposits held by Seller under Leases shall be credited against the Purchase Price (and Seller shall be entitled to retain such cash security deposits). Seller shall receive credits at Closing for the amount of any utility or other deposits with respect to the Property. Buyer shall cause all utilities to be transferred into Buyer's name and account at the time of Closing.

Seller and Buyer hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date or in the case of rents or other charges received from tenants, such amount have not been collected, then the same shall be calculated as soon as reasonably practicable after the Closing Date or the date such amounts have been collected, and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall pay said sum to the other party within thirty (30) days thereafter. Any amounts not paid within such thirty (30) day period shall bear interest from the date actually received by the payor until paid at the greater of (i) the rate of ten percent (10%) per annum or (ii) the prime rate (or base rate) reported from time to time in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger United States money center commercial banks plus two (2) percent. Upon request of either party, the parties shall provide a detailed and accurate written statement signed by such party certifying as to the payments received by such party from tenants from and after Closing and to the manner in which such payments were applied, and shall make their books and records available for inspection by the other party during ordinary business hours upon reasonable advance notice.

(b) All title charges (including endorsements and reinsurance charges), survey costs, escrow or closing fees, sale and transfer taxes, recording fees or taxes, documentary taxes and similar taxes and fees imposed upon the transfer of the Property by applicable law shall be paid by Buyer at Closing. Any escrow fees shall be split equally between Seller and Buyer. The parties will execute and deliver any required transfer or other similar tax declarations to the appropriate governmental entity at Closing.

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(c) Omitted

(d) The provisions of this Section 8.5 shall survive the Closing.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, and such notices shall be addressed as follows:

To Buyer: Christopher Clemente
Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 510
Reston, Virginia 20190
Fax No.: (703) 760-1520

Jubal Thompson, Esquire
Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, Suite 510
Reston, Virginia 20190
Fax No.: (703) 760-1520

with a copy to: Joseph Edward Bankert, Esquire
Bankert & Associates, P.C.
3025 Hamaker Court, #501
Fairfax, Virginia 22031
Fax No.: (703) 876-4628

To Seller: ER Carter, L.L.C.
c/o RREEF America L.L.C.
280 Park Avenue, 40th Floor
New York, New York 10017
Attention: Peter F. Feinberg
Fax No.: 212-454-6616

with a copy to: Seyfarth Shaw LLP
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication sent as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Any notice sent by the attorney representing a party, shall qualify as notice under this Agreement.

Section 9.2 Entire Agreement.

This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

Section 9.3 Entry and Indemnity.

Notwithstanding the fact that Buyer has no due diligence or inspection contingency under this Agreement, Seller shall permit Buyer to enter the Property in accordance with the terms of this Section 9.3 solely for purposes of planning and preparing for Buyer's ownership of the Property and for purposes of performance and design testing or inspection solely related to such planning and preparation. In connection with any entry by Buyer, or its agents or employees onto the Property, Buyer shall give Seller reasonable advance notice of such entry and the nature and scope of any testing or inspection to be performed in connection with such entry and shall conduct such entry and any inspections in connection therewith (a) during normal business hours, (b) so as to minimize, to the greatest extent possible, interference with Seller's operation of the Property and the use and enjoyment of the Property by Seller's tenants, (c) in compliance with all applicable laws, and (d) otherwise in a manner reasonably acceptable to Seller. Notwithstanding anything to the contrary contained herein, Buyer shall not contact any governmental authority or any tenant without first notifying Seller of the nature of such contact, and Seller, at Seller's election, shall be entitled to have a representative participate in any telephone or other contact made by Buyer to a tenant and present at any meeting by Buyer with a tenant. Buyer shall maintain public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its agents or employees arising out of any entry to the Property pursuant to the provisions hereof, and Buyer shall provide Seller with evidence of such insurance coverage upon request by Seller. Buyer shall indemnify and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by Buyer, its agents or employees. The provisions of this Section 9.3 shall be in addition to any access or indemnity agreement previously executed by Buyer in connection with the Property; provided that in the event of any inconsistency between this Section 9.3 and such other agreement, the provisions of this Section 9.3 shall govern. The foregoing indemnity shall survive beyond the

Closing, or, if the sale is not consummated, beyond the termination of this Agreement. Buyer's right of entry, as provided in this Section 9.3, shall continue up through the date of Closing.

Section 9.4 Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein.

Section 9.5 Attorneys' Fees.

If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, whether prior to or after Closing, or if any party defaults in payment of its post-Closing financial obligations under this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 9.6 Assignment.

Except as provided herein, Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of Seller in Seller's sole discretion. Notwithstanding the foregoing, Buyer shall have the right, without the necessity of obtaining Seller's consent but with prior written notice to Seller, to assign its right, title and interest in and to this Agreement to a separate account, or an entity owned by a separate account, of Buyer, or to a single purpose entity, whether existing or not as of the Effective Date, at any time before the Closing Date. Without limiting and notwithstanding the above, in no event shall Buyer have the right to assign its rights or obligations hereunder to any party which could not make the representation and warranty contained in subsection 3.5(e) above, and in connection with any assignment pursuant to the terms hereof, the assignee shall reconfirm in a written instrument acceptable to Seller and delivered to Seller prior to the effective date of the assignment said representation and warranty as applied to the assignee and that all other terms and conditions of this Agreement shall apply to such assignee. Subject to the provisions of this Section, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 9.8 Governing Law.

Section 9.9 Confidentiality and Return of Documents.

Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, Seller shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties. The provisions of this paragraph shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Due Diligence Materials and other documents and copies obtained by Buyer from Seller or Seller's agents in connection with the purchase of the Property hereunder.

Section 9.10 Interpretation of Agreement.

The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

Section 9.11 Limited Liability.

The obligations of Seller under this Agreement and under all of the Other Documents are intended to be binding only on the property of Seller and shall not be personally binding upon, nor shall any resort be had to, the private properties of any Seller Related Parties.

Section 9.12 Amendments.

This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

Section 9.13 No Recording.

Neither this Agreement or any memorandum or short form thereof may be recorded by Buyer.

Section 9.14 Drafts Not an Offer to Enter into a Legally Binding Contract.

The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, and both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission). The last date upon which either Seller or Buyer executes and delivers a counterpart of this Agreement to the other shall be the "Effective Date" of this Agreement, and such date shall be inserted in the first paragraph of this Agreement.

Section 9.15 ERISA.

Without limiting Buyer's representation and warranty in Section 3.5(e) above, within ten (10) days after the Effective Date, Buyer shall furnish to Seller all information regarding Buyer, its affiliates and the shareholders, members, investors or partners of each of them and any permitted assignees of Buyer hereunder (collectively, the "Buyer Related Parties") as Seller requests in order to enable Seller to determine to Seller's sole satisfaction that Buyer's representation and warranty contained in Section 3.5(e) of this Agreement is true and correct. Buyer represents and warrants and covenants to Seller that there will not be any change in any such information regarding Buyer or the Buyer Related Parties prior to or on the Closing. In the event any such information or change in Seller's reasonable judgment makes this transaction a sale to a party-in-interest, Seller may terminate this Agreement without liability on the part of Seller or Buyer (provided such change did not occur as a result of a default by Buyer), other than Buyer's indemnity contained in Section 9.3 hereof and the obligations of Buyer contained in Sections 6.1 and 9.9 hereof, and the Deposit will be returned to Buyer.

Section 9.16 No Partnership.

The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

Section 9.17 No Third Party Beneficiary.

The provisions of this Agreement are not intended to benefit any third parties.

Section 9.18 Omitted.

Section 9.19 Limitation on Liability.

Notwithstanding anything to the contrary contained herein, after the Closing: (a) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Buyer (including, without limitation, for any breach of any

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representation, warranty and/or covenant by Seller) under this Agreement or any documents executed pursuant hereto or in connection herewith, including, without limitation, the Deed, the Bill of Sale, the Assignment of Leases and any Seller estoppel certificate (collectively, the “**Other Documents**”, shall under no circumstances whatsoever exceed Seven Hundred Fifty Thousand Dollars (\$750,000); and (b) no claim by Buyer alleging a breach by Seller of any representation, warranty and/or covenant of Seller contained herein or in any of the Other Documents may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation, warranty and/or covenant is for an aggregate amount in excess of Fifteen Thousand Dollars (\$15,000) (the “**Floor Amount**”), in which event Seller’s liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (a) above; provided, however, that if any such final judgment is for an amount that is less than or equal to the Floor Amount, then Seller shall have no liability with respect thereto.

Section 9.20 FIN 46 Language.

Buyer hereby represents that it is subject to the requirements of Interpretation No. 46 (“FIN 46”), *Consolidation of Variable Interest Entities*, an authoritative accounting pronouncement issued by the Financial Accounting Standards Board. Seller agrees to timely cooperate in all material respects with the Buyer’s obligation to comply with the financial reporting requirements of FIN 46, including providing Seller’s financial statements (i.e., balance sheet, income statement and statement of cash flows) and certain other information such as, but not limited to, asset values, development stage, and cost estimation, provided, however, that the foregoing obligations of Seller shall be limited to providing such information or documentation as may be in the possession of, or reasonably obtainable by, Seller, its property manager or accountants, at no cost to Seller, and in the format that Seller (or its property manager or accountants) have maintained such information.. Buyer agrees that such information shall be used only to prepare financial statements in accordance with generally accepted accounting principles to comply with Buyer’s legal financial reporting obligations to the Securities and Exchange Commission and other legally mandated uses of Buyer’s audited financial statements. Such information shall not be distributed individually to any other third party nor used for any other purposes. Financial information provided will be consolidated with other information from multiple entities and will not be identified in any of Buyer’s public financial reports on an individual or specific attribution basis. The Information will be collected, controlled and kept confidential by the Buyer’s Chief Accounting Officer, or his designee, and will not be shared or distributed to the Buyer’s operation personnel in any form, oral or written.

Section 9.21 Survival.

Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

Section 9.22 Survival of Article IX.

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Section 9.23 The provisions of this Article IX shall survive the Closing.

Section 9.24 Storm Water Management Facility.

It is a condition to Buyer’s obligation to proceed to Closing hereunder that Seller shall perform its obligations set forth in this Section 9.24. Buyer and Seller acknowledge that the spillway that previously contained the storm water management facility located on the Property has been breached, that the governmental authorities with jurisdiction over the storm water management facility are aware of the breach, and that said breach could be construed by the governmental authorities as a default under that certain Storm Water Detention Agreement dated December 7, 1976 and recorded in the land records of Fairfax County, Virginia in Deed Book 4539, page 378 (the “SWM Agreement”), as well as a violation of law. Seller agrees, on or prior to July 29, 2005, to obtain approval of the appropriate governmental authorities to permit the creation of a landscaped wetlands area as a cure for any default under the SWM Agreement and as a remedy for any outstanding the violation of law as well as approval of the scope of work to be performed. Seller shall cooperate with Buyer to allow Buyer to review and comment on Seller’s plan to remedy the default and cure the violation, and Seller shall allow Buyer to attend all meetings with the appropriate governmental authorities and to review all correspondence prior to being sent to the appropriate governmental authorities, provided that the nature and scope of the cure shall be in Seller’s sole discretion. If such approval has not been obtained on or before July 29, 2005, either party may terminate this Agreement by written notice to the other, in which event neither party shall have any obligation to the other except for those obligations contained herein which by their terms survive contract termination, provided that upon notice from Seller of its intention to terminate, Buyer may waive Seller’s requirement to obtain the necessary governmental approvals. (In the event of such waiver, Seller agrees to permit Buyer to assume the lead role in working towards obtaining such approvals and completing the work, but neither obtaining such approvals nor completing such work shall be a condition of Closing. Furthermore, if such approvals have not been obtained prior to Closing, Seller will provide Buyer with a credit against the Purchase Price of 110% of Seller’s cost to complete the scope of work last proposed by Seller to the governmental authorities, provided that, notwithstanding anything herein to the contrary, Seller shall not be responsible for the costs of survey, the design of the required planting area, engineering and agreed scope of work for the creation of a landscaped wetlands area, to the extent the costs thereof in the aggregate exceed \$75,000.) Upon approval by the appropriate governmental authorities, Seller shall cause the approved work to be performed with due diligence and in a good and workmanlike manner and shall pay for the same. Upon completion, Seller shall be responsible to obtain all additional documentation required to evidence the curing of the default under the SWM Agreement and the remedying of the outstanding violation of law. If required Seller will enter into a written wetlands maintenance agreement with the appropriate governmental authorities for the area of the storm water management facility, which agreement shall be subject to Buyer’s approval, such approval not to be unreasonably withheld, will record the same in the land records of Fairfax County. Following Closing, Buyer shall assume all maintenance obligations under

such wetlands maintenance agreement. To the extent the work is not completed as of Closing, Seller shall assign the contracts for such work to Buyer, which will assume all

responsibility therefor post-closing, and Buyer shall receive a credit for 110% of the contract price for such work less amounts paid to date.

The parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

Seller: ER CARTER, L.L.C.,
a Delaware limited liability company

By: RREEF America, L.L.C.
Its: Managing Member

By: /s/ Pamela Boneham
Pamela Boneham, Director

Buyer: COMSTOCK CARTER LAKE, L.C., a Virginia
limited liability company

By: Comstock Homebuilding Companies, Inc., a
Delaware corporation, its manager

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

LIST OF EXHIBITS AND SCHEDULES

Exhibits

Exhibit A	Real Property Description
Exhibit B	List of Tenant Leases
Exhibit C	Deed
Exhibit D	Bill of Sale
Exhibit E	Assignment of Leases, Service Contracts, Warranties and Other Intangible Property
Exhibit F	Building Lease Termination Dates
Exhibit G	List of Service Contracts
Exhibit H	Intentionally Omitted

Schedules

Schedule 1	Disclosure Items
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EXHIBIT A

Legal Description

Beginning at a point on the Northeasterly line of Beacontree Lane (Route 4787) marking the Southernmost corner of Block 13, Section 9, Reston; thence running with the Easterly lines of said Block 13 and continuing with the Southerly lines of Block 17, Section 9, Reston and the Fairfax County Park Authority the following courses: N 44°48'01" E, 6.26 feet; N 40°38'42" E, 124.61 feet; N 32°20'30" E, 124.73 feet; N 28°07'04" E, 196.93 feet; S 64°45'14" E, 575.83 feet to a stone found; S 43°44'07" E, 841.52 feet to a concrete monument found; S 02°52'55" E, 920.86 feet to a concrete monument found; N 79°17'03" W, 900.68 feet to a concrete monument found and N 79°15'05" W, 1,054.87 feet to an iron pipe found on the Easterly line of Block 2, Section 29, Reston; thence running with the Easterly lines of the said Block 2 and continuing with Block 14, Section 9, Reston, the following courses: N 37°08'10" E, 173.54 feet; N 28°51'25" E, 74.03 feet; N 22°14'36" E, 73.86 feet to an iron pipe found; N 14°07'29" E, 449.12 feet to an iron pipe found; N 21°46'59" E,

98.11 feet to an iron pipe found; N 37°07'28" E, 97.71 feet to an iron pipe found and N 44°48'01" E, 167.93 feet, to a point on the Southwesterly line of the aforementioned Becontree Lane; thence running with the Southwesterly lines of Becontree Lane S 52°53'40" E, 26.26 feet and with a curve to the right whose radius is 25.00 feet and whose chord is S 07°15'50" E, 35.75 feet, an arc distance of 39.82 feet to a point on the Westerly line of Becontree Lake Drive (Route 6330); thence running with the lines of Becontree Lake Drive the following courses: S 38°22'00" W, 59.98 feet; with a curve to the right whose radius is 25.00 feet and whose chord is S 62°27'42" W, 20.41 feet, an arc distance of 21.03 feet; with a curve to the left whose radius is 50.00 feet and whose chord is S 51°38'00" E, 66.67 feet, an arc distance of 241.19 feet; with a curve to the right whose radius is 25.00 feet and whose chord is N 14°16'18" E, 20.41 feet, an arc distance of 21.03 feet; N 38°22'00" E, 332.95 feet; with a curve to the right whose radius is 190.00 feet and whose chord is N 75°33'03" E, 229.66 feet, an arc distance of 246.61 feet; with a curve to the right whose radius is 25.00 feet and whose chord is S 43°10'14" E, 20.41 feet, an arc distance of 21.03 feet; with a curve to the left whose radius is 50.00 feet and whose chord is N 22°44'06" E, 66.67 feet, an arc distance of 241.18 feet; with a curve to the right whose radius is 25.00 feet and whose chord is S 88°38'26" W, 20.41 feet, an arc distance of 21.03 feet; with a curve to the left whose radius is 240.00 feet and whose chord is S 75°33'03" W, 290.10 feet, an arc distance of 311.51 feet; S 38°22'01" W, 172.95 feet; with a curve to the right whose radius is 25.00 feet and whose chord is S 82°44'10" W, 34.96 feet, an arc distance of 38.72 feet and N 52°53'40" W, 21.71 feet to the point of beginning, containing 47.42571 acres of land, more or less.

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EXHIBIT B

List of Tenant Leases

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Exhibit C

SPECIAL WARRANTY DEED

THIS DEED, made this _____ day of _____, 2005, by and between _____ having an address at _____ ("Grantor"), and _____ having an address at _____ ("Grantee").

WITNESSETH:

That the Grantor, in consideration of the sum of Ten (\$10.00) in hand paid by Grantee and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, in fee simple and with SPECIAL WARRANTY, all those certain lots or parcels of land situate, lying and being in Fairfax County, Virginia, commonly known as Carter Lake Apartments, as such land is more particularly described as follows:

INSERT LEGAL

TOGETHER with all of the ways, easements, rights, covenants, benefits, rights of ways, agreements, privileges, and appurtenances to the same belonging, enjoyed by, or in any way benefiting or appertaining; all right of the Grantor in and to any and all adjoining public and private streets, roadways, and rights of way, and any privately owned water and sewer lines serving the Property; and all of the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of Grantor of, in, to or out of the Property.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto unto the Grantee in fee simple. Grantor covenants that it has the right to convey the lot or parcel of land to Grantee; that it has done no act to encumber the same; and that it will execute such further assurances of the lot or parcel of land as may be requisite.

IN WITNESS WHEREOF, the Grantor has executed this Deed, as of the day and year first above written.

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By: _____

STATE OF _____)
)
COUNTY OF _____)

The undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, of _____, whose name is signed to the foregoing Deed, being personally well known to me, did personally appear before me and acknowledged that she/he executed said deed as the free act and deed of _____.

GIVEN under my hand and seal this _____ day of _____, 2005.

(SEAL)
Notary Public

Exhibit D

BILL OF SALE

This Bill of Sale (the "**Bill of Sale**") is made and entered into _____, 2004 by and between SELLERNAME, SELLERENTITY ("Assignor"), and ASSIGNEENAME, ASSIGNEENTITY ("**Assignee**").

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer, convey and deliver to Assignee free and clear of all liens or claims with special warranty of title and covenant of further assurances, its successors and assigns, all items of Tangible Personal Property (as defined in the Agreement referred to below and listed on **Exhibit** attached hereto [**ATTACH AS A LIST**]), if any, owned by Assignor and situated upon and used exclusively in connection with the Real Property (as defined in the Agreement) and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, including, without limitation, the Tangible Personal Property identified in **Exhibit B**, if any, attached hereto and made a part hereof for all purposes (the "**Personal Property**").

This Bill of Sale is made subject, subordinate and inferior to the easements, covenants and other matters and exceptions set forth on **Exhibit C**, if any, attached hereto and made a part hereof for all purposes.

Assignee acknowledges and agrees that, except as expressly provided in, and subject to the limitations contained in, that certain Agreement of Purchase and Sale dated CONTRACTDATE, by and between Assignor and BUYERNAME (as amended, the "**Agreement**"), Assignor has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the nature, quality or conditions of the Personal Property, (b) the income to be derived from the Personal Property, (c) the suitability of the Personal Property for any and all activities and uses which Assignee may conduct thereon, (d) the compliance of or by the Personal Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the quality, habitability, merchantability or fitness for a particular purpose of any of the Personal Property, or (f) any other matter with respect to the Personal Property. Assignee further acknowledges and agrees that, having been given the opportunity to inspect the Personal Property, Assignee is relying solely on its own investigation of the Personal Property and not on any information provided or to be provided by Assignor, except as specifically provided in the Agreement. Assignee further acknowledges and agrees that any information provided or to be provided with respect to the Personal Property was obtained from a variety of sources and that Assignor has not made any independent investigation or verification of such information. Assignee further acknowledges and agrees that the sale of the Personal Property as provided for herein is made on an "as is, where is" condition and basis

"with all faults," except as specifically provided in, and subject to the limitations contained in, the Agreement.

The obligations of Assignor are intended to be binding only on the property of Assignor and shall not be personally binding upon, nor shall any resort be had to, the private properties of any Seller Related Parties (as defined in the Agreement).

IN WITNESS WHEREOF, Assignor and Assignee have caused this Bill of Sale to be executed on the date and year first above written.

ASSIGNOR:

SELLERNAME, SELLERENTITY

BY: _____
Name: _____
Its: _____

ASSIGNEE:

ASSIGNEENAME, ASSIGNEENTITY

By: _____
Name: _____
Its: _____

Exhibit E

**Assignment of Leases, Service Contracts,
Warranties and Other Intangible Property**

This Assignment of Leases, Service Contracts, Warranties and Other Intangible Property (this “**Assignment**”) is made and entered into , 2004 by and between SELLERNAME, SELLERENTITY (“**Assignor**”), ASSIGNEENAME, ASSIGNEENTITY (“**Assignee**”).

For good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer, set over and deliver unto Assignee all of Assignor’s right, title, and interest in and to the following (collectively, the “**Assigned Items**”): (i) those certain leases (the “**Leases**”) listed on **Exhibit A** attached hereto and made a part hereof for all purposes except for Seller’s right to collect delinquent rent and other delinquent sums owing under such Leases for the period prior to the date hereof in accordance with the Agreement (as defined below), (ii) those certain service contracts, equipment leases, tenant improvement agreements and leasing agreements (the “**Service Contracts**”) listed on **Exhibit B**, if any, attached hereto and made a part hereof for all purposes, and (iii) those certain warranties held by Assignor (the “**Warranties**”) listed on **Exhibit C**, if any, attached hereto and made a part hereof for all purposes, and (iv) all zoning, use, occupancy and operating permits, and other permits, licenses, approvals and certificates, maps, plans, specifications, and all other Intangible Personal Property (as defined in the Agreement) owned by Assignor and used exclusively in the use or operation of the Real Property and Personal Property (each as defined in the Agreement), including, without limitation, any right of Assignor to use the name “Carter Lake Apartments” and any other mark, logo, name or trade name owned by Assignor now used exclusively in connection with the Real Property and any utility contracts or other agreements or rights relating to the use and operation of the Real Property and Personal Property but excluding the names “RREEF” and any derivatives thereof (collectively, the “**Other Intangible Property**”).

This Assignment is made subject, subordinate and inferior to the easements, covenants and other matters and exceptions set forth on **Exhibit D**, if any, attached hereto and made a part hereof for all purposes.

ASSIGNEE ACKNOWLEDGES AND AGREES, BY ITS ACCEPTANCE HEREOF, THAT, EXCEPT AS EXPRESSLY PROVIDED IN, AND SUBJECT TO THE LIMITATIONS CONTAINED IN, THAT CERTAIN AGREEMENT OF PURCHASE AND SALE, DATED AS OF CONTRACTDATE, BY AND BETWEEN ASSIGNOR AND BUYERNAME (AS AMENDED, THE “**AGREEMENT**”), THE ASSIGNED ITEMS ARE CONVEYED “AS IS, WHERE IS” AND IN THEIR PRESENT CONDITION WITH ALL FAULTS, AND THAT ASSIGNOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO,

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CONCERNING OR WITH RESPECT TO THE NATURE, QUALITY OR CONDITION OF THE ASSIGNED ITEMS, THE INCOME TO BE DERIVED THEREFROM, OR THE ENFORCEABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ASSIGNED ITEMS.

Except as otherwise expressly provided in Article VII of the Agreement, by accepting this Assignment and by its execution hereof, Assignee assumes the payment and performance of, and agrees to pay, perform and discharge, all the debts, duties and obligations to be paid, performed or discharged from and after the Closing Date (as defined in the Agreement) by (a) the “landlord” or the “lessor” under the terms, covenants and conditions of the Leases, including, without limitation, compliance with the terms of the Leases relating security deposits, and (b) the owner under the Service Contracts, the Warranties and/or the Other Intangible Property. Assignee agrees to indemnify, hold harmless and defend Assignor from and against any and all claims, losses, liabilities, damages, costs and expenses (including, without limitation, court costs and reasonable attorneys’ fees and disbursements) resulting by reason of the failure of Assignee to pay, perform or discharge any of the debts, duties or obligations assumed or agreed to be assumed by Assignee hereunder arising out of or relating to, directly or indirectly, in whole or in part, the Assigned Items, from and after the Closing Date. Except as otherwise expressly provided in Article VII and subject to the provisions of Sections 3.2 and 9.19 of the Agreement (which provisions are not modified in any way by the following indemnity), Assignor agrees to protect, indemnify, defend and hold Assignee harmless from and against all claims, losses, damages, costs, expenses, obligations and liabilities (including, without limitation, court costs and reasonable attorneys’ fees and disbursements) (collectively, “**Claims**”) arising out of or relating to, directly or indirectly, in whole or in part, the Assigned Items, the Leases or Service Contracts prior to the Closing Date; provided, however, that the foregoing indemnity shall not apply to any Claims relating in any way to the physical, environmental or other condition of the Property (as defined in the Agreement) or the compliance or non-compliance of the Property with any legal requirements; and provided further that the foregoing indemnity shall apply solely to Claims first raised after the Closing Date and shall survive only for a period of six (6) months after the Closing Date. Any such Claim which Assignee may have at any time against Assignor, whether known or unknown, which is not specifically asserted by written notice to Assignor within such six (6) month period shall not be valid or effective, and neither Assignor nor any Seller Related Parties (as defined in the Agreement) shall have any liability with respect thereto.

The obligations of Assignor are intended to be binding only on the property of Assignor and shall not be personally binding upon, nor shall any resort be had to, the private properties of any Seller Related Parties.

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

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IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed on the day and year first above written.

ASSIGNOR:

SELLERNAME, SELLERENTITY

BY: _____

ASSIGNEE:

ASSIGNEENAME, ASSIGNEENTITY

By: _____
Name: _____
Its: _____

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Exhibit F

BUILDING LEASE TERMINATION DATES

Building Address	Lease Termination Date
11023 Becontree Lake Drive	December 31, 2005
11027 Becontree Lake Drive	December 31, 2005
11019 Becontree Lake Drive	January 31, 2006
11017 Becontree Lake Drive	February 28, 2006
11015 Becontree Lake Drive	March 31, 2006
11013 Becontree Lake Drive	April 30, 2006
11011 Becontree Lake Drive	May 31, 2006

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EXHIBIT G

List of Service Contracts

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EXHIBIT H

INTENTIONALLY OMITTED

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Schedule 1

Disclosure Items

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[EXHIBITS](#)

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AGREEMENT OF SALE

THIS AGREEMENT, entered into as of the 28th day of September, 2005, by and between COMSTOCK BELLEMEADE, L.C., a Virginia limited liability company ("Purchaser") and BELLEMEADE FARMS INVESTORS, LLC, a Delaware limited liability company, FF BELLEMEADE FARMS, LLC, a Delaware limited liability company and FF INVESTORS W-I LLC, a Delaware limited liability company (collectively, the "Seller").

WITNESSETH:

1. PURCHASE AND SALE. Purchaser agrees to purchase and Seller agrees to sell at the price (the "Purchase Price") of Forty Four Million Eighty Two Thousand and No/100 Dollars (\$44,082,000.00), all of the following property (collectively, the "Property"):

a. that certain parcel of real property located in Leesburg, Virginia, more particularly described on Exhibit A attached hereto (the "Land");

b. the personal property located on the Improvements (hereinafter defined) which is used for operation and maintenance of the apartment project and is owned by Seller, including those items set forth on Exhibit B, which shall be transferred to Purchaser at Closing (as hereinafter defined) by a Bill of Sale;

c. all rights and appurtenances pertaining to the Land, including, without limitation, any and all rights of Seller in and to all air and development rights, all mineral rights, roads, alleys, easements, streets and ways adjacent to the Land, rights of ingress and egress thereto, any strips and gores within or bounding the Land and in the profits or rights or other appurtenances connected with the beneficial use or enjoyment of the Land;

d. those certain apartment buildings containing approximately 316 apartment units, and all of Seller's right, title and interest in the other improvements, structures and fixtures placed, constructed or installed on the Land (collectively, the "Improvements");

e. all of Seller's right, title and interest in all leases, licenses and concession agreements (collectively, the "Leases") covering space situated at or within the Land and Improvements under any existing Lease occupied by tenants (collectively, the "Tenants") and all refundable security deposits deposited by Tenants with respect to the Leases;

f. all of Seller's rights in and to contractual rights and intangibles with respect to the operation, maintenance, and repair of the Land and the Improvements, including service and maintenance agreements (collectively, "Service Contracts"), utility agreements, manufacturers' warranties, assignable governmental permits, licenses, certificates and approvals in connection with the ownership of the Property (collectively, the "Licenses"), and all development rights relating or appurtenant to the Land or the Improvements;

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g. Seller's right, if any, to the use of the trade name "Bellemeade Farms Apartments" or "Bellemeade Farms" (the "Trade Name") in connection with the Property;

h. the right, if assignable, to the use of all telephone numbers used by Seller at the Property; and

i. subject to the provisions of Paragraph 6 of this Agreement, all rights to any award made or to be made or settlement in lieu thereof for damage to the Land or Improvements by reason of condemnation, eminent domain, exercise of police power or change of grade of any street.

2. PURCHASE PRICE. The Purchase Price shall be paid as follows:

a. Upon the full execution of this Agreement, the sum of \$2,000,000.00 (the "Earnest Money") payable to the "Escrow Agent" (as defined in the Escrow Agreement) to be held in escrow by the Escrow Agent, by and in accordance with the provisions of the Escrow Agreement ("Escrow Agreement") attached hereto as Exhibit C;

b. on the Closing Date (as hereinafter defined), \$44,082,000.00 (less a credit for all Earnest Money adjusted in accordance with the prorations by federally wired "immediately available" funds delivered to the Escrow Agent's account as set forth in the Escrow Agreement no later than 12:00 Noon Central Time on the Closing Date. If the funds are not received by the Escrow Agent by 12:00 Noon Central Time, then on the Closing Date, Purchaser shall pay Seller an amount equal to any additional mortgage per diem interest costs (including, if required, the payment of interest due Seller's lender for the full month in which the Closing occurs) actually incurred by Seller.

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3. TITLE COMMITMENT AND SURVEY

a. Attached hereto as Exhibit E is a pro-forma title policy ("Pro-Forma Title Policy") for an owner's ALTA standard coverage title insurance policy ("Title Policy") issued by Chicago Title Insurance Company ("Title Insurer"). The owner's Title Policy issued at Closing will be in the amount of the Purchase Price subject only to: (i) real estate taxes and assessments not yet due and payable; (ii) existing leases; and (iii) those matters shown in the Pro-Forma Title Policy. All of the above are herein referred to as the "Permitted Exceptions". The Pro-Forma Title Policy shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions therein stated. On the Closing Date, the Title Insurer shall issue the Title Policy or a "marked up" commitment in conformity with the Pro-Forma Title Policy. Purchaser shall pay all costs of the Title Policy including any additional costs of an "extended coverage" Title Policy and any special endorsements which Purchaser requires.

b. Purchaser acknowledges receipt of a survey ("Survey") of the Property dated July 20, 2005 prepared by Burgess & Niple, Inc. ("Surveyor"). Purchaser acknowledges and accepts all matters as shown on the Survey. Purchaser shall pay for all costs of the update to the Survey performed by the Surveyor which had updated the Survey from the survey dated October 7, 2003, as well as the costs for any recertification or for any additional work which Purchaser requires.

4. CONDITION OF TITLE/CONVEYANCE. Seller agrees to convey fee simple title to the Property by Special Warranty Deed ("Deed") in recordable form

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subject only to the Permitted Exceptions. If Seller is unable to convey title to the Property subject only to the Permitted Exceptions hereof because of the existence of an additional title exception ("Additional Unpermitted Exception"), then Purchaser can elect to take title to the Property subject to the Additional Unpermitted Exception or terminate this Agreement. If Purchaser elects to terminate this Agreement pursuant to this Paragraph, then the Earnest Money plus all accrued interest shall be delivered to the Purchaser and except as specifically provided for elsewhere in this Agreement, neither party shall have any further obligation or liability hereunder. Notwithstanding the aforesaid, all liens of a definite ascertainable amount which are Additional Unpermitted Exceptions shall be paid for by Seller at the Closing or "insured over" by the Title Insurer. Seller agrees not to place any mortgage or deed of trust on the Property during the term of this Agreement without the consent of Purchaser.

5. PAYMENT OF CLOSING COSTS. Seller shall pay the grantor's tax estimated at One Dollar (\$1.00) per each One Thousand Dollars (\$1,000.00) of the Purchase Price. Purchaser shall pay the grantee's tax estimated at Two Dollars (\$2.00) per each One Thousand Dollars (\$1,000.00) of the Purchase Price and any other transfer taxes, documentary stamps or recording fees incurred in connection with the sale of the Property and recording of the Deed. Purchaser shall pay the closing costs with reference to any loan which Purchaser obtains. Purchaser and Seller shall equally share the Escrow Agent's escrow fees.

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6. DAMAGE, CASUALTY AND CONDEMNATION

a. If the Property suffers damage as a result of any casualty prior to the Closing Date and can be repaired or restored for \$250,000 or less, then Seller shall commence the repair or restoration in an expeditious manner, in which event the Closing Date will be extended until such date as may reasonably be required to complete the repair or restoration and Seller shall retain all insurance proceeds. If the cost of repair or restoration exceeds that amount, then Seller can elect to either: (a) repair and restore same, in which event the Closing Date will be extended until such date as may reasonably be required to complete the repair or restoration; or (b) terminate this Agreement upon notice to Purchaser served within twenty (20) business days of such casualty. If Seller elects to terminate this Agreement pursuant to this Paragraph, then Purchaser will have the option to accept the Property in its damaged condition together with an assignment from Seller of all insurance proceeds and receive a credit at Closing in the amount of the deductible, provided Purchaser notifies Seller by notice served within twenty (20) days after receipt of Seller's notice of election to terminate.

b. If condemnation proceedings ("Proceedings") are instituted against the Property and the parties reasonably believe that such Proceedings will result in an award in excess of \$250,000.00, then Purchaser can elect to either take the Property subject to the Proceedings along with an assignment of Seller's interest in the Proceedings or terminate this Agreement. If Purchaser elects to terminate this Agreement, it shall be by notice to the Seller within five (5) days after Seller notifies Purchaser of the Proceedings.

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c. If the Agreement is terminated pursuant to this Paragraph, then the Earnest Money plus all accrued interest shall be delivered to the Purchaser and except as specifically provided for elsewhere in this Agreement, neither party shall have any further obligation or liability hereunder.

7. AS-IS CONDITION.

Except as may hereinafter be specifically set forth in this Agreement, Purchaser is not relying on Seller having made any inquiry as to the condition of the Property or the Leases. Purchaser acknowledges and agrees that it will be purchasing the Property based solely upon its inspection and investigations of the Property and that Purchaser will be purchasing the Property "AS IS" and "WITH ALL FAULTS" based upon the condition of the Property as of August 12, 2005, subject to reasonable wear and tear and, subject to the provisions of Paragraph 6, loss by fire or other casualty or condemnation from August 12, 2005 until the Closing Date. Without limiting the foregoing, Purchaser acknowledges that, except as may otherwise be specifically set forth in Paragraph 19 or elsewhere in this Agreement, neither Seller nor its consultants, brokers or agents have made any other representations or warranties of any kind upon which Purchaser is relying as to any matters concerning the Property, including, but not limited to, any implied warranty as to the quality of the construction of the Property or its fitness for use as an apartment project, the condition of the Land or any of the Improvements, whether or not the Property is

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subject to airport corridor noise, the existence or nonexistence of asbestos, lead in water, lead in paint, radon, underground or above ground storage tanks, petroleum, toxic waste or any Hazardous Materials or Hazardous Substances (as such terms are defined below), the Tenants of the Property or the Leases affecting the Property, economic projections or market studies concerning the Property, any development rights, taxes, bonds, covenants, conditions and restrictions affecting the Property, water or water rights, topography, drainage, soil, subsoil of the Property, the utilities serving the Property or any zoning, environmental or building laws, rules or regulations affecting the Property. Seller makes no representation that the Property complies with Title III of the Americans With Disabilities Act, the Fair Housing Act of 1968 as amended, or any fire codes, building codes or health

codes. Except with respect to a Claim as defined and as limited pursuant to Paragraph 19d hereof for a breach of any representation, warranty or covenant of Seller under this Agreement, Purchaser hereby releases Seller, which release shall also inure to the benefit of any member, manager, or partner of Seller, FF Development L.P., FF Properties L.P. and their affiliates (collectively referred to herein as the "Related Parties") from any and all liability in connection with any claims (including but not limited to all health and medical claims) which Purchaser may have against Seller or any of the Related Parties, and Purchaser hereby agrees not to assert any claims, for damage, loss, compensation, contribution, cost

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recovery or otherwise, against Seller or any of the Related Parties, whether in tort, contract, or otherwise, relating directly or indirectly to the condition of the Property, including without limitation (i) claims relating to the existence of asbestos; (ii) claims attributable to indoor air quality issues, releases from building material and furnishings, releases from cleaning, repairing, or decorating activities, and the operation of heating and cooling systems and humidifiers; or (iii) claims relating to Hazardous Materials or Hazardous Substances on, or environmental conditions of, the Property, or arising under the Environmental Laws (as such term is hereinafter defined), or relating in any way to the quality of the indoor or outdoor environment at the Property; or (iv) claims relating to mold, fungus, bacteria and/or other biological growth or biological growth factors, or any other type of indoor contaminants that may exist on the Property; or (v) claims relating to latent or patent construction defects or any implied warranty as to fitness for use as an apartment project; or (vi) claims relating to the failure of Seller to disclose any information relating to the Property, except as may otherwise be expressly set forth in Paragraph 19 or elsewhere in this Agreement. As used in this paragraph the term "affiliates" means, with respect to Seller or any manager, member or partner of Seller, any other entity or person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with Seller or any manager, member or partner of Seller. As used in the previous sentence, "control"

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means the possession, directly or indirectly, of the power to cause the direction of the management of Seller or any manager, member or partner of Seller, whether through voting securities, by contract, family relationship or otherwise. This release shall forever survive the Closing and the delivery and recording of the Deed. As used herein, the term "Hazardous Materials" or "Hazardous Substances" means (i) hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials", "toxic pollutants", or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 9601, *et seq.*; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws,

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regulations, rules or ordinance now or hereafter in effect relating to environmental matters (collectively the "Environmental Laws"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and their byproducts, (E) asbestos, (F) lead in water, paint or elsewhere, (G) radon, (H) Polychlorinated Biphenyls (PCB's), (I) ureaformaldehyde, (J) volatile organic compounds (VOC), (K) total petroleum hydrocarbons (TPH), (L) benzene derivative (BTEX), and (M) petroleum byproducts.

Purchaser hereby specifically acknowledges that Purchaser has carefully reviewed this subsection, and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this subsection are a material part of this Agreement, PROVIDED, HOWEVER, such release, waiver or discharge shall not apply and shall be of no force or effect for any claims arising out of Seller's fraud.

Purchaser's Initials

b. Seller has provided to Purchaser certain unaudited historical financial information regarding the Property relating to certain periods of time in which Seller owned the Property. Except as may be otherwise specifically set forth elsewhere in this Agreement, Seller makes no representation or warranty that such material is complete or accurate or that Purchaser will achieve similar financial or other results with

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respect to the operations of the Property, it being acknowledged by Purchaser that Seller's operation of the Property and allocations of revenues or expenses may be vastly different than Purchaser may be able to attain. Purchaser acknowledges that it is a sophisticated and experienced purchaser of real estate and further that Purchaser has relied upon its own investigation and inquiry with respect to the operation of the Property and releases Seller and the Related Parties from any liability with respect to such historical information; provided however, such release, waiver or discharge shall not apply and shall be of no force or effect for any claims arising out of Seller's fraud.

Purchaser's Initials

8. CLOSING

The closing ("Closing") of this transaction shall be on September 28, 2005 ("Closing Date"), at which time Seller shall deliver possession of the Property to Purchaser.

9. CLOSING DOCUMENTS

- a. On or before the Closing Date, Purchaser shall deliver to Escrow Agent the balance of the Purchase Price plus or minus prorations, in accordance with the closing statement.
- b. On the Closing Date, Seller shall deliver to Purchaser possession of the Property; all keys used in connection with the Property; copies of the Tenants Lease files (which will be available at the Property).
- c. On or before the Closing Date, Seller and Purchaser shall deliver to Escrow Agent or the other party, as applicable, executed originals of the following: the

Deed (in the form of Exhibit F attached hereto) subject to the Permitted Exceptions; the Bill of Sale (in the form of Exhibit G attached hereto); a closing statement; an assignment and assumption of all Service Contracts (in the form of Exhibit H attached hereto); an assignment and assumption of all Leases and security deposits (in the form of Exhibit I attached hereto); updated certified rent roll; a notice to the tenants of the transfer of title and the assumption by Purchaser of the landlord's obligations under the Leases and the obligation to refund the security deposits (in the form of Exhibit J attached hereto); a non-foreign affidavit (in the form of Exhibit K attached hereto); an assignment of intangible property (in the form of Exhibit L attached hereto); and an assignment of warranties and guaranties relating to the Personal Property (in the form of Exhibit M-1 attached hereto); and such other documents as may be reasonably required by the Title Insurer in order to consummate the transaction as set forth in this Agreement.

10. SELLER'S RIGHT TO CURE. Intentionally Deleted.

11. DEFAULT BY PURCHASER. ALL EARNEST MONEY DEPOSITED INTO THE ESCROW IS TO SECURE THE TIMELY PERFORMANCE BY PURCHASER OF ITS OBLIGATIONS AND UNDERTAKINGS UNDER THIS AGREEMENT. IN THE EVENT OF ANY DEFAULT OF THE PURCHASER UNDER THE PROVISIONS OF THIS AGREEMENT (PROVIDED PURCHASER SHALL NOT BE CONSIDERED IN DEFAULT UNDER THIS AGREEMENT IF IT HAS WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER CURED ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY REQUIRED UNDER PARAGRAHS 17 AND 36.) SELLER SHALL RETAIN ALL OF THE

EARNEST MONEY AND THE INTEREST THEREON AS SELLER'S SOLE RIGHT TO DAMAGES OR ANY OTHER REMEDY AND PURCHASER SHALL HAVE NO FURTHER RIGHTS TO PURCHASE THE PROPERTY. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY PURCHASER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICAL TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE EARNEST MONEY HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES.

Seller's Initials

Purchaser's Initials

12. SELLER'S DEFAULT. IF THIS SALE IS NOT COMPLETED BECAUSE OF SELLER'S UNCURED DEFAULT, PURCHASER'S SOLE REMEDY SHALL BE THE RIGHT TO SUE FOR ACTUAL DAMAGES NOT TO EXCEED \$250,000.00 AND THE RETURN OF ALL EARNEST MONEY TOGETHER WITH ANY INTEREST ACCRUED THEREON, AND THIS AGREEMENT SHALL TERMINATE AND EXCEPT AS SPECIFICALLY PROVIDED FOR ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION OR LIABILITY TO EACH OTHER AT LAW OR IN EQUITY. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IF SELLER'S DEFAULT IS ITS REFUSAL TO DELIVER THE DEED AND THE OTHER DOCUMENTS REQUIRED TO BE DELIVERED AT CLOSING AND WRONGFULLY REFUSES TO CONVEY THE PROPERTY TO PURCHASER AS A

RESULT THEREOF, THEN PURCHASER WILL BE ENTITLED TO SUE FOR SPECIFIC PERFORMANCE.

Seller's Initials

Purchaser's Initials

13. a. PRORATIONS. Rents (exclusive of Delinquent Rent, as hereinafter defined, but including prepaid rents); refundable security deposits and interest thereon if required by law (which will be assigned to and assumed by Purchaser and credited to Purchaser at Closing); water and other utility charges; fuels; prepaid operating expenses; real and personal property taxes; and other similar items shall be adjusted ratably as of 11:59 P.M. on the Closing Date, and credited or debited to the balance of the cash due at Closing. All supplemental taxes and assessments attributable to the period prior to the Closing Date for the calendar year in which the Closing occurs shall be prorated to the Closing Date; provided, however, in no event shall Seller be charged with or (and Purchaser shall) be responsible for any increase in the taxes on the Property resulting from the sale of the Property or from any improvements made at any time from and after the Closing Date. If the amount of any of the items to be prorated is not then ascertainable, the adjustment thereof shall be on the basis of the most recent ascertainable data and all prorations shall be final. If special assessments have been levied against the Property for completed improvements, then the amount of any installments which are due prior to the Closing Date shall be paid by the Seller; and the amount of installments which are due after the Closing Date shall be paid by the Purchaser. All assessments for incomplete improvements shall be paid by Purchaser.

b. DELINQUENT RENTS. If, as of the Closing Date, basic rent is in arrears (“Delinquent Rent”) for the calendar month in which the Closing occurs, then Seller’s portion of the first rent collected by Purchaser during that calendar month will be delivered to Seller for the Delinquent Rent. If Delinquent Rent is in arrears for a period prior to the calendar month in which the Closing occurs, then rents collected by Purchaser shall first be applied to current rent and then to Delinquent Rent. Purchaser shall deliver Seller’s pro rata share within 10 days of Purchaser’s receipt of that Delinquent Rent except that the Delinquent Rent received for the calendar month in which Closing occurs shall be paid in one lump sum within ten (10) days of the last day of the calendar month. This subparagraph of this Agreement shall survive the Closing and the delivery and recording of the Deed.

14. RECORDING. This Agreement shall not be recorded and the act of recording by Purchaser shall be an act of default hereunder by Purchaser and shall be subject to the provisions of Paragraph 11.

15. ASSIGNMENT. The Purchaser shall not have the right to assign its interest in this Agreement without the prior written consent of the Seller. Any assignment or transfer of, or attempt to assign or transfer, Purchaser’s interest in this Agreement shall be an act of default hereunder by Purchaser and subject to the provisions of Paragraph 11. Seller hereby consents to an assignment to an entity, the ownership and control of which is held by the same persons owning and controlling Purchaser. However, Purchaser shall remain liable for all of the Purchaser’s obligations and undertakings set forth in this Agreement and the exhibits attached hereto. Purchaser shall

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notify Seller of any assignment no later than ten (10) business days prior to the Closing Date.

16. BROKER. The parties hereto acknowledge that Ideal Realty Group (“Broker”) is the only real estate broker involved in this transaction. The foregoing does not apply to any fee which may be paid by Seller to any affiliate of Seller or FF Properties L.P. or an exclusive broker engaged by an affiliate of Seller as a result of this transaction for which Seller shall be responsible and Purchaser has no obligations relating to said fees. Seller agrees to pay Broker a commission or fee (“Fee”) pursuant to an agreement between Seller and Broker. Purchaser agrees to indemnify, defend and hold harmless the Seller and any member, partner or affiliate or parent of Seller, and all shareholders, employees, officers and directors of Seller or Seller’s partner(s), or member(s), or parent or affiliate (each of the above is individually referred to as a “Seller Indemnitee”) from all claims, including attorneys’ fees and costs incurred by a Seller Indemnitee as a result of anyone’s claiming by or through Purchaser any fee, commission or compensation on account of this Agreement, its negotiation or the sale

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hereby contemplated. Purchaser does now and shall at all times consent to a Seller Indemnitee’s selection of defense counsel. Seller agrees to indemnify, defend and hold harmless the Purchaser and all shareholders, employees, officers and directors of Purchaser or Purchaser’s parent or affiliate (each of the above is individually referred to as a “Purchaser Indemnitee”) from all claims, including attorneys’ fees and costs incurred by a Purchaser Indemnitee as a result of anyone’s claiming by or through Seller any fee, commission or compensation on account of this Agreement, its negotiation or the sale hereby contemplated. Seller does now and shall at all times consent to a Purchaser Indemnitee’s selection of defense counsel. Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Paragraph shall forever survive the Closing and delivery of the Deed or earlier termination of this Agreement.

17. DOCUMENTS, INSPECTION OF PROPERTY AND APPROVAL PERIOD.

a. Seller has heretofore delivered or shall deliver or make available to Purchaser, originals or copies of the following documents to the extent that they are in Seller’s possession (collectively the “Documents”):

- i. Copies of all certificates of occupancy.
- ii. Copies of any third party environmental and seismic or soils (as applicable) reports relating to the Property.
- iii. Copies of the most recent real estate and personal property tax bills.
- iv. Copies of all Service Contracts pertaining to the Property and a schedule listing all such Service Contracts.
- v. A schedule listing all Personal Property.
- vi. True, correct and complete copies of any Leases and licenses which are located at the Property for Purchaser’s review.
- vii. A current rent roll (“Rent Roll”).

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viii. Unaudited income and expense statements of operations (hereinafter referred to as the “Financial Statements”) for the Property for the prior calendar year and the latest available current calendar year.

- ix. Such other non-confidential documents as Purchaser may reasonably require and which are in Seller’s possession.

Purchaser by its execution of this Agreement hereby acknowledges that it has approved all of the Documents and has prior to the date hereof inspected and by its execution hereof does approve the condition of the Property. Purchaser agrees to indemnify, defend, protect and hold Seller, its partners, members, shareholders, affiliates, officers, managers, employees, trustees and beneficiaries, and FF Properties L.P. and the respective successors and assigns of each of the foregoing (“Indemnified Parties”) harmless from any and all loss, costs, including attorneys’ fees, liability or damages which any of the Indemnified

Parties may incur or suffer as a result of Purchaser's prior inspection and investigation of the Property including the entry of Purchaser, its employees or agents and its lender onto the Property, including without limitation, liability for mechanics' lien claims. Purchaser shall keep all information or data received or discovered in connection with any of the inspections, reviews or examinations strictly confidential. Notwithstanding anything contained in this Agreement to the contrary, Purchaser's indemnity obligations under this Paragraph shall forever survive the Closing and delivery and recording of the Deed or the earlier termination of this Agreement.

b. Purchaser acknowledges that it is a sophisticated and experienced purchaser of real estate; that numerous apartment complexes contain mold; water

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damage, fungi, bacteria and/or other biological growth or biological growth factors; and that the Property may contain mold, water damage, fungi, bacteria, and/or other biological growth or biological growth factors which Purchaser may not have discovered during its inspection of the Property. Purchaser agrees that in purchasing the Property from the Seller, it is assuming the risk that the Property may contain mold, water damage, fungi, bacteria, and/or other biological growth or biological growth factors even as a result of a patent or latent construction defect.

c. Purchaser agrees to repair to the reasonable satisfaction of Seller any damage to the Property which may arise as a result of Purchaser's prior inspection of the Property.

d. If at anytime during its prior inspection of the Property Purchaser discovered or was advised of any fact or circumstance which would cause a representation or warranty of Seller to be untrue or misleading, or with the passage of time would become untrue or misleading, then Purchaser shall be deemed to have waived its right to seek damages or termination of this Agreement.

e. As a result of Purchaser's prior inspection of the Property, it is conclusively presumed that Purchaser (i) has approved the Documents and the condition of the Property, (ii) has acknowledged and agreed that all Earnest Money plus the interest accrued thereon shall belong to Seller unless Seller is in default hereunder or this Agreement is terminated in accordance with its terms, (iii) has acknowledged and agreed that, prior to purchase, Purchaser has been given adequate access to inspect the Property, including the opportunity to conduct invasive testing to discover any patent or latent

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defects in or on the Property, examine the books and records relating to the Property; conduct interviews or take any other necessary steps to fully and adequately discover any and all latent or patent defects with the Property, (iv) has acknowledged that it has the full and complete knowledge necessary to purchase the Property, or has chosen not to obtain the full and complete knowledge, although provided with the opportunity by Seller, and (v) has conducted, or had the opportunity to conduct, sufficient examination of the building, building envelope, building systems, building grounds, building components and surrounding conditions including but not limited to soils.

18. **INDEMNIFICATION AND INSURANCE REQUIREMENTS.** In addition to all other covenants contained herein binding on Purchaser, Purchaser hereby further agrees:

a. To indemnify, defend and hold harmless the Seller, Fairfield Properties, Fairfield Financial A LLC, Fairfield Residential LLC, FF Development L.P., FF Properties L.P., FF Properties, Inc., Fairfield Bellemeade Farms LP and FF Bellemeade Farms LLC, the Roland and Dawn Arnall Living Trust, Roland Edmund Arnall, Dawn Lynn Arnall and any other Seller Related Parties and the members, partners, officers, directors, trustees, affiliates, parents, subsidiaries, shareholders, managers, beneficiaries, employees and agents of each of the foregoing entities (individually, the "Seller Indemnified Party" or collectively, the "Seller Indemnified Parties"), to the extent enforceable under applicable law, from any and all losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever, whether in tort, contract or otherwise (including without limitation, court costs and

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reasonable attorneys' fees and disbursements) (collectively, "Losses") that (i) are actually incurred by a Seller Indemnified Party; (ii) arise out of, or in any way relate to claims made or brought by any party or parties who acquire or contract to acquire any ownership interest in the Property following the Closing (including but not limited to any unit owner or owners or any condominium association or associations); (iii) arise out of claims asserted at any time after the conversion of the Property into a condominium form of ownership, cooperative housing corporation, community apartment property or stock corporation, including but not limited to claims by any unit owner or owners or any condominium association or associations, their agents, employees and successors and assigns in connection with or related thereto and (iv) relate to either (A) the physical condition of the Property including, without limitation, latent or patent defects, and claims relating to the existence of asbestos, any other construction defects, claims relating to mold, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, or (B) any law or regulation applicable to the Property, including, without limitation, any Environmental Law and any other federal, state or local law. The insurance to be provided by Purchaser as described in this Section below shall in no way be construed to limit Purchaser's indemnity obligations under this Paragraph 18(a) or Purchaser's other obligations under other provisions of Paragraph 18 or under other Paragraphs of this Agreement. Purchaser does now and shall at all times consent to the Indemnified Parties' selection of defense counsel. The indemnification obligations contained in this Paragraph 18 shall not apply to any Losses resulting from (i) governmental enforcement of chain-of-title liability

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under CERCLA or other similar Environmental Laws or (ii) a breach of Seller's representations and warranties as stated in and as limited by Paragraph 19 herein. The provisions of this Paragraph 18 shall survive the Closing and the delivery and recording of the Deed.

b. Purchaser has delivered to Seller a certificate of insurance attached hereto as Exhibit X containing insurance coverages (“Insurance Coverages”) to be maintained by Purchaser. By no later than ninety (90) days after the Closing, Purchaser shall deliver to Seller certified copies of all of the insurance policies showing the agreed upon Insurance Coverages. Purchaser at its own cost and expense shall maintain all of said Insurance Coverages including keeping the Seller Indemnified Parties as additional insureds thereunder for a period of five (5) years after the Closing Date and shall provide written evidence of same to Seller no later than the date of termination of any insurance policy fulfilling the required Insurance Coverages.

c. Purchaser shall cause to be delivered at Closing to Seller either (i) a Guaranty (“Guaranty”) executed by Comstock Homebuilding Companies, Inc., in favor of the Seller Indemnified Parties in the form of Exhibit T-1 attached hereto guarantying the obligations of Purchaser under Paragraphs 18(a) and 18(b) above or (ii) an irrevocable stand-by Letter of Credit (“Letter of Credit”) issued by a bank reasonably acceptable to Seller with an expiration date of no later than five (5) years from its issuance (or one (1) year from its issuance, provided that replacement one (1) year letters of credit are issued to Seller thirty (30) days prior to the expiration of the then existing letter of credit) in the face amount of \$1,000,000.00 to secure Purchaser’s obligations

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under Paragraphs 18a. and 18b. The Letter of Credit shall be substantially in the form as shown on Exhibit S attached hereto (as modified to reflect reasonable bank requirements) and will allow Seller to draw on the Letter of Credit (subject to refund of any amounts to Purchaser following a draw under the Letter of Credit that exceed Seller Indemnified Parties actual damages under Sections 18(a) and 18(b))by presentation of:

(i) a sight draft in the face amount of the Letter of Credit, and

(ii) a statement executed by Seller or any Seller Indemnified Party stating that “COMSTOCK BELLEMEADE L.C. (“Comstock”) or its successors and assigns have (a) breached the provisions of either Paragraph 18a. or Paragraph 18b. of that certain Agreement of Sale dated August 28, 2005, as amended between BELLEMEADE FARMS INVESTORS, LLC, a Delaware limited liability company, FF BELLEMEADE FARMS, LLC, a Delaware limited liability company and FF INVESTORS W-I LLC, a Delaware limited liability company as Seller and COMSTOCK BELLEMEADE L.C. as Purchaser relating to the Property commonly known as Bellemeade Farms Apartments, Leesburg, Virginia and Comstock has failed to cure said breach within five (5) days of written notice given to Comstock in the manner described in Paragraph 22 of said Agreement of Sale or (b) failed to deliver an acceptable replacement Letter of Credit to the undersigned by thirty (30) days prior to the expiration date of this Letter of Credit.

Following the Closing, Purchaser may from time to time deliver a written request (the “Substitution Request”) to Seller asking that any Guaranty then held by Seller be replaced by a Letter of Credit substantially in the Form of Exhibit S (the “Substitution

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Letter of Credit”) or that any Letter of Credit then held by Seller be replaced by an executed Guaranty in the form of Exhibit T-1 (the “Substitution Guaranty”). The Substitution Request shall be accompanied by either the Substitution Guaranty or the Substitution Letter of Credit. Provided that if at the time Seller received the Substitution Request and the required Substitution Guaranty or Substitution Letter of Credit, (i) Purchaser has not breached any of the Purchaser’s obligations or liabilities under Paragraph 18a. or 18b. and (ii) there is not then any pending claims against any Indemnified Party covered by the indemnification given under Paragraph 18a., Seller shall honor said Substitution Request and return the Letter of Credit or Guaranty then in Seller’s possession. It is expressly acknowledged and agreed that the return of any Letter of Credit by Seller shall be good and sufficient consideration for the execution and deliver of any Substitution Guaranty or Substitution Letter of Credit.

19. SELLER’S REPRESENTATIONS, WARRANTIES AND COVENANTS

a. Any reference herein to Seller’s knowledge or to the best of Seller’s knowledge shall only mean such knowledge or notice that has actually been received by Gino Barra or James Flanagan not having made and with no duty to make a diligent inquiry and any representation or warranty of the Seller is based upon those matters of which Gino Barra or James Flanagan has actual knowledge as opposed to constructive or imputed knowledge. Any knowledge or notice given, had or received by any of Seller’s agents, servants or employees shall not be construed or imputed to Seller or the individual partners or the general partner of Seller.

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b. Subject to the limitations set forth in subparagraph a above, Seller hereby makes the following representations, warranties and covenants, all of which are made to the best of Seller’s knowledge:

i. Seller has not received written notice from any governmental authority that the present use and occupancy of the Property do not conform with applicable building and zoning laws.

ii. Except as may be set forth on the tax bills and the Title Commitment, there are presently no pending, and Seller has received no written notice of, special assessments of any nature with respect to the Property or any part thereof, nor has Seller received any written notice of any special assessments being contemplated.

iii. The Rent Roll attached hereto as Exhibit O is true and accurate and contains information regarding the security deposits held in connection with each lease and a delinquency report for the Leases and will be updated and certified as of the Closing Date.

iv. Seller has not received written notice of any pending litigation affecting the Property, except as may be set forth on Exhibit P attached hereto.

v. The existing casualty insurance for the Property is for full replacement value.

vi. This Agreement has been duly authorized and executed on behalf of Seller and constitutes a valid and binding agreement, enforceable against

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Seller in accordance with its terms. The performance by Seller of its obligations hereunder does not and will not violate any law; and neither this Agreement nor the performance by Seller of its obligations hereunder violates any agreement or contract to which Seller is bound or a party. Seller has obtained (or will obtain prior to Closing) all consents, releases and permissions and given all required notifications, related to the transactions herein contemplated.

vii. Seller does not have any employees on site at the Property.

viii. The Financial Statements delivered to Purchaser by Seller are copies of the Financial Statements which Seller or its affiliate relies upon for the purposes of reporting to its investors and filing Federal income tax statements and Seller has no reason to believe that they are incorrect.

ix. The Property is connected with and has water, sewage disposal, telephone, gas and electrical services.

x. Attached hereto as Exhibit Q is a list of all current Service Contracts (excepting the property management agreement which will be terminated at Closing) entered into by Seller and/or its property manager or leasing agent relating to the management, maintenance, leasing or operation of the Property.

xi. None of the Property is subject to any option to purchase or right of first refusal, recorded or unrecorded.

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xii. Seller has not received any written notice from any governmental authority of any pending or threatened condemnation proceeding affecting the Property or any part thereof.

xiii. Seller is the sole owner of the Property.

xiv. Other than the occupancy by the Seller and the tenants shown on the Rent Roll (as adjusted over time), occupancy by any party with a right of entry or possession under the Service Contracts and any party given any rights to use or occupy the Property under any of the Permitted Exceptions, all of the Property is vacant and free of any written leases, tenancies, licenses or other rights of present or future occupancy for any portion of the Property.

xv. Seller has not received any written notices of any default by Seller with respect to the Leases which has not been cured.

c. Seller hereby covenants that from August 12, 2005 (except as provided in sub-paragraph iv. below) and up to including the Closing:

i. Seller shall operate, lease and manage the Property (or to cause its property manager to do so) in at least the same manner that Seller (or its property manager, as the case may be) has heretofore operated, leased and managed the Property (wear and tear, and casualty excepted).

ii. Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned, permit any material structural modifications or additions to the Property.

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iii. Seller will not remove any Personal Property, unless it is replaced by similar personal property of at least equal value.

iv. After August 31, 2005 and until the Closing Date, Seller will not enter into any new Lease or extend any existing Lease for a term in excess of six (6) months except for the Leases shown on Exhibit Z.

v. Seller shall, at Purchaser's sole cost and expense, reasonably cooperate with Purchaser in the termination of any Service Contracts by Purchaser following the Closing Date.

d. Purchaser's right to make a claim against Seller for a breach of an indemnity (except for Seller's indemnity for a brokerage commission), representation, warranty or covenant under this Agreement or the Exhibits attached hereto ("Claim") shall expire two hundred seventy (270) days after the Closing and delivery of the Deed ("Survival Date"). As to any Claim, Purchaser must: (i) notify Seller of the existence of the Claim in question, which notification ("Claim Notice") shall contain a reasonable description of the nature of the Claim or the facts, circumstances, conditions or events then known to Purchaser which give rise to the claim in question; and (ii) institute legal proceedings in a court of competent jurisdiction within sixty (60) days after the Survival Date ("Judicial Proceedings Date"). Any Claim for which a Claim Notice is not delivered by Purchaser to Seller on or prior to the Survival Date or for which legal proceedings are not instituted on or prior to the Judicial Proceedings Date, then such Claim shall be deemed to have been waived by Purchaser and rendered null and void and of no further force or effect. Seller's total liability in the aggregate for all Claims shall

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not exceed Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars. Seller shall not be liable for any Claim(s) which in the aggregate do(es) not exceed Twenty Five Thousand (\$25,000.00) Dollars.

20. COMPLIANCE WITH OFAC.

a. To the best knowledge of Purchaser, without any duty to make diligent inquiry, Purchaser is in compliance with all laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to Purchaser and all beneficial owners of Purchaser, including, without limitation, the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Purchaser agrees to make its policies, procedures and practices regarding compliance with the Orders available to Seller for its review and inspection during normal business hours and upon reasonable prior notice.

b. Neither Purchaser nor any beneficial owner of Purchaser:

i. is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists");

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ii. has been determined by competent authority to be subject to the prohibitions contained in the Orders;

iii. is owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or

iv. shall transfer or permit the transfer of any interest in Purchaser or any beneficial owner in Purchaser to any person who is or whose beneficial owners are listed on the Lists.

If Purchaser obtains knowledge that Purchaser or any beneficial owner in Purchaser has become listed on the Lists or has been indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Purchaser shall immediately notify Seller.

21. CONDITIONS PRECEDENT TO CLOSING.

a. In addition to any conditions provided in other provisions of this Agreement, Purchaser's obligation to purchase the Property is and shall be conditioned on the following:

i. That at no time prior to the Closing shall any of the following have been done by or against or with respect to Seller:

(i) the commencement of a case under Title 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii)

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the appointment of a trustee or receiver of any property interest; or (iii) an assignment for the benefit of creditors.

ii. On the Closing Date, there shall not be any uncured Unpermitted Exception or any violation of law, ordinance, order or requirement relating to the Property which is imposed in writing and delivered to Seller by any governmental authority relating to the Property, which is not remedied by Seller.

iii. If the transaction contemplated hereby shall require authorization or approval of any governmental agency having jurisdiction, all such authorizations and approvals shall have been obtained and shall be in full force and effect on and as of the Closing Date. If such authorizations and approvals shall not have been obtained on or prior to the last day for Closing hereinabove provided, the Closing Date may be deferred, at the election of either party, for an additional period of time, not to exceed 30 days, as shall be necessary to obtain any authorizations or approvals not then obtained.

iv. Seller shall deliver to Purchaser on the Closing Date an executed Certification as to Representations, Warranties, Covenants and Conditions in the form of Exhibit U attached hereof.

v. All services required to be performed by Phoenix Renovation Corp. ("Phoenix") under that certain Multi-Unit Repipe Contract ("Contract") dated February 2, 2005 shall have been completed by the Closing Date and all amounts due Phoenix under the Contract shall have been paid for by Seller.

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b. If there is a failure of a condition precedent, Purchaser can either (i) waive such failure and close this transaction, or (ii) notify Seller within two (2) business days after Purchaser is aware of such failure that Purchaser has elected to terminate this Agreement and obtain a return of the Earnest Money. In event of termination, except as may be specifically set forth elsewhere in this Agreement, neither party shall have any further liability hereunder.

c. If Purchaser elects not to close because of an alleged failure of a condition precedent, then Purchaser shall first deliver to Seller a written statement setting forth in detail such failure.

22. ENVIRONMENTAL AND PROPERTY CONDITION REPORTS. Seller has delivered to Purchaser at Purchaser's request the following environmental and property condition reports ("Reports") of the Property:

- a. Property Condition Report dated August 14, 2003 prepared by Pan Western Corporation;
- b. Structural Review dated August 20, 2003 prepared by R. D. Boyens Engineering;
- c. Phase I Environmental Site Assessment dated October 13, 2003 prepared by ATC Associates, Inc.;
- d. National Account Termite report dated September 18, 2003 prepared by Terminix International Company L.P.;
- e. Asbestos Management Plan V2.1 dated October 8, 2003 prepared by ATC Associates Inc.

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f. Survey for Visible AMG and Remediation Recommendations, Bellemeade Farms, Building 7, Apartment 714 dated November 29, 2004 prepared by Searchlight Safety LLC.

g. Mold Incident Report dated March 17, 2004 for 775 Gateway Drive, Apt. 101.

Seller makes no representation or warranty that the Reports are accurate or complete. Purchaser hereby releases Seller from any liability whatsoever with respect to the Reports, including, without limitation, the matters set forth in the Reports or the accuracy and/or completeness of the Reports.

23. ORGANIZATIONAL DOCUMENTS. At least ten (10) days prior to the Closing Date, Purchaser and Seller will provide Title Insurer with copies of their respective organizational documents as required by Title Insurer.

24. TIME OF ESSENCE. Time is of the essence of this Agreement.

25. NOTICES. Any notice or demand which either party hereto is required or may desire to give or deliver to or make upon the other party shall be in writing and may be personally delivered or given or made by overnight courier such as Federal Express or by facsimile or made by United States registered or certified mail addressed as follows:

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TO SELLER:
Fairfield Residential LLC
5510 Morehouse Drive
Suite 200
San Diego, California 92121
Attn: Gino A. Barra
858/457-2123
858/457-3982 (FAX)
E-mail: gbarra@ffres.com

with a copy to:
Robbins, Salomon & Patt, Ltd.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
Attn: John T. Duax
312/782-9000
312/782-6690 (FAX)
E-mail: jduax@rsplaw.com

TO PURCHASER:
Comstock Bellemeade, L.C.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
703/883-1700 ext. 215
703/760-1520 (FAX)

with a copy to:
Comstock Bellemeade, L.C.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Jubal Thompson
703/883-1700 ext. 135
703/760-1520 (FAX)

subject to the right of either party to designate a different address for itself by notice similarly given. Any notice or demand so given shall be deemed to be delivered or made on the next business day if sent by overnight courier, or on the same day if sent by facsimile (with facsimile confirmation sheet) before the

provided, with postage thereon fully prepaid. Any such notice, demand or document not given, delivered or made by registered or certified mail or by overnight courier or by facsimile as aforesaid shall be deemed to be given, delivered or made upon receipt of the same by the party to whom the same is to be given, delivered or made. Copies of all notices shall be served upon the Escrow Agent.

26. EXECUTION OF AGREEMENT AND ESCROW AGREEMENT. The parties hereto will each execute three (3) copies of this Agreement and the Escrow Agreement and forward them to the Escrow Agent. Purchaser's three (3) executed copies of this Agreement and the Escrow Agreements will be accompanied by the Earnest Money. Seller's three (3) executed copies of this Agreement and the Escrow Agreements will be accompanied with a direction to deliver a fully executed copy of this Agreement to the Purchaser and to the Seller, each accompanied by an Escrow Agreement executed by the Seller, the Purchaser and the Escrow Agent.

27. GOVERNING LAW. The provisions of this Agreement shall be governed by the laws of the state in which the Property is located without regard to principles of conflicts of laws.

28. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and supersedes all other negotiations, understandings and representations made by and between the parties and the agents, servants and employees.

29. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

30. CAPTIONS Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

31. NON-BUSINESS DAYS. Whenever action must be taken (including the giving of notice of the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, "business day" means any day other than a Saturday, Sunday or federal holiday.

32. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

33. NO WAIVER. No waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such

payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

34. ATTORNEYS' FEES. In the event either party commences legal proceedings against the other party pursuant to any right to do so under this Agreement, then the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

35. TAX DEFERRED EXCHANGE. Purchaser and Seller may use this Property in connection with a 1031 or 1033 tax deferred exchange. The parties agree to cooperate with each other and will execute such documents as may reasonably be required by each other in order to effectuate such tax deferred exchange, provided that neither Purchaser nor Seller will assume any liability or cost in connection with the tax deferred exchange and provided that the Closing will not be delayed. Either party's inability to obtain any benefits for a tax deferred exchange under Section 1031 or 1033 of I.R.C. will not relieve such party of any of its obligations under this Agreement.

36. CONFIDENTIALITY. Purchaser and Seller each hereby agree to keep the terms and conditions of this Agreement and any information obtained with reference to the Property, including but not limited to the Reports, confidential, provided that the parties may reveal such information regarding the terms and provisions of this Agreement as may be necessary in their reasonable discretion to comply with the provisions of this Agreement or in the ordinary course of business.

37. SURVIVAL OF INDEMNIFICATION. Notwithstanding anything contained in this Agreement to the contrary, all of Purchaser's indemnity obligations contained in this Agreement and the Exhibits attached hereto shall forever survive the Closing and the delivery and recording of the Deed or the earlier termination of this Agreement.

38. MISCELLANEOUS PROVISIONS.

a. This Agreement shall not be construed more strictly against any party merely by virtue of the fact that the same has been prepared by such party or its counsel, it being recognized that each party hereto has contributed substantially and materially to the preparation of this Agreement, and that each party hereto acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other parties hereto in entering into this Agreement.

b. Except as to those obligations which specifically survive the Closing, all of Seller's other obligations hereunder shall merge with the Deed.

c. In the event of a dispute, the parties hereto waive a trial by jury.

39. RIGHT TO CONTINUE TO MARKET. Intentionally Deleted.

40. THIRD PARTY BENEFICIARY. It is expressly agreed and it is the intention of Purchaser and Seller that no party acquiring the Property from Purchaser following the conversion of the Property into a condominium form of ownership, cooperative housing corporation, community apartment property or stock corporation, including but not limited to any unit owner or owners or any condominium association or association, their agents, employees and successors and assigns shall be considered to be

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a third party beneficiary to any and all of the obligations and/or liabilities of Purchaser or Seller under this Agreement.

IN WITNESS WHEREOF, the parties hereto have put their hand and seal as of the date set forth above.

Executed by Purchaser on
September 28, 2005.

PURCHASER:

COMSTOCK BELLEMEADE, L.C.
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
its manager

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

Witness: /s/ Bruce Labovitz

Name: Bruce Labovitz

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Executed by Seller on
September 28, 2005.

SELLER:

FF BELLEMEADE FARMS, LLC, a
Delaware limited liability company

By: FF PROPERTIES, INC., a Delaware
Corporation, its Manager

By: /s/ Gino Barra

Name: Gino Barra

Title: Vice President

FF INVESTORS W-I LLC, a Delaware limited
Liability company, on behalf of the Archstone
Mid-Atlantic Portfolio Series

By: FF PROPERTIES, INC., a Delaware corporation,
its Manager

By: /s/ Gino Barra

Name: Gino Barra

Title: Vice President

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BELLEMEADE FARMS INVESTORS, LLC, a
Delaware limited liability company,

By: /s/ Stuart Isen
Title: Authorized Representative

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Ideal Realty Group (“Broker”) executes this Agreement in its capacity as a real estate broker and acknowledges that the fee or commission (“Fee”) due to it as a result of the transaction described in this Agreement is the amount as set forth in the agreement between Broker and Seller. Broker also acknowledges that payment of the aforesaid Fee is conditioned upon the Closing and the receipt of the Purchase Price by the Seller. Broker agrees to deliver a receipt to the Seller at the Closing for the Fee and a release stating that no other fees or commissions are due to Broker from Seller or Purchaser.

IDEAL REALTY GROUP

By: /s/ Allen Manesh
Title: President

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EXHIBITS

- A - Legal
- B - Personal Property
- C - Escrow Agreement
- D - Intentionally Deleted
- E - Pro-forma Title Policy
- F - Deed
- G - Bill of Sale
- H - Assignment and Assumption of Service Contracts
- I - Assignment and Assumption of Leases and Security Deposits
- J - Notice to Tenants
- K - Non-Foreign Affidavit
- L - Assignment of Intangible Property
- M - Intentionally Deleted
- M-1 - Assignment of Guaranties, Warranties, Permits, Licenses and Approvals
- N - Intentionally Deleted
- O - Rent Roll
- P - Litigation
- Q - Service Contracts
- R - Intentionally Deleted
- S - Letter of Credit
- T-1 - Guaranty
- U - Intentionally Deleted
- V - Certifications as to Representations, Warranties, Covenants and Conditions
- X - Certificate of Insurance
- Z - Extended Leases

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made as of this 28 day of September, 2005 by and between (i) **COMSTOCK BELLEMEADE, L.C.**, a Virginia limited liability company ("Borrower") and (ii) **BANK OF AMERICA, N.A.**, a national banking association (the "Lender").

R E C I T A L S:

Pursuant to and subject to the terms of a certain Commitment Letter from Lender to Borrower dated September 2, 2005 (the "Commitment") and subject to the terms sets forth hereinbelow, Lender agrees to make a loan to Borrower, as more particularly described herein for the purpose of (i) the acquisition of certain residential buildings containing in the aggregate 316 units (each a "Unit" and collectively, the "Units") and the improvement of common area facilities within the complex and (ii) the renovation and condominium conversion of the Units (the "Renovation"). All of the foregoing shall be constructed on real property in Leesburg, Virginia more particularly described in Exhibit "A" hereto.

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

WHEREAS, Lender and Borrower have agreed to execute this Agreement for the purpose of describing together with the other Loan Documents (as herein defined) some of the terms and conditions relating to the disbursement of Loan proceeds, and to otherwise set forth together with the other Loan Documents (as herein defined) some of the obligations of Borrower and the Lender.

W I T N E S S E T H:

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

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ARTICLE I – DEFINITIONS

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

- (a) **Appraised Value** - The then current market value determined pursuant to the most recent appraisal for the Property. All such appraisals shall be ordered by the Lender, prepared at Borrower's expense by a certified appraiser acceptable to the Lender and otherwise satisfactory to the Lender in all respects. The Lender may order, if required by the Lender's internal policies, reappraisals of the Property, at the Lender's sole discretion and at Borrower's expense.
- (b) **Borrower** - The entity hereinabove designated as such.
- (c) **Contract** - A fully executed contract of sale for a Unit that: (i) has been accepted by Borrower and meets the Lender's criteria for acceptable contracts; (ii) is not subject to cancellation without forfeiture of all deposits thereunder (except for cause in accordance with applicable law and in the event the purchaser fails to obtain the necessary mortgage loan); (iii) contains no contingencies (including, without limitation, the sale of the purchaser's home) except ordinary financing contingencies; (iv) is accompanied by a cash deposit or deposits in form, content and amount acceptable to the Lender; and (v) that either (A) provides for a cash sale (i.e., a sale not contingent upon financing) by a purchaser whose creditworthiness is satisfactory to the Lender in all respects, or (B) is accompanied by a pre-qualification letter from a permanent mortgage lender in form, amount and content satisfactory to the Lender in all respects. In lieu of copies of Contracts, the Borrower may elect to submit a "Unit Contract Summary Report" in form attached hereto as Exhibit "C". At Lender's option, no more than twice monthly Lender shall verify the accuracy of the information on each Unit Contract Summary Report through a review of Borrower's files. Notwithstanding the foregoing, the Lender shall retain the right to request copies of Contracts at any time during the term of the Loan. At the time any Unit Contract Summary Report is submitted to the Lender for its approval, Borrower shall specifically identify to the Lender each Contract wherein the purchaser is affiliated with or related to Borrower, Guarantor (hereinafter defined) or any of their respective employees, shareholders, partners, members or other principals, as applicable "Related Party Contracts"). The number of Related Party Contracts shall not exceed ten percent (10%) of the total Units without Lender's prior consent.
- (d) **Deed of Trust** - Collectively, that certain Credit Line Deed of Trust and Security Agreement of even date herewith, executed and delivered by Borrower to secure the Loan, as any of the same may from time to time be amended, modified, supplemented or spread.
- (e) **Default** - Any of the happenings, events, circumstances or occurrences designated as such in this Agreement.

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- (f) **Environmental Regulations** - "Environmental Regulations" as defined in the Deed of Trust.
- (g) **Guarantor** - Comstock Homebuilding Companies, Inc. and any other party that executes and delivers a Guaranty, and its or their respective successors, personal representatives and permitted assigns.
- (h) **Guaranty** - That certain (i) Guaranty Agreement of even date herewith executed and delivered by Guarantor to secure the Loan and all other indebtedness under the Loan Documents (hereinafter defined), and (ii) any and all other guaranty agreements executed for the benefit of the

Lender to secure the Loan, as any of the same may from time to time be amended, modified, replaced or supplemented.

(i) **Hazardous Materials** - "Hazardous Materials" as defined in the Deed of Trust.

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

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

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

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

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

(o) **Letter of Credit Note** – that certain Letter of Credit Note of even date herewith in the principal amount of \$1,000,000.00 made by the Borrower, payable to the order

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of the Lender, as the same may from time to time be amended, modified, replaced or supplemented.

(p) **Loan** – That certain acquisition and development loan in the amount of \$46,725,000.00, and that certain \$1,000,000.00 letter of credit, each made pursuant to this Agreement, to finance the acquisition and development of certain property, as evidenced by the Note and the Letter of Credit Note and secured by the Deed of Trust and the other Loan Documents.

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

(r) **Maturity Date** – October , 2007.

(s) **Note** - That certain Deed of Trust Note of even date herewith in the original principal amount of \$46,725,000.00, or so much thereof as shall be advanced, made by the Borrower, payable to the order of the Lender, as the same may from time to time be amended, modified, replaced or supplemented.

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

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

(v) **Project** – Bellemeade Farms Project (hereinafter defined).

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

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

(y) **Bellemeade Farms Project** – acquisition, renovation and condominium conversion of up to 316 Units in Leesburg, Loudoun County, Virginia and the improvement of common area facilities within the complex.

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ARTICLE II – CONDITIONS PRECEDENT TO CLOSING

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

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

2.2. Organizational Documents. Borrower shall supply, with respect to the Borrower and Guarantor: (i) a currently certified copy of the Articles of Organization or Certificate of Incorporation and all amendments thereto, as applicable; (ii) evidence satisfactory to Lender and its counsel that Borrower and Guarantor in good standing in the jurisdiction where organized and qualified to do business in every jurisdiction in which the nature of their businesses or their properties makes such qualification necessary; (iii) resolutions of the Borrower and Guarantor authorizing the due execution and delivery of the Loan Documents to which it is a party, to the extent necessary; and (iv) certified true copies of the Operating Agreement or By-laws and all amendments thereto, as applicable.

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

2.3 Insurance. Borrower shall provide Lender with a complete and fully paid up policy or policies of casualty and fire insurance with standard extended coverage in an amount not less than the replacement cost of the improvements and personalty located on the Property; \$2,000,000.00 covering all claims for bodily injury or death and property damage arising out of a single occurrence and \$2,000,000.00 for the aggregate of all occurrences during any given annual policy period, plus \$5,000,000.00 of "umbrella" coverage; builder's risk insurance with on a completed value, nonreporting form with permission to complete and occupy; malicious mischief insurance; business interruption insurance and insurance against such other hazards as Lender may require, in amounts, with insurers and under forms of policies containing such provisions and endorsements as Lender may require. All policies of insurance (except employee benefit and public liability insurance which shall name Lender as an additional insured) shall contain a lender's loss payable clause and standard mortgagee clause for the benefit of Lender, and shall provide, in part, that: (a) in the event of a loss, all insurance proceeds shall be paid to Lender and Lender shall be authorized and empowered by Borrower to settle, adjust or compromise any claims for loss, damage or destruction under such policies of insurance; (b) any loss covered by such insurance shall be payable by the insurer in accordance with the terms of such policy notwithstanding any act or negligence of Borrower, its agents or employees, the named insured or any owner, tenant or occupant of the Property which might otherwise result in forfeiture of said insurance; (c) the insurer waives all rights of setoff, counterclaim or deduction against Borrower; and (d) should title to and beneficial

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ownership of the Property become vested in Lender, the insurance provided by such policies shall continue for the term thereof for the benefit of Lender. All required insurance shall provide that (i) the insurance afforded all parties named as insureds shall be primary insurance and shall not participate with, nor be in excess over, any other valid and collectible insurance available to Lender, (ii) any other insurance obtained by any named insured shall not be called upon to contribute until the limits of the policies required hereunder are exhausted, and (iii) the insurance required hereunder cannot be canceled or materially amended or altered without at least thirty (30) days prior written notification to Lender. All insurance required hereunder shall be issued by companies and in an amounts in each company approved in advance by Lender, in its sole discretion, and such insurance shall be in the form and on terms (including but not limited to deductibles, self-insured retentions or similar provisions) approved in advance by Lender, in its sole discretion.

Borrower shall deliver all such policies (or certified copies thereof) to Lender, together with a one-year's paid receipt for each such policy. In addition, Lender shall be furnished with satisfactory evidence indicating whether the Property is located within an area that has been identified as a "special flood hazard area" as that term is used in the Flood Disaster Protection Act of 1973. If any insurable improvements on the Property are located in any area so designated, a flood insurance policy satisfactory to Lender shall be deposited with Lender prior to the closing on the Loan and shall be maintained in full force until the Loan is repaid in full.

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

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

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

(b) Title Insurance. An irrevocable commitment to issue a full-coverage mortgagee title insurance policy (the "Title Policy") on the ALTA 1992 form insuring the first lien of the Deed of Trust to Lender in a form and issued by a title insurance company or companies acceptable to Lender, said policy (i) containing only those exceptions to title as shall be reasonably approved by Lender and Lender's counsel, and (ii) showing the lien of the Deed of Trust securing the Loan to be a first lien of record, on the fee simple estate of Borrower in the Property, together with true and complete copies of all documents or instruments identified therein as exceptions to title. The title policy shall be delivered to Lender promptly after

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recordation of the Deed of Trust. Lender shall have the right to designate such co-insurers or re-insurers as it deems advisable in its sole discretion. Such policy or policies shall be endorsable or assignable to Lender's successors and assigns, upon request, without cost to Lender. Such policy or policies shall contain affirmative insurance against filed and unfiled mechanic's liens in form acceptable to Lender. Lender shall receive satisfactory evidence that there is no pending litigation with respect to the Property.

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

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

(e) Budget. Receipt by Lender of the final budget for the Project, which shall be attached hereto as Exhibit "B", and which shall be reasonably acceptable to Lender.

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

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

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

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

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

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

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2.6 Equity Requirement. At or prior to Closing, Borrower shall provide Lender evidence that Borrower has contributed \$8,872,548.00 toward the purchase price of the Property ("Equity Contribution").

2.7 Loan Fee. Upon the closing of the Loan, the Borrower shall pay Lender a non-refundable loan fee in accordance with the Fee Letter Agreement of even date herewith between Borrower and Lender.

ARTICLE III - CONDITIONS FOR RENOVATION ADVANCES

3.1 In addition to any other conditions stated in this Agreement, the following conditions must be satisfied prior to Lender making any advances under this Agreement for the Renovation. Borrower shall obtain and submit to Lender for Lender's approval, in its reasonable discretion, the following, as they pertain to the Project:

(a) Permits. Copies of any and all building and similar permits required in connection with the Renovation, together with such evidence as the Lender may require to the effect that all fees for such permits have been paid. Satisfactory evidence shall be submitted to Lender of the receipt of all governmental approvals necessary for the Renovation and condominium conversion of the Units have been obtained. Lender shall also receive satisfactory evidence that all applicable safety, ecological and environmental laws and any other codes or regulations affecting the Renovation and/or proposed use of the Property have been complied with.

(b) General Contractor. The general contractor must be approved by Lender in Lender's sole discretion (the "General Contractor"). The contract for the Renovation shall be subject to Lender's approval, and shall be assigned to Lender, effective on a Default under any of the Loan Documents. The General Contractor shall consent to such assignment, and the General Contractor shall agree, in the event of any such Default, to continue performance of the contract for Lender, if Lender so requests. In addition, the General Contractor shall maintain workers' compensation and disability insurance in amounts required by law, and employer's liability insurance.

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

(d) Builder's Risk Insurance. Evidence that the insurance policy referred to in paragraph 2.2 hereof contains builder's risk coverage on a completed value, non-reporting form with permission to complete and occupy.

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ARTICLE IV - - ADVANCES FOR THE RENOVATION

4.1 Loan disbursements for the Renovation shall be governed and conditioned on the following:

(a) The Renovation shall be performed by the Borrower in strict accordance with all applicable (whether present or future) laws, ordinances, rules, regulations, requirements and order of any governmental or regulatory authority having or claiming jurisdiction. The Renovation shall be completed in a manner so as not to encroach upon any easement or right-of-way, or upon the land of others. The Renovation shall be wholly within all applicable building restriction lines and set-backs or variances made therefor, however established, and shall be in strict accordance with all applicable use or other restrictions and the provisions of any prior declarations, covenants and zoning ordinances and regulations.

(b) Borrower shall submit to Lender or the Progress Inspector, at Lender's discretion, such information as may be reasonably requested by Lender or the Progress Inspector to verify the Renovation costs which are to be incurred in connection with the Renovation. Lender shall not be obligated to authorize disbursement of Loan proceeds with respect to the Renovation for an amount in excess of the Renovation costs to be incurred in connection therewith as verified by Lender or the Progress Inspector pursuant to the provisions of the preceding sentence. The funding of each draw request is

subject to an inspection and approval by an authorized officer of the Lender and the Progress Inspector. Sufficient time shall be required between the submission of the draw request and the actual advances in order to permit on-site inspection by an authorized officer of the Lender and the Progress Inspector.

(c) The Loan proceeds will be advanced in installments as the Renovation progresses in accordance with the terms of this Agreement to finance the Renovation, but no more often than twice each thirty (30) days; provided that Lender is satisfied that the undisbursed amount of the Loan will be sufficient to complete the work, costs estimates, approved change orders on file with the Lender, and pay or provide for all reasonably anticipated Renovation costs through the maturity of the Loan and the Lender is satisfied that the Borrower has paid all costs incurred in connection with the Renovation prior to the date of the requested advance. In the event Lender determines that the undisbursed portion of the Loan is insufficient to complete the Renovation in such manner as Lender may require, the Borrower shall provide such funds necessary to complete the Renovation.

(d) Each advance shall be conditioned upon receipt of (i) a written certification, on AIA forms G-702 and G-703 by the Borrower, that the work which is the basis of the requested advance was satisfactorily completed and within the cost estimates approved by Lender (or such adjustments of cost estimates of line items as shall be required and approved by Lender, provided that sufficient funds to complete the Renovation will be available under such adjusted estimates), to the satisfaction of Lender, and (ii) evidence that all then necessary certificates required to be obtained from any board, agency or department (government or otherwise) have been obtained. All documents required to be submitted to Lender as a condition of each disbursement shall be on standard AIA forms or such other agreed upon draw

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mechanism and shall be furnished to Lender at the address designated by Lender from time to time.

(e) Lender shall also require notice of continuation or an endorsement to the title insurance policy theretofore delivered, indicating that since the last preceding advance there has been no change in the status of title and no title exceptions not theretofore approved by the Lender and bringing the policy to the date of the advance then being made and increasing the coverage of the policy by an amount equal to the advance then being made if the policy does not by its terms provide for such an increase.

(f) Before making any advance of Loan proceeds, the Lender may require the Borrower to obtain from the General Contractor, acknowledgments of payment and releases of liens and rights to claim liens, if applicable, down to the date of the last preceding advance and concurrently with the final advance. All such acknowledgments and releases shall be in the form and substance satisfactory to the Lender.

(g) The Lender shall not be obligated to make the final advance of Loan proceeds hereunder, unless (i) the Progress Inspector has certified to the Lender on standard AIA forms that the work is complete; (ii) the Lender has received evidence satisfactory to it that all work requiring inspection by governmental or regulatory authorities having or claiming jurisdiction has been duly inspected and approved by such authorities and by any rating or inspection organization, bureau, association, or office having or claiming jurisdiction; and (iii) the Lender has received evidence satisfactory to it that requisite certificates of occupancy for permanent occupancy have been validly issued and that completion of the Renovation has occurred free and clear of all mechanics' or materialmens' liens and any bills or claims for labor, materials and services in connection with the completion of the Renovation. All fees and costs of the Progress Inspector incurred by the Lender shall be paid by the Borrower at its sole expense.

(h) The Lender shall not be obligated to make any advances of Loan proceeds hereunder unless, in the reasonable judgment of the Lender, all work completed at the time of the application for advance has been performed in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at that stage of the Renovation have been furnished and installed, and no Default which has not been cured has occurred under any of the documents evidencing, securing or guaranteeing the Loan.

(i) Upon Default hereunder, Lender, at its option, may make any and all advances, or any part thereof, directly to the contractors or subcontractors against requisitions for payment under the Renovation contracts or subcontracts, as the case may be; the execution of this Agreement by Borrower shall and does constitute an irrevocable direction and authorization to so advance funds. All payments made pursuant to the foregoing shall be made within the scope of the respective contracts.

(j) Lender, at its option, may make any advance to itself for the payment of interest or any and all other reasonable costs incurred by Lender in connection with or pursuant

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to the Loan Documents, and the execution of this Agreement by Borrower shall and does constitute an irrevocable direction and authorization to so advance funds.

ARTICLE V — REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to the Lender, as of the date hereof and at all times hereafter, that:

5.1 Organization, Power, Etc. (a) Borrower is a duly organized, validly existing limited liability company, in good standing under the laws of the jurisdiction of its organization; (b) Guarantor is a duly organized, validly existing corporation under the laws of the jurisdiction of its organization (c) each of the Borrower and Guarantor has the power and authority to own its properties and to carry on its business as now being conducted; (c) each of the Borrower and Guarantor is duly qualified to do business in the jurisdiction where the Property is located and in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; (d) each of the Borrower and Guarantor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it; and (e) each of the Borrower and Guarantor has the full power, authority and legal right to execute, deliver and perform the covenants and obligations set forth in this Agreement and the other Loan Documents and to carry out the terms hereof and thereof.

5.2 Validity of Loan Documents. The execution, delivery and performance by Borrower of the Note, the Letter of Credit Note and the other Loan Documents: (a) are within the legal powers of Borrower; (b) have been duly authorized by all requisite partnership and/or membership action, as applicable; (c) have received all necessary governmental approvals; (d) will not violate any provision of law, any order of any court or other agency of government or any articles of organization, membership and/or operating agreement, partnership agreement, indenture, agreement or other instrument to

which Borrower is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the Loan Documents; and (e) when executed and delivered by Borrower, will constitute the legal, valid and binding obligations of the Borrower and other obligors named therein, if any, in accordance with their respective terms.

5.3 Financial Statements. All financial statements delivered to the Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting practices consistently applied (other than with respect to individual Guarantors), and fairly present the financial condition of the Borrower and other parties named therein as of the dates thereof. No material adverse change has occurred in the financial condition reflected therein since the dates thereof and no material additional liabilities have been incurred since the

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most recent date thereof other than the borrowing contemplated in the Commitment and this Agreement.

5.4 Other Information. All other information, reports, papers and data given to the Lender with respect to Borrower or others obligated under the terms of the Loan Documents and the Property are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Lender a true and accurate knowledge of the subject matter.

5.5 Utilities and Access. All utility services and access necessary for the Renovation are available, including, without limitation, roads, telephone service, water supply, storm and sanitary sewer facilities, and natural gas or electric facilities.

5.6 Defaults. There is no Default on the part of the Borrower under the Note or any of the other Loan Documents and no event has occurred that may give rise to a Default.

ARTICLE VI — AFFIRMATIVE COVENANTS

Until the Indebtedness has been paid in full and the Loan has been terminated, Borrower hereby affirmatively covenants and agrees as follows:

6.1 Financial Statements; Sales and Inventory Reports. Borrower shall provide the following with respect to the Guarantor:

(a) as soon as available, but in no event later than ninety (90) days after the close of its fiscal year (but in no event earlier than the date such financial statements must be submitted to governmental authorities), financial statements (all of which financial statements may include, as requested by the Lender, a balance sheet, income statement, sources and uses of funds for such fiscal and/or calendar year, projected sources and uses of funds for the coming year, detailed listing and description of all contingent liabilities, tax returns, written verification of liquidity and such other supporting schedules and documentation which the Lender may request). All such financial statements shall be audited by a certified public accountant acceptable to the Lender in all respects; and

(b) if requested by the Lender, within forty-five (45) days after the close of its quarterly business period (but in no event earlier than the date such financial statements must be submitted to governmental authorities), the financial statements to be filed with applicable governmental authorities.

6.2 Construction. After each advance of proceeds under the Loan, Borrower shall commence to acquire the Land and/or proceed with the Renovation for which each such advance is designated and will prosecute the same in good faith with diligence and continuity.

6.3 Approval and Permits. No work associated with the Renovation shall be commenced by Borrower unless and until all necessary approvals by all governmental

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authorities having or claiming jurisdiction and by the beneficiary of any applicable restrictive covenant have been obtained, and unless and until all required building and other permits have been validly issued and all required fees and bonds have been paid or posted, as the circumstances may require.

6.4 Free and Clear of Liens. Except as may be otherwise specifically permitted under the Loan Documents, Borrower shall not make any contract or arrangement of any kind which would give rise to a lien on any portion of the Property. The Renovation shall be completed by Borrower free and clear of all mechanics' and materialmen's liens.

6.5 Compliance with Laws - Encroachments. The Renovation shall be performed in strict accordance with all applicable present and future laws, ordinances, rules, regulations, requirements and orders of any governmental or regulatory authority having or claiming jurisdiction.

6.6 Inspections; Cooperation. Borrower shall permit the Lender and its duly authorized representatives (including, without limitation, the Progress Inspector) to enter upon the Property at all reasonable times and in a reasonable manner to inspect the Improvements and any and all materials and to examine all detailed plans and shop drawings and similar materials relating to the Renovation. Borrower will at all times cooperate and request its subcontractors and materialmen to cooperate with the Lender and its duly authorized representatives (including, without limitation, the Progress Inspector) in connection with or in aid of the performance of the Lender's functions under this Loan Agreement. Borrower shall pay all inspection fees incurred by the Lender in connection with the Loan; however, so long as no Default exists, inspections shall be limited to two site inspection visits per month to be performed by the Progress Inspector at Borrower's sole cost and expense. Inspection fees may be deducted by the Lender from the Borrower's applicable Loan disbursement.

6.7 Vouchers and Receipts. Borrower will furnish to the Lender, promptly on demand, a computer generated report of job costs and accounts payable for the Project financed under the Loan, and from and after any Default under the Loan, (i) any contracts, bills of sale, statements, receipted vouchers or agreements pursuant to which Borrower has any claim of title to any materials, fixtures or other articles delivered or to be delivered to the Land or

incorporated or to be incorporated into the Improvements and (ii) a verified written statement, in such form and detail as the Lender may require, showing all amounts paid and unpaid for labor and materials and all items of labor and materials to be furnished for which payment has not been made and the amounts to be paid therefor.

6.8 Payments for Labor and Materials. Borrower will pay when due all bills for materials supplied and for services or labor performed in connection with the Renovation.

6.9 Correction of Construction Defects. Borrower will promptly correct or cause the correction of any structural defects in the Improvements and any substantial departures or deviations from the Plans and Specifications.

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6.10 Insurance. Borrower will comply with all insurance requirements set forth in the Deed of Trust.

6.11 Hazardous Materials. Borrower will comply with the provisions of the Deed of Trust regarding Hazardous Materials and all applicable Environmental Regulations.

6.12 Subcontractors. Borrower shall immediately disclose to the Lender upon request the names of all subcontractors with whom Borrower has contracted or intends to contract for the Renovation or for the furnishing of labor or materials therefor.

6.13 Equity Contribution. At or prior to closing, Borrower shall make the Equity Contribution.

6.14 Condominium Conversion. The Borrower shall take all steps necessary to validly and legally convert the Property into a condominium regime with approximately 316 residential Units. The condominium documents, including without limitation, the condominium declaration and by-laws, shall be acceptable to the Lender in its discretion. From time to time, upon the Lender's request, the Borrower shall provide Lender with evidence that Borrower has complied with any applicable requirements of the condominium documents and any applicable laws. Borrower shall, within 150 days of the closing of the Loan, provide Lender with all condominium documents, including without limitation, the public offering statement. Lender recognizes that the Bellemeade Farms Project will utilize an expandable condominium regime, whereby the condominium will be established in phases to expand over the Property. Lender shall not unreasonably withhold its consent to certain cross easements as the condominium regime expands within the complex.

6.15 Curtailment Schedule. Borrower agrees to comply with the following curtailment schedule for advances under the Loan (the "Mandatory Principal Curtailment Requirement"):

<u>Due Date</u>	<u>\$ Amount of Curtailment</u>	<u>Remaining Commitment</u>
June 30, 2006	\$ 7,400,000	\$ 39,325,000
September 30, 2006	\$ 5,550,000	\$ 33,775,000
December 31, 2006	\$ 5,550,000	\$ 28,225,000
March 31, 2007	\$ 5,550,000	\$ 22,675,000
June 30, 2007	\$ 5,550,000	\$ 17,125,000
September 30, 2007	\$ 5,550,000	\$ 11,575,000
Extension Period		
December 31, 2007	\$ 5,550,000	\$ 6,025,000
March 31, 2008	\$ 6,025,000	\$ 0

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ARTICLE VII — NEGATIVE COVENANTS

Until the Indebtedness has been paid in full and the Loan has been terminated, Borrower hereby covenants and agrees as follows:

7.1 Restrictions on Subordinate Financing. Throughout the term of the Loan, Borrower shall not place any subordinate financing on the Property.

7.2 Changes to Plans and Specifications. Without the prior written consent of the Lender, Borrower will not permit any substantial changes in the design concept for the Units.

7.3 Prohibition on Transfer of Assets. Without the prior written consent of the Lender, Borrower will not transfer any of its assets, except for transfers in the ordinary course of business and transfers for which Borrower receives consideration substantially equivalent to the fair market value of the transferred asset.

7.4 Assignments. Without the prior written consent of Lender, Borrower will not transfer, assign, pledge or hypothecate any of its rights to advances, or any of its rights or obligations under this Agreement. Any assignment made or attempted by Borrower without the prior written consent of the Lender shall be void. No consent by the Lender to an assignment by Borrower shall either (a) release Borrower as the party primarily obligated and liable under the terms of this Agreement unless Borrower shall be released specifically by the Lender in writing, or (b) be deemed to be a waiver of the requirement of prior written consent by the Lender with respect to each and every further assignment.

ARTICLE VIII — DEFAULT

Each of the following events shall constitute a "Default" under this Agreement and each of the other Loan Documents:

8.1 Payment of Indebtedness. Any failure by the Borrower to pay when due any and all amounts payable by the Borrower under the terms of the Note or any of the other Loan Documents, which failure to pay remains uncured for a period of five (5) calendar days after the date such payment is due (or five (5) calendar days after notice from Lender in the case of amounts due that are not regular monthly payments), including, without limitation, any principal payment, interest payment, letter of credit reimbursement, loan fee, extension fee, letter of credit fee or late charge, and including any advances made by the Lender from the proceeds of the Loan or otherwise and interest thereon at the applicable rate set forth in the Loan Documents.

8.2 Performance of Obligations. Any default by the Borrower or Guarantor in the due observance or performance of any of the Obligations and such default, if other than in payment of the Indebtedness, shall remain uncured thirty (30) days after the receipt by Borrower of written notice from Lender identifying such default. If Borrower receives such notice, Borrower shall diligently pursue a cure of such default.

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8.3 Other Defaults. The occurrence of any Default under the Deed of Trust or the Note or any of the other Loan Documents.

8.4 Representations and Warranties. Any determination by the Lender that any representation or warranty contained in any of the Loan Documents or in any certificate, opinion, financial information or any other form delivered to the Lender in connection with the Loan, is incorrect or misleading in any material respect at any time.

8.5 Progress of Construction. Except for delays unavoidably occasioned by strikes, lock-outs, war or civil disturbance, natural disaster or acts of God (a) any delay in the Renovation caused by lack of good faith or reasonable dispatch, (b) any abandonment of the work or discontinuation of construction for a period of more than thirty (30) consecutive days, unless the Lender is notified of Borrower's abandonment of work or discontinuance of construction is otherwise approved by the Lender, or (c) any failure to complete the Renovation on or before the maturity date of the Loan.

8.6 Proceeds Insufficient to Complete. Any failure by Borrower to pay or deposit the amount of the deficiency required pursuant to Section 4.1(c) hereof, if the Lender determines that the amount of undisbursed Loan proceeds available is less than the amount necessary or required to complete and pay for the Renovation.

8.7 Mechanic's Lien. The establishment of any mechanics' or materialmen's lien against any portion of the Property, unless the same is insured over by the Title Company, satisfied, or bonded to the satisfaction of the Lender within thirty (30) days.

8.8 Adverse Action or Insolvency. (a) the entry of a final judgment for the payment of money in excess of \$50,000.00 against the Borrower or the Guarantor that is not discharged or bonded within thirty (30) days after the date of entry, (b) the institution of any proceeding by or against the Borrower or the Guarantor in bankruptcy, or for a reorganization or an arrangement with creditors under any insolvency or debtor relief law which is not dismissed or stayed within thirty (30) days of the date of filing, (c) the appointment of any receiver, liquidator, assignee, custodian or similar official for the Borrower or the Guarantor or any portion of the Property, or (d) the issuance of any writ or order of attachment, levy or garnishment against the Borrower or the Guarantor which is not discharged to the Lender's satisfaction within thirty (30) days after the date of such issuance.

8.9 Financial Condition. Any reasonable determination by the Lender that a material adverse change has occurred in the financial condition of the Borrower or Guarantor, including without limitation, the failure of Guarantor to meet the financial covenants of set forth in Section 4 of the Guaranty.

8.10 Hazardous Materials. Violations of any applicable Environmental Regulations or requirements of the Deed of Trust pertaining to Hazardous Materials.

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8.11 Death and Dissolution. The death, legal incompetence, dissolution, liquidation or termination of Borrower or Guarantor, or of any general partner of Borrower or Guarantor, subject to the provisions of the Guaranty Agreement.

ARTICLE IX — DEFAULT - REMEDIES

9.1 Remedies on Default. Upon the happening of any Default, the Lender shall not be obligated to advance any additional Loan proceeds, and, in addition to any other rights or remedies available to it under this Section, the Deed of Trust and other Loan Documents, the Lender may enter into possession of the Property or any portion thereof, and perform any and all work and labor necessary to complete the Renovation and to employ watchmen to protect the Property.

All sums expended by the Lender for such purposes shall be deemed to have been paid to the Borrower or for its benefit and shall constitute part of the Indebtedness secured by the Deed of Trust. Borrower hereby constitutes and appoints the Lender as its true and lawful attorney-in-fact with full power of substitution to complete the work in the name of Borrower, and hereby empowers said attorney or attorneys as follows: (a) to use any funds of Borrower, including any escrow balances and any unadvanced Loan proceeds, for the purpose of completing the Renovation; (b) to make such additions and changes and corrections in the plans and specifications as may be necessary or desirable in the judgment of the Lender to complete the Renovation; (c) to employ such contractors, subcontractors, agents, architects and inspectors as may be required for such purpose; (d) to pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of the work or the clearance of title; (e) in the name of Borrower to execute all applications and certificates that may be required; (f) to execute, acknowledge and deliver such documents, instruments and certificates, and to take such other actions, in the name and on behalf of Borrower and at the sole cost and expense of Borrower, as the Lender, in its sole discretion, deems necessary, desirable or appropriate to effectuate the provisions of this section; and (g) to do any and every act with respect to the Renovation that Borrower may do in its own behalf.

It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Such attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the Renovation and to take such actions and require such performance as is deemed necessary.

The Lender shall also have the right, upon the happening of any Default, to do any one or more of the following, at its election, but without any obligation to do so:

- (a) to declare the Indebtedness immediately due and payable;
- (b) to terminate the Loan;
- (c) to decline to make any further Loan advances and/or readvances;

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(d) to reduce any claim to judgment;

(e) to exercise any and all rights and remedies afforded by this Agreement and the other Loan Documents, as well as any and all legal or equitable rights and remedies afforded under any statute or otherwise; and

(f) to set off and apply against the Indebtedness any and all deposits, funds or assets at any time held, and any and all indebtedness at any time owed, by the Lender to or for the credit or account of Borrower.

9.2 No Conditions Precedent to Exercise of Remedies. Neither Borrower nor Guarantor shall be relieved of any obligation by reason of the failure of the Lender to comply with any request of Borrower or of any other person to take action to foreclose on the Deed of Trust or otherwise to enforce any provisions of the Note, the Letter of Credit Note or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the Property, or by reason of any agreement or stipulation between any subsequent owner of any portion of the Property and the Lender extending the time of payment or modifying the terms of the Notes or the other Loan Documents without first having obtained the consent of Borrower or such Guarantor; and in the latter event, Borrower and each Guarantor shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by the Lender.

9.3 Remedies Cumulative and Concurrent. No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedies provided for in the Note or in the other Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under the Note, the Deed of Trust or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given by the Note and the Loan Documents to the Lender shall be concurrent and may be pursued separately, successively or together against the Borrower, Guarantor, or the Property or any part thereof, or any one or more of them; and every right, power and remedy given by the Note or the other Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

9.4 Strict Performance. No delay or omission of the Lender in exercising any right, power or remedy accruing upon the happening of a Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Default or any acquiescence therein. No delay or omission on the part of the Lender in exercising any option for acceleration of the maturity of the Indebtedness, or for foreclosure under the Deed of Trust following any Default as aforesaid, or any other option granted to the Lender hereunder in any one or more instances, or the acceptance by the Lender of any partial payment on account of the Indebtedness, shall constitute a waiver of any such Default and each such option shall remain continuously in full force and effect.

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9.5 Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any Dispute shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of the American Arbitration Association, or any successor thereof (“AAA”) and the “Special Rules” set forth below. “Dispute” means any controversy, claim or dispute between or among the parties to this Note, Agreement, or Guaranty, as applicable, including any controversy, claim or dispute arising out of or relating to (a) this Agreement, (b) any other Loan Documents, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Borrower or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms “party” and “parties” shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Agreement, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Agreement.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, the any party to this Agreement, may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Agreement, referred to collectively as the “arbitrator”).

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Agreement.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) **Reservations of Rights.** Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Agreement, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Agreement, in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement, as applicable. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) **Conflicting Provisions for Dispute Resolution.** If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Agreement, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) **Jury Trial Waiver in Arbitration.** By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

ARTICLE IX — MISCELLANEOUS

10.1 No Warranty by Lender. By accepting or approving anything required to be observed, performed or fulfilled by Borrower or Guarantor pursuant to this Agreement or any other Loan Documents, including, without limitation, any plans, specifications, certificate, financial information, survey, receipt, appraisal or insurance policy, the Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof. Any such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by the Lender.

10.2 Liability of Lender. The Lender shall not be liable for any act or omission by it pursuant to the provisions of this Agreement in the absence of fraud or gross negligence. The Lender shall incur no liability to Borrower or any other party in connection with the acts or omissions of the Lender in reliance upon any certificate or other paper believed by the Lender to be genuine or with respect to any other thing which the Lender may do or refrain from doing, unless such act or omission amounts to fraud or gross negligence.

10.3 Modification - Waiver. None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except as provided in the Deed of Trust.

10.4 Third Parties - Benefit. All conditions set forth herein with respect to the obligations of the Lender to make Loan advances are imposed solely and exclusively for the benefit of the Lender, and no other person shall either have standing to require satisfaction of such condition in accordance with its terms, be entitled to assume that the Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, or be deemed to be beneficiary of such conditions under any circumstances, any or all of which may be freely waived in whole or in part by the Lender at any time in the sole and absolute exercise of its discretion. The Lender shall in no event be responsible or liable to any person other than the Borrower for the disbursement of or failure to disburse any of the proceeds of the Loan, and

no contractor, subcontractor, laborer or material supplier or other person shall have any right or claim against the Lender with respect to this Agreement. The terms and provisions of this Agreement are for the benefit of the parties hereto and, except as herein specifically provided, no other person shall have any right or cause of action on account thereof.

10.5 Captions and Headings. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof.

10.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

10.7 Signs; Publicity. At the request and expense of the Lender (subject to applicable law and compliance with governmental requirements, and subject to Borrower's approval of the design and location of said sign, which consent shall not be unreasonably withheld), Borrower shall install a sign or signs at a location or locations on the Property satisfactory to the Lender, reciting, among other things, that the Lender is financing the Renovation. Borrower shall (at the expense of Lender) obtain all permits, licenses and approvals from the appropriate governmental agency or association that are necessary for the erection and existence of any such signs. Borrower expressly authorizes the Lender to prepare and to furnish to the news media for publication from time to time news releases with respect to any portion of the Property detailing the Lender's involvement with the financing.

10.8 Applicable Law. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the Jurisdiction of Choice, unless the "choice of law" rules of the Jurisdiction of Choice can be construed or interpreted to require the laws of another jurisdiction to govern, in which case the "choice of law" rules of the Jurisdiction of Choice shall not apply.

10.9 Time of Essence. Time shall be of the essence of each and every provision of this Agreement of which time is an element.

10.10 Conflicts. The terms and conditions of the Note and the other Loan Documents are incorporated into this Agreement and made a part hereof as if specifically set forth herein. In the event any provision of this Agreement conflicts with the terms of any other Loan Document, the terms of this Agreement shall prevail. For purposes of this Section the absence of a provision from any Loan Documents shall not constitute a conflict.

10.11 Quality of Documents and Other Items. Each document, item or other evidence required to be delivered to the Lender in connection with this Agreement shall be satisfactory in form and substance to the Lender in its sole discretion. In addition, all surveys, appraisals, environmental site assessments, inspections, cost reviews, subcontracts, leases, bonds, insurance policies and all other documents required or contemplated by this Agreement and the other Loan Documents shall be satisfactory to the Lender and, if required by the Lender,

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Borrower shall provide the Lender and its counsel with copies of any or all of such documents. All contractors, subcontractors, sureties, insurers and any other party responsible for the execution and preparation of the foregoing documents shall also be satisfactory to the Lender.

10.12 Professional Services. If requested by Lender, Borrower shall: (a) not more frequently than annually, cause an inspection and written appraisal of the Property (or such parts of it as are designated in the Lender's request) to be made and provided to Lender by an appraiser approved and engaged by the Lender in its sole discretion; and (b) cause to be conducted or prepared any other written report, summary, opinion, inspection, review, survey, audit or other professional service relating to the Property or any operations in connection with it (all as designated in Lender's request) as Lender may reasonably request, including, without limitation, any accounting, auctioneering, architectural, consulting, engineering, design, legal, management, pest control, surveying, title abstracting or other technical, managerial or professional service relating to the Property or its operations. The Lender may elect to deliver any such request by facsimile, by mail or by hand delivery addressed to the Borrower as provided herein or by any other legally effective method, and it may be given at any time and from time to time.

10.13 Further Assurances. At the request of the Lender, Borrower shall take any action or execute any additional document reasonably required by the Lender to secure the Indebtedness, confirm the lien of the Deed of Trust or further the intent of any of the Loan Documents.

10.14 Costs and Expenses. The Borrower shall pay all out-of-pocket fees, charges and expenses incurred by or on behalf of the Lender in connection with the Loan and the making, closing and administration of the Loan, including, without limitation (a) fees and expenses for the examination of title to the Property; (b) recording and filing fees, recordation taxes and transfer taxes; (c) Title Company premiums, fees and charges; (d) surveyor charges; (e) appraisal fees; (f) inspection fees; (g) the fees and expenses of the Lender's counsel; (h) all amounts due the Progress Inspector; (i) the payment, satisfaction, discharge and release of any encumbrance, tax, assessment or other charge or lien upon any portion of the Property; (j) any syndication or participation fees, if applicable, and (k) the construction, maintenance and protection of the Improvements and every portion thereof. Further, the Lender may (but shall be under no obligation to do so) advance for the account of Borrower as part of or in addition to the Loan any amount or amounts as the Lender may deem necessary or advisable in order to fulfill the obligations of Borrower hereunder, which amount or amounts may be disbursed by the Lender directly to a third party in order to protect its interests, and any amount so applied by the Lender shall constitute a portion of the Indebtedness, even though the aggregate of the amounts so applied, together with the other advances under the Note, may exceed the principal amount of the Note.

10.15 Fees and Expenses - Indemnity. Borrower will hold the Lender harmless and indemnify the Lender from all claims of brokers and "finders" arising by reason of the Loan, the execution and delivery of this Agreement or the making of the Loan. Borrower shall protect, indemnify and save harmless the Lender and its directors, officers, agents, and employees, the

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Deed of Trust trustees, and all independent contractors from and against all liabilities, obligations, claims, damages, fines, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and disbursements), imposed upon or incurred by or asserted against any of them in connection with the Loan.

10.16 Participation or Sale of the Loan. The Lender may sell the Loan or any undivided ownership or participation interest in the Loan and disclose in confidence such financial and other information with respect to Borrower, the Loan, Guarantor, and/or the Property, or any portion thereof, which

the Lender may deem necessary in connection with such sale or participation. Borrower shall execute, acknowledge and deliver any and all instruments reasonably requested by the Lender in connection with the foregoing. Borrower shall also pay any expenses of each participant in connection with the enforcement of the Loan Documents.

10.17 Seal. If any Borrower is a corporation, the designation “(SEAL)” on this Agreement shall be effective as the affixing of such Borrower’s corporate seal physically to this Agreement.

10.18 WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES’ AGREEMENT TO ARBITRATE ANY “DISPUTE” (FOR PURPOSES OF THIS SECTION, AS DEFINED IN THE “DISPUTE RESOLUTION” SECTION) AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY “DISPUTE” IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH “DISPUTE” AND ANY ACTION ON SUCH “DISPUTE.” THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT, AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

10.19 Electronic Transmission of Data. Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including transmission over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates and other persons involved with the subject matter of this Agreement. Borrower acknowledges and agrees that (a) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (b) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt or third party interception of any such transmission, except for Lender’s fraud or gross negligence, and (c) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender’s strict liability or sole, comparative or contributory negligence, but excluding that arising from Lender’s fraud or gross negligence, which is related to the electronic transmission of data.

10.20 USA Patriot Act Notice. Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Borrower and the Lender, intending to be executed and delivered under seal, have executed and delivered these presents or caused these presents to be executed and delivered under seal as of the year and day first above written.

BORROWER:

WITNESS/ATTEST:

COMSTOCK BELLEMEADE, L.C.,
a Virginia limited liability company

By: /s/ Jubal R. Thompson

By: Comstock Homebuilding Companies, Inc.,
Its Manager

By: /s/ Christopher Clemente

Name: Jubal R. Thompson

Christopher
Clemente
Its Chief
Executive
Officer

Title: General Counsel

(Seal)

Address: 11465 Sunset Hills Road
5 th Floor
Reston, Virginia 20190

WITNESS:

LENDER:

BANK OF AMERICA, N.A.

/s/ Kelly Wyche

By:

/s/ Linda Long

Name: Kelly Wyche
Title:

Linda P. Long
Senior Vice President

Address:

8300
Greensboro
Drive
Suite 300
McLean, Va.
22102-3604

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EXHIBIT "A"

Property Description

C-27

EXHIBIT "B"

Budget

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EXHIBIT "C"

Unit Contract Summary Report

C-1

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 28 day of September, 2005, by **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the "Guarantor") in favor of **BANK OF AMERICA, N.A.**, a national banking association (the "Lender"), and its successors and assigns.

RECITALS:

WHEREAS, Lender has made an acquisition and development loan to Comstock Bellemeade, L.C. ("Borrower") in the maximum principal amount of \$46,725,000.00 (or so much thereof as shall be advanced) and/or may issue letters of credit for the Borrower's account in connection therewith, including, without limitation, a \$1,000,000.00 letter of credit (such extensions of credit being herein sometimes called individually and/or collectively the "Loan");

WHEREAS, as a condition precedent to making the Loan, the Lender has required, among other things, the execution and delivery of this Guaranty by Guarantor;

WHEREAS, the Loan shall be made in accordance with the terms and conditions of a Loan Agreement of even date herewith, between the Lender and Borrower (as amended, modified or supplemented from time to time, the "Loan Agreement");

WHEREAS, the Loan shall be evidenced by certain notes, applications or agreements for the issuance of a letter or letters of credit, including, without limitation, that certain Deed of Trust Note of even date herewith, from Borrower payable to the order of the Lender in the maximum principal amount of \$46,725,000.00, or so much thereof as shall be advanced, that certain Letter of Credit Note in the principal amount of \$1,000,000.00 of even date herewith, from Borrower payable to the order of the Lender, and any other instrument or agreement executed from time to time by the Borrower in favor of the Lender, as any of the same may from time to time be amended, modified, replaced or supplemented (collectively, the "Note");

WHEREAS, the Guaranty is or shall be secured by one or more Credit Line Deed(s) of Trust and Security Agreements now or hereafter executed and delivered by the Borrower to certain trustees for the benefit of the Lender, including, without limitation, that certain Credit Line Deed of Trust and Security Agreement of even date herewith, from Borrower as grantor, to certain trustees for the benefit of the Lender (as amended, modified or supplemented from time to time, collectively, the "Deeds of Trust"), covering certain real property as more particularly described therein, as well as all improvements located thereon;

WHEREAS, it is intended that this Guaranty extend to the Loan and all other amounts owing under any of the "Loan Documents" (hereinafter defined), without any need for any notice to the Guarantor of the making of the Loan or advances thereunder

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and without any need for any supplements or amendments to this Guaranty or any other documentation to be executed by the Guarantor; and

WHEREAS, unless otherwise defined herein, all capitalized terms used herein shall have the meanings assigned to them in the Loan Agreement.

WITNESSETH:

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to the Lender to extend credit to the Borrower from time to time, the Guarantor hereby guarantees to the Lender the prompt and full payment and performance of the Indebtedness and the other obligations in connection with the Loan as defined and described below in this Guaranty (hereinafter sometimes collectively called the "Obligations"), upon the following terms and conditions:

1. Guaranty of Payment. The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the punctual payment when due, whether by scheduled payment date, upon maturity, lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against the Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness (including, without limitation, indemnification for environmental matters), and other sums of money now or hereafter due and owing pursuant to (a) the terms of the Note, the Loan Agreement, the Deed(s) of Trust, and any and all other documents executed by the Borrower in connection with the Loan (the "Loan Documents"), now or hereafter existing, and specifically including any and all advances made by the Lender under the Loan Documents from sources other than the Loan, and interest on such advances, and (b) all renewals, extensions, increases, refinancings, modifications, supplements or amendments to such indebtedness, or any of the Loan Documents, or any part thereof (such indebtedness being hereinafter collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, whether or not presently contemplated by the Guarantor, the Borrower or the Lender, and whether or not the same shall be incurred after satisfaction, payment or reduction of any previous Indebtedness, including all amounts advanced and/or readvanced by the Lender in stages or installments. The guaranty of the Guarantor as set forth in this Section is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. The Guarantor additionally hereby unconditionally and irrevocably guarantees to the Lender the timely performance of all other obligations of the Borrower under all of the Loan Documents, including without limitation, completion of the Improvements and compliance with all covenants regarding environmental matters.

3. Primary Liability of the Guarantor. This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. The Guarantor shall be liable for the payment and performance of the Obligations, as set forth in this

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Guaranty, as a primary obligor. This Guaranty shall be effective as a waiver of, and the Guarantor hereby expressly waives any and all rights to which the Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require the Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever. Upon the occurrence of: (i) any Default under the Loan, (ii) any reasonable determination by the Lender that a material adverse change has occurred in the financial condition of the Guarantor, (iii) the dissolution or insolvency of Guarantor, subject to the provisions of Section 4 below, or (iv) any transfer of assets of Guarantor without receiving fair value in exchange therefor, the Indebtedness shall be deemed immediately due and payable at the election of the Lender, and the Guarantor shall, on demand and without presentment, protest, any notice whatsoever, pay the amount due thereon to the Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and it shall not be necessary for the Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against the Borrower or others liable on the Obligations or for such performance, or to institute suit or pursue or exhaust any rights or remedies against the Borrower or Guarantor or other sureties of the Obligations as contemplated by applicable law or to enforce any rights against any security that shall ever have been given to secure the Obligations, or to join the Borrower or any others liable for the payment or performance of the Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Obligations. The term "Person" as used herein shall mean all of the Borrower and the Guarantor.

4. Representations, Warranties, and Covenants of the Guarantor. Guarantor hereby represents, warrants, and covenants that:

(a) Guarantor will derive substantial benefit, directly or indirectly, from the making of the Loan to the Borrower and from the making of this Guaranty by the Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against the Guarantor; (c) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (d) Guarantor is a duly organized, validly existing limited liability company in good standing under the laws of the Commonwealth of Virginia, is lawfully doing business in the jurisdiction where it operates, and has full power and authority to enter into and perform this Guaranty; (e) except as may have been disclosed to the Lender in writing, there is not now pending against or affecting the Guarantor, nor, to the knowledge of the Guarantor, is there threatened, any action, investigation, suit or proceeding by or before any administrative agency which if adversely determined would materially impair or affect the Guarantor's financial condition; (f) all financial statements and information heretofore furnished to the Lender by the Guarantor do, and all financial statements and information hereafter furnished to the Lender by the Guarantor will, fully and accurately present the financial condition of the Guarantor as of their dates and the results of the Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Guarantor heretofore furnished to the Lender, no material adverse change has occurred in the financial condition of the Guarantor, nor, except as

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heretofore disclosed in writing to the Lender, has the Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this Guaranty, the Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Guarantor is an unreasonably small capital, and does not intend to incur or believes that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Lender has no duty at any time to investigate or inform the Guarantor of the financial or business condition or affairs of the Borrower or any change therein, and the Guarantor will keep fully apprised of the Borrower's financial and business condition; (i) the Guarantor acknowledges and agrees that the Guarantor may be required to pay and perform the Obligations in full without assistance or support from the Borrower or any other Person; and (j) the Guarantor has read and fully understand the provisions contained in the Loan Agreement, the Deed(s) of Trust, and the other Loan Documents, each of which may be modified, extended, supplemented or extended from time to time without notice to or consent from the Guarantor and without affecting the obligations of the Guarantor under this Guaranty.

In addition, during the term of the Loan, Lender must be satisfied that Guarantor's financial condition meets the following requirements:

(i) Adjusted Tangible Net Worth (ATNW) shall be at least \$65,000,000 for fiscal year 2005, increasing by 50% of consolidated after tax net earnings for each year thereafter. Adjusted Tangible Net Worth is defined as GAAP net worth plus subordinated debt approved by Agent less any goodwill, organizational costs, leasehold improvements and Affiliate and/or stockholder receivables and investments in joint ventures; and

(ii) Debt to Tangible Net Worth ("Leverage Ratio") shall be 3.50:1. Leverage Ratio is the total Adjusted Liabilities to Adjusted Tangible Net Worth (ATNW). Adjusted Liabilities is defined as GAAP total liabilities less Variable Interest Entities, less subordinated debt due to related parties and investments in affiliates and joint ventures that are not co-borrowers ("Related Venturer Subordinated Debt"), less subordinated debt ("Direct Subordinated Debt"), plus any other debt guaranteed by Borrower. For purposes hereof, a "Variable Interest Entity" is either: (A) an entity that is consolidated for financial statement purposes when (1) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (2) equity holders either (a) lack direct or indirect ability to make decisions about the entity (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur or (B) a "variable interest entity" as defined in Guarantor's SEC-filed financial statements and as the definition of such term is amended from time to time based upon guidance from the Financial Accounting Standards Board. For purposes of clarity, the primary beneficiary of a Variable Interest Entity is the party that absorbs a majority of the Variable Interest Entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity.

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The Guarantor's representations, warranties and covenants are a material inducement to the Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting the Borrower, the Guarantor, any other party, or any security for all or any part of the Obligations.

5. Financial Information. The Guarantor shall furnish or cause to be furnished to the Lender upon request any financial statements for Guarantor and any entity related to the Guarantor containing such information and in such form as Lender may from time to time reasonably determine, provided the obligations of the Guarantor hereunder have not already terminated.

Without limiting the generality of the foregoing, the Guarantor shall furnish to the Lender financial statements as follows:

(a) as soon as available, but in no event later than ninety (90) days after the close of its fiscal year (but in no event earlier than the date such financial statements must be submitted to governmental authorities), financial statements (all of which financial statements may include, as requested by the Lender, a balance sheet, income statement, sources and uses of funds for such fiscal and/or calendar year, projected sources and uses of funds for the coming year, detailed listing and description of all contingent liabilities, tax returns, written verification of liquidity and such other supporting schedules and documentation which the Lender may request). All such financial statements shall be audited by a certified public accountant acceptable to the Lender in all respects; and

(b) if requested by the Lender, within forty-five (45) days after the close of its quarterly business period (but in no event earlier than the date such financial statements must be submitted to governmental authorities), the financial statements to be filed with applicable governmental authorities.

6. Certain Agreements and Waivers by the Guarantor.

(a) The Guarantor hereby waives the benefits of Va. Code Ann. § 49-25 and § 49-26 as amended and agrees that neither the Lender's rights or remedies nor the Obligations shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of the Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (i) any limitation of liability or recourse in any other Loan Document or arising under any law;
- (ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;
- (iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Obligations;

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(iv) any homestead exemption or other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Obligations, including any impairment of the Guarantor's recourse against any Person or collateral;

(vi) whether express or by any operation of law, any full or partial release of the liability of the Guarantor, the Borrower or any other party hereunder or under any of the other Loan Documents;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Borrower, the Guarantor or any other party at any time liable for the payment or performance of any or all of the Obligations;

(viii) either with or without notice to or consent of the Guarantor, any renewal, extension, modification or rearrangement of the terms of any or all of the Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s), interest rate(s) and amortization) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by the Lender to the Borrower, the Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of the Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Obligations;

(x) any failure of the Lender to notify the Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by the Lender against the Borrower or any security or other recourse, or of any new agreement between the Lender and the Borrower,

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it being understood that the Lender shall not be required to give the Guarantor any notice of any kind under any circumstances with respect to or in connection with the Obligations, any and all rights to notice that the Guarantor may have otherwise had being hereby waived by the Guarantor;

(xi) any refund of any payment by the Borrower or any other party liable for the payment or performance of any or all of the Obligations;

(xii) the existence of any claim, set-off, or other right that the Guarantor may at any time have against the Borrower, the Lender (other than pursuant to a final judgment), or any other Person, whether or not arising in connection with this Guaranty or any other Loan Document;

(xiii) the unenforceability of all or any part of the Obligations against the Borrower, whether because the Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Obligations, or any part thereof, is beyond the scope of powers granted, or because the officers or Persons creating same acted in excess of their authority, or because of a lack of validity or enforceability of or

defect or deficiency in any of the Loan Documents, or because the Borrower has any valid defense, claim or offset with respect thereto, or because the Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that the Guarantor shall remain liable hereunder regardless of whether the Borrower or any other Person are found not liable on the Obligations, or any part thereof, for any reason (and regardless of any joinder of the Borrower or any other party in any action to obtain payment or performance of any or all of the Obligations);

(xiv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to the Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Obligations, whether or not consented to by the Lender; or

(xv) any failure to notify the Guarantor of, or obtain the Guarantor's consent to, the making of the Loan or any advances thereunder.

(b) In the event that any payment by the Borrower or any other Person to the Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason the Lender is required to refund such payment or pay the amount thereof to any other party, such payment by the Borrower or any other party to the Lender shall not constitute a release of the Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by the Lender of this Guaranty or of the Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by the Lender or paid by the Lender to another Person (which amounts shall constitute part of the Obligations), and any interest paid by the Lender and any reasonable attorneys' fees, costs and expenses paid or incurred by the Lender in connection with any such event. It is the intent of the Guarantor and the Lender that

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the obligations and liabilities of the Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of the Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of any of the Guarantor except as otherwise set forth herein. The Lender shall be entitled to continue to hold this Guaranty in its possession for a period of one year from the date the Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of the Guarantor hereunder and/or to exercise any right or remedy of the Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by the Borrower under the Note or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by the Guarantor on demand by the Lender.

7. Waiver of Trial by Jury; Consent to Jurisdiction. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED IN THE "DISPUTE RESOLUTION" SECTION) AS SET FORTH IN THIS NOTE, AGREEMENT, OR GUARANTY, AS APPLICABLE, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE, AGREEMENT, OR GUARANTY, AS APPLICABLE, AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

The Guarantor irrevocably submits to the nonexclusive jurisdiction of any state or federal court sitting in the Jurisdiction of Choice over any suit, action or proceeding arising out of, or relating to, this Guaranty, and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such

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state or federal court. The Guarantor irrevocably waives, to the fullest extent permitted by law, any objection that the Guarantor may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claims that any such suit, action or proceeding is brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon the Guarantor and may be enforced in any court in which the Guarantor are subject to jurisdiction, by a suit upon such judgment provided that service of process is effected upon the Guarantor as provided in the Loan Documents or as otherwise permitted by applicable law.

8. Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any Dispute shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of the American Arbitration Association, or any successor thereof ("AAA") and the "Special Rules" set forth below. "Dispute" means any controversy, claim or dispute between or among the parties to this Note, Agreement, or Guaranty, as applicable, including any controversy, claim or dispute arising out of or relating to (a) this Note, Agreement, or Guaranty, as applicable, (b) any other Loan Documents, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Borrower or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Note, Agreement, or Guaranty, as applicable, may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over

such action. For the purposes of this Dispute Resolution Section only, the terms “party” and “parties” shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Note, Agreement, or Guaranty, as applicable, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Note, Agreement, or Guaranty, as applicable.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, the any party to this Note, Agreement, or Guaranty, as applicable, may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute

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Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Note, Agreement, or Guaranty, as applicable, referred to collectively as the “arbitrator”).

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Note, Agreement, or Guaranty, as applicable.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Note, Agreement, or Guaranty, as applicable, shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Note, Agreement, or Guaranty, as applicable, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Note, Agreement, or Guaranty, as applicable, in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body

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(including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Note, Agreement, or Guaranty, as applicable. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) Conflicting Provisions for Dispute Resolution. If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Note, Agreement, or Guaranty, as applicable, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) Jury Trial Waiver in Arbitration. By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

9. **Attorneys' Fees and Costs of Collection.** The Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by the Lender in the enforcement of or preservation of the Lender's rights under this Guaranty. The Guarantor's obligations and liabilities under this Section 9 shall survive any payment or discharge in full of the Obligations.

10. **Term of Guaranty.** This Guaranty shall continue in effect until such time as the Obligations have been fully and finally paid and performed, except that, and notwithstanding any return of this Guaranty to the Guarantor, this Guaranty shall continue in effect (a) with respect to any of the Obligations that survive after expiration or termination of the Loan, (b) with respect to all obligations and liabilities of the Guarantor for indemnification and for the payment of all costs and expenses, as provided herein, and (c) as provided herein with respect to preferential, fraudulent or other voidable payments or other transfers.

11. **Subordination.** If, for any reason whatsoever, the Borrower is now or hereafter becomes indebted to the Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of the Borrower securing same shall, at all times, be subordinate in all respects to the Obligations and to all liens, security interests and rights now or hereafter existing to secure the Obligations; and

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(b) The Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of the Borrower to the Guarantor until the Obligations have been fully and finally paid and performed. Notwithstanding the foregoing, the Guarantor may receive payments upon close-out of any Project with regard to loans made by the Guarantor to the owner of any such Project, or with regard to loans made to Borrower on behalf of the owner of any such Project. Notwithstanding the foregoing, the Guarantor may receive payments from Borrower in the form of salaries or shareholder or member dividends.

12. **Subrogation.** Notwithstanding anything to the contrary contained herein (a) the Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness, until the later of the date on which the Indebtedness has been fully and finally paid, or the Loan has expired or been terminated, and (b) if the Guarantor is or becomes an "insider" (as defined in Section 101 of the United States Bankruptcy Code) with respect to the Borrower, then the Guarantor hereby irrevocably and absolutely waives any and all rights of contribution, indemnification, reimbursement or any similar rights against the Borrower with respect to this Guaranty (including any right of subrogation, except to the extent of collateral held by the Lender), whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that the Guarantor shall not be deemed to be a "creditor" (as defined in Section 101 of the United States Bankruptcy Code) of the Borrower by reason of the existence of this Guaranty in the event that the Borrower or the Guarantor becomes a debtor in any proceeding under the United States Bankruptcy code.

13. **Notices.** Unless specifically provided otherwise, any notice for purposes of this Guaranty shall be given in writing or by telecopier transmission and shall be addressed or delivered to the respective addresses set forth at the end of this Guaranty, or to such other address as may have been previously designated by the intended recipient by notice given in accordance with this Section. If sent by prepaid, registered or certified mail (return receipt requested), the notice shall be deemed effective when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change in address of which the sending party has not been notified; and if transmitted by telecopier or personal delivery, the notice shall be effective when received. No notice of change of address shall be effective except upon actual receipt.

14. **Cumulative Rights.** The exercise by the Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. The Lender shall have all rights, remedies and recourses afforded to the Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same shall be cumulative and concurrent and are intended to be, and shall be, nonexclusive. No waiver of any default on the part of the Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be

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construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. No provision of this Guaranty or any right, remedy or recourse of the Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or the Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to the Guarantor, by the Lender, except as otherwise provided herein.

15. **Disclosure of Information.** The Lender may sell or offer to sell the Loan or an interest in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant any information the Lender has pertaining to the Loan, the Obligations, this Guaranty, or the Guarantor. The Lender also may disclose any such information to any regulatory body having jurisdiction over the Lender and to any agent or attorney of the Lender and in such other circumstances and to such other parties as necessary or appropriate in the Lender's reasonable judgment.

16. **Governing Law; Forum.** This Guaranty is an agreement executed under seal, and its validity, enforcement, and interpretation, shall for all purposes be governed by and construed in accordance with the laws of the Jurisdiction of Choice and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If the Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of Guarantor's corporate seal physically to this Guaranty. All obligations of the Guarantor hereunder are payable and performable at the place or places where the Obligations are payable and performable. The Guarantor hereby irrevocably submits generally and unconditionally for the Guarantor and in respect of the Guarantor's respective property to the jurisdiction of any state court, or any United States federal court, sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Obligations. The Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that the Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum.

17. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement.

18. **Miscellaneous.** This Guaranty embodies the entire agreement between the Lender and the Guarantor with respect to the guaranty by the Guarantor of the Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to guaranty by the Guarantor of the Obligations. This Guaranty may not be modified, amended or superseded except in a writing signed by the Lender and the Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty is binding not only on the Guarantor, but also on the Guarantor's heirs, personal representatives, successors and assigns. If any provision of this Guaranty or the

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application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

[SIGNATURES ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Guarantor duly executed and delivered this Guaranty, intending that it be an instrument under seal, as of the date first written above.

WITNESS:

GUARANTOR:

COMSTOCK HOMEBUILDING
COMPANIES,
INC., a Delaware corporation

By: /s/ Jubal R. Thompson

By: /s/ Christopher
Clemente

Name: Jubal R. Thompson
Title: General Counsel

Christopher Clemente,
Chief Executive
Officer

(Seal)

Address: 11465 Sunset Hills
Road
5th Floor
Reston, Virginia 20190

ADDRESS OF LENDER:

BANK OF AMERICA, N.A.
8300 Greensboro Drive
Suite 300
McLean, Virginia 22102-3604
Attention: Homebuilder Division
Fax No: (703) 761-8160

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CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

I, Christopher Clemente, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the period presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others within that entity, particularly during the period in which this report is being prepared;
 - b) 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
 - c) 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 10, 2005

/s/ Christopher Clemente

Christopher Clemente
Chairman and Chief Executive Officer

(Principal executive officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Bruce J. Labovitz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the period presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, is made known to us by others within that entity, particularly during the period in which this report is being prepared;
 - b) 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
 - c) 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 10, 2005

/s/ Bruce J. Labovitz

Bruce J. Labovitz
Chief Financial Officer

(Principal financial officer)

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, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Christopher Clemente, Chairman and Chief Executive Officer of the Company and Bruce Labovitz, Chief Financial Officer of the Company, certify, to our best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 10, 2005

/s/ Christopher Clemente

Christopher Clemente
Chairman and Chief Executive Officer

Date: November 10, 2005

/s/ Bruce Labovitz

Bruce Labovitz
Chief Financial Officer

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